

AGENDA
SHAKOPEE PUBLIC UTILITIES COMMISSION
REGULAR MEETING
February 6, 2023
at 5:00 PM

To watch this meeting live click or copy the link: <https://tinyurl.com/SPU-YouTube-Live>

1. **Call to Order** at 5:00pm in the SPU Service Center, 255 Sarazin Street
 - 1a) Roll Call (KM)
 2. **Communications**
 3. **Consent Agenda**
 - C=> 3a) Approval of January 3, 2023 Minutes (GD)
 - C=> 3b) Approval of February 6, 2023 Agenda (KM)
 - C=> 3c) January 17, 2023 Warrant List (KW)
 - C=> 3d) February 6, 2023 Warrant List (KW)
 - C=> 3e) MMPA December 2022 Meeting (GD)
 - C=> 3f) MMPA January 2023 Meeting (GD)
 - C=> 3g) Pay Equity Implementation Report (KW)
 - C=> 3h) AMI Vendor Contract for Signature (SW)
 - C=> 3i) Delegating Payment of Budgeted Claims Powers to General Manager (KW)
 - C=> 3j) November Financial Report (KW)
 - C=> 3k) MVEC Joint Use Pole Agreement transfer to SPU (BC)
 - C=> 3l) Phased Retirement Agreement (JA)
 4. **Liaison Report** (JD)
 5. **Public Comment Period.** Please step up to the table and state your name and address for the record.
 6. **Reports: Water Items**
 - 6a) Water System Operations Report – Verbal (DH)
 7. **Reports: Electric Items**
 - 7a) Electric System Operations Report – Verbal (BC)
 - 7b) Stagecoach Road Overhead Electric Facilities Relocation (JA)
 - 7c) Resolution #2023-24 A Resolution Approving Purchase Agreement, Utility Easement Agreement, And Lease: All Documents Necessary to carry out Purchase Agreement, Utility Easement Agreement, And Lease; and Completion of Closing Under Purchase Agreement for the East Shakopee substation Site (JA)
 8. **Reports: Human Resources**
 9. **Reports: General**
 - 9a) Marketing/Key Accounts Report – Verbal (SW)
 - 9b) Director of Finance & Administration – Verbal (KW)
 - 9c) General Manager Report – Verbal (GD)
 - 9d) 2023 Workshops (GD)
 - 9e) Goals 2023 (GD)
 - 9f) NES WTP Site Search Update (JA)
 - Water Treatment Plant Site Update (JA) **
- ** A portion of this meeting may be closed under Minnesota Statutes, Section 13D.05, subdivision 3(c) to review confidential or protected nonpublic appraisal data and to develop or consider offers or counteroffers for the purchase of properties located at 3650 Eagle Creek Boulevard and 3690 Eagle Creek Boulevard.
10. **Items for Future Agendas**
 11. **Tentative Dates for Upcoming Meetings**
 - February 21, 2023 Workshop
 - March 6, 2023 Commission Meeting
 12. **Adjournment**

MINUTES OF THE
SHAKOPEE PUBLIC UTILITIES COMMISSION

January 3, 2023

Regular Meeting

1. Call to Order. President Mocol called the January 3, 2023, meeting of the Shakopee Public Utilities Commission to order at 5:00 PM. President Mocol, Vice President Krieg, Commissioner Fox, and Commissioner Letourneau were present. President Mocol and Commissioner Fox participated through interactive technology due to weather conditions.
2. Approval of Consent Agenda. Commissioner Fox moved approval of the consent agenda: (3a) December 5, 2022 minutes; (3b) January 3, 2023 agenda; (3c) December 19, 2022 warrant list; (3d) January 3, 2023 warrant list; (3e) Monthly dashboard; (3f) Nitrate results; (3g) PFAS results; (3i) MMPA November 2022 Meeting; (3j) Res #2023-01 Resolution Adjusting Fees Applied Under the Water Capacity Charge Policy; and (3k) Res #2023-02 Resolution Clarifying the Provisions of Resolution #815 Resolution for the Equivalent Lateral Water Main Portion of a Trunk Water Project. Vice President Krieg seconded the motion. Ayes: Mocol, Krieg, Fox, and Letourneau. Nays: None. Motion carried.
3. Public Comment Period. Mike Lavoie asked about timing for SPU to rely fully on renewable energy sources. General Manager Drent explained that SPU currently exceeds state requirements, and the efforts with MMPA to achieve 50% renewables by the end of 2023.
4. Water Report. David Hagen, Water Distribution Supervisor, reported two water leaks. One was found on December 23rd at the curb stop and it was fixed by December 29th. The second was found on December 30th when SPU used leak detection to help locate the leak, which was under the front porch and the customer's responsibility. Mr. Hagen noted that crews have started reading fire detection meters at businesses. He stated that Well 15 will be removed on January 16th. He reported that staff is working on year-end inventory counts, preventive maintenance at pump houses and well sites, rebuilding the chlorine equipment and tubing, and with engineering on concluding projects for 2022 and upcoming projects.
5. Electric Report. Brad Carlson, Electric Superintendent, reported that no outages occurred since the last Commission meeting nearly a month ago. He discussed electric projects, including the SW Gateway; changing over 200 meters for the Bonnevista Terrace transfer from MVEC; Summerland Second Addition joint trench project; Canterbury Crossing 2nd is close to completion; scheduled maintenance shutdown on Old Carriage Court; and work on multiple streetlights damaged in recent storms. He reported that SPU sent two staff members to Moose Lake on December 15th for mutual aid; after their work was completed, the crew was reassigned to Northwestern Wisconsin and they returned on December 21st. Mr. Carlson noted an appreciation letter from the City of Bartow for the mutual aid provided after Hurricane Ian; of the 2.7 million affected customers, the 10,000 in Bartow were restored power within four days.

6. Marketing/Key Accounts Report. Sharon Walsh, Director of Key Accounts/Marketing/Special Projects, reported that the customer billing insert has been drafted and will be sent to the printer; City staff decided to do a separate insert and SPU will work with them to include it. Ms. Walsh noted that updated rate brochures were printed and posted to the website, and staff reviewed every page of the website to update for 2023. Ms. Walsh also modified the EV charging page. She noted that the AMI contract negotiations are close to be completion but due to vendor vacations and the holidays the documents were not finalized for this meeting.
7. General Manager Report. Mr. Drent provided an update, including grant funding with the State and MMUA; his meeting with new Mayor and that a Commissioner appointment is expected soon; Policy Manual clean-up; and meeting with new property owner and Greystone on the Water Capacity Charge Agreement for Bravis and Badger Hill. Mr. Drent noted that a customer concern with water damage at a property that changed hands was referred to SPU's insurer. With the changeover to NISC, he also noted that financial reports will occur on a more regular basis.
8. Organizational Chart. Mr. Drent presented the proposed revised SPU's Organizational Chart, with Engineering Supervisor (Water) and Engineering Supervisor (Electric), and changing the open engineering technical position to civil engineer. Commissioner Letourneau moved approval of the Organizational Chart as presented. Vice President Krieg seconded the motion. Ayes: Mocol, Krieg, Fox, and Letourneau. Nays: None.
9. 2023 Commission Meeting Schedule. Mr. Drent presented the proposed 2023 Commission regular meeting schedule, in which meetings will occur monthly on the first Monday. He also discussed holding four work sessions, on the third Monday in February, May, September, and December. Commissioner Letourneau moved approval of the 2023 meeting schedule and work sessions; Commissioner Fox seconded the motion. Ayes: Mocol, Krieg, Fox, and Letourneau. Nays: None.
10. Land Purchase Status - Water Treatment Plant Site and East Shakopee Substation Site. Commissioner Letourneau moved, seconded by Vice President Krieg, that the Commission go into closed session under Minnesota Statutes, Section 13D.05, subdivision 3(c) to review confidential or protected nonpublic appraisal data and to develop or consider offers or counteroffers for the purchase of property described as 3650 Eagle Creek Boulevard and 1462 Maras Street. Ayes: Mocol, Krieg, Fox, and Letourneau. Nays: None. In open session, President Mocol noted that the Commission gave direction to staff.
11. Adjourn. Motion by Commissioner Letourneau, seconded by Commissioner Fox, to adjourn to the February 6, 2023 meeting. Ayes: Mocol, Krieg, Fox, and Letourneau. Nays: None.

Greg Drent, Commission Secretary

AGENDA
SHAKOPEE PUBLIC UTILITIES COMMISSION
REGULAR MEETING
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 - 9e) Goals 2023 (GD)
 - 9f) NES WTP Site Search Update (JA)
Water Treatment Plant Site Update (JA) **
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SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

January 17, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities Commission:

ABDO LLP	\$9,808.00
KATIE J ADAMS	\$108.00
AGC NETWORKS LLC	\$5,729.53
AMARIL UNIFORM COMPANY	\$763.13
AMERICAN NATL BANK_MASTERCARD_ACH	\$14,083.52
KAY ANDERSON	\$400.00
ARAMARK REFRESHMENT SERVICES INC	\$261.11
B & B TRANSFORMER INC	\$83,006.00
NATHAN BARE	\$100.00
ROBERT BERNDTSON	\$201.24
BOLTON HARDWARE	\$10,327.00
BRANDL ANDERSON HOMES INC.	\$53.69
CHRIS E BRINKHAUS	\$100.00
WILLIAM L BROWN	\$400.00
CAP AGENCY	\$34,715.00
BRIAN CASEY	\$1,000.00
CENTURY PROMOTIONAL ADVERTISING LLC	\$108.00
CHOICE ELECTRIC INC	\$1,004.68
CITY OF PRIOR LAKE	\$7,389.00
CITY OF SHAKOPEE	\$13,783.57
CITY OF SHAKOPEE	\$458,443.84
CITY OF SHAKOPEE	\$798,152.20
CORE & MAIN LP	\$5,485.93
CSK AUTO	\$150.30
DAKOTA SUPPLY GROUP	\$115,919.31
DAVE BERG CONSULTING, LLC	\$500.00
DGR ENGINEERING	\$3,824.80
GREG DRESSEN	\$400.00
DSI/LSI	\$427.21
INC. FERGUSON US HOLDINGS	\$333.53
FLYTE HCM LLC	\$5.50
INC. FRANZ REPROGRAPHICS	\$758.87
INC. FRONTIER ENERGY	\$6,424.80
GOPHER STATE ONE-CALL	\$248.40
GRAINGER INC	\$2,670.75
BRAD GUSTAFSON	\$130.01
HAWKINS INC	\$2,400.90
HREXPRTISEBP LLC	\$75.00
INC. IMPACT MAILING OF MI	\$1,298.32
LABOR AND INDUSTRY	\$60.00
LANO EQUIPMENT INC	\$490.24
INC LARKSTUR ENGINEERING	\$122.17
LOFFLER COMPANIES - 131511	\$1,726.01
MASTER MECHANICAL INC	\$3,348.84
LORAIN MCBRIDE	\$400.00
MCGRANN SHEA CARNIVAL	\$13,008.75
INC. MIDWEST SAFETY COUNS	\$417.63
MINN DEPT OF HEALTH (MDH)	\$29,279.07
MINN VALLEY TESTING LABS INC	\$383.34
MMUA	\$1,776.00
NAPA AUTO PARTS	\$272.73
NATIONAL CONDUCTOR CONSTRUCTORS LI	\$83,582.10
GERRY NEVILLE	\$348.69
CINDY NICKOLAY	\$263.74
NISC	\$3,193.17
NORTHERN STATES POWER CO	\$3,947.00
MORRIS A OLDFATHER	\$400.00
ORACLE AMERICA INC.	\$48,025.75
INC PARROTT CONTRACTING	\$11,798.05
RDO-VERMEER LLC	\$2,250.40

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

January 17, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities Commission:

RESCO	\$4,831.88
RIES HEATING & A/C INC	\$165.00
JESSICA M RIVEST	\$100.00
JUSTIN ROTERT	\$324.50
INC, LEIDOS ENG. LL RW BECK GROUP	\$25,370.97
SAMBATEK	\$8,025.50
JACK SCHINTZ	\$109.00
SCOTT COUNTY	\$782.00
SDDI SIGN	\$21.48
SHAKOPEE CHAMBER OF COMMERCE	\$7,500.00
TROY D SHEELER	\$100.00
CLINT SICHMELLER	\$100.00
SOUTHWEST NEWS MEDIA	\$826.62
STAR ENERGY SERVICES	\$149.00
STAR TRIBUNE	\$582.30
STELLA-JONES CORPORATION	\$19,270.60
INC. TEREX UTILITIES	\$100.00
GREG TRIPLETT	\$38.75
USA BLUE BOOK	\$715.51
VERIZON WIRELESS	\$2,865.65
JAMIE VON BANK	\$250.00
MICHAEL VOURLOS	\$41.98
WATER CONSERVATION SERVICE INC	\$333.75
MARK WERMERSKIRCHEN	\$100.00
KELLEY WILLEMSEN	\$3,118.45
INC. WSB & ASSOCIATES	\$29,577.25
MMPA - ACH	\$3,055,537.56
FURTHER -ACH	\$189.98
MN DEPT. OF REVENUE -ACH	\$259,705.00
PAYROLL FOR 1.13.23	\$125,725.71
BENEFITS & TAXES FOR 1.13.23	\$274,931.72
JANUARY CREDIT REFUNDS	\$4,919.20
	<u>\$5,612,494.18</u>


Presented for approval by: Director of Finance & Administration

Approved by General Manager

Approved by Commission President

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

January 17, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret
authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities
Commission:

ABDO LLP	\$9,808.00 FS ACCT. FOR DEC.
KATIE J ADAMS	\$108.00 MILEAGE REIMB OCT, NOV & DEC 2022
AGC NETWORKS LLC	\$5,729.53 ANNUAL CONTRACT FOR MTE/LIC. GUARDIAN SU
AMARIL UNIFORM COMPANY	\$763.13 BEANIE HATS FOR ELEC. DEPT.
AMERICAN NATL BANK_MASTERCARD_ACF	\$14,083.52 DEC. MONTH ACTIVITY/JAN. CHARGE MONTH
KAY ANDERSON	\$400.00 ENERGY WISE CREDIT
ARAMARK REFRESHMENT SERVICES INC	\$261.11 COFFEE FOR LUNCHROOMS
B & B TRANSFORMER INC	\$83,006.00 37.5 PAD ROOM
NATHAN BARE	\$100.00 ENERGY WISE CREDIT
ROBERT BERNDTSON	\$201.24 REIMB 191 MILES 12.16.22 - 12.29.22
BOLTON HARDWARE	\$10,327.00 WEST END LOWER BLUFF TRUNK
BRANDL ANDERSON HOMES INC.	\$53.69 TEMP ELECTRIC SVC NOT USED 7591 WAVERLY
CHRIS E BRINKHAUS	\$100.00 ENERGY WISE CREDIT
WILLIAM L BROWN	\$400.00 ENERGY WISE CREDIT
CAP AGENCY	\$34,715.00 2022 LOW INCOME PROGRAM
BRIAN CASEY	\$1,000.00 2022 SOLAR REBATE
CENTURY PROMOTIONAL ADVERTISING LLC	\$108.00 BLACK JACKET FOR GABE
CHOICE ELECTRIC INC	\$1,004.68 MIDDLE SCHOOL INSTALL METER SOCKET
CITY OF PRIOR LAKE	\$7,389.00 4TH QTR. PRIOR LAKE FRANCHISE FEE
CITY OF SHAKOPEE	\$13,783.57 DEC. FUEL USAGE
CITY OF SHAKOPEE	\$458,443.84 DEC 2022 SW \$349,318.42 SD \$109,125.42
CITY OF SHAKOPEE	\$798,152.20 2022 PILOT TRUE UP
CORE & MAIN LP	\$5,485.93 OMNI 2" T2 REG RETROFIT KIT
CSK AUTO	\$150.30 5 GAL HYDRO OIL
DAKOTA SUPPLY GROUP	\$115,919.31 CABLE
DAVE BERG CONSULTING, LLC	\$500.00 E & W COST OF SERVICE & RATE DESIGN
DGR ENGINEERING	\$3,824.80 PROF. SERVICE THRU 12/31/22 DIST.IMPROVE
GREG DRESSEN	\$400.00 ENERGY WISE CREDIT
DSI/LSI	\$427.21 DECEMBER TRASH
INC. FERGUSON US HOLDINGS	\$333.53 SPILL RES. PRES VACUUM BREAKER
FLYTE HCM LLC	\$5.50 COBRA HIPPA NOTICE DECEMBER 2022
INC. FRANZ REPROGRAPHICS	\$758.87 HP SYSTEM PREVENTATIVE MTE
INC. FRONTIER ENERGY	\$6,424.80 PROF. SERVICE 12/1-12/31/22
GOPHER STATE ONE-CALL	\$248.40 DECEMBER TICKETS
GRAINGER INC	\$2,670.75 ELCT WL/CEIL HEATER
BRAD GUSTAFSON	\$130.01 REIMB FOR SAFETY BOOTS - MAX FOR YEAR
HAWKINS INC	\$2,400.90 HYDROFLUOSILICIC ACID
HREXPRTISEBP LLC	\$75.00 NOV. - DEC. HR CONSULTING
INC. IMPACT MAILING OF MI	\$1,298.32 DECEMBER COLLECTION LETTERS
LABOR AND INDUSTRY	\$60.00 PRESSURE VESSEL
LANO EQUIPMENT INC	\$490.24 REPAIR FITTINGS GRAPPLE HOOK BOBCATY
INC LARKSTUR ENGINEERING	\$122.17 CRIMP FITTING, MONOBLOK
LOFFLER COMPANIES - 131511	\$1,726.01 4TH QTR. 2022 OVERAGE CHARGE
MASTER MECHANICAL INC	\$3,348.84 BOILER PUMP NOT WORKING
LORAIN MCBRIDE	\$400.00 ENERGY WISE CREDIT
MCGRANN SHEA CARNIVAL	\$13,008.75 LAND EXCHANGE AGREEMENT
INC. MIDWEST SAFETY COUNS	\$417.63 GLOVES
MINN DEPT OF HEALTH (MDH)	\$29,279.07 4TH QTR. COMMUNITY WATER SUPPLY CONN. FE
MINN VALLEY TESTING LABS INC	\$383.34 COLIFORM
MMUA	\$1,776.00 DEC. SCIOOLING CONF. MARSHALL, MN
NAPA AUTO PARTS	\$272.73 AUTO BATTER CHARGER
NATIONAL CONDUCTOR CONSTRUCTORS LI	\$83,582.10 WORK DONE IN DEC.
GERRY NEVILLE	\$348.69 REIMB SAFETY BOOTS
CINDY NICKOLAY	\$263.74 REIMB 251 MILES 12.16.22-12.29.22
NISC	\$3,193.17 DEC. RECURRING INVOICE
NORTHERN STATES POWER CO	\$3,947.00 DEC. POWER BILL
MORRIS A OLDFATHER	\$400.00 ENERGY WISE CREDIT
ORACLE AMERICA INC.	\$48,025.75 4TH QTR. OPOWER CHANNEL FEE POSTAGE
INC PARROTT CONTRACTING	\$11,798.05 REPAIR WATERMAIN BLUFF AVE. LIFT
RDO-VERMEER LLC	\$2,250.40 GOVE. TRANSACTION po#638 CODY

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

January 17, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret
authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities
Commission:

RESCO	\$4,831.88	ELBOW JACKET SEAL 15KV
RIES HEATING & A/C INC	\$165.00	SWITCH OUT ELE. HEATER - WATER DEPT.
JESSICA M RIVEST	\$100.00	ENERGY WISE CREDIT
JUSTIN ROTERT	\$324.50	PER DIEM WO#2685 MOOSE LAKE/WO#2686 GRAN
INC, LEIDOS ENG. LL RW BECK GROUP	\$25,370.97	NOV. - DEC. 2022 INVOICE SPU W. SUB DESI
SAMBATEK	\$8,025.50	PROF. THRU DEC. ELEVATED TANK #8
JACK SCHINTZ	\$109.00	SAFETY BOOT REIMB.
SCOTT COUNTY	\$782.00	WC CHRG AGREEMNT REL DORAN CANTERBURY II
SDDI SIGN	\$21.48	NAME PLATE JAMES KELTGEN
SHAKOPEE CHAMBER OF COMMERCE	\$7,500.00	2023 RHYTHM ON THE RAILS WEEKLY HEADLINE
TROY D SHEELER	\$100.00	ENERGY WISE CREDIT
CLINT SICHMELLER	\$100.00	ENERGY WISE CREDIT
SOUTHWEST NEWS MEDIA	\$826.62	DEC. LEGALS
STAR ENERGY SERVICES	\$149.00	SOFTWARE INTEGRATION & DEVELOPMENT
STAR TRIBUNE	\$582.30	RENEWAL MEMBERSHIP 12/9/22-12/8/23
STELLA-JONES CORPORATION	\$19,270.60	FIR PENTA/DCOL - POLES
INC. TEREX UTILITIES	\$100.00	ENERGY WISE CREDIT
GREG TRIPLETT	\$38.75	REIMB 62 MILES 12/30/22-1/5/2023
USA BLUE BOOK	\$715.51	HACH FLUORIDE REAGENT
VERIZON WIRELESS	\$2,865.65	NOVEMBER 24-DECEMBER 23 BILLING PERIOD
JAMIE VON BANK	\$250.00	REIMB FOR SAFETY BOOTS
MICHAEL VOURLOS	\$41.98	REIMB 16 MILES 12.13, 12.27-12.30 2022
WATER CONSERVATION SERVICE INC	\$333.75	DEC. 30,2022 LEAK LOCATE 1033 MAIN ST. S
MARK WERMERSKIRCHEN	\$100.00	ENERGY WISE CREDIT
KELLEY WILLEMSEN	\$3,118.45	REIMB. MOTOR VEHICLE TABS 2022 FORD F450
INC. WSB & ASSOCIATES	\$29,577.25	PROF. SERVCIE FOR NOV. 2022
MMPA - ACH	\$3,055,537.56	DEC. POWER BILL
FURTHER -ACH	\$189.98	MEDICAL CLAIM REIMB.
MN DEPT. OF REVENUE -ACH	\$259,705.00	DEC. SALES & USE TAX
PAYROLL FOR 1.13.23	\$125,725.71	
BENEFITS & TAXES FOR 1.13.23	\$274,931.72	
JANUARY CREDIT REFUNDS	\$4,919.20	

\$5,612,494.18

Presented for approval by: Director of Finance & Administration

Approved by General Manager

Approved by Commission President

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WARRANT LISTING

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SCOTT COUNTY ABSTRACT & TITLE CO	\$1,427.41
AAR BUILDING SERVICE CO.	\$4,051.43
ALL ELEMENTS INC.	\$1,050.00
ALTERNATIVE TECHNOLOGIES INC	\$66.00
DEBRA D AMUNDSON	\$50.00
ANCOM COMMUNICATIONS INC	\$1,145.70
APPLE FORD OF SHAKOPEE	\$1,087.33
ARROW ACE HARDWARE	\$80.47
ASPEN EQUIPMENT CO	\$3,089.12
ROBERT BERNDTSON	\$286.89
BORDER STATES ELECTRIC SUPPLY	\$1,771.69
ERIC BRAESCH	\$100.00
CHOICE ELECTRIC INC	\$180.58
LLC CHOICE UNDERGROUND	\$3,990.00
CITY OF SHAKOPEE	\$1,031.08
INC. COMCAST CABLE COMMUN	\$2.25
CORE & MAIN LP	\$16,240.62
CUSTOMER CONTACT SERVICES	\$435.28
D R HORTON	\$10,215.00
INC. DAILY PRINTING	\$2,450.00
ANNA DANIELS	\$100.00
INC. FRANZ REPROGRAPHICS	\$292.64
GOPHER STATE ONE-CALL	\$50.00
GRAINGER INC	\$1,942.68
GRAYBAR ELECTRIC COMPANY INC	\$25,575.43
HAWKINS INC	\$300.00
HEALTHPARTNERS	\$72,307.26
INC. HENNEN'S AUTO SERVIC	\$82.88
INDELCO PLASTICS CORP	\$954.60
INNOVATIVE OFFICE SOLUTIONS LLC	\$1,723.61
INTERSTATE COMPANIES INC	\$3,025.46
IRBY - STUART C IRBY CO	\$3,993.28
IRBY TOOLS - STUART C IRBY CO	\$1,098.60
MATTHEW JOHNSON	\$100.00
KATAMA TECHNOLOGIES, INC.	\$5,156.25
LANO EQUIPMENT INC	\$42.70
LEAGUE OF MINN CITIES INS TRUST	\$101,215.00
LINK CONSTRUCTION	\$459.50
MESENBRINK CONSTR & ENG INC	\$1,450.21
MID-COUNTY FABRICATING INC.	\$778.47
INC. MIDWEST SAFETY COUNS	\$724.53
MINN VALLEY TESTING LABS INC	\$804.88
MINNESOTA RURAL WATER ASSOCIATION	\$265.00
MMUA	\$55,113.00
MN DNR WATERS	\$32,440.37
NAPA AUTO PARTS	\$193.80
GERRY NEVILLE	\$281.00
CINDY NICKOLAY	\$93.67
INC. PLUNKETT'S PEST CONT	\$145.29
RDO-VERMEER LLC	\$292.80
RESCO	\$1,637.47
SCOTT COUNTY	\$92.00
SCOTT COUNTY TREASURER	\$162.00
SHAKOPEE CHAMBER OF COMMERCE	\$160.00
SHORT ELLIOTT HENDRICKSON INC	\$20,172.50
STATE OF MINNESOTA	\$1,156.63
STATES MANUFACTURING CORPORATION	\$20,274.55
STELLA-JONES CORPORATION	\$18,387.97
GREG TRIPLETT	\$268.56
USA BLUE BOOK	\$465.62

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

February 6, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret
authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities
Commission:

VERIZON WIRELESS	\$106.87
INC VESSCO	\$2,013.98
WMG DEVELOPMENT LLC	\$3,601.09
MARK ZEVENBERGEN	\$200.00
MINNESOTA LIFE	\$1,376.25
FURTHER - ACH	\$7,522.31
CENTERPOINT ENERGY - ACH	\$6,891.24
PAYMENTUS CORPORATION - ACH	\$30,782.05
DELTA DENTAL PLAN OF MN	\$5,734.62
HEALTHPARTNERS	\$72,307.26
PAYROLL FOR 1.27.23	\$120,189.35
BENEFITS & TAXES FOR 1.27.23	\$132,416.99

\$805,673.07


Presented for approval by: Director of Finance & Administration

Approved by General Manager

Approved by Commission President

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

February 6, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret
authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities
Commission:

SCOTT COUNTY ABSTRACT & TITLE CO	\$1,427.41 PURCHASE OF LAND
AAR BUILDING SERVICE CO.	\$4,051.43 FEB 2023 CLEANING SERVICE
ALL ELEMENTS INC.	\$1,050.00 2023 SEMIANNUAL ROOF INSPECTION
ALTERNATIVE TECHNOLOGIES INC	\$66.00 OIL TEST/DISSOLVED GAS ANALYSIS
DEBRA D. AMUNDSON	\$50.00 WATER SENSE TOILET REBATE D.AMUNDSON
ANCOM COMMUNICATIONS INC	\$1,145.70 ANTENNA MOBILE ANALOG - WATER DEPT
APPLE FORD OF SHAKOPEE	\$1,087.33 WATER TRUCK OIL CHANGE
ARROW ACE HARDWARE	\$80.47 GAL KEROSENE FULE
ASPEN EQUIPMENT CO	\$3,089.12 FULL SIZE GULL/CUP HOLDER WATER DEPT
ROBERT BERNDTSON	\$286.89 REIMB 128 MILES
BORDER STATES ELECTRIC SUPPLY	\$1,771.69 3 PORT INSULATED
ERIC BRAESCH	\$100.00 ENERGY STAR DISHWASHER REBATE E.BRAESCH
CHOICE ELECTRIC INC	\$180.58 REMOVE SAVOR SWITCH
LLC CHOICE UNDERGROUND	\$3,990.00 WO#2617 BID INSTALL (1) 1.25" HDPE LIGHT
CITY OF SHAKOPEE	\$1,031.08 FEB. STORM DRAINAGE/SPU PROPERTIES
INC. COMCAST CABLE COMMUN	\$2.25 LUNCHROOM CABLE BILL
CORE & MAIN LP	\$16,240.62 OMNI RETROFIT METERS
CUSTOMER CONTACT SERVICES	\$435.28 ANSWERING SVC 1/10-2/6 2023
D R HORTON	\$10,215.00 REFUND WO#2473 PROJ WINDEMERE 4TH ADDN
INC. DAILY PRINTING	\$2,450.00 SPU JANUARY 2023 RATES INSERT
ANNA DANIELS	\$100.00 ENERGY STAR DISHWASHER REBATE A.DANIELS
INC. FRANZ REPROGRAPHICS	\$292.64 PLOTTER PAPER FOR ENGINEERING
GOPHER STATE ONE-CALL	\$50.00 2023 ANNUAL FACILITY OPERATOR FEE
GRAINGER INC	\$1,942.68 MOBIL DTE LIGHTS 5 GAL WATER DEPT
GRAYBAR ELECTRIC COMPANY INC	\$25,575.43 CVR BD 13X24X.75/HW-BLANK
HAWKINS INC	\$300.00 CHLORINE CYLINDERS
HEALTHPARTNERS	\$72,307.26 VOID
INC. HENNEN'S AUTO SERVIC	\$82.88 OIL CHANGE TRUCK#627 ELECTRIC
INDELCO PLASTICS CORP	\$954.60 TUBES CONNECTORS/TUBING
INNOVATIVE OFFICE SOLUTIONS LLC	\$1,723.61 OFFICE SUPPLIES
INTERSTATE COMPANIES INC	\$3,025.46 PUMPHOUSE #9 HEATER REPAIR
IRBY - STUART C IRBY CO	\$3,993.28 ARRESTER
IRBY TOOLS - STUART C IRBY CO	\$1,098.60 SHOP TOOL REPAIR
MATTHEW JOHNSON	\$100.00 ENERGY STAR DISHWASHER REBATE M.JOHNSON
KATAMA TECHNOLOGIES, INC.	\$5,156.25 WO#2472 AMI PROJECT
LANO EQUIPMENT INC	\$42.70 BPA TUBLINE
LEAGUE OF MINN CITIES INS TRUST	\$101,215.00 2023 WORKERS COMP COVERAGE PREMIUM
LINK CONSTRUCTION	\$459.50 REFUND WO#2477 PROJ JEFFERSON CT UG ELEC
MESENBRINK CONSTR & ENG INC	\$1,450.21 REFUND WO#2556 PROJECT ACE TRAILER UG E
MID-COUNTY FABRICATING INC.	\$778.47 BOX FOR TRACK MACHINE
INC. MIDWEST SAFETY COUNS	\$724.53 POLISHIELD DISPOS. LATEX GLOVES
MINN VALLEY TESTING LABS INC	\$804.88 COLIFORM
MINNESOTA RURAL WATER ASSOCIATION	\$265.00 C&D WATER EXAM REFRESHER J HANSON
MMUA	\$55,113.00 4-YR APPRENTICE LINeworker CAREER PROG
MN DNR WATERS	\$32,440.37 WATER USE 2022 / SUMMER SURCHARGE
NAPA AUTO PARTS	\$193.80 BATTERY ELECTRIC TRUCK #645
GERRY NEVILLE	\$281.00 REIMB 183 MILES
CINDY NICKOLAY	\$93.67 REIMB 34 MILES
INC. PLUNKETT'S PEST CONT	\$145.29 WELL/P.H. #4 GENERAL PEST CONTROL
RDO-VERMEER LLC	\$292.80 SEALS FOR BACKHOE LOADER
RESCO	\$1,637.47 ELBOW JACKET SEAL 15KV
SCOTT COUNTY	\$92.00 WC CHRg AGREEMENT SW GATEWAY BADGER HILL
SCOTT COUNTY TREASURER	\$162.00 PERMIT U5-2023 UID#17070
SHAKOPEE CHAMBER OF COMMERCE	\$160.00 2023 ANNUAL MTG COMM'S,GD,SW,KW,BC
SHORT ELLIOTT HENDRICKSON INC	\$20,172.50 WO#2360,#2603,#2650,#2597,#2639,#2643
STATE OF MINNESOTA	\$1,156.63 WIDE AREA NETWORK SERVICES MONTHLY INV
STATES MANUFACTURING CORPORATION	\$20,274.55 CUSTOM LIGHTING SERVICE CABINET
STELLA-JONES CORPORATION	\$18,387.97 RED PINE POLES
GREG TRIPLETT	\$268.56 REIMB 137 MILES
USA BLUE BOOK	\$465.62 HACH FLOURIDE REAGENT

SHAKOPEE PUBLIC UTILITIES COMMISSION

WARRANT LISTING

February 6, 2023

By direction of the Shakopee Public Utilities Commission, the Secretary does heret
authorize the following warrants drawn upon the Treasury of Shakopee Public Utilities
Commission:

VERIZON WIRELESS	\$106.87 DEC 6 2022- JAN 05 2023
INC VESSCO	\$2,013.98 PM KIT, FILTERS, LEAD GASKET
WMG DEVELOPMENT LLC	\$3,601.09 REFUND WO#2641 PROJECT SHAKO DENTAL OFFC
MARK ZEVENBERGEN	\$200.00 IRRIGATION REBATE M. ZEVENBERGEN
MINNESOTA LIFE	\$1,376.25 JAN. LIFE INS. PREMIUMS
FURTHER - ACH	\$7,522.31 ANNUAL FEE
CENTERPOINT ENERGY - ACH	\$6,891.24 GAS USAGE 12/7/22-1/6/2023 255 SARAZIN
PAYMENTUS CORPORATION - ACH	\$30,782.05 DECEMBER 2022 FEES
DELTA DENTAL PLAN OF MN	\$5,734.62 JAN. DENTAL PREMIUMS & JAN. EE DEDUCTION
HEALTHPARTNERS	\$72,307.26 FEB. PREMIUMS
PAYROLL FOR 1.27.23	\$120,189.35
BENEFITS & TAXES FOR 1.27.23	\$132,416.99
	<u>\$805,673.07</u>

Presented for approval by: Director of Finance & Administration

Approved by General Manager

Approved by Commission President



PO Box 470 • 255 Sarazin Street
Shakopee, Minnesota 55379
Main 952.445-1988 • Fax 952.445-7767
www.shakopeeutilities.com

To: SPU Commissioners

From: Greg Drent, General Manager *ghd*

Date: January 6, 2023

Subject: MMPA December Meeting Update

The Board of Directors of the Minnesota Municipal Power Agency (MMPA) met on December 20, 2022, at Chaska City Hall in Chaska, Minnesota and via videoconference.

The Board reviewed the Agency's financial and operating performance for November 2022.

The Board discussed the current business environment.

The Board approved rates for 2023, which are 2.1% lower than 2022 rates.

The Board discussed the status of renewable projects the Agency is pursuing.

Customer penetration for the residential Clean Energy Choice program increased to 4.3%. There was an increase of 74 customers participating in the residential Clean Energy Choice program from October to November.

The following officers were elected for 2023: Matt Podhradsky – Chairman, Keith Mykleseth – Vice Chairman, Greg Drent – Treasurer, Brian Frandle – Secretary.



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To: SPU Commissioners

From: Greg Drent, General Manager *GD*

Date: January 19, 2023

Subject: MMPA January 2023 Member Meeting Update

The Board of Directors of the Minnesota Municipal Power Agency (MMPA) met on January 17, 2023, at Chaska City Hall in Chaska, Minnesota and via videoconference.

The Board reviewed the Agency's financial and operating performance for December 2022.

The Board discussed the current business environment.

The Board discussed the status of renewable projects the Agency is pursuing.

It was announced that the Walleye Wind Farm achieved commercial operation in December 2022. MMPA purchases all of the output of the 109 MW wind farm under a long-term contract.

Customer penetration for the residential Clean Energy Choice program remained at 4.3%. There was an increase of 38 customers participating in the residential Clean Energy Choice program from November to December.

Thanks



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DATE: January 19, 2023
 TO: Greg Drent, General Manager *gld*
 FROM: Kelley Willemssen, Director of Finance & Administration *kw*
 SUBJECT: Pay Equity Implementation Report

The 2023 Pay Equity Implementation report filing required by the State of Minnesota Management and Budget office has been completed and is ready for Commission approval.

The report is attached for your review. Data for the year ended 12/31/22 was used to prepare the report.

- 31 job classes were identified and reported
- 55 employees in total

Preliminary testing and analysis results would suggest that Shakopee Public Utilities is in compliance. The state will notify us of final compliance approval upon completion of their review.

	<u>Target</u>	<u>SPU</u>
<ul style="list-style-type: none"> ▪ Underpayment Ratio 	>80%	157.5%
<p><i>Note:</i> Compares salary data to determine if female classes are paid consistently below male classes of comparable work value (job points). Results of 80 and above are passing.</p>		
<ul style="list-style-type: none"> ▪ T-test Results 	N/A	N/A
<p><i>Note:</i> T-test only used if Underpayment Ratio is less than 80%</p>		
<ul style="list-style-type: none"> ▪ Salary Range Test 	0%	0.00%
<p><i>Note:</i> Salary Range Test only used if years to achieve maximum salary range consists of a time-phased step progression. SPU does not use a phased step progression; they use a pay for performance system. Results of 0 is a passing score.</p>		



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- Exceptional Service Pay Test 0% 0.00%

Note: Exceptional Service Pay Test only used if exceptional service pay is available. SPU does not use exceptional service pay. Results of 0 is a passing score.

Action Requested:

Approve the 2023 Pay Equity Implementation Report. Signature by the Commission President is required.



Compliance Report

Jurisdiction: Shakopee Public Utilities Commission
PO Box 470

255 Sarazin Street
Shakopee, MN 55379

Report Year: 2023
Case: 1 - 2023DATA (Private (Jur
Only))

Contact: Kelley Willemssen

Phone: (952) 233-1516

E-Mail: kwillemssen@shakopee
utilities.com

The statistical analysis, salary range and exceptional service pay test results are shown below. Part I is general information from your pay equity report data. Parts II, III and IV give you the test results.

For more detail on each test, refer to the Guide to Pay Equity Compliance and Computer Reports.

I. GENERAL JOB CLASS INFORMATION

	Male Classes	Female Classes	Balanced Classes	All Job Classes
# Job Classes	20	9	2	31
# Employees	34	13	8	55
Avg. Max Monthly Pay per employee	10216.52	8755.32		9289.92

II. STATISTICAL ANALYSIS TEST

A. Underpayment Ratio = 157.5 *

	Male Classes	Female Classes
a. # At or above Predicted Pay	6	5
b. # Below Predicted Pay	14	4
c. TOTAL	20	9
d. % Below Predicted Pay (b divided by c = d)	70.00	44.44

*(Result is % of male classes below predicted pay divided by % of female classes below predicted pay.)

B. T-test Results

Degrees of Freedom (DF) = 45	Value of T = 1.183
------------------------------	--------------------

- a. Avg. diff. in pay from predicted pay for male jobs = -1
b. Avg. diff. in pay from predicted pay for female jobs = -271

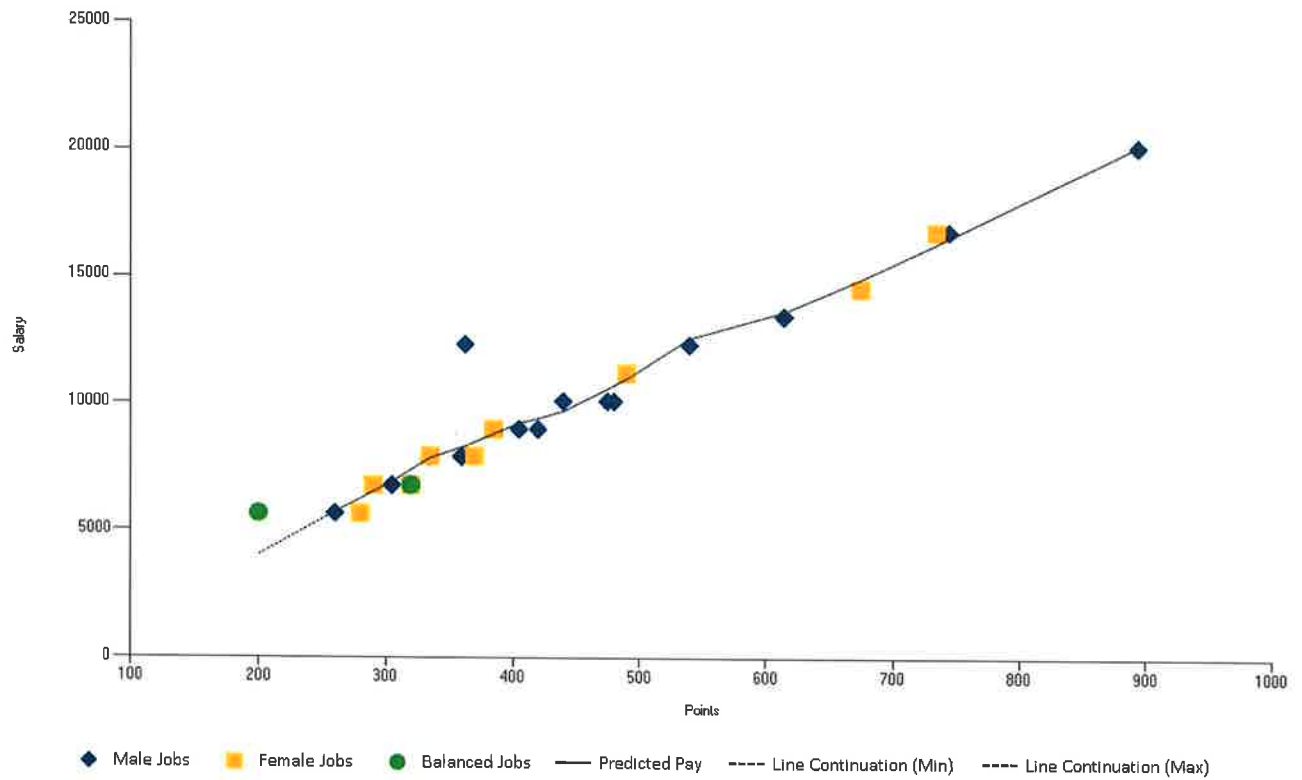
III. SALARY RANGE TEST = 0.00 (Result is A divided by B)

- A. Avg. # of years to max salary for male jobs = 0.00
B. Avg. # of years to max salary for female jobs = 0.00

IV. EXCEPTIONAL SERVICE PAY TEST = 0.00 (Result is B divided by A)

- A. % of male classes receiving ESP = 0.00 *
B. % of female classes receiving ESP = 0.00
*(If 20% or less, test result will be 0.00)

Predicted Pay Report for: Shakopee Public Utilities Commission
Case: 2023DATA





Predicted Pay Report for: Shakopee Public Utilities Commission

Case: 2023DATA

Job Nbr	Job Title	Nbr Males	Nbr Females	Non- Binary	Total Nbr	Job Type	Job Points	Max Mo Salary	Predicted Pay	Pay Difference
21	Meter Reader	3	1	0	4	Balanced	200	5663.4400	4027.3724	1636.0676
20	Locator/Meter Specialist	1	0	0	1	Male	260	5663.4400	5721.2369	-57.7969
10	Dispatcher	0	1	0	1	Female	280	5663.4400	6286.5127	-623.0727
1	Accounting Specialist	0	1	0	1	Female	290	6777.7600	6568.1692	209.5908
15	Inventory/Maintenance Speciali	1	0	0	1	Male	305	6777.7600	6908.4486	-130.6886
25	Procurement Specialist	1	0	0	1	Male	305	6777.7600	6908.4486	-130.6886
7	Customer Service & Billing Rep	0	5	0	5	Female	320	6777.7600	7412.9984	-635.2384
28	Water Operator - Apprentice	3	1	0	4	Balanced	320	6777.7600	7412.9984	-635.2384
4	Administrative Assistant	0	1	0	1	Female	335	7944.0700	7857.3999	86.6701
27	Water Operator - Journeyman	3	0	0	3	Male	335	7890.3500	7857.3999	32.9501
23	Network Administrator	1	0	0	1	Male	360	7944.0700	8284.4582	-340.3882
13	Engineering Tech	3	0	0	3	Male	360	7890.3500	8284.4582	-394.1082
29	Water Superintendent	1	0	0	1	Male	363	12343.8000	8333.1358	4010.6642
5	Billing Lead	0	1	0	1	Female	370	7944.0700	8447.4717	-503.4017
3	Accounting Technician & HR	0	1	0	1	Female	385	9002.9400	8878.9064	124.0336
22	Meter/Electronics Technician	1	0	0	1	Male	405	9002.9400	9235.6986	-232.7586
17	Apprentice Lineworker	4	1	0	5	Male	420	9002.9400	9417.5164	-414.5764
18	Journey Lineworker	4	0	0	4	Male	440	10115.5200	9718.5537	396.9663
6	CS & Billing Supervisor	1	0	0	1	Male	475	10117.4800	10610.0797	-492.5997
30	Water Supervisor	2	0	0	2	Male	480	10115.5200	10740.3161	-624.7961
2	Accounting Supervisor	0	1	0	1	Female	490	11231.5300	11000.5808	230.9492
26	Service Department Lead	1	0	0	1	Male	490	11229.8400	11000.5808	229.2592
19	Lead Lineworker	3	0	0	3	Male	490	11229.8400	11000.5808	229.2592
12	Electric Supervisor	1	0	0	1	Male	540	12340.6900	12590.7332	-250.0432
16	IT Director	1	0	0	1	Male	615	13456.0600	13636.6870	-180.6270
31	Engineering Supervisor	1	0	0	1	Male	615	13456.0600	13636.6870	-180.6270
8	Dir of Key Accounts, Marketing	0	1	0	1	Female	675	14570.1100	14924.4946	-354.3846
11	Electric Superintendent	1	0	0	1	Male	675	14570.1100	14924.4946	-354.3846
9	Director of Finance & Admin	0	1	0	1	Female	735	16796.4200	16314.8536	481.5664
24	Director of Planning & Enginee	1	0	0	1	Male	745	16796.4200	16557.4790	238.9410
14	General Manager	1	0	0	1	Male	895	20145.7000	20194.3325	-48.6325

Job Number Count: 31

Pay Equity Implementation Form

Part A: Jurisdiction Identification

Jurisdiction: Shakopee Public Utilities Commission
PO Box 470
Shakopee

Jurisdiction Type: UTL - Utility

Contact:	Name	Title	Phone	Email
	Cindy Menke	AP/HR Specialist	952-233-1508	cmenke@shakopeeutilities.com
	Kelley Willemssen	Director of Finance	952-233-1516	kwillemssen@shakopeeutilities.com

Part B: Official Verification

1. The job evaluation system used measured skill, effort responsibility and working conditions and the same system was used for all classes of employees.

The system used was: **Consultant's System (specify)**

Describe below if the job evaluation system used is: "The same as last year", "A new system", "A substantially modified system from last year", or another descriptor not listed here: ("less than 240 characters")

MODIFIED SYSTEM - Shakopee Public Utilities Commission hired a consultant and used their job evaluation system in 2020 to analyze and re-evaluate all job descriptions and establish job evaluation points for each position in

2. Health Insurance benefits for male and female classes of comparable value have been evaluated and

There is no difference and female classes are not at a disadvantage.

3. An official notice has been posted at:

Shakopee Public Utilities - Main Lunchroom

(prominent location) ("less than 60 characters")

Informing employees that the Pay equity Implementation Report has been filed and is available to employees upon request. A copy of the notice has been sent to each exclusive representative, if any, and also to the public library.

The report was approved by:

Shakopee Public Utilities

(governing body) ("less than 60 characters")

Karen Mose

(chief elected official) ("less than 60 characters")

Commission President

(title) ("less than 60 characters")

- ☒ Checking this box indicates the following:

- signature of chief elected official
- approval by governing body
- all information is complete and accurate, and
- all employees over which the jurisdiction has final budgetary authority are included

Part C: Total Payroll



\$517,314.00 is the annual payroll for the calendar year just ended December 31.

SPUC President



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January 31, 2023

TO: Greg Drent, General Manager 
FROM: Sharon Walsh, Director of Marketing, Key Accounts and Special Projects 
SUBJECT: AMI Vendor Contract for Signature

Overview

Since the approval of Border States/Itron as the vendor of choice in November 2022 for SPU's AMI project, both parties have been working on contract negotiations. Points of discussion between the parties have been minimal; rather, it was the timing of holiday schedules and associated vacations that pushed the presentation of this contract into 2023.

After reviews by both SPU's and Border States' legal representatives, and confirmation of adherence to the RFP by Katama Technologies, Inc., the attached mutually-agreed upon Master Agreement and associated service agreements, including –

- End User License Agreement,
- Software as a Service Agreement, and
- Maintenance Service Agreement

are presented to the Commission for signature.

Upon a fully-executed contract, we will officially begin the conversion and implementation of an advanced metering infrastructure for the SPU service territory.

Action Requested

Staff recommends that the Commission approve the AMI Master Agreement and Exhibits in a form substantially similar to that presented, with such further changes and revisions that staff and counsel recommend, and authorize signature.

MASTER AGREEMENT

This Master Agreement ("**Agreement**") is by and between Border States Industries, Inc. ("**Vendor**"), a North Dakota corporation, with an office located at 2400 38th Street South, Fargo, ND 58104, and Shakopee Public Utilities, a Minnesota municipal utilities commission with an office located at 255 Sarazin Street, Shakopee, MN 55379 ("**Owner**"). This Agreement together with the attached Exhibits are deemed to be made and shall become effective on the date of execution by the last party required to execute this Agreement (hereafter "**Effective Date**").

WHEREAS Vendor is a reseller of advanced meter infrastructure hardware and software technologies known currently under various trademarks and marketing names; and

WHEREAS Owner is a Minnesota municipal utilities commission that provides energy services in the State of Minnesota; and

WHEREAS Owner has requested and received pricing for delivery and installation of, and technical support for, an advanced meter infrastructure system from the Vendor:

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, and other good and valuable consideration, the sufficiency of which is hereby acknowledged, Vendor and Owner agree as follows:

1. Definitions

The following capitalized terms shall have the following meanings:

1.1 Agreement

This Master Agreement as well as all other documents and exhibits as specifically referenced or incorporated herein.

1.2 AMI

Advanced metering infrastructure.

1.3 AMI Meter

A complete device comprised of a Vendor supplied communications module and associated meter/measurement device supplied by the Vendor or a third-party meter manufacturer that will be purchased as a part of this Agreement.

1.4 AMI Network

The communication network and associated Equipment provided by the Vendor to support the communication with the End Points such as meters, oil/propane devices, load control devices and distributed automation. AMI Network may also be referred to as the Neighborhood Area Network (NAN). This includes a collection device which serves as the connection to the Backhaul Network.

1.5 AMI System

The combination of Equipment, Software, and Services that will be acquired by Owner from Vendor and any required third parties.

1.6 Available End Point

“Available End Point” means an AMI Meter or other similar field device which has been installed, which is not an Unavailable Meter, and which satisfies all the following criteria:

- (a) it functions properly, is powered, is registered to the AMI System and is not a damaged or failed,
- (b) it is in a deployment area of meters,
- (c) it is functioning and serviced by a network communications device that has not been subjected to a power failure greater than eight (8) total hours,
- (d) neither the AMI Meter nor any other network equipment that serves that meter has been affected by a Force Majeure event,
- (e) illegal or unauthorized jamming of the radio spectrum is not preventing or interfering with radio communication to or from the meter,
- (f) it is installed in Owner's service territory,
- (g) its functions or performance have not been adversely affected by a failure of Owner to perform obligations or tasks for which it is responsible, including, but not limited to, testing and confirming that the socket to which the meter will be/is connected is in safe operating condition, is fully functional, is not corroded, does not contain improperly installed jaws or other deficiencies, complies with applicable American National Standards Institute standards, and is not overheated, damaged, or otherwise in need of maintenance or repair,
- (h) its function and performance have not been adversely affected by a failure or insufficiency of the back-haul telecommunications network of Owner, and
- (i) it has been installed in compliance with the procedures and specifications approved by Owner and Vendor.

1.7 Backhaul Network

This is the communication network and associated equipment provided by Owner to support the communication between Owner's office and the AMI System. The Backhaul Network could be comprised of fiber, wired Ethernet, high capacity radio links, cellular links, or other communication media.

1.8 Commercially Reasonable Efforts

Taking such reasonable steps and performing in such a manner as a well-managed company, its employees, and its sub-contractors would undertake where it was acting in a determined, prudent, and reasonable manner and in accordance with industry standards and best practices.

1.9 Contract Manufacturers

Those entities that manufacture proprietary Vendor-supplied transponders, network control equipment and other equipment.

1.10 Deliverables

The Equipment, Software, and Services provided by Vendor listed on the Exhibit 1, "List of Deliverables and Pricing," attached to this Agreement.

1.11 Delivery and Acceptance

In the case of Equipment purchased hereunder, shipment is Free On Board (F.O.B.) Destination, Freight Prepaid to the Owner's selected destination with Vendor to pay shipping costs, retain title and/or ownership of the Equipment, and remain responsible for Equipment until it tenders delivery of the Equipment at one or more pre-designated sites or locations. In the case of Services provided herein, *Delivery* means the periodic performance of such Services as described herein. Equipment and, or Services are deemed accepted unless Owner sends written notice specifying reasonable basis for rejection within thirty (30) days after delivery. Vendor will, at its option repair, replace or re-perform rejected deliverables.

1.12 Due Diligence

Prior to the execution of this Agreement, the Vendor shall make and shall be deemed to have made a reasonable examination of the site of the project and of the plans, specifications, construction drawings, and forms of Vendor's proposal and contractor's bond, and shall review the location and nature of the proposed work, the transportation facilities, the kind and character of soil and terrain to be encountered, the kind of facilities required before and during the work, general local conditions, environmental and historic preservation considerations, and all other matters that may affect the cost and time of completion of the work. Vendor will be required to comply with all federal, state, and local laws, rules, and regulations applicable to its performance, including those pertaining to the licensing of contractors and the Anti Kick-Back Act of 1986 (41 U.S.C. 51 *et seq*), as amended.

1.13 End Point

The generic name for all the metering, load control, and other field devices connected by the AMI-Network and used for AMI functionality.

1.14 Equipment or System Components

The hardware listed in Exhibit 1 to this Agreement – "List of Deliverables and Pricing" – that Owner will acquire from or through AMI Vendor.

1.15 Failure

With respect to Equipment or System Components, the definition of failure shall include, but is not limited to, the following:

- (a) Meter failures resulting from defects in materials, design, or workmanship.
- (b) Communication board failures resulting from defects in materials, design, or workmanship.
- (c) Failure of meter(s) to perform pursuant to published specifications.
- (d) Failure of meter(s) to perform functions as proposed in the Scope of Work and SAT; or
- (e) Failure of meter(s) due to intrusion of water, humidity, and/or insects.

1.16 Force Majeure Event

An event that is not within the reasonable control of the Party, or, in the case of third-party obligations or facilities related to the performance of a Party hereunder, the third party, claiming suspension, and which by the exercise of due diligence by such Party, or third party, such Party is unable to prevent or overcome. "Force Majeure Event" shall include, but not be limited to, the following: (i) physical events such as acts of God, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment; (ii) acts of others such as strikes, lockouts, or other industrial disturbances, riots, sabotage, insurrections, acts of terrorism or wars; (iii) actions by governmental authority such as necessity for compliance with any court order, law, statute, ordinance, regulation or policy having the effect of law promulgated by a governmental authority having jurisdiction; and (iv) quarantine restrictions, failure of a party's suppliers to ship or delivery on time, transportation embargoes, inability to secure equipment from vendors or suppliers at reasonable prices or in sufficient amounts through usual sources of supply, or any other circumstances beyond a party's reasonable control.

1.17 Meter Data Management (MDM)

A software system that enables the Owner to validate and manage the large amounts of metering and operational data acquired by the AMI System and other systems already in place at Owner's facilities.

1.18 Order

Owner's purchase order to acquire Equipment, Software, and Services from Vendor.

1.19 Owner

Shakopee Public Utilities Commission, the Party that will acquire the AMI System.

1.20 Owner-furnished Materials

Materials and system components previously or separately purchased or furnished by the Owner.

1.21 Party and Parties

Either or both, respectively, of the parties to this Agreement.

1.22 Project Manager

The individual designated by each Party whose responsibility is to coordinate the activities of their respective Party on matters concerning the Scope of Work and this Agreement.

1.23 Project Schedule

The schedule in Exhibit 2 – “Scope of Work and Project Schedule”, attached to this document.

1.24 Prudent Utility Practice

Those practices, methods and procedures, as modified from time to time, that are currently used by electric utilities to design, engineer, select, construct, operate and maintain electric power facilities and equipment dependably, reliably, safely, and economically, with due regard for the practices required within the region.

1.25 Scope of Work

The planned activity schedule required for Vendor to accomplish the implementation of the Vendor System and the basic sequence of events required to make the Vendor System operative at Owner's sites as specified in the document attached to this Agreement as Exhibit 2, “Scope of Work and Project Schedule.”

1.26 Services

Project management services, software technical support, system integration services, and other similar Deliverables required from the Vendor to enable the functionality of the AMI System. The Services include the performance of the Agreement by the Vendor, and other third parties up to Substantial Completion and completion of any punch lists items as may be applicable. Services also include System maintenance and technical support to be performed by the Vendor after Substantial Completion as addressed in Exhibit 5.

1.27 Software

The computer programs and applications listed in Exhibit 1 to this Agreement – “List of Deliverables and Pricing”, that Owner will acquire from or through Vendor.

1.28 Substantial Completion

Substantial Completion shall occur at the end of the full deployment phase of the project and shall mean when 98% of the Work in accordance with Exhibit 2 is complete. For the avoidance of doubt, Substantial Completion is not a final system acceptance test, and does not alter SAT, which is to be achieved in the initial phase of the project.

1.29 System

The AMI system that will be acquired by Owner from Vendor and any required third parties.

1.30 System Acceptance Test (SAT)

A test of the process, Equipment, Software, and all other applicable contract equipment and supplies to demonstrate and determine whether the AMI System and the Scope of Work in the initial phase is compliant with the functional and performance requirements set forth in the System Acceptance Test protocol attached as Exhibit 4.

1.31 System Optimization

Upon achieving Substantial Completion, the AMI Network performance will be evaluated and potentially modified to ensure compliance with the performance requirements, including the terms of the Network Design Guarantee. This process is known as System Optimization.

1.32 Third Party Products

Equipment that Owner acquires which are not supplied by Vendor or its Contract Manufacturers but are required to complete the AMI System.

1.33 Unavailable Meter

Non-reporting meters/modules that have experienced Failure, exhibit a failure alarm, are non-communicating, are orphaned, or have been affected by Owner-side issues such as improper installation, meter removal, damage, tampering, vandalism, installation outside of AMI network design, underperforming WAN network. Unavailable meter does not include meters/modules impacted by a Force Majeure Event.

1.34 Vendor System

The AMI Systems being deployed on Owner's distribution network, including Third Party Products and Services obtained by Owner.

1.35 Work

All obligations, duties, and responsibilities of the Vendor necessary to be performed by them to accomplish all their respective obligations under this Agreement.

2. Exhibits

Note to prospective Vendors: the exhibit list shown below are representative of the actual exhibits that will be used. The actual exhibits will depend on the selected vendor and associated deliverables.

The Exhibits to this Agreement are a material part of this Agreement and are incorporated by reference herein. The following Exhibits are attached to this Agreement:

Exhibit 1 — List of Deliverables and Pricing

Exhibit 2 — Project Timeline and Statement of Work (both to be mutually agreed upon, consistent with the Agreement).

Exhibit 3 — Software End User License Agreement

Exhibit 4 — System Acceptance Test Requirements and Compliance

Exhibit 5 — System Maintenance Agreement

Exhibit 6 — Software-as-a-Service Agreement

3. Schedule

In accordance with Exhibit 2 (Scope of Work and Project Schedule), Vendor shall take all necessary steps, including design, construction, and management, and provide all necessary System Components, Software, Services, supervision, materials, tools, supplies, facilities and resources necessary for Owner to begin AMI operations after a System Acceptance Test Certificate is issued. Vendor shall perform its Work in accordance with the terms of this Agreement so as to achieve Substantial Completion of the System. Vendor shall further take all necessary steps to achieve a satisfactory System Acceptance Test on or before the date set forth in Exhibit 2. Vendor further agrees to provide or procure all necessary System Components, Software, Services, management, supervision, resources, and materials required to perform the Work in accordance with the terms and intention of this Agreement, all so that at the time of Substantial Completion the Vendor System is ready for use and Owner may begin AMI operations immediately.

All Owner requests for a modified schedule must be in writing and are subject to Vendor's prior approval and adjustments in price, scheduling, and delivery terms. Vendor reserves the right to reject any change(s).

4. Owner's Rights and Responsibilities

4.1 Owner's Approval or Rejection of Work

Owner or its duly authorized representative shall have the authority to disapprove or reject Work within forty-five (45) days which does not conform to the requirements of the Agreement or does not meet the requirements of any inspection or test. Owner will provide written notice to the Vendor for any disapproval of the Work. Payment shall not constitute acceptance by Owner, nor shall it waive any rights Owner has pursuant to this Agreement.

4.2 Owner Right to Witness Tests

Vendor shall invite Owner to witness all System Acceptance Testing, including all tests of material System Components. Owner is not obligated to attend such tests but shall be entitled to a written report summarizing the results of the test. Payment or Owner's attendance (or lack thereof) at any test shall not constitute acceptance by Owner nor shall it waive any rights Owner has pursuant to this Agreement.

4.3 Owner's Right to Operate Equipment

Owner shall have the right to operate the AMI System provided operation will not damage the AMI System or components and the AMI System or components are in safe operating

condition as determined by the Parties, even if Owner has not yet accepted such system or components. Further, Owner shall maintain the right to operate any unsatisfactory AMI System or components, at its own risk, for as long as necessary, until it can be taken out of service without inconvenience to Owner to permit Vendor to correct the defects or omissions or to replace the AMI System or any components. Nothing in this Section shall affect Owner's obligation to comply with the End User License Agreement.

4.4 Owner's Right to Correct Deficiencies

If any deficiencies are found during mutually agreed upon System Acceptance Testing, and if Vendor has not reasonably corrected the deficiency within thirty (30) days or taken reasonable steps to correct the deficiency within thirty (30) days, then Owner, may at its own discretion and without prejudice to any other rights and remedies it may have, perform and/or seek assistance from a third-party to correct such deficiencies. Owner shall be allowed to deduct from any payments due to Vendor, the reasonable and documented cost of correcting such deficiencies. If payments then or thereafter due to Vendor are insufficient to cover the cost of correcting such deficiencies, then Vendor shall promptly pay the difference to Owner upon written demand by Owner.

5. Time for Performance

5.1 Force majeure

Neither Party shall be liable to the other for failure or delay in performance of a required obligation if such failure or delay is caused by a Force Majeure Event. However, each Party's delay for any task shall be limited solely to the time actually and reasonably related to the Force Majeure Event. Any Party adversely affected by a Force Majeure Event shall use all Commercially Reasonable Efforts to minimize the extent of the delay in performance.

5.2 Remedies for Force Majeure Events

Upon the occurrence of a Force Majeure Event, the Party whose performance is adversely affected shall promptly notify the other Party of the nature and extent of the occurrence and the anticipated period of delay in performance. If such delay is expected to exceed ninety (90) days from the ending date of the Force Majeure Event, either Party to this Agreement may, at its sole discretion, terminate this Agreement, subject to any restocking or cancellation fees incurred by Vendor. Such termination will not relieve Owner of its obligation to pay for any Work performed before the Force Majeure Event.

5.3 Commercially Reasonable Efforts

Vendor shall use Commercially Reasonable Efforts to complete all Work in a timely manner in accordance with Exhibit 2. Owner understands and agrees that the ability of Vendor to make such deliveries and provide such Services within such times is dependent upon the timely issuance of Orders and timely performance of Owner's Work. Owner agrees that it will use Commercially Reasonable Efforts to perform its obligations in a timely fashion and to cooperate with Vendor in scheduling its respective Work.

5.4 Delays

If either Party causes a delay in the progress of the Work not otherwise excused or addressed herein, such Party shall use Commercially Reasonable Efforts to complete its Work within the times set forth in the Project Schedule. Vendor shall not be liable under this Agreement for delays caused by Owner. If reasonably necessary in the event of a delay caused by Owner, Vendor's time for performance shall be extended by a time equal to the length of the delay caused by Owner, and Vendor shall be entitled to receive compensation for reasonable additional costs incurred by Vendor as a direct result of such delay. Owner shall not be liable for additional costs or compensation for delays caused by Vendor.

6. Representations

Vendor shall inform Owner in writing of any product recalls or unresolved quality issues related to any Equipment that may be supplied to Owner under this Agreement. Vendor shall further inform Owner in writing of any limitations that may negatively impact Owner's use and enjoyment of the Software.

7. Responsibilities, Scope of Work and Changes

7.1 Cooperation

Owner has the overall responsibility to manage the System after System Optimization. The Vendor has those responsibilities as are set forth in the Exhibits. To successfully implement the Vendor System as contemplated by this Agreement, the cooperation of the Parties as well as certain third-party vendors will be required. Owner will make its Project Manager and related personnel reasonably available to meet or consult with the Vendor's personnel on matters pertaining to this Agreement. The Vendor will make its Project Manager and related personnel reasonably available to meet with or consult with Owner's personnel on matters pertaining to this Agreement in accordance with the customer engagement period defined in the Scope of Work. The primary function of Owner's Project Manager will be the on-site coordination and control of all Owner activities related to this Agreement.

7.2 Vendor's Obligations

Vendor shall: (i) sell to Owner the Equipment listed in the Exhibits attached to this Agreement; (ii) facilitate the delivery to Owner and integration of the Software pursuant to the Software License Agreement attached to this Agreement as Exhibit 3; (iii) provide technical assistance and software maintenance in accordance with Exhibit 5; (iv) provide all Services described in this Agreement; and (v) do and perform all other Work required of it as is set forth in this Agreement. Vendor's Work shall be performed with the standard of professional care, skill, and diligence customarily provided. In performing the Work, the Vendor shall comply with all applicable federal, state, and local laws and regulations.

7.3 Owner's Obligations

Owner shall: (i) purchase from Vendor the Equipment listed in the List of Deliverables attached to this Agreement as Exhibit 1; (ii) license from the Vendor the Software pursuant to the Software License Agreement attached to this Agreement as an Exhibit 3; and (iii) perform as is required and set forth in this Agreement.

7.4 Purpose of Scope of Work and Changes

This Agreement and the Scope of Work are intended to establish a base set of system features/functions, education, support, and activities required to permit the Vendor System to be installed for the benefit of and full operation by the Owner. Changes to this Agreement may be made only by the mutual written agreement of the Parties and may cause additional charges, price reductions and schedule changes to be applied using unit priced as bid. The Parties will not unreasonably reject such requests to deviate from the Scope of Work provided that such deviation does not materially increase the costs of performing the installation of the Vendor System or materially change the schedule. If the scope of the project increases, or schedule changes would be incurred because of any proposed deviation from the Scope of Work, the Parties will identify such costs and schedule changes and mutually agree to the changes in advance.

7.5 Work to Achieve Substantial Completion

If the performance of the installed System does not achieve Substantial Completion or pass a Systems Acceptance Test within the timeframes set under the Project Schedule in Exhibit 2, Vendor shall propose and, with Owner's approval, which approval shall not to be unreasonably withheld, carry out all reasonably necessary changes to the Vendor System to achieve Substantial Completion at Vendor's sole cost in accordance with this Section 7.

7.6 Access to Owner Facilities

Owner shall provide the Vendor's personnel and third-party vendors with safe and reasonable access, working space, and facilities, including heat, light, ventilation, electric current and outlets, and local telephone extensions. The Vendor personnel shall comply with all applicable rules, regulations, and requirements relating to visitors on the premises of Owner and shall not disrupt the Owner's business. In addition, Vendor personnel shall supply their safety policy and procedures to Owner for review and will comply with any additional safety policies and procedures required by the Owner from the Owner's safety policies. Owner's safety policies will be made available to Vendor at the time the Agreement is executed.

7.7 Access to Work

Owner and its agents shall, for any purpose consistent with furthering the Work of this project, have reasonable access to the Work and the premises used by the Vendor and shall be provided proper and safe facilities. Access to the Work shall be limited to a reasonable number of requests during normal business hours so Owner will not disrupt the Vendor's Work.

7.8 Commercially Reasonable Efforts

The Parties agree to use Commercially Reasonable Efforts to adhere to the Scope of Work, to the assigned activities, and to the scheduled dates for site preparation, scheduled meetings, installations, training sessions, and SATs (as may be applicable) to avoid delays in the schedule.

7.9 Project Manager Meetings

Meetings between the Parties will be held on an agreed-upon regular basis. Owner and Vendor shall each designate a Project Manager. Vendor's Project Manager and Owner's Project Manager will attend such meetings to provide the forum for review of project activity, schedule integrity, problems, concerns, and issues requiring management action. Project control will be exercised through these meetings and schedule impediments will be corrected. A status report will be issued by the Project Managers, and action items resulting from the meetings will be tracked by such Project Managers for resolution.

7.10 Removal of Employees

Provided that Owner's removal request is not in violation of any applicable laws, the Owner reserves the right to require the removal from the project of any employee of the Vendor if in the judgment of the Owner such removal shall be necessary to protect the interests of the Owner. Each Party will coordinate with the other on all issues that may arise under this Section.

7.11 Supervision and Inspection

The Vendor shall give sufficient supervision to all applicable Work, in a professional, competent, and timely manner. The Vendor shall carefully study and compare all drawings, specifications and other instructions and shall report to the Owner any error, inconsistency, or omission which it may discover prior to commencement of its Work. The Vendor shall cause applicable Work on the project to be performed by a competent employee (hereafter called the "**Technical Expert**") who shall be present to the extent reasonably necessary during normal working hours. The Vendor shall also employ or contract for, in connection with the Work, capable, experienced, and reliable supervisors and such skilled workers as may be required for the various classes of Work to be performed. The Vendor shall be solely responsible for the means and methods of any applicable Work on the project and for the supervision of the Vendor's employees. Vendor affirms that all employees and agents are and shall be legally entitled to work in the United States.

8. Term

The term of this Agreement begins on the Effective Date and shall continue in full force and effect until six months after Substantial Completion unless earlier terminated in accordance with this Agreement. Thereafter, this Agreement shall automatically renew for successive one-year terms unless earlier terminated in accordance with this Agreement. Notwithstanding such termination, certain rights and obligations arising under this Agreement shall survive the

termination or expiration of this Agreement as context requires, including, at least sections 6, 12, 19, 20, 21, 22, 24, 25, 26, and 27 of this Agreement.

9. System Acceptance Testing and Related Termination Rights

Vendor and Owner agree to conduct the SAT pursuant to the terms of the Agreement. Owner agrees to: (a) purchase and install all Equipment necessary as set forth in the Exhibits to conduct the SAT on a timely basis; (b) commence the SAT within thirty (30) days following installation of the necessary Equipment (or within such other time as the Parties may agree); (c) perform such other acts as may be required as provided as set forth in this Agreement, and (d) upon successful completion of the SAT, promptly issue to the Vendor an SAT Acceptance Certificate.

If Vendor fails or refuses to timely and successfully complete the functional and performance requirements set forth in Exhibit 4, unless due to a Force Majeure event, the Vendor shall notify the Owner in writing as soon as is practicable and suggest alternate remedies to resolve the problem without further costs to the Owner. In all such cases, the Owner reserves the right to reasonably accept or reject all remedies proposed by the Vendor if Owner in good faith does not believe such remedies will reasonably cure the problem. Vendor's failure to timely and successfully complete the functional and performance requirements set forth in Exhibit 4 shall constitute a default under Section 22 of this Agreement and Owner may, in its sole discretion, exercise its rights of termination, including but not limited to taking steps either through its own labor and/or through the assistance of third parties, to achieve Substantial Completion, unless due to a Force Majeure event. Any such Work performed by Owner through its own labor and/or through the assistance of third parties shall be at Vendor's sole cost.

10. Purchase and Shipment of Deliverables

10.1 Purchase of Deliverables

The Vendor shall purchase all Deliverables (other than Owner-furnished Materials) outright and not subject to any conditional sales agreements, bailment, lease, or other agreement reserving unto the seller any right, title, security interest, or other interest therein. All Deliverables shall be new and other than licensed Software (addressed in Section 10.5), become property of the Owner upon the Delivery and Acceptance as provided in Section 10.5. All Deliverables shall be transferred to Owner free and clear of all liens and encumbrances at the prices included in this Agreement. Owner shall pay vendor for Deliverables in accordance with Exhibit 1, List of Deliverables and Pricing.

10.2 Orders

Owner will issue Orders to Vendor for all Deliverables. Orders shall be accepted by the Vendor provided that each Order is in accordance with the terms of this Agreement. The Vendor shall acknowledge receipt and acceptance of all Orders from the Owner through facsimile or electronic mail with estimated shipment and Delivery dates. No additional terms in Vendor's

acceptance shall be effective unless such terms are specifically acknowledged in writing by both Parties.

10.3 Substitution

The Vendor shall have the right to substitute an item for Equipment listed in Exhibit 1, provided that such substituted item is, at least, functionally equivalent to the specified Equipment. In the event of any such substitution, the Vendor shall give Owner prompt written notice of its intention to make a substitution which notice shall set forth the reason(s) for such substitution and shall contain a statement that the substituted item is functionally equivalent to the specified item. Owner shall have the right to review and approve or reject the substitute items at its sole discretion.

10.4 Pricing of Additional Components during System Optimization

If, during System Optimization, additional AMI Network components are required to comply with the performance requirements provided for in this Agreement, Vendor shall provide necessary items at no cost to Owner subject to the network design reserve amount to be itemized in Exhibit 1, per the terms of the Network Design Guarantee.

10.5 Shipment

Vendor shall arrange for and ship the Equipment and Software to the location(s) specified by the Owner. Delivery of all Equipment and Software shall be F.O.B. to the Owner's selected destination with Vendor to pay shipping costs and remain responsible for all Equipment and Software until it tenders delivery of the Equipment and Software. Risk of loss transfers upon delivery unless Vendor retains care, custody, and control of the Equipment. Any Equipment or Software not rejected by Owner by written notice to Vendor within such (30) thirty-day period will be deemed to have been accepted by Owner upon Delivery. Nothing in this Section 10.5 shall be construed to limit the warranty provisions of this Agreement. For Equipment deliveries to Owner, Vendor shall retain title/ownership of the Equipment and Software until delivered. For Software deliveries to Owner, title/ownership of the Software shall remain with Vendor, and Owner will be issued a license to use such software pursuant to the Software License and Hosting Agreement attached hereto as Exhibit 3. Equipment and Software shall be delivered to the facilities of Owner or additional sites within Owner's service territory as specified by Owner. Owner agrees to visually inspect Equipment and Software upon receipt and to promptly notify the Vendor of any defects which could be revealed by such an inspection. Vendor shall be responsible for handling and resolving all freight claims for delivery of Equipment and Software.

11. Prices, Payment, and Taxes

11.1 Prices

Equipment prices, including any orders placed within 12 months of the Effective Date, shall be fixed pricing according to Exhibit 1 of the Agreement.

The prices in this Agreement are inclusive of all taxes including federal, state, and local taxes, and such taxes are to be paid by the Vendor. The Vendor agrees to pay all such taxes, except taxes upon the sale, purchase or use of Owner-furnished Materials, if applicable, under this Agreement.

The forgoing notwithstanding, Vendor may adjust the price of Equipment to recover costs actually incurred because of tariffs imposed directly on such Equipment, or components thereof, by the United States Government between the date of the Order and the date of Delivery. Vendor shall notify Owner of any changes to the price of Equipment prior to accepting any Order. Any price adjustment pursuant to this Section shall be measured by the net change in the cost of all tariffs imposed directly on Equipment, or components thereof, between the Effective Date and the date of the Order. Upon Owner's request, Vendor shall provide Owner with sufficient documentation to support the added cost of the government tariffs and the application of such tariffs to Equipment purchased by Owner.

11.2 Disputes

In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet in person and confer in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods. If the Parties are unable to resolve the dispute through these methods, either Party may commence an action in Scott County District Court.

11.3 Inspection and Auditing of Records

Upon reasonable notice, the Owner shall have the right to inspect all of Vendor's invoices, accounts receivable and payable, shipment, other data, and records on site at Vendor's office or facility relating to the Equipment, Licensed Software, and/or Services. Such right includes the right to inspect records or documentation relating to Vendor's subcontractor or vendor relationships relating to the AMI System. Vendor will keep complete and systematic written records of all products purchased by Owner. Such records will include records relevant to any costs or expenses incurred by Vendor on behalf of Owner and any financial records, procedures (including records for compliance with federal, state, and local law), and such other documentation pertaining to Vendor's performance under this Agreement. Vendor will preserve all such records until six (6) years after the termination or expiration of this Agreement. Vendor will fully cooperate in any such inspection or audit of its records.

11.4 Invoices and Payments

The Vendor may invoice Owner in accordance with Exhibit 1, Deliverables and Pricing. The Vendor shall submit monthly invoices for all Equipment, Software, and other Work. Invoices shall also include any applicable license fees pursuant to Exhibit 3. Owner shall pay invoices within thirty (30) days from the date of the invoice, provided there is no dispute as set forth in Section 11.2, and provided, further, that Owner shall pay for only eighty percent (80%) of invoices until the issuance of the SAT Acceptance Certificate. Upon issuance of the SAT

Acceptance Certificate, Owner shall pay the remaining twenty percent (20%) of the invoices within thirty (30) days. Except as otherwise provided in this Agreement, no payment shall be due to Vendor while Vendor is in default with respect to any of the provisions of this Agreement.

All invoices shall be sent by email or mailed to:

Shakopee Public Utilities - Accounts Payable
255 Sarazin Street, Shakopee, MN 55379
Email address: TBD

Failure of Owner to pay any invoice as set forth above within thirty (30) days after it becomes due and without just cause as otherwise defined in this Agreement, shall subject Owner to late payment fees, interest at 1.5% per month or 18% per annum and collection costs.

11.5 Payments to Material Suppliers and Subcontractors

Vendor shall pay each Deliverables supplier or subcontractor, if any, within ten (10) calendar days after receipt of any payment from the Owner for the undisputed services provided by such subcontractor or supplier. Vendor shall pay interest of 1-1/2 percent per month or any part of a month to the subcontractor or supplier on any undisputed amount not paid on time to the subcontractor, as more fully provided in Minnesota Statutes, Section 471.425 subd. 4a. Vendor shall promptly provide proof of such payments to the Owner. For all Work completed at the Owner's site, by the Vendor or the Vendor's subcontractors, or if otherwise requested by the Owner, before any payment obligation of Owner, Vendor shall supply Owner with releases signed by all subcontractors and suppliers that confirm they have received full payment from Vendor.

12. Warranties and Remedies

12.1 Equipment Warranty

Vendors hereby certifies that Equipment including firmware will (a) be new, (b) comply with their corresponding specifications, and (c) be free from material defects in workmanship and design. The Equipment Warranty Period for Equipment shall be:

- (a) For meters, communication modules, access points, and repeaters: sixty (60) months after date of shipment.
- (b) For handheld meter reading units: sixty (60) months after date of shipment.
- (c) All Equipment repaired or replaced, if any, are warranted only for the greater of ninety (90) days from shipment or the remaining and unexpired portion of the original Warranty Period.

If a nonconformity to the foregoing warranty is discovered in any Equipment during the applicable Equipment Warranty Period, as specified above and provided the Equipment have been properly stored, installed, operated, and maintained and provided that written notice of

such nonconformity is provided to Vendor promptly after such discovery, Vendor shall, at its own cost, repair or replace the nonconforming Equipment.

12.2 Excessive Failure Warranty

If, within the Equipment Warranty period, a Major Failure occurs due to a defect in materials or workmanship Equipment provided by the Vendor, the Vendor shall repair or replace all Equipment of a similar model or type pursuant to the Equipment Warranty and reimburse Owner \$35.00 for the cost of installing replacement Equipment. As used herein, "Major Failure" shall mean failures exceeding 3.5% of the installed Equipment within any rolling twelve (12) month period which are caused by the same or similar defects in materials or workmanship. A Major Failure does not include firmware defects which can be corrected via an over-the-air update.

12.3 Network Design Guarantee

Vendor's communication network is designed to provide end-point connectivity as defined in its proposal and stated in Exhibit 1 - List of Deliverables and Pricing. The network design is based on Owner supplied location data. Non-geocoded endpoints and non-co-located water endpoints are outside the scope of the guarantee. Owner will bear the cost of proposed network equipment plus 10%. Equipment in excess of this 10% shall be borne 40% by Vendor and 60% by Itron. This metric assumes the availability of cellular coverage wherever required for remediation.

12.4 System Warranty

Provided Owner remains current on SaaS and Device Monitoring fees, Vendor warrants that the System will function and perform as an integrated whole in conformance, in all material respects, with the Statement of Work. This warranty will extend for one year beginning from the Substantial Completion date as provided in Exhibit 2. Owner agrees not to unreasonably hinder or delay the operational checkout or on-site training.

If a material nonconformity is discovered in the System during the warranty period, under normal and proper use with proper operation and maintenance, and Owner provides written notice of such nonconformity to Vendor promptly after such discovery, Vendor shall, at its own cost, repair or replace the nonconforming portion of the System. Vendor shall not be liable under the foregoing System warranty for any nonconformity, costs, damage, or failure caused by (a) vandalism; (b) theft; (c) improper operation, installation, repair, or maintenance by Owner or a third party; (d) misuse by Owner; (e) Force Majeure Event; (f) negligent acts or omissions or malfeasance of Owner or any third Party; (g) or actions or conditions beyond the reasonable control of Vendor.

12.5 Services Warranty

With respect to Services to be performed by the Vendor under this Agreement, the Vendor warrants that the Services shall be performed in a professional, competent, and timely manner by Vendor personnel appropriately qualified and trained to perform such Services.

If Vendor breaches this warranty, in addition to any other remedies available under this Agreement, Vendor shall, at its own costs, promptly and professionally re-perform the services, except that, Owner shall have the right to perform and/or hire a third-party to perform such services if Vendor is in breach of any other term of this Agreement, and such work shall be at Vendor's sole cost. Owner shall notify Vendor of any breach of this Services Warranty within twelve (12) months of the occurrence of such breach.

12.6 Warranty Returns

For warranty returns of Vendor manufactured products, Owner shall be responsible for gaining access to, removal of, and reinstallation of Vendor manufactured products. Vendor shall provide all freight charges. After expiration of the warranty period, Owner is responsible for payment of any support or maintenance agreements for computer hardware and/or third-party Software used in the System.

12.7 Exceptions

The warranties in this Agreement will not be effective with respect to any goods which (i) have been improperly repaired or altered by Owner; (ii) have been subjected by Owner to misuse, negligence, or accident; (iii) have been damaged due to forces of nature through no fault of Vendor; (iv) have been used by Owner in a manner contrary to Vendor's instructions; or (v) are comprised of materials provided by Owner.

The warranties in this Agreement are exclusive and in lieu of all other warranties of quality and performance, whether written, oral, or implied, and all other warranties including any implied warranties of merchantability or fitness for a particular purpose, non-infringement or usage of trade are hereby disclaimed. The remedies stated herein constitute Owner's exclusive remedies and Vendor's entire liability for any breach of warranty.

13. Change Order and Changes in Price

Either Vendor or Owner may initiate a modification to the original or previously amended obligations and understanding in this Agreement so long as such amendments are agreed upon and set forth in writing between the Parties ("Change Order"). Any adjustment in the price resulting from such Change Order requested or approved by Owner after award of a contract shall be determined by such applicable unit prices, if any, as are set forth in Exhibit 1, List of Deliverables and Pricing. If no such unit prices are set forth, Owner and Vendor shall mutually agree upon, in writing, a unit price or a lump sum for such Change Order.

14. Errors and Omissions

The Vendor warrants that the proposed system includes all components necessary for the System Components to perform as described in the Vendor's published and/or submitted specifications. No payment shall be made to the Vendor for materials or labor involved in correcting errors or omissions on the part of the Vendor which result in work not in accordance with the plans and specifications.

15. Subcontractors and Manufacturers

Vendor shall perform all Work pursuant to this Agreement with Vendor's employees and shall not subcontract portions of the Work without prior notification of and approval by Owner.

The Vendor shall be fully responsible to Owner for the acts and omissions of any of its manufacturers as the Vendor is responsible for the acts and omissions of persons directly employed by the Vendor. Except as may be otherwise be provided for under this Agreement, nothing contained herein is intended or shall be deemed to create any legal or contractual relationship between any subcontractor, manufacturer, and Owner, including but not limited to any third-party beneficiary rights, or any obligation on the part of Owner to pay or to seek payment of any kind for the subcontractor or manufacturer.

16. Independent Contractor Status

Vendor shall be deemed to be an independent contractor hereunder and shall not be considered or permitted to be an employee, agent, servant, joint venture, or partner of Owner. Neither Vendor nor Vendor's employees will be considered or permitted to be an employee, agent, servant, joint venture, or partner of Owner. All persons furnished, used, retained, or hired by or on behalf of the Vendor shall be employees or agents of the Vendor, and Vendor shall be responsible for payment of all unemployment, social security, and other payroll taxes for such persons, including related assessments or contributions required by law.

17. Insurance Coverage

17.1 Insurance

Vendor agrees to carry and maintain, at its own expense, during the entire Term of this Agreement, including any subsequent extension thereof, the following types of insurance coverage, in amounts not less than those specified below for each type:

Worker's Compensation

Workers Compensation insurance in accordance with all applicable federal and state laws subject to statutory limits and Employer's Liability insurance in an amount of not less than \$1,000,000 per accident for bodily injury and \$500,000 per employee and policy limit for disease.

Commercial General Liability

Commercial general liability insurance, including coverage for Contractual Liability, in an amount of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate.

Automobile Liability

Automobile liability insurance, including coverage for owned, hired and non-owned vehicles, in an amount of not less than \$5,000,000 combined single limit per accident.

Product Liability

Product liability insurance in an amount of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate. Such insurance may be provided under the Commercial General Liability insurance policy required above, provided that the Umbrella or Excess Liability insurance required in section 16.1.5 below provides additional limits of such insurance.

Professional or Errors & Omissions Liability insurance.

Insurance covering professional errors and omissions liability in an amount of not less than \$2,000,000 per claim and annual aggregate.

Data Breach Insurance

Insurance covering a data breach in an amount of not less than \$5,000,000 per claim and annual aggregate.

If, at any time, Vendor neglects or refuses to provide or cause to be provided the insurance coverage required in this Agreement, or if such insurance coverage is canceled or exhausted, Owner shall have the right to procure the same and the cost thereof shall be deducted from monies then due or that thereafter become due Vendor plus an administrative cost of ten percent (10%) of the insurance premium(s). The Owner shall be named as an additional insured on a primary and non-contributory basis on all General Liability, Automobile Liability, and Product Liability Insurance policies of insurance pertaining to this Agreement. Vendor agrees to provide proof of insurance coverage including the addition of Owner as an additional insured and the waiver of subrogation. Vendor agrees to provide 30 days' notice of any policy cancellation.

17.2 Documentation

The policies of insurance shall be in such form and issued by such insurer as shall be satisfactory to the Owner. The Vendor shall have its insurance carrier, agent or broker furnish Owner with certificates evidencing that all the insurance coverage required under this Agreement are in force, identifying any deductible and/or self-insured retention amounts. Owner shall also be provided written notice at least thirty (30) days prior to any material changes or cancellation of all policies of insurance required in this section.

17.3 Waiver of Subrogation.

To the fullest extent provided by law, Vendor hereby waives all rights of subrogation of its insurers; the Vendor agrees that all policies described hereunder shall be endorsed to provide

that its underwriters and insurance companies shall not have any right of subrogation against the Owner, its agents, employees, officers, underwriters, and insurance companies.

18. Reasonable Precautions

The Vendor shall always take all reasonable precautions for the safety of all employees, personnel, and the public, and shall comply with all applicable provisions of federal, state, and local laws, rules, and regulations and building and construction codes, in addition to the safety rules and procedures of the Owner. Vendor assumes responsibility for implementing and monitoring all safety precautions and programs related to the performance of the Work.

Upon violation by Vendor of this section, after written notice of such violation has been given to Vendor by Owner Vendor shall immediately correct such violation. Should Vendor fail to correct such violation, Owner may correct such violation at Vendor's expense. However, if Owner determines that any such violation poses an immediate hazard to life or property, Owner may, at its sole discretion, correct such violation at the Vendor's expense without such prior notice given to Vendor. In such case, notice of any corrective action taken by Owner will be provided to vendor on or before the next business day following such action.

19. Indemnification.

19.1 Claims.

Vendor shall indemnify, hold harmless and defend Owner and its commissioners, officials, employees, agents, officers, attorneys, and others acting on behalf of Owner (hereinafter collectively called the "Indemnitees") from and against all liabilities, claims, damages, demands, assessments, penalties, causes of action, judgments, losses, costs and expenses, including reasonable attorneys' fees, to the extent arising out of or resulting from: (i) the failure of Vendor to perform its obligations in accordance with the terms and conditions of this Agreement; (ii) any negligent acts or omissions or acts of willful misconduct of Vendor, or any of its agents, employees, subcontractors, material suppliers or others for whose acts any of them may be liable (each, a "Responsible Party"); (iii) any dangerous or otherwise defective condition in or of any of the Equipment, System Components, materials supplies, designs or specifications provided by or on behalf of Vendor in connection with its performance under this Agreement; or (iv) the violation of any law, ordinance, or regulation by Vendor or any other Responsible Party. Vendor shall include in each subcontract a comparable indemnification clause wherein the subcontractor will indemnify and hold harmless the Indemnitees for matters arising out of or resulting from the obligations of such subcontractor and the work to be performed by such subcontractor on the Project.

19.2 Mechanics Liens

Vendor shall at all times indemnify and hold Owner harmless against any liability for claims and liens for payment of labor performed or materials used or furnished in the performance of Vendor's Work, including any costs and expenses incurred in the defense of such claims and

liens, reasonable attorneys' fees and any damages to Owner resulting from such claims or liens. After written demand by Owner, Vendor shall immediately cause the effect of any such suit or lien to be removed from Owner's property. In the event Vendor fails to do so, Owner is authorized to use whatever means in its discretion it may deem appropriate to cause said lien or suit to be removed or dismissed, and the costs thereof, together with reasonable attorneys' fees, shall be immediately due and payable by Vendor or may, at Owner's option, be offset against any sums due and payable to Vendor hereunder. In the event a suit on such claim or lien is brought, Vendor shall, at the option of Owner, defend said suit at its own cost and expense, with counsel reasonably satisfactory to Owner and will pay and satisfy any such claim, lien, or judgment as may be established by the decision of the Court in such suit. Vendor may litigate any such lien or suit, provided Vendor causes the effect thereof to be removed promptly in advance from Owner's property.

19.3 Process.

Payment obligations under this Section 19 shall be made within thirty (30) days after a debt or obligation of the Indemnified Party is incurred. The provisions of this Section 19 shall survive the termination of this Agreement.

20. Intellectual Property Rights

In the event any Equipment or Software is held to be infringing or misappropriating on any third-party's intellectual property rights, or use of any Equipment or Software by Owner is enjoined or limited in any manner, or Vendor believes that such holding or enjoining is likely, Vendor shall at its option and expense: (a) procure for Owner the right to continue use of such Equipment, or (b) replace or modify the same with an equivalent non-infringing product, acceptable to Owner, and functionality substantially similar to the product it is replacing inclusive of installation costs. Notwithstanding the foregoing, the Vendor shall not be liable for any claim based on the combination or use of the Equipment with any other equipment not supplied or authorized by the Vendor, or any claim based on Owner's possession or use of any altered version of the Equipment unless such alteration has been performed or expressly authorized by Vendor. If neither option (a) nor (b) is commercially reasonable, Owner shall retire such Equipment and Software in place and Vendor shall refund to Owner the full purchase price for such Equipment and Software.

21. Limitation of Liability

IN NO EVENT, EXCLUDING CLAIMS FOR INDEMNIFICATION ARISING OUT OF VENDOR'S NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF LAW, WILL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, STATUTORY, OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, OR LOSS OF PROFITS, REVENUES OR USE, EVEN IF INFORMED OF THE POSSIBILITY OF THESE DAMAGES. EXCEPT WITH RESPECT TO ANY CLAIM FOR INDEMNIFICATION ARISING OUT OF VENDOR'S NEGLIGENCE, WILLFUL MISCONDUCT, OR VIOLATION OF

LAW. TO THE EXTENT PERMITTED BY APPLICABLE LAW, THIS LIMITATION OF LIABILITY APPLIES IF LIABILITY ARISES FROM BREACH OF CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), OPERATION OF LAW, OR OTHERWISE.

22. Owner's Immunity.

Nothing contained in this Agreement shall in any way affect or impair Owner's immunity or the immunity of its commissioners, officials, employees, agents, attorneys, consultants, or independent contractors, whether on account of official immunity, legislative immunity, statutory immunity, discretionary immunity or otherwise. Nothing contained in this Agreement, including any provisions regarding obtaining insurance or otherwise being insured, shall in any way affect or impair the limitations on Owner's liability or the liability of Owner's commissioners, officials, employees, agents, attorneys, consultants, or independent contractors set forth in Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time. By entering into this Agreement, Owner does not waive any rights, protections, or limitations provided to Owner or its commissioners, officials, employees, agents, attorneys, consultants, or independent contractors under the various rules of governmental immunity or under Minnesota Statutes Chapter 466, as such statute may be amended, modified, or replaced from time to time.

23. Termination

If (a) Vendor fails to perform its obligations hereunder; (b) becomes insolvent, commits any act of bankruptcy, makes a general assignment for the benefit of creditors, becomes the subject of any proceeding commenced under any statute or law for the relief of debtors; or (c) a receiver, trustee or liquidator of any property or income of Vendor is appointed, the Owner may declare the Vendor to be in breach of this Agreement and terminate this Agreement and all of its obligations hereunder, by giving the Vendor thirty (30) days prior written notice, provided such breach or failure described in (a) is not cured by the Vendor within fifteen (15) days of such notice. From and after the date of termination specified in such notice, all rights and interests of Vendor hereunder shall terminate. In such event of such termination, Vendor shall be compensated (as provided in Section 11 hereof) for all Work performed in a satisfactory manner before the date of termination, subject to any offset arising from a breach of the provisions of this Agreement by Vendor. Upon termination of this Agreement, Vendor shall immediately deliver to Owner all drawings, reports, analyses, samples, materials, or other work product completed pursuant to this Agreement.

23.1 Termination for Failure of SAT

If the System does not pass the SAT as required by this Agreement, it shall be considered a default and Owner shall have the right to terminate the Agreement by providing written notice should Vendor be unsuccessful in curing the failure within thirty (30) days.

23.2 Termination for Convenience

Owner reserves the right, at any time, to terminate this Agreement, or any portion of the Work, for its sole convenience. Owner shall notify Vendor of any such termination by giving written notice of termination to the Vendor specifying the extent to which the Agreement and related Work have been terminated and the date upon which the termination shall be effective. The date of the termination shall be no earlier than thirty (30) days from the receipt of the notice of termination by Vendor. Upon receipt of such notice, Vendor shall, in good faith and using all Commercially Reasonable Efforts, stop its performance hereunder and shall promptly take steps to cancel existing orders, contracts, and subcontracts relating to the Work. In the event of such termination, Vendor shall be entitled to receive:

- a. The contract price then due to Vendor for Work performed, the System Components delivered, the Software, and the Services performed.
- b. The contract price for Equipment manufactured but not delivered prior to the termination if Owner desires to purchase such Equipment.
- c. Unavoidable costs reasonably incurred by Vendor prior to the termination, including proven and documented labor and materials not covered in the two immediate subsections above, and for any restocking or cancellation charges incurred by Vendor.

23.3 Termination of License and Maintenance Agreements

Termination of this Master Agreement by either Party shall automatically terminate the End User License Agreement (Exhibit 3) and the System Maintenance Agreements (Exhibit 5).

24. Cancellations.

Owner may cancel any order prior to production or shipment only by written notice and upon payment to Vendor of reasonable cancellation and restocking charges as determined by Vendor, including reimbursement for direct costs plus allowances for business costs. Cancellation charges associated with orders for custom Equipment, Equipment specifically manufactured to Owner's specifications, large volume orders, or orders that involve commodities subject to fluctuating costs may equal the actual purchase price of the Equipment.

25. Equal Opportunity.

This Agreement is subject to all applicable federal, state and local laws and executive orders relating to equal opportunity, affirmative action and nondiscrimination in employment including, but not limited to, Minnesota Statutes, Section 473.144, if applicable. Vendor represents and warrants that it shall not discriminate in its employment practices in violation of any such applicable law, executive order or affirmative action plan or targeted group business goals. Vendor shall include in each subcontract, equal employment opportunity and affirmative action obligations as required by law

26. Government Data.

Vendor, its officers, agents, owners, partners, employees, and subconsultants shall abide by the provisions of the Minnesota Government Data Practices Act, Minnesota Statutes, Chapter 13 (the "Act") and all other applicable state and federal laws, rules, regulations and orders relating to data privacy or confidentiality, and as any of the same may be amended. If Vendor creates, collects, receives, stores, uses, maintains or disseminates data because it performs functions of Owner pursuant to this Agreement, then Vendor must comply with the requirements of the MGDPA as if it were a government entity, and may be held liable under the MGDPA for noncompliance. Vendor agrees to promptly notify SPU if it becomes aware of any potential claims, or facts giving rise to such, under the MGDPA. The terms of this Section shall survive the cancellation or termination of this Agreement. To the extent required by law, Vendor shall abide by the provisions of the Act. Customer electric usage levels and other identifying information of Owner's customers is governed by Minnesota Statutes, Section 13.685. Vendor agrees to promptly notify Owner if it becomes aware of any potential claims, or facts giving rise to potential claims, under the Act.

26.1 Confidential Information

Under this Agreement, "Confidential Information" means all information of a party ("Disclosing Party") that has been disclosed to the other Party ("Receiving Party"), that is not generally available to the public and that contains value in remaining confidential shall be marked "trade secret." For purposes of this Agreement only, any information disclosed by the Disclosing Party to the Receiving Party that includes personally identifiable customer information to which Vendor may have access pursuant to this Agreement shall be considered confidential regardless of any "confidential" or similar labels or the lack of these labels.

Confidential Information shall not include information of Disclosing Party which: (i) is publicly available as of the Effective Date or becomes publicly available thereafter through no fault of Receiving Party; (ii) Receiving Party rightfully possessed before it received such information from Disclosing Party; (iii) is subsequently furnished to Receiving Party by a third party without restrictions on disclosure or expectation of privacy.

26.2 Disclosure and Use of Confidential Information

Each Party shall comply with all laws and regulations that apply to use, transmission, storage, disclosure, or destruction of Confidential Information. To the maximum extent allowed by law, each Receiving Party agrees to hold Disclosing Party's Confidential Information in strict confidence. Receiving Party agrees to use Confidential Information solely for the performance of this Agreement. Receiving Party agrees to use all reasonable efforts to limit access and protect unauthorized use or distribution of Confidential Information. Receiving Party further agrees not to disclose or permit any third-party access to Confidential Information, except such disclosure or access shall be permitted if the disclosure is necessary for the performance of this Agreement. Receiving Party agrees to ensure that its employees, agents, representatives, contractors, and sub-contractors are advised of the confidential nature of the

Confidential Information and are precluded from taking any action prohibited under this Agreement.

Nothing in this Section 24.2 shall prohibit either Party from disclosing any Confidential Information of the other Party that is required to be disclosed by applicable law, provided that such Party shall promptly notify the other Party before such disclosure is required within sufficient time so that the other Party may seek any appropriate protective orders limiting further disclosure or use of Confidential Information.

Notwithstanding anything herein to the contrary and to the extent allowed by applicable law, Vendor may use electric usage data collected by the AMI System to provide, protect, improve, or develop Vendor's products, provided such electric usage data is in a completely anonymized form that does not identify Owner, any customer, or any electric supplier.

26.3 Destruction of Confidential Information

Upon the termination of this Agreement, Receiving Party shall return or destroy all Confidential Information of the other Party that is in its possession. Receiving Party shall, upon request, certify such destruction of such Confidential Information within thirty (30) days following request for such certification.

27. Data Security

Vendor shall evaluate and respond to any confirmed breach of security leading to the accidental or unlawful destruction, loss, alteration or unauthorized access, disclosure or use of the Deliverables and/or of Confidential Information ("Security Incident") and will work with Owner (and where necessary with outside regulatory and law enforcement authorities) to develop response strategies and respond to and mitigate the adverse effects of a Security Incident. Where it is determined a Security Incident has occurred, Vendor shall notify Owner immediately and continue to notify Owner as relevant information becomes available to assist Owner in meeting its potential reporting or notice obligations under applicable law. Vendor shall include a description, whether and what type of Confidential Information may have been affected, and such information as Owner may reasonably request, unless the law prohibits it. Owner shall work with Vendor in good faith to develop any related public statements or required notices resulting from a Security Incident.

28. Miscellaneous Provisions

28.1 Complete Agreement and Modification

The Parties agree that this Agreement, along with its Exhibits, constitutes the complete and exclusive statement of the terms and conditions and supersedes all previous understandings, negotiations, and proposals, whether oral or written with respect to the subject matter hereof. No modification of this Agreement will be effective unless it is in writing and signed by authorized representatives of both Owner and Vendor. To the maximum extent possible, terms in the Exhibits shall be interpreted so as not to conflict with any term contained in this

Master Agreement. If there is a conflict between any terms of an Exhibit and the express terms of this Master Agreement, the terms of this Master Agreement shall be controlling.

28.2 Assignment

Neither Party shall assign any rights or obligations under this Agreement or any interest in any funds that may be due or become due hereunder, to any third party without the prior written consent of the other Party.

28.3 Choice of Law and Venue

This Agreement shall be deemed to have been made in the State of Minnesota and shall be governed by and construed in accordance with the laws of the State of Minnesota, without giving effect to any choice of law provisions arising thereunder. The Parties agree and acknowledge that this Agreement involves the ownership, use, licensing, lease, installation, or performance of intellectual property. The exclusive venue for all disputes arising under or related to this Agreement shall be Scott County, Minnesota.

28.4 Waiver

Unless specifically stated otherwise, no term or provision of this Agreement shall be deemed waived and no breach thereof shall be deemed excused, unless such waiver or consent shall be in writing and signed by the Party claimed to have waived or consented. No consent by any Party to, or waiver of, a breach by the other, whether expressed or implied, shall constitute consent to, waiver of, or excuse for, any different or subsequent breach.

28.5 Litigation Fees

In the event of litigation to enforce any of the terms of this Agreement, the prevailing Party shall be entitled to an additional award for its reasonable attorney fees incurred in such litigation.

28.6 Severability

If any term or provision of this Agreement shall be found to be illegal or unenforceable then, notwithstanding any such illegal or unenforceable terms or provisions, the remainder of this Agreement shall remain in full force and effect to the maximum extent possible.

28.7 Successors and Assigns

This Agreement shall inure to the benefit of, and be binding upon, the respective successors and assigns, if any, of the Parties hereto, except that nothing contained in this subsection shall be construed to permit any attempted assignment which would be unauthorized or void pursuant to any other provision of this Agreement.

28.8 Choice of Law

This Agreement shall be construed and governed under the laws of the State of Minnesota.

28.9 Headings

The headings herein are inserted as a matter of convenience only and do not define, limit, or describe the scope of this Agreement or the intent of the provisions hereof.

28.10 Counterpart Signatures

The Parties to this Agreement may execute this Agreement in one or more copies. Each copy shall be considered an original, but all shall evidence only one Agreement as of the Effective Date.

28.11 No Presumption/ Rule of Construction.

The Parties hereto acknowledge that each Party and its counsel have had the opportunity to review and revise this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against a drafting party shall not be employed in the interpretation of this Agreement or any amendments hereto.

28.12 Citation of Laws, Regulations and Statutes

Legal citations provided herein are for the convenience of the Parties and shall include all amendments both prior to and after the Effective Date of this Agreement.

28.13 No Third-Party Beneficiaries

There are no third-party beneficiaries to this Agreement, and no other person other than the Owner or Vendor shall have any legally enforceable rights under this Agreement.

28.14 Notices

Notices shall be deemed given and received (a) if delivered by overnight express or messenger, upon delivery, or (b) if delivered by mail, upon the earlier of actual delivery or three days after being mailed. Any Party may change the address to which notices under this Agreement are to be sent to it by giving written notice of a change of address in the manner provided in this Agreement for giving notice. All notices are to be addressed as follows:

If to **Owner**, to:

Shakopee Public Utilities
Attention: General Manager
255 Sarazin Street,
Shakopee, MN 55879

If to **Vendor**, to:

Border States Industries, Inc.
Attention: Legal Department
2400 38th Street South
Fargo, ND 58104

Or at such other addresses as the Parties may specify in writing from time to time.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives, as of the Effective Date.

Shakopee Commission	Public Utilities	Border States Industries, Inc.
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Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Title

Attest

Attest

Date

Date



CHAPMAN METERING

A Division of Border States



CHAPMAN METERING
1911 North LaVista Heights Road
Avoca, IA 51521
(800) 782-2719
www.chapmanmetering.com

Customer:
Shakopee Public Utilities
QUOTATION
Date: 12/22/2022
VALIDITY: 90 DAYS

Shakopee Public Utilities - PHASE 1

NOTE: Our AMR / AMI deployment program is designed to work within your day to day operation as seamlessly as possible. We provide daily reports that include a PDF record of each individual exchange complete with up to 6 photos of any segment of the procedure requested. Other reports etc. are also designed to allow easy review of the daily progress. This helps greatly in avoiding confusion in the exchange process. Meter exchange files that automatically record the meter exchanges in your billing software are worked out during initial setup to provide the exchange data in whatever format might be required. Time charged for processing this information and generating the reports is at the "Support Services" rate stated below. The estimated total hours in this quote are based on averages seen during similar deployment efforts and will vary.

	Description	Unit	Quantity	Unit Price	Total
	One Time Setup Charge: Onsite setup database and links for daily transfers within the utility and the CIS system.	EA	1	\$1,050.00	\$1,050.00
CHAP 701	Single Phase Meter Exchange Forms 1S, 2S, 3S, 4S and 12S - All Classes: Installation is inspected to verify wiring and voltages are correct. Socket tensions are tested with the appropriate TESCO tension tester. Includes taking photos as stated in the proposal.	EA	1500	\$19.00	\$28,500.00
CHAP 703	Unable to Complete: If we are unable to make the exchange after multiple attempts, you will be notified and this charge will be applied to cover the cost of the attempts. To be charged per occurrence.	EA	1	\$15.00	\$15.00
	Program Management: Coordinating with Utility, setting up reports, managing field technicians, managing data transfer, etc. Hours are ESTIMATE ONLY. Time to be billed by the hour as incurred. A minimum of 16 hours will be billed in Phase 1.	HR	16	\$150.00	\$2,400.00
Estimated Phase 1 Total					\$31,965.00
					Tax not included.
ESTIMATE:					
CHAP 502/540	Support Services: This is charged in 1/10th hour increments for technician services conducted during the day to day operation of the project. Managing daily data transfers and reports as required, repair of defective equipment, time lost waiting to gain access that is beyond our control, working by appointment or standing by while others involved in the procedure conduct their duties etc. This is an ESTIMATE ONLY. Actual occurrences will be charged.	HR	5	\$150.00	\$750.00
OPTIONS:					
	Door Hangers: Two-sided, printed black and white. 4.25 x 11 inches, 80# uncoated cover.	EA	2000	\$0.35	\$700.00
	Call Center Set Up Fee: one time set up fee which includes set up and training. Includes incoming and outbound calls. Standard reporting included. Custom reporting is \$150/hr additional. To be billed at project commencement.	EA	1	\$625.00	\$625.00
	Call Center Minute Package: various minute packages available. Includes incoming and outbound calls. Standard reporting included. Custom reporting is \$150/hr additional. The minutes purchased expire two years from the date of purchase. Additional minutes may be purchased if these are used before the end of the project. To be invoiced upon initiation of the project. Additional requirements result in additional fees. To be billed at project commencement.	MIN	1,000	\$1.20	\$1,200.00

It is understood actual counts may vary.
Standard BSE terms and conditions apply.
<https://www.borderstates.com/termsAndConditions#>

Shakopee Public Utilities - PHASE 2

NOTE: Our AMR / AMI deployment program is designed to work within your day to day operation as seamlessly as possible. We provide daily reports that include a PDF record of each individual exchange complete with up to 6 photos of any segment of the procedure requested. Other reports etc. are also designed to allow easy review of the daily progress. This helps greatly in avoiding confusion in the exchange process. Meter exchange files that automatically record the meter exchanges in your billing software are worked out during initial setup to provide the exchange data in whatever format might be required. Time charged for processing this information and generating the reports is at the "Support Services" rate stated below. The estimated total hours in this quote are based on averages seen during similar deployment efforts and will vary.

	Description	Unit	Quantity	Unit Price	Total
CHAP 701	Single Phase Meter Exchange Forms 1S, 2S, 3S, 4S and 12S - All Classes: Installation is inspected to verify wiring and voltages are correct. Socket tensions are tested with the appropriate TESCO tension tester. Includes taking photos as stated in the proposal.	EA	16,548	\$19.00	\$314,412.00
CHAP 703	Unable to Complete: If we are unable to make the exchange after multiple attempts, you will be notified and this charge will be applied to cover the cost of the attempts. To be charged per occurrence.	EA	1	\$15.00	\$15.00
	Program Management: Coordinating with Utility, setting up reports, managing field technicians, managing data transfer, etc. Hours are ESTIMATE ONLY. Time to be billed by the hour as incurred. A minimum of 250 hrs will be charged in Phase 2.	HR	250	\$150.00	\$37,500.00
Estimated Phase 2 Total					\$351,927.00

Tax not included.

	ESTIMATE:				
CHAP 502/540	Support Services: This is charged in 1/10th hour increments for technician services conducted during the day to day operation of the project. Managing daily data transfers and reports as required, repair of defective equipment, time lost waiting to gain access that is beyond our control, working by appointment or standing by while others involved in the procedure conduct their duties etc. This is an ESTIMATE ONLY. Actual occurrences will be charged.	HR	75	\$150.00	\$11,250.00

	OPTIONS:				
	Door Hangers: Two-sided, printed black and white. 4.25 x 11 inches, 80# uncoated cover.	EA	17,000	\$0.35	\$5,950.00
	Call Center Minute Package: various minute packages available. Includes incoming and outbound calls. Standard reporting included. Custom reporting is \$150/hr additional. The minutes purchased expire two years from the date of purchase. Additional minutes may be purchased if these are used before the end of the project. To be invoiced upon initiation of the project. Additional requirements result in additional fees. To be billed at project commencement.	MIN	3,000	\$1.10	\$3,300.00

It is understood actual counts may vary.
Standard BSE terms and conditions apply.
<https://www.borderstates.com/termsAndConditions#>
See additional terms and conditions.

Estimated Phase 1 & 2 Total **\$383,892.00**

**Taxes not included.
Options not included.**

BSE-Chapman Metering Additional Terms & Conditions:

Project Stop/Restart:

Restarts will incur a project restart fee (TBD) to cover reimplementation costs including, but not limited to, travel, and potential new hires and training. As restarts will cause schedule delays, Chapman Metering will negotiate a new start date and targeted completion date with customer based on the impacts and resolutions of any interruptions.

Project Cancellation:

All project costs incurred or committed to up to the date of cancellation will be invoiced, including but not limited to labor, travel, fuel, printing or call center fees. Chapman Metering invoices every two weeks for all labor and expense incurred during that timeframe.

Notifications:

Chapman Metering needs a 60-day notification, after the contract is signed, prior to project start to hire and train field technicians, if need be, and set-up for project commencement, including electronic data reporting and transfer tools to customer.

Meter Availability:

Customer must have exchange meters available upon a set target date for to support on-going field installations. Due to current lead time issues, it is imperative for customer and Chapman Metering to understand the meter delivery schedule. Chapman can work with the customer on the production schedule in the event of delays of meter deliveries. Interruptions in meter supply may have a significant cost and schedule impact to the project.

Warehousing:

Customer must have a warehouse location available to begin the set-up process. If the customer wants BSE-Chapman Metering to be responsible for warehousing new meters, please allow 60-day notification to provide a quote and make arrangements and manage the new meter inventory. Customer also needs a dedicated point of contact (POC) or Program Manager available upon contract signing to assist in any questions or issues that may arise.

Storage of legacy meters may be possible. Monthly charges may include but is not limited to material handling, storage and transportation fees. If BSE is to discard meters, a 3% salvage value and handling charges will apply.

Shakopee Water Gen5 Meters & Modules

Presented by: United Systems



AMR / AMI | SOFTWARE | WATER LOSS

For: Shakopee Public Utilities

Prepared By:

Brad Bersch, United Systems & Software, Inc.

P.O. Box 547 - 205 Ash Street, Benton, KY 42025

Phone: 262.328.7241 - Email: bradb@united-systems.com



Date	PO Number	Shipping Method	Delivery Date
13-May-22	TBD	Best Way	~30-60 Days
Qty	Item Description	Unit Price	Ext Price
WATER METERS- SOLID STATE:			
8,068	Diehl Hydrus Ultrasonic Meter 5/8x3/4 with 5' cable & Itron Connector (7.5" LL)	\$123.68	\$997,850.24
2,548	Diehl Hydrus Ultrasonic Meter 3/4 with 5' cable & Itron Connector (9" LL)	\$123.68	\$315,136.64
392	Diehl Hydrus Ultrasonic Meter 1" with 5' cable & Itron Connector (10.75" LL)	\$194.74	\$76,338.08
AMI WATER ENDPOINTS:			
11,726	Itron 500W Water Pit Radio. 10 Year Full Warranty plus 10 Year Prorated Warranty	\$103.37	\$1,212,116.62
80	Itron 500W Water Pit CELLULAR. 10 Year Full Warranty plus 10 Year Prorated Warranty	\$142.11	\$11,368.80
SERVICES & PROGRAMMING TOOL:			
40	Estimated USS Remote Services for Setup, Testing & Training. Includes 40 Remote Hours at \$175/hr. Actual Services provided will be invoiced. For onsite services: add \$750/trip & \$275/day for Per Diems.	\$7,000.00	\$7,000.00
1	Itron Mobile Radio (Use with Windows 10, iOS & Android devices for Radio Programming)	\$2,900.00	\$2,900.00
NEEDED?			
11,806	Optional 500W Rod/Wall Install Kit (Add if desired)	\$3.09	
1	Optional 500W 5' Cable & Gel Caps (For Retrofits Inside) (Add if desired)	\$15.46	
627	Diehl Hydrus Ultrasonic Meter 1.5" with 5' cable & Itron Connector (13" LL)	\$551.55	
15	Diehl Hydrus Ultrasonic Meter 2"x17" with 5' cable & Itron Connector (17" LL)	\$706.19	
15	Kamstrup Ultrasonic Meter 2"x17" with 5' cable & Itron Connector (17" LL)	\$876.29	
61	Kamstrup Ultrasonic Meter 2"x15.25" with 5' cable & Itron Connector (15.25" LL)	\$979.38	
30	Zenner Ultrasonic Meter 2"x10" with Itron Connector (10" LL)	\$927.84	
ALTERNATE AND OPTIONAL ITEMS:			
	Zenner Ultrasonic Meter 3" with Itron Connector (12" LL)	\$1,447.37	
	Zenner Ultrasonic Meter 4" with Itron Connector (14" LL)	\$1,578.95	
	Zenner Ultrasonic Meter 6" with Itron Connector (18" LL)	\$2,368.42	
	Zenner Ultrasonic Meter 10" with Itron Connector (17.75" LL)	\$4,157.89	
	Kamstrup Ultrasonic Meter 3" with Itron Connector (12" LL)	\$1,552.63	
	Kamstrup Ultrasonic Meter 4" with Itron Connector (14" LL)	\$2,394.74	
	Honeywell EvoQ4 Mag Meter 6" w Itron Connector (18" LL)	\$5,578.95	
	Honeywell EvoQ4 Mag Meter 10" w Itron Connector (17.75" LL)	\$10,842.11	
	1.5" Oval Ductile Iron Two Bolt Flange Kit	\$46.39	
	2" Oval Ductile Iron Two Bolt Flange Kit	\$56.70	
	2" Round Cast Iron Four Bolt Flange Kit	\$36.08	
		TOTAL:	\$2,622,710.38

NOTES:

1. This pricing includes Itron's current 5% hardware surcharge and shipping charges to Shakopee, MN.
2. Pricing is valid 180 days from the bid date of June 20, 2022.
3. We recommend submitting a blanket PO to lock in the pricing and establish delivery schedules over 6-18 months.
4. Prices not locked in via a PO/Order are subject to an increase.
5. Alternate and optional items, due to uncertainty of quantities to be delivered, items in this section do not include shipping. Shipping invoiced at actual cost.

General— Prices include shipping.

All related invoices shall be paid on a Net 30 Day basis.

Shakopee - Water Installation		Date	Estimate #
Presented By: Midwest Testing		5/23/2022	802
Pricing Per Meter			
Description	QTY	Price	Ext Price
R&R of 5/8" water meter each	8068	\$19.15	\$154,502.20
5/8" Radio upgrade each		\$53.19	
R&R of 3/4" water meter each	2548	\$19.15	\$48,794.20
3/4" Radio upgrade each		\$53.19	
R&R of 1" water meter each	392	\$19.15	\$7,506.80
1" Radio upgrade each		\$53.19	
1.5" Radio upgrade each		\$53.19	
2" Radio upgrade each		\$53.19	
3" Radio upgrade each		\$53.19	
4" Radio upgrade each		\$53.19	
6" Radio upgrade each		\$53.19	
10" Radio upgrade each		\$53.19	
Mobilization	1	\$75,531.91	\$75,531.91
If Midwest Testing is going into an account to install a water meter and connect to an existing radio 5/8", 3/4" & 1" each		\$72.34	
		Total:	\$286,335.11
<p>Notes:</p> <p>Midwest Testing to supply : Labor, tools, appointment center, electronic files and send 2nd & 3rd notices.</p> <p>United Systems to supply : All water meters, radio's, gaskets, zip ties, hand-helds, seals, wire and anything else that would be needed for the installation of the water meters and radio's.</p> <p>City of Shakopee, MN to supply : Accounts in Excel format, Storage for water meters etc., garbage and recycling bins, send out 1st notices and any curb stops if needed.</p> <p>Installer responsible for: labor, tools, appointment center, electronic files, send second and third notices.</p> <p><i>United Systems: Meters, 500Ws, gaskets, zip ties, one IMR to installer.</i></p> <p><i>City Responsible for: Account List(Excel file), storage, send out first notices, curb stops if needed, garbage and recycling.</i></p> <p><i>Any additional (mutually agreed upon) parts required to install meters. Example: spacer, valve</i></p>			



BORDER STATES
Supply Chain Solutions™

Phone: 712.343.2125

Email: cdeschamp@borderstates.com

General Scope:

- Mobilization to Shakopee, MN
- Mounting of Itron AP or Relay, low voltage connection(s) including antenna using standard bucket truck or lift, as needed
- Chapman will provide required coax, hangers, jumpers, connectors, as necessary, to complete project.
- Chapman will mount streetlight arms (provided by others), if required and as necessary.
- If applicable, Chapman will terminate electrical connections at the pole to provide power to AP/Relay.
- Project closeout with photos and documentation of each installed site.

NETWORK INFRASTRUCTURE INSTALLATION:

Service	Location	Quantity	Unit	Total	Add for Arm Installation	Add for Terminating Electrical
AP	Wood Pole	11	\$ 1,842.11	\$ 20,263.21	\$157.89	\$263.16
Relay	Wood Pole	15	\$ 1,578.95	\$ 23,684.25	\$157.89	\$263.16
Mobilization		1	\$ 5,263.16	\$ 5,263.16		
			Total:	\$ 49,210.62		

Additional Notes:

- Pricing is valid for 180 days from the date of this proposal.
- Terms/Payments:
 - Payment Terms 1% 10 / Net 30.

Project Assumptions & Exceptions:

- Assumes Davis Bacon or Prevailing wage rates are not applicable to this project.
- Assumes Chapman will provide Payment and Performance Bonds, as necessary.
- Chapman assumes adequate space and access is available for the site locations of AP's and Relays. It is the Owner/Others/Utility responsibility to ensure this.
- Chapman assumes Owner/Others/Utility has permission for Chapman to access all site locations
- Chapman assumes all AP's and Relays are complete and ready for communication installation upon Chapman arrival.
- Chapman will provide required coax, hangers, jumpers, connectors, as necessary, to complete project.
- Chapman assumes AP's, Relays, Antenna, and Mounting Arms to be provided by others, any delays due to missing or improper materials by others may result in additional charges.
- Chapman assumes there is space to mount the AP's, Relays and its antenna (and Mounting Arm if necessary) on Wood Poles up to a normal elevation of 45'. If devices need to be installed on a taller pole or installed on a different type of mounting location (ie storm sirens, on buildings, communication towers, etc) extra charges will apply.
- Chapman assumes antenna mounting location will be below the primary and outside of the unsafe working zone, if applicable.
- Chapman assumes all runs of coax will not be in new or existing conduit.
- Chapman assumes standard installation will not require electrical termination—to be done by others. In the event electrical termination is required, Chapman will need to provide a local electrician or lineman to perform this work during installation at an additional charge as stipulated in the pricing.
- Chapman will make one mobilization to the area to do this work and assumes all required materials are onsite at the same time. If it is discovered that required equipment or material (by Border States/Itron/others) is missing or incorrect resulting in an incomplete project preventing complete installation of this scope, Chapman reserves the right to charge a de-mobilization fee in the amount of the original mobilization charge. Likewise, an additional mobilization charge will be required for re-deployment and completion of remaining work.
- Assumes Chapman will install the AP's and Relays onto the network as specified.
 - Chapman is not responsible if RSSI levels, azimuths, or noise reducing the reliability of the network and is not responsible for network design or reliability.
- Assumes any issues resulting in delays that do not fall within the responsibility of Chapman (aside from weather), may be subject to additional charges.
- Pricing is valid for 180 days from the date of this proposal.

Shakopee - Gen5 - Pricing Overview



Tab Description	Price
BSE Gen5 Pricing Summary	\$3,561,298.25
Electric Installation For Gen5	\$383,892.00
Water Products For Gen5	\$2,622,710.38
Water Installation for Gen5	\$286,335.11
Infrastructure Install	\$ 49,210.62
Total:	\$6,903,446.36

Taxes are subject to change as they are based on current assumptions.

Sales tax assement and rates are subject to Minnesota.statute

Estimated Taxes: \$509,129.17

Exhibit 4

AMI PROJECT TESTING AND ACCEPTANCE PROCESS

Upon execution of the Master Agreement, Owner and Vendor will jointly develop a test and acceptance process for the AMI Project according to the terms and conditions of the Master Agreement. The purpose of the test and acceptance process is to verify that the AMI Systems provided by the Vendor meets the requirements set forth in the Master Agreement and the associated Compliance Exhibits, including Attachment 1 – Vendor’s Table of Compliance as provided in Vendor’s proposal dated June 20, 2022. This Exhibit summarizes the testing to be performed as part of FAT, SAT, and System Optimization. The testing will be carried out by Owner’s personnel. If a test failure occurs, Vendor will be notified and allowed the opportunity to validate results, suggest alternate methods, remedy the failure, or take other mutually agreeable actions. Owner and Vendor agree that the format of the testing and acceptance process will consist of three types of tests and/or inspections.

1. Test Description

1.1 First Article Testing (FAT)

First Article Testing and Inspections will be used to verify the physical condition of the received System Components and to confirm the AMI Meters are accurately configured.

1.2 System Acceptance Testing (SAT)

These tests will be used to verify the functionality of the delivered System Components (which include hardware and software elements) and to verify that the delivered System Components exchange data with each other and with the systems that are already in place within Owner’s operations. Owner’s existing systems include Customer Information System (CIS), and Geographic Information System (GIS). Data exchanges will be tested for a variety of factors including data integrity and reliability. The tested functions include end-to-end system testing for applications such as transfer of billing determinants, on-demand meter readings, remotely disconnecting and connecting meters, etc. Testing will be carried out by Owner personnel.

For this testing, AMI Vendor will install approximately 1,500 – 2,000 water and electric meters at homes and businesses. Vendor will also install appropriate AMI Network devices, to allow communication with the Owner’s physical test locations in two or three test areas selected by Owner. To support this testing, AMI Vendor will implement the production software environment and integrate with Owner’s existing production systems as necessary (CIS and GIS). Owner will supply and install the Backhaul network for this testing.

Test areas will be selected by Owner based upon:

- Accessibility.
- Availability of suitable bulk-communications channel.
- Cross section of end customers.
- Geography and topology.
- Density.

Before the completion of the SAT, AMI Vendor will establish any other software environments, e.g., test, that are part of the project definitions. Each of these environments will also need to be integrated and

tested with their counterpart environment within the CIS and GIS systems

These tests will be used to verify integration and functionality of the delivered AMI Systems/Components. Testing will be carried out by Owner's personnel.

1.3 System Optimization

This process will document the performance of the AMI System under circumstances approximating normal (day-to-day) operating conditions for Owner. These tests will include the performance of the AMI Network as well as the Software applications. These tests will be conducted and measured at various time periods.

System Optimization will be finalized by Owner once 98% of the AMI Meters have been installed.

2. Test Process

Owner will perform all test and inspections after Vendors have commissioned mutually agreeable AMI application. The test process shall be in accordance with the Project Schedule and in accordance with the AMI Project Milestones set forth in the appropriate attachment to the Master Agreement.

It is suggested that Vendor participate as a witness for the last week of testing to support Owner and to increase probability of success. This participation is at Vendor's expense. Notice of testing should be given by Owner in writing at least two weeks in advance of the test to accommodate Vendor's participation.

2.1 Procedure

The acceptance test results shall be evaluated using the following procedure:

- 2.1.1 Owner will provide Vendor detailed acceptance test procedures that are accepted or modified to mutual satisfaction of the Parties.
- 2.1.2 Owner will notify Vendor of upcoming tests.
- 2.1.3 Owner will produce an acceptance report and submit it to Vendor's review.

2.2 Actions upon success

If the relevant portion of the AMI System successfully passes the applicable test(s), written results will be provided by Owner to Vendor advising of the completion.

2.3 Actions upon failure

If the relevant portion of the AMI System fails the applicable test(s), Owner will notify Vendor so that Vendor can correct the deficiency or deficiencies in accordance with the terms of the Agreement.

2.4 Joint Responsibilities

Vendor and Owner will work together to perform each of the following tasks:

- 2.4.1 Participate in coordinated test activities required for FAT, SAT, and System Optimization.
- 2.4.2 Execute integration test plans and scenarios involving the AMI application.
- 2.4.3 Create the test plans in accordance with Attachments 1 and 2 to this Exhibit.

2.5 Vendor Responsibilities

Vendor will perform each of the following tasks:

- 2.5.1 Provide guidance to Owner on how to execute test plans for integration points between AMI application and the Owner's back-office systems.
- 2.5.2 Provide support to Owner during the execution of the test plans (via troubleshooting and remediation).
- 2.5.3 Develop the AMI software configuration guide regarding operations and support issues.

2.6 Owner Responsibilities

Owner will perform each of the following tasks:

- 2.6.1 Execute the test plans.
- 2.6.2 Provide Vendor with final test plan documentation in accordance with Section 2.4 above.
- 2.6.3 Schedule coordinated test cases to include Vendor participation.
- 2.6.4 Review test case results with Vendor.

3. Non-Binding Example of Test Plan

3.1 Inspections

Table 1 defines inspections that may be performed by Owner or its representatives for testing the AMI and system components. These will be performed as required and at the convenience of Owner to ensure conformance to the project schedule. The inspections will not be limited to the components of the SAT system, they will continue through delivery of 100% of the AMI system. In addition to this table the AMI Project testing attachments define the additional First Article Tests (FAT) which will be completed upon receipt of the individual components.

**Table 1
Inspections**

Component	Function	Responsible Party
Residential and C/I meters	<p>Visual inspection for:</p> <ul style="list-style-type: none"> • Nameplate including bar code data • Form and voltage (electric) • Manufacturing quality • Production and test data available and in conformance to Owner requirements • Shipping damage <p>Validation measurements for:</p> <ul style="list-style-type: none"> • Electric and water accuracy • Accuracy of voltage measurements • Verification of power quality tolerances • Confirm Factory Configuration (Programming) 	Owner

Component	Function	Responsible Party
Network communication components	Visual inspection for: <ul style="list-style-type: none"> • Nameplate including bar code data • Manufacturing quality • Production and test data available and in conformance to Owner requirements • Shipping damage 	Owner

3.2 System Acceptance Tests (SAT)

AMI Project testing attachments define the System Testing required for verifying that the system meets the specifications as offered by Vendor. Owner understands that software integration requires collaboration among multiple suppliers. Vendor commits to provide software that meets current integration requirements and to assist Owner with the support to achieve integration goals. The timing of integration tests will be at Owner's discretion to meet project milestones. Vendor is encouraged to make suggestions regarding timing and/or order of tests based upon prior experiences. Many tests may be run multiple times to verify communications reliability. The duration of the SAT is expected to be three months or more after all components are installed and/or implemented.

The tests that follow may be supplemented with additional tests based on Owner research of Vendor's reference systems. As mutually agreed, supplemental tests may be added to verify system performance. Tests may not be added for functions that were not part of these reference documents unless mutually agreed to by Vendor and Owner.

In preparation for the SAT, the integration with Owner's existing systems will be complete and the reports and development to support the use cases is expected to be completed. It is expected that before the SAT is considered completed by Owner, all the system interfaces, reports, and support for use cases will be completed and operational. Moving forward with the full installation of the rest of the End Points and the System Optimization steps will not begin until SAT is completed.

3.3 System Optimization

AMI Project testing attachments define the performance assessment required for the AMI system. These tests will be measured and quantified over critical times during the SAT or later as needed to verify system suitability for Owner's purposes.

The System Optimization will begin, once 98% of the meters have been installed and made operational. During the System Optimization testing, some of the SAT tests will be redone by Owner to ensure compliance with the requirements. Owner will decide which of these tests to redo.

3.4 Requirements and Assumptions for Testing

- Production Environment/Field tests will be performed on AMI Meters in the Production area after they have been fully deployed and received Production-level Optimization. At the start of the Production-level Optimization, Vendor and its sub-contractors will provide an estimate of the elapsed time that will be required to Optimize those meters; the "elapsed time" will exclude (a) time required to take action (e.g. relocate or install additional Access Points and/or Relays, as requested by Vendor and its sub-contractors) or to provide information required for the Optimization, and (b) any delay imposed on Vendor and its sub-contractors.
- All System Acceptance Tests and System Optimization will be performed using Owner's Backhaul network and Vendor's AMI Network and back office environment.

- AMI software has completed security associations between the End Points and the back office.
- The test meters shall be deployed within a contiguous geographic area and must be easily separated/identified using the AMI system search function.
- All network equipment to be tested shall be deployed and functional prior to the start of testing. To the extent that a specific test has already been performed as part of the Optimization and/or SAT, that test may not need to be repeated during System Optimization at Owner's discretion.
- For those tests which indicate mean performance criteria, the test results will be calculated using a statistically valid sample size. Mean performance will be calculated based on data from not less than 10 devices to be used in each test. All devices will be chosen at random from the test area(s). Packet success rate must exceed 95% for the test to be valid.
- Field tests have standard test procedures associated with them. If changes to the test procedures, or acceptance test criteria, are required, pricing for acceptance testing may change.
- Tests and/or performance criteria may be updated, at any time, to reflect deployment challenges and/or updates to AMI Network, Backhaul, back office environment or other elements.
- Acceptance Testing for a given phase (FAT, SAT, System Optimization) shall be deemed complete when there are no outstanding Severity Level 1 issues because of testing. Severity Level 2 and 3 issues will be handled during the next testing phase or via Owner support tickets against the appropriate system but shall not prevent completion of a given testing phase, or substantial completion.

Severity Level	Description
1	<ul style="list-style-type: none"> • System Down (Software Application, Hardware, Operating System, Database) • Functionality as described in the Agreements and associated Exhibits where there is no mutually agreeable alternative available to Owner to continue its business, operations or services utilizing AMI System • Incorrect calculation errors • Error messages preventing data integration and update • Performance issues of severe nature impacting critical processes • Security Issues
2	<ul style="list-style-type: none"> • Functionality as described in the Agreements and associated Exhibits where there is a mutually agreeable alternative available to Owner to continue its business, operations or services utilizing the AMI system • Functionality of the AMI system where there is mutual agreement to defer that functionality to a later testing phase. • Reports calculation issues • Performance issues not impacting critical processes • Workstation connectivity issues (Workstation specific)
3	<ul style="list-style-type: none"> • Training questions, how to, or implementing new processes • Aesthetic issues • Issues where there is a mutually agreeable alternative available to Owner to continue its business, operations or services utilizing the AMI system for a majority of the cases • Recommendations for enhancements on system changes • Questions on documentation



ADDENDUM TO THE ITRON SALES CHANNEL PARTNER AGREEMENT

Itron End User License Agreement

This Addendum sets forth the EULA for Activated Itron Software distributed by Sales Channel Partner to Customers in the Territory under the Agreement. Itron may change the EULA or any of its components in accordance with its terms and conditions. A current version of the EULA is available for download on the Itron partner center. Sales Channel Partner shall require each Customer to agree to the EULA prior any access or use of any Activated Itron Software by that Customer.

Itron End User License Agreement

This Itron End User License Agreement ("EULA") between You and Itron governs Your use of Itron Software purchased through an Itron Sales Partner. Definitions of capitalized terms are in Section 14 (Definitions) of this EULA.

You agree to be bound by the terms of this EULA through (a) Your download, installation, or use of the Itron Software; or (b) Your express agreement to this EULA.

If You do not have authority to enter into this EULA or You do not agree with its terms, do not use the Itron Software. You may request a refund for the Itron Software from the Itron Sales Channel Partner within 30 days of Your initial purchase provided You return the Itron Software to the Itron Sales Channel Partner and disable or uninstall it. This paragraph does not apply where You have expressly agreed to end user license terms with Itron as part of a transaction with an Itron Sales Channel Partner.

1 License and Right to Use.

Subject to Your payment of all applicable fees and compliance with this EULA, Itron grants You a non-exclusive, non-transferable license to use Authorized Installations of the Itron Software, as acquired from an Itron Sales Channel Partner, for Your direct benefit during the License Term and as set out in Your Entitlement and this EULA (collectively, the "Usage Rights"). You are not permitted to copy Itron Software other than to make one machine readable copy for disaster recovery or archival purposes.

2 Use by Third Parties.

You may permit Authorized Third Parties to exercise the Usage Rights on Your behalf, provided that You are responsible for (a) ensuring that such Authorized Third Parties comply with this EULA, and (b) any breach of this EULA by such Authorized Third Parties.

3 Upgrades.

You may only use Upgrades beyond Your license Entitlement if You have (a) acquired such rights under a support agreement covering the applicable Itron Software; or (b) You have purchased the right to use Upgrades separately.

4 Restrictions.

Unless expressly agreed by Itron, You may not (a) transfer, distribute, sell, sublicense, monetize or make the functionality of any Itron Software available to any third party; (b) remove, modify, or conceal any product



identification, copyright, proprietary, intellectual property notices or other marks; (c) reverse engineer, decompile, decrypt, disassemble, modify, or make derivative works of the Itron Software; (d) include or combine Itron Software with any software, equipment, or hardware other than as expressly authorized in the Document; or (e) use Itron Software to provide services to third-parties.

5 Fees.

To the extent permitted by law, orders for Itron Software are non-cancellable. Fees for Your use of Itron Software are set out in Your purchase terms with Your Itron Sales Channel Partner. If You use Itron Software beyond Your Entitlement ("Overage"), the Itron Sales Channel Partner may invoice You, and You agree to pay, for such Overage.

6 Confidentiality.

Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know ("Permitted Recipients"). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EULA, and (b) is liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information that: (i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete, or destroy all Confidential Information of Discloser and certify the same.

7 Ownership.

Except where agreed in writing, including, but not limited to Section 1, nothing in this EULA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your Confidential Information and Itron retains ownership of its Confidential Information, the Itron Software, and the Documentation. Itron may use any feedback You provide in connection with Your use of the Itron Software as part of its business operations.

8 Indemnification.

8.1 Claims.

Itron will defend any third-party claim against You that Your valid use of Itron Software under Your Entitlement infringes a third party's patent, copyright or registered trademark (the "IP Claim"). Itron will indemnify You against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that You: (a) promptly notify Itron in writing of the IP Claim; (b) fully cooperate with Itron in the defense of the IP Claim; and (c) grant Itron the right to exclusively control the defense and settlement of the IP Claim, and any subsequent appeal. Itron will have no obligation to reimburse You for attorney fees and costs incurred prior to Itron's receipt of notification of the IP Claim. You, at Your own expense, may retain Your own legal representation.

8.2 Additional Remedies.

If an IP Claim is made, or Itron determines that an IP Claim is likely to be made, Itron may either procure for You the right to continue using the Itron Software or replace or modify the Itron Software with functionality that is at least equivalent. Only if Itron determines that these alternatives are not reasonably available, Itron may terminate Your Usage Rights granted under this EULA upon written notice to You



and will refund You a prorated portion of the fee You paid for the Itron Software for the remainder of the unexpired License Term.

8.3 Exclusions.

Itron has no obligation with respect to any IP Claim based on: (a) compliance with any designs, specifications, or requirements You provide or a third party provides on Your behalf; (b) Your modification of any Itron Software or modification by a third party; (c) the amount or duration of use made of the Itron Software, revenue You earned, or services You offered; (d) combination, operation, or use of Itron Software with products, services software or business processes not provided by Itron; (e) Your failure to modify or replace Itron Software as required by Itron; or (f) any Itron Software provided on a no charge, beta or evaluation basis.

8.4 Exclusive Remedy.

This Section states Itron's entire obligation and Your exclusive remedy regarding any IP Claims against You.

9 Warranty, Qualifications and Disclaimer.

9.1 Warranty.

During the Software Warranty Period, Itron warrants that the Itron Software substantially complies with the Documentation. Upon Your prompt written notification to Itron during the Software Warranty Period of Itron's breach of this [Section 9.1](#), Your sole and exclusive remedy (unless otherwise required by applicable law) is, at Itron's option, either (i) repair or replacement of the applicable Itron Software or (ii) a refund of the license fees paid or due for the non-conforming Itron Software. Where Itron provides a refund of license fees paid for Itron Software, You must return or destroy all copies of the applicable Itron Software.

9.2 Qualifications.

[Section 9.1](#) does not apply if the Itron Software: (a) has been altered, except by Itron or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EULA or the Documentation; (c) is acquired on a no charge, beta or evaluation basis; (d) has not been provided by an Itron Sales Channel Partner; or (e) has been exposed to viruses or security vulnerabilities through no fault of Itron.

9.3 Disclaimer.

Except as expressly stated in [Section 9.1](#), to the extent allowed by applicable law, Itron expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition, or other implied term as to merchantability, fitness for a particular purpose or noninfringement, or that the Itron Software will be secure, uninterrupted or error free.

10 Liability.

Neither party will be liable for indirect, incidental, exemplary, special, or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EULA is limited to (a) for claims solely arising from Itron Software licensed on a perpetual basis, the fees received by Itron for that Itron Software; or (b) for all other claims, the fees received by Itron for the applicable Itron Software and attributable to the 12-month period immediately preceding the first event giving rise to such liability. These limitations of liability do not apply to liability arising from (a) Your failure to pay all amounts due; or (b) Your breach of Sections 1 (License and Right to Use), 4 (Restrictions), or 13.7 (Export). The maximum liability cap does not apply to Section 8 (Indemnity). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise.



even if either party has been advised of the possibility of such damages. Nothing in this EULA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

11 Termination and Suspension.

11.1 Suspension.

Itron may immediately suspend Your Usage Rights if You breach Sections 1 (License and Right to Use), 4 (Restrictions), or 13.7 (Export).

11.2 Termination.

If a party materially breaches this EULA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EULA for cause. Itron may immediately terminate this EULA if You breach Sections 1 (License and Right to Use), 4 (Restrictions), or 13.7 (Export). Upon termination of the EULA, You must stop using the Itron Software and destroy any copies of Itron Software and Confidential Information within Your control. If this EULA is terminated due to Itron's material breach, Itron will refund You or Your Itron Sales Channel Partner, the prorated portion of fees You have prepaid for the Usage Rights beyond the date of termination. Upon Itron's termination of this EULA for Your material breach, You will pay Itron or the Itron Sales Channel Partner any unpaid fees through to the end of the then-current License Term. If You continue to use or access any Itron Software after termination, Itron or the Itron Sales Channel Partner may invoice You, and You agree to pay, for such continued use.

12 Verification.

During the License Term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Itron Software sufficient to verify compliance with this EULA ("Verification Records"). Upon reasonable advance notice, and no more than once per 12-month period, You will, within 30 days from Itron's notice, allow Itron and its auditors access to the Verification Records and any applicable books, systems (including Itron product(s) or other equipment), and accounts during Your normal business hours. If the verification process discloses underpayment of fees: (a) You will pay such fees; and (b) You will also pay the reasonable cost of the audit if the fees owed to Itron as a result exceed the amounts You paid for Your Usage Rights by more than 5%.

13 General Provisions.

13.1 Survival.

Sections 4, 5, 6, 7, 8, 9, 10, 11.2, 13 and 14 survive termination or expiration of this EULA.

13.2 Third-Party Beneficiaries.

This EULA does not grant any right or cause of action to any third party.

13.3 Assignment and Subcontracting.

Except as set out below, neither party may assign or novate this EULA in whole or in part without the other party's express written consent. Itron may without written notice to You, assign or novate this EULA in whole or in part to an Affiliate of Itron, or otherwise as part of a sale or transfer of any part of its business.

13.4 U.S. Government End Users.

The Itron Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation" pursuant to FAR 12.212 and DFARS 227.7202. All U.S.



Government end users acquire the Itron Software and Documentation with only those rights set forth in this EULA. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.

13.5 Itron Partner Transactions.

The terms of this EULA apply to Your use of Itron Software and prevail over any inconsistent provisions in Your agreement with the Itron Sales Channel Partner.

13.6 Modifications to the EUSA.

Itron may change this EULA or any of its components by providing an updated version of this EUSA to You or Your Itron Sales Channel Partner. Changes to the EULA apply to any Entitlements acquired or renewed after the date the updated version of this EULA is provided to You or Your Itron Sales Channel Partner.

13.7 Compliance with Laws.

Each party will comply with all laws and regulations applicable to their respective obligations under this EULA. Itron may restrict the availability of the Itron Software in any particular location or modify or discontinue features to comply with applicable laws and regulations. If You use the Itron Software in a location with local laws requiring a designated entity to be responsible for collection of data about individual end users and transfer of data outside of that jurisdiction (e.g., Russia and China), You acknowledge that You are the entity responsible for complying with such laws.

13.8 Export.

Itron Software is subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export, or re-export any Itron Software in a way that would cause Itron to violate those laws. You also agree to obtain any required licenses or authorizations.

13.9 Governing Law and Venue.

This EULA, and any disputes arising from it, will be governed exclusively by the applicable governing law below, based on Your primary place of business and without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The courts located in the applicable venue below will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the EULA or its formation, interpretation, or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the below governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of Itron's intellectual property or proprietary rights.

Your Primary Place of Business	Governing Law	Jurisdiction and Venue
Any location not specified below	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas
Australia	Laws of the State of South Australia, Australia	State and Federal Courts of South Australia



Your Primary Place of Business	Governing Law	Jurisdiction and Venue
Canada	Province of Ontario, Canada	Courts of the Province of Ontario
China	Laws of the People's Republic of China	Hong Kong International Arbitration Center
European Union	Laws of the EU Member State of Your primary place of business	Courts of the EU Member State of Your primary place of business
Europe (excluding the European Union), Middle East, Africa, Asia (excluding India, Malaysia, Singapore), Oceania (excluding Australia)	Laws of England	Courts of London
India	Laws of New Delhi, India	Courts of New Delhi, India
Malaysia	Laws of Selangor, Malaysia	Courts of Selangor, Malaysia
Singapore	Laws of Singapore	Courts of Singapore
United States, Latin America, or the Caribbean	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas

If You are a United States public sector agency or government institution located in the United States, the laws of the primary jurisdiction in which You are located will govern the EULA and any disputes arising from it. For U.S. Federal Government customers, this EULA will be controlled and construed under the laws of the United States of America.

13.10 Notices.

All notices required or permitted under this EUSA must be in writing. Notices set between You and Itron will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices to You will be sent to the address provided to Itron by Your Itron Sales Channel Partner or by You. Notices to Itron must be sent to the attention of the Itron Legal Department 2111 North Molter Road, Liberty Lake, WA 99019.

13.11 Force Majeure.

Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.



13.12 No Waiver.

Failure by either party to enforce any right under this EULA will not waive that right.

13.13 Severability.

If any portion of this EULA is not enforceable, it will not affect any other terms.

13.14 Entire Agreement.

This EULA is the complete agreement between the parties with respect to the subject matter of this EULA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).

13.15 Translations.

Itron may provide local language translations of this EULA in some locations. You agree that those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EULA will prevail.

14 Definitions.

"Affiliate" means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

"Authorized Installations" means installations of Itron Software only on one production environment and one test environment on Your premises.

"Authorized Third Parties" means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Itron Software on Your behalf as part of Your Entitlement.

"Confidential Information" means non-public proprietary information of the disclosing party ("Discloser") obtained by the receiving party ("Recipient") in connection with this EULA, which is (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.

"Delivery Date" the earlier of the date Itron Software is made available for download or installation, or the date that Itron ships the tangible media containing the Itron Software.

"Documentation" means the technical specifications and usage materials officially published by Itron specifying the functionalities and capabilities of the applicable Itron Software.

"Endpoint" means a physical device (e.g., a meter, encoder-receiver-transmitter module, or other measuring, monitoring, or sensing device) capable of being used in connection with the applicable Itron Software.

"Entitlement" means the specific duration and quantity of permitted Endpoint usage for the applicable Itron Software that You commit to acquire from an Itron Sales Channel Partner.

"Itron" means Itron, Inc. or its applicable Affiliate(s).

"Itron Sales Channel Partner" means a distributor authorized by Itron to sell licenses to Itron Software.

"Itron Software" means the Itron-branded computer programs including Upgrades and applicable Documentation.



“License Term” means the period commencing on the Delivery Date and continuing until expiration or termination of the Entitlement, during which period You have the right to use the applicable Itron Software.

“Software Warranty Period” means a period of 90 days from the Delivery Date.

“Upgrades” means all updates, upgrades, bug fixes, error corrections, enhancements, and other modifications to the Itron Software.

“User” means the individuals (including contractors or employees) permitted to access and use the Itron Software on Your behalf as part of Your Entitlement.

“You” or **“Your”** means the individual or legal entity purchasing a license to the Itron Software.



ADDENDUM

TO THE ITRON SALES CHANNEL PARTNER AGREEMENT

Itron End User Service Agreement - Maintenance Services

This Addendum sets forth the End User Service Agreement (“**EUSA**”) for Activated Maintenance Services purchased by Sales Channel Partner for resale to Customers in the Territory under the Agreement. Itron may change the EUSA or any of its components in accordance with its terms and conditions. A current version of the EUSA is available for download on the Itron partner center. Sales Channel Partner shall require each Customer to agree to the EUSA prior any access or use of any Activated Maintenance Services by that Customer.

This Itron End User Service Agreement (“**EUSA**”) between You and Itron governs Your access and use of Itron Maintenance Services purchased through an Itron Sales Channel Partner. Definitions of capitalized terms are in Section 17 (Definitions) of this EUSA.

You agree to be bound by the terms of this EUSA through (a) Your access or use of Maintenance Services; or (b) Your express agreement to this EUSA.

If You do not have authority to enter into this EUSA or You do not agree with its terms, do not use the Maintenance Services. You may request a refund for the Maintenance Services from the Itron Sales Channel Partner within 30 days of Your initial purchase provided You discontinue all access and use of the Maintenance Services. This paragraph does not apply where You have expressly agreed to end user service terms with Itron as part of a transaction with an Itron Sales Channel Partner.

1 Sales Channel Partner Support.

Your Itron Sales Channel Partner may be responsible for providing You with First Tier Support with respect to some or all the Covered Products. If so, notwithstanding else to the contrary in this EUSA, Itron is not responsible for providing Global Support Services for the applicable Covered Products, You must request and obtain First Tier Support directly from Your Itron Sales Channel Partner, and Itron reserves the right to decline any request for Global Support Services and redirect You to Your Itron Sales Channel Partner for First Tier Support if You fail to do so. It is Your responsibility to consult with Your Itron Sales Channel Partner and to understand the Covered Products for which Your Itron Sales Channel Partner is responsible for providing You with First Tier Support.

2 Primary Services Contacts.

2.1 Designation by You.

You shall designate a minimum of one and not more than two Primary Services Contacts for each Covered Product line, to serve as administrative liaisons for all matters pertaining to Maintenance Services for such Covered Product line and shall provide their contact information to Itron's customer account representative. Subject to Section 1 (Sales Channel Partner Support), Primary Services Contacts shall promptly report problems with Covered Products by submitting a Service Request for entry into Itron's support tracking system. Although it is Your sole right to choose its Primary Services Contacts, You acknowledge and agree that each Primary Services Contact must have the appropriate technical skills and training for the position. If You replace a Primary Services Contact, You will provide updated contact information to Itron's customer account representative, and the new Primary Services Contact will be properly trained prior to interfacing with Itron support personnel.



2.2 Training of Primary Services Contacts.

Before a Primary Services Contact interfaces with Itron support personnel, he/she will attend training sessions offered by Itron, an Itron-approved trainer, or Your training program approved by Itron to ensure that the Primary Services Contact is (i) knowledgeable about operation of the applicable Covered Products, and (ii) qualified to perform problem determination and remedial functions with respect to such Covered Products. You may perform Itron-approved training or engage Itron through Your Itron Sales Channel Partner to perform training of Primary Services Contacts. Itron will make training sessions available by remote video conference or training will be made available at a location or in a manner mutually agreed by the parties. You shall be responsible for all Your associated travel-related expenses. The Primary Services Contacts must have the skills and capabilities to train Your other personnel on Covered Products. Itron may update Covered Product training from time to time and, upon receiving notice of such updates from Itron, You shall promptly provide such training to Your Primary Services Contacts in accordance with this Section.

3 Global Support Services & Service Requests.

3.1 Global Support Services.

Subject to Section 1 (Sales Channel Partner Support), Itron will make support representatives available to provide Global Support Services during its then current normal business hours as set forth in the Product Contact Information Sheet included within the Client Services Guidelines Document. Global Support Services include troubleshooting & problem diagnosis relating to Covered Products, release or system management consulting, and recommendations for fully utilizing Covered Products. You acknowledge and agree that Global Support Services are not intended as a substitute for training of Your personnel, field support, or Itron professional services. Nor will You use Global Support Services in lieu of having qualified and trained support personnel of its own.

3.2 Service Request Process.

You shall submit Service Requests in the manner required by the Client Services Guidelines Documents and Service Levels. You may submit Service Requests on a 24/7/365 basis and Itron will respond to such Service Requests in accordance with the Service Levels. When You submit a Service Request, You will reasonably assess its urgency according to the appropriate Severity Level in Attachment A-1 to this EUSA. Itron will designate the initial Severity Level and the parties will resolve any perceived gap regarding the Severity Level designation as soon as is reasonably practical.

3.3 Field Support.

At Your request made through Your Itron Sales Channel Partner, and Your Itron Sales Channel Partner's approval, Itron may dispatch support personnel to Your location to provide onsite Global Support Services to address issues with Covered Products that cannot be resolved remotely.

4 Firmware and Software Maintenance.

4.1 Scope.

Firmware Maintenance Services covers its associated Covered Firmware embedded within the applicable communicating device. Software Maintenance Services covers its associated Covered Software sold as any of the following: (i) on premise software license, and (ii) Software-as-a-Service or SaaS Hybrid subscription for software residing in the Itron cloud.



4.2 Modifications.

Itron may modify or replace Covered Firmware and Covered Software so long as such modifications or replacements do not eliminate key, documented functionality provided by the most current System Release.

4.3 Fixes.

Itron shall provide Fixes in accordance with the Service Levels. Itron's obligations with respect to Service Levels are contingent upon You (i) devoting the same level of effort to resolving the Error as is required of Itron, (ii) responding to requests made by Itron within the applicable Response Time, (iii) assigning only qualified personnel to help Itron address the Error, and (iv) providing all information, access, and assistance reasonably requested by Itron to address the Error.

4.4 Improvements.

Itron shall provide Improvements, if any, at no additional charge to You if such Improvements are made within the current product specifications and are made available to Itron customers generally at no charge. Improvements released as new add-on modules/features and not part of the products original specifications, may require additional licensing and support fees and will be made available at Your Sales Channel Partner's then current rates.

4.5 Software Releases.

4.5.1 Release Numbering Convention.

Upgrades, Fixes and/or Improvements are made available to customers through periodic Software Releases. For informational purposes, Itron's current practice (which may be changed by product, at any time in Itron's discretion) is to provide Software Releases using the numbering guideline, "X.X.X.X".

4.5.2

The first place, "X.X.X.X", in Itron's numbering convention refers to a "Major Release", or "System Release", which consists of a new version of Covered Software. A Major Release may include architectural changes, Improvements, Fixes and / or interfaces to new functional modules or platforms. A Major release may require infrastructure or component updates which affect compatibility with previous release versions.

4.5.3

The second place, "X.X.X.X", in Itron's numbering convention refers to a "Minor Release, which is an update to a current Major Release. A Minor Release may include consolidation of previous Service Packs, Improvements, Fixes, platform / 3rd party updates. Minor Release are provided to Itron customers on a regularly scheduled basis.

4.5.4

The third place "X.X.X.X", in Itron's numbering convention refers to a "Service Pack, which is an update to specific modules found in a current Major Release. A Service Pack may include Fixes to Severity 1 - Severity 4 issues for a specified Minor or Major Release.

4.5.5

The fourth place, "X.X.X.X", in Itron's numbering convention refers to a "Hot Fix," which is an unscheduled release provided to one or more customers as a short-term, temporary fix to a critical Severity Level 1 Error. While not utilized by all Itron software product lines, Hot Fix releases are not



made available to Itron customers generally but may be included in the next scheduled Minor Release or Service Pack for general release.

4.6 Support for Covered Firmware.

Itron will only provide Maintenance Services for Covered Firmware if You test and install the latest (i) Covered Firmware Fix within twelve (12) months of being made available by Itron, and (ii) Covered Firmware Improvement within twenty-four (24) months of being made available by Itron.

4.7 Support for Licensed Itron Enterprise Edition and OpenWay Software.

Itron will only provide Maintenance Services for on licensed Itron Enterprise Edition and OpenWay software if You test and install the latest (i) Service Pack Releases associated with the Major or Minor Release in use by You within twelve (12) months of such Service Pack Releases being made available by Itron, and (iii) Major or Minor Releases within twenty-four (24) months to thirty-six (36) months of such Software Release being made available by Itron.

4.8 Support for Other Licensed Covered Software.

Itron will only provide Maintenance Services for other licensed Covered Software if You test and install the latest Major, Minor and Service Pack Releases within twelve (12) months of such Software Releases being made available by Itron.

4.9 Support for Service Offerings.

Itron will only provide Maintenance Services for Covered Software sold as part of a Service Offering if You test each Release as installed by Itron either in Your production environment, or in Your funded non-production environment, prior to Your full production use of the Release.

4.10 Support for Unsupported Itron Software and Firmware.

At Your request made through Your Itron Sales Channel Partner, and subject to Your Itron Sales Channel Partner's approval, Itron may elect to provide Maintenance Services for an unsupported Release at Your Sales Channel Partner's then-current rates.

4.11 Mandatory Revisions.

You must install all Mandatory Revisions. "Mandatory Revisions" are licensed Covered Software Releases intended to address an Error, a material security breach, or a third-party infringement claim or suit of any kind. ITRON DISCLAIMS ALL LIABILITY RELATED TO OR ARISING OUT OF YOUR FAILURE TO INSTALL A MANDATORY REVISION IN A TIMELY FASHION.

4.12 Installation Services for Licensed Software Releases.

Maintenance Services for licensed Covered Software and Covered Firmware includes the following Release installation services: limited, remote consulting support, during standard business hours, for licensed Covered Software and Covered Firmware on Itron-approved server configurations for one production server and one non-production server (test, training, or back-up – for example) owned/operated by You. At Your request made through Your Itron Sales Channel Partner, and subject to Your Sales Channel Partner's approval, Itron may provide licensed Software Release installation services for System Releases or Service Packs on current certified production servers, additional production servers or nonproduction servers, at Your Itron's Sales Channel Partner's then-current rates. Itron will install Releases to Covered Software sold as a part of a Service Offering in accordance with the Itron End User Service Agreement for Service Offerings.



4.13 Restoring Software or Firmware to Maintenance Services.

If You decline or discontinue Maintenance Services for licensed Covered Software or Covered Firmware through Your Itron Sales Channel Partner and thereafter wish to resume such Maintenance Services, You will notify Your Itron Sales Channel Partner in writing of Your request and, subject to Your Sales Channel Partner's approval, pay Your Itron Sales Channel Partner's applicable fees.

4.14 Exclusions.

Itron shall have no obligation to provide Maintenance Services for, or liability to You for Covered Software adversely affected by (i) use of Covered Firmware or Covered Software by anyone other than Itron in combination with software, equipment, or communications networks not referenced in the Documentation as being compatible with the Covered Firmware or Covered Software; (ii) modification or recompiling of Covered Firmware or Covered Software or Covered Software installation instructions / installation scripts or database schema scripts, or improper installation of a Release, by anyone other than Itron, (iii) failure to perform customer responsibilities describe in this EUSA, (iv) use of an unsupported version of Covered Firmware or Covered Software by anyone other than Itron; (v) Your failure to implement a Mandatory Revision; (vi) maintenance and/or support of Covered Firmware or Covered Products other than by Itron; or (vii) viruses introduced through no fault of Itron.

4.15 Documentation and Backup.

Itron will make an electronic copy of the Documentation available to You at no additional charge via physical media or download access. Itron will also maintain a copy of its most recent supported version of executable Covered Firmware and licensed Covered Software to be made available to You or installed by Itron as necessary in the event of corrupted or inoperative Covered Firmware or licensed Covered Software. Said copy of executable Covered Firmware or licensed Covered Software or Third- Party software does not relieve You of its responsibility to backup and manage its Covered Firmware or licensed software installation as part of ongoing system operation.

4.16 Your Responsibilities.

The provision of Maintenance Services for Covered Firmware or Covered Software by Itron assumes that You will facilitate such services as follows:

4.16.1 Service Requests.

You will support Itron investigation and restoration efforts as defined in the Service Level table and will act upon / implement support solutions and workarounds recommended by Itron in a timely fashion. When escalating a Service Request with Itron, Your Primary Service Contact shall collect and provide all data logs, findings, analysis, and any relevant forensic information pertaining to the issue as outlined in Client Services Guideline Documents.

4.16.2 Data Review.

If Itron determines that it is necessary to evaluate Your data to reproduce error conditions not reproducible with Itron's standard test data sets, You will provide Itron with reasonable access to such data. Itron shall not be liable for any delay or failure to resolve the problem if access to Your data is denied to Itron.

4.16.3 Installation and Upgrades.

You will engage Itron Global Support Services or their Itron account team for any Covered Firmware or licensed Covered Software installations and upgrades which require support beyond that provided herein at the current billable services rate.



4.16.4 Remote Access.

You are responsible for supporting necessary remote access to Covered Firmware or licensed Covered Software by Itron support personnel assigned to provide Maintenance Services for purposes of remote diagnosis and troubleshooting of Covered Firmware or licensed Covered Software. Itron shall not be liable for any delay or failure to resolve a problem if remote access to Covered Firmware or licensed Covered Software is denied to Itron.

4.16.5 System Configuration, Operation and Maintenance.

You are responsible for the configuration, operation, and maintenance of equipment, system peripherals, operating system, and data communications environment associated with licensed Covered Software. These activities include but are not limited to checking audit logs, clearing discovered exceptions, and performing daily, weekly, and monthly operational tasks and systems responsibilities. You are responsible for any change made to Your software system, operating system, database or network configuration or any change to installation procedures, scripts, or any other provisions that materially affect the usability or operation of licensed Covered Software. You will consult with Itron prior to making any material changes that may affect the installation or operation of licensed Covered Software.

4.16.6 Network Administration.

You are responsible to monitor and maintain, repair, replace and upgrade its local, and wide area network components (if any)—including network servers, network clients, network hubs, routers, modems, and other software components necessary for efficient and reliable network operations associated with Covered Firmware or licensed Covered Software—to ensure continued conformance with the applicable published Itron specifications. In addition, You are responsible to administer related host names, Internet Protocol addresses, network interfaces, access, security, communications, and equipment and software version control.

4.16.7 Database Administration.

You are responsible to administer the agreed upon database(s) associated with licensed Covered Software, including hardware and software components, in accordance with the Documentation, which administration shall include, monitoring the database server, backing up electrical power sources, and configuring and administering of database schema, application interfaces, networking operating system, communications, and file transfer software. You are responsible to maintain database files (e.g., truncate, cleanup, and delete files consistent with industry standard practices) and perform regular data backup and data archiving.

5 Itron Equipment Maintenance

5.1 Preventive and Corrective Maintenance.

Upon receipt of an item of Covered Equipment, Itron shall (i) perform preventative Maintenance Services necessary to maintain the Covered Equipment in Operating Condition, and (ii) diagnose and correct any failure in the Covered Equipment as necessary to meet Operating Condition, excluding minor cosmetic deficiencies such as blemishes, dents or scratches.

5.2 Maintenance Procedures.

Subject to Section 1 (Sales Channel Partner Support), You will initiate a request for Maintenance Services for Covered Equipment by delivering the Covered Equipment to the applicable Itron Certified Repair Center identified on the Itron Equipment Repair Table. Return of Covered Equipment shall be at Your expense and in accordance with Itron's then-current Return Material Authorization ("RMA")



procedures. Upon receipt of Covered Equipment (with the required information) under Itron's RMA procedures, Itron shall assess the item to determine (a) whether it is in fact Covered Equipment and (b) whether the maintenance requested is included within the Maintenance Services ordered by You and not otherwise excluded from coverage. If the returned equipment is determined to be Covered Equipment and the maintenance requested is included in the Maintenance Services ordered by You, Itron shall provide the applicable Maintenance Services and return the item of Covered Equipment to You at Itron's expense within the applicable turnaround time identified on the Itron Equipment Repair Table. If Itron determines that returned equipment is not Covered Equipment or is excluded from the Maintenance Services ordered by You, then Itron will proceed in accordance with the estimation fees section below.

5.3 Exclusions.

Covered Equipment Maintenance Services do not include repairs related to: (i) damage due to accident, abuse, misuse, inadequate maintenance, problems caused by electrical power surges or acts of God outside of the tolerances set forth in the applicable published Itron specifications; (ii) service or repair processes (including installation or de-installation of equipment, parts, or firmware/software) not performed or authorized by Itron; (iii) use of parts, configurations or repair depots not certified or authorized by Itron; or (iv) Your failure to perform material Your responsibilities in accordance with this EUSA, including caring for Covered Equipment in accordance with applicable Documentation.

5.4 Estimation Fees.

Itron will provide You with a price quote for the estimated cost (including current inspection fees), including labor, materials, and shipping, for any repairs to equipment that are requested, which Itron determines are excluded from or not included within the Maintenance Services purchased by You from Your Itron Sales Channel Partner. If You elect not to proceed with the requested repair, Itron will return the item of equipment at Your expense and Itron may charge You its then-current inspection fee. You will pay Itron any amounts invoiced under this Section within thirty (30) days of the date of invoice.

5.5 Restoring Equipment to Maintenance Services.

If You decline or discontinue Maintenance Services for Covered Equipment through Your Itron Sales Channel Partner and thereafter wish to resume such Maintenance Services, You will notify Your Itron Sales Channel Partner in writing of Your request. Prior to restoring any equipment as Covered Equipment, Your Itron Sales Channel Partner may require that the applicable equipment be returned by You to a repair facility designated by Itron in accordance with Itron's then-current RMA process and procedure and inspected and/or repaired by Itron at Your Itron Sales Channel Partner's then-current rates or the rates set forth in a valid price quote.

5.6 Equipment Responsibilities.

Itron shall make available, and You shall obtain, a copy of the Documentation for Covered Equipment and You will be responsible to perform preventive maintenance for each such item in accordance with such Documentation. You shall also keep accurate records of Covered Equipment serial numbers and locations to assist Itron with performing Maintenance Services.

6 End of Support.

Itron may discontinue Maintenance Services for any Covered Equipment, Covered Firmware or Covered Software by giving You or Your Itron Sales Channel Partner written notice of such discontinuance no less than one hundred eighty (180) days before the end of support date. The end of support date for a Third Party Covered Product shall be the date specified by the applicable third-party service provider, which date will be promptly communicated by Itron to You or Your Itron Sales Channel Partner following the date of



receipt by Itron. At Your request made through Your Itron Sales Channel Partner, and subject to Your Itron Sales Channel Partner's approval, Itron may elect to provide custom support for products for which Maintenance Services have been discontinued at Your Itron Sales Channel Partner's then-current rates. Unless otherwise agreed by the parties in accordance with the foregoing sentence, Itron shall have no obligation to provide Maintenance Services with respect to Covered Products for which Itron has discontinued Maintenance Services.

7 Support for Third Party Products.

Subject to Section 1 (Sales Channel Partner Support), Itron shall provide first tier Global Support Services for Third Party Covered Products by handling all Your inquiries, attempting to identify the component involved in the problem and obtaining appropriate documentation of such inquiry or problem. In addition, Itron shall make commercially reasonable efforts to facilitate Your receipt of maintenance and support for such Third-Party Covered Products consistent with the applicable third-party maintenance terms. Notwithstanding anything else to the contrary, Itron's sole obligation under this EUSA with respect to Third Party Covered Products shall be as set forth in this Section.

8 Fees.

To the extent permitted by law, orders for Maintenance Services are non-cancellable. Fees for Your access and use of Maintenance Services are set out in Your purchase terms with Your Itron Sales Channel Partner.

9 Confidential Information and Use of Data.

9.1 Confidentiality.

Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know ("Permitted Recipients"). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EUSA, and (b) is liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information that: (i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete, or destroy all Confidential Information of Discloser and certify the same.

9.2 How We Use Data.

Itron will access, process, and use data in connection with Your use of Maintenance Services in accordance with applicable privacy and data protection laws.

9.3 Notice and Consent.

To the extent Your use of Maintenance Services requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer, and storage of their data through Your use of Maintenance Services.

10 Ownership.

Nothing in this EUSA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your Confidential Information and Itron retains ownership of its Confidential



Information, the Maintenance Services, and the Documentation. Itron may use any feedback You provide in connection with Your use of Maintenance Services as part of its business operations.

11 Indemnification.

11.1 Claims.

Itron will defend any third-party claim against You that Your valid use of Maintenance Services Your Entitlement infringes a third party's patent, copyright or registered trademark (the "IP Claim"). Itron will indemnify You against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that You: (a) promptly notify Itron in writing of the IP Claim; (b) fully cooperate with Itron in the defense of the IP Claim; and (c) grant Itron the right to exclusively control the defense and settlement of the IP Claim, and any subsequent appeal. Itron will have no obligation to reimburse You for attorney fees and costs incurred prior to Itron's receipt of notification of the IP Claim. You, at Your own expense, may retain Your own legal representation.

11.2 Additional Remedies.

If an IP Claim is made, or Itron determines that an IP Claim is likely to be made, Itron may either procure for You the right to continue using the Maintenance Services or replace or modify the Maintenance Services with functionality that is at least equivalent. Only if Itron determines that these alternatives are not reasonably available, Itron may terminate Your access to Maintenance Services granted under this EUSA upon written notice to You and will refund You a prorated portion of the fee You paid for the Maintenance Services for the remainder of the unexpired maintenance term.

11.3 Exclusions.

Itron has no obligation with respect to any IP Claim based on: (a) compliance with any designs, specifications, or requirements You provide or a third party provides on Your behalf; (b) Your modification of any Maintenance Services or modification by a third party; (c) the amount or duration of use made of Maintenance Services, revenue You earned, or services You offered; (d) combination, operation, or use of Maintenance Services with products, services software or business processes not provided by Itron; (e) Your failure to modify or replace any Maintenance Services as required by Itron; (f) any Maintenance Services provided on a no charge, beta or evaluation basis; (g) any Maintenance Services for Third Party Covered Products.

11.4 Exclusive Remedy.

This Section states Itron's entire obligation and Your exclusive remedy regarding any IP Claims against You.

12 Warranty, Qualifications and Disclaimer.

12.1 Warranty.

During the maintenance term, Itron warrants that it provides Maintenance Services with commercially reasonable skill and care and in accordance with the Documentation and this EUSA. Upon Your prompt written notification to Itron during the maintenance terms of Itron's breach of this [Section 12.1](#), Your sole and exclusive remedy (unless otherwise required by applicable law) is, at Itron's option, either (i) correction and reperformance of the nonconforming Maintenance Services, or (ii) a refund of the fees paid for the period in which the Maintenance Services did not comply.

12.2 Qualifications.

[Section 12.1](#) does not apply if the Maintenance Services: (a) has been altered, except by Itron or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or



negligence, or installation or use inconsistent with this EUSA or the Documentation; (c) is acquired on a no charge, beta or evaluation basis; (d) is not an Itron-branded Maintenance Services, (e) has not been purchased by You through an Itron Sales Channel Partner; (f) has been exposed to viruses or security vulnerabilities through no fault of Itron; or (g) are subject to any other exclusions set forth in this EUSA.

12.3 Disclaimer.

Except as expressly stated in Section 12.1, to the extent allowed by applicable law, Itron expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition, or other implied term as to merchantability, fitness for a particular purpose or noninfringement, or that the Maintenance Services will be secure, uninterrupted or error free.

13 Liability.

Neither party will be liable for indirect, incidental, exemplary, special, or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EUSA is limited to the fees received by Itron for the applicable Maintenance Services and attributable to the 12-month period immediately preceding the first event giving rise to such liability. This maximum aggregate limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages; it does not apply to Section 11 (Indemnity). Nothing in this EUSA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

14 Termination and Suspension.

14.1 Suspension.

Itron may immediately suspend the Maintenance Services if Your Itron Sales Channel Partner fails to pay applicable fees for such services.

14.2 Termination.

If a party materially breaches this EUSA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EUSA for cause. Upon termination of the EUSA, You must stop using the Maintenance Services and destroy any copies of any Itron Confidential Information within Your control. If this EUSA is terminated due to Itron's material breach, Itron will refund You or Your Itron Sales Channel Partner the portion of fees You have prepaid for the Usage Rights beyond the date of termination. . Upon Itron's termination of this EUSA for Your material breach, You will pay Itron or the Itron Sales Channel Partner any unpaid fees through to the end of the then-current maintenance term. If You continue to use or access any Maintenance Services after termination, Itron or the Itron Sales Channel Partner may invoice You, and You agree to pay, for such continued use.

15 Verification.

During the maintenance term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Maintenance Services sufficient to verify compliance with this EUSA ("Verification Records"). Upon reasonable advance notice, and no more than once per 12-month period, You will, within 30 days from Itron's notice, allow Itron and its auditors access to the Verification Records and any applicable books, systems (including Itron product(s) or other equipment), and accounts during Your normal business hours.



16 General Provisions.

16.1 Survival.

Sections 6, 8, 9, 10, 11, 12.3, 13, 14, 15, 16 and 17 of this EUSA and Your payment obligations with respect to Maintenance Services survive termination or expiration of this EUSA.

16.2 Third-Party Beneficiaries.

This EUSA does not grant any right or cause of action to any third party.

16.3 Assignment and Subcontracting.

Except as set out below, neither party may assign or novate this EUSA in whole or in part without the other party's express written consent. Itron may without written notice to You, assign or novate this EUSA in whole or in part to an Affiliate of Itron, or otherwise as part of a sale or transfer of any part of its business.

16.4 U.S. Government End Users.

The Maintenance Services and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation" pursuant to FAR 12.212 and DFARS 227.7202. All U.S. Government end users acquire the Maintenance Services and Documentation with only those rights set forth in this EUSA. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.

16.5 Itron Partner Transactions.

The terms of this EUSA apply to Your use of Maintenance Services and prevail over any inconsistent provisions in Your agreement with the Itron Sales Channel Partner.

16.6 Modifications to the EUSA.

Itron may change this EUSA or any of its components by providing an updated version of this EUSA to You or Your Itron Sales Channel Partner. Changes to the EUSA apply to any Maintenance Services purchased by You after the date the updated version of this EUSA is provided to You or Your Itron Sales Channel Partner.

16.7 Compliance with Laws.

Each party will comply with all laws and regulations applicable to their respective obligations under this EUSA. Itron may restrict the availability of the Itron Software in any particular location or modify or discontinue features to comply with applicable laws and regulations. If You use the Itron Software in a location with local laws requiring a designated entity to be responsible for collection of data about individual end users and transfer of data outside of that jurisdiction (e.g. Russia and China), You acknowledge that You are the entity responsible for complying with such laws.

16.8 Export.

Maintenance Services are subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export, or re-export any Maintenance Services in a way that would cause Itron to violate those laws. You also agree to obtain any required licenses or authorizations.

16.9 Governing Law and Venue.

This EUSA, and any disputes arising from it, will be governed exclusively by the applicable governing law below, based on Your primary place of business and without regard to conflicts of laws rules or the



United Nations Convention on the International Sale of Goods. The courts located in the applicable venue below will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the EUSA or its formation, interpretation, or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the below governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of Itron's intellectual property or proprietary rights.

Your Primary Place of Business	Governing Law	Jurisdiction and Venue
Any location not specified below	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas
Australia	Laws of the State of South Australia, Australia	State and Federal Courts of South Australia
Canada	Province of Ontario, Canada	Courts of the Province of Ontario
China	Laws of the People's Republic of China	Hong Kong International Arbitration Center
European Union	Laws of the EU Member State of Your primary place of business	Courts of the EU Member State of Your primary place of business
Europe (excluding the European Union), Middle East, Africa, Asia (excluding India, Malaysia, Singapore), Oceania (excluding Australia)	Laws of England	Courts of London
India	Laws of New Delhi, India	Courts of New Delhi, India
Malaysia	Laws of Selangor, Malaysia	Courts of Selangor, Malaysia
Singapore	Laws of Singapore	Courts of Singapore
United States, Latin America, or the Caribbean	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas

If You are a United States public sector agency or government institution located in the United States, the laws of the primary jurisdiction in which You are located will govern the EUSA and any disputes arising from it. For U.S. Federal Government customers, this EUSA will be controlled and construed under the laws of the United States of America.

16.10 Notices.

All notices required or permitted under this EUSA must be in writing. Notices sent between You and Itron will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices to



the You will be sent to the address provided to Itron by Your Itron Sales Channel Partner or by You. Notices to Itron must be sent to the attention of the Itron Legal Department 2111 North Molter Road, Liberty Lake, WA 99019.

16.11 Force Majeure.

Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.

16.12 No Waiver.

Failure by either party to enforce any right under this EUSA will not waive that right.

16.13 Severability.

If any portion of this EUSA is not enforceable, it will not affect any other terms.

16.14 Entire Agreement.

This EUSA is the complete agreement between the parties with respect to the subject matter of this EUSA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).

16.15 Translations.

Itron may provide local language translations of this EUSA in some locations. You agree that those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EUSA will prevail.

17 Definitions.

"Affiliate" means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

"Authorized Third Parties" means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Maintenance Services on Your behalf as part of Your Entitlement.

"Client Services Guidelines Documents" means the following documents as they may be updated by Itron from time to time: "Product Contact Information Sheet", "After Hours Support", "Itron Equipment Repair Center Locations", and "Working Effectively with Itron Global Services". Copies of the Client Services Guidelines Documents may be obtained by calling (877) 487-6602 or such other number or process provided by Itron to You.

"Confidential Information" means non-public proprietary information of the disclosing party ("Discloser") obtained by the receiving party ("Recipient") in connection with this EUSA, which is (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.

"Covered Equipment" means Itron-branded equipment for which You have purchased Maintenance Services through an Itron Sales Channel Partner.

"Covered Firmware" means Itron's network and application firmware embedded within a communicating device identified in an Order Document (e.g., network interface cards, meters,



endpoints, network equipment, etc.) for which You have purchased Maintenance Services through an Itron Sales Channel Partner.

“Covered Products” mean Covered Firmware, Covered Software, Covered Equipment and Third Party Covered Products.

“Covered Software” means Itron-branded software for which You have purchased Maintenance Services through an Itron Sales Channel Partner, either on a standalone basis or as part of a Service Offering.

“Documentation” means the technical specifications and usage materials officially published by Itron specifying the functionalities and capabilities of the applicable Covered Product.

“Error” means a material failure of Covered Firmware or Covered Software to comply with applicable published Documentation.

“First Tier Support” means the provision of direct support to You by Your Itron Sales Channel Partner to address questions or issues related to Covered Products. First Tier Support includes, but is not limited to, receipt of calls, problem and question intake, customer site visits, problem identification and diagnosis, efforts to create repeatable demonstrations of any issues, determining which problems require referral to Itron for in-depth analysis, distributing new Documentation made available by Itron, and taking any other actions appropriate or as reasonably requested by Itron to resolve all Your questions and problems.

“Fix” means a correction or workaround for an Error.

“Global Support Services” means those support services provided by Itron technical representatives via telephone, email, website or other means to assist Your Primary Service Contacts with questions or issues related to the operation of Covered Products.

“Improvement” means an update, modification, enhancement and/or extension to Covered Software functionality that is included in a Release.

“Itron” means Itron, Inc. or its applicable Affiliate(s).

“Itron Sales Channel Partner” means a distributor authorized by Itron to sell Maintenance Services.

“M&S Commencement Date” means the date upon and after which a Covered Product will be entitled to receive Maintenance Services, which will be as follows:

Covered Product	M&S Commencement Date
On premise Covered Software	First day of month following date Covered Software is made available to You
Covered Firmware	Date of shipment of the applicable communicating device
Covered Software provided as a Service Offering	The earlier of (1) validation of Service Offering implementation by Itron pursuant to the applicable Statement of Work, or (2) seven (7) days after completing Service Offering application system setup and You have been provided valid access credentials
Covered Equipment	End of Warranty Period



Covered Product	M&S Commencement Date
Third Party Covered Products	Per applicable third-party service provider terms and conditions

“Maintenance Services” means services provided by Itron under this EUSA.

“Operating Condition” means performance in accordance with applicable published Documentation.

“Primary Services Contacts” means Your primary support staff who provides internal support to Your personnel and who are the key interface to Itron for all Maintenance Services.

“Release” means a collection of Fixes and / or Improvements made available by Itron to You.

“Service Levels” means the defined level of impact and associated response time, effort level, and escalation path procedures and guidelines described in Attachment A-1 to this EUSA.

“Service Offering” means each software-as-a-service or managed service offering described in the Itron End User Service Agreement for Software-as-a-Service.

“Service Request” means an Itron tracked customer request for Global Support Services.

“Third Party Covered Products” means third-party equipment and third-party software identified for which You purchase Maintenance Services through an Itron Sales Channel Partner.

“You” means the individual or legal entity purchasing the Maintenance Services.



Attachment 1 to EUSA for Maintenance Services

– Software and Firmware Maintenance Service Levels –

Severity Level	Response Times	Effort Level and Restoration	Escalation
<p>Severity Level 1*</p> <p>Business Impact: Critical Impact / System Down. A Production System Error for which there is no work-around, which causes Covered Firmware or Covered Software Product or a critical business function / process of said product to be unavailable such that system operation cannot continue.</p> <p>Example: a) Billing cannot be completed, b) Major documented function not working, c) System hung or completely down</p>	<p>During regular business-hours Itron will begin the Service Request process during Your initial call.</p> <p>During after-hour periods, Itron will respond to a critical support voice messages within 15 minutes by a return call to You, to validate receipt of the critical support call and begin the Service Request process.</p> <p>Following the start of the Service Request process Itron will respond to Your Service Request within two (2) business hours with an investigation response.</p> <p>Itron will update You at three (3) hour intervals during each day the Service Request remains unresolved, or as otherwise agreed by the Parties.</p> <p>You will respond to an Itron inquiry or request within three (3) hours.</p>	<p>Itron will make diligent efforts on a 24x7 basis, or as otherwise agreed by the Parties, to:</p> <p>i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) provide a workaround which restores Covered Firmware or Covered Software and downgrades the Severity Level to S2, S3, S4.</p> <p>Your Support Staff must be available 24x7 to work cooperatively with Itron continuously until such time restoration is achieved.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p>After 30 minutes: Technical Customer Support Team Lead</p> <p>After 8 hours: Manager, Technical Client Services</p> <p>After 16 hours: Director, Global Support Services</p> <p>After 48 hours: Service Request. Vice President, Services and Delivery</p> <p>After 72 hours: President, Itron</p>



Severity Level	Response Times	Effort Level and Restoration	Escalation
<p>Severity Level 2*</p> <p>Business Impact: Major impact, degraded Operation. An Error other than a Severity Level 1 Error, for which there is no work-around, which degrades or limits operation of major system functions causing Covered Firmware or Covered Software to miss required business interface or deadlines. Covered Firmware or Covered Software remains available for operation but in a highly restricted fashion.</p> <p>Example: a) Billing cannot be completed on time, b) Major function is operating outside documented timing / term, c) Covered Firmware or Covered Software operating slow, missing data, data delivery, daily mission.</p>	<p>During regular business-hours Itron will respond to You regarding Service Request within one (1) business day.</p> <p>While Service Request remains unresolved, Itron will update You and the Service Request at least every other business day, or as otherwise agreed by the parties.</p> <p>You will respond to an Itron inquiry or request within one (1) business day.</p>	<p>Itron will make diligent efforts during normal business hours to:</p> <p>i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) a workaround which restores Covered Firmware or Covered Software and downgrade the Severity Level to S3, S4.</p>	<p>An unresolved Service Request shall be escalated to Itron management as follows:</p> <p>After 1 hours: Technical Customer Support Team Lead</p> <p>After 8 hours: Manager, Technical Client Services</p> <p>After 24 hours: Director, Global Support Services</p> <p>After 30 Days: Vice President, Services and Delivery</p>



Severity Level	Response Times	Effort Level and Restoration	Escalation
Severity Level 3** Business Impact: Minor Business Impact, compromised operations. An Error other than a Severity Level 1 or Severity Level 2 Error that has moderate impact on use of or access, with low business impact, but not preventing You from performing daily activities. Example: The Service Request affects use by Covered Firmware or Covered Software users, allowing Your functions to continue to meet daily business needs.	During regular business-hours Itron will respond to You regarding Service Request within two (2) business days. While Service Request remains unresolved, Itron will update the Service Request weekly, or as otherwise agreed by the parties. You will respond to an Itron inquiry or request within two (2) business days.	Itron will work during normal business hours to: i) restore Covered Firmware or Covered Software with a change to eliminate root cause, ii) a workaround which restores Covered Firmware or Covered Software and downgrades the Severity Level to S4.	
Severity Level 4 Business Impact: Standard Operations intact. A low or no-impact Error other than a Severity Level 1, Severity Level 2 or Severity Level 3 Error, or a request for enhancement / new functionality Example: Generally, a cosmetic Error or an Error which does not degrade Your use of the product or system.	During regular business-hours Itron will respond to You regarding Service Request within three (3) business days.	Itron GSS Management Team will make commercially reasonable efforts during normal business hours to understand the Service Request and provide applicable recommendations as to when a Fix may be schedule in a future release, or how to proceed with a formal enhancement request to Itron's product and delivery teams.	

* Severity Level 1 and Severity Level 2 must be reported by phone to insure they are addressed under the appropriate severity level response process. Service Requests entered by email or Web access are generally addressed as a Severity Level 3.

** Service Request opened on Non-production servers / environments are entered as a Severity Level 3.





ADDENDUM TO THE ITRON SALES CHANNEL PARTNER AGREEMENT

Itron End User Service Agreement - Software-as-a-Service

This Addendum sets forth the EUSA for Activated Service Offerings purchased by Sales Channel Partner for resale to Customers in the Territory under the Agreement. Itron may change the EUSA or any of its components in accordance with its terms and conditions. A current version of the EUSA is available for download on the Itron partner center. Sales Channel Partner shall require each Customer to agree to the EUSA prior any access or use of any Activated Service Offering by that Customer.

This Itron End User Service Agreement (“**EUSA**”) between You and Itron governs Your access and use of an Itron Service Offering purchased through an Itron Sales Channel Partner. Definitions of capitalized terms are in Section 26 (Definitions) of the General SaaS Terms and Conditions of this EUSA.

You agree to be bound by the terms of this EUSA through (a) Your access or use of a Service Offering; or (b) Your express agreement to this EUSA.

If You do not have authority to enter into this EUSA or You do not agree with its terms, do not use the Service Offering. You may request a refund for the Service Offering from the Itron Sales Channel Partner within 30 days of Your initial purchase provided You discontinue all access and use of the Service Offering. This paragraph does not apply where You have expressly agreed to end user service terms with Itron as part of a transaction with an Itron Sales Channel Partner.

General SaaS Terms and Conditions

1 Applicable Terms and Conditions.

This EUSA consists of theses General SaaS Terms and Conditions, which generally applies to all Service Offerings, and any attached Special Terms and Conditions, which apply to specific Service Offerings. Unless otherwise provided, references to this EUSA shall be deemed to encompass these General SaaS Terms and Conditions and any attached Special Terms and Conditions.

2 Order of Precedence.

In the event of any inconsistencies, ambiguities or conflicts between these General SaaS Terms and Conditions and the Special Terms and Conditions, the Special Terms and Conditions shall prevail, but only with respect to the applicable Service Offering.

3 Access Rights and Restrictions.

3.1 Access Rights.

SaaS is only available for Itron Software identified in the table set forth in this Section 3.1 below for which an Itron Sales Channel Partner has purchased a Service Offering for You and paid all applicable fees. Subject to Your compliance with this EUSA and payment of all applicable fees by the Itron Sales Channel Partner, Itron hereby grants You a non-exclusive, non-transferable, non-assignable, limited right to access and use the Service Offering for Your direct benefit during the Subscription Term as set out in Your Entitlement and this EUSA (collectively, the “Usage Rights”).

Itron Software Eligible to Receive SaaS	
ACE VISION	MV-90 xi
Action Manager	MV-PBS



Itron Software Eligible to Receive SaaS	
ChoiceConnect Fixed Network	MV-WEB
Distributed Intelligence (Riva system)	OpenWay Collection Engine (CE)
Distributed Intelligence (GenX system)	OpenWay Collection Manager (CM)
EMMSYS	Operations Optimizer – AMI Operations
Everblu FN (Fixed Network)	Operations Optimizer – Grid Operations
FCS	Operations Optimizer – Network Operations
FDM Tools	Operations Optimizer – Revenue Assurance
FDM Workorders	Operations Optimizer – QuickStart (RA/AMI Ops)
Gas and Water Analytics	Performance Manager
Gridscape	Saturne
HAN Communications Manager	Streetlight Vision
IntelliSOURCE Express	Temetra
Itron Enterprise Edition	TMS
Itron Mobile	UIQ: Advanced Metering Manager, Meter Plugin Configurator, Control Platform, Outage Detection and SensorIQ
Mlogonline	

3.2 Use by Third Parties.

You may permit Authorized Third Parties to exercise Your Usage Rights on Your behalf, provided that You are responsible for (a) ensuring that such Authorized Third Parties comply with this EUSA, and (b) any breach of this EUSA by such Authorized Third Party.

3.3 Restrictions on Use.

You may not: (a) modify, translate or create derivative works of any Service Offering or related Documentation; (b) copy, reproduce, distribute, republish, download, display, post or transmit any portion of a Service Offering or related Documentation in any form or by any means; (c) sell, assign, transfer, lease or sublicense any Service Offering; (d) allow any third party, other than Authorized Third Parties, to access any Service Offering or related Documentation without Itron's prior written consent; (e) use any Service Offering on a "service bureau" or "timesharing" or subscription basis to provide services to third parties; (f) reverse engineer, disassemble, decrypt, extract or otherwise reduce any Service Offering to a human perceivable form or otherwise attempt to determine the source code or algorithms of any Service Offering (except to the extent the foregoing restriction is expressly prohibited by applicable law); (g) infringe any of Itron's or its providers' intellectual property rights; (h) publicly publish the results of any benchmark tests run on any Service Offering; (i) use any Service Offering or related Documentation to engage in any fraudulent, illegal or unauthorized act; (j) introduce into or transmit through any Service Offering any material containing software viruses, worms, trap doors, back doors, Trojan horses or other harmful or malicious computer code, files, scripts, agents or programs; (k) remove, alter or obscure any titles, product logo or brand name, trademarks, copyright notices, proprietary notices or other indications of Itron's or its providers' intellectual property rights, whether such notice or indications are affixed on, contained in or otherwise connected to a Service Offering; (l) attempt to gain unauthorized access to a Service Offering or Itron's or its providers' systems or networks; (m) merge any Service Offering with any other product or service without Itron's prior written consent and the payment of any additional fees; or (n) access or use any Service Offering or related Documentation to build or support, and/or assist a third-party in building or supporting, products or services competitive to Itron or its providers.



Content Restrictions.

You may not distribute, download, or place on Itron's or its providers' website or Server, or use with any Service Offering, any content that: (a) You know or have reason to believe infringes the intellectual property rights of any third party or violates any rights of publicity or privacy; (b) violates any applicable law, statute, ordinance; (c) is defamatory, trade libelous, unlawfully threatening or unlawfully harassing; or (d) is obscene, pornographic or indecent (items (a) – (d) are collectively referred to as "Prohibited Content"). Itron reserves the right to remove any Prohibited Content from the Server without prior notice to You. You will indemnify, defend and hold Itron and its providers harmless for any claims, liabilities, losses, causes of action, damages, settlements, and costs and expenses (including, without limitation attorneys' fees and costs) arising from any third-party claims related to or generated by any Prohibited Content distributed, downloaded, or placed on any Itron or its providers' website or Server or used with any Service Offering by You.

3.4 Evolving Itron Technology.

Itron may: (a) enhance or refine a Service Offering, although in doing so, Itron will not materially reduce the core functionality of that Service Offering, except as contemplated in this Section; and (b) perform scheduled maintenance of the infrastructure and software used to provide a Service Offering, during which time You may experience some disruption to that Service Offering. Whenever reasonably practicable, Itron will provide You with advance notice of such maintenance. You acknowledge that, from time to time, Itron may need to perform emergency maintenance without providing You advance notice, during which time Itron may temporarily suspend Your access to, and use of, the Service Offering.

Itron may end the life of a Service Offering, including component functionality ("EOL"), by providing written notice to You or Your Itron Sales Channel Partner. If Your Itron Sales Channel Partner prepaid a fee for Your use of the Service Offering that becomes EOL before the expiration of Your then-current Subscription Term, Itron will use commercially reasonable efforts to transition You to a substantially similar Service Offering. If Itron does not have substantially similar Service Offering, then Itron will credit You or Your Itron Sales Channel Partner any unused portion of the prepaid fee for the Service Offering that has been declared EOL ("EOL Credit"). The EOL Credit will be calculated from the last date the applicable Service Offering is available to the last date of the applicable Subscription Term. Such credit can be applied towards the future purchase of Itron products or services.

3.5 Use with Third-Party Products.

If You use a Service Offering together with third-party products, such use is at Your risk. You are responsible for complying with any third-party provider terms, including its privacy policy. Itron does not provide support or guarantee ongoing integration support for products that are not a native part of the Service Offering.

4 Monthly Application Availability Service Level.

4.1 Service Level.

Provided Itron Sales Channel Partner has paid all applicable fees, SaaS Application Availability with respect to each production environment Service Offering will be at least 99.5%, measured and reported monthly beginning in the first full calendar month following the respective Service Offering Commencement Date ("Monthly SaaS Application Availability Service Level"). The Monthly SaaS Application Availability Service Level will be measured and calculated separately for each Service Offering. Itron records and data will be the sole basis for all SaaS Application Availability Service Level measurements and calculations.



4.2 Service Level Credits.

In addition to any warranty remedies provided under Section 21 (Warranty, Qualifications, and Disclaimer) of these General SaaS Terms and Conditions, as Your sole and exclusive remedy for Itron's failure to meet the foregoing Monthly SaaS Application Availability Service Level, subject to the service level exclusions in Section 5 (Service Level Exclusions) of these General SaaS Terms and Conditions, You will be entitled to credits as follows:

SaaS Application Availability (production environments only)	
Monthly SaaS Application Availability performance	Credit (% of monthly Subscription Fee paid by Sales Channel Partner to Itron on behalf of You for applicable Service Offering)
≥99.0% and <99.5%	1%
≥98.0% and <99.0%	2%
≥96.5% and <98.0%	5%
≥95.0% and <96.5%	6%
<95.0%	15%

4.3 Service Level Report.

Upon Your request, Itron will deliver a monthly service level report to You that identifies daily performance and monthly average with respect to the Monthly SaaS Application Availability Service Level. If Itron does not meet the Monthly SaaS Application Availability Service Level, the report will give the reason such service level was not achieved and describe the corrective actions taken. You must request any credits from Your Itron Sales Channel Partner, who shall provide any credits. Upon validation by Itron, Itron will provide any such requested credits to Your Itron Sales Channel Partner to be passed along to You.

5 Service Level Exclusions.

Itron shall not be liable for failing to meet any service level commitment set forth in this EUSA (including any Special Terms and Conditions) to the extent such failure is attributable to any one or more of the following: (a) planned maintenance or scheduled upgrades; (b) an event designated by local, state or federal government authorities as a disaster triggering a disaster recovery and for a twenty-four (24) hour period after the resumption of service following such an event to allow the system to return to normal operating ranges; (c) suspension or restriction of service under Section 23.1 (Suspension) of these General SaaS Terms and Conditions; and (d) conditions beyond Itron's reasonable control, including but not limited to (i) failure of any backhaul between the Service Offering and the Endpoints; (iii) failures in external Internet or VPN configurations not managed by Itron; (iv) a force majeure event; (v) false reports of unavailability as a result of outages or errors of any Itron measurement system; (vi) an act or omission of Your or any third party (other than Itron's contractors, subcontractors or suppliers), including security incidents caused by such act or omission; (vii) incident investigation or computer failures that could not reasonably have been prevented by Itron; (viii) failures of third-party equipment, hardware, software, or services not provided by Itron; (ix) Your delay in performing tasks designated as Your responsibility in this EUSA; or (x) any



warranty qualification set forth in Section 21 (Warranty, Qualifications and Disclaimer) of these General SaaS Terms and Conditions.

6 Sizing of Software-as-a-Service.

Itron will size Service Offerings, Servers, and systems for Your specific deployment. System sizing depends upon the Service Offering and types of devices and sensors and may be a factor in determining Subscription Fees. Sizing criteria may include number of system endpoints, number of network devices, residential meter configuration, commercial and industrial meter configuration, desired data collection intervals, storage duration for historical data, and the number of concurrent and total users of the application. Any sizing changes during a Subscription Term will require Itron's written consent and may result in a change in subscription fees.

7 Application Upgrade and Fixes.

Itron typically releases application upgrades once every two years, if available, containing new features and functions to the latest general release. Application hot fixes will be performed as needed, at Itron's sole discretion.

8 Conditions on Use of Service.

You will use the Service Offerings only in accordance with Itron user guides, this EUSA, and laws and government regulations. The rights of any User to access and use the Service Offerings cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized User), and You shall make every reasonable effort to prevent unauthorized third parties from accessing the Service Offerings.

9 Incident Management.

Itron will provide You support and incident and problem management services, which include responding to alerts, tracking the issue, troubleshooting the problem and escalating to Itron subject matter experts or third-party providers, in accordance with the Itron End User Service Agreement for Maintenance Services.

10 Your Technical Responsibilities.

You are responsible for selecting, acquiring, securing, and maintaining all equipment and ancillary services needed to connect to, access, or otherwise use and maintain compatibility with the Service Offerings, at Your expense.

11 Protecting Account Access.

You will keep all account information up to date, use reasonable means to protect Your account information, passwords, and other login credentials, and promptly notify Itron of any known or suspected unauthorized use of or access to Your account.

12 Planned Maintenance.

Planned maintenance, whenever reasonably practicable, will be performed during off-business hours between 6:00 p.m. to 12:00 a.m. Your local time, with as little disruption to Your use of the Service Offerings as possible. Unplanned maintenance, whenever reasonably practicable, shall also be performed during off-business hours between 6:00 p.m. and 12:00 a.m., Your local time.

13 Unplanned Maintenance.

Itron will provide You with notice of unplanned maintenance as soon as reasonably practical. Itron will minimize Service Offering disruptions to the extent reasonably practical.



14 Business Continuity.

Itron has architected and operates a high availability and scalable infrastructure to facilitate virtualized customer environments with various fault tolerant components. Fault tolerance and failover methodologies allow Itron to maximize system availability and confidently uphold the Monthly SaaS Application Availability Service Level and Monthly File Delivery Percentage Service Level. Itron will conduct daily backups of back-office application configuration files and associated data. These backups are for operational purposes only and are not a disaster recovery solution or a solution to be used by You for testing or analysis purposes. Itron will periodically test the restore capability of its business continuity solution. System and database backups are performed via a schedule to provide for a full weekly backup and daily differential backups. System backups and snapshots are also taken prior to any system change that has been approved via the Itron Global Managed Services Change Control Board. The system can be recovered from the backup in an event of a failure. Business continuity is designed to provide recovery for component failures within a datacenter, this does not provide coverage for the loss or connectivity to a data center. If a more robust mitigation solution is required by You, geo-diverse disaster recovery options can be discussed and priced as a more fault tolerant solution. All incidents requiring system recovery will be required to adhere to Itron's incident management policy and related standard operating procedures. BUSINESS CONTINUITY: RPO = 72 hours; RTO = 5 business days.

15 Disaster Recovery.

Disaster Recovery ("DR") is an optional service that is offered by Itron to hosted customers who purchase DR for an additional fee. Upon Itron Sales Channel Partner's purchase of DR services for You and payment of applicable fees, Itron will maintain DR services at a dedicated facility that is equipped to facilitate hosted operations, meter reading and interrogations, and Field Area Network ("FAN") communications in the event DR is needed. Upon Your request, mutual agreement between Itron and Itron Sales Channel Partner, and payment of applicable fees, Itron will exercise the DR capabilities once per calendar year on Your production environments and provide the results of each such test to You. In the event of a Severity Level 1 Error (as defined in the Itron End User Service Agreement for Maintenance Services), Itron will evaluate the scale of the incident, readily available mitigation plans, and the estimated time to recover. If it is apparent to Itron that an incident has been declared a disaster by local, state, or federal government authorities with no possibility of mitigation, Itron will declare a disaster and begin the notification process. Itron will notify You of any such event that will result in service interruption in excess of twelve (12) hours. Once a disaster has been declared, Itron's responsibilities for SLAs will be temporarily suspended until the time at which Your environment has been failed over and is operating in the secondary DR datacenter. The Recovery Point Objective (RPO) for DR is six (6) hours. The Recovery Time Objective (RTO) for DR is twenty-four (24) hours.

16 Roles and Responsibilities.

The table below lists the respective responsibilities of You and Itron to ensure reliable operation of the Software-as-a-Service.

P=Primary responsibility

S=Support responsibility

Description of Role or Responsibility	Itron	You
Submit user access requests for new users and deletion notifications for users no longer involved with the Service Offering.		P



Description of Role or Responsibility	Itron	You
Provide immediate notification in the event any of Your employees with access to the Service Offering are terminated.		P
Provide immediate notification in the event any Itron employee with access to the Service Offering is terminated.	P	
Maintain skill sets necessary to properly support the Service Offering.	P	
Administer and monitor Servers including but not limited to utilization of CPU, memory, IOPs, and disk space.	P	
Manage and troubleshoot the secure Service Offering components and processes (if applicable).	P	
Administer associated Linux, Unix, and Windows operating systems.	P	
Apply operating system and other third-party security patches and critical updates as appropriate.	P	
Maintain and troubleshoot third-party software issues required for Service Offering operations pursuant to this EUSA; work with third party to troubleshoot as required.	P	
Maintain anti-virus on all windows-based Servers if applicable to the Service Offering platform.	P	
Monitor communications and support communications troubleshooting activities for the Service Offering.	P	
Perform software upgrade activities.	P	
Maintain and administer the Service Offering Server databases.	P	
Manage upload and submission of meter data files; work with Itron when problems are identified.		P
Provide and maintain a Secure FTP or equivalent if included in the Service Offering.	P	
Perform regular system, database, and custom component backups in accordance with selected service level.	P	
Maintain the applicable standard operating procedures and run books to maintain, monitor and operate the hosted environment.	P	

17 Fees.

To the extent permitted by law, orders for Service Offerings are non-cancellable. Fees for Your access and use of a Service Offering are set out in Your purchase terms with Your Itron Sales Channel Partner. If You use a Service Offering beyond Your Entitlement ("**Overage**"), the Itron Sales Channel Partner may invoice You, and You agree to pay, for such Overage.



18 Confidential Information and Use of Data.

18.1 Confidentiality.

Recipient will hold in confidence and use no less than reasonable care to avoid disclosure of any Confidential Information to any third party, except for its employees, affiliates, and contractors who have a need to know ("Permitted Recipients"). Recipient: (a) must ensure that its Permitted Recipients are subject to written confidentiality obligations no less restrictive than the Recipient's obligations under this EUSA, and (b) is liable for any breach of this Section by its Permitted Recipients. Such nondisclosure obligations will not apply to information that: (i) is known by Recipient without confidentiality obligations; (ii) is or has become public knowledge through no fault of Recipient; or (iii) is independently developed by Recipient. Recipient may disclose Discloser's Confidential Information if required under a regulation, law or court order provided that Recipient provides prior notice to Discloser (to the extent legally permissible) and reasonably cooperates, at Discloser's expense, regarding protective actions pursued by Discloser. Upon the reasonable request of Discloser, Recipient will either return, delete, or destroy all Confidential Information of Discloser and certify the same.

18.2 How We Use Data.

Itron will access, process, and use data in connection with Your use of a Service Offering in accordance with applicable privacy and data protection laws.

18.3 Notice and Consent.

To the extent Your use of the Service Offering requires it, You are responsible for providing notice to, and obtaining consents from, individuals regarding the collection, processing, transfer, and storage of their data through Your use of the Service Offering.

19 Ownership.

Except where agreed in writing, nothing in this EUSA transfers ownership in, or grants any license to, any intellectual property rights. You retain any ownership of Your Confidential Information and Itron retains ownership of its Confidential Information, the Service Offerings, and the Documentation. Itron may use any feedback You provide in connection with Your use of a Service Offering as part of its business operations.

20 Indemnification.

20.1 Claims.

Itron will defend any third-party claim against You that Your valid use of a Service Offering under Your Entitlement infringes a third party's patent, copyright or registered trademark (the "IP Claim"). Itron will indemnify You against the final judgment entered by a court of competent jurisdiction or any settlements arising out of an IP Claim, provided that You: (a) promptly notify Itron in writing of the IP Claim; (b) fully cooperate with Itron in the defense of the IP Claim; and (c) grant Itron the right to exclusively control the defense and settlement of the IP Claim, and any subsequent appeal. Itron will have no obligation to reimburse You for attorney fees and costs incurred prior to Itron's receipt of notification of the IP Claim. You, at Your own expense, may retain Your own legal representation.

20.2 Additional Remedies.

If an IP Claim is made, or Itron determines that an IP Claim is likely to be made, Itron may either procure for You the right to continue using the Service Offering or replace or modify the Service Offering with functionality that is at least equivalent. Only if Itron determines that these alternatives are not reasonably available, Itron may terminate Your Usage Rights granted under this EUSA upon written notice to You



and will refund You a prorated portion of the fee You paid for the Service Offering for the remainder of the unexpired Subscription Term.

20.3 Exclusions.

Itron has no obligation with respect to any IP Claim based on: (a) compliance with any designs, specifications, or requirements You provide or a third party provides on Your behalf; (b) Your modification of any Service Offering or modification by a third party; (c) the amount or duration of use made of the Service Offering, revenue You earned, or services You offered; (d) combination, operation, or use of a Service Offering with products, services software or business processes not provided by Itron; (e) Your failure to modify or replace any Service Offering as required by Itron; (f) any Service Offering provided on a no charge, beta or evaluation basis; (g) any Service Offering that is not an Itron-branded Service Offering.

20.4 Exclusive Remedy.

This Section states Itron's entire obligation and Your exclusive remedy regarding any IP Claims against You.

21 Warranty, Qualifications and Disclaimer.

21.1 Warranty.

During the Subscription Term, Itron warrants that it provides the Service Offering with commercially reasonable skill and care and in accordance with the Documentation and this EUSA. Upon Your prompt written notification to Itron during the Subscription Term of Itron's breach of this [Section 21.1](#), in addition to any service level credits provided under this EUSA, Your sole and exclusive remedy (unless otherwise required by applicable law) is, at Itron's option, either (i) correction and reperformance of the nonconforming Service Offering, or (ii) a refund of the fees paid for the period in which the Service Offering did not comply, excluding the amounts any service level credits provided under this EUSA.

21.2 Qualifications.

[Section 21.1](#) does not apply if the Service Offering: (a) has been altered, except by Itron or its authorized representative; (b) has been subjected to abnormal physical conditions, accident or negligence, or installation or use inconsistent with this EUSA or the Documentation; (c) is acquired on a no charge, beta or evaluation basis; (d) is not an Itron-branded Service Offering; (e) has not been purchased by You through an Itron Sales Channel Partner; (f) has been exposed to viruses or security vulnerabilities through no fault of Itron; or (g) is subject to any other exclusions set forth in this EUSA.

21.3 Disclaimer.

Except as expressly stated in [Section 22.1](#), to the extent allowed by applicable law, Itron expressly disclaims all warranties and conditions of any kind, express or implied, including without limitation any warranty, condition, or other implied term as to merchantability, fitness for a particular purpose or noninfringement, or that the Service Offering will be secure, uninterrupted or error free.

22 Liability.

Neither party will be liable for indirect, incidental, exemplary, special, or consequential damages; loss or corruption of data or interruption or loss of business; or loss of revenues, profits, goodwill or anticipated sales or savings. The maximum aggregate liability of each party under this EUSA is limited to the fees received by Itron for the applicable Service Offering and attributable to the 12-month period immediately preceding the first event giving rise to such liability. These limitations of liability do not apply to liability arising from (a) Your failure to pay all amounts due; or (b) Your breach of Sections 3.1 (Access Rights), 3.3 (Restrictions on Use), 3.4 (Content Restrictions), or 25.8 (Export) of these General SaaS Terms and



Conditions. The maximum aggregate liability cap does not apply to Section 20 (Indemnity). This limitation of liability applies whether the claims are in warranty, contract, tort (including negligence), infringement, or otherwise, even if either party has been advised of the possibility of such damages. Nothing in this EUSA limits or excludes any liability that cannot be limited or excluded under applicable law. This limitation of liability is cumulative and not per incident.

23 Termination and Suspension.

23.1 Suspension.

Itron may immediately suspend Your Usage Rights if You breach Sections 3.1 (Access Rights), 3.3 (Restrictions on Use), 3.4 (Content Restrictions) or 25.8 (Export) of these General SaaS Terms and Conditions.

23.2 Termination.

If a party materially breaches this EUSA and does not cure that breach within 30 days after receipt of written notice of the breach, the non-breaching party may terminate this EUSA for cause. Itron may immediately terminate this EUSA if You breach Sections 3.1 (Access Rights), 3.3 (Restrictions on Use), 3.4 (Content Restrictions) or 25.8 (Export) of these General SaaS Terms and Conditions. Upon termination of the EUSA, You must stop using the Service Offering and destroy any copies of any Itron Confidential Information within Your control. If this EUSA is terminated due to Itron's material breach, (a) Itron will refund You or Your Itron Sales Channel Partner the portion of fees You have prepaid for the Usage Rights beyond the date of termination, and (b) You are entitled to seek recovery of direct, actual, and documented costs to transition to a replacement system, such costs not to exceed one year of the recurring SaaS fees. Upon Itron's termination of this EUSA for Your material breach, You will pay Itron or the Itron Sales Channel Partner any unpaid fees through to the end of the then-current License Term. If You continue to use or access any Service Offering after termination, Itron or the Itron Sales Channel Partner may invoice You, and You agree to pay, for such continued use.

24 Verification.

During the License Term and for a period of 12 months after its expiry or termination, You will take reasonable steps to maintain complete and accurate records of Your use of the Service Offering sufficient to verify compliance with this EUSA ("Verification Records"). Upon reasonable advance notice, and no more than once per 12-month period, You will, within 30 days from Itron's notice, allow Itron and its auditors access to the Verification Records and any applicable books, systems (including Itron product(s) or other equipment), and accounts during Your normal business hours. If the verification process discloses underpayment of fees: (a) You will pay such fees; and (b) You will also pay the reasonable cost of the audit if the fees owed to Itron as a result exceed the amounts You paid for Your Usage Rights by more than 5%.

25 General Provisions.

25.1 Survival.

Sections 3.3, 3.4, 17, 18, 19, 20, 21.3, 22, 23, 24, 25 and 26 of these General SaaS Terms and Conditions survive termination or expiration of this EUSA. The Special Terms and Conditions do not survive the termination or expiration of this EUSA.

25.2 Third-Party Beneficiaries.

This EUSA does not grant any right or cause of action to any third party.

25.3 Assignment and Subcontracting.

Except as set out below, neither party may assign or novate this EUSA in whole or in part without the other party's express written consent. Itron may without written notice to You, assign or novate this



EUSA in whole or in part to an Affiliate of Itron, or otherwise as part of a sale or transfer of any part of its business.

25.4 U.S. Government End Users.

The Service Offerings and Documentation are deemed to be “commercial computer software” and “commercial computer software documentation” pursuant to FAR 12.212 and DFARS 227.7202. All U.S. Government end users acquire the Service Offerings and Documentation with only those rights set forth in this EUSA. Any provisions that are inconsistent with federal procurement regulations are not enforceable against the U.S. Government.

25.5 Itron Partner Transactions.

The terms of this EUSA apply to Your use of Service Offerings and prevail over any inconsistent provisions in Your agreement with the Itron Sales Channel Partner.

25.6 Modifications to the EUSA.

Itron may change this EUSA or any of its components by providing an updated version of this EUSA to You or Your Itron Sales Channel Partner. Changes to the EUSA apply to any Entitlements acquired or renewed after the date the updated version of this EUSA is provided to You or Your Itron Sales Channel Partner.

25.7 Compliance with Laws.

Each party will comply with all laws and regulations applicable to their respective obligations under this EUSA. Itron may restrict the availability of the Itron Software in any particular location or modify or discontinue features to comply with applicable laws and regulations. If You use the Itron Software in a location with local laws requiring a designated entity to be responsible for collection of data about individual end users and transfer of data outside of that jurisdiction (e.g., Russia and China), You acknowledge that You are the entity responsible for complying with such laws.

25.8 Export.

Service Offerings are subject to U.S. and local export control and sanctions laws. You acknowledge and agree to the applicability of and Your compliance with those laws, and You will not receive, use, transfer, export, or re-export any Service Offering in a way that would cause Itron to violate those laws. You also agree to obtain any required licenses or authorizations.

25.9 Governing Law and Venue.

This EUSA, and any disputes arising from it, will be governed exclusively by the applicable governing law below, based on Your primary place of business and without regard to conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The courts located in the applicable venue below will have exclusive jurisdiction to adjudicate any dispute arising out of or relating to the EUSA or its formation, interpretation, or enforcement. Each party hereby consents and submits to the exclusive jurisdiction of such courts. Regardless of the below governing law, either party may seek interim injunctive relief in any court of appropriate jurisdiction with respect to any alleged breach of Itron’s intellectual property or proprietary rights.

Your Primary Place of Business	Governing Law	Jurisdiction and Venue
Any location not specified below	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas



Your Primary Place of Business	Governing Law	Jurisdiction and Venue
Australia	Laws of the State of South Australia, Australia	State and Federal Courts of South Australia
Canada	Province of Ontario, Canada	Courts of the Province of Ontario
China	Laws of the People's Republic of China	Hong Kong International Arbitration Center
European Union	Laws of the EU Member State of Your primary place of business	Courts of the EU Member State of Your primary place of business
Europe (excluding the European Union), Middle East, Africa, Asia (excluding India, Malaysia, Singapore), Oceania (excluding Australia)	Laws of England	Courts of London
India	Laws of New Delhi, India	Courts of New Delhi, India
Malaysia	Laws of Selangor, Malaysia	Courts of Selangor, Malaysia
Singapore	Laws of Singapore	Courts of Singapore
United States, Latin America, or the Caribbean	State of Texas, United States of America	Superior Court of Texas, County of Travis and Federal Courts of the Western District of Texas

If You are a United States public sector agency or government institution located in the United States, the laws of the primary jurisdiction in which You are located will govern the EUSA and any disputes arising from it. For U.S. Federal Government customers, this EUSA will be controlled and construed under the laws of the United States of America.

25.10 Notices.

All notices required or permitted under this EUSA must be in writing. Notices sent between You and Itron will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices to You will be sent to the address provided to Itron by Your Itron Sales Channel Partner or by You. Notices to Itron must be sent to the attention of the Itron Legal Department 2111 North Molter Road, Liberty Lake, WA 99019.

25.11 Force Majeure.

Except for payment obligations, neither party will be responsible for failure to perform its obligations due to an event or circumstances beyond its reasonable control.

25.12 No Waiver.

Failure by either party to enforce any right under this EUSA will not waive that right.

25.13 Severability.

If any portion of this EUSA is not enforceable, it will not affect any other terms.



25.14 Entire Agreement.

This EUSA is the complete agreement between the parties with respect to the subject matter of this EUSA and supersedes all prior or contemporaneous communications, understandings or agreements (whether written or oral).

25.15 Translations.

Itron may provide local language translations of this EUSA in some locations. You agree that those translations are provided for informational purposes only and if there is any inconsistency, the English version of this EUSA will prevail.

26 Definitions.

"Affiliate" means any corporation or company that directly or indirectly controls, or is controlled by, or is under common control with the relevant party, where "control" means to: (a) own more than 50% of the relevant party; or (b) be able to direct the affairs of the relevant party through any lawful means (e.g., a contract that allows control).

"Authorized Third Parties" means Your Users, Your Affiliates, Your third-party service providers, and each of their respective Users permitted to access and use the Service Offering on Your behalf as part of Your Entitlement.

"Confidential Information" means non-public proprietary information of the disclosing party ("**Discloser**") obtained by the receiving party ("**Recipient**") in connection with this EUSA, which is (a) conspicuously marked as confidential or, if verbally disclosed, is summarized in writing to the Recipient within 14 days and marked as confidential; or (b) is information which by its nature should reasonably be considered confidential whether disclosed in writing or verbally.

"Documentation" means the technical specifications and usage materials officially published by Itron specifying the functionalities and capabilities of the applicable Service Offering.

"Endpoint" means an electric meter, gas endpoint receiver-transmitter, battery-powered device, or any other device that Itron has agreed to monitor as part of a Service Offering.

"Entitlement" means the specific duration and quantity of permitted Endpoint usage for each Service Offering that You commit to acquire from an Itron Sales Channel Partner.

"General SaaS Terms and Conditions" means the provisions set forth in the main body of this EUSA comprised of Sections 1 (Applicable Terms and Conditions) through and including 26 (Definitions).

"Itron" means Itron, Inc. or its applicable Affiliate(s).

"Itron Sales Channel Partner" means a distributor authorized by Itron to sell Service Offerings.

"Maintenance Services" means maintenance and support services described in the Itron End User Service Agreement for Maintenance and Support Services.

"Recovery Point Objective" (or RPO) means the maximum tolerable time period which data might be lost from production Software due to a service interruption event.

"Recovery Time Objective" (or RTO) means the duration of time allowing for the execution of all failover processes required to return access, connectivity, functionality, and operation of production Software to Customer following declaration of a disaster event.

"SaaS" means software-as-a-service whereby Itron or its designated provider hosts and provides Customer with access to Software on Servers via the internet.



"SaaS Application Availability" means the total number of minutes in a calendar month that the applicable Software is available via (a) a web browser client, (b) web services interface and (c) thin client. Scheduled downtime is excluded from this calculation. A determination of availability will be based on 24x7 accessibility, less any exclusions set forth in this EUSA.

"Servers" means the physical computer hardware owned by Itron or its designated provider on which Software will be installed, operated, and maintained.

"Service Offering" means SaaS, plus any services that are additional or supplemental to SaaS, as described in the applicable Special Terms and Conditions.

"Service Offering Commencement Date" means, with respect to each Service Offering, the earlier of (a) validation of such Service Offering implementation by Itron pursuant to the applicable Statement of Work, or (b) seven (7) days after completing application system setup.

"Software" means each machine readable (object code) versions of computer program for which an Itron Sales Channel Partner has purchased a Service Offering for You.

"Special Terms and Conditions" means Service Offering-specific terms and conditions set forth on Attachment A to this EUSA.

"Subscription Term" means the subscription term for each Service Offering purchased by an Itron Sales Channel Partner for Customer, which begins upon the applicable Service Offering Commencement Date.

"User" means the individuals (including contractors or employees) permitted to access and use the Itron Software on Your behalf as part of Your Entitlement.

"You" or "Your" means the individual or legal entity purchasing the Service Offering.



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Main 952.445-1988 • Fax 952.445-7767
www.shakopeeutilities.com

DATE: January 31, 2023
TO: Greg Drent, General Manager *gld*
FROM: Kelley Willemssen, Director of Finance & Administration *kw*
SUBJECT: Delegating Payment of Budgeted Claims Powers to General Manager

Background:

The process for payment of expenditures in the finance department is to process payments twice a month and mail checks once the commission approves payments during the meetings held on the first and third Monday of the month. A warrant list is produced and included in each commission packet. The warrant list consists of all expenditures along with a brief description of the expenditure. Check numbers are eliminated from the warrant list to reduce opportunities for fraudulent check issues.

We have been reviewing our internal accounts payable process to determine how we can effectively implement a new process that aligns with the recently adopted commission schedule - once a month meeting. We also wanted to ensure that we utilized a more streamlined process internally with this change now that we are live with newly implemented accounting software. We conferred with the League of MN Cities and Abdo Financial Services to ensure that we considered accounting best practices and state statutes with any proposed changes.

We would like to propose a change in the process where the finance department issue vendor checks once a week (on Fridays). The process would include a weekly check register that would be approved by the General Manager and Director of Finance and Administration prior to any checks being mailed. A warrant list would still be produced and consist of the details from each weekly check run, i.e. vendor names and brief descriptions of the expenditures and be included in the monthly commission packet.

The official way to make this type of change is for the commission to delegate the authority for paying claims to the general manager through adopting a resolution that delegates the authority and the type of claims to be paid, establishes internal accounting and administrative controls and periodic commission review at the meeting following the expenditures.

Attached is the proposed resolution delegating payment of budgeted claims powers to the general manager as well as the outlined accounts payable process that will be followed internally.

Requested Action

Approve resolution delegating payment of budgeted claims powers to general manager and internal accounts payable process.

RESOLUTION #2023-03

RESOLUTION DELAGATING PAYMENT OF CLAIM
POWERS TO GENERAL MANAGER

WHEREAS, Minnesota Statutes Section 412.271, Subd.8 authorizes the Shakopee Public Utilities commission to delegate the General Manager the authority to pay all budget approved claims effective January 3, 2023; and

WHEREAS, the statute cited above requires the commission to prescribe the conditions for any delegation; and

WHEREAS, the Shakopee Public Utilities Commission has determined it would be efficient to delegate authority to the General Manager for the following tasks:

- 1) Establish and maintain internal accounting and administrative control procedures to ensure proper disbursement of public funds; and
- 2) Review all claims prior to their payment; and

WHEREAS, the statute also requires that a list of all claims paid shall be present to the commission for informational purposes at the next regularly scheduled meeting after payment;

NOW, THEREFORE, BE IT RESOLVED that, pursuant to Minnesota Statutes Section 412.271, Subd.8, the Shakopee Public Utilities Commission hereby delegates responsibility and authority for the following to the General Manager:

- 1) Establish and maintain internal accounting and administrative control procedures to ensure property disbursement of public funds; and
- 2) Review all claims prior to their payment.
- 3) Pay those claims meeting the internal accounting and administrative control procedures.

Passed in regular session of the Shakopee Public Utilities Commission, this 6th day of February, 2023.

Commission President: Kathi Mocol

ATTEST:

Commission Secretary: Greg Drent



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shakopee, mn 55379
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Accounts Payable Process

Explanation of Business Process

Accounts payable manages the process of making payments for all orders of goods and services for the utility. The payment process begins when the accounting specialist receives an invoice or a check request. An accounts payable (AP) authorization workflow through ABS iVue Financials is utilized to automate the payment process from start to finish. The workflow begins and ends with the accounting specialist. The process provides for an electronic submission, approval, tracking, posting, and archiving of all invoices and purchase orders.

Payments on invoices requiring a purchase order begin with the accounting specialist completing a three-way match; purchase order, packing slip(s), and invoice. The invoices do not need to be routed through the authorization flow since they have already been approved at the purchase order level. Purchase orders are opened and approved following the guidelines of the purchasing policy. Managers monitor purchase orders and expenditures against the approved capital improvement plan and operating budget. In some instances, a single purchase order could have multiple invoices, if not all the material shipped simultaneously. If any discrepancies arise in terms of the quantity or price, the accounting specialist reroutes the invoice to the procurement specialist to determine the source of the issue. Payment on an invoice is not processed until all discrepancies are resolved.

Payment on invoices that do not require a purchase order are routed electronically through the accounts payable authorization workflow for approval to the appropriate manager. Managers monitor invoices and expenditures against the approved capital improvement plan and operating budget. If any discrepancies arise during the review process, in terms of quantity or price, the authorizer will report a problem on the invoice and work directly with the vendor to resolve the issue. Payment on an invoice is not processed until all discrepancies are resolved.

Examples of when a purchase order is not required:

- Purchases made by authorized employees under \$500.00
- Purchases pre-authorized by department heads made on a credit card or p-card
- Recurring purchases, such as the power invoice
- Professional services and contracts
- Subscriptions
- Conference registration fees
- Travel related charges for conferences and education
- Professional memberships related to employees' work
- Tuition Reimbursement
- Rebates



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Expenses incurred for business travel and other business expenses are reimbursable when properly documented, approved and the supporting documents are included in the request for reimbursement. Reimbursements are processed through the accounts payable authorization workflow.

Expenses incurred by credit card are paid directly to the credit card company through an ach payment and assigned an ACH transaction number in the regular accounts payable process. Individuals authorized to make purchases using a p-card or credit card are required to provide detailed receipts and approvals for all expenditures posted against the card within the established deadlines. The payment to the credit card company is processed through the authorization workflow.

Utility billing refunds for overpayments are processed monthly when the billing department pushes the requests for payment to accounts payable. The accounting specialist verifies that all totals balance and that all the batches pushed over for processing have been approved. The payment to utility customers is processed through the accounts payable authorization workflow.

Once all payment requests have been authorized the accounting specialist creates an accounts payable report. The report and related support documents are forwarded to the accounting supervisor and director of finance and administration for review and approval. Finance processes weekly check runs to vendors. A check register is prepared each week and approved by the director of finance and administration and the general manager prior to checks being mailed. A warrant list including all claims paid during the period will be presented to the commission in the monthly scheduled meeting.

System/Program Access Required

NISC ABS iVue Financials

Internet – Access

Excel

Primary Owner

Accounting Specialist

Backup Owner

Accounting Technician

Last Updated

January 29, 2023



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DATE: January 31, 2023
TO: Greg Drent, General Manager *GD*
FROM: Kelley Willemssen, Director of Finance & Administration *kw*
SUBJECT: November Financial Reports

Current Status

As part of November 2022 Financial reports, we continued the practice of providing a component of analytical review. For the Water and Electric Operating Revenue and Expense budget to actual and the Water and Electric Revenue and Expense report ending for each respective period, you will see comments at the bottom of each page. In addition to the analytical review, there are a few important points to note.

- The budget is projected on an annual basis rather than a monthly basis so the information in the November 2022 financial reports equates to 92% of the annual budget.
- SPU's investment portfolio is well diversified among short-term fixed income securities permitted by Minnesota Statute 118A.04. During periods of rising and falling interest rates, the market value will either increase or decrease in value, however, unless those securities are sold prior to maturity that increase or decrease will only result in an unrealized gain or loss. Communication between SPU staff and PFM Asset Management is on-going. We continue to work on cash flows and monitoring liquidity in the portfolio to fund upcoming CIP projects.
- Finance staff has been working with Abdo Financial Services and internally to complete year-end entries and pull records together for the 2022 audit. The schedule for the 2022 audit is below.
 - February 15th, 2023: Audit Planning Meeting
 - March 6th – 10th: Preliminary Audit work
 - March 13th – 17th: Audit Fieldwork onsite

Included in this report are the following statements & documents: Combined Statement of Revenues, Expenses and Changes in Fund Net Position

- Electric Operating Revenue and Expense – Budget to Actual (with analytics)
- Electric Operating Revenue and Expense – 2021 to 2022 (with analytics)
- Water Operating Revenue and Expense – Budget to Actual (with analytics)
- Water Operating Revenue to Expense – 2021 to 2022 (with analytics)

Request

The Commission is requested to accept November 2022 Financial Reports

SHAKOPEE PUBLIC UTILITIES
COMBINED STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND NET POSITION

	Year to Date Actual - November 30, 2022			Year to Date Budget - November 30, 2022			Electric		Water		Total Utility	
	Electric	Water	Total Utility	Electric	Water	Total Utility	YTD Actual v. Budget B/(W)	%	YTD Actual v. Budget B/(W)	%	YTD Actual v. Budget B/(W)	%
	\$						\$		\$		\$	
OPERATING REVENUES	\$ 54,667,732	6,270,574	60,938,306	47,741,904	5,066,147	52,808,051	6,925,828	14.5%	1,204,426	23.8%	8,130,255	15.4%
OPERATING EXPENSES												
Operation, Customer and Administrative	46,319,992	3,342,527	49,662,518	40,467,503	4,008,709	44,476,212	(5,852,489)	-14.5%	666,182	16.6%	(5,186,306)	-11.7%
Depreciation	2,344,689	1,666,165	4,010,854	2,438,959	1,607,993	4,046,952	94,270	3.9%	(58,173)	-3.6%	36,098	0.9%
Total Operating Expenses	48,664,681	5,008,692	53,673,373	42,906,463	5,616,702	48,523,164	(5,758,218)	-13.4%	608,010	10.8%	(5,150,208)	-10.6%
 Operating Income	 8,003,052	 1,261,882	 7,264,933	 4,835,441	 (550,556)	 4,284,886	 1,167,610	 24.1%	 1,812,437	 329.2%	 2,980,047	 69.5%
NON-OPERATING REVENUE (EXPENSE)												
Rental and Miscellaneous	328,329	193,178	521,507	330,466	173,583	504,048	(2,137)	-0.6%	19,595	11.3%	17,459	3.5%
Interdepartment Rent from Water	82,500	-	82,500	82,500	-	82,500	-	0.0%	-	-	-	0.0%
Investment Income	(1,046,355)	(171,263)	(1,217,618)	617,271	255,228	872,500	(1,663,626)	-269.5%	(426,492)	-167.1%	(2,090,118)	-239.6%
Interest Expense	(2,263)	(130)	(2,394)	(59,544)	(2,009)	(61,553)	57,281	96.2%	1,879	93.5%	59,160	96.1%
Total Non-Operating Revenue (Expense)	(637,789)	21,784	(616,004)	970,693	426,802	1,397,495	(1,608,482)	-165.7%	(405,018)	-94.9%	(2,013,499)	-144.1%
 Income Before Contributions and Transfers	 5,365,263	 1,283,666	 6,648,929	 5,806,135	 (123,754)	 5,682,381	 (440,872)	 -7.6%	 1,407,420	 -1137.3%	 966,548	 17.0%
CAPITAL CONTRIBUTIONS	63,279	5,969,524	6,032,803	635,179	4,879,466	5,514,645	(571,899)	90.0%	1,090,058	22.3%	518,159	9.4%
MUNICIPAL CONTRIBUTION	(2,581,620)	(264,000)	(2,845,620)	(2,555,368)	(265,300)	(2,820,668)	(26,252)	-1.0%	1,300	0.5%	(24,952)	-0.9%
 CHANGE IN NET POSITION	 \$ 2,846,922	 6,989,190	 9,836,112	 3,885,945	 4,490,413	 8,376,358	 (1,039,023)	 -26.7%	 2,498,777	 55.6%	 1,459,754	 17.4%

SHAKOPEE PUBLIC UTILITIES
ELECTRIC OPERATING REVENUE AND EXPENSE

	YTD Actual 11/30/2022	YTD Budget 11/30/2022	YTD Actual v. Budget Increase (decrease)	
			\$	%
OPERATING REVENUES				
Sales of Electricity				
Residential	\$ 20,005,482	18,839,751	1,165,730	106.2
Commercial and Industrial	33,473,097	27,831,945	5,641,151	120.3
Uncollectible accounts	-	-	-	-
Total Sales of Electricity	53,478,578	46,671,697	6,806,882	114.6
Forfeited Discounts	284,986	264,490	20,495	107.7
Free service to the City of Shakopee	106,620	114,369	(7,749)	93.2
Conservation program	797,548	691,348	106,200	115.4
Total Operating Revenues	54,667,732	47,741,904	6,925,828	114.5
OPERATING EXPENSES				
Operations and Maintenance				
Purchased power	39,805,214	33,084,011	6,721,203	120.3
Distribution operation expenses	486,017	711,369	(225,352)	68.3 (1)
Distribution system maintenance	676,774	846,230	(169,456)	80.0
Maintenance of general plant	332,275	323,157	9,118	102.8
Total Operation and Maintenance	41,300,280	34,964,767	6,335,513	118.1
Customer Accounts				
Meter Reading	127,827	156,707	(28,880)	81.6
Customer records and collection	748,786	645,742	103,044	116.0
Energy conservation	411,958	683,918	(271,960)	60.2 (2)
Total Customer Accounts	1,288,570	1,486,367	(197,796)	86.7
Administrative and General				
Administrative and general salaries	648,669	832,338	(183,669)	77.9 (3)
Office supplies and expense	254,257	253,864	394	100.2
Outside services employed	223,733	491,388	(267,655)	45.5 (4)
Insurance	131,677	119,938	11,740	109.8
Employee Benefits	2,105,861	1,936,366	169,496	108.8
Miscellaneous general	366,943	382,476	(15,533)	95.9
Total Administrative and General	3,731,141	4,016,370	(285,228)	92.9
Total Operation, Customer, & Admin Expenses	46,319,992	40,467,503	5,852,489	114.5
Depreciation	2,344,689	2,438,959	94,270	96.1
Total Operating Expenses	\$ 48,664,681	42,906,463	5,758,218	113.4
Operating Income	\$ 6,003,052	4,835,441	1,167,610	124.1

Item Explanation of Items Percentage Received/Expended Less than 80% or Greater than 120% and \$ Variance Greater than \$15,000.

- (1) Variance due to less Distribution operation expenses than projected through Nov 2022.
- (2) Variance due to less energy conservation expenses than budgeted for through Nov 2022. Variance should be stabilized throughout the year.
- (3) Variance due to less payroll expenses than budgeted for through Nov 2022. Unfilled position budgeted for the full year.
- (4) Variance due to less outside service expenses than budgeted for through Nov 2022.

SHAKOPEE PUBLIC UTILITIES
ELECTRIC OPERATING REVENUE AND EXPENSE
For period ending November 30, 2022

			2021 - 2022	
	2022	2021	Increase (decrease)	
			\$	%
OPERATING REVENUES				
Sales of Electricity				
Residential	\$ 20,005,482	17,774,486	2,230,996	112.6
Commercial	33,473,097	27,664,422	5,808,675	121.0
Uncollectible accounts	-	-	-	-
Total Sales of Electricity	53,478,578	45,438,908	8,039,670	117.7
Forfeited Discounts	284,986	93,273	191,713	305.5 (1)
Free service to the City of Shakopee	106,620	102,884	3,736	103.6
Conservation program	797,548	677,736	119,812	117.7
Total Operating Revenues	54,667,732	46,312,801	8,354,931	118.0
OPERATING EXPENSES				
Operations and Maintenance				
Purchased power	39,805,214	34,925,407	4,879,807	114.0
Distribution operation expenses	486,017	381,213	104,804	127.5 (2)
Distribution system maintenance	676,774	718,058	(41,284)	94.3
Maintenance of general plant	332,275	240,831	91,444	138.0 (3)
Total Operation and Maintenance	41,300,280	36,265,509	5,034,771	113.9
Customer Accounts				
Meter Reading	127,827	120,697	7,130	105.9
Customer records and collection	748,786	633,264	115,522	118.2 (4)
Energy conservation	411,958	365,002	46,956	112.9
Total Customer Accounts	1,288,570	1,118,963	169,607	115.2
Administrative and General				
Administrative and general salaries	648,669	507,139	141,530	127.9
Office supplies and expense	254,257	146,554	107,703	173.5
Outside services employed	223,733	594,323	(370,590)	37.6 (5)
Insurance	131,677	160,961	(29,284)	81.8 (6)
Employee Benefits	2,105,861	1,668,607	437,254	126.2
Miscellaneous general	366,943	288,368	78,575	127.2
Total Administrative and General	3,731,141	3,365,952	365,189	110.8
Total Operating Expenses	46,319,992	40,750,424	5,569,568	113.7
Depreciation	2,344,689	2,134,116	210,573	109.9
Total Operating Expenses	\$ 48,664,681	42,884,540	5,780,141	113.5
Operating Income	\$ 6,003,052	3,428,261	2,574,791	175.1

Item Explanation of Items Percentage Received/Expended Less than 80% or Greater than 120% and \$ Variance Greater than \$15,000.

- (1) Variance due to increased penalty fees collected, penalty fees were put on hold during most of 2020 and beginning of 2021 during the pandemic.
- (2) Variance due to less overhead line, underground line, metering, and misc. distribution expenses from Nov 2021 to Nov 2022.
- (3) Variance due to less maintenance costs of general plant, distribution plant, and the building operations center from Nov 2021 to Nov 2022.
- (4) Variance due to less customer records and collection agency expenses from Nov 2021 to Nov 2022.
- (5) Variance due to AEMFS and HR consulting expenses has decreased from Nov 2021 to Nov 2022.
- (6) Variance due to timing benefit expenses being booked in Nov 2022 from Nov 2021.

SHAKOPEE PUBLIC UTILITIES

WATER OPERATING REVENUE AND EXPENSE

	YTD Actual 11/30/2022	YTD Budget 11/30/2022	YTD Actual v. Budget Increase (decrease)	
			\$	%
OPERATING REVENUES				
Sales of Water	\$ 6,248,584	5,049,016	1,199,568	123.8
Forfeited Discounts	21,990	17,132	4,858	128.4
Total Operating Revenues	6,270,574	5,066,147	1,204,426	123.8
OPERATING EXPENSES				
Operations and Maintenance				
Pumping and distribution operation	609,489	607,949	1,540	100.3
Pumping and distribution maintenance	357,637	708,068	(350,431)	50.5 (1)
Power for pumping	326,474	372,570	(46,096)	87.6
Maintenance of general plant	72,508	74,492	(1,984)	97.3
Total Operation and Maintenance	1,366,108	1,763,079	396,971	77.5
Customer Accounts				
Meter Reading	68,762	90,111	(21,350)	76.3
Customer records and collection	230,918	236,800	(5,881)	97.5
Energy conservation	3,311	-	3,311	#DIV/0!
Total Customer Accounts	302,991	326,911	23,920	92.7
Administrative and General				
Administrative and general salaries	395,549	554,940	(159,391)	71.3 (2)
Office supplies and expense	67,564	153,262	(85,698)	44.1 (3)
Outside services employed	93,436	246,203	(152,767)	38.0 (4)
Insurance	39,946	51,069	(11,124)	78.2
Employee Benefits	881,173	714,787	166,385	123.3
Miscellaneous general	195,760	198,457	(2,697)	98.6
Total Administrative and General	1,673,428	1,918,719	245,291	87.2
Total Operation, Customer, & Admin Expenses	3,342,527	4,008,709	666,182	83.4
Depreciation	1,666,165	1,607,993	58,173	103.6
Total Operating Expenses	\$ 5,008,692	5,616,703	608,011	89.2
Operating Income	\$ 1,261,882	(550,556)	1,812,437	(229.2)

Item Explanation of Items Percentage Received/Expended Less than 80% or Greater than 120% and \$ Variance Greater than \$15,000.

- (1) Variance due to less maintenance expenses for pumping equipment, valves, meters, and hydrants than budgeted for through Nov 2022.
- (2) Variance due to less office supplies and expenses purchased than budgeted for through Nov 2022.
- (3) Variance due to less outside service expenses than budgeted for through Nov 2022.
- (4) Variance due to less outside service expenses than budgeted for through Nov 2022.

SHAKOPEE PUBLIC UTILITIES
WATER OPERATING REVENUE AND EXPENSE
For period ending November 30, 2022

	2022	2021	2021 - 2022 Increase (decrease)	
			\$	%
OPERATING REVENUES	\$			
Sales of Water	6,248,584	6,282,250	(33,666)	99.5
Forfeited Discounts	21,990	10,139	11,851	216.9
Uncollectible accounts	-	-	-	#DIV/0!
Total Operating Revenues	6,270,574	6,292,389	(21,815)	99.7
OPERATING EXPENSES				
Operations and Maintenance				
Pumping and distribution operation	609,489	564,464	45,025	108.0
Pumping and distribution maintenance	357,637	443,340	(85,703)	80.7
Power for pumping	326,474	275,137	51,337	118.7 (1)
Maintenance of general plant	72,508	42,403	30,105	171.0
Total Operation and Maintenance	1,366,108	1,325,344	40,764	103.1
Customer Accounts				
Meter Reading	68,762	65,531	3,231	104.9
Customer records and collection	230,918	197,224	33,694	117.1
Energy conservation	3,311	3,843	(532)	86.1
Total Customer Accounts	302,991	266,598	36,393	113.7
Administrative and General				
Administrative and general salaries	395,549	344,552	50,997	114.8
Office supplies and expense	67,564	44,722	22,842	151.1
Outside services employed	93,436	223,206	(129,770)	41.9 (2)
Insurance	39,946	51,100	(11,154)	78.2
Employee Benefits	881,173	646,881	234,292	136.2
Miscellaneous general	195,760	168,041	27,719	116.5
Total Administrative and General	1,673,428	1,478,502	194,926	113.2
Total Operating Expenses	3,342,527	3,070,444	272,083	108.9
Depreciation	1,666,165	1,450,971	215,194	114.8
Total Operating Expenses	5,008,692	4,521,415	487,277	110.8
Operating Income	\$ 1,261,882	1,770,974	(509,092)	71.3

Item Explanation of Items Percentage Received/Expended Less than 80% or Greater than 120% and \$ Variance Greater than \$15,000.

- (1) Variance due to increase cost and usage needed in Nov 2022 than Nov 2021.
(2) Variance due to less outside service expenses needed in Nov 2022 than Nov 2021.



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DATE: January 30th, 2023
TO: Greg Drent, General Manager *GD*
FROM: Brad Carlson, Electric Superintendent *BSC*
Subject: MVEC Joint Use Pole Agreement transfer to SPU

Background:

Shakopee Public Utilities and Minnesota Valley Electric Cooperative are in the final stages of completing the recent Territory Acquisition. Final approval and documentation is needed to complete the transfer of facilities between Shakopee Utilities and Minnesota Valley Electric Cooperative. The territory swap between MVEC and SPU includes a section of joint use poles owned by Xcel Energy. The 69KV transmission structures are located along the west side of U.S. Highway 169 and Highway 41 within Jackson Township. MVEC has existing under build to Xcel Energy existing distribution facilities on the 69KV transmission line #0716, as shown in the Joint Use Pole Agreement in place with Xcel Energy. This agreement will be transferred to Shakopee Public Utilities with completion of the Assignment and Assumption of Joint Use Pole Agreement.

Action:

Approve "Assignment and Assumption of Joint Use Pole Agreement"

ASSIGNMENT AND ASSUMPTION OF JOINT USE POLE AGREEMENT

MINNESOTA VALLEY ELECTRIC COOPERATIVE, a Minnesota cooperative (“Assignor”), and SHAKOPEE PUBLIC UTILITIES COMMISSION, a Minnesota municipal utility (“Assignee”), referred to collectively from time to time hereinafter as “the Parties”, make and enter into this Assignment and Assumption of Joint Use Pole Agreement (“this Assignment”) dated effective September 15, 2022 (“Effective Date”).

RECITALS:

- A. Assignor and Northern States Power Company are parties to that certain Joint Use Pole Agreement dated September 19, 1988 (the “JUPA”).
- B. Following the City of Shakopee’s annexation of portions of Assignor’s assigned electric service territory into the City limits of the City of Shakopee, Assignor and Assignee have agreed exchange to each other certain areas currently within each Party’s assigned electric service territories.
- C. The electric service territory transferred from Assignor to Assignee includes facilities subject to the JUPA.
- D. Assignor desires to assign and convey all its right, title, interest, and obligations in, to, and under the JUPA and facilities related thereto to Assignee, and Assignee desires to accept such assignment and assume the interests and obligations of Assignor under the JUPA.

NOW, THEREFORE, in consideration of the above premises and the promises and covenants set out below, and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, the Parties hereby agree as follows:

- 1. **Assignment.** Assignor hereby assigns and conveys to Assignee all right, title, interest, and obligations of Assignor in and to the JUPA and to all facilities subject thereto.
- 2. **Assumption.** Assignee hereby assumes and agrees to perform all obligations of Assignor under and pursuant to the JUPA that arise thereunder from and after the Effective Date.
- 3. **Binding Effect.** This Assignment shall be binding upon and inure to the benefit of the Parties and their successors and assigns.
- 4. **Electronic Signature; Counterparts.** Each of the parties agrees that (i) this Assignment may be signed and delivered by electronic signature via facsimile, email or any other means of electronic transmission (“Electronic Signature”), (ii) the Electronic Signature shall be binding and enforceable as if each such party had signed originally, and (iii) this Assignment may be signed in multiple counterparts, which together shall constitute an original.

5. **Law.** This Assignment shall be governed by and construed in accordance with the laws of the State of Minnesota.

6. **Recitals.** The Parties acknowledge the above Recitals are true and correct and are being relied upon, among other things, in entering into this Assignment and such Recitals are incorporated into the body of the Assignment by reference as though fully set forth.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date set forth above.

ASSIGNOR:

**MINNESOTA VALLEY ELECTRIC
COOPERATIVE**

By: 
Ryan Hentges
Its: Chief Executive Officer

ASSIGNEE:

**SHAKOPEE PUBLIC UTILITIES
COMMISSION**

By: _____
Kathi Mocol
Its: President

By: _____
Greg Drent
Its: General Manager

JOINT USE POLE AGREEMENT

THIS AGREEMENT, made this 19th day of September, 1988, between NORTHERN STATES POWER COMPANY, a Minnesota Corporation hereinafter referred to as "Power Company", and MINNESOTA VALLEY ELECTRIC COOPERATIVE, with headquarters in Jordan, Minnesota, hereinafter referred to as "Cooperative",
WITNESSETH:

Whereas, Power Company proposes to construct a 69 KV transmission line (#0716), located near Shakopee, Minnesota, along the west side of U. S. Highway #169, within the same alignment presently occupied by Cooperative's distribution facilities, and

Whereas, Cooperative proposes to underbuild their existing distribution facilities on Power Company's 69 KV transmission line #0716, as more specifically shown on "Exhibit A", which is incorporated herein and made a part hereof, and

Whereas, it is the desire of the parties to this Agreement to eliminate structural and conductor conflict by the joint use of forty-eight (48) Power Company transmission poles, as more specifically shown on "Exhibit A",

NOW, THEREFORE, in consideration of the terms and conditions hereinafter provided, the parties hereto agree as follows:

Power Company hereby grants to Cooperative the right to attach their facilities and occupy, free from rental charge, forty-eight (48) Power Company transmission poles, structures #19 through #69, line #0716, as more specifically shown on "Exhibit A".

Power Company agrees to reimburse Cooperative for all costs to reconstruct its facilities on NSP structures #19 through #69.

Cooperative agrees to maintain at its own expense its attachments on

NSP copy

Power Company's pole in conformity with the "National Electrical Safety Code" and the requirements of all existing State of Minnesota regulations.

Failure of either party to maintain its facilities as herein provided shall entitle the other party to terminate this Agreement by giving the defaulting party thirty (30) days' notice of such termination.

Wherever any liability is incurred by either or both of the parties hereto for damages for death of or injury to persons, or damage to property, arising out of the joint use of poles under this agreement, the liability for such damages, as between the parties hereto, shall be as follows:

1. Each party shall be liable for all damages for death of or injury to persons, or damage to property, caused by its sole negligence.
2. All payments made by either party to an employee or his dependents by reason of the operation of a Workmen's Compensation Law or voluntary employees disability plan shall be considered to be damages within the purview of Paragraph One (1) hereof, when resulting from the sole negligence of the other party hereto.
3. Each party shall be liable for all damages to its own property when caused by its own negligence, the concurrent negligence of both parties, or when due to causes which cannot be traced to the negligence of either party.
4. Each party shall be liable for one-half of all damages for death of or injury to persons other than employees, and for one-half of all damages to property of others when caused by the concurrent negligence of both parties hereto, or when due to causes which cannot be traced to the negligence of either party.
5. Each party shall be liable for claims made by its own employees, or their dependents or subrogees, whether such claims are based upon a Workmen's Compensation Law, or at common law, against the other party who is not the employer, when the accident or occurrence was caused by the concurrent negligence of both parties hereto, or when due to causes which cannot be traced to the negligence of either party.
6. All claims for damages arising hereunder that are asserted against or affect both parties hereto shall be dealt with by the parties hereto jointly; provided, however, that in any case where the claimant offers to settle any such claim upon terms acceptable to one of the parties hereto, but not to the other, the party to whom said terms are acceptable may at its election pay to the other party one-half of the loss payment which such settlement would involve and

thereupon such other party shall be bound to protect the party making such payment from all further liability and expense on account of such claim.

7. In the adjustment between the parties hereto of any claims for damage or reimbursement due consideration shall be given to all expenses incurred in addition to the loss payment itself, but such adjustment shall not include attorney's fees.

Either party hereto may terminate this agreement without cause and without liability therefore upon giving to the other party six (6) month's notice in writing of the desire to do so. No termination of this agreement shall release either party from any liability or obligation with respect to any matter occurring prior to such termination.

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as to the day and year first above written.

WITNESSES:

MINNESOTA VALLEY ELECTRIC COOPERATIVE

Daniel F. Reilly

By

Thom Shab

Melvin Hentges

And

Edward J. Sallan

NORTHERN STATES POWER COMPANY

Marilyn Fleischer

By

George Briere

Arlene Krutson

And

Catherine A. Jones

JACKSON - LOUISVILLE T. 115-116 N.-R. 23 W.

"EXHIBIT A"

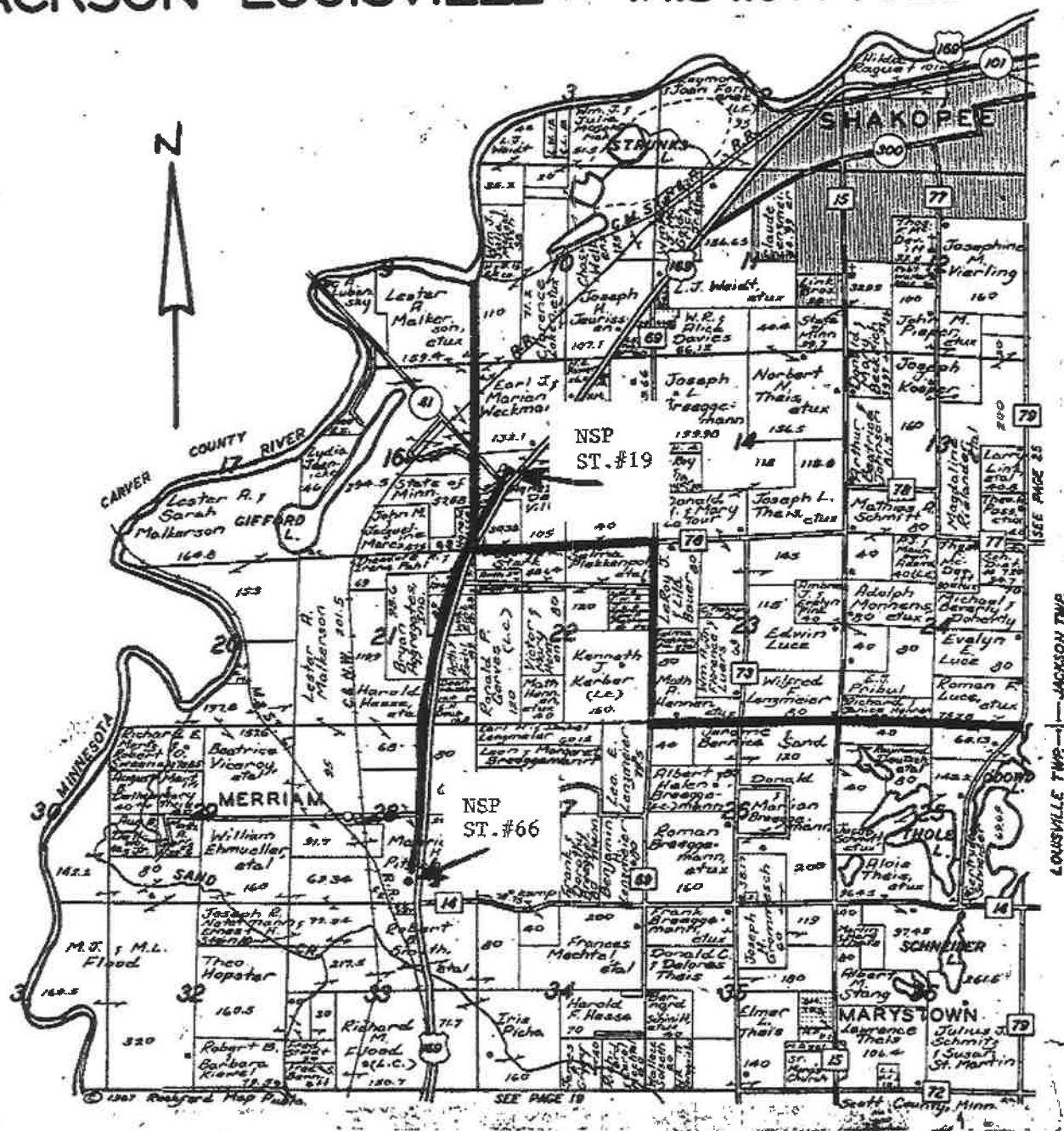
SCOTT COUNTY
NSP LINE #0716
AND

MINNESOTA VALLEY
ELECTRIC COOPERATIVE
UNDERBUILD

NSP STRUCTURES #19-#66



DETAIL PLAN & PROFILE
ON FILE WITH NSP
CONTRACT

G. BRIERE
SERVICE POLICY
9/19/88





PO Box 470 • 255 Sarazin Street
Shakopee, Minnesota 55379
Main 952.445-1988 • Fax 952.445-7767
www.shakopeeutilities.com

TO: Greg Drent, General Manager 
FROM: Joseph D. Adams, Planning & Engineering Director 
SUBJECT: Phased Retirement Agreement
DATE: February 1, 2023

ISSUE

Our long time Inventory Specialist Mike Skoug is retiring, and we have hired a replacement starting February 13, 2023. Staff is requesting the attached phased retirement agreement be approved to allow for an adequate transition period.

BACKGROUND

Mike Skoug has been our Inventory specialist or Storekeeper for the past 11 years. Passing on his valuable experience and knowledge in managing the inventory inside and outside the warehouse would be a great benefit to his replacement.

DISCUSSION

The SPU Employee Handbook allows for a phased retirement option subject to Commission approval of up to a 6 month period with the employee allowed to work a maximum of 50% of the previous work schedule. The Public Employee Retirement Association pension program that SPU participates in allows for phased retirement agreements that limit the work hours to 75% of the previous schedule up to a 5-year period.

The attached plan mutually agreed on between SPU and Mike Skoug meets both sets of criteria SPU's and PERAs with a maximum work schedule of 20 hours per week through March 31, 2023.

When our long time Purchasing Specialist retired in 2022 his replacement had the opportunity to work alongside him prior to his departure and we saw the benefit in that with the replacement being better prepared to assume the full duties and he is doing an excellent job.

RECOMMENDATION

Staff requests the Commission approve the attached agreement.



Personnel Policies

Effective: 5/1/2022

These and other plan documents will be the final determinant of eligibility and coverage.

Health Savings Accounts

Health Savings accounts are offered to qualifying employees who elect Shakopee Public Utilities High Deductible Health Plan. The Commission determines, on an annual basis, the amount to be contributed into an employee's Health Savings Account. Health Savings accounts are a pre-tax benefit from Shakopee Public Utilities, an employee may also elect deductions from each paycheck pre-tax to contribute to their Health Savings Account, up to the IRS limits each year.

Public Employees Retirement Association/PERA

Shakopee Public Utilities participates in the Public Employees Retirement Association (PERA) to provide pension benefits for its eligible employees to help plan for a successful and secure retirement. Participation in PERA is mandatory for most employees, and contributions into PERA begin immediately. SPU and the employee contribute to PERA each pay period as determined by state law. Most employees are also required to contribute a portion of each paycheck for Social Security and Medicare (SPU matches the employee's Social Security and Medicare withholding for many employees).

For information about PERA eligibility and contribution requirements, contact Human Resources.

Phased Retirement

Individuals who have been employed by Shakopee Public Utilities for 5 years or more and who are age 55 or older may be offered a phase retirement benefit, upon the recommendation of the General Manager and approval of the Commission. The purpose of phased retirement is to allow long-term employees to work reduced hours while maintaining their benefits and assisting in the training of a new employee in their specialized skills and knowledge. In order to be eligible, the employee must hold a specialized position that will require significant training of a new or promoted employee. Employees offered and accepting a phased retirement benefit shall work no more than an average of 20 hours per week, but shall receive full insurance benefits, at the level they enjoyed prior to phased retirement, as well as pro-rated vacation, holiday and sick leave for a period not to exceed 6 months.

PERA retirement benefits may be affected, please check with PERA prior to discussing this option.

The Phased Retirement program creates a flexible environment where members can transition into retirement, and employers can provide the necessary knowledge transfer. If you are age 62 or older, you may be eligible to participate in the Phased Retirement Option (PRO) and start your PERA retirement benefit without terminating your public service position.

IT IS UP TO YOUR EMPLOYER

Participating in the PRO is at the discretion of your employer and may not be available to all Coordinated and Basic members. Contact your employer for more information. In addition, you should investigate if a reduction of hours may impact other employee benefits.

PRO REQUIREMENTS

- Active Coordinated or Basic member, not an elected official
- Age 62 or older
- Must hold same position with same employer last active with
- Immediately eligible for a retirement annuity from the General Plan (Coordinated or Basic members)
- Worked at least 1,044 hours in each of the five preceding years in a position covered by PERA that you intend to go PRO
- You must agree to reduce your regular schedule by 25 percent in each pay period under the PRO and may not work over 1,044 hours in a one year period
- Not a current PERA benefit recipient
- Not eligible for the state employee Post-Retirement Option program under minn. Stat. §43A.346

BENEFITS OF THE PRO

- **PERA's termination requirements are waived for your PRO.** You will receive a PERA retirement monthly benefit without terminating your public service position. If you are active in other public service, however, you must follow PERA's termination requirements for these positions to receive your PERA retirement benefit.
- **No member and employer contributions to PERA.** You will no longer contribute to PERA for the employment under the PRO. Since you are receiving your retirement benefit, there is no accrual of service credit or adjustment of the high-five salary for your service under the PRO.
- **No annual earnings limits while working under the PRO agreement.** Your position covered under the PRO will not be subject to PERA's post-retirement earnings limits.

THE PRO PROCESS

- 1 Contact your employer.** The PRO agreement must be with your same employer, and it is the discretion of your employer to offer the PRO to you.
- 2 Apply for the PRO and retirement benefit.** PERA must receive the PRO agreement before the PRO begins. The PRO agreement replaces the *Verification of Termination* form. All other PERA benefit and application requirements must be met. Your retirement benefit will begin approximately the same time as the PRO employment period.
- 3 During the PRO.** The maximum length of the PRO is five years. You must reduce your regular schedule by 25 percent in each pay period and may not work over 1,044 hours in a one year period during the PRO. Your employer will report your earnings and hours to PERA while working under the PRO.
- 4 End of the PRO agreement.** After completing the PRO, you must terminate your position covered under the PRO. You must have no written/verbal agreement prior to termination of employment to provide services to any public employer as an employee, independent contractor or an employee of an independent contractor for 30 days. Public employment includes service to any governmental employer in Minnesota—e.g. school districts, cities, counties, townships, and state.

COMBINED SERVICE ANNUITY

Please contact a PERA representative if you have service with another Minnesota public pension fund and are considering a PERA Phased Retirement program or the other fund's Phased Retirement Program.



Your PERA monthly benefit will be suspended if the allowed hours in a pay period or the maximum hours per year are exceeded. The benefit will not be reinstated until all public employment has been terminated, and you have a continuous separation from public employment for 30 days. Please see the PRO agreement for more information.

FREQUENTLY ASKED QUESTIONS (FAQs)

If I enter a PRO agreement, when does my retirement benefit begin?

Both the PRO agreement and the retirement application materials must be sent to PERA together. Your PERA retirement benefit cannot be deferred while you are employed under the PRO. Your employer will enter the starting date of the PRO employment period on the PRO agreement. Therefore:

- If the PRO employment period starts on the 1st of the month, then your benefit effective date will also be the 1st of the month (same date).
- If the PRO employment period starts on any other day of the month, then your benefit effective date will be the 1st of the following month.

When I enter into and begin my PRO agreement, can I take a position with my current employer that is different than my current position?

No. You must remain in your current position.

Can a PERA-covered employer other than my current employer offer me a PRO agreement?

No. The PRO agreement must be entered with your same, current PERA covered employer prior to any termination of employment.

Can I work full-time for a certain period and then not work at all for the remainder of a year covered by a PRO agreement?

No. You must reduce your regularly scheduled hours of work by at least 25% per pay period and not exceed 1,044 hours for the PRO agreement one year period.

- Example 1: if you were scheduled to work 80 hours per pay period prior to the PRO, you may work 40 hours per pay period for the PRO one year agreement.
- Example 2: if you were scheduled to work 80 hours per pay period prior to the PRO, you may not work more than 60 hours in any pay period covered by the PRO for the first 6 months and not work more than 20 hours in any pay period for the remaining 6 months (as you may not work more than 1,044 total hours for the year).

If my employer allows me to accrue vacation, sick and holiday leave while working under the PRO, will the hours associated with the leave pay, when taken, count towards the maximum number of hours I may work under the PRO?

Yes. The hours you take off from work, for which you receive pay, will count towards the maximum number of hours you may work under the PRO agreement.

If I currently have employment in more than one position covered by PERA membership and want to continue working for these employers, do I have to enter a PRO with each PERA-covered employer?

Yes, if you wish to continue employment for each position. To participate under the PRO agreement and also start your PERA pension, you must either:

- Enter a PRO agreement for each position you intend to maintain during the PRO agreement. However, you must reduce each position by at least 25% and total work hours combined under all PRO agreements must not exceed 1,044 hours.
- Terminate the employment not covered by a PRO agreement and remain out of that employment for at least 30 days with no agreement to return.

Will I be eligible for disability benefits from PERA if I become disabled while working under a PRO agreement?

No. By accepting/receiving a retirement benefit, you are no longer eligible for PERA disability benefits.



Public Employees Retirement Association
60 Empire Drive, Suite 200, St. Paul, MN 55103-2088
1-800-652-9026 | 651-296-7460 | mnpera.org

This publication is intended to provide general information; the rights and obligations of PERA members are governed by state and federal laws, rules, and regulations. The Minnesota Legislature or the federal government may change the statutes, rules, and regulations governing PERA at any time. If there is a discrepancy between the law governing PERA and the information contained in this publication, the statutes and regulations will govern. This document can be made available in alternative formats to individuals with disabilities by calling 651-296-7460 or 1-800-652-9026, or through the Minnesota Relay Service at 1-800-627-3529.



PERA

PHASED RETIREMENT OPTION (PRO) AGREEMENT

The employee and employer must enter into a PRO Agreement prior to the start of the employee's phased retirement employment. The employer and PERA member must complete this form in its entirety. The signed Agreement must be submitted to PERA before the effective date of the PRO and should accompany a completed *Application for PERA Retirement Benefits*.

EMPLOYER

Shakopee Public Utilities 7578-01
 Name of employer offering PRO Agreement PERA Employer No. (6-digits)
Michael L. Skoug 9015
 Name of individual to be employed under the PRO Agreement Social Security No. (last 4)
02/25/2023
 Starting date of the PRO employment period

The employee must have a reduced schedule that (1) is a reduction of at least 25 percent of regularly scheduled work hours and (2) does not exceed 1,044 hours. Complete lines 1-3 to determine the allowable number of compensated hours the employee may have in any reporting period under the PRO Agreement.

Normal reporting period for the employee ☐ Weekly ☒ Biweekly ☐ Monthly ☐ Semi-monthly

Member must meet BOTH of the following maximum hour criteria:

A. Maximum hours per pay period:

1. Number of current hours the employee worked in a normal pay period: 80
 2. Multiply the number from line 1 X .75: x .75
 3. Enter the **maximum** hours to be worked per pay period (result from multiplying lines 1 and 2): 60

B. Maximum hours per year. 1,044¹

¹Note: For members working less than full time prior to the PRO, annualized maximum hours per pay period may be less than 1,044

I have read the requirements for PRO Agreements (on back of form) and confirm that the named employee has met the PRO requirements.

Signature of Employer Representative General Manager Date
 Job Title

MEMBER

I have read the requirements for PRO Agreements (on back of form) and confirm that my agreement has met the PRO requirements.

Signature of PERA member Date Home email address
 (for PRO communications)

INFORMATION ABOUT THE PERA PHASED RETIREMENT OPTION (PRO) PROGRAM

The employer has sole discretion to determine the length of an employee's PRO employment period. The maximum period of phased retirement employment for a member is five years.

The PRO Agreement must be completed by the employer and employee and sent to PERA before the reduced PRO employment begins. If a PRO Agreement covering employment of less than five years is renewed, do not send the renewal document to PERA. Keep the document on file.

To participate in the PRO program, the following requirements must be met:

The employee must:

- understand that if the allowed hours in a pay period or the maximum hours per year are exceeded, the PERA monthly benefit will be suspended the month of the violation. Any payments made between the date of the violation and suspension of the benefit must be returned to PERA by the employee. The benefit will not be reinstated until all public employment has been terminated, a continuous separation from public service has occurred, and any overpayments have been returned to PERA.
- be an active member of General Plan as an employee, not an elected official
- be age 62 or older
- be immediately eligible for a retirement annuity from the General Plan
- have worked at least 1,044 hours each of the five preceding years in a position covered by PERA that they intend to go PRO
- have a reduced annual work schedule that is both a reduction of at least 25 percent from the employee's number of previously regularly scheduled work hours and that may not exceed 1,044 hours in a one-year period. The employer and employee may agree on any scheduling arrangement that is less than the maximum hours allowed
- not be eligible for the state employee Post-Retirement Option program under Minn.Stat. § 43A.346
- not work as an employee for another governmental employer in Minnesota
- remain with your current employer in your current position
- at the termination of the PRO agreement, have no written/verbal agreement prior to termination of employment to provide services to your agency as an employee, independent contractor or an employee of an independent contractor for 30 days. Public employment includes service to any governmental employer in Minnesota—e.g. school districts, cities, counties, townships, and state

The PERA reporting responsibilities of the employer are:

- I understand that our agency must report the earnings and number of compensated hours that the named employee has each pay period while the PRO employment continues.
- The employee must remain with the same employer, in the same position held prior to starting the PRO.
- Enroll the employee under PERA's Exempt Plan at the start of the phased retirement employment period.
- Report the phased retirement earnings of the employee and the associated number of compensated hours after each pay period using the Salary Deduction Report or an approved alternative method.
- Do not pay employer contributions or employee deductions to PERA on the earnings of the PRO position.
- Monitor the number of compensated hours that the employee has while working in a PRO position and ensure that the limit in law is not exceeded. Please work with PERA to fulfill this requirement.
- When the member does fully retire, report the termination of service to PERA and take steps to ensure that the employee has a complete, continuous separation from all public employment for 30 days. Also, there can be no written/verbal agreement prior to termination of employment to provide services to your agency as an employee, independent contractor or an employee of an independent contractor for 30 days. Public employment includes service to any governmental employer in Minnesota—e.g. school districts, cities, counties, townships, and state.

IMPORTANT:



If the PRO employment does not meet the conditions in law (stated above) the employee will no longer qualify to receive retirement annuity payments unless the person has a termination of service and a 30 day break from all public employment.

RETURN (MAIL OR FAX) COMPLETED FORM TO:



Public Employees Retirement Association
60 Empire Drive, Suite 200, St. Paul, MN 55103-2088
1-800-652-9026 | 651-296-7460 | Fax: 651-297-2547 | mnpera.org

5.17.21

TO: Greg Drent, General Manager 
FROM: Joseph D. Adams, Planning & Engineering Director 
SUBJECT: Stagecoach Road Overhead Electric Facilities Relocation
DATE: February 2, 2023

ISSUE

In the spring of 2021 the City of Shakopee determined that the west end of Stagecoach Road near its intersection with Cr 101 would have to be realigned and reconstructed as a condition of approving the Hentges Industrial Park plat development. The project was not in the City's nor consequently in SPU's Capital Improvement Plan. The roadway improvements required the relocation of approximately 1,736 feet of the overhead three phase electric utility feeder line designated BL-22 that originates out of the Blue Lake Substation.

BACKGROUND

The City of Shakopee has adopted a Right-of-Way Management Ordinance that includes establishing their authority to order utility facilities be placed underground when they must be relocated due a public improvement in a public right of way.

This affected segment of BL-22 ran along the south side of CR 101 and the north side of Stagecoach Road in the project area, extending east from a point west of the original intersection of Stagecoach Road and CR 101 and serves primarily industrial customers in the area north and south of Highway 169 along Stagecoach Road. This leg of BL-22 also serves as an important feeder tie as back-up to another feeder circuit that originates out of the Pike Lake Substation in Prior Lake.

DISCUSSION

Due to urgency to complete the project on an accelerated and expedited construction schedule to facilitate a new industrial building project known as SW Logistics staff proceeded to secure design services from DGR Engineering and relocated the overhead electric facilities underground utilizing SPU crews and equipment per direction from City staff without the pause for the Commission to consider the funding source options. Now that the project is complete and we are closing it out, staff is seeking direction from the Commission.

The estimated costs associated with relocating the facilities within the project and keeping them overhead is \$39,000. The actual costs to relocate the facilities and place them underground was \$109,785.32 (including removal of the then existing overhead facilities).

Since these facilities are all located within City road right of way and not in private utilities easements, the cost for construction of new replacement overhead facilities plus removal and retirement of the existing overhead facilities that must be relocated is normally absorbed as an electric operating expense.

REQUESTED ACTIONS

1. Staff requests the Utilities Commission accepts the estimated overhead and actual underground costs to relocate the BL-22 overhead facilities in the project area due to the unplanned 2021 Stagecoach Road improvements.
2. Staff requests the Utilities Commission direct staff to make the necessary accounting entries to assign the \$39,000 cost of the estimated overhead relocation costs from the Electric Operating Fund and the additional \$70,785.32 costs due to placing the facilities underground per City direction from the Electric Underground Relocation Fund.

TO: Greg Drent, General Manager *GD*

FROM: Joseph D. Adams, Planning & Engineering Director *J Adams*

SUBJECT: Resolution 2023-04 A Resolution Approving Purchase Agreement, Utility Easement Agreement, And Lease: All Documents Necessary to Carry Out Purchase Agreement, Utility Easement Agreement, And Lease; And Completion of Closing Under Purchase Agreement for the East Shakopee Substation Site

DATE: February 3, 2023

ISSUE

Staff has completed negotiations with the property owner Mr. Eugene Hansen, and I am pleased to report we have reached final agreement on both price and terms. I am submitting the attached final purchase agreement for Commission review and approval by resolution to secure a site for the East Shakopee Substation.

BACKGROUND

The 2018 Long Range Electric System Study prepared by Kevin Favero of Leidos identified the need for additional substation capacity to serve the anticipated growth envisioned in the City of Shakopee's 2040 Comprehensive Plan and the Jackson township AUAR.

Currently SPU's load in eastern Shakopee is served partly by our Dean Lake and Pike Lake Substations and our two feeder circuits that originate out of Xcel Energy's Blue Lake Substation. Occupying space within another utility's facility while once was a necessity, does create ongoing access, operational and maintenance issues. SPU's capacity out of Blue Lake Substation is limited by agreement to 8.3 MW. Past attempts to increase that capacity have not been successful and are unlikely to ever occur given Xcel Energy's position. In fact, Xcel Energy has frequently inquired as to when SPU may be able to vacate our capacity out of Blue Lake Substation. At one time, Xcel Energy was open to SPU constructing its own substation on Xcel Energy's property under a ground lease arrangement. Unfortunately, that is no longer the case.

Because of the potential for load growth in SPU's electric service territory in eastern Shakopee that was projected in the long-term electric system study and the possible eventual vacation of SPU's capacity in Xcel Energy's Blue Lake Substation, adding an electric substation in eastern Shakopee was recommended in the Long-Range Electric System Study under certain load growth scenarios.



PO Box 470 • 255 Sarazin Street
Shakopee, Minnesota 55379
Main 952.445-1988 • Fax 952.445-7767
www.shakopeeutilities.com

DISCUSSION

The Electrical Operating Fund would be the funding source for the site purchase and eventual design and construction costs. The operating funds are collected through sales of electricity to all customer classes.

Funds are budgeted in the current 5-year CIP to acquire a site and construct an East Shakopee Substation. The total cost of the substation site and an easement on the adjoining property is in the amount of \$1,077,470.00.

REQUESTED ACTION

Staff requests the Commission approve Resolution 2023-04 A Resolution Approving Purchase Agreement, Utility Easement Agreement, And Lease: All Documents Necessary to Carry Out Purchase Agreement, Utility Easement Agreement, And Lease; And Completion of Closing Under Purchase Agreement.

RESOLUTION 2023-04

RESOLUTION APPROVING PURCHASE AGREEMENT, UTILITY EASEMENT AGREEMENT, AND LEASE; ALL DOCUMENTS NECESSARY TO CARRY OUT PURCHASE AGREEMENT, UTILITY EASEMENT AGREEMENT, AND LEASE; AND COMPLETION OF CLOSING UNDER PURCHASE AGREEMENT

WHEREAS, the Shakopee Public Utilities Commission, a municipal utility commission organized under Minnesota law (the “Commission”), is proposing to enter into a Purchase Agreement (the “Purchase Agreement”) with Maras Street, LLC, a Minnesota limited liability company (“Seller”), for the purchase of a parcel of real property depicted in Exhibit A to the Purchase Agreement (the “Property”), and the purchase of a permanent utility easement over a portion of the property located at 8600 Hansen Avenue (the “Easement”), which is adjacent to the Property and owned by a Seller-affiliated entity, Hansen Avenue, LLC, a Minnesota limited liability company, to enable the Commission to install the necessary exit circuits from the substation to the Stagecoach Road right of way, pursuant to the terms of an electric underground easement agreement in substantially the form attached as Exhibit B to the Purchase Agreement (the “Utility Easement Agreement”); and

WHEREAS, the Commission is also proposing, from and after the date of closing, to enter into a lease for a portion of the Property to Reliakor Services, Inc., a Minnesota limited liability company, on an “as-is, where-is” basis pursuant to the terms and conditions of the lease in substantially the form attached hereto as Exhibit C to the Purchase Agreement (the “Lease”); and

WHEREAS, the Commission has determined that it is appropriate to execute, accept and deliver the Purchase Agreement, the Utility Easement Agreement and the Lease; and

WHEREAS, the Commission has determined that it is appropriate to finalize and close the transactions contemplated by the Purchase Agreement, the Utility Easement Agreement and the Lease, and to execute, accept and deliver such documents as are necessary to acquire the Property, accept the Easement, grant the Lease, and carry out the transactions contemplated thereby; and

WHEREAS, the Commission has determined that the acquisition of the Property, the acceptance of the Easement, and the granting of the Lease are in the public interest.

NOW, THEREFORE, BE IT RESOLVED BY THE SHAKOPEE PUBLIC UTILITIES COMMISSION AS FOLLOWS:

1. That the Commission hereby ratifies, confirms, authorizes and approves the execution of the Purchase Agreement, the Utility Easement Agreement and the Lease, and authorizes and approves the transactions contemplated by the Purchase Agreement, the Utility Easement Agreement and the Lease.
2. That the Commission hereby ratifies, confirms, authorizes and approves, and directs the President or the General Manager of the Commission to finalize, accept and/or deliver in the name and on behalf of the Commission, the Purchase

Agreement, the Utility Easement Agreement and the Lease and all documents, affidavits and certificates in such form and on such terms and conditions as deemed necessary or appropriate in connection with the Purchase Agreement, the Utility Easement Agreement and the Lease and the acquisition of the Property, acceptance of the Easement, and the granting of the Lease, including all closing documents and other documents as may be required to complete the transactions contemplated by the Purchase Agreement, the Utility Easement Agreement and the Lease.

3. That the President or the General Manager of the Commission is hereby authorized, empowered and directed to make such changes to the foregoing documents, affidavits and certificates and any other closing documents necessary to carry out the transactions contemplated by the Purchase Agreement, the Utility Easement Agreement and the Lease as the President or the General Manager of the Commission deems reasonable and necessary.
4. That the President or General Manager of the Commission are authorized, empowered and directed to do all other acts and things as are deemed necessary or desirable in their discretion to effectuate the transactions.

BE IT FURTHER RESOLVED, that all things necessary to carry out the terms and purposes of this Resolution are hereby authorized and performed.

Passed in regular session of the Shakopee Public Utilities Commission this 6th day of February, 2023.

Commission President: Kathi Mocol

ATTEST:

Secretary: Greg Drent

PURCHASE AGREEMENT

DATE: FEBRUARY __, 2022 (“Effective Date”)

BETWEEN: MARAS STREET, LLC,
a Minnesota limited liability company **(“Seller”)**

AND: SHAKOPEE PUBLIC UTILITIES COMMISSION,
a Minnesota municipal utility commission **(“Buyer”)**

FOR VALUABLE CONSIDERATION, Seller and Buyer agree as follows:

I. SALE AND PURCHASE

1.1 Sale of Property.

- (a) Subject to the terms and conditions of this Purchase Agreement (this “**Agreement**”), Seller will sell and convey to Buyer, and Buyer will purchase and accept from Seller, the real property depicted and identified as the “**Subject Property**” on Exhibit A attached hereto (to be adjusted and/or confirmed by the Parcel Subdivision, Commitment and Survey, all as hereinafter defined), located in the City of Shakopee, County of Scott, State of Minnesota, consisting of part of PID #27.912024.0 and with a street address of 1465 Maras Street (the “**Parent Parcel**”), together with all improvements thereon and all rights, privileges, easements, licenses, appurtenances and hereditaments relating thereto, and all of Seller’s right, title and interest in and to all adjacent streets or alleys or rights of way (collectively, the “**Property**”).
- (b) The parties acknowledge the Subject Property is not currently a separate individual parcel and, in accordance with this Agreement, the Parent Parcel will be subdivided and the Property will be severed into a separate legally described parcel and tax parcel whose boundary lines will be generally as set forth in Exhibit A; provided, however, that unless waived in writing by Buyer, Buyer shall have the right to terminate this Agreement and the Earnest Money will be returned to Buyer and neither party will have any further obligations under this Agreement, except those obligations that expressly survive such termination, if the final gross area of the Subject Property is less than 2.55 acres.
- (c) In addition to the Subject Property, in exchange for the Easement Consideration (as defined in Section 2.1(b) below), Seller will cause its affiliated entity, Hansen Avenue, LLC, a Minnesota limited liability company (the “**Easement Grantor**”), to grant Buyer a permanent easement (the “**Appurtenant Utility Easement**”) over a portion of the property located at 8600 Hansen Avenue, which is adjacent to the Subject Property, to enable Buyer to install the necessary exit circuits from the substation to the Stagecoach Road right of way, pursuant to the terms of an electric

underground easement agreement (the “**Appurtenant Utility Easement Agreement**”), in substantially the form attached hereto as Exhibit B.

- 1.2 Closing. The closing of the sale and purchase of the Property (“**Closing**”) will occur thirty (30) days after the expiration of the Due Diligence Period under Article IV of this Agreement at 10:00 a.m. local time in the offices of the Title Company identified in Section 3.1, or at such other time or place as Buyer and Seller may agree. Buyer and Seller shall not be obligated to attend the Closing in person and may submit the documents required of each by courier, mail, Federal Express or other overnight delivery service.
- 1.3 Post-Closing Lease. From and after the date of Closing, Buyer agrees to lease a portion of the Property to Reliakor Services, Inc., a Minnesota limited liability company (“**Reliakor**”), on an “as-is, where-is” basis pursuant to the terms and conditions of the lease in substantially the form attached hereto as Exhibit C (the “**Reliakor Lease**”).

II. PURCHASE PRICE

- 2.1 Purchase Price. The purchase price shall be One Million Seventy-Seven Thousand Four Hundred Seventy and No/100ths Dollars (\$1,077,470.00) (the “**Purchase Price**”), applied as follows:
 - (a) One Million Fifty-Three Thousand Five Hundred Twenty-Two and No/100ths Dollars (\$1,053,522.00) paid to Seller for the Property; and
 - (b) Twenty-Three Thousand Nine Hundred Forty-Eight and No/100ths Dollars (\$23,948.00) paid to the Easement Grantor (the “**Easement Consideration**”) as consideration for the Appurtenant Utility Easement.
- 2.2 Purchase Price Adjustment. Seller and Buyer acknowledge and agree that Buyer is relying on there being no wetlands on the Property which could interfere with Buyer’s proposed use of the Property. If a wetland delineation is needed or required as part of Buyer’s development of the Property, and such wetland delineation shows that the Property contains or requires the Property to contain wetlands in excess of 0.5 acres (the “**Wetland Allowance**”), Buyer shall be entitled to a reduction of the Purchase Price equal to the actual cost to purchase wetland credits for any existing or required wetlands in excess of the Wetland Allowance; provided, however, the credit for the cost to purchase the wetland credits shall not exceed 25% of the original purchase price per acre for each acre of wetland credit required to be purchased. By way of example, if Buyer is required to purchase an acre of wetland credit and the final gross area of the Property is 2.55 acres, the original purchase price per acre is \$422,537.25, 25% of that is \$105,634.32 per acre, resulting in a Purchase Price reduction of the lesser of (i) the actual cost of the wetland credits, or (i) \$105,634.32.
- 2.3 Payment of Purchase Price. The Purchase Price for the Property will be paid in the following manner:
 - (a) \$10,000.00, by Buyer depositing with the Title Company such amount in cash upon execution of this Agreement as earnest money (the “**Earnest Money**”); and

- (b) the remainder, by Buyer paying such amount to Seller and the Easement Grantor in cash at Closing.
- 2.4 Method of Payment. All cash payments by Buyer will be in U.S. Dollars and in the form of wire transfers, certified checks or other immediately available funds acceptable to Seller.
- 2.5 Application of Earnest Money. The Earnest Money will be deposited with the Title Company within forty-eight hours of the Effective Date. The Title Company will be instructed to hold the Earnest Money in its trust account, and invest the Earnest Money in certificates issued by and time deposits in national banking associations or nationally chartered savings and loan associations, in securities issued or guaranteed by the United States Government, in money market funds the underlying assets of which consist of the above-described certificates or securities, or in such other investments as may from time to time be approved in writing by Buyer and Seller. All interest earned on the Earnest Money will be considered as additional Earnest Money, to be held and invested by the Title Company in the same manner as the Earnest Money originally deposited. If Closing does not occur pursuant to the termination of this Agreement by Buyer per the terms hereof or because of a default by Seller under this Agreement, the Earnest Money and any interest earned thereon will be returned to Buyer. If Closing does not occur because of a default by Buyer under this Agreement, the Earnest Money will be paid to Seller as liquidated damages. If Closing occurs, the Earnest Money and any interest earned thereon will be paid to Seller as a part of the Purchase Price. Buyer will bear any risk of loss with regard to the Earnest Money or any interest earned thereon.

III. TITLE

- 3.1 Title Commitment. Within fifteen (15) days of the Effective Date, Seller will furnish to Buyer a commitment for an owner's policy of title insurance (ALTA Form 06/17/06) covering the Property (the "**Commitment**"), issued by Old Republic National Title Insurance Company through Scott County Abstract and Title, Inc., or such other title insurer as may be acceptable to Buyer (the "**Title Company**"), with standard exceptions for mechanic's liens, survey and parties in possession deleted, with searches for special assessments and with an amount of coverage equal to the Purchase Price. The Commitment will include a copy of each instrument listed as an exception to title or referred to therein. The service charge for the Commitment will be paid by Seller. The premium for any owner's or lender's policy issued pursuant to such Commitment will be paid by Buyer.
- 3.2 Survey. Within thirty (30) days of the Effective Date, Seller will furnish to Buyer at Seller's cost a survey of the Property made by a registered land surveyor and certified to Buyer, the Title Company and the title insurer, showing the location of all easements, buildings, improvements and encroachments (if any), and conforming to the current standard detail requirements established by the American Land Title Association and the National Society for Professional Surveyors (the "**Survey**"), together with a proposed plat prepared for purposes of accomplishing the Parcel Subdivision (as hereinafter defined).

- 3.3 Examination of Title. Buyer will be allowed thirty (30) days after receipt of the Commitment and Survey for examination of title to the Property and making of objections. Objections will be made in writing or be deemed waived.
- 3.4 Corrections to Title. If any objections to title to the Property are made as provided in Section 3.3, Seller will be allowed sixty (60) days in which to make title marketable. Pending correction of title, Closing will be postponed; but upon correction of title or waiver of the specified defects by Buyer, Closing will be held on the date scheduled for Closing under Section 1.2 or, if later, ten (10) days after the objections are cured or waived. If title is not made marketable or the objections are not waived by Buyer within sixty (60) days after the date Buyer gives written objection to title to the Property under Section 3.3, Buyer or Seller may terminate this Agreement and the Earnest Money and any interest earned thereon will be returned to Buyer and neither party will have any further obligations under this Agreement.
- 3.5 Parcel Subdivision. Seller, at its expense, shall complete the necessary administrative or legislative procedure required to divide the Property into a separate legally described parcel and tax parcel as depicted in Exhibit A (the “**Parcel Subdivision**”).

IV. REVIEW OF THE PROPERTY

- 4.1 Documents. Within fifteen (15) days after the Effective Date, Seller shall provide to Buyer copies of all leases, contracts, records, environmental and engineering studies, reports and tests, and other documents and surveys relating to the condition, suitability, and desirability of the Property that are in the possession of Seller or otherwise reasonably available to Seller (collectively, the “**Documents**”). Seller will not be responsible for the accuracy, completeness or sufficiency of the Documents, may provide the documents in electronic format and will have no obligation to copy or incur any costs for copying the Documents.
- 4.2 Due Diligence. Buyer will be allowed one hundred eighty (180) days after the Effective Date (the “**Due Diligence Period**”) to review the Documents, inspect the Property, perform such inventories, observations, tests, and investigations as Buyer may reasonably deem appropriate, and otherwise satisfy itself regarding the condition, suitability, and desirability of the Property. If Buyer in its sole discretion is not satisfied with the Property, Buyer may on or before the expiration of the Due Diligence Period terminate this Agreement by giving written notice to Seller. Upon such termination, the Earnest Money and any interest earned thereon will be returned to Buyer and neither party will have any further obligations under this Agreement.
- 4.3 Environmental Inspection. Buyer may provide its environmental consultant with a copy of any environmental report included in the Documents made available by Seller, and pursuant to Section 9.2 may at its cost conduct additional investigations of the environmental condition of the Property. If Buyer conducts a Phase I environmental investigation and such report contains a recommendation for a Phase II investigation, Buyer will have the option of terminating this Agreement or ordering at Seller’s cost a Phase II investigation. If a Phase II investigation is ordered, the Due Diligence Period will be extended by an additional sixty

(60) days for investigation and submittal of such report. Buyer will provide Seller with a copy of its Phase I and Phase II environmental reports upon completion.

- 4.4 Cooperation. Seller will cooperate with Buyer in making all necessary filings, petitions, and submissions required by Buyer to obtain the necessary governmental approvals for Buyer's planned use of the Property. Seller will take no action, either personally or in connection with a related entity, which would be inconsistent with or in contravention of its obligations to cooperate hereunder.

V. CONDITIONS TO CLOSING

- 5.1 Seller Conditions. The obligation of Seller to sell the Property under this Agreement is subject to the reasonable satisfaction of Seller that:
- (a) the representations and warranties of Buyer contained in Section 8.2 are true and correct in all material respects as of Closing;
 - (b) Buyer has in all material respects performed and observed all covenants, agreements and conditions of this Agreement to be performed or observed by Buyer prior to or on Closing;
 - (c) Seller has received a certificate or certificates dated the day of Closing and signed by a responsible officer of Buyer certifying as to the matters set forth in items (a) and (b) of this Section;
 - (d) no action or proceeding has been instituted or threatened by any third party unaffiliated with Seller to enjoin or delay purchase or obtain material damages from Seller with respect to the purchase which Seller in good faith believes presents a significant risk of succeeding; and
 - (e) Buyer has delivered to Seller all of the items required to be delivered to Seller pursuant to Section 6.1.
- 5.2 Buyer Conditions. The obligation of Buyer to purchase the Property under this Agreement is subject to the reasonable satisfaction of Buyer that:
- (a) the representations and warranties of Seller contained in Section 8.1 are true and correct in all material respects as of Closing;
 - (b) Seller has in all material respects performed and observed all covenants, agreements and conditions of this Agreement to be performed or observed by it prior to or at Closing;
 - (c) Seller has completed the Parcel Subdivision;
 - (d) Seller has delivered the Appurtenant Utility Easement Agreement granting the Appurtenant Utility Easement to Buyer duly executed by the Easement Grantor;

- (e) Buyer has received a certificate or certificates dated the day of Closing and signed by a responsible officer or manager of Seller certifying as to the matters set forth in items (a) and (b) of this Section;
- (f) it is satisfied with the Property in its sole judgment and has determined that it can proceed with its planned use of the Property without significant additional expense and that the same is economically feasible;
- (g) it has obtained the approval of the City of Shakopee and any and all relevant governmental authorities and other bodies and persons for all required rezoning, permits, licenses, variances, site plan reviews, and other approvals necessary for Buyer's planned use of the Property, including, but not limited to, transmission access approvals from Xcel Energy and the Midwest Independent System Operator (MISO);
- (h) Seller has terminated all existing leases on the Property prior to Closing so that Seller can deliver the Property to Buyer free of all claims for lease termination and tenant relocation expenses;
- (i) no action or proceeding has been instituted or threatened by any third party unaffiliated with Buyer to enjoin or delay purchase or obtain material damages from Buyer with respect to the purchase which Buyer in good faith believes presents a significant risk of succeeding; and
- (j) Seller has delivered to Buyer all of the items required to be delivered to Buyer pursuant to Section 6.2.

5.3 Unsatisfied Conditions. If any condition set out in Section 5.1 or 5.2 is unsatisfied on the date scheduled for Closing, the party for whose benefit the condition is may at its option:

- (a) waive the condition and proceed with Closing;
- (b) delay Closing for up to sixty (60) days to allow the condition to be satisfied; or
- (c) terminate this Agreement.

If this Agreement is so terminated, the Earnest Money and any interest thereon will be applied as set out in Section 2.4 and neither Seller nor Buyer will have the right to specific performance or damages for default of this Agreement.

VI. CLOSING

6.1 Buyer Closing Documents. Buyer will deliver to Seller at Closing:

- (a) the portion of the Purchase Price specified in Section 2.2;

- (b) a certificate or certificates dated the day of Closing and signed by a responsible officer of Buyer certifying as to the matters set forth in Section 5.1(a) and (b) of this Agreement;
- (c) the Reliakor Lease, duly executed by Buyer;
- (d) a resolution of the board of commissioners of Buyer authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by the secretary of Buyer; and
- (e) any other items required by this Agreement or reasonably required by the Title Company.

6.2 Seller Closing Documents. Seller will deliver or cause to be delivered to Buyer at Closing:

- (a) a certificate or certificates dated the day of Closing and signed by a responsible officer or manager of Seller certifying as to the matters set forth in Section 5.2(a) and (b) of this Agreement;
- (b) a warranty deed duly executed by Seller conveying the Property to Buyer;
- (c) the Appurtenant Utility Easement Agreement, duly executed by the Easement Grantor;
- (d) termination agreements for all existing leases on the Property, if any;
- (e) an affidavit satisfactory to Buyer that Seller is not a foreign person under Section 1445 of the United States Internal Revenue Code;
- (f) a well disclosure statement as required under Minnesota Statutes section 103I.235, if appropriate disclaimer language is not contained in the deed delivered at Closing;
- (g) an affidavit satisfactory to Buyer that at Closing there are no outstanding, unsatisfied judgments, tax liens, or bankruptcies against Seller, no labor, services, materials, or machinery furnished to the Property for which mechanics' liens could be filed, and no unrecorded interests in the Property which have not been fully disclosed to Buyer;
- (h) the Reliakor Lease, duly executed by Reliakor;
- (i) a resolution of the board of governors or managers of Seller authorizing and approving the transaction contemplated by this Agreement, certified as true and correct by the secretary or manager of Seller; and
- (j) any other items required by this Agreement or reasonably required by the Title Company.

6.3 Delivery of Possession. Seller will deliver possession of the Property to Buyer at Closing, subject to the Lease.

- 6.4 Further Actions. At Buyer's request from time to time after Closing, Seller will at no cost to Seller execute and deliver such further documents of conveyance and take such other action as Buyer may reasonably require to convey the Property to Buyer.

VII. CLOSING COSTS AND PRORATIONS

- 7.1 Closing Costs. Buyer and Seller will each be responsible for its legal, accounting and other expenses associated with the transaction contemplated by this Agreement up to and including the date final adjustments are made pursuant to this Agreement. However, if Buyer or Seller defaults under this Agreement, it will be responsible for all reasonable expenses (including attorneys' fees) incurred by the other in enforcing any rights and remedies under this Agreement. Seller will be responsible for any document recording fees required for correction of title and any state deed tax required in connection with the transaction. Buyer will pay all other document recording fees, fees associated with the transfer or obtaining of licenses and permits required to operate the Property, mortgage registry taxes, and any sales or use taxes required in connection with the transaction. Seller and Buyer will each pay half of the closing fee and any escrow fees imposed by the Title Company, title insurer or its closing agent in connection with this transaction.
- 7.2 Taxes and Assessments. Real estate taxes due and payable in the year of Closing shall be prorated as of the Closing Date. Buyer will pay all real estate taxes due and payable in years following the year in which Closing occurs. Real estate taxes and all special assessments due and payable in all years prior to Closing shall be paid by Seller. On or prior to the Closing Date, Seller shall pay all special assessments, whether or not then due, levied or pending against the Property as of Closing, including, but not limited to street assessments in the estimated amount of \$82,000.00 for a current City of Shakopee project. If the actual amount of any pending or other assessments is not known at the Closing Date, the Title Company shall withhold in escrow from Seller's proceeds at closing an amount equal to 150% of the estimated amount thereof. When the amount of said assessments becomes fixed and payable, the Title Company shall apply said escrow in payment of the assessments, returning any surplus to Seller; provided, however, that if the amount withheld in escrow is insufficient to pay the assessments, Seller shall immediately pay, and shall be liable for the immediate payment of, any such deficiency.
- 7.3 Income and Expenses. Except as set out in Section 7.2, rents (including without limitation payments for operating costs and percentage rent) and all other income and operating expenses relating to the Property, including, but not limited to annual income and annual expenses related to agricultural crops, will be prorated as of the close of business of the day before Closing. Seller will be responsible for the expenses and entitled to the revenues accrued or applicable to the period prior to Closing. Buyer will be responsible for the expenses and entitled to the revenues accrued or applicable to the day of Closing and thereafter.
- 7.4 Estimates. If any amount to be apportioned under Section 7.3 cannot be calculated with precision because any item included in such calculation is not then known, such calculation will be made on the basis of reasonable estimates of Seller of the items in question. Promptly after any such item becomes known to either party, such party will so notify the

other and will include in such notice the amount of any required adjustment. If such adjustment requires an additional payment by Buyer to Seller, Buyer will make such payment to Seller simultaneously with its giving or within twenty (20) days of its receipt of such notice, as the case may be. If such adjustment requires a refund by Seller to Buyer, Seller will make such refund simultaneously with its giving or within twenty (20) days after its receipt of such notice, as the case may be.

VIII. WARRANTIES AND REPRESENTATIONS

8.1 Seller Warranties. Seller warrants and represents to Buyer that:

- (a) no brokerage commission or other compensation is due and unpaid in connection with any lease, tenancy or occupancy of the Property or any renewal thereof;
- (b) Seller has not received any notice and is not aware of a violation of any building codes, fire codes, health codes, zoning codes, environmental laws, or other laws and regulations affecting the Property or the use thereof;
- (c) Seller has not received any notice of a condemnation, environmental, zoning or other regulation or proceeding being instituted or planned which would detrimentally affect the use and operation of the Property for its intended purpose;
- (d) no portion of the Property is located in an area that has been designated as wetlands or other environmental protection area;
- (e) Seller has not received any notice of hearing of a public improvement project from any governmental assessing authority, the costs of which may be assessed against the Property;
- (f) Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Minnesota and has all requisite power and authority to carry out its business as conducted, to execute and deliver this Agreement and the documents entered into pursuant hereto, and to carry out its obligations under this Agreement and such documents;
- (g) this Agreement has been duly authorized, executed and delivered on behalf of Seller and constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms;
- (h) the execution, delivery and performance of this Agreement by Seller will not result in a breach or violation of Seller or constitute a default by Seller under any agreement, instrument or order to which Seller is a party or by which Seller is bound;
- (i) Seller is not aware of any action, proceeding or investigation pending or threatened which might materially adversely affect the Property or the ability of Seller to perform its obligations under this Agreement; and

- (j) Seller's disclosures attached hereto as Exhibit D are incorporated in this Agreement as representations and warranties of Seller as if fully set forth in this Section 8.1.

8.2 Buyer Warranties. Buyer warrants and represents to Seller that:

- (a) Buyer is a municipal utility commission duly organized, validly existing and in good standing under the laws of the State of Minnesota and has all requisite power and authority to carry on its business as conducted, to execute and deliver this Agreement and the documents entered into pursuant hereto, and to carry out its obligations under this Agreement and such documents;
- (b) this Agreement has been duly authorized, executed and delivered on behalf of Buyer and constitutes the valid and binding agreement of Buyer, enforceable in accordance with its terms;
- (c) the execution, delivery and performance of this Agreement by Buyer will not result in a breach or violation by Buyer or constitute a default by Buyer under any agreement, instrument or order to which Buyer is a party or by which Buyer is bound; and
- (d) Buyer is not aware of any action, proceeding or investigation pending or threatened which might materially adversely affect the ability of Buyer to perform its obligations under this Agreement.

8.3 Non-Residential Property Disclosures. Seller shall complete the disclosures attached hereto as Exhibit D.

8.4 Survival. The representations and warranties of the parties contained in this Agreement or in any document executed in connection herewith, including, without limitation, the provisions of Sections 8.1 and 8.2 above shall not merge with or into any deed of conveyance or other document or instrument delivered at or in connection with the Closing and shall survive the Closing.

IX. OPERATIONS PRIOR TO CLOSING

9.1 Operation. During the period from the execution of this Agreement to Closing, Seller will cause the Property to be operated in the manner in which it has been operated prior to the execution of this Agreement. Seller will not without Buyer's written consent permit any new leases or contracts relating to the Property. Seller will keep and comply with all requirements of encumbrances and will not without Buyer's written consent permit any new encumbrance or any amendment, modification or termination of any encumbrance or any waiver of Seller's rights under any encumbrance on the Property.

9.2 Inspection. During the period from execution of this Agreement to Closing, Buyer and its representatives may enter the Property to inspect the Property and perform such inventories, observations, tests and investigations, including, but not limited to geotechnical investigations, as Buyer may reasonably deem appropriate. Buyer will at Buyer's cost repair or provide reasonable compensation to Seller for any resulting damage to the Property and

will indemnify and hold harmless Seller from any resulting injury or damage to persons or property. Notwithstanding anything in this Agreement to the contrary, this obligation and indemnity shall survive termination of this Agreement.

X. CASUALTY AND CONDEMNATION

10.1 Notice of Damage or Taking. Seller will give Buyer prompt notice of any fire or other casualty occurring between the Effective Date and Closing which involves damage to the Property and of any actual or threatened taking in condemnation affecting the Property of which Seller has knowledge.

10.2 Option to Terminate. If prior to Closing:

- (a) the Property sustains damage by fire or other casualty in an amount greater than 10% of the Purchase Price under this Agreement;
- (b) the Property is taken in condemnation or by transfer in lieu of condemnation; or
- (c) condemnation proceedings are commenced against the Property,

Buyer may terminate its obligations under this Agreement by written notice given to Seller within fifteen (15) days after receipt of the notice referred to in Section 10.1. If so terminated, this Agreement will be void and of no effect, the Earnest Money and any interest earned thereon will be returned to Buyer and neither party will have any further rights or obligations under this Agreement.

10.3 Affect on Closing. If Buyer is not entitled to or does not timely make the election provided for in Section 10.2, this Agreement and the obligations of Seller and Buyer under this Agreement will remain in full force and effect except that:

- (a) Buyer will accept the Property with such damage or condemnation;
- (b) there will be no abatement or reduction in the Purchase Price; and
- (c) Seller will at Closing, pay over to Buyer any insurance proceeds and condemnation awards received prior to Closing which have not been applied to repairs and restoration, and assign to Buyer Seller's interest in all unpaid insurance proceeds and condemnation awards.

XI. GENERAL

11.1 Notices. Any notice or other communication under this Agreement will be in writing and will be deemed given when delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed as follows:

- (a) if to Seller: Maras Street, LLC
8600 Hansen Avenue
Shakopee, MN 55379
Attn: Eugene Hansen
- (a) if to Buyer: Shakopee Public Utilities Commission
255 Sarazin Street
Shakopee, MN 55379
Attention: Joseph D. Adams
- with copies to: Shakopee Public Utilities Commission
255 Sarazin Street
Shakopee, MN 55379
Attention: Lon Schemel
- and McGrann Shea Carnival Straughn & Lamb, Chartered
800 Nicollet Mail, Suite 2600
Minneapolis, MN 55402
Attention: Carla J. Pedersen

or to such other address as the party to be addressed shall specify by notice so given.

- 11.2 Broker Commissions. Buyer and Seller each represents that no salesperson, broker, or agent has been retained by it in connection with this transaction. Buyer and Seller each indemnifies the other from any real estate or other sales commissions arising out of any claim of any salesperson, broker or agent acting or claiming to have acted on behalf of the indemnifying party in connection with this transaction.
- 11.3 Entire Agreement. This Agreement embodies the entire agreement and understanding between Buyer and Seller relating to the transactions contemplated by this Agreement and may not be amended, waived or discharged except by an instrument in writing executed by the party against whom enforcement of such amendment, waiver or discharge is sought. No warranties or representations have been given by either party to the other which are not fully embodied in this Agreement. If any term or provision of this Agreement is invalid or unenforceable, the remainder of this Agreement will not be affected and will remain in full force and effect.
- 11.4 Survival. Except as may otherwise be expressly provided in this Agreement, all covenants, agreements, obligations and undertakings made by Seller and Buyer in or pursuant to this Agreement will survive Closing, for a period of six (6) years after Closing, whether or not so expressed in the immediate context of any such covenant, agreement, obligation or undertaking.
- 11.5 Construction. This Agreement will be construed and enforced in accordance with the laws of the State of Minnesota. Time is of the essence of this Agreement. Seller and Buyer and their respective counsel have reviewed and revised this Agreement. Seller and Buyer acknowledge that the normal rule of construction to the effect that any ambiguities are to be

resolved against the drafting party shall not be employed in the interpretation of this Agreement.

- 11.6 Binding Agreement. This Agreement will be binding upon and inure to the benefit of Buyer and Seller and their respective heirs, representatives, successors and assigns.
- 11.7 Announcements. Prior to and at Closing, Buyer and Seller will coordinate press releases and other public disclosures concerning the transactions contemplated by this Agreement.
- 11.8 Section Headings. The Section headings herein contained are for purposes of identification only and shall not be considered in construing this Agreement.
- 11.9 Exhibits. Any and all exhibits attached or to be attached hereto are hereby incorporated and made a part of this Agreement by reference.
- 11.10 Memorandum of Agreement. Buyer has the right to record a memorandum of this Agreement with the County Recorder, Registrar of Titles or other recording office of the County in which the Property is located and Seller consents to and agrees to join in and sign any such memorandum.
- 11.11 Waiver. Except as herein expressly provided, no waiver by a party of any breach of this Agreement or of any warranty or representation hereunder by another party shall be deemed to be a waiver of any other breach of any kind or nature (whether preceding or succeeding and whether or not of the same or similar nature), and no acceptance of payment or performance by a party after any such breach by another party shall be deemed to be a waiver of any further breach of this Agreement or of any representation or warranty hereunder by such other party whether or not the first party knows of such a breach at the time it accepts such payment or performance. No failure on the part of a party to exercise any right it may have by the terms hereunder or by law upon the default of another party, and no delay in the exercise thereof by the first party at any time when such other party may continue to be so in default, shall operate as a waiver of any default or as a modification in any respect of the provisions of this Agreement.
- 11.12 Time Computations. In computing a period of days for performance or payment as provided hereunder, the first day shall be excluded and the last day shall be included. If the last day of any such period is a Saturday, Sunday or legal holiday, the period shall extend to include the next day which is not a Saturday, Sunday or legal holiday. Any performance or payment which must be taken or made under this Agreement must be taken or made prior to 5:00 p.m. of the last day of the applicable period provided hereunder for such action, unless another time is expressly specified. All references to time shall be Minneapolis, Minnesota time.
- 11.13 Blocked Persons. Neither Seller nor Buyer, nor, to the actual knowledge of Seller and Buyer, any of their affiliates, is in violation of any laws relating to terrorism or money laundering (“**Anti-Terrorism Laws**”), including Executive Order No. 13224 on Terrorist Financing, effective September 24, 2001 (the “**Executive Order**”), and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Public Law 107-56. Neither party hereto nor, to the knowledge of the parties, any of their affiliates, or their respective brokers or other agents acting or

benefiting in any capacity in connection with the transaction contemplated hereby, is any of the following: (a) a person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (b) a person or entity owned or controlled by, or acting for or on behalf of, any person or entity that is listed in the annex to, or is otherwise subject to the provisions of, the Executive Order; (c) a person or entity with which either party is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (d) a person or entity that commits, threatens or conspires to commit or supports "terrorism" as defined in the Executive Order; or (e) a person or entity that is named as a "specially designated national and blocked person" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website (www.treas.gov/ofac) or any replacement website or other replacement official publication of such list. Neither party, nor to the knowledge of either party, any of its brokers or other agents acting in any capacity in connection with the transaction contemplated hereby (i) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any person described in this Section, (ii) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order, or (iii) engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. This Agreement may be terminated by either party if the other party is determined to be a blocked person within the meaning of the Executive Order. Upon such termination, the Earnest Money will be returned to Buyer and neither party will have any further obligations under this Agreement, except for those obligations that expressly survive such termination.

- 11.14 1031 Exchange. Either party may elect to enter into the transaction as part of a simultaneous, deferred or reverse tax-deferred exchange under Section 1031 of the Internal Revenue Code (the "1031 Exchange"), pursuant to an exchange agreement or similar agreement to be entered into by and between the party electing the 1031 Exchange and another qualified party (the "1031 Agent") as contemplated by the Code. The parties agree to cooperate with each other and to execute any documents (which may include an acknowledgement of an assignment of rights, but not obligations, under this Agreement) that are reasonably required by the party electing the 1031 Exchange, the 1031 Agent, or the Code in order to complete the purchase of the Property as part of an exchange that qualifies for non-recognition of gain under Section 1031 of the Code. The party not electing the 1031 Exchange shall not incur any additional liability or financial obligation as a consequence of the possible exchange.
- 11.15 Allocation of Liability. It is expressly understood and agreed that Seller shall be liable to third parties for any and all obligations, claims, losses, damages, liabilities and expenses arising out of events, contractual obligations, acts or omissions of Seller that occurred in connection with the ownership or operation of the Property prior to Closing and, subject to the terms of this Agreement and the documents delivered at Closing, Buyer shall be liable to third parties for any and all obligations, claims, losses, damages, liabilities and expenses arising out of events, contractual obligations, acts or omissions of Buyer that occur in connection with the ownership or operation of the Property after Closing.

- 11.16 Attorneys' Fees. Notwithstanding anything contained herein to the contrary, if any lawsuit or arbitration or other legal proceeding arises in connection with the interpretation or enforcement of this Agreement, the prevailing party therein shall be entitled to receive from the other party the prevailing party's costs and expenses, including reasonable attorneys' fees incurred in connection therewith, in preparation therefor and on appeal therefrom, which amounts shall be included in any judgment therein.
- 11.17 Time of Essence. Time shall be of the essence with respect to the performance of each and every covenant and obligation, and the giving of all notices, under this Agreement.
- 11.18 Waiver of Trial by Jury. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES HEREBY ABSOLUTELY AND IRREVOCABLY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BETWEEN THEM RELATED TO THIS AGREEMENT OR THE CONSUMMATION OF THE TRANSACTIONS CONTEMPLATED HEREUNDER.
- 11.19 Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same agreement of the parties. Each such counterpart may be delivered by facsimile or e-mail (in .pdf format) and any signatures which are so delivered by facsimile or e-mail shall be deemed original signatures for all purposes.
- 11.20 Execution and Delivery. This Agreement will be effective only upon execution and delivery by both parties.

[The remainder of this page is intentionally left blank]

IN WITNESS OF this Agreement, Seller and Buyer have duly executed it as of the Effective Date.

SELLER:

MARAS STREET, LLC,
a Minnesota limited liability company

By: _____
Its: _____

BUYER:

SHAKOPEE PUBLIC UTILITIES COMMISSION,
a Minnesota municipal utility commission

By: _____
Its: _____

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JOINDER

Hansen Avenue, LLC, a Minnesota limited liability company, hereby executes this Joinder for the purpose of acknowledging and agreeing that it will grant the Appurtenant Utility Easement set forth in Section 1.1(c) of the foregoing Purchase Agreement (the “**Agreement**”) by executing and delivering the Appurtenant Easement Agreement pursuant to Section 6.2(i) of the Agreement, in substantially the form attached to the Agreement as Exhibit B in exchange for the Easement Consideration set forth in Section 2.1(b) of the Agreement at or prior to Closing.

HANSEN AVENUE, LLC,
a Minnesota limited liability company

By: _____
Its: _____

JOINDER

Reliakor Services, Inc., a Minnesota corporation, hereby executes this Joinder solely for the purpose of acknowledging and agreeing that pursuant to Section 1.3 and Section 6.2(h) of the foregoing Purchase Agreement (the “**Agreement**”), at or prior to Closing, it will execute and deliver the Reliakor Lease in substantially the form attached to the Agreement as Exhibit C.

RELIAKOR SERVICES, INC.,
a Minnesota corporation

By: _____
Its: _____

EXHIBIT A

Depiction of Subject Property

Parcel ID Number: 27.912024.0



EXHIBIT B

Form of Appurtenant Utility Easement

[See attached.]

EXHIBIT C

Form of Reliakor Lease

[See attached.]

EXHIBIT D

Disclosures for Sale of Non-Residential Property

A. WELL DISCLOSURE. Pursuant to Minnesota Statutes Section 103I.235 *[check one of the following:]*

- ☐ Seller certifies that Seller does not know of any wells on the real property and will so certify on the Deed or Contract for Deed delivered at closing.
- ☐ Seller certifies there are one or more wells located on the real property and Seller's disclosure is continued on the attached *Well Disclosure Statement*. *[If this option is selected, attach a copy of Well Disclosure Statement, M.S.B.A. Real Property Form No. 21.]*

B. SEWAGE TREATMENT SYSTEM DISCLOSURE. Pursuant to Minnesota Statutes Section 115.55 *[check only one from (1), (2 and (3):]*

- ☐ (1) Seller certifies that sewage generated at the Property goes to a facility permitted by the Minnesota Pollution Control Agency (for example, a city of municipal sewer system).
- ☐ (2) Seller certifies that sewage generated at the Property does not go to a facility permitted by the Minnesota Pollution Control Agency and Seller's disclosure of the sewage system is continued on the attached *Disclosure of Sewage Treatment System*. *[If this option is selected, attach a copy of Disclosure of Sewage Treatment System, M.S.B.A. Real Property Form No. 14.]*
- ☐ (3) Seller certifies that no sewage is generated at the Property.

[and also check either (4) or (5):]

- ☐ (4) Seller has no knowledge whether there is an abandoned subsurface sewage treatment system on the Property.
- ☐ (5) Seller knows there *[select one:]* ☐ **are** ☐ **are no** abandoned subsurface sewage treatment systems on the Property. *[If Seller discloses the existence of an abandoned subsurface sewage treatment system on the Property, attach a copy of Disclosure of Sewage Treatment System, M.S.B.A. Real Property Form No. 14.]*

Independent Compliance Report. In addition to the statutory disclosures under Minnesota Statutes Sections 115.55, some local units of government may require an independent sewage treatment system compliance report be provided to the Buyer and may impose obligations on Buyer or Seller for failed systems as a condition to sale of the Property. A copy of any required independent sewage treatment system compliance report *[select one:]* ☐ **is** ☐ **is not** attached.

C. HAZARDOUS SUBSTANCES, PETROLEUM PRODUCTS, AND UNDERGROUND STORAGE TANK DISCLOSURE. Pursuant to Minnesota Statutes Sections 115B.16 and 116.48, Seller knows of no hazardous substances or petroleum products having been placed, stored, or released from or on the Property by any person in violation of any law, nor of any underground or aboveground storage tanks having been located on the Property at any time, except as follows:

If the presence of any hazardous substances or petroleum products or any underground or aboveground storage tanks is disclosed, then this paragraph applies:

Seller certifies that all underground and aboveground storage tanks known to Seller on the Property are shown on the attached drawing or map. Seller shall provide Buyer with a copy of the affidavits required by Minnesota Statutes Sections 115B.16 and 116.48 if applicable to the Property and shall record such affidavits at Closing.

- D. FLOOD PLAIN, SHORELAND AND WETLANDS DISCLOSURE.** Minnesota law and local ordinances restrict the ability to build or to rebuild improvements (including homes, garages, outbuildings, wells or sewage treatment systems) within flood plains, shorelands, or wetlands or to excavate, fill, or drain a wetland. A “flood plain” is the area adjoining a water course which has been or hereafter might be covered by the regional flood which recurs once in 100 years, a “shoreland” is land located within 1,000 feet from the normal high watermark of a lake, pond, or flowage and land located within 300 feet of a river or stream or the landward side of a flood plain, whichever is greater, and a “wetland” is land transitional between terrestrial and aquatic systems where the water table is usually at or near the surface or the land is covered by shallow water. Seller knows of no flood plains, shorelands or wetlands affecting the Property, except as follows:

[If the presence of a flood plain, shoreland or wetland is disclosed, attach a copy of Addendum to Purchase Agreement: Wetlands, Shoreland and Flood Plain Disclosure, M.S.B.A. Real Property Form No. 8.]

- E. METHAMPHETAMINE DISCLOSURE.** Pursuant to Minnesota Statutes Section 152.0275, Subd. 2(m), Seller hereby certifies that *[check only one box, either (1) or (2):]*

- ☐ (1) Seller is not aware of any methamphetamine production that has occurred on the Property.
- ☐ (2) Seller is aware that methamphetamine production has occurred on the Property, and Seller’s disclosure is continued on the attached *Methamphetamine Disclosure Statement*. *[If this option is selected, attach a copy of Methamphetamine Disclosure Statement, M.S.B.A. Real Property Form No. 22.]*

- F. NOTICE OF AIRPORT ZONING REGULATIONS.** If airport zoning regulations affect this real property, a copy of those airport zoning regulations as adopted can be viewed or obtained at the office of the county recorder where the zoned area is located.

- G. CEMETERY DISCLOSURE.** Minnesota Statutes Section 307.08 prohibits any damage or illegal molestation of human remains, burials or cemeteries. Seller certifies that Seller *[select one:]* ☐ **is** **not** aware of any human remains, burials or cemeteries on the Property.

ATTACHMENTS TO EXHIBIT D
DISCLOSURES FOR SALE OF PROPERTY
(NON-RESIDENTIAL)

- ☐ Well Disclosure Statement (M.S.B.A. Real Property Form No. 21)
- ☐ Disclosure of Sewage Treatment System (M.S.B.A. Real Property Form No. 14)
- ☐ Independent Sewage Treatment Compliance Report
- ☐ Addendum to Purchase Agreement: Wetlands, Shoreland and Flood Plain Disclosure (M.S.B.A. Real Property Form No. 8)
- ☐ Methamphetamine Disclosure Statement (M.S.B.A. Real Property Form No. 22)



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DATE: February 2, 2023

TO: Commissioners

FROM: Greg Drent, General Manager

A handwritten signature in dark ink, appearing to read "GD", is written over the name "Greg Drent" in the "FROM:" line.

Subject: 2023 Workshops

The current schedule for the quarterly workshops on the 3rd Monday of the month are as follows:

February---- IT projects and security at SPU facilities

May--- Water infrastructure planning and water treatment plants

September--- Finance, prepare for budget, Investments

November--- Electric infrastructure planning, new substations and Blue Lake Substation

Workshops will focus on each department within the utility and the manager for their respective area, and I will prepare the agendas. The workshops will be led by the manager and I but will be in an interactive setting.

IT projects, and security at SPU facilities is scheduled for February. The IT director position is currently open. IT director James Keltgen's last day at SPU is Feb 3rd. While we have good information to share about some of the significant changes this last year that Mr. Keltgen and the staff accomplished, I would like to consider canceling the February workshop. I think it is important to hire a new IT director and allow them time to review past practices and discuss where SPU should be moving forward regarding the IT Department before conducting the workshop. I want to ensure we are staying on course and saving everyone's time with the position filled first and then being able to discuss IT projects and direction. We will continue our search for an IT Director that can continue the momentum of moving the organization forward. Some of the successful projects that Mr. Keltgen and the IT Department completed this past year are the conversion to office 365, Teams, wireless infrastructure throughout the building, connected to Scott County fiber, Daffron to NISC and iPads for workflow efficiencies in all departments.

I considered adjusting the workshop topics to a different department area for February, but SPU staff is quite busy with the conversion to NISC currently underway, so it would be challenging to prepare for the shift in the schedule at this point, so I am recommending that we cancel the February workshop and bring the IT projects and security at SPU facilities to a future workshop.

Recommendation: Cancel February Workshop meeting

DATE: January 18, 2023
TO: SPU Commissioners
FROM: Greg Drent, General Manager *GD*
Subject: Goals 2023

It is that time of year for the commission to set 2023 goals and look back at 2022 goals to see where we have been and where we are going. Below are the 2022 goals that were approved in January of 2022.

2022 Goals

1. Complete Service Territory Acquisition with MVEC (Project Manager Carlson) **Done**
 - A. Agreement (Drent) **Done**
 - B. Integration analysis (Engineering and Electric departments) **Done**
 - C. Customer outreach (Walsh) **Done**
 - D. Meter transfer (Electric) **Done**
 - E. Meter reads (Finance and Admin) **Done**
 - F. Run bills (Finance and Admin) **Done**
2. SPU Handbook update and implementation (Project Manager Menke) **Done**
3. Water treatment site acquisition (Drent and Adams) **Ongoing**
4. Software implementation (Project Manager Keltgen) **Done**
 - A. Contract negotiation (Drent) **Done**
 - B. Finance module in October (Willemessen) **Done**
 - C. Billing module February 2023 (Finance and Admin) **February 2023**
5. AMI vendor selected and contract negotiation complete (Project Manager Walsh) **February 2023**
 - A. Bid package April **Done**
 - B. Contract negotiation (Drent) **January 2023**
 - C. Integration into billing and Meters ordered 4th quarter **First Quarter 2023**
6. East Shakopee Substation (Adams) **Land under Contract**
7. Strategic plan and succession plan Kelley Willemessen will take the lead on this project with my assistance as this is part of her master's degree capstone project. (Project Manager Willemessen) **Done**

8. Convert to Office365 & System Implementations (Project Manager Keltgen) **Done**
- A. Setup Intranet using MS Teams **Done**
 - B. Reduce need for alternative systems (Barracuda, Norton, Zoom, PDQ, etc... - estimated \$7600 annual savings) **Done**
 - C. Wireless Infrastructure Reset (February 2022) **Done**
 - Setup wireless for maximum usability throughout building **Done**
 - D. “Resurrect” Fiber Ring Project (2022)
 - Meet with stakeholders (February) **Done**
 - Visit all potential sites (April) **Done**
 - Develop project rollout plan (May) **First Quarter 2023**
 - Establish primary fiber connection at main SPUC campus (September) **Done**
 - Establish alternative DR site on fiber ring @ water site (September) Need full fiber ring this is **ongoing**
 - E. Daffron to NISC Conversion (April 2023) **Done**
 - Project Plan (March) **Done**
 - Finance Conversion to NISC ABS (October) **Done**
 - Billing Conversion to NISC CC&B (February 2023) **Done**
9. Customer outreach—information (Walsh)
- A. Meet with 10 largest customers to get feedback on SPU services **Ongoing**
 - B. Increase SPU presence on social media platforms **Ongoing**
 - C. Customer outreach for paperless billing, clean energy choice and customer portal to view bills **Ongoing**
 - D. Community events/outreach for education and service awareness to SPU customers **Ongoing**

As you can see, we accomplished many of our goals for 2022. I am very proud of the staff at SPU for taking on these challenges and making SPU a better place. When I look at 2023, we will have another busy year. I am confident staff can accomplish the goals we put in front of them. We continue to move forward on the NISC implementation. We went live on the billing and service side this week, and it went well. We will continue updating and streamlining processes as we gain a deeper understanding of the system and its features. Below are the 2023 goals that the SPU leadership team has put together for your review.

2023 Goals

1. Develop and Implement AMI Deployment Plan - (AMI Project Kick-Off)

- A. Executed Contract (Jan/Feb)
- B. Establish AMI Project Team – Roles and Responsibilities – Kick-Off Meeting (Jan/Feb)
- C. Purchase Orders –
 - Meter Specifications Defined (Q1)
 - First Article Ordering/Testing (Q1-Q2)
 - SAT Pilot Ordering/Testing (Q2)
- D. Work Planning, Integration (NISC) and Design Work (Q1-Q3)
- E. SAT Pilot Installation (Q3)
- F. Conduct SAT (Q3-Q4)
- G. Preparation for Full System Ordering (Dec 2023)

2. Complete RP3 Award Application- American Public Power (APPA)

The RP3 application covers four disciplines — reliability, safety, workforce development, and system improvement. An award to the utility demonstrates the utility's dedication to operating an efficient, safe, and reliable distribution system. Below are the sections covered in the application process.

I. Reliability

- A. Reliability Indices Collection
- B. Reliability Indices Use
- C. Mutual Aid
- D. Disaster Plan
- E. Physical Security

II. Safety

- A. Safety Manual
- B. Safe Work Practices
- C. Benchmarking

III. Workforce Development

- A. Succession Planning and Recruitment
- B. Employee Development & Recognition
- C. Education, Participation and Service

IV. System Improvement

- A. Research & Development
- B. System Maintenance and Betterment
- C. Financial Health

Application Deadline - September 30, 2023

3. Continue developing and planning infrastructure needs to support expected growth

- A. West Shakopee Substation Energized and load transferred
 - **115 kV Breaker** - Delivery week of February 6th
 - **VTC Power Transformer** Delivery Waiting for update from VTC
December 2nd delivery postponed (VTC waiting on ETM to be install)
 - **15 kV Switchgear Building** Mid to end of April (1 wk. after road restriction are lifted)
 - **NCC Steel & Bus** Install Mid May
 - **NCC Wiring Connections** One month after delivery of the switchgear building
 - **Xcel Energy** Transmission line tentative completion mid to End of October
- B. Water Treatment Land Purchases
- C. Water Infrastructure planning workshop for water treatment locations
 - 2nd quarter 2023 3-5-10 year plans
- D. East Substation
 - System impact study – June 2023
 - Land purchased 3–5-year plan

4. IT projects - Security

5. Expand SPU Clean Energy program

- A. Advertising campaign
- B. Develop sales materials/aids for CS staff
- C. Work with MMPA to fund promotional efforts
- D. Incorporate into community education and events (i.e., Rhythm on the Rails)
- E. Target key accounts

6. Continue to develop and update SPU Website to enhance user interface and the flow of information - SmartHub Engagement

- A. Drive customer enrollments with service features
 - Enhanced customer billing notifications (texting and emailing)
 - Data presentation (graphs, weather, historical comparisons)

- Data presentation (graphs, weather, historical comparisons)
 - Account management tools
 - B. Improve and increase customer touch points
 - Utilize custom messaging on dashboard
 - Utilize message center on billing statements
 - Utilize Messenger for custom email communications
 - C. Customize SmartHub enrollment process to direct targeted actions
 - Auto Pay
 - Paperless Billing
 - Clean Energy Choice
 - Budget Billing
- 7. Rate evaluation options to customers
 - A. Irrigation rate
 - B. Water Capacity Trunk Water rate and Development fees
 - C. EV rate
 - D. Evaluate all other rates for new opportunities to serve our customers better.

Additional topics: 10-year CIP to match city, succession planning to prepare for retirements, Leadership development, Employee Handbook review process using technology data as opposed to word documents, Software implementation full rollout, goals for workshops

Action: Approve 2023 SPU Goals



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TO: Greg Drent, General Manager *GD*
 FROM: Joseph D. Adams, Planning & Engineering Director *J Adams*
 SUBJECT: NES WTP Site Search Update
 DATE: February 3, 2023

ISSUE

Staff wishes to update the Commission on the status of the Normal Elevation Service District Water Treatment Plant site search.

BACKGROUND

The Commission direction to staff is to follow the Hybrid Water Treatment Plan described in their consultant's (Short Elliot Hendrickson – SEH) Inc. Water Treatment Plant Feasibility Study. The Hybrid plan would require the Commission to acquire a site large enough to develop a WTP for all the NES District water supply.

Per Commission direction staff submitted a draft purchase agreement and the appraisal report on the 14.90-acre parcel located at 3690 Eagle Creek Boulevard to the property owner's representative.

Staff also submitted a draft purchase agreement and the appraisal report on the adjacent 3.5-acre parcel located at 3650 Eagle Creek Boulevard to the property owner's representative.

DISCUSSION

Staff has been in discussions with the property owner's representative on both parcels.

REQUESTED ACTION

It may be appropriate for the Commission to adjourn to closed session to discuss negotiations on these potential land acquisitions. If so, then the motion would be as follows:

Motion: I move that the Commission go into closed session under Minnesota Statutes, Section 13D.05, subdivision 3(c) to review confidential or protected nonpublic appraisal data and to develop or consider offers or counteroffers for the purchase of property described as 3690 Eagle Creek Boulevard and 3650 Eagle Creek Boulevard in Shakopee.