



MEETING AGENDA – AUGUST 27, 2019

BOARD ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

- 1. Approval of Agenda**
- 2. Safety Moment**
- 3. Approval of Minutes**

1. Public Utility Board - Regular Meeting - Jul 23, 2019 4:00 PM

- 4. Approval of Accounts Payable**

1. AP Board Listing

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.)

- 5. Consideration Of Bids**

1. Mechanical Systems Upgrade
Resolution: Mechanical Systems Upgrade

- 6. Regular Agenda**

1. Mayo Clinic MOU: S.E. Substation
Resolution: Mayo Clinic MOU: SE Substation

- 7. Informational**

1. Rates Sub Committee - Customer Charge
2. Customer Relations - Updated Life Support Policy

- 8. Board Liaison Reports**

- 9. General Managers Report**

- 10. Division Reports**

- 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 – JULY 23, 2019

COMMUNITY ROOM
4000 EAST RIVER ROAD NE
ROCHESTER, MN 55906

4:00 PM

Call to Order

Attendee Name	Title	Status	Arrived
Brett Gorden	Board Member	Absent	
Tim Haskin	Board Member	Present	
Melissa Graner Johnson	Board Vice President	Present	
Brian Morgan	Board President	Present	
Michael Wojcik	Board Member	Present	

1. Approval of Agenda

- Motion to:** approve the agenda as presented

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Tim Haskin, Board Member
AYES:	Tim Haskin, Melissa Graner Johnson, Brian Morgan, Michael Wojcik
ABSENT:	Brett Gorden

2. Safety Moment

President Brian Morgan spoke regarding heat safety and those working outdoors in light of the high heat indices our area experienced last week. He stated that OSHA has regulations regarding safety precautions such as taking regular breaks and drinking water.

3. Approval of Minutes

- Public Utility Board - Regular Meeting - Jun 25, 2019 4:00 PM
- Public Utility Board - Special Meeting - Jul 17, 2019 4:00 PM
- Motion to:** approve the minutes of June 25, 2019 and July 17, 2019 as presented

RESULT:	APPROVED [3 TO 0]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Tim Haskin, Board Member
AYES:	Tim Haskin, Melissa Graner Johnson, Brian Morgan
ABSTAIN:	Michael Wojcik
ABSENT:	Brett Gorden

4. Approval of Accounts Payable

Minutes Acceptance: Minutes of Jul 23, 2019 4:00 PM (Approval of Minutes)

1. AP Board Listing
2. **Motion to:** approve the a/p board listing as presented

RESULT:	APPROVED [UNANIMOUS]
MOVER:	Tim Haskin, Board Member
SECONDER:	Melissa Graner Johnson, Board Vice President
AYES:	Tim Haskin, Melissa Graner Johnson, Brian Morgan, Michael Wojcik
ABSENT:	Brett Gorden

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 Morgan opened the meeting for public comment. Five people came forward to speak.

Anna Richey, of the Rochester Energy Commission, spoke regarding the status of the LED street lighting project and asked for RPU staff to send any updates to commission member Steve Nyhus.

Alan Hoffman, of Rochester, thanked the RPU Board for its support of a 100 percent renewable energy plan, and asked the board not to only look at it, but adopt it.

Ivan Idso, of the newly-formed Transition Rochester, thanked the Board for its efforts towards 100 percent renewable energy.

Cooper Wigger, representing Christ United Methodist Church, said he was present to bear witness for 100 percent renewable energy, and said amen to planet-saving change.

Rick Morris, representing the Sierra Club, stated he knows that global warming is real, and he is really excited to see what's in the board's plan.

Susan Robinson-Denbow, a member of the Sierra Club, thanked RPU for the installation of solar and wind farms, and stated that global warming is real and urgent.

Vice President Johnson pointed out that the Board Members also received an email from Reuben Unseth, of Rochester, asking RPU to remain "agile and flexible in determining future electrical sources for Rochester" in its "consideration of a proposal to move Rochester to 100 percent dependency on renewable energy in 2030". He cited higher costs associated with wind, solar, battery storage and price increases due to regulations, and asked that citizens be allowed input on the process.

5. Consideration Of Bids

1. Foxcroft Circle Watermain Reconstruction

Buyer Mona Hoeft and Project Engineer Wade Neubauer presented a request to the Board for approval to reconstruct a water main at 2018 Fox Pointe Ln SW. Mr. Neubauer stated this is the second phase of the project that was started last year. Sealed bids for the project were opened on July 11, 2019 with two bidders. A bid from S.L. Contracting Inc, of \$175,315, was unresponsive due to failing to

provide a bid bond. Staff recommended acceptance of a bid from Elcor Construction Inc in the amount of \$155,900, which is within the budgeted estimate for the project.

Work includes replacement of three gate valves and deep extension rods in a deep section of the water main to connect it to existing mains. The work is expected to take place between September 3 and October 31, 2019.

President Morgan asked if this is similar in cost to a typical water main bid. This is a low bid, said Mr. Neubauer.

Resolution: Foxcroft Circle Watermain Reconstruction

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to reject the bid received by S.L. Contracting, Inc. as non-responsive, and accept the bid from Elcor Construction, Inc., in the amount of \$155,900.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 23rd day of July, 2019.

RESULT:	ADOPTED [UNANIMOUS]
MOVER:	Michael Wojcik, Board Member
SECONDER:	Tim Haskin, Board Member
AYES:	Tim Haskin, Melissa Graner Johnson, Brian Morgan, Michael Wojcik
ABSENT:	Brett Gorden

6. Regular Agenda

1. 2019 Resource Plan

Director of Power Resources Jeremy Sutton introduced Mike Borgstadt, manager of utility consulting, and Victor Aguirre, project manager, from Burns and McDonnell in Kansas City, Missouri. Mr. Borgstadt shared a presentation of the resource plan prepared by Burns and McDonnell for RPU's future power supply needs following the end of its power supply contract with Southern Minnesota Municipal Power Agency (SMMPA) in 2030. The plan offers five different scenarios and covers the time period from 2020 through 2039.

Mr. Borgstadt stated the options offered were planned with the following in mind: RPU's energy and capacity needs post-2030, reduced fossil-based energy sources and greenhouse gases with a focus towards renewable energy, exceeding the City's environmental compliance goals of reducing greenhouse gas emissions by 80% in 2050, providing reliable low cost energy to customers and implementing new technologies. Five different power supply options were evaluated: 25 percent renewable energy, 50 percent renewable energy, 75 percent renewable energy, 100 percent renewable energy and 100 percent renewable energy and capacity. Further analysis of the plans showed that a base case of 40 percent renewable energy is the most cost effective, using a 220 megawatt combustion gas turbine for capacity (Scenario 1). Scenario 2 proposes 50 percent renewables using the same large combustion turbine and wind energy and adding an additional one percent rate increase. Scenario 3, the lowest cost option using 100 percent renewables, would use a large combustion turbine and wind and solar energy, adding \$8 million over the base case at a 2 percent rate increase. Scenario 4 incorporates 100 percent renewables using a smaller 110 megawatt reciprocating engine block turbine, wind, solar and battery

storage for capacity, but at a little more than 4 percent rate increase. Scenario 5 proposes 100 percent renewable fossil free energy using only wind, solar and battery storage, but it is also the highest cost option with a \$115 million premium over the base case and an 18 percent rate increase.

President Morgan asked if the Power Purchase Agreements (PPA) would be local, regional or national. Mr. Borgstadt stated they would be regional in the MISO footprint. Board Member Michael Wojcik asked about the cost of capital on the 100 percent renewable plans. Director of Corporate Services Peter Hogan replied it is 6 percent. President Morgan asked at what capacity the turbines would be running in the scenarios, to which Mr. Borgstadt replied 5 to 10 percent. Did the study consider purchase capacity on the grid versus building power source facilities, asked President Morgan? Securing long-term capacity via the grid would be difficult and building a facility will be a long-term, low-cost solution, said Mr. Borgstadt. An audience member asked, is there no possibility of doing anything prior to 2030? Through RPU's CROD (contract rate of delivery) with SMMPA, RPU is required to purchase power through SMMPA until 2030, said President Morgan. Mr. Wojcik stated that RPU is legally binded to the SMMPA contract.

Since battery technology is changing very quickly, Mr. Wojcik asked how confident Burns and MacDonnell are in the projections? Mr. Borgstadt stated his company is researching battery storage and he feels comfortable but could not predict the future. RPU staff made a recommendation in support of Scenario 3, said Mr. Borgstadt, based on its 100 percent renewable energy option and low impact to rates. Scenario 3 is in line with survey tolerance, he said, based on a 2019 RPU customer survey that indicated that 57% of customers are willing to pay an additional \$5-\$10 more per month to use renewable energy.

The Board's acceptance of Scenario 3 would put RPU on the path to continue towards 100 percent renewable energy, said Director of Power Resources Jeremy Sutton. Mr. Sutton added that with the implementation of Scenario 3, further planning through the Minnesota Public Utilities Commission would be required. He shared a proposed implementation schedule through December 2029 to include project development, permitting, engineering and construction timelines.

Mr. Wojcik commented it would seem like all the non-100 percent renewable options should be taken off the table, and asked when the Board will have to make a decision regarding funding. That would be in the 2021 time frame, said Mr. Sutton. Vice President Johnson asked what a 2 percent premium would look like on the average customer bill. Mr. Sutton replied a 2 percent rate increase is equal to about \$1.60 on the customer bill. President Morgan asked for a clarification of the difference between Scenario 3 and Scenario 4. Mr. Borgstadt stated that the model for Scenario 3 incorporates a large combustion turbine, while Scenario 4 would use a smaller combination turbine requiring fill-in capacity from wind, solar and battery power. President Morgan asked if there are PPA's available for wind and solar? Yes, said Mr. Borgstadt, although it will be a longer process to find developers and sites. Are we running out of land to put windmills on, asked Mr. Morgan? No, replied Mr. Sutton, land is not the issue, transmission is the issue. Technology has also improved for wind turbines, said Mr. Borgstadt, to allow for optimal output even from less optimal resource areas, and there are currently competitive prices on PPA's. Vice President Johnson asked about the typical length of a PPA, to which Mr. Sutton stated it is 20 to 30 years. Mr.

Borgstadt clarified that for wind it would be 20 years and there are also short-term five-year contracts, although longer year contracts are more favorable. Mr. Sutton further stated that RPU is currently issuing a request for proposal for building a 20 to 27 megawatt solar garden that could be owned by RPU in 2030, which could be a resource for this plan, adding that the utility is not waiting to do something.

President Morgan asked if RPU would need to stagger bonding for these multiple resources. Director of Corporate Services Peter Hogan stated that RPU would likely begin bonding in 2026-2027 for capital, with short-term financing prior to that. Do PPA's carry a capital requirement, asked President Morgan. No, and buying into PPA's early is of no advantage, said Mr. Sutton, and those resources will provide RPU with an energy hedge. President Morgan asked about the margin of error for the cost data. Mr. Borgstadt said it's within the error of the system unless the market significantly changes. Mr. Wojcik asked what the cost per megawatt per subcomponent will be. Mr. Borgstadt did not have that information, and Mr. Hogan said the scenarios are based on assumptions. Mr. Wojcik asked why Scenario 3 is favored over Scenario 4. Mr. Sutton stated there are opportunities to partner with other utilities which could drive Scenario 3 into the best case, due to the capacity for a lower kilowatt basis. Mr. Wojcik asked for the embedded costs of the carbon footprint of the batteries in the scenarios. Mr. Borgstadt did not know, and Mr. Sutton said RPU would need to look into battery recycling. How much is conservation (greenhouse gas reductions) influencing these numbers, asked Mr. Wojcik? The utility has enough kilowatt hours saved and would convert those to greenhouse gases, said Mr. Sutton. Between the two different types of capacity plans that are out there, what is the potential footprint on the land? Mr. Aguirre said it will be smaller, about the size of the Westside Energy Station (for the 220 megawatt turbine). The 110 megawatt turbine would be three times the size of Westside, said Mr. Sutton. When will RPU receive proposals for the upcoming solar project, asked Mr. Wojcik? It will be in the next couple of weeks, replied Mr. Sutton. The solar project will offer opportunity to partner with businesses and others within the community and fits in with RPU's goals and system, said Mr. Sutton.

Mr. Wojcik stated he would like to study Scenario 3 and continue to monitor Scenarios 4 and 5. Vice President Johnson asked where Scenario 3 would be on the greenhouse gas emissions chart if RPU were to partner with other utilities. Mr. Sutton replied that the output of the unit would not change. Mr. Borgstadt added that Scenario 3 would slightly reduce the CO2 and greenhouse gases produced.

Board Member Tim Haskin noted that Scenarios 3 and 4 are 100 percent renewable until we need to burn gas and compared it to eating vegetarian until you need to eat a steak. Why would RPU not shoot high and aim for Scenario 5, he asked? The only way to get carbon-free would be to disconnect the ties in Rochester and disconnect from the grid, said Mr. Sutton. He pointed out that unique climate events, such as the polar vortex event of January 30, 2019, are times when limited resources force the need to utilize fossil fuels. Mr. Haskin added that Scenario 3 presents a plan on the path to achieving Scenario 5, if 5 is truly achievable. Mr. Borgstadt replied that these are economic models taking into account the economics and not reliability situations such as Mr. Sutton described, and Scenario 5 would require buying market energy in such situations. Mr. Wojcik commented that there really is no zero impact energy

solution, therefore Scenario 5 is not truly zero impact, and further data and guidance is needed. He said he would like to learn more about Scenario 5 and doesn't necessarily see an advantage to Scenario 4.

General Manager Mark Kotschevar stated that Scenarios 3 and 4 are identical from a greenhouse gas reduction and renewable energy perspective but Scenario 4 has a higher price tag (\$27 million more) and a smaller backup generator, therefore showing no real economic or environmental benefit. Mr. Sutton added that RPU is still waiting for feedback from the Board before pulling together a final resource plan document.

Mr. Wojcik made a motion to direct RPU staff to pursue a 100 percent renewable strategy energy plan, specifically to continue analysis of Scenarios 3 and 5. This was seconded by Mr. Haskin. Motion passed.

Mr. Kotschevar stated that he and Mr. Sutton were asked to present the resource plan options at the August 12, 2019 City Council study session, and at a public hearing on September 4, 2019. President Morgan encouraged the public to reach out on this topic via the RPU Board email link on the RPU website. Mr. Wojcik credited Mr. Sutton and his power resources team for their hard work on delivering a 100 percent renewable plan. Additionally, Mr. Kotschevar stated that a press release would be issued following today's meeting, an article will be published in RPU's Plugged In, and that RPU staff plan to speak at the Rochester Area Chamber of Commerce and at the various energy groups.

7. Board Liaison Reports

Board Member Michael Wojcik stated that he and members of the Rates Committee met to review the residential customer charge and policies relating to equity assistance to qualified households and conservation programs for low-income groups.

General Manager Mark Kotschevar said the next Board policy in line for revision is the Electric Service Availability policy.

8. General Managers Report

General Manager Mark Kotschevar reported that RPU is actively pursuing the request for proposals for its solar project. RPU's water cost of service study results will be presented to the Board in August.

Todd Osweiler, environmental and regulatory affairs coordinator, is currently updating RPU's wellhead protection plan and will present a report to the Board in August. The plan is updated every ten years.

Vice President Johnson commended RPU staff for raising over \$12,000 for United Way through the Power of the Purse event. Mr. Kotschevar credited Business Services Manager Deb Donahue and Director of Customer Relations Krista Boston and thanked them for their work with United Way.

9. Division Reports & Metrics

10. Other Business

11. Adjourn

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Regular Meeting**Tuesday, July 23, 2019****4:00 PM**

Submitted by:

Secretary

Approved by the Board

Board President_____
Date

Minutes Acceptance: Minutes of Jul 23, 2019 4:00 PM (Approval of Minutes)

ACCOUNTS PAYABLE

Meeting Date: 8/27/2019

SUBJECT: AP Board Listing

PREPARED BY: Colleen Keuten

Please Approve.

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 07/10/2019 To 08/09/2019
Consolidated & Summarized Below 1,000

Greater than 50,000 :

SOUTHERN MN MUNICIPAL POWER A	July SMMPA Bill	8,970,204.66
THE ENERGY AUTHORITY INC	July MISO Transmission	307,529.64
KNUTSON CONSTRUCTION SERVICES	Service Center Expansion Mtls 4/16-6/7/19	276,178.00
STUART C IRBY CO INC	31944FT-Wire, AL, 15kV, 750 Str, 1/C, 22	178,304.41
CONSTELLATION NEWENERGY-GAS D	June Gas for SLP	150,325.59
KNUTSON CONSTRUCTION SERVICES	Service Center Expansion Labor 4/16-6/7/19	147,387.35
BORDER STATES ELECTRIC SUPPLY	600EA-Meter, 12S CL200 120V 2-WAY W/Disc	116,181.68
SCHMIDT GOODMAN OFFICE PRODUC	BEP-Office Furnit-15 Cubicles, Chairs, Cabinets	107,626.55
RIVERWALK ROCHESTER LLC	CIP-AirSrc Heat Pumps-Incentives/Rebates	96,600.00
STUART C IRBY CO INC	49679FT-Wire, AL, 15kV, 1/0 Solid, 1/C,	94,361.29
BORDER STATES ELECTRIC SUPPLY	600EA-Meter, FM2S CL200 240V 2WAY W/Disc	89,775.00
CONSTELLATION NEWENERGY-GAS D	June Gas for WES	87,197.81
CITY OF ROCHESTER	Various Street Opening Repairs	70,638.74
MAYO FOUNDATION	CIP-Cooling Eq. (C&I)-Incentives/Rebates	65,013.00
CONSTELLATION NEWENERGY-GAS D	June Gas for CC	60,754.95

Price Range Total:

10,818,078.67

5,000 to 50,000 :

BORDER STATES ELECTRIC SUPPLY	120EA-Meter, FM9S 2-Way 3-Register	49,267.24
BILLTRUST dba	July CC/Billing/Mailing/IVR Services	45,178.16
USIC LOCATING SERVICES INC	May and June Locating Services	41,158.24
PEOPLES ENERGY COOPERATIVE (P	July Compensable	39,758.96
CITY OF ROCHESTER	CIP-Lighting (C&I)-Incentives/Rebates	35,153.53
CLEMENTS CHEVROLET CADILLAC S	2019 Chevy Silverado 1500HD 4WD (V649)	32,166.00
CLEMENTS CHEVROLET CADILLAC S	2019 Chevy Silverado 1500HD 4WD (V648)	32,166.00
CENTRAL MINNESOTA MUNICIPAL P	July Capacity/CMP	31,900.00
PEOPLES ENERGY COOPERATIVE (P	June Compensable	29,426.16
WRIGHT TREE SERVICE INC	Hourly Tree Removal 2019-2020~	27,537.84
NEOPOST USA INC	Mail Equip-Base w/Autofill Sealer, Tray, Scanner	24,997.15
HPC AMERICA	July - December 2019 SAP Support	24,500.00
THE ENERGY AUTHORITY INC	July Resource Fee	22,628.17
BLUESPIRE STRATEGIC MARKETING	2016 - 2019 RPU Plugged In Contract	22,182.81
BELL LUMBER & POLE COMPANY	54EA-Pole, 35ft, WRC, CL3	21,978.00
FORBROOK LANDSCAPING SERVICES	SC landscaping NW #2	21,494.35
A & A ELECT & UNDERGROUND CON	2017-2022 Directional Boring	20,981.75
RESCO	50EA-Three Phase VT Pack Ratio 2.5:1	20,872.50
STUART C IRBY CO INC	10975FT-Wire, AL, 15kV, 1/0 Solid, 1/C,	20,739.79
RIVERWALK ROCHESTER LLC	CIP-LED Light Fixtures-Incnavs/Rebts	20,699.27
WESCO DISTRIBUTION INC	50EA-Elbow, 15kv, 600A, 350-750 CU/AL	19,950.00
U S ALLIANCE GROUP	July Credit Card Processing Fees	18,685.62
DAKOTA SUPPLY GROUP	60EA-Luminaire, 108W LED, PC 120-277V, G	18,339.75
SCHMIDT GOODMAN OFFICE PRODUC	Install - 15 Cubicles BEP	16,672.50
MN SUPPLY COMPANY INC (P)	10EA-Custom wire cages	16,619.68
PW POWER SYSTEMS INC	2019 Field Serv for GT2~Borescope Inspections	15,612.82
EPLUS TECHNOLOGY INC	Firepower license - 3yr	15,284.68
MOODYS INVESTORS SERVICE INC	Annual Bond Rating Agency Fee-Moody's	15,200.00
CENTURYLINK (P)	2018-23 Monthly Telecommunications	14,638.50

Attachment: AP Board CrMo (10988 : AP Board Listing)

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 07/10/2019 To 08/09/2019
Consolidated & Summarized Below 1,000

52	N HARRIS COMPUTER CORP	CIS Implementation-CO-003B	13,950.00
53	VISION COMPANIES LLC (P)	Leadership Journey 100,200-Strategy/Comm	13,912.50
54	ADVANTAGE DIST LLC (P)	10426GAL-Urea 32, WES	13,482.78
55	MINNESOTA ENERGY RESOURCES CO	June Gas for WES	13,294.27
56	CHS ROCHESTER	July Fuel Electric	12,993.31
57	STUART C IRBY CO INC	2310FT-Wire, AL, 15kV, 750 Str, 1/C, 220	12,952.17
58	BELL LUMBER & POLE COMPANY	24EA-Pole, 40ft, WRC, CL3	12,936.00
59	McGRANN SHEA CARNIVAL STRAUGH	Q2 Retainer	12,500.00
60	BURNS & MCDONNELL INC (P)	Infrastructure Financial Modeling Study	12,169.98
61	EPLUS TECHNOLOGY INC	15EA-Wireless access point	11,212.50
62	AE2S INC	Water Model Update and Calibration Svcs.	11,169.45
63	XCEL ENERGY CORP	Q2-CapX-RPU's O&M Share	10,996.70
64	EPLUS TECHNOLOGY INC	2EA-Cisco Firepower firewall appliance	10,995.00
65	INSITE COMMERCIAL REAL ESTATE	Consulting - Property to be purchased by RPU	10,937.50
66	BELL LUMBER & POLE COMPANY	12EA-Pole, 50ft, WRC, CL3	10,908.00
67	TRIPWIRE INC	Professional Services and Training	10,772.00
68	STUART C IRBY CO INC	9EA-Trans, PM, 1ph, 25kVA, 13.8/8, 240	10,359.00
69	STUART C IRBY CO INC	9EA-Trans, OH, 1ph, 37.5kVA, 13.8/8, 120	10,080.00
70	STEVE BENNING ELECTRIC	Install manual transfer switch @01 Baihly	9,377.50
71	STUART C IRBY CO INC	10EA-Metal Sec. Encl, 3ph, 30"x67"x22" 2	9,350.00
72	CONSTELLATION NEWENERGY-GAS D	Revised April 2019-Gas for WES	9,150.38
73	BELL LUMBER & POLE COMPANY	12EA-Pole, 45ft, WRC, CL3	8,880.00
74	HILLERS FLOORING AMERICA INC	Wellness room floor replacement - BEP	8,700.00
75	ST JOHNS CHURCH	CIP-Lighting (C&I)-Incentives/Rebates	8,519.70
76	WELLS FARGO BANK ACCT ANALYSI	July Banking Services	8,308.35
77	RIVERWALK ROCHESTER LLC	CIP-Clothes Washers-Incentives/Rebates	7,600.00
78	ONE DIVERSIFIED LLC dba	Barco Videowall Maint & Training	7,575.30
79	STUART C IRBY CO INC	4EA-Trans, PM, 1ph, 75kVA, 13.8/8, 240	7,536.00
80	STUART C IRBY CO INC	10EA-Trans, OH, 1ph, 15kVA, 13.8/8, 12	7,350.00
81	CHS ROCHESTER	July Fuel Water	7,203.70
82	STUART C IRBY CO INC	2EA-Switch, Air, 3Phase Riser	7,150.00
83	CONSTELLATION NEWENERGY-GAS D	Revised April 2019-Gas for CC	6,951.83
84	WAL-MART STORES, INC.	CIP-Lighting (C&I)-Incentives/Rebates	6,617.28
85	CRESCENT ELECTRIC SUPPLY CO	2500FT-Conduit, HDPE, 4.00, Empty, SDR 1	6,615.00
86	MINNESOTA ENERGY RESOURCES CO	June Gas SLP	6,557.05
87	STUART C IRBY CO INC	5EA-Trans, OH, 1ph, 50kVA, 13.8/8, 120	6,480.00
88	KATS EXCAVATING LLC	Water SA Serv Repair 616 27th ST NW	6,400.00
89	BURNS & MCDONNELL INC (P)	Power Supply Infrastructure Plan	6,169.45
90	S L CONTRACTING INC	2018-Break Repair/No Invoice till 2019-Oak Cliff	6,040.00
91	REMOTE SOLUTIONS LLC	Install/Training - STR Integration	6,009.01
92	ULTEIG ENGINEERS INC	Cascade Creek Sub Transformer Replace	6,000.00
93	D P C INDUSTRIES INC	799 Gals-2019 Carus 8500 Aqua Mag F35	5,832.70
94	OWATONNA PUBLIC UTILITIES	Mutual Aid-Storm Clean up	5,766.16
95	HARRIS ROCHESTER INC	Install a Desuperheater Control Valve	5,749.88
96	PITNEY BOWES PURCHASE POWER	Postage	5,676.22
97	EPLUS TECHNOLOGY INC	2EA-3504 wireless controller	5,562.00
98	STUART C IRBY CO INC	17EA-Fuse End Fitting, SML-20, For SMU-2	5,525.00
99	EPLUS TECHNOLOGY INC	3EA-Catalyst 9200 24 port switch	5,220.60
100	D P C INDUSTRIES INC	68 Cyl-2019 Chlorine	5,151.00
101	PARSONS ELECTRIC LLC	Speaker and data cable addition	5,034.00
102	VERIZON WIRELESS	2019 Cell & Ipad Monthly Service - July	5,018.00

Attachment: AP Board CrMo (10988 : AP Board Listing)

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 07/10/2019 To 08/09/2019
Consolidated & Summarized Below 1,000

103	BROWN RUSS	CIP-Renewables-Incentives/Rebates	5,000.00
104	EGAN COMPANY	Install 200 Amp Service & Re-Feed Exist	5,000.00
105	KATS EXCAVATING LLC	Water SA service repair 948 18th ST SE	5,000.00
106			
107		Price Range Total:	1,191,486.74
108			
109	<u>1,000 to 5,000 :</u>		
110			
111	WESCO DISTRIBUTION INC	90EA-Clamp, DE, U-Bolt,2-2/0 ACSR,1-3/0	4,755.60
112	ENERVAC INTERNATIONAL ULC	1EA-SF6 DN20 adapter kit	4,711.00
113	RESCO	36EA-Junction, LB, 200A, 4 Pos, w/Strap	4,701.60
114	STUART C IRBY CO INC	5EA-Metal Sec. Encl, 3ph, 30"x67"x22" 20	4,675.00
115	STUART C IRBY CO INC	50EA-Cutout, 15KV, 100A, NLB, Poly	4,580.00
116	TREATMENT RESOURCES INC	4EA-Vac. Reg. 201C5, Adv. Ser.200, 50ppd	4,520.00
117	MOKUA ELIZABETH	CIP-Renewables-Incentives/Rebates	4,500.00
118	BARR ENGINEERING COMPANY (P)	Groundwater Consulting Services	4,461.00
119	PODEINS POWER EQUIPMENT (P)	Hydro Site Mower	4,380.81
120	INTERSTATE MOTOR TRUCKS INC	Repairs to '12 Navistar	4,379.80
121	KATS EXCAVATING LLC	Water SA service repair-4518 Portage DR	4,355.00
122	PARSONS ELECTRIC LLC	Camera, cable, and horn install SC-North Shop	4,321.00
123	ULTEIG ENGINEERS INC	Engineering Srvs for IBM Phasing Mod	4,267.50
124	ROCH TOOL & DIE INC	Fabrication of Panels, ZRS's, Bus Feeder	4,084.55
125	EAST JORDAN IRON WORKS INC db	6EA-Manhole Cover w/Ring, 38.0", 6 High	4,070.64
126	CORE & MAIN LP (P)	2EA-WB67 Hydrant Bonnet	4,037.84
127	IHEART MEDIA dba	Radio Ads - July	4,002.00
128	EPLUS TECHNOLOGY INC	Firepower support	3,959.27
129	ELEVATE MARKETING SOLUTIONS L	Scam Calls Cable Ads for July	3,880.00
130	MASTEC NORTH AMERICA INC	2019 Joint Trench Directional Boring	3,860.00
131	PEOPLES ENERGY COOPERATIVE (P)	Comp Pmt-New Territ-18th Ave SW(Fieldsto	3,847.13
132	RIVERWALK ROCHESTER LLC	CIP-Dishwashers-Incentives/Rebates	3,800.00
133	RIVERWALK ROCHESTER LLC	CIP Conserve&Save Clothes Washer Rebate	3,800.00
134	SHI INTERNATIONAL CORP (P)	2019-20 KACE maintenance	3,766.06
135	WSB & ASSOCIATES	Soil boring services	3,750.00
136	STUART C IRBY CO INC	40EA-Conn, Trans, 1/0-1000, 6-Tap, Bare	3,702.00
137	N HARRIS COMPUTER CORP	CIS Implementation-CO-036B	3,690.00
138	CRESCENT ELECTRIC SUPPLY CO	10EA-Elbow, Steel, 36.0 R, 5.00	3,675.00
139	OPTIV SECURITY INC	SCADA Security Assessment	3,671.63
140	DAKOTA SUPPLY GROUP	12EA-Luminaire, 108W LED, PC 120-277V, G	3,667.95
141	DAKOTA SUPPLY GROUP	12EA-Luminaire, 108W LED, PC 120-277V, B	3,667.95
142	BORDER STATES ELECTRIC SUPPLY	15EA-Grd Sleeve, 3ph Sect. Encl, 18 x 67	3,630.00
143	AMERICAN HOSPITALITY LLC	CIP-Lighting (C&I)-Incentives/Rebates	3,605.38
144	WARTSILA NORTH AMERICA	WES-WOIS Temp Programming	3,604.58
145	N HARRIS COMPUTER CORP	CIS Implementation-CO-043	3,600.00
146	N HARRIS COMPUTER CORP	CIS Implementation-CO-047	3,600.00
147	N HARRIS COMPUTER CORP	CIS Implementation-CO-047	3,600.00
148	EPLUS TECHNOLOGY INC	3EA-Power supply	3,559.50
149	HDR ENGINEERING INC	Water Main Analysis	3,550.66
150	WARTSILA NORTH AMERICA	1EA-Ball Valve Assembly - Engine Inlet	3,544.62
151	BENTLEY SYSTEMS INC	2019-2020WaterCAD Software Maintenance	3,459.60
152	D P C INDUSTRIES INC	9590 Lbs-2019 Hydrofluorosilicic Acid	3,337.33
153	CONSOLIDATED COMMUNICATIONS d	2018-20 Network and Co-location Services	3,333.62

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154	VEIT DISPOSAL SYSTEMS	CIP-Lighting (C&I)-Incentives/Rebates	3,298.00
155	QUANTITATIVE MARKET INTELLIGENCE	2019 Qtly Customer Satisfaction Survey	3,206.25
156	KNXR - FM	June Ads	3,200.00
157	CAMERON GRAHAM	CIP-Geothermal (R)-Incentives/Rebates	3,187.50
158	BORDER STATES ELECTRIC SUPPLY	120EA-Elbow, 15kV, 200A, LB, 1/0 Sol, 175-	3,114.00
159	BURNS & MCDONNELL INC (P)	Q2 Silver Creek Rd roundabout study	3,070.60
160	FERGUSON ENTERPRISES INC #165	2EA-Hydrant, 8 ft	3,050.00
161	IHEART MEDIA dba	June Scam Ads	3,036.00
162	ADVANTAGE DIST LLC (P)	110GAL-Oil, Lubriplate Marine Safe (55ga	2,982.24
163	HALLBERG ENGINEERING INC	CSC Commissioning Service for BEP	2,958.60
164	BAIER GERALD	2019 Sweeping Services-July	2,833.26
165	McGRANN SHEA CARNIVAL STRAUGH	Service Territory	2,808.50
166	KATS EXCAVATING LLC	Water SA Serv Repair 2117 8th ST NW	2,800.00
167	ULTEIG ENGINEERS INC	Engineering Svcs for Marion Rd Sub	2,720.00
168	ELEVATE MARKETING SOLUTIONS L	Cable Ads for July	2,705.00
169	EXPRESS SERVICES INC	2018-19 Seasonal staff facilities	2,677.03
170	ONLINE INFORMATION SERVICES I	2019 Utility Exchange Report - July	2,649.66
171	STUART C IRBY CO INC	2019 Rubber Goods Testing & Replacement	2,625.90
172	BOLTON AND MENK (P)	New Cingular Airport Modification~	2,625.00
173	RESCO	21EA-CT Bar Type 600/5 Small Bar	2,593.50
174	PARSONS ELECTRIC LLC	Repl & Install 2 cameras-Garage & Hallway	2,460.00
175	KRAUS ANDERSON CONSTRUCTION C	Customer Refunds 300000720537-Overpmt	2,450.31
176	MOTOROLA INC	1EA-Radio, Vehicle, APX 1500 Pkg	2,447.25
177	MINNESOTA ENERGY RESOURCES CO	June Gas for CC	2,353.02
178	RIVERWALK ROCHESTER LLC	CIP Conserve & Save Rebates - Toilets	2,325.00
179	MIDCONTINENT ISO INC	July MISO Fees	2,311.79
180	RIVERWALK ROCHESTER LLC	CIP-Central AC-Incentives/Rebates	2,300.00
181	TWIN CITY SECURITY INC	2019 Security Services	2,270.70
182	CLEMENTS CHEVROLET CADILLAC S	Tax, license, and registration (V648)	2,259.54
183	CLEMENTS CHEVROLET CADILLAC S	Tax, license, and registration (V649)	2,259.54
184	CITY OF ROCHESTER	MN Dept of Labor & Industry 1st 1/2 SCF	2,234.89
185	N HARRIS COMPUTER CORP	Travel for Cayenta Implementation Serv	2,213.71
186	RESCO	50EA-Crossarm, Wood, 8' HD	2,199.00
187	ELITE CARD PAYMENT CENTER	Travel, TKYllo, iP Util Safety Conf, Regi	2,173.00
188	N HARRIS COMPUTER CORP	CIS Implementation-CO-033B	2,160.00
189	ATLAS COPCO COMPRESSORS LLC	2EA-Filter Kit, UD310+ WS Air Dryer	2,152.65
190	IHEART MEDIA dba	RPU Scams spots-June	2,138.57
191	UNITED RENTALS INC	June Rental of Telescopic Boom-55th Str	2,123.27
192	EPLUS TECHNOLOGY INC	2019 Network maintenance services	2,120.00
193	BLUE EARTH LIGHT & WATER	Mututal Aid-Storm Work	2,112.50
194	UNITED RENTALS INC	Boom Rental 7/8-8/5/19-3605 Hwy 52 N	2,089.49
195	ULTEIG ENGINEERS INC	Engineering Svcs Cascade Creek Bus Duct	2,030.00
196	IHEART MEDIA dba	June Radio Ads	2,001.00
197	ENVIRONMENTAL INITIATIVE	Environmental Initiative Sponsorship	2,000.00
198	ATLAS COPCO COMPRESSORS LLC	4EA-Silencer, WS Air Dryer	1,975.61
199	SOMA CONSTRUCTION INC	Crushed aggregate for break evac backflow	1,958.29
200	BORDER STATES ELECTRIC SUPPLY	30EA-SLP-LED Panel Lights	1,949.29
201	WARTSILA NORTH AMERICA	1EA-Pressure Differential Transmitter	1,943.06
202	STUART C IRBY CO INC	2EA-Trans, OH, 1ph, 25kVA, 13.8/8, 120	1,824.00
203	NETWORKFLEET INC	June - GPS Fleet Tracking	1,787.62
204	RESCO	600EA-Lock, Trans. Security	1,782.68

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205	WARTSILA NORTH AMERICA	2EA-Transmitter	1,770.30
206	GDS ASSOCIATES INC	MISO Schedule 2	1,730.00
207	ELITE CARD PAYMENT CENTER	Travel,RCooke, Natl Safety, Lodging	1,640.60
208	GRAYBAR ELECTRIC COMPANY INC	3000FT-Wire, Copper, 600V, #6 Str, XLP	1,632.98
209	THE PROW COMPANY	CIP-Lighting (C&I)-Incentives/Rebates	1,602.50
210	ARNOLDS SUPPLY & KLEENIT CO (10SET-Slim jim recycling station (2 cans	1,600.00
211	EPLUS TECHNOLOGY INC	Service support (3 yrs)	1,587.10
212	GRAINGER INC	10EA-Steel handrail, 96"	1,578.80
213	STUART C IRBY CO INC	50EA-Arrester, 10kV, Dist, OH MOV	1,560.00
214	BORDER STATES ELECTRIC SUPPLY	500FT-Wire, Meter Rapid Pull cable 500'	1,555.03
215	STUART C IRBY CO INC	1EA-Phasing tester	1,525.00
216	SMITH ENGINEERING INC	8EA-DI Vessels, Two-bed	1,480.22
217	CLARK LEE	CIP-Renewables-Incentives/Rebates	1,480.00
218	EXPRESS SERVICES INC	2019 Seasonal warehouse temp	1,466.40
219	BOYS & GIRLS CLUB	CIP-Lighting (C&I)-Incentives/Rebates	1,428.00
220	WARTSILA NORTH AMERICA	1EA-Ball Valve Assembly - Pressure Test	1,420.23
221	BORDER STATES ELECTRIC SUPPLY	50EA-Steel Deadend, .375" Guy, EHS, Long	1,414.00
222	ROBERTSON GORDON	Travel, GIS Conf,San Diego,CA, Lodging	1,412.28
223	BANKS JOSHUA C	Online delivery of BEP Photography	1,410.00
224	WARTSILA NORTH AMERICA	2EA-Pressure Switch	1,402.88
225	SANS INSTITUTE dba	NERC Compliance Training	1,400.00
226	BAIER GERALD	Blacktop Repair-JM HS,Lot & Road Amer Legio	1,400.00
227	BORENE LAW FIRM P.A.	Immigration Matters-File 3742 Mohan PERM	1,399.20
228	GOPHER STATE ONE CALL	July Electric Tickets	1,377.00
229	GOPHER STATE ONE CALL	July Water Tickets	1,377.00
230	CITY OF ROCHESTER	Employee Background Verifications	1,364.40
231	BOLTON AND MENK (P)	Antenna Review TMOB Golden Hill #91	1,312.50
232	ULINE	3-Open Gear Lockers	1,311.36
233	CITY OF ROCHESTER	Workers Comp Fees June 2019	1,282.00
234	TOTAL RESTAURANT SUPPLY	1EA-Bunn coffee brewer	1,274.40
235	CITY OF ROCHESTER	Workers Comp Payments	1,270.38
236	CORE & MAIN LP (P)	2EA-Coupling,12" Romac Alpha 2Bolt Restr	1,268.74
237	WESCO DISTRIBUTION INC	20EA-Crossarm, Wood, 10' HD	1,257.00
238	ADVANTAGE DIST LLC (P)	55GAL-Oil, #732, Turbine Oil (55 Gal Dru	1,249.10
239	EPLUS TECHNOLOGY INC	3504 software support	1,236.89
240	ELITE CARD PAYMENT CENTER	Valve Body Rebuild	1,234.77
241	ELITE CARD PAYMENT CENTER	Travel, JMason, Fund Battery Storage, Re	1,195.00
242	WESCO DISTRIBUTION INC	12EA-Saw, FG Square Pole 1.250" x 6', 41	1,187.60
243	ROCHESTER ARMORED CAR CO INC	2019 Pick Up Services - July	1,187.24
244	U S A SAFETY SUPPLY	24PR-Glove, Leather Work, Lite Duty, X-L	1,186.31
245	GRAYBAR ELECTRIC COMPANY INC	2000FT-Wire for Trucks	1,184.97
246	CHRIST UNITED METHODIST CHURC	CIP-Lighting (C&I)-Incentives/Rebates	1,177.04
247	ARNOLDS SUPPLY & KLEENIT CO (4EA-SS trash/recycling 20 gallon can	1,160.00
248	EXPRESS SERVICES INC	2019 Temp Staff Business Services	1,154.82
249	MORGAN BRIAN	Travel, APPA Conf, Austin,TX, Lodging	1,151.40
250	WESCO DISTRIBUTION INC	30EA-Mast Arm, 6' x 1.250"	1,146.23
251	BORDER STATES ELECTRIC SUPPLY	50EA-Steel Deadend, .375" Guy, EHS, Long	1,129.50
252	EPLUS TECHNOLOGY INC	Switch license (3 yrs)	1,105.03
253	ELITE CARD PAYMENT CENTER	Travel, DLarson, AEE Conf, Lodging	1,102.85
254	STEVE BENNING ELECTRIC	Electrical Repair-SC-Labor & Matls	1,092.50
255	HALO BRANDED SOLUTIONS	10' Tent w/RPU Logo	1,084.79

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256	ELITE CARD PAYMENT CENTER	2-Eaton 1000 Towers EBM's for Tower Bldg	1,082.79
257	S L CONTRACTING INC	Curb repair due to main break	1,081.00
258	SOLID WASTE OLMSTED COUNTY	Electricity Purchased by RPU	1,060.13
259	KERRY	CIP-Lighting (C&I)-Incentives/Rebates	1,056.00
260	ADVANTAGE DIST LLC (P)	55GAL-Oil, DTE Heavy Med. (55 Gal Drum)	1,046.89
261	MN SAFETY COUNCIL INC	Electrical Safety Training	1,039.32
262	RESCO	30EA-Conn, Fire-On Stirrup, 336.4, ACSR	1,024.50
263	OPEN ACCESS TECHNOLOGY	OATI Services June 2019	1,016.67
264	POMPS TIRE SERVICE INC	4-Tires	1,008.05
265			
266		Price Range Total:	372,884.13
267			
268	<u>0 to 1,000 :</u>		
269			
270	EXPRESS SERVICES INC	Summarized transactions: 38	27,523.93
271	REBATES	Summarized transactions: 103	18,707.95
272	ELITE CARD PAYMENT CENTER	Summarized transactions: 64	14,916.12
273	Customer Refunds (CIS)	Summarized transactions: 133	12,089.74
274	STUART C IRBY CO INC	Summarized transactions: 49	8,719.09
275	RESCO	Summarized transactions: 28	7,565.13
276	CINTAS CORP	Summarized transactions: 44	7,337.68
277	GRAINGER INC	Summarized transactions: 48	5,889.80
278	EPLUS TECHNOLOGY INC	Summarized transactions: 12	5,596.61
279	BORDER STATES ELECTRIC SUPPLY	Summarized transactions: 34	5,362.77
280	WESCO DISTRIBUTION INC	Summarized transactions: 18	4,790.75
281	CRESCENT ELECTRIC SUPPLY CO	Summarized transactions: 36	3,775.22
282	LAWSON PRODUCTS INC (P)	Summarized transactions: 13	3,561.92
283	U S A SAFETY SUPPLY	Summarized transactions: 16	3,154.71
284	BOLTON AND MENK (P)	Summarized transactions: 9	3,092.50
285	CITY OF ROCHESTER	Summarized transactions: 8	2,322.72
286	POMPS TIRE SERVICE INC	Summarized transactions: 7	2,308.65
287	AMARIL UNIFORM COMPANY	Summarized transactions: 12	2,299.70
288	CORE & MAIN LP (P)	Summarized transactions: 5	2,125.17
289	ADVANCE AUTO PARTS	Summarized transactions: 26	2,093.18
290	CLAREY'S SAFETY EQUIPMENT dba	Summarized transactions: 4	2,025.29
291	A & A ELECT & UNDERGROUND CON	Summarized transactions: 4	1,995.50
292	N HARRIS COMPUTER CORP	Summarized transactions: 3	1,800.00
293	VIKING ELECTRIC SUPPLY INC	Summarized transactions: 9	1,774.36
294	FIRST CLASS PLUMBING & HEATIN	Summarized transactions: 9	1,759.92
295	AMAZON.COM	Summarized transactions: 23	1,741.28
296	ELITE CARD PAYMENT CENTER	Summarized transactions: 5	1,674.92
297	SEEME PRODUCTIONS LLC	Summarized transactions: 2	1,539.00
298	GRAYBAR ELECTRIC COMPANY INC	Summarized transactions: 12	1,516.35
299	NEW LINE MECHANICAL INC	Summarized transactions: 3	1,508.57
300	SUNBELT RENTALS	Summarized transactions: 2	1,503.96
301	HUG ENGINEERING INC	Summarized transactions: 5	1,500.46
302	REINDERS INC	Summarized transactions: 8	1,453.63
303	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 31	1,394.24
304	TREATMENT RESOURCES INC	Summarized transactions: 6	1,349.40
305	WARTSILA NORTH AMERICA	Summarized transactions: 6	1,322.26
306	ROCH SIGN SERVICE INC	Summarized transactions: 6	1,311.36

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307	STEVE BENNING ELECTRIC	Summarized transactions: 4	1,301.68
308	MINNESOTA ENERGY RESOURCES CO	Summarized transactions: 6	1,301.59
309	INNOVATIVE OFFICE SOLUTIONS L	Summarized transactions: 8	1,267.32
310	J & W INSTRUMENTS INC (P)	Summarized transactions: 3	1,257.74
311	METRO SALES INC	Summarized transactions: 2	1,182.08
312	DAVIES PRINTING COMPANY INC	Summarized transactions: 4	1,160.56
313	CENTURYLINK (P)	Summarized transactions: 5	1,055.80
314	HALO BRANDED SOLUTIONS	Summarized transactions: 5	1,052.86
315	NETWORK SERVICES COMPANY	Summarized transactions: 10	1,016.20
316	NUVERA	Summarized transactions: 2	1,009.67
317	ULINE	Summarized transactions: 6	971.35
318	PRAIRIE EQUIPMENT CO LLC	Summarized transactions: 1	967.11
319	ATLAS COPCO COMPRESSORS LLC	Summarized transactions: 5	963.94
320	WRIGHT TREE SERVICE INC	Summarized transactions: 1	961.41
321	SHI INTERNATIONAL CORP (P)	Summarized transactions: 1	939.20
322	ERC WIPING PRODUCTS INC	Summarized transactions: 2	913.42
323	AUTHORIZE.NET	Summarized transactions: 1	861.70
324	MENARDS ROCHESTER NORTH	Summarized transactions: 13	857.72
325	ON SITE SANITATION INC	Summarized transactions: 4	852.91
326	CLEMENTS CHEVROLET CADILLAC S	Summarized transactions: 8	847.67
327	EAST JORDAN IRON WORKS INC db	Summarized transactions: 2	822.78
328	MILESTONE MATERIALS	Summarized transactions: 2	820.90
329	ROCH TOOL & DIE INC	Summarized transactions: 2	813.19
330	BADGER METER INC (P)	Summarized transactions: 5	803.44
331	FAST PHONE REPAIR LLC	Summarized transactions: 3	789.97
332	ALL SEASONS POWER & SPORT INC	Summarized transactions: 4	782.26
333	INTERSTATE MOTOR TRUCKS INC	Summarized transactions: 5	752.74
334	DIGI-KEY CORPORATION	Summarized transactions: 7	746.17
335	CINTAS CORP	Summarized transactions: 4	745.84
336	COMPREHENSIVE LOSS MANAGEMENT	Summarized transactions: 1	742.78
337	THE ENERGY AUTHORITY INC	Summarized transactions: 1	717.48
338	K A A L TV LLC	Summarized transactions: 1	700.00
339	CENTURYLINK	Summarized transactions: 2	685.48
340	A T & T	Summarized transactions: 1	654.60
341	NAPA AUTO PARTS dba	Summarized transactions: 15	651.92
342	SCHUMACHER ELEVATOR COMPANY	Summarized transactions: 1	636.54
343	FASTENAL COMPANY	Summarized transactions: 9	627.52
344	ROCH AREA BUILDERS INC	Summarized transactions: 1	615.00
345	HAWK & SON'S INC	Summarized transactions: 1	615.00
346	THOMAS TOOL & SUPPLY INC	Summarized transactions: 6	613.43
347	DAVE SYVERSON TRUCK CENTER IN	Summarized transactions: 2	598.55
348	AMERICAN ENGINEERING TESTING	Summarized transactions: 2	595.00
349	WSB & ASSOCIATES	Summarized transactions: 1	594.50
350	BOB THE BUG MAN LLC	Summarized transactions: 1	577.12
351	ALTERNATIVE TECHNOLOGIES INC	Summarized transactions: 2	572.00
352	LANGUAGE LINE SERVICES INC	Summarized transactions: 1	563.25
353	TRUCKIN' AMERICA	Summarized transactions: 2	557.08
354	AIRGAS SAFETY INC (P)	Summarized transactions: 3	549.77
355	MOHAN SIDDARTHAN	Summarized transactions: 3	533.32
356	FRANZ REPROGRAPHICS INC	Summarized transactions: 3	531.13
357	CORPORATE WEB SERVICES INC	Summarized transactions: 2	525.47

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358	RDO EQUIPMENT COMPANY (P)	Summarized transactions: 3	523.56
359	BRIMAR INDUSTRIES	Summarized transactions: 9	521.30
360	VERTEX US HOLDINGS INC	Summarized transactions: 1	517.20
361	WARNING LITES OF MN INC (P)	Summarized transactions: 2	515.81
362	ALTEC INDUSTRIES INC (P)	Summarized transactions: 2	504.79
363	THOMAS TOOL & SUPPLY INC	Summarized transactions: 1	502.89
364	CHOSEN VALLEY TESTING	Summarized transactions: 1	500.00
365	REBATES	Summarized transactions: 15	483.81
366	IHEART MEDIA dba	Summarized transactions: 1	483.00
367	FEDEX SHIPPING	Summarized transactions: 19	482.29
368	GARCIA GRAPHICS INC	Summarized transactions: 3	472.00
369	TEREX UTILITIES INC	Summarized transactions: 4	469.20
370	MAJERUS WILLIAM	Summarized transactions: 3	467.06
371	TOTAL RESTAURANT SUPPLY	Summarized transactions: 9	453.08
372	STATE SUPPLY CO	Summarized transactions: 3	452.74
373	McGRANN SHEA CARNIVAL STRAUGH	Summarized transactions: 2	450.00
374	GOPHER SEPTIC SERVICE INC	Summarized transactions: 2	441.69
375	COLLINS FEED & SEED CENTER	Summarized transactions: 3	438.19
376	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 2	437.94
377	BLOM BRYAN	Summarized transactions: 1	425.00
378	SUPERIOR COMPANIES OF MINNESO	Summarized transactions: 1	402.00
379	MN VALLEY TESTING LABS INC	Summarized transactions: 1	400.00
380	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 9	397.59
381	PAAPE ENERGY SERVICE INC	Summarized transactions: 2	390.00
382	ROCH PLUMBING & HEATING CO IN	Summarized transactions: 2	388.38
383	MISSISSIPPI WELDERS SUPPLY CO	Summarized transactions: 3	383.06
384	ZEE MEDICAL SERVICE INC (P)	Summarized transactions: 2	378.51
385	INSITE COMMERCIAL REAL ESTATE	Summarized transactions: 1	374.40
386	SOUND AND MEDIA SOLUTIONS	Summarized transactions: 2	372.50
387	JENNINGS, STROUSS & SALMON PL	Summarized transactions: 1	368.00
388	OVERHEAD DOOR CO OF OLM CO DB	Summarized transactions: 2	353.40
389	BECKLEYS OFFICE PRODUCTS INC	Summarized transactions: 2	352.14
390	CLARK CONCRETE INC	Summarized transactions: 1	350.00
391	SHERWIN WILLIAMS CO	Summarized transactions: 11	346.45
392	HELENA CHEMICAL COMPANY	Summarized transactions: 2	339.87
393	STEVE BENNING ELECTRIC	Summarized transactions: 2	332.50
394	ROBERTSON GORDON	Summarized transactions: 1	330.00
395	MORGAN BRIAN	Summarized transactions: 3	327.86
396	TOKAY SOFTWARE dba	Summarized transactions: 1	323.00
397	MERIT CONTRACTING INC (P)	Summarized transactions: 1	298.90
398	NEOPOST USA INC	Summarized transactions: 1	292.37
399	ELCOR CONSTRUCTION INC	Summarized transactions: 3	288.11
400	FORBROOK LANDSCAPING SERVICES	Summarized transactions: 1	277.88
401	PARSONS ELECTRIC LLC	Summarized transactions: 1	277.75
402	TRUCKIN' AMERICA	Summarized transactions: 1	276.25
403	VERIZON WIRELESS	Summarized transactions: 2	273.81
404	VANCO SERVICES LLC	Summarized transactions: 1	273.32
405	HARRIS ROCHESTER INC	Summarized transactions: 1	269.00
406	MASTEC NORTH AMERICA INC	Summarized transactions: 2	268.85
407	WERNER ELECTRIC SUPPLY	Summarized transactions: 4	268.58
408	SUTTON JEREMY	Summarized transactions: 2	264.26

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409	DAKOTA SUPPLY GROUP	Summarized transactions: 7	260.18
410	OLSEN CHAIN & CABLE CO INC	Summarized transactions: 6	258.01
411	PEOPLES ENERGY COOPERATIVE	Summarized transactions: 1	254.96
412	POLLARDWATER dba	Summarized transactions: 1	250.21
413	ARNOLDS SUPPLY & KLEENIT CO (Summarized transactions: 3	243.72
414	WARNING LITES OF MN INC (P)	Summarized transactions: 1	243.60
415	MCMASTER CARR SUPPLY COMPANY	Summarized transactions: 5	242.38
416	CHARTER COMMUNICATIONS HOLDIN	Summarized transactions: 2	238.42
417	IDEAL SERVICE COMPANY INC	Summarized transactions: 2	237.28
418	SAFELITE FULFILLMENT INC	Summarized transactions: 1	225.85
419	AMER WATER WORKS ASSN	Summarized transactions: 1	208.00
420	BUSCH SYSTEMS INTERNATIONAL I	Summarized transactions: 2	201.39
421	POSSABILITIES OF SOUTHERN MN	Summarized transactions: 1	196.00
422	CULVER COMPANY INC	Summarized transactions: 2	192.60
423	DAKOTA SUPPLY GROUP	Summarized transactions: 2	190.67
424	SIREK HYDRAULIC SERVICE INC	Summarized transactions: 2	186.00
425	TOTAL TOOL SUPPLY INC (P)	Summarized transactions: 6	182.28
426	WATER SYSTEMS COMPANY	Summarized transactions: 4	180.51
427	POWER SYSTEMS ENGINEERING INC	Summarized transactions: 1	177.50
428	T E C INDUSTRIAL INC	Summarized transactions: 4	172.93
429	CANADIAN HONKER EVENTS AT APA	Summarized transactions: 1	157.52
430	ALTEC INDUSTRIES INC	Summarized transactions: 2	154.65
431	CLEMENTS CHEVROLET CADILLAC S	Summarized transactions: 2	133.02
432	EDINALARM INC	Summarized transactions: 2	128.85
433	GILLUND ENTERPRISES	Summarized transactions: 3	120.13
434	RONCO ENGINEERING SALES INC	Summarized transactions: 1	119.38
435	SMITH ENGINEERING INC	Summarized transactions: 1	117.56
436	KAMAN INDUSTRIAL TECHNOLOGIES	Summarized transactions: 3	100.73
437	POST BULLETIN CO	Summarized transactions: 1	97.04
438	HACH COMPANY	Summarized transactions: 4	95.22
439	A T & T MOBILITY	Summarized transactions: 2	93.54
440	CITY OF ROCHESTER	Summarized transactions: 1	92.50
441	BLUESPIRE STRATEGIC MARKETING	Summarized transactions: 1	90.03
442	WERNER ELECTRIC SUPPLY (P)	Summarized transactions: 2	88.40
443	SLEEPY EYE TELEPHONE CO	Summarized transactions: 1	84.76
444	37TH STREET TIRE & AUTO SVC I	Summarized transactions: 1	79.00
445	NICKELS SCOTT	Summarized transactions: 1	78.88
446	K & M GLASS INC	Summarized transactions: 1	75.24
447	ROCH HUMAN RESOURCES ASSOCIAT	Summarized transactions: 1	75.00
448	OPTIV SECURITY INC	Summarized transactions: 1	75.00
449	CHESNEY JAMES	Summarized transactions: 1	74.24
450	MONSON STEVE	Summarized transactions: 1	72.76
451	MSC INDUSTRIAL SUPPLY CO INC	Summarized transactions: 3	68.61
452	FERGUSON ENTERPRISES INC #165	Summarized transactions: 2	67.53
453	NETWORKFLEET INC	Summarized transactions: 3	65.37
454	FEDEX SHIPPING	Summarized transactions: 4	65.17
455	POST BULLETIN CO	Summarized transactions: 1	64.64
456	LACEY JAMES V	Summarized transactions: 1	60.00
457	ANCOM COMMUNICATIONS INC	Summarized transactions: 2	53.44
458	U S BANK	Summarized transactions: 1	50.89
459	AMAZON.COM	Summarized transactions: 1	42.01

Attachment: AP Board CrMo (10988 : AP Board Listing)

ROCHESTER PUBLIC UTILITIES
A/P Board Listing By Dollar Range
For 07/10/2019 To 08/09/2019
Consolidated & Summarized Below 1,000

460	UNITED RENTALS INC	Summarized transactions: 1	37.61
461	NALCO COMPANY	Summarized transactions: 2	37.00
462	CENTRAL FINANCE OLMSTED COUNT	Summarized transactions: 1	36.75
463	THRONDSO OIL & LP GAS CO	Summarized transactions: 4	36.01
464	MENARDS ROCHESTER NORTH	Summarized transactions: 3	34.65
465	BROCK WHITE COMPANY LLC (P)	Summarized transactions: 1	32.09
466	MENARDS ROCHESTER SOUTH	Summarized transactions: 2	29.85
467	EVOQUA WATER TECHNOLOGIES LLC	Summarized transactions: 1	21.48
468	ARROW ACE HARDWARE (P)	Summarized transactions: 1	21.35
469	ARROW ACE HARDWARE (P)	Summarized transactions: 1	20.97
470	WABASHA IMPLEMENT	Summarized transactions: 1	20.52
471	ZIEGLER INC	Summarized transactions: 2	19.34
472	RONCO ENGINEERING SALES INC	Summarized transactions: 1	18.98
473	GREAT RIVER ENERGY	Summarized transactions: 1	11.68
474	OPEN ACCESS TECHNOLOGY	Summarized transactions: 1	8.52
475	MISTER CARWASH	Summarized transactions: 1	6.66
476			
477		Price Range Total:	238,937.35
478			
479			
480		Grand Total:	12,621,386.89
481			

Attachment: AP Board CrMo (10988 : AP Board Listing)

FOR BOARD ACTION

Agenda Item # (ID # 10973)

Meeting Date: 8/27/2019

SUBJECT: Mechanical Systems Upgrade

PREPARED BY: Andrew Bianco

ITEM DESCRIPTION:

Sealed bids were opened on July 2, 2019 for the mechanical systems upgrade at the RPU Service Center. This project includes general construction for a new IT server mechanical room, replacing the halon fire protection system, three computer room air conditioning units, three air handlers, condensing units, heat and associated pumps, dry cooler, temperature controls, and other building related mechanical systems. This project will be completed during three phases: Fall 2019, Spring 2020 and Fall 2020. The intent of the project phasing is to avoid the peak heating and cooling seasons in order to minimize occupancy discomfort due to HVAC systems being offline. MEP Associates, LLC is the design firm for the project.

The pre-bid meeting garnered a lot of attention but in the end just one bidder responded. Alvin E. Benike, Inc. submitted a proposal in the amount of \$2,346,000. Staff reached out to several HVAC contractors who indicated they were not comfortable being the general contractor on a project that involved multiple sub-trades. Staff also conferred with another general contractor who indicated they had been awarded a couple large contracts following the pre-bid meeting and no longer had the capacity to complete a contract of this size. Staff and MEP vetted the numbers and agree that Benike's submittal is in line with market conditions and re-bidding isn't likely to produce any better results.

The 2019 budget included \$2,300,000 for this project, which includes \$135,830 for the cost of design services. Building expansion funding will cover the balance of this project.

UTILITY BOARD ACTION REQUESTED:

Approval of a resolution to enter into a contract with Alvin E. Benike, Inc. in the amount of \$2,346,000, and authorize the Mayor and City Clerk to execute the agreement.



AIA® Document A101™ – 2017

Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum

The term "Architect" contained herein shall be considered synonymous with the term "Engineer".

AGREEMENT made as of the 29th day of August in the year 2019
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)

City of Rochester
Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55906

and the Contractor:
(Name, legal status, address and other information)

Alvin E. Benike, Inc.
2960 Hwy 14 West
Rochester, MN 55901

for the following Project:
(Name, location and detailed description)

Rochester Public Utilities
Mechanical System Upgrades
4000 East River Road NE
Rochester, MN 55906

The Architect:
(Name, legal status, address and other information)

MEP Associates, LLC
3416 Lakeridge Place NW
Rochester, MN 55901

The Owner and Contractor agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

The parties should complete A101™–2017, Exhibit A, Insurance and Bonds, contemporaneously with this Agreement. AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Attachment: RPU - Benike AIA A101 Agreement 08.21.19 - Final (10973 : Mechanical Systems Upgrade)

Init.

TABLE OF ARTICLES

1	THE CONTRACT DOCUMENTS
2	THE WORK OF THIS CONTRACT
3	DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION
4	CONTRACT SUM
5	PAYMENTS
6	DISPUTE RESOLUTION
7	TERMINATION OR SUSPENSION
8	MISCELLANEOUS PROVISIONS
9	ENUMERATION OF CONTRACT DOCUMENTS

EXHIBIT A INSURANCE AND BONDS

ARTICLE 1 THE CONTRACT DOCUMENTS

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary, and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract, and are as fully a part of the Contract as if attached to this Agreement or repeated herein. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. An enumeration of the Contract Documents, other than a Modification, appears in Article 9.

ARTICLE 2 THE WORK OF THIS CONTRACT

The Contractor shall fully execute the Work described in the Contract Documents, except as specifically indicated in the Contract Documents to be the responsibility of others.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be:

(Check one of the following boxes.)

- ☐ The date of this Agreement.
- ☒ A date set forth in a notice to proceed issued by the Owner.
- ☐ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of this Agreement.

§ 3.2 The Contract Time shall be measured from the date of commencement of the Work.

§ 3.3 Substantial Completion

§ 3.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Contractor shall achieve Substantial Completion of the entire Work:

(Check one of the following boxes and complete the necessary information.)

- ☐ Not later than () calendar days from the date of commencement of the Work.

Init.

☒ By the following dates:

Project Phase shall be completed as follows:

1. Phase I:
 - a. Construction shall commence on September 16, 2019.
 - b. All Phase I work will need to be Substantially Completed prior to November 29, 2019.
2. Phase II:
 - a. Construction shall commence on March 16, 2020.
 - b. All Phase I work will need to be Substantially Completed prior to May 15, 2020.
3. Phase III:
 - a. Construction shall commence on September 14, 2020.
 - b. All Phase I work will need to be Substantially Completed prior to November 27, 2020.

§ 3.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Contractor shall achieve Substantial Completion of such portions by the following dates:

Portion of Work

Refer to above Phases.

Substantial Completion Date

Refer to above Dates.

§ 3.3.3 If the Contractor fails to achieve Substantial Completion as provided in this Section 3.3, liquidated damages, if any, shall be assessed as set forth in Section 4.5.

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Contractor the Contract Sum in current funds for the Contractor's performance of the Contract. The Contract Sum shall be \$2,346,000.00, subject to additions and deductions as provided in the Contract Documents.

§ 4.2 Alternates

§ 4.2.1 Alternates, if any, included in the Contract Sum:

Item

N/A

Price

§ 4.2.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Agreement. Upon acceptance, the Owner shall issue a Modification to this Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item

N/A

Price

Conditions for Acceptance

§ 4.3 Allowances, if any, included in the Contract Sum:
(Identify each allowance.)

Item

N/A

Price

§ 4.4 Unit prices, if any:

(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item

N/A

Units and Limitations

Price per Unit (\$0.00)

§ 4.5 Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

Init.

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User Notes:

N/A

§ 4.6 Other:

(Insert provisions for bonus or other incentives, if any, that might result in a change to the Contract Sum.)

N/A

ARTICLE 5 PAYMENTS

§ 5.1 Progress Payments

§ 5.1.1 Based upon Applications for Payment submitted to the Architect by the Contractor and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ 5.1.3 Provided that an Application for Payment is received by the Architect not later than the 25th day of a month, the Owner shall make payment of the amount certified to the Contractor not later than the 10th day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty (30) days after the Architect receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ 5.1.4 Each Application for Payment shall be based on the most recent schedule of values submitted by the Contractor in accordance with the Contract Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. The schedule of values shall be prepared in such form, and supported by such data to substantiate its accuracy, as the Architect may require. This schedule of values shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 5.1.5 Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.1.6 In accordance with AIA Document A201™–2017, General Conditions of the Contract for Construction, and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

§ 5.1.6.1 The amount of each progress payment shall first include:

- .1 That portion of the Contract Sum properly allocable to completed Work;
- .2 That portion of Construction Change Directives that the Architect determines, in the Architect's professional judgment, to be reasonably justified.

§ 5.1.6.2 The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2 The amount, if any, for Work that remains uncorrected and for which the Architect has previously withheld a Certificate for Payment as provided in Article 9 of AIA Document A201–2017;
- .3 Any amount for which the Contractor does not intend to pay a Subcontractor or material supplier, unless the Work has been performed by others the Contractor intends to pay;
- .4 For Work performed or defects discovered since the last payment application, any amount for which the Architect may withhold payment, or nullify a Certificate of Payment in whole or in part, as provided in Article 9 of AIA Document A201–2017; and
- .5 Retainage withheld pursuant to Section 5.1.7.

Init.

§ 5.1.7 Retainage

§ 5.1.7.1 For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)

Five Percent (5%)

§ 5.1.7.1.1 The following items are not subject to retainage:

(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)

N/A

§ 5.1.7.2 Reduction or limitation of retainage, if any, shall be as follows:

(If the retainage established in Section 5.1.7.1 is to be modified prior to Substantial Completion of the entire Work, including modifications for Substantial Completion of portions of the Work as provided in Section 3.3.2, insert provisions for such modifications.)

N/A

§ 5.1.7.3 Except as set forth in this Section 5.1.7.3, upon Substantial Completion of the Work, the Contractor may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 5.1.7. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

(Insert any other conditions for release of retainage upon Substantial Completion.)

N/A

§ 5.1.8 If final completion of the Work is materially delayed through no fault of the Contractor, the Owner shall pay the Contractor any additional amounts in accordance with Article 9 of AIA Document A201–2017.

§ 5.1.9 Except with the Owner's prior approval, the Contractor shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 Final Payment

§ 5.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor when

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Article 12 of AIA Document A201–2017, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect.

§ 5.2.2 The Owner's final payment to the Contractor shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment, or as follows:

§ 5.3 Interest

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

Not Applicable.

ARTICLE 6 DISPUTE RESOLUTION**§ 6.1 Initial Decision Maker**

The Initial Decision Maker shall be pursuant to Article 15 of AIA Document A201–2017.

Init.

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User Notes:

§ 6.2 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

(Check the appropriate box.)

- ☐ Arbitration pursuant to Section 15.4 of AIA Document A201–2017
- ☒ Litigation in a court of competent jurisdiction
- ☐ Other *(Specify)*

If the Owner and Contractor do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

ARTICLE 7 TERMINATION OR SUSPENSION

§ 7.1 The Contract may be terminated by the Owner or the Contractor as provided in Article 14 of AIA Document A201–2017.

§ 7.1.1 If the Contract is terminated for the Owner's convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Contractor a termination fee as follows:

(Insert the amount of, or method for determining, the fee, if any, payable to the Contractor following a termination for the Owner's convenience.)

N/A

§ 7.2 The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017.

ARTICLE 8 MISCELLANEOUS PROVISIONS

§ 8.1 Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

§ 8.2 The Owner's representative:

(Name, address, email address, and other information)

Steve Monson, MS, PMP, CFM
Manager of Facilities Services
Rochester Public Utilities
4000 East River Road NE
Rochester, MN 55906
Phone: 507.280.1577
Cell: 507.993.4998
E-mail: smonson@rpu.org

§ 8.3 The Contractor's representative:

(Name, address, email address, and other information)

Aaron Benike, President
Alvin B. Benike, Inc.
2960 Hwy 14 West
Rochester, MN 55901

Init.

Phone: 507.288.6575
E-mail: aaronb@benike.com

§ 8.4 Neither the Owner's nor the Contractor's representative shall be changed without ten days' prior notice to the other party.

§ 8.5 Insurance and Bonds

§ 8.5.1 The Owner and the Contractor shall purchase and maintain insurance as set forth in AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor where the basis of payment is a Stipulated Sum, Exhibit A, Insurance and Bonds, and elsewhere in the Contract Documents.

§ 8.5.2 The Contractor shall provide bonds as set forth in AIA Document A101™–2017 Exhibit A, and elsewhere in the Contract Documents.

§ 8.6 Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)

N/A

§ 8.7 Other provisions:

N/A

ARTICLE 9 ENUMERATION OF CONTRACT DOCUMENTS

§ 9.1 This Agreement is comprised of the following documents:

- .1 AIA Document A101™–2017, Standard Form of Agreement Between Owner and Contractor.
- .2 AIA Document A201™–2017, General Conditions of the Contract for Construction.
- .3 Drawings: Refer to attached Exhibit 'A' - List of Drawings.
- .4 Specifications: Refer to attached Exhibit 'B' - Project Manual Table of Contents.
- .5 Addenda, if any:

Number	Date	Pages
One (1)	June 20, 2019	Two (2)

Portions of Addenda relating to bidding or proposal requirements are not part of the Contract Documents unless the bidding or proposal requirements are also enumerated in this Article 9.

- .6 Other Exhibits:
(Check all boxes that apply and include appropriate information identifying the exhibit where required.)

☒ Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
Project Manual Section 00 73 00	Supplementary Conditions	May 31, 2019	One (1), plus attachments.

Init.

.7 Other documents, if any, listed below:

(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201™-2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or proposal, portions of Addenda relating to bidding or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)

N/A

This Agreement entered into as of the day and year first written above.

CITY OF ROCHESTER

By: _____

Kim Norton, Mayor

Attest: _____

Anissa Hollingshead, City Clerk

Approved
as to Form: _____

Jason Loos, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____

Mark Kotschevar, General Manager

ALVIN E. BENIKE, INC.

CONTRACTOR *(Signature)*

(Printed name and title)

Init.

DRAFT AIA® Document A201™ – 2007

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address)

«Rochester Public Utilities
Mechanical System Upgrades»
«4000 East River Road NE»
«Rochester, MN 55906»

THE OWNER:

(Name, legal status and address)

City of Rochester »« »
«Rochester Public Utilities»
«4000 East River Road NE»
«Rochester, MN

« »« »
« »

THE ARCHITECT:

(Name, legal status and address)

«MEP Associates, LLC»
«3416 Lakeridge Place NW»
«Rochester, MN 55901»

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The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT
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Attachment: RPU - Benike AIA A101 Agreement 08.21.19 - Final (10973 : Mechanical Systems Upgrade)

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Attachment: RPU - Benike AIA A101 Agreement 08.21.19 - Final (10973 : Mechanical Systems Upgrade)

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding requirements.

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants or (4) between any persons or entities other than the Owner and the Contractor. The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.

§ 1.1.3 THE WORK

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

§ 1.1.4 THE PROJECT

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by separate contractors.

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 INSTRUMENTS OF SERVICE

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, and other similar materials.

§ 1.1.8 INITIAL DECISION MAKER

The Initial Decision Maker is the Owner or its designee.

1.1.9 KNOWLEDGE

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor actually does, or subject to Section 3.2.3, should know, recognize, and discover in exercising the care, skill and diligence of the local contracting community. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean reasonably inferable by a contractor familiar with the Project and exercising the care, skill and diligence required of the Contractor by the Contract Documents. For the purposes of this Section, the Contractor is acting in its capacity as a contractor and not as a licensed design professional unless

otherwise specifically provided in the Contract Documents. These obligations do not relieve or reduce the Architect's professional responsibilities or liabilities.

1.1.10 PRODUCT

Materials, systems and equipment incorporated or to be incorporated in the Work.

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results. In the event of conflict or discrepancies among the Contract Documents, the interpretations will be based on the following priorities: (a) The Agreement (the Contract) including any approved change orders; (b) Addenda, with those of later date having precedence over those of earlier dates; (c) The General Conditions of the Contract for construction as modified by the Owner; (d) Specifications; (e) Drawings, larger scale over small scale drawings (i.e. 1/2" scale drawings take precedence over 1/4" scale drawings). In the event of any conflict between State and City requirements the stricter of the two control. In the event of patent inconsistencies within or between parts of the Contract Documents, or between the Contract Documents and applicable standards, codes, or ordinances, the Contractor shall (a) provide the better quality or greater quantity of Work, or (b) comply with the more stringent requirements. This subsection shall not modify any of the rights or obligations set forth in Sections 3.2 and 3.7

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

1.2.4 Whenever a product is specified or shown by describing proprietary items, model numbers, catalog numbers, manufacturer, trade names, or similar reference, no substitutions may be made unless accepted prior to execution of the Contract or if accepted as a Change in the Work in accordance with Section 7. Where two or more products are shown or specified, the Contractor has the option to use either of those shown or specified.

1.2.5 Standard specifications, rules, codes (as adopted by the State of Minnesota), instructions, recommendations and references referred to in the Project Specifications shall be the latest edition unless a specific edition is specified. If standard specifications are revised prior to completion of any part of the work to which such revisions would pertain, the Contractor may, if approved by the Architect, perform such work in accordance with the revised specifications. Standard specifications, except as modified in the Project Specifications, shall have full force and effect as though included in the Project Specifications.

§ 1.3 CAPITALIZATION

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.5.1 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and will retain all common law, statutory and other reserved rights, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

§ 1.5.2 The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce the Instruments of Service provided to them solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers may not use the Instruments of Service on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants.

§ 1.6 TRANSMISSION OF DATA IN DIGITAL FORM

If the parties intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions, unless otherwise already provided in the Agreement or the Contract Documents.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 Prior to commencement of the Work, the Contractor may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. Thereafter, the Contractor may only request such evidence if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. Except for surveys or grade information, the Contractor shall compare the information furnished by the Owner including, but not limited to, soil tests with visibly observable physical conditions and the Contract Documents and, on the basis of such review, promptly report to the Owner and the Architect any known conflicts, errors or omissions. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect or failure. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

2.5 EXTENT OF OWNER'S RIGHTS

2.5.1 The rights stated in Article 2 and elsewhere in the Contract Documents are cumulative and not in limitation of any rights of the Owner (a) granted in the Contract Documents, (b) at law, or (c) in equity.

2.5.2 In no event shall the Owner have control over, charge of, or any responsibility for construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the Work, notwithstanding any of the rights and authority granted the Owner in the Contract Documents.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Prior to execution of the Agreement, the Contractor and each Subcontractor visually evaluated and satisfied themselves as to the conditions and limitations under which the Work is to be performed, including, without limitations, (a) the location, condition, layout, and nature of the Project site and surrounding areas; (b) generally prevailing climatic conditions; (c) anticipated labor supply and costs; (d) availability and cost of materials, tools and equipment; and (e) other similar issues. Except as set forth in Section 10.3, as between the Owner and the Contractor, the Contractor shall be solely responsible for providing a safe place for the performance of the Work. The Owner shall not be required to make any adjustment in either the Contract Sum or the Contract Time in connection with any failure by the Contractor or any Subcontractor to have complied with the requirements of this Section.

§ 3.2.2 Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the

Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

3.2.2.1 The Contractor shall, therefore, satisfy itself as to the accuracy of all dimensions and locations. In all cases of interconnections of its Work with existing or other work, it shall verify at the site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such dimensions, or locations shall be promptly rectified by the Contractor without any additional cost to the Owner and without delay to the completion of the Work.

§ 3.2.3 The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing and necessary changes shall be accomplished by appropriate Modification.

§ 3.2.4 If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall make Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage arising solely from those Owner-required means, methods, techniques, sequences or procedures.

§ 3.3.2 The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

3.3.4 Inspection of the progress, quantity or quality of the Work done by the Owner, any Owner's Representative, any governmental agency, or the Architect, or any inspector, shall not relieve the Contractor of any responsibility for the compliance of the Work with the Contract Documents.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 Except in the case of minor changes in the Work authorized by the Architect in accordance with Sections 3.12.8 or 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive. If the Contractor desires to submit an alternate product or method in lieu of what has been specified or shown in the Contract Documents, the provisions of Section 3.4.2.1 apply.

3.4.2.1 The Contractor shall cooperate with the Architect to present to the Owner and Architect; (a) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures, and other like information necessary for a complete evaluation of the substitution; (b) a written explanation of the reasons the substitution is advantageous and necessary, including the benefits to the Owner and the Work in the event the substitution is acceptable; (c) the adjustment, if any, in the Contract Sum, in the event the substitution is acceptable; (d) the adjustment, if any, in the time of completion of the Contract and the construction schedule in the event the substitution is acceptable; and (e) a statement representing that; (1) the proposed substitution conforms to and meets all the requirements of the pertinent Specifications and the requirement shown on the Drawings, and (2) the Contractor accepts the warranty and correction obligations set forth in the Contract Documents in connection with the proposed substitution as if originally specified by the Architect. Proposals for substitutions shall be submitted to allow the Owner no less than ten working days for review. No substitutions will be considered or allowed without the Contractor's submittal of complete substantiating data and information as stated herein.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 3.5 WARRANTY

3.5.1 The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. The Contractor represents and warrants to the Owner that the Work required by the Contract Documents including without limitation, construction means, methods, procedures and techniques necessary to perform the Work, use of materials, selection of equipment and requirements of product manufacturers are and shall be consistent with: (a) good and sound practices within the construction industry ; (b) generally prevailing and accepted industry standards applicable to the Work; (c) requirements of any warranties applicable to the Work; and (d) all laws, ordinances, regulations, rules and order which bear upon the Contractor's performance of the Work subject to Section 3.2.3. Work, materials, or equipment not conforming to these requirements will be considered defective and promptly after notification of non-conformance shall be repaired or replaced by Contractor without cost to the Owner and without delay to the completion of the Work with Work conforming to the requirements of the Contract Documents. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

3.5.2 The Contractor agrees to assign to the Owner at the time of the final completion of the Work any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties.

§ 3.6 TAXES

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES, NOTICES, AND COMPLIANCE WITH LAWS

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded. .

§ 3.7.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

§ 3.7.3 If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

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§ 3.7.4 If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

§ 3.9.2 The Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner through the Architect the name and qualifications of a proposed superintendent. The Architect may reply within 14 days to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to the proposed superintendent or (2) that the Architect requires additional time to review. Failure of the Architect to reply within the 14 day period shall constitute notice of no reasonable objection.

§ 3.9.3 The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's and Architect's information and approval a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare a submittal schedule, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, and shall submit the schedule(s) for the Architect's approval. The Architect's approval shall not unreasonably be delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

§ 3.10.3 The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

The Contractor shall maintain at the site for the Owner one copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Architect and the Owner, and shall be delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ 3.12.6 By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice, the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance and design criteria specified in the Contract Documents.

§ 3.13 USE OF SITE

3.13.1 The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

3.13.2 The Contractor shall not bring or permit any subcontractor, supplier or anyone else for whom the Contractor is responsible, to bring on the site any asbestos, PCB's petroleum, hazardous waste or radioactive materials except for proper use in performing the Work.

3.13.3 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor except as covered by property insurance as described in Section 11.3. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the site of the Work and all adjacent areas. The Work shall be performed to the fullest extent reasonably possible, in such a manner that public areas adjacent to the site of the Work shall be free from all debris, building materials and equipment likely to cause hazardous conditions.

3.13.4 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best effort to minimize any interference with the occupancy or beneficial use of (a) any areas and buildings adjacent to the site of the Work and (b) the Building in the event of partial occupancy, as more specifically described in Section 9.9. Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances and parking areas other than those designated by the Owner.

3.13.5 Without limitation of any other provision of the Contract Documents, the Contractor shall use its best effort to comply with all reasonable rules and regulations promulgated by the Owner in connection with the use and occupancy of the Project site and the Building, as amended from time to time. The Contractor shall immediately notify the Owner in writing if during the performance of the Work, the Contractor finds compliance of any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved.

The Owner may, in the Owner's sole discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements of the rules and regulations.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting and patching shall be restored to the condition existing prior to the cutting, fitting and patching, unless otherwise required by the Contract Documents.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work.

3.14.3 Altering or cutting of structural members will not be allowed without written approval of the Architect.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Contractor.

§ 3.16 ACCESS TO WORK

The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law the Contractor shall indemnify and hold harmless the Owner, the Owner's Consultant, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

3.18.3 The Contractor's indemnity obligations under Section 3.18 shall also specifically include, without limitation, all fines, penalties, damages, liability, costs, expenses (including, without limitation, reasonable attorneys' fees), citations and punitive damages (if any) arising out of, or in connection with, any (a) violation of or a failure to comply with any law, statute, ordinance, rule, regulation, code, or requirement of a public authority that bears upon the performance of the Work by the Contractor, a Subcontractor, or any person or entity for whom either is responsible subject to Section 3.2.3; (b) means, methods, procedures, techniques, or sequences of execution or performance of the Work, and; (c) failure to secure and pay for permits, fees, approvals, licenses, and inspections as required under the Contract Documents, or any violation of any permit or other approval of a public authority applicable to the Work, by the Contractor, a Subcontractor, or any person or entity for whom either is responsible.

3.18.4 The Contractor shall indemnify and hold harmless all of the Indemnities from and against any costs and expenses (including reasonable attorneys' fees) incurred by any of the Indemnities in enforcing any of the Contractor's defense, indemnity and hold-harmless obligations under this Contract.

3.19 PERSONNEL CONDUCT

3.19.1 The Owner adheres to the principle that all persons shall have equal opportunity and access to its facilities, activities and employment without regard to race, creed, age, sex national origin, sexual or affectional preference or non-disqualifying handicap. It will tolerate no behavior or language toward any other person that is, or may be construed as, disrespectful, demeaning, or harassing.

3.19.2 The Owner also expects construction personnel to be treated with courtesy and consideration. Disrespectful, demeaning or harassing behavior toward construction personnel is not to be ignored or answered in kind, but should be reported to Contractor's office.

3.19.3 Cursing and foul language will not be tolerated.

3.19.4 Shirts must be worn at all times.

3.19.5 Loud personal radios are not allowed in work areas.

3.19.6 Smoking is not permitted in or near the building. Chewing tobacco will not be allowed.

ARTICLE 4 ARCHITECT

§ 4.1 GENERAL

§ 4.1.1 The Owner shall retain an architect lawfully licensed to practice architecture or an entity lawfully practicing architecture in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

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§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a successor architect as to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

§ 4.2 ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents and will be an Owner's representative during construction until the date the Architect issues the final Certificate For Payment. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

§ 4.2.2 The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, to endeavor to guard the Owner against defects and deficiencies in the Work, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and

responsibilities under the Contract Documents, except as provided in Section 3.3.1. No approval by the Architect of the Work shall relieve Contractor from the responsibility to perform the Work in a workmanlike manner, free from defects and strictly in conformance with the Contract Documents, nor shall such an approval relieve Contractor from any liability arising out of Work not performed in a workmanlike manner, free from defects and strictly in conformance with the Contract Documents.

§ 4.2.3 On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of and will not be responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 COMMUNICATIONS FACILITATING CONTRACT ADMINISTRATION

Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Any direct communications between the Owner and the Contractor that affect the performance or administration of the Work shall be made or confirmed in writing with copies to the Architect and Owner's Representative.

§ 4.2.5 Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Architect will prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

§ 4.2.9 The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

§ 4.2.10 If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 4.2.12 Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either and will not be liable for results of interpretations or decisions rendered in good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

§ 4.2.14 The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Prior to the initiation of Work by an Subcontractor but no later than 30 days after the later of full execution of the Agreement, the Contractor shall furnish the Owner and Architect, in writing, with the name, trade, and subcontract amount for each Subcontractor. The Architect will promptly reply to the Contractor in writing stating (1) whether the Owner or the Architect has reasonable objection to any such proposed person or entity or (2) that the Architect requires additional time for review.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not substitute a Subcontractor, person or entity previously selected if the Owner or Architect makes reasonable objection to such substitution.

§ 5.3 SUBCONTRACTUAL RELATIONS

By appropriate agreement, written where legally required for validity, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by

terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

§ 5.4.2 If the Work in connection with a subcontract has been suspended for more than 30 days after termination of the Contract by the Owner pursuant to Section 14.2 and the Owner accepts assignment of such subcontract, the Subcontractor's compensation shall be equitably adjusted for any increase in direct costs incurred by such Subcontractor as a result of the suspension.

§ 5.4.3 Each subcontract shall specifically provide that upon assignment as provided for in Section 5.4.1, the Owner shall only be responsible to the Subcontractor for those obligations of the Contractor that accrue subsequent to the Owner's exercise of any rights under this conditional assignment.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Article 15.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 Unless specified otherwise, the Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised.

§ 6.1.4 Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights that apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to defects not then reasonably discoverable.

§ 6.2.3 The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a separate and independent contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a separate and independent contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 6.2.4 The Contractor shall promptly remedy damage the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

6.3.1 If the Contractor fails to clean up to the satisfaction of the Owner's Representative after 24 hours written notice to the Contractor, the Owner may clean-up and charge the cost to the Contractor as the Owner's Representative determines to be just.

6.3.2 If a dispute arises among the Contractor, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner and the Architect will allocate the cost among those responsible.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, Contractor and Architect; a Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor; an order for a minor change in the Work may be issued by the Architect alone.

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, Construction Change Directive or order for a minor change in the Work. Except as permitted in Sections 7.2, 7.3, 7.4, 15.1, 15.3, 15.4, and 9.7.2, a change in the Contract Sum or the Contract Time shall be accomplished only by Change Order. Accordingly, unless a written notice of a Claim has been made pursuant to Article 4, no course of conduct or dealings between the parties, nor express or implied acceptance of alterations or additions to the Work, and no claim that Owner has been unjustly enriched by an alteration of or addition to the Work, whether or not there is, in fact, any unjust enrichment to the Work, shall be the basis of any claim to an increase in any amounts due under the Contract Documents or a change in any time period provided for in the Contract Documents.

§ 7.1.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are so changed in a proposed Change Order or Construction Change Directive that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§7.1.5 The Owner's Representative shall establish administrative procedures of the Changes in the Work process. Adjustments to the Contract Sum shall be based on one of the methods established in Section 7.3.3. The Contractor shall, within 20 calendar days of receipt of Proposed Request, submit to the Owner's Representative a quote for the Work.

§7.1.6 Cost or credit for changes in the Work, if accepted on the basis of a mutually agreed to lump sum price, shall be itemized to indicate the following: Unit quantity and unit price for materials and equipment hours and hourly rate for labor, taxes, insurance, overhead and profit, each separately identified.

§7.1.7 Cost or credit for changes in the Work shall be limited as provided in Section 7.3.6 and shall not include any of the following:

- .1 Payroll costs and other compensation of the Contractor's officers, executive, principals of partnerships and sole proprietorships, general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and of the personnel employed the Contractor whether at the site or in the Contractor's principal office or branch office for general administration of the Work. All of which are to be considered administrative costs covered by the Contractor's markup.
- .2 Expenses of the Contractor's principal and branch offices other than the Contractor's office at the site.
- .3 Any part of the Contractor's capital expenses, including interest on the Contractor's capital employed for the Work and charges against the Contractor for delinquent payments.
- .4 Costs due to the negligence or omissions of the Contractor, and Subcontractor or anyone directly or indirectly employed by any of them, or for whose acts any of them may be liable including, but not limited to, the correction of defective work, disposal of materials or equipment wrongly supplied and making good any damage to property.

§7.1.8 The maximum that will be allowed for overhead and profit or commission, shall be as follows:

	Overhead/Profit	Commission
To the Contractor and/or Subcontractor for work performed with their own forces	10%	0%
To the Contractor for work performed by a subcontractor	0%	5%
To the Subcontractor for work performed by a sub-subcontractor	0%	5%

The maximum allowable on account of commission is 10% in the aggregate.

§7.1.9 The percentages allowed for overhead, profit or commission under Section 7.1.8 shall be deemed to include and no further addition allowed for (1) field and office supervision and administration, including the field superintendent and non-working foremen; (2) general insurance, except that listed as the labor burden; (3) use or replacement of tools; (4) equipment or similar equipment necessary solely as a result of the change; (5) engineering and estimating costs; (6) shipping, drayage and demurrage; (7) parking charges; (8) clean up and debris removal; (9) testing; (10) permits, unless a new permit type is required; (11) home and field office expenses.

§ 7.2 CHANGE ORDERS

§7.2.1 A Change Order is a written instrument prepared by the Architect and signed by the Owner, Contractor and Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§7.2.2 Methods used in determining adjustments to the Contract Sum may include those listed in Section 7.3.3.

§7.2.3 Except as set forth in the Change Order, agreement on any Change Order shall constitute a final settlement of all matters relating to the change in the Work that is the subject of the Change Order, including, but not limited to, all direct and indirect costs associated with such change and any and all adjustments to the Contract Sum and the construction schedule associated with such change.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 7.3.7.

§ 7.3.4 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 7.3.5 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Owner's Representative and Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ 7.3.6 A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.7 If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Owner's Representative and Architect shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Owner's Representative and Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.7 shall be limited to the following:

- .1 Costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;
- .2 Quantities, Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- .4 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .5 Additional costs of supervision and field office personnel directly attributable to the change.
- .6 The cost of subcontractor work, computed in the same way as provided for under this Section.
- .7 Overhead, profit or commission.
- .8 Applicable sales tax on materials, added after the above computations are complete.

§ 7.3.8 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 7.3.9 Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

§ 7.3.10 When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Architect will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

§ 7.4 MINOR CHANGES IN THE WORK

The Architect has authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes will be effected by written order signed by the Architect and shall be binding on the Owner and Contractor. The Contractor shall carry out such written orders promptly.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve specific contractual milestones dates (if any), Substantial Completion and Final Completion within the times stated in the Contract Documents.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, or Architect, or of an employee of either, or of any separate contractor employed by the Owner; or by changes ordered in the Work; or by other causes beyond the Contractor's control; reason of force majeure which shall mean and include acts of God; act of public enemies; strikes or lockouts; enforceable governmental or judicial orders; insurrections; riots; civil disturbances; earthquakes; floods; fires; explosions or other similar catastrophes or events not reasonably within the Contractor's control; or by delays authorized by the Owner or by concealed conditions; then the Contract Time and/or Contract Sum shall be changed by Change Order as reasonably

determined by the Owner's Representative. Claims for extension of time or additional compensation for causes enumerated above will be considered under the following conditions.

.1 The burden of proof substantiate the claim for an extension shall rest with the Contractor, including evidence that the cause was beyond the Contractor's control. The Contractor shall be deemed to have control over the supply of labor, materials, equipment, methods, and techniques and over the Contractor's subcontractors and suppliers.

.2 In the event of Changes in the Work, any consideration for a time extension will be made no later than the date the Change Order is prepared. For changes which do not affect the entire work, time extensions may be granted only for the area, phase, unit or element affected by the change, if there is a valid reason for a time extension. All costs associated with the time extension must be included in the change order including extended over head and impact costs, which shall be deemed waived if not presented to Owner and supported before the change order is executed by Contractor.

.3 Any unusual delay in transportation will not be considered unless it is solely due to transportation. An extension of time will not be granted for delays in deliveries where said delivery was not properly scheduled or when orders were not promptly and properly placed.

.4 With respect to a claim for an extension of time as a result of climatic conditions, the Contractor shall recognize the location of the site and the existence, as normal, of variations from "average" conditions. Foul weather in itself will not be a valid reason for a time extension. Requests for time extension because of delay resulting from weather extremes will not be considered unless a substantial variation from usual weather conditions occurs for a significant period of time, during phases of the Work when they would otherwise have been in progress. In considering the time extension, the weather conditions both before and after the period in which the delay is claimed will be evaluated.

.5 Delays resulting from a labor dispute will not result in a time extension of a longer period than the dispute, plus a reasonable time for mobilization if justified and necessary as approved the Owner's Representative and may be less depending on the impact of the dispute, including what operations were suspended or curtailed.

.6 A delay in the overall Project progress that actually occurred and clearly disrupted the total Project progress as a result of one of the valid causes for time extension. An extension of time for parts, phases or stages may be granted where a valid delay indicates such partial time extension is justified.

.7 No time extension will be granted as result of the Contractor's improper or inadequate scheduling or for failure to have Shop Drawings or Samples submitted in ample time for review under a reasonable or agreed upon schedule.

.8 Delays by Subcontractors or Suppliers will not be considered justification for a time extension, except for the same valid reasons and conditions enumerated under Section 8.3.1.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

8.3.4 If the Contractor submits a progress report indicating or otherwise expresses an intention to achieve, completion of the Work prior to any completion date required by the Contract Documents or expiration of the Contract Time, no liability of the Owner to the Contractor for any failure of the Contractor to so complete the Work shall be created or implied.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.2 SCHEDULE OF VALUES

9.2.1 Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit to the Architect, before the first Application for Payment, a schedule of values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

9.2.2 The Contractor and each Subcontractor shall prepare a trade payment breakdown for the Work for which each is responsible, such breakdown being submitted on a uniform standardized form approved by the Architect and Owner. Any trade breakdown that fails to include sufficient detail, is unbalanced, or exhibits "front-loading" of the value of the Work shall be rejected. If trade breakdown had been initially approved and subsequently used but later was found improper for any reason, sufficient funds shall be withheld from future Applications for Payment to ensure an adequate reserve (exclusive of normal retainage) to complete the Work. Approval by Architect and Owner will not unreasonably be withheld.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2., for completed portions of the Work. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and shall reflect retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or material supplier, unless such Work has been performed by others whom the Contractor intends to pay.

§ 9.3.2 Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

9.3.4 The Contractor agrees to pay the Owner's costs of defense, including legal fees, arising out of any actions, lawsuits, or proceedings brought against the Owner as a result of liens or claims filed against the Work, Project site and any improvements thereon for Work for which the Contractor has been paid. The Contractor hereby agrees to indemnify and hold the Indemnitees harmless against any such liens and agrees to pay any judgment or lien resulting from any such actions, lawsuits, or proceedings for Work for which the Contractor has been paid.

§ 9.4 CERTIFICATES FOR PAYMENT

§ 9.4.1 The Architect will, within seven days after receipt of the Contractor's Application for Payment, either issue to the Owner a Certificate for Payment, with a copy to the Contractor, for such amounts as the Architect determines is properly due, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certification in whole or in part as provided in Section 9.5.1.

§ 9.4.2 The issuance of a Certificate for Payment will constitute a representation by the Architect to the Owner, based on the Architect's evaluation of the Work and the data comprising the Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to specific qualifications expressed by the Architect. The issuance of a Certificate for Payment will further constitute a representation that the Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment will not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) made examination to ascertain how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 9.5 DECISIONS TO WITHHOLD CERTIFICATION

§ 9.5.1 The Architect may withhold a Certificate for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Architect is unable to certify payment in the amount of the Application, the Architect will notify the Contractor and Owner as provided in Section 9.4.1. If the Contractor and Architect cannot agree on a revised amount, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to make such representations to the Owner. The Architect may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued, to such extent as may be necessary in the Architect's opinion to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum or that the unpaid balance would not be adequate to cover actual or liquidated damages;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Architect withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or material or equipment suppliers to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Architect and the Architect will reflect such payment on the next Certificate for Payment.

§ 9.6 PROGRESS PAYMENTS

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor no later than seven days after receipt of payment or as required by state law from the Owner the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Architect will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Architect and Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and material and equipment suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law.

§ 9.6.5 Contractor payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors and suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

9.6.8 Neither the Owner nor Architect shall have an obligation to pay or to see to the payment of money to a Subcontractor except as may otherwise be required by law.

9.6.9 Issuance of a Contractor's Application and Certificate for Payment, a Progress Payment, or partial or entire use of occupancy of the project by the Owner shall not constitute an acceptance of any work not in accordance with the Contract Documents. The Contractor and its Surety agree any issuance of a Contractor's Application and Certificate for Payment by the Architect, payment on the Contract Sum or in reducing any retained amount, or any use or occupancy of the Work will in no way relieve them of the obligation to completely fulfill or accomplish all obligations of the Contract, including warranty of the Work, and that they waive any actual or alleged rights or subrogation or action against the Owner or the Owner's Representative or Architect as a result of any such issuance of a Contractor's Application and Certificate for Payment, payment, or use or as any payment, and may request the Owner to withhold additional sums as it considers appropriate to protect its interests.

§ 9.7 FAILURE OF PAYMENT

9.7.1 If the Architect should fail to issue a Certification or reasons to withhold, through no fault of the Contractor, within 21 days after the end of the month, or if the Owner does not make payment of the amount certified within 30 days after delivery of a proper invoice to the Owner, then the Contractor may, upon three additional days written notice to the Owner, Owner's Representative and Architect, stop the Work until payment of the portion owned by the Owner of the amount owing has been received. The Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay and start-up.

9.7.2 If the Owner is entitled to reimbursement or payment from the Contractor under or pursuant to the Contract Documents, such payment shall be made promptly upon demand by the Owner. Notwithstanding anything contained in the Contract Documents to the contrary, if the Contractor fails to promptly make any payment due the Owner, or if the Owner incurs any costs and expenses to cure any default of the Contractor or to correct defective Work, the Owner shall have an absolute right to offset such amount against the Contract Sum and may, in the Owner's sole discretion, elect either to (a) deduct an amount equal to that which the Owner is entitled from any payment then or thereafter due the Contractor from the Owner, or (b) issue a written notice to the Contractor reducing the Contract Sum by an amount equal to that which the Owner is entitled.

§ 9.8 SUBSTANTIAL COMPLETION

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without undo interference, disruption or disturbance; provided, however, that as a condition precedent to Substantial Completion, the Owner has received all temporary certificates of occupancy and any other permits, approvals, licenses, and other documents from any governmental authority having jurisdiction

thereof necessary for the beneficial occupancy of the Project, unless the Owner's failure to obtain these documents is not due to acts or omissions for which the Contractor is not responsible.

§ 9.8.2 When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

§ 9.8.3 Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

§ 9.8.4 When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion, shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance, and shall fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.5 The Certificate of Substantial Completion shall be submitted to the Owner and Contractor for their written acceptance of responsibilities assigned to them in such Certificate. Upon such acceptance and consent of surety, if any, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be reduced by the product of 150% multiplied by the cost estimated by Owner of completing or correcting Work that is incomplete or not in accordance with the requirements of the Contract Documents.

§ 9.9 PARTIAL OCCUPANCY OR USE

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer as required under Section 11.3.1.5 and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner, Contractor and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

§ 9.10 FINAL COMPLETION AND FINAL PAYMENT

§ 9.10.1 Following the Owner's Representative's and Architect's issuance of the Certificate of Substantial Completion of the Work or designated portion thereof, and the Contractor's completion of the Work, the Contractor shall forward to the Owner's Representative a written notice that the Work is ready for final inspection and acceptance and shall also forward to the Owner's Representative a final Application for Payment. Upon receipt, the Owner's Representative will make the necessary evaluation and forward recommendations to the Architect who will promptly make such inspection with the Owner's Representative. When the Owner's Representative finds the Work acceptable under the Contract Documents and the Contract fully performed, the Owner's Representative will issue a Project Certificate of Payment which will approve the final payment due the Contractor. This approval will

constitute a representation that, to the best of the Owner's Representative's knowledge, information and belief, and on the basis of the observations and inspections, the Work has been completed in accordance with the terms and Conditions of the Contract Documents and that the entire balance found to be due the Contractor and noted in said Certificate, is due and payable. All warranties and guarantees required under or pursuant to the Contract Documents shall be assembled and delivered by the Contractor to the Architect as part of the final Application for Payment. The final Certificate for Payment will not be issued by the Architect until all warranties and guarantees have been received and accepted by the Owner.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Contractor knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment and (5), if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging such lien, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents; or
- .3 terms of special warranties required by the Contract Documents.

§ 9.10.5 Acceptance of final payment by the Contractor, a Subcontractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.11 RE-INSPECTIONS

The Contractor will be responsible for all Owner costs associated with more than two inspections at Substantial Completion and more than one inspection at Final Completion. Cost will be deducted from the Contract Sum prior to final payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 SAFETY PRECAUTIONS AND PROGRAMS

10.1.1 The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

10.1.2 The Owner, Architect and Owner's Representative shall not be responsible for approving and enforcing the safety requirements of the Contractor or its Subcontractors. The Contractor's Safety Program shall be submitted to the Owner's Representative prior to the start of Work and before the first payment application will be processed. Contractors shall submit Product Data Safety Sheets to the Owner's Representative for each material used in the Work that is classified by The Employee Right-to-Know Act of 1983 as a "hazardous substance or a harmful physical agent".

§ 10.2 SAFETY OF PERSONS AND PROPERTY

§ 10.2.1 The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Contractor or the Contractor's Subcontractors or Sub-subcontractors; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction. The Contractor shall also be responsible, at the Contractor's sole cost and expense, for all measures necessary to protect any property adjacent to the Project and improvements therein. All damage to such property or improvements shall be promptly repaired by the Contractor without cost to the Owner or delay to the Work.
- .4 construction or operations by the Owner or other contractors.

§ 10.2.2 The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ 10.2.3 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel. When use or storage of explosives or other hazardous materials or equipment or unusual construction methods are necessary, the Contractor shall give the Owner and the Architect reasonable advance notice.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 INJURY OR DAMAGE TO PERSON OR PROPERTY

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 HAZARDOUS MATERIALS

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a concealed and undisclosed hazardous material or substance (as defined in the Federal Regulations), including but not limited to asbestos, lead based paint, petroleum or a constituent thereof or

polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner and Architect in writing.

§ 10.3.2 Upon receipt of the Contractor's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. By way of example only and not by way of limitation, Owner shall engage a licensed laboratory to monitor the air in the excavation area if hazardous material is found in the excavation pit. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Contractor's reasonable additional costs of shut-down, delay and start-up, which adjustments shall be accomplished as provided in Section 7. The term "rendered harmless" shall be interpreted to mean less than any applicable exposure standards set forth in OSHA regulations. In no event, however, shall the Owner have any responsibility for any unspecified substance or material that is brought to the Project site by the Contractor, any Subcontractor, any material supplier, or any entity for whom any of them is responsible. The Contractor agrees not to use any fill or other materials to be incorporated into the Work that are hazardous, toxic, or made up of any items that are hazardous or toxic.

§ 10.3.3 To the fullest extent permitted by law, but only to the extent caused by Owner, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants and agents and employees of any of them from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Contractor shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work that is specifically and explicitly required by the Contract Documents, the Owner shall indemnify the Contractor for all cost and expense thereby incurred.

§ 10.4 EMERGENCIES

In an emergency affecting safety of persons or property, the Contractor shall act, without special instruction or authorization, to prevent threatened damage, injury or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

ARTICLE 11 INSURANCE AND BONDS

§ 11.1 CONTRACTOR'S LIABILITY INSURANCE

§ 11.1.1 The Contractor shall purchase from and maintain with a company or companies acceptable to the Owner (The insurer must have a rating of not less than "B+" in the latest edition of Best's Rating Guidelines) in a company

or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor, Owner, Architect, Owner's Representative, their agents and consultants from claims set forth below which may arise out of or result from the Contractor's operations and completed operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

- .1 Claims under workers' compensation, disability benefit and other similar employee benefit acts that are applicable to the Work to be performed;
- .2 Claims for damages because of bodily injury, occupational sickness or disease, or death of the Contractor's employees;
- .3 Claims for damages because of bodily injury, sickness or disease, or death of any person other than the Contractor's employees;
- .4 Claims for damages insured by usual personal injury liability coverage;
- .5 Claims for damages, other than to the Work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;
- .6 Claims for damages because of bodily injury, death of a person or property damage arising out of ownership, maintenance or use of a motor vehicle;
- .7 Claims for bodily injury or property damage arising out of completed operations; and
- .8 Claims involving contractual liability insurance applicable to the Contractor's obligations under Section 3.18.

§ 11.1.2 The insurance required by Section 11.1.1 shall be written for not less than limits of liability specified in the Contract Documents or required by law, whichever coverage is greater. Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from the date of commencement of the Work until the date of final payment and termination of any coverage required to be maintained after final payment, and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of Work or for such other period for maintenance of completed operations coverage as specified in the Contract Documents.

§ 11.1.3 Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work and thereafter upon renewal or replacement of each required policy of insurance. These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner. An additional certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section 11.1.2. Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness. The Owner, Architect, Owner's Representative, their agents and consultants shall be named as additional insureds on the liabilities policies required by Section 11.1.

§ 11.1.4 The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations. Contractor's policy(ies) shall be primary and non-contributory insurance to any other valid and collectible insurance available to the Owner with respect to any claim arising out of this Contract.

§ 11.2 OWNER'S LIABILITY INSURANCE

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

§ 11.3 PROPERTY INSURANCE

§ 11.3.1 Unless otherwise provided, the Contractor shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus value of subsequent Contract Modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made as provided in Section 9.10 or

until no person or entity other than the Owner has an insurable interest in the property required by this Section 11.3 to be covered, whichever is later. This insurance shall include interests of the Owner, the Contractor, Subcontractors and Sub-subcontractors in the Project.

§ 11.3.1.1 Property insurance shall be on an “all-risk” or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Architect’s and Contractor’s services and expenses required as a result of such insured loss. Property insurance provided by the Contractor shall not cover any tools, apparatus, machinery, scaffolding, hoists, forms, staging, shoring, and other similar items commonly referred to as construction equipment that may be at the site and the capital value of which is not included in the Work. The Contractor shall make its own arrangements for any insurance it may require on such construction equipment. Any such policy obtained by the Contractor under this subsection shall include a waiver of subrogation in accordance with the requirements of Subsection 11.3.7.

§ 11.3.1.2 If the Owner is damaged by the failure or neglect of the Contractor to purchase or maintain insurance as described above, without so notifying the Owner in writing, then the Contractor shall bear all reasonable costs properly attributable thereto.

§ 11.3.1.3 If the property insurance requires deductibles, the Contractor shall pay costs not covered because of such deductibles.

§ 11.3.1.4 This property insurance shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ 11.3.1.5 Partial occupancy or use in accordance with Section 9.9 shall not commence until the insurance company or companies providing property insurance have consented to such partial occupancy or use by endorsement or otherwise, which consent shall not be unreasonably withheld. The Owner and the Contractor shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ 11.3.2 BOILER AND MACHINERY INSURANCE

The Contractor shall purchase and maintain boiler and machinery insurance required by the Contract Documents or by law, which shall specifically cover such insured objects during installation and until final acceptance by the Owner; this insurance shall include interests of the Owner, Contractor, Subcontractors and Sub-subcontractors in the Work, and the Owner and Contractor shall be named insureds.

§ 11.3.3 LOSS OF USE INSURANCE

The Owner, at the Owner’s option, may purchase and maintain such insurance as will insure the Owner against loss of use of the Owner’s property due to fire or other hazards, however caused. The Owner waives all rights of action against the Contractor for loss of use of the Owner’s property, including consequential losses due to fire or other hazards however caused.

§ 11.3.4 If the Contractor requests in writing that insurance for risks other than those described herein or other special causes of loss be included in the property insurance policy, the Contractor shall, if possible, include such insurance. .

§ 11.3.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section 11.3.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ 11.3.6 Before an exposure to loss may occur, the Contractor shall file with the Owner a copy of each policy that includes insurance coverages required by this Section 11.3. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. Each policy shall contain a provision

that the policy will not be canceled or allowed to expire, and that its limits will not be reduced, until at least 30 days' prior written notice has been given to the Owner.

§ 11.3.7 WAIVERS OF SUBROGATION

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors described in Article 6, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent of actual recovery of any insurance proceeds under any property insurance obtained pursuant to this Section 11.3 or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the Owner in good faith. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors described in Article 6, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ 11.3.8 A loss insured under the Contractor's property insurance shall be adjusted by the Owner in good faith and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.3.10. The Contractor shall pay Subcontractors their just shares of insurance proceeds received by the Contractor, and by appropriate agreements, written where legally required for validity, shall require Subcontractors to make payments to their Sub-subcontractors in similar manner.

§ 11.3.9 If required in writing by a party in interest, the Owner in good faith shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received in good faith. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Contractor. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Contractor after notification of a Change in the Work in accordance with Article 7.

§ 11.3.10 The Owner in good faith shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of loss to the Owner's exercise of this power; if such objection is made, the dispute shall be resolved as provided in Sections 15.3 and 15.4.

§ 11.4 PERFORMANCE BOND AND PAYMENT BOND

§ 11.4.1 The Owner requires the Contractor to furnish bonds covering faithful performance of the Contract and payment of obligations arising thereunder as stipulated in bidding requirements or specifically required in the Contract Documents on the date of execution of the Contract

§ 11.4.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

11.4.3 Bonds furnished by the Contractor must name the Owner's lender, if any, as an additional obligee.

11.4.4 Upon the request of any person or entity appearing to be a potential beneficiary of any of the bonds required under Section 11.4, the Contractor promptly shall furnish a copy of the bonds or shall permit a copy thereof to be made and delivered to such persons or entity.

11.4.5 The Contractor shall require the attorney-in-fact who executes the required bonds on behalf of the surety to affix thereto a certified and current copy of a Power of Attorney.

11.4.6 Contractor to use City of Rochester Bond Forms. See Section 005200.

11.5 FAILURE TO PURCHASE OR MAINTAIN INSURANCE

11.5.1 If either the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees, and court and settlement expenses) properly attributable thereto.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

§ 12.1 UNCOVERING OF WORK

§ 12.1.1 If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

§ 12.1.2 If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Contract Documents, such costs and the cost of correction shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

§ 12.2 CORRECTION OF WORK

§ 12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION

The Contractor shall promptly correct Work rejected by the Owner's Representative and Architect or failing to conform to the requirements of the Contract Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense. If the Contractor fails to timely and properly correct nonconforming Work within a reasonable time, the Owner may correct it in accordance with Section 2.4. If the Contractor does not proceed with correction of such nonconforming Work within a reasonable time fixed by written notice from the Owner's Representative, the Owner may remove it and store the salvageable materials or equipment at the Contractor's expense. If the Contractor does not pay costs of such removal and storage within ten days after written notice, the Owner may upon ten additional days' written notice sell such materials and equipment at auction or a private sale and shall account for the process thereof, after deducting costs and damages that should have been borne by the Contractor including compensation for the Owner's Representative's and Architect's services and expenses made necessary thereby. If such proceeds of sale do not cover costs which the Contractor should have borne, the Contract Sum shall be reduced by the deficiency. If payments then or thereafter due the Contractor are not sufficient to cover such amount, the Contractor shall pay the difference to the Owner. If prior to the date of Substantial Completion the Contractor, a Subcontractor, or anyone for whom either is responsible uses or damages any portion of the Work (other than start-up), including, without limitation, mechanical, electrical, plumbing, and other building systems, machinery, equipment, or other mechanical device, the Contractor shall cause such item to be restored to "like new" condition at no expense to the Owner.

§ 12.2.2 AFTER SUBSTANTIAL COMPLETION

§ 12.2.2.1 In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.4.

§ 12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

§ 12.2.3 The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

§ 12.2.4 The Contractor shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

§ 12.2.5 Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

§ 12.3 ACCEPTANCE OF NONCONFORMING WORK

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

§ 13.1 GOVERNING LAW

The Contract shall be governed by the law of the place where the Project is located

§ 13.2 SUCCESSORS AND ASSIGNS

§ 13.2.1 The Owner and Contractor respectively bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 13.2.2 The Owner may, without consent of the Contractor, assign the Contract to an institutional lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate such assignment.

§ 13.3 WRITTEN NOTICE

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 13.4 RIGHTS AND REMEDIES

§ 13.4.1 Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 13.4.2 No action or failure to act by the Owner, Architect or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach there under, except as may be specifically agreed in writing.

§ 13.5 TESTS AND INSPECTIONS

§ 13.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until

after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Contractor.

§ 13.5.2 If the Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.5.3, shall be at the Owner's expense.

§ 13.5.3 If such procedures for testing, inspection or approval under Sections 13.5.1 and 13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure including those of repeated procedures and compensation for the Architect's services and expenses shall be at the Contractor's expense. The Contractor also agrees that the cost of testing services required for the convenience of the Contractor in his scheduling and performance of the Work, and the cost of testing services related to remedial operations performed to correct deficiencies in the Work, shall be borne by the Contractor.

§ 13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.5.5 If the Architect is to observe tests, inspections or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.5.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 13.6 INTEREST

Payments due and unpaid under the Contract Documents shall bear interest from the date payment is due at the then current prime rate plus two (2) percent in effect.

§ 13.7 TIME LIMITS ON CLAIMS

The Owner and Contractor shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other arising out of or related to the Contract in accordance with the requirements of the final dispute resolution method selected in the Agreement within the time period specified by applicable law, .

13.8 As between the Owner and Contractor:

- .1 Before Substantial Completion. As to acts or failures to act occurring prior to the relevant date of Substantial Completion, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than such date of Substantial Completion;
- .2 Between Substantial Completion and Final Certificate for Payment. As to acts or failures to act occurring subsequent to the relevant date of Substantial Completion and prior to issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of issuance of the final Certificate for Payment; and
- .3 After Final Certificate for Payment. As to acts or failures to act occurring after the relevant date of issuance of the final Certificate for Payment, any applicable statute of limitations shall commence to run and any alleged cause of action shall be deemed to have accrued in any and all events not later than the date of any act or failure to act by the Contractor pursuant to any Warranty provided under Section 3.5, the date of any correction of the Work or failure to correct the Work by the Contractor under Section 12.2, or the date of actual commission of any other act or failure to perform any duty or obligation by the Contractor or Owner, whichever occurs last.

13.9 The Contractor shall permit the authorized representative of Owner, their agents to inspect and audit all work, material, payroll and other data and records relating to its performance under this Contract.

ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

§ 14.1 TERMINATION BY THE CONTRACTOR

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
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§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor or a Subcontractor, Sub-subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Contractor, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 14.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' written notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor or a Subcontractor or their agents or employees or any other persons performing portions of the Work under contract with the Contractor because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' written notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

§ 14.2 TERMINATION BY THE OWNER FOR CAUSE

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors for materials or labor in accordance with the respective agreements between the Contractor and the Subcontractors;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority;
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.
- .5 becomes insolvent, files a Petition in Bankruptcy, or is adjudicated bankrupt, makes a general assignment to the benefit of its creditors, or cannot pay its debts as they generally become due; or
- .6 suspends its business operations or otherwise fails to operate its business in the ordinary course.

§ 14.2.2 When any of the above reasons exist, the Owner, , may without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' written notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages and costs incurred by the Owner in furnishing the Work and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

§ 14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

§ 14.4.3 In case of such termination for the Owner's convenience, the Contractor shall be paid (without duplication of any items): (1) for complete, timely and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such work; (2) for expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair expenses; (3) for all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers and others; and (4) for reasonable expenses directly attributable to termination. The Contractor hereby waives and forfeits all claims for payment and damages, including, without limitation, anticipated profits. The Owner shall be credited for (a) payments, previously made to the Contractor for the terminated portion of the Work, (b) claims that the Owner has against the Contractor under the Contract, and (c) the value of the materials, supplies, equipment, or other items that are to be disposed of by the Contractor that are part of the Contract Sum. .

ARTICLE 15 CLAIMS AND DISPUTES

§ 15.1 CLAIMS

§ 15.1.1 DEFINITION

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 15.1.2 NOTICE OF CLAIMS

Claims by either the Owner or Contractor must be initiated by written notice to the other party with a copy sent to the Architect. Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim. Provided, however, that the claimant shall use its best efforts to furnish the Architect and the other party, as expeditiously as possible, with notice of any Claim including, without limitation, those in connection with concealed or unknown conditions, once such claim is recognized, and shall cooperate with the Architect and the

party against whom the claim is made in any effort to mitigate the alleged potential damages, delay, or other adverse consequences arising out of the condition that is the cause of such a Claim. Claims must be initiated by written notice to the Architect and the other party. Claims may also be reserved in writing within the time limits set forth in this Subsection. If a Claim is reserved, the Resolution of Claims and Disputes procedures described in this Section shall not commence until a written notice from the claimant is received by the Architect. Any notice of Claim of reservation of Claim must clearly identify the alleged cause and the nature of the Claim and include data and information then available to the claimant that will facilitate prompt verification and evaluation of the Claim.

§ 15.1.3 CONTINUING CONTRACT PERFORMANCE

Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents. The Architect will prepare Change Orders and issue Certificates for Payment in accordance with the decisions of the Initial Decision Maker.

§ 15.1.4 CLAIMS FOR ADDITIONAL COST

If the Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 15.1.5 CLAIMS FOR ADDITIONAL TIME

§ 15.1.5.1 If the Contractor wishes to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.5.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. The request must include local National Weather Service climatology reports for the period involved plus a report indicating the average conditions for the past ten (10) years from the nearest reporting station.

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15.1.6 Claims for Concealed or Unknown Conditions.

15.1.6.1 If the Contractor encounters conditions at the site that are (1) concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature and which differ materially from those ordinarily found to exist in the region in which the Work was performed and/or generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than ten days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may proceed as provided in Article 15. No adjustment in the Contract Time or Contract Sum shall be permitted, however, in connection with a concealed or unknown condition that does not differ materially from those conditions disclosed or, subject to Section 3.2, that reasonably should have been disclosed by the Contractor's prior visual inspections (or other types of inspections of specified in the specifications), tests, reviews and preconstruction services for the Project.

§ 15.2 INITIAL DECISION

§ 15.2.1 Claims, excluding those arising under Sections 10.3, 10.4, 11.3.9, and 11.3.10, shall be referred to the Initial Decision Maker for initial decision.. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Initial Decision Maker with no decision having been rendered. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

§ 15.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate with respect to the initial decision.

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 15.3 MEDIATION

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.6 shall be subject to mediation.

§ 15.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered in accordance with the Minnesota Civil Mediation Act, Minn. Stat. §572.31, et.seq. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation.

§ 15.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

15.3.4 Limitation on Consolidation or Joinder. Mediation shall include, by consolidation or joinder or in any other manner, all parties including the Owner, Contractor, a separate contractor as described in Section 6, a Subcontractor and other persons substantially involved in the dispute to be mediated. Consent to mediation involving an additional person or entity shall not constitute consent to mediation of a Claim not described therein or with a person or entity

not named or described therein. The foregoing agreement to mediate shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 15.4 LEGAL PROCEEDINGS

Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 9.10.4 and 9.10.5, shall, after decision by the Initial Decision Maker or 30 days after submission of the Claim to the Initial Decision Maker, be subject to legal proceedings venued in Olmsted County, Minnesota. Prior to legal proceedings, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions in Section 15.3.

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ARTICLE 16 GENERAL REQUIREMENTS

§16.1 If the Owner or the Contractor is damaged by the failure of the other party to purchase or maintain insurance required under Article 11, then the party who failed to purchase or maintain the insurance shall bear all reasonable costs (including attorneys' fees, and court and settlement expenses) properly attributable thereto.

§16.2 This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements or representations, oral or written, not contained within this Agreement.

§16.3 By executing this Agreement, Owner and Contractor acknowledge that they: (a) enter into and execute this Agreement knowingly, voluntarily and freely of their own volition with such consultation with legal counsel as they deem appropriate; (b) have had an opportunity to consult an attorney before signing this Agreement; (c) have read this Agreement, understand all of its terms and appreciates the significance of those terms; and (d) have not relied upon any representation or statement not set forth herein.

§16.4. Wherever possible, each provision of this Agreement shall be interpreted in a manner as to be effective and valid under applicable law. If, however, any provision of this Agreement, or portion thereof, is prohibited by law or found invalid under any law, only such provision or portion thereof shall be ineffective, without in any manner invalidating or affecting the remaining provisions of this Agreement or valid portions of such provision, which are hereby deemed severable.

Attachment: RPU - Benike AIA A101 Agreement 08.21.19 - Final (10973 : Mechanical Systems Upgrade)

LIST OF DRAWINGS**Exhibit A****GENERAL**

G001 TITLE SHEET / LOCATION MAP
G100 FIRE AND LIFE SAFETY PLAN

STRUCTURAL

S001 GENERAL STRUCTURAL NOTES
S101 MECHANICAL UPGRADE PLANS

ARCHITECTURAL

A101 PARTIAL GROUND FLOOR DEMOLITION AND NEW FLOOR PLANS
A102 PARTIAL ROOF DEMOLITION PLAN, NEW FLOOR PLAN, AND DETAILS
A110 PARTIAL MEZZANINE DEMOLITION, FLOOR PLAN, AND DRY COOLER PLAN
A201 PARTIAL DEMOLITION CEILING PLAN AND NEW CEILING PLAN
A301 DOOR SCHEDULES, FRAME TYPES, DOOR TYPES, PARTITION TYPES, DETAILS

PLUMBING AND FIRE PROTECTION

P001 PLUMBING SYMBOLS, ABBREVIATIONS AND GENERAL NOTES
FP101A PARTIAL GROUND FLOOR DEMOLITION AND NEW FIRE PROTECTION PLANS
FP102B MEZZANINE DEMOLITION AND NEW FIRE PROTECTION PLANS
P100A PARTIAL UNDERGROUND DEMOLITION AND NEW PLUMBING PLANS
P101A PARTIAL GROUND FLOOR DEMOLITION AND NEW PLUMBING PLANS

MECHANICAL

M001 MECHANICAL SYMBOLS, ABBREVIATIONS AND GENERAL NOTES
MD101 PARTIAL GROUND FLOOR DEMOLITION HVAC PLAN
M101 PARTIAL GROUND FLOOR NEW HVAC PLAN
M101A PARTIAL GROUND FLOOR DEMOLITION AND NEW HVAC PLANS
M102A PARTIAL ROOF DEMOLITION AND NEW HVAC PLANS
M102B PARTIAL MEZZANINE DEMOLITION AND NEW HVAC PLANS
M201A PARTIAL GROUND FLOOR DEMOLITION AND NEW PIPING PLANS
M201B HEAT PUMP ROOM DEMOLITION AND NEW PIPING PLANS
M202B PARTIAL MEZZANINE DEMOLITION AND NEW PIPING PLANS
M301 MECHANICAL ELEVATIONS
M401 DEMOLITION AIR FLOW DIAGRAM
M402 AIR FLOW DIAGRAM
M403 DEMOLITION PIPING FLOW DIAGRAM
M404 NEW PIPING FLOW DIAGRAM
M501 MECHANICAL DETAILS AND DIAGRAMS
M502 MECHANICAL DETAILS AND DIAGRAMS
M503 AHU DETAILS
M601 CONTROL SCHEMATICS
M602 CONTROL SCHEMATICS
M603 CONTROL SCHEMATICS
M701 MECHANICAL SCHEDULES

ELECTRICAL

E001 ELECTRICAL SYMBOLS, ABBREVIATIONS AND GENERAL NOTES
ED101 PARTIAL GROUND FLOOR DEMOLITION ELECTRICAL PLAN
ED102 PARTIAL MEZZANINE DEMOLITION ELECTRICAL PLAN
E101 PARTIAL GROUND FLOOR ELECTRICAL PLAN
E102 PARTIAL ROOF DEMOLITION AND POWER PLAN
E103 PARTIAL MEZZANINE ELECTRICAL PLAN
E401 ELECTRICAL ONE-LINE DIAGRAM

Exhibit B

SECTION 00 01 10

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Attachment: RPU - Benike AIA A101 Agreement 08.21.19 - Final (10973 : Mechanical Systems Upgrade)



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve a contract with Alvin B. Benike, Inc. and authorize the Mayor and City Clerk to execute the agreement for the Mechanical Systems Upgrade project in the amount of \$2,346,000.00.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of August, 2019.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 10918)

Meeting Date: 8/27/2019

SUBJECT: Mayo Clinic MOU: S.E. Substation

PREPARED BY: Randy Anderton

ITEM DESCRIPTION:

To continue to reliably serve continued load growth within the downtown area of Rochester, RPU determined through various studies that it was necessary to build a new substation and phase 1 of a duct and manhole system to support the ongoing and future electrical loads within the downtown area. Mayo Clinic expressed interest in partnering with RPU so that they can also continue to serve their electrical loads to the standard of reliability that they require. This Memorandum of Understanding (MOU) has been drafted to outline the scope terms of this project between the two partnering entities.

The MOU outlines the following:

- RPU special policies and procedures related to providing redundant electrical, or excess electrical, facilities in support of customer requests
 - Review of current and applicable RPU policies and procedures
- Technical identification of facility size and capability, to include key substation design and configuration parameters
 - General one-line electrical diagrams and other reference details will be affirmed
- Documentation of Mayo Clinic's contribution-in-aide-to-construction (CIAC)
 - Discussion of general allocation methodology used in the CIAC formulation
 - Discussion of asset ownership, maintenance obligations, etc.
- RPU's fiscal credit policy, and its applicability to S.E. Substation project design, construction and operation as it relates to CIAC payments and timing
 - Credit provisions and policy expectation throughout the lifecycle of this project
- Real estate and/or easement transactions needed to support S.E. Substation project and associated distribution feeders
- Transmission planning coordination with the Midcontinent Independent System Operator (MISO) and regional transmission requirements
- Tentative project overview, to include schedule and timeline(s), budget overview and risks driven by various technical complexities

FOR BOARD ACTION

Agenda Item # (ID # 10918)

Meeting Date: 8/27/2019

RPU's preliminary estimate for this substation and duct project on the low end is \$26,394,362, and on the high end is \$33,520,431. RPU and Mayo Clinic will be sharing the cost of the substation project on nominally a 50/50 split. Phase 1 of the duct and manhole system will be cost shared based predominantly upon the dedication of conduits between RPU and Mayo Clinic. Mayo Clinic will be providing a CIAC on a percentage of this overall cost estimate as the calculation methodology unfolds in the future.

As part of the MOU, RPU will have the responsibility to develop, design and construct all of the facilities of this project including those dedicated to Mayo Clinic's use. RPU will own, maintain and retain all ownership rights to the substation and duct system. Funding provided by Mayo Clinic will be considered as CIAC.

The City Attorney has reviewed this MOU

UTILITY BOARD ACTION REQUESTED:

RPU management and staff request that the Board approve the Memorandum of Understanding (MOU) between the City of Rochester, a Minnesota municipal corporation, acting through its Public Utility Board, and Mayo Clinic.

MEMORANDUM OF UNDERSTANDING (MOU) between City of Rochester (RPU) and Mayo Clinic

I. PURPOSE & SCOPE:

The purpose of this memorandum of understanding (MOU) is to memorialize agreements between the City of Rochester acting by and through its Public Utility Board (RPU), a Minnesota municipal corporation and Mayo Clinic, a Minnesota nonprofit corporation. The agreement relates to the design, construction and operation of the RPU S.E. Substation project.

This MOU will memorialize agreements between the parties, along with pertinent background and supporting detail such as:

- RPU special policies and procedures related to providing redundant electrical, or excess electrical facilities in support of customer requests.
 - Review of current and applicable RPU policies and procedures.
- Technical identification of facility size and capability, to include key substation design and configuration parameters.
 - General one-line electrical diagrams and other reference details will be affirmed.
- Documentation of Mayo Clinic's contribution-in-aid-to-construction (CIAC)
 - Discussion of general allocation methodology used in the CIAC formulation.
 - Discussion of asset ownership, maintenance obligations, etc.
- RPU's fiscal credit policy, and its applicability to S.E. Substation project design, construction and operation as it relates to CIAC payments and timing.
 - Credit provisions and policy expectation throughout the lifecycle of this project.
- Real Estate and/or easement transactions needed to support S.E. Substation project and associated distribution feeders.
- Transmission planning coordination with the Midcontinent Independent System Operator (MISO) and regional transmission requirements.
- Tentative project overview, to include schedule and timeline(s), budget overview and risks driven by various technical complexities.

II. INTRODUCTION:

As aforementioned, this document confirms the agreement between RPU and Mayo Clinic for the design, construction and operation of the S.E. Substation, and associated distribution feeder buildout to a common point near the Rochester downtown area.

Note: The S.E. Substation and distribution feeder buildout represent two (2) distinct projects that are interdependent, with planning and construction horizons over multiple calendar years.

The RPU Board of Directors approved the 2019 budget, which includes authorization and funding to begin the multi-year construction of the S.E. Substation project and associated distribution

***MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic***

feeders. This project will support the growing Downtown Rochester electrical capacity needs, while providing needed reliability and resiliency improvements.

Prior to project approval, RPU explored numerous alternative options to include expansion of existing substations, power transformer enhancement, and new transmission lines and routing. The S.E. Substation option proved the most economic option given the enhanced reliability and resiliency desired outcomes.

The economic commerce hub of lower southeastern Minnesota is the downtown Rochester corridor. Due to its economic and regional importance, this load center must be supported by a robust electrical system commensurate with analogous core downtown load centers across the country – meaning an electrical backbone that is extremely reliable, and robust with ability to leverage electrical redundancy.

RPU, as the electric retail provider, with electrical service territory in Rochester MN, has studied the growth in the Downtown Rochester area. RPU has convened various studies that have confirmed electrical load growth downtown. Moreover, these studies have been independently affirmed by regional forecasts, employment forecasts, and others econometrics that similarly point toward increased investment in the downtown Rochester area into the future.

In addition to prospective studies, there has been significant downtown private investment as seen by the numerous construction projects recently completed, or that have just started active construction, or those that are in the planning and approval processes. These private developments have been aggressive in terms of aggregate incremental load, RPU interconnection requirements, and the overall RPU planning that is needed to support these projects. Lastly, public partnership as defined by the Destination Medical Center (DMC) initiative will grow downtown load even more over time.

As RPU moves to solidify its downtown electrical infrastructure, Mayo Clinic has asked to partner with RPU in the S.E. Substation project. RPU welcomes this partnership, especially given the history of working with Mayo Clinic on like-kind projects such as our enduring Crosstown Substation legacy project.

This partnership with Mayo Clinic represents a win-win or mutually beneficial scenario, as Mayo Clinic, and RPU both receive similar benefits from the partnership.

- Mayo Clinic will receive exclusive use of the redundant and dedicated facilities for its purposes, and shares in the economies of scale provided by joint participation and CIAC contributions.
- RPU benefits by leveraging the economics enabled by joint participation with Mayo Clinic, as seen by the CIAC contributions.

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

III. S.E. Substation Design:

A basic one-line diagram is provided in Attachment 1. This diagram outlines the primary components of the Substation at this stage of preliminary design.

Technical coordination with Mayo Clinic will be ongoing until such time as design is finalized. The finalized design must be compliant with the balance of the RPU electrical infrastructure, consistent with accepted utility standards and coordinated to the interfacing external high voltage transmission system. There are numerous external entities that will be required to affirm the design, validate modeling considerations for the purpose of assuring the integrity of both electrical transmission and distribution system.

Preliminary, the basic design configuration is a four (4) transformer configuration, in a ring-bus breaker and half scheme. In this configuration, the two (2) Mayo transformers are dedicated to serving Mayo specific load centers, while the two (2) RPU transformers are dedicated to servicing RPU retail load obligations. During emergency or irregular situations, the two circuits can be closed-in to operate as a singular and unitary power supply for both combined Mayo and RPU load centers.

The preliminary design also has two distinct control houses. Each control house contains the dedicated switchgear and protective relay components associated with their relative circuits. This methodology provides physical separation as well as a high degree of electrical separation of the distribution circuits.

IV. Duct and Electrical Feeder Design:

RPU's original feeder design constituted a reinforced duct back containing 9-way duct system. The sizing of this system provided RPU with needed feeder routing and separation options along with inherent conduit spares for future use.

This project collaboration with Mayo Clinic will increase the size of this duct infrastructure, and by default increases the complexity, cost and overall design considerations to include potential duct routing reconfiguration.

At this time it is unclear the number of feeder conduits desired by Mayo, leading to some project design ambiguity. This phase of the project will need the investment of preliminary design to assure routing options and sizing expectations can be met at reasonable cost. Once a preliminary design is completed that includes feasible routing options, at that time a budgetary estimate with a reliable degree of certainty will be communicated.

V. RPU Billing, Credit and Collection compliance

Mayo's participation in the S.E. Substation project will be conducted in compliance with approved RPU Billing, Credit and Collection policies.

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

The buildout and investments to complete the S.E. Substation project will occur over several years. As such, RPU will be making capital investments during all phases of construction, to include capital and labor investments needed to support Mayo Clinic's portion of the project.

RPU will bill Mayo Clinic as it incurs costs and investments that are attributable to Mayo Clinic's CIAC obligation. Per existing RPU policies, those billings are anticipated to occur monthly. Moreover, consistent with existing RPU credit policies, the provision for posting credit facilities will be reviewed for applicability.

VI. Contribution in Aide of Construction (CIAC) & Cost Allocation

In consideration for participation in the S.E. Substation project, Mayo Clinic will provide monetary reimbursement to RPU, or Contribution in Aide of Construction, also known as CIAC.

The cost allocation percentages attributed to RPU and Mayo Clinic for the S.E. Substation project, shall be agreed to be a percentage based upon the number of transformers specific to each party, divided by the total number of transformers for the project – or other mutually agreed too methodology.

Note: Based upon preliminary design, Mayo will have two of the total four transformers dedicated to its purposes. Thus, the Mayo Clinic cost allocation percentages is nominally 50%.

Similarly, RPU will have two of the total four transformers dedicated to its purposes. Thus, the RPU cost allocation is nominally 50% as well.

This percentage of total substation transformer cost allocation methodology is specific to the S.E. Substation portion of the project. The cost allocation for the distribution feeder portion of the project will require further review given that it is unclear as to number of conduits specific to each party, or the scope of incremental construction activities needed to support Mayo Clinic desired conduit buildout.

Based upon preliminary S.E. Substation design, the two (2) substation circuits generally mirror one another. As such, there is sound rationale in the allocation of a nominally 50%-to-50% cost allocation between the parties.

As described in Attachment 2, S.E. Substation cost estimation, the allocation costs relative to land development, substation engineering, equipment & materials, contract and internal labor, overheads and other services would be divided equally at 50% each.

Based upon preliminary design concepts, the overall S.E. Substation budgetary estimate is \$14.4M to \$17.0M. Based upon the aforementioned suggested cost allocation discussion, Mayo Clinic would provide a CIAC payment to RPU of nominally 50% of this total cost or \$7.2M to \$8.5M, to be collected over the nominal 3-year time horizon of this phase of the project.

Similarly, based upon preliminary design concepts, the overall distribution duct high level budgetary estimate is \$11.95M to \$16.49M. Given that the CIAC cost allocation percentage for

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

this phase of the project requires further review, yet Mayo would provide a CIAC on a percentage of this overall cost estimate as the calculation methodology unfolds in the future.

VII. Budgetary Cost Estimation and risk identification:

As provided in Attachment 2, S.E. Substation cost estimation, the core components of the project are presented, along with a low/high range budgetary cost anticipation.

- Substation Land Development
- Substation Engineering
- Substation Equip & Material
- Substation contract labor
- Substation Internal labor and overheads
- Substation services
- Substation contingency

The S.E. Substation project budgetary range is estimated at \$14.4M to \$17.0M, which is spread across the above categories with the Equipment and Material category being the largest. While this category may be the largest in terms of monetary value, it does not represent the broadest risk to the project.

Equipment and Material expenditures are largely reliant upon the technical specification, custom manufacture, delivery and installation of the unique power transformers, or attributed to manufacturer capabilities, dependency and ability to deliver on-time, on-schedule and on-budget.

Similarly, a more significant risk to project schedule/budget lies in the complexity associated with real-estate and/or easement procurement, negotiation, and acquisition. This risk is particularly pronounced in both the S.E. Substation and Distribution Feeder project phases.

In terms of criticality or critical path, the Real Estate risk is unique in that the project cannot proceed forward without resolution in this space. S.E. Substation earth/soil movement is scheduled for spring 2020, and this key 2020 schedule could slip given measureable delays in real-estate acquisition during 2019.

Other general project risks are associated with feeder river crossings and associated regulatory reviews, approvals required by other governmental entities, environmental reviews and current ambiguity related to feeder circuit routing, sizing, soil conditions, Right of Way matters, etc.

To the extent that competing project objectives might occur between the parties. RPU's project needs and project prioritization will take precedence over that of subordinate partner Mayo Clinic, whom is providing CIAC contributions.

RPU's superior position in terms of prioritization is based upon RPU's obligation as a load serving entity, as well as the various other binding regulatory obligations inherent upon a public utility in the State of Minnesota.

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

IIX. RPU's RESPONSIBILITIES UNDER THIS MOU:

RPU will have responsibility to develop, design, construct, and solely own and operate the electrical facilities including the S.E. Substation and associated distribution feeder network. RPU will have responsibility to assure effective project management, effective communication with CIAC partners while executing risk mitigation where possible.

RPU will enter into applicable contracts with consultants, and/or contractors as may be necessary in support of the project(s).

RPU will install applicable meter(ing) as needed, consistent with RPU electrical policies and procedures.

RPU will follow existing RPU electrical policies and procedures as they might apply generically to this project.

RPU will coordinate with Mayo Clinic in the execution of any fiscal credit facilities, requirements or payment obligations.

RPU will maintain and share with Mayo Clinic high level fiscal project details, needed to accurately reconcile project costs while supporting the goal of transparency without undue administrative burden.

RPU will coordinate with applicable regional transmission planning organizations that might be necessary, procuring applicable approval(s) from those organizations as well as municipalities and other local, state and federal regulatory authorities that may be required (if any) at RPU's expense.

Given the strategic significance of the S.E. Substation geographic location, RPU will seek and/or request confirmatory Mayo Clinic approval of the final selection.

IX. Mayo Clinic Responsibilities:

Mayo Clinic will have responsibility to work cooperatively with RPU, including providing timely technical reviews and confirmations when requested. Moreover, Mayo Clinic agrees to pay incremental feasibility costs, study costs, and system impacts costs for instances where Mayo technical requests require further study than technically contemplated in the MOU.

Mayo Clinic agrees to adhere to RPU's credit, collections and payment policies as it applies to CIAC responsibilities under the duration of this project. Based upon preliminary review, initial credit facilities or line of credit should not be required given the long credit history Mayo Clinic has established consistent with RPU's policies.

***MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic***

X. It is mutually understood and agreed by and between the parties that:

This MOU is intended to document and outline the overall intent of the parties.

Mayo Clinic and RPU may agree to more granular language in subsequent detailed agreements as necessary to support the project(s), and to potentially address particular issues that might arise in the future.

Mayo Clinic does not have the authority to reassign their obligation or benefits under this MOU to third parties, or successors, other than to Mayo Clinic affiliated or owned enterprises, subject to RPU credit policies.

XI. RPU Governance:

RPU operates as division of the City of Rochester. As such, certain governance obligations and requirements are incumbent upon RPU.

Specifically, the RPU Board of Directors and RPU General Manager have differing and unique approval authorities within the RPU Charter. The RPU Charter allocates overall budgetary approval authority with the RPU Board of Directors, with further confirmation of RPU budgets and rates by the City Council of Rochester Minnesota.

Singular budgetary approved expenditures greater than \$175,000 may require some measure of competitive bidding transparency, as well as RPU Board approval. As a result of these ministerial approvals, RPU must actively manage work flows to assure that required approvals are in place prior to actual work progressions – otherwise schedule delays can result given that the RPU monthly Board meetings are relatively infrequent.

Compliance with the RPU Governance process is an important regulatory activity.

XII. Future Agreements:

A future Operations and Maintenance (O&M) agreement will be required as a result of the S.E. Substation project. This agreement will define ongoing Mayo Clinic fiscal obligations needed to support maintenance and capital replacement of the facilities.

There may be other agreements that might arise as a result of this project that can't be predicated or anticipated at this time.

XII. Project Cancellation:

In case of project cancellation by Mayo Clinic. Mayo Clinic shall be responsible for any incurred redesign cost, contractual commitments that can't be deferred or incurred damages resulting from project cancellation.

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

XII. OTHER CONSIDERATIONS:

Consistent with RPU practices. RPU will own, singularly perform maintenance and retain all ownership rights to the proposed facility/substation and associated equipment within the proposed facility/substation to include the distribution feeder infrastructure.

RPU will coordinate with regulatory and regional reliability agencies such as MISO for required grid authorizations (if applicable).

Project timelines are ultimately dependent upon inputs such as available labor, lead time for materials etc. It has been noted during conversations that lead time for proposed electrical transformers can be nominally a year or twelve (12) months. Additionally, expediting material can also result in incremental costs.

This MOU is contingent upon approval by internal RPU governance such as RPU Board, City Attorney and RPU General Manager.

XIII. EFFECTIVE DATE AND SIGNATURE

Parties indicate agreement with this MOU by their signatures.

CITY OF ROCHESTER

By: _____
Kim Norton, Mayor

Attest: _____
Anissa Hollingshead, City Clerk

Approved
as to Form: _____
Jason Loos, City Attorney

ROCHESTER PUBLIC UTILITIES

By: _____
Mark Kotschevar, General Manager

Date: _____

MAYO CLINIC, a Minnesota nonprofit corporation

By: _____

Name: _____

Its: _____
Mayo Clinic

Date: _____

*MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic*

Future

- One Line Technical Diagram -

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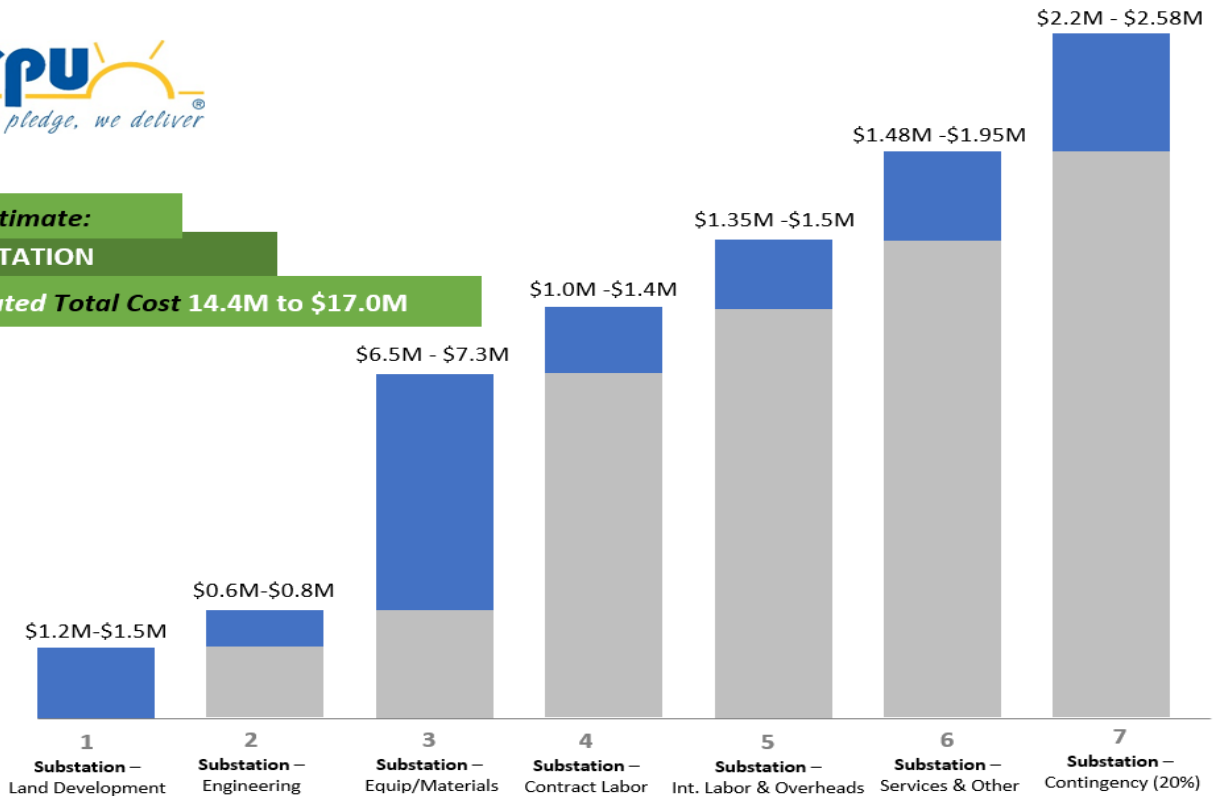
**MEMORANDUM OF UNDERSTANDING (MOU) between
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Budgetary Estimate:

S.E. SUBSTATION

- **Estimated Total Cost 14.4M to \$17.0M**



1 SUBSTATION – LAND DEVELOPMENT

Site evaluations, soil sampling, final site selection, land acquisition, negotiations for occupancy, and related easements remain a critical path activity.

Due to a number of dynamics, there remain significant fiscal variability. We are working with key partners to assist in reducing project timing and fiscal risk.

2 SUBSTATION – ENGINEERING

The process of selecting an Engineering consulting firm to assist with final design is underway.

Coordination with the various partners will be required to assure RPU delivers the technical specifications associated with increased reliability, resiliency and redundancy.

3 SUBSTATION – EQUIP/MATERIALS

The final design and identification of technical specifications will be a critical path and time sensitive initiative.

Equipment & materials represent the single largest project expenditure(s), as it includes the anticipated four large (4) power transformers.

Power transformers require customized specifications and can have a lead time of nominally 12 months or more. Additionally, the specs for the switchgear, control house, protective relay equipment, communications equipment and general design are included in this space.

4 SUBSTATION – CONTRACT/LABOR

This initiative begins the phase of actual construction to include labor and contracted services needed for soil movement and soil preparation, grading and assistance in specific erection of facilities.

RPU will be using a significant amount of its own internal labor, specifically substation and electrical distribution teams.

5 SUBSTATION – INT. LABOR & OVERHEADS

Project management, fiscal record keeping, billing services are captured in this space as overheads.

As previously mentioned, RPU will be using a significant amount of its own internal labor, substation, electrical distribution line workers, substation electricians and other specialty technical services during construction.

6 SUBSTATION – SERVICES & OTHER

Various regulatory reviews including site environmental review, crane(s) & major material handling, telecom, equipment rentals, flood plain mitigation (\$400k), & safety oversight.

7 SUBSTATION – CONTINGENCY (20%)

The breath of this contingency percentage is driven by the dynamics and complexity of this project, and the inability to predict a number of unlikely and unanticipated challenges.

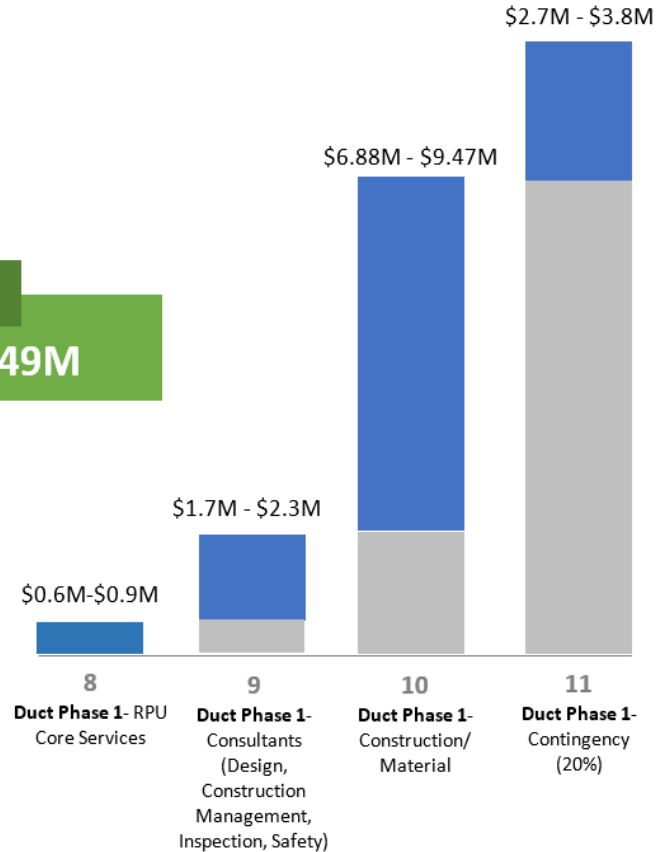
**MEMORANDUM OF UNDERSTANDING (MOU) between
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Budgetary Estimate:

DUCT PHASE 1 TOTAL

\$11.95M - \$16.49M



8 DUCT PHASE 1 – RPU CORE SERVICES

Route validation: Determining the extent of other utilities occupying the proposed corridor and the feasibility of routing three 9 way 5" encased conduit systems through a single proposed corridor.

9 DUCT PHASE 1 – CONSULTANTS (DESIGN, CONSTRUCTION MANAGEMENT, INSPECTION, SAFETY)

The technical design phase of the project including planning activities for duct routing, easement acquisition and other technical specifications.

10 DUCT PHASE 1 – CONSTRUCTION MATERIAL

This section of the project consists of actual construction primarily reliant upon excavation associated with underground duct work, conduit, cables and manhole structure as well as street demolition.

11 DUCT PHASE 1 – CONTINGENCY (20%)

The breath of this contingency percentage is driven by the dynamics and complexity of this project, and the inability to predict a number of likely and anticipated challenges.

**MEMORANDUM OF UNDERSTANDING (MOU) between
City of Rochester (RPU) and Mayo Clinic**

Estimated project expenditures by year

Assumptions:

- Two projects run concurrently as shown below

New SE Substation & Duct Project Estimate								
	2019 - Low	2019 - High	2020 - Low	2020 - High	2021 - Low	2021 - High	2022 - Low	2022 - High
Substation - Land Development	\$1,211,000	\$1,510,000	\$0	\$0	\$0	\$0	\$0	\$0
Substation - Engineering	\$185,000	\$230,000	\$367,000	\$460,000	\$50,000	\$80,000	\$0	\$0
Substation - Equip/Materials			\$4,536,000	\$5,020,000	\$2,005,000	\$2,280,000	\$0	\$0
Substation - Contract Labor			\$525,000	\$705,000	\$525,000	\$705,000	\$0	\$0
Substation - Int. Labor & Overheads	\$225,000	\$275,000	\$600,000	\$650,000	\$525,000	\$575,000	\$0	\$0
Substation - Services & Other	\$220,000	\$300,000	\$650,000	\$850,000	\$610,000	\$800,000	\$0	\$0
Substation - Contingency (20%)	\$200,000	\$350,000	\$1,130,000	\$1,236,000	\$875,000	\$1,000,000	\$0	\$0
Duct Phase 1- RPU Core Services	\$150,000	\$200,000	\$200,000	\$300,000	\$200,000	\$300,000	\$50,000	\$100,000
Duct Phase 1- Consultants (Design, Con	\$172,979	\$209,894	\$994,967	\$1,336,241	\$514,658	\$717,564	\$30,000	\$50,000
Duct Phase 1- Construction/Material			\$1,537,242	\$1,998,678	\$5,146,586	\$7,175,647	\$200,000	\$300,000
Duct Phase 1- Contingency (30%)	\$96,894	\$122,968	\$819,663	\$1,090,476	\$1,758,373	\$2,457,963	\$84,000	\$135,000
Yearly Totals	\$2,460,873	\$3,197,862	\$11,359,872	\$13,646,395	\$12,209,617	\$16,091,174	\$364,000	\$585,000
TOTAL PROJECT - LOW	\$26,394,362							
TOTAL PROJECT - HIGH	\$33,520,431							



RESOLUTION

BE IT RESOLVED by the Public Utility Board of the City of Rochester, Minnesota, to approve the Mayo Clinic MOU: SE Substation and authorize the Mayor and the City Clerk to execute the agreement.

Passed by the Public Utility Board of the City of Rochester, Minnesota, this 27th day of August, 2019.

President

Secretary

FOR BOARD ACTION

Agenda Item # (ID # 10919)

Meeting Date: 8/27/2019

SUBJECT: Rates Sub Committee - Customer Charge

PREPARED BY: Peter Hogan

ITEM DESCRIPTION:

The rates sub committee was formed by the Board at the January 29, 2019 meeting. The sub committee has met with management to address questions regarding the components of the customer charge within the cost of service study conducted every three years. Staff will update the Board on those discussions in preparation for potential rate changes as part of the 2020 budget and rates approval process.

UTILITY BOARD ACTION REQUESTED:

Informational only, no action requested.

FOR BOARD ACTION

Agenda Item # (ID # 10977)

Meeting Date: 8/27/2019

SUBJECT: Customer Relations - Revised Life Support Policy

PREPARED BY: Krista Boston

ITEM DESCRIPTION:

Attached is a revised policy for review and comment. The draft was sent out to Communications Committee members for review and feedback which has been incorporated. I have also attached the existing policy for reference. Please let me know if you have additional feedback or comments. I will incorporate and bring the policy back for approval at the September board meeting.

UTILITY BOARD ACTION REQUESTED:

Review and provide additional comments.

ROCHESTER PUBLIC UTILITIES BOARD POLICY STATEMENT

POLICY SUBJECT: Life Support Equipment and Disconnects

OBJECTIVE:

The purpose of this policy is to define the Life Support Program, a means for identifying life support customers, and outline the responsibilities of the customer and Rochester Public Utilities (RPU) in regard to the electric service.-

POLICY STATEMENT:

One of RPU's Core Values is to Protect Every Individual. This includes customers who rely on medically necessary equipment to survive. Electric service is critical to these customers and any disruption of service regardless of how short, may threaten their health or safety.

RPU, as required by Minnesota Statute 216B.098, will provide electricity to customers with medically necessary equipment. To be recognized as a RPU Life Support account, the customer must complete the Life Support Program Application and have their licensed medical doctor, licensed physician assistant, advanced practice registered nurse, or a registered nurse (but only to the extent of verifying the current diagnosis made by a licensed medical doctor) complete the Life Support Medical Certification Form.

Through RPU's Life Support pProgram-~~management~~:

RPU will provide program information to medical suppliers and local medical centers so that they may share the information with their customers. Application forms will be provided to make the process easier for the customers.

The Life Support Medical Certification Form must be submitted on an annual basis to continue participation in the life support program. Upon receiving completed forms confirmation may be required.

~~RPU will verify that the customer no longer requires medically necessary equipment if the form is not resubmitted by the anniversary date.~~

RPU will rely on the advice of the medical personnel to determine what constitutes medically necessary equipment.

RPU reserves the right to verify the legitimacy of the certification by the medical professional.

A customer whose account is in arrears must contact RPU and enter into a payment arrangement. The arrangement must consider the customer's financial circumstances and if there are extenuating circumstances.

Life support customers will be offered information on automatic payment plans and the option to provide third party contact information. If the negotiated payment arrangement is not followed, an RPU representative will contact the customer to help them address the arrears and offer resources and support to follow the payment arrangement or negotiate a new arrangement.~~If payments are not made, an RPU representative will contact the customer to discuss an arrangement.~~

RELEVANT LEGAL AUTHORITY:

~~Minnesota Statutes Chapter 216B.098, Subdivision 5. Medically Necessary Equipment~~
Minnesota Statutes Chapter 216B.098, Subdivision 5. Medically Necessary Equipment

EFFECTIVE DATE OF POLICY:

DATE OF POLICY REVIEW:

POLICY APPROVAL:

 Board President

 Date

ROCHESTER PUBLIC UTILITIES BOARD
POLICY STATEMENT

POLICY SUBJECT: Life Support

POLICY OBJECTIVE:

The purpose of this policy is to define the Life Support Program, a means for identifying life support customers, and outline the responsibilities of the customer and Rochester Public Utilities (RPU).

POLICY STATEMENT:

1. One of RPU's Core Values is to Protect Every Individual. This includes customers who rely on medically necessary equipment to survive. Electric service is critical to these customers and any disruption of service regardless of how short, may threaten their health or safety.
2. RPU, as required by Minnesota Statute 216B.098, will provide electricity to customers with medically necessary equipment. To be recognized as a RPU LifeSupport account, the customer must complete the Life Support Program Application and have their licensed medical doctor, licensed physician assistant, advanced practice registered nurse, or a registered nurse (but only to the extent of verifying the current diagnosis made by a licensed medical doctor) complete the Life Support Medical Certification Form.
3. Through RPU's program management:
 - a. RPU will provide program information to medical suppliers and local medical centers so that they may share the information with their customers. Application forms will be provided to make the process easier for the customers.
 - b. The Life Support Medical Certification Form must be submitted on an annual basis to continue participation in the life support program. Upon receiving completed forms confirmation may be required
 - c. RPU will verify that the customer no longer requires medically necessary equipment if the form is not resubmitted by the anniversary date.
 - d. RPU will rely on the advice of the medical personnel to determine what constitutes medically necessary equipment.
 - e. A customer whose account is in arrears must contact RPU and enter into a payment arrangement. The arrangement must consider the customer's financial circumstances and if there are extenuating circumstances.

Life support customers will be offered information on automatic payment plans and the option to provide third party contact information. If payments are not made, an RPU representative will contact the customer to discuss an arrangement.

EFFECTIVE DATE OF POLICY: September 30, 2014 DATE

OF POLICY REVIEW:

POLICY APPROVAL:


Board President
10/9/14
Date