

CITY COUNCIL/ELECTRICAL  
ADVISORY COMMITTEE

May 13, 2015 – 6:00 p.m.  
Regular Meeting

CITY COUNCIL

Marc Tall, Mayor  
Ronald Beauchamp, Mayor Pro-Tem  
Patricia Baribeau, Council Member  
Michael Sattem, Council Member  
Ralph Blasier, Council Member

ADMINISTRATION

James V. O'Toole, City Manager  
Robert S. Richards, CMC, City Clerk  
Ralph B.K. Peterson, City Attorney  
Mike Furmanski, Electrical Superintendent  
Michael Dewar, City Controller

ELECTRICAL ADVISORY COMMITTEE

Tim Wilson, Chairperson  
Ann Bissell, Vice Chairperson  
Larry Arkens, Committee Member  
Glendon Brown, Committee Member  
John Anthony, Committee Member  
Vacant Seat  
Vacant Seat

Escanaba City Council Chambers: 410 Ludington Street - Escanaba, MI 49829

Meeting Agenda

Wednesday, May 13, 2015

CALL TO ORDER  
ROLL CALL  
APPROVAL/ADJUSTMENTS TO THE AGENDA  
CONFLICT OF INTEREST DECLARATION  
NEW BUSINESS

- 1. Update - Electric Department –General Operations.**  
**Explanation:** Electrical Superintendent Mike Furmanski will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the current departmental activities.
- 2. Update – Shutdown of Power Plant – Pro Energy Services, Inc.**  
**Explanation:** Pro Energy Services, Inc. will update the City Council, Electrical Advisory Committee and Citizens of Escanaba on the status of the shutdown of the power plant.
- 3. Approval – Professional Services – Spill Prevention, Control, and Countermeasures Plan.**  
**Explanation:** Administration is seeking Council approval to accept a proposal from TriMedia Environmental and Engineering of Marquette, MI to update/design a Spill Prevention, Control, and Countermeasures plan for the West Side Substation, the Cold Storage facility, and the new substation in an amount not to exceed not-to-exceed \$4,000.00
- 4. Approval – Distribution Pole Purchase.**  
**Explanation:** Administration is seeking Council approval to purchase wooden distribution poles from Thomasson Company of Philadelphia, MS in the amount of \$37,781.48.

Agenda - May 13, 2015

5. **Approval – Distribution System Cable Purchase**

**Explanation:** Administration is seeking Council approval to purchase 15kV cable from Border States Electric of Green Bay, WI in an amount not to exceed \$12,000.00.

6. **Approval – West Side Substation Equipment Replacement and Upgrade.**

**Explanation:** Administration is seeking Council approval to retain Energis High Voltage Resources of Green Bay, WI to replace the voltage regulators and associated equipment at the West Side Substation in an amount not to exceed \$22,000.00

7. **Update – Power Plant Sale.**

**Explanation:** The administration will update the City Council, Electrical Advisory Committee and the Citizens of Escanaba regarding the sale of the plant.

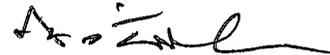
GENERAL PUBLIC COMMENT

COMMISSION/STAFF COMMENT AND ANNOUNCEMENTS

ADJOURNMENT

The City of Escanaba will provide all necessary, reasonable aids and services, such as signers for the hearing impaired and audiotapes of printed materials being considered at the meeting to individuals with disabilities at the meeting/hearing upon five days notice to the City of Escanaba. Individuals with disabilities requiring auxiliary aids or services should contact the City of Escanaba by writing or calling City Hall at (906) 786-9402.

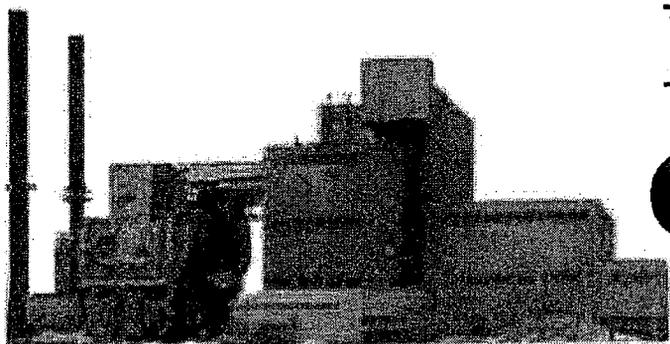
Respectfully Submitted,



James V. O'Toole  
City Manager

NB#2  
CC-EAC  
5-13-15

Escanaba Operating Services  
Monthly Report  
April 2015



*Escanaba Generating Station*

**Escanaba**  
**Operating**  
**Services**

## Executive Summary

The power plant operating statistics for the month of April 2015 are described in the tables below.

## Key Performance Indicators

Measure	Unit of Measure	Month	Year to Date
Steam Plant Gross Electrical Generation	MWH	0	6717
Unit 1 Net Electrical Generation	MWH	0	3026
Unit 2 Net Electrical Generation	MWH	0	3074
Unit 1 Hours of Operation	Hours	0	486.2
Unit 2 Hours of Operation	Hours	0	454
Coal Consumption	Tons	0	3638.91
Coal in Bunkers	Tons	1513.39	1513.39
Steam Plant Net Heat Rate	BTU/KWH	0	13800
Plant Availability	%	0	53%
Combustion Turbine Gross Electrical Generation	MWH	0	0
Combustion Turbine Station Service	MWH	0	52
Combustion Turbine Hours of Operation	Hours	0	0
Fuel Oil Consumption	Gallons	0	0
Combustion Turbine Availability	%	0%	0%

## Operations Summary

### Unit Starts

There were no unit starts during the month of April 2015

Unit	Date	On-Line Time	Off-Line Time	Reason
1				Substation Event
2				
CT				

### Unit Trips and Unplanned Outages.

There were no unit trips or unplanned outages during the month.

Unit	Date	Breaker Open Time	Unit Released	Duration (Hours)	Cause
1					Substation Event
2					
CTG					

### Planned Outages

There were no planned outages during the month April 2015.

Unit	Start Date	Start Time	End Date	End Time	Cause
1	None				Substation Event
2	None				
CTG	None				

### Forced Outages /Load Limitations

The entire plant was out of service for the month of April 2015

Unit	Start Date	End Date	End Time	Load Limit	Cause
1				NA	Substation Event
2				NA	
CTG				NA	

## Maintenance Activities

### Plant Major Maintenance Activities for April 2015.

#### Unit 1 and 2

The plant personnel began preparing for the permanent shutdown of the power plant. Flyash was cleaned from the precipitator hoppers. Plant electrical wiring is also being removed. The wire has scrap value. The wire will be stripped and sold.

Maintenance installed a coupling on fuel oil tank line in order to in preparation for the removal of the fuel oil from the tank.

#### Combustion Turbine

There was no major maintenance performed on the Combustion Turbine.

#### Balance of Plant Outstanding Issues

Coal will be removed from the coal bunkers in order to prevent spontaneous combustion of the coal.

## Emissions Compliance Overview-Air/Water

- There were no Air Monitoring deviations in the month of April 2015.

### Air Monitoring Deviations

Start Date	Start Time	End Date	End Time	Opacity Parameter	Cause
None					

**Water – NPDES Permit Deviations**

- There were no NPDES violations during the month of April 2015.

**Water – Groundwater**

- There were no Groundwater deviations during the month of April 2015

**Water Monitoring Deviations**

Start Date	End Date	Parameter	Cause
None			

**Occupational Safety and Health Overview**

**OSHA Summary of Work Related Injuries and Illnesses**

- 1) There were no OSHA work related injuries or illnesses during the month of April 2015.

**EH&S Incidents – (Near Misses and/or Property Damage)**

- 1) There were no near misses or property damage during the month.

**Labor Statistics Labor Statistics** (Note: These statistics are for the 2015 calendar year from Jan 1 through December 31.)

Item	Month	Year to Date
Total Man-Hours Worked	2725.5	6112.5
Total Number of Standard Time (ST) Hours	2284.75	4867.25
Total Number of Overtime (OT) Hours	180.75	636.25
Total Number of Double Time (DT) Hours	260	609

NB # 3

CC-EAC

5-13-15

MEMORANDUM

To: Jim O'Toole

From: Mike Furmanski *MF*

Date: 07MAY15

Re: Spill Prevention, Control, and Countermeasures plan

The Electric Department recently proposals from 3 firms to update and add to our Spill Prevention, Control, and Countermeasures (SPCC) plan. 1 of the firms was unable to bid at this time. The other 2 firms that are qualified to do this type of work submitted proposals. The firms and their 2 proposals were as follows:

TriMedia Environmental & Engineering	\$4,000.00
Golder Associates	\$8,500.00

I am recommending accepting the proposal from TriMedia Environmental & Engineering of Marquette, MI for a not-to-exceed total of \$4,000.00



830 W. Washington Street  
Marquette, MI 49855  
906.228.5125  
906.228.5126 Fax  
www.trimediaee.com

May 5, 2015

**SENT VIA ELECTRONIC MAIL**

Mr. Mike Furmanski, Electric Superintendent  
City of Escanaba  
1711 Sheridan Road  
Escanaba, Michigan 49829

Re: *Technical and Cost Proposal* – Professional Environmental Consulting and Technical Services to Update Two Existing Spill Prevention Control and Countermeasures Plans, Develop a New Plan, and Present Training on the Plans for the City of Escanaba, Michigan  
TriMedia Proposal Number 2015-4223

Dear Mr. Furmanski:

TriMedia Environmental & Engineering Services, LLC (TriMedia) appreciates having the opportunity to discuss how we can be of assistance to the City of Escanaba by updating the existing *Spill Prevention Control and Countermeasure Plans* (SPCC Plans) for the West Side Substation and Cold Storage Building, and by developing a SPCC Plan for the newly constructed substation. In addition, TriMedia is prepared to present a brief training session on topics covered in the SPCC Plans for designated department personnel.

**PROJECT UNDERSTANDING**

In response to your request, TriMedia has developed the following Scope-of-Service and opinion of probable cost in accordance with project information made available to-date

***Scope-of-Service***

**Task 1: Project Management / File Review**

TriMedia will provide necessary project management and coordination services to complete the project. In this regard, we will work with designated City of Escanaba staff to assess current facilities, systems and procedures, evaluate current spill response capabilities, and review overall capabilities of facility staff. TriMedia will coordinate with your office to secure information with regard to facility updates that are applicable to the existing SPCC Plans and the SPCC Plan for the new substation.

**Task 2: Site Reconnaissance**

TriMedia will perform a site reconnaissance of the newly constructed substation to determine the location(s), quantity(ies), and type(s) of chemical(s) stored on-site; review all administrative and engineering controls currently in-place; and, assess any and all available

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Regional Offices

Michigan

Wisconsin

Montana

North Dakota

Arizona

North Carolina

Mr. Mike Furmanski, Electric Superintendent  
City of Escanaba  
May 5, 2015  
Page 2

spill response equipment. Additionally, during the site reconnaissance, TriMedia will verify that the facility is subject to SPCC regulations.

**Task 3: SPCC Plan Update**

Following completion of facility information review, TriMedia will update the two existing SPCC Plans, as needed, and draft a new SPCC Plan for the new substation meeting regulatory requirements of the United States Environmental Protection Agency (USEPA) *40 CFR Part 112*. TriMedia will present any administrative and/or engineering control issues that may preclude effective compliance with the SPCC Plan requirements. TriMedia will forward the SPCC Plans to you for review and comment. Following receipt and incorporation of comments, TriMedia will finalize the SPCC Plans and provide two stamped copies and one electronic copy (PDF format on compact disc) of each plan. We suggest the documents be managed as "control documents", thus ensuring that minor future facility and/or operational changes are adequately presented in the current SPCC Plans.

**Task 4: SPCC Plan Training**

TriMedia will provide one 4-hour SPCC Plan training session for approximately 13 people to be presented at your facility in Escanaba, Michigan. The training will be scheduled on a date and time yet to be determined in 2015, and mutually agreeable to the City of Escanaba and TriMedia.

**SCHEDULE**

Services will be initiated and the SPCC Plans will be prepared within **20 business days** of receiving your authorization to proceed and completion of the site visits, assuming all information necessary to complete the plans is available.

**COST ESTIMATE & AUTHORIZATION TO PROCEED**

Given our experience with the City of Escanaba facilities and expertise providing professional environmental consulting and technical services, TriMedia has developed a Lump Sum cost of **\$4,000.00** to complete the aforementioned tasks.

Should this *Technical and Cost Proposal* be acceptable, please formalize your authorization to proceed by executing and returning both copies of the enclosed Professional Services Agreement, on Pages 1 and 6, or by issuing a Purchase Order which reflects *TriMedia Proposal Number 2015-4223*. In the event authorization to proceed is granted via Purchase Order, all terms and conditions presented herein will apply.

Should you have any questions, or wish to discuss this *Technical and Cost Proposal* in greater detail relative to the technical requirements or anticipated project costs and pricing controls, please do not hesitate to contact either of the undersigned individuals at (906) 228-5125, or via email at [mkoski@trimediaee.com](mailto:mkoski@trimediaee.com).

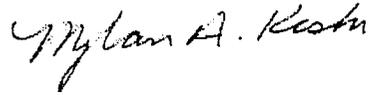
Mr. Mike Furmanski, Electric Superintendent  
City of Escanaba  
May 5, 2015  
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**Your Priorities. Our Promise.** On behalf of the professional staff at TriMedia, we look forward to your review and the opportunity to successfully complete this project for the City of Escanaba.

Sincerely,  
TriMedia Environmental & Engineering Services, LLC



Maura A. Pliska, E.I.T  
Staff Environmental Engineer



Mylan A. Koski, P.E., CP  
Environmental Department Manager

MAK/rjw/mlh  
Enclosures: Professional Services Agreement (2)  
cc: TriMedia File 2015-4223  
*G:\Proposals\2015\2015-4223 City of Escanaba - SPOC Plan\2015-4223.doc*

ATTACHMENT I

- PROFESSIONAL SERVICES AGREEMENT -

THIS AGREEMENT, by and between **City of Escanaba** hereinafter referred to as the CLIENT, of **1711 Sheridan Road, Escanaba, Michigan 49829** and TriMedia Environmental and Engineering Services, LLC hereinafter referred to as TriMedia, whose principal office is located at 1002 Harbor Hills Drive, Marquette, Michigan 49855.

WITNESSETH:

**PROJECT.** The CLIENT hereby contracts with TriMedia to perform the following described services, hereinafter collectively referred to as the PROJECT (including the TriMedia Technical and Cost Proposal): **Professional Services to Update the Two Existing Spill Prevention Control and Countermeasures Plans, Develop a New SPCC Plan, and Present SPCC Plan Training for the City of Escanaba, Michigan.**

**COMPENSATION.** TriMedia shall be paid for all services rendered on the following basis: **Lump Sum as described in TriMedia Proposal Number 2015-4223 dated May 5, 2015. Compensation shall be paid by CLIENT to TriMedia as provided in Paragraph 5 of the Terms and Conditions attached hereto.**

**CLIENT'S AGENT.** The CLIENT has appointed **Mike Furmanski** as the official AGENT of the CLIENT for the purpose of the PROJECT. As such, the AGENT shall be responsible for the execution of any document pertaining to this Agreement or any amendment thereto, and for approving all Change Orders, Addenda, and additional services to be performed by TriMedia and said AGENT has the express authority to bind CLIENT to all Terms and Conditions of this Agreement and all documents referenced in this Agreement.

**TERMS AND CONDITIONS.** Terms and Conditions of the Agreement, indicated below and attached hereto, shall apply to all work performed by TriMedia unless otherwise specifically agreed in writing.

**ADDITIONAL PROVISIONS; ENTIRE AGREEMENT.** The CLIENT and TriMedia mutually agree the rights and obligations of the parties under this Agreement shall be further governed by the Additional Provisions indicated below and attached hereto, and that such Additional Provisions, together with the Terms and Conditions attached hereof are the final expression and complete and exclusive statement of their agreement.

Additional Provisions

\_\_\_\_\_

PLEASE INDICATE YOUR  
PREFERRED METHOD FOR  
RECEIVING INVOICES

U.S. Mail Only

Email Only

U.S. Mail and Email

Email Address: \_\_\_\_\_

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement.

CLIENT: CITY OF ESCANABA

TRIMEDIA ENVIRONMENTAL & ENGINEERING SERVICES, LLC

\_\_\_\_\_  
Mike Furmanski

\_\_\_\_\_  
Thomas L. Anthos, CIH

ITS: Electric Superintendent

ITS: Member

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## TERMS AND CONDITIONS

These Terms and Conditions, including all General Terms and Conditions and the duly noted (  ) Environmental Terms and Conditions, along with any supplemental Contract Addenda which are or may become applicable to the services described herein, are incorporated by reference into the attached TriMedia *Technical and Cost Proposal* and are incorporated by reference into this Agreement under which services are to be performed by TriMedia for the Client. No Agreement or understanding, oral or written, which in any way modifies or waives these Terms and Conditions shall be binding on TriMedia, whether contained in the Client's purchase order forms or otherwise, unless made in writing and executed by an authorized representative of TriMedia.

### GENERAL TERMS AND CONDITIONS

1. **PARTIES AND SCOPES OF WORK:** TRIMEDIA ENVIRONMENTAL AND ENGINEERING SERVICES, LLC ("TriMedia") shall include said company, or its particular division, subsidiary or affiliate performing the work. "Work" means the service(s) performed by TriMedia for Client or at Client's direction. This "Agreement" consists of the TriMedia *Technical and Cost Proposal*, its Professional Rate Schedule, Client's written acceptance, and these Terms and Conditions. "Client" refers to the person or business entity ordering or authorizing the work to be done by TriMedia. If Client is ordering the work on behalf of another, Client represents and warrants that Client is the duly authorized agent of said party. In such case the term "Client" also includes the principal for whom the work is being performed. Prices quoted and charged by TriMedia for its work are predicated solely upon the conditions expressed in this Agreement. Unless specifically provided, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by Client is adequate and sufficient for Client's intended purpose. TriMedia shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this Agreement. Ordering work from TriMedia shall constitute acceptance of the terms of this Agreement. Client acknowledges that TriMedia, at its sole and absolute discretion may notify third parties, including regulatory agencies, if in its opinion activities or discoveries reveal an imminent danger to human health or the environment

2. **PERFORMANCE:** TriMedia will perform professional services with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services at the same time under similar circumstances in the same or similar locality. **The foregoing standard of care is in lieu of all other standards and warranties, expressed or implied, including warranties of marketability or fitness for a particular purpose.** Client agrees to notify TriMedia with reasonable specificity of any deficiencies in the services within 30 days of discovery, but in no event later than 120 days after substantial completion of services, and Client will give TriMedia a reasonable opportunity to correct the deficiencies. Client accepts the professional services provided by TriMedia and acknowledges such services entail risk of personal injury and property damage (including the risk that environmental contaminants may migrate or be moved from one location to another during the course of the services, i.e. environmental cross-contamination) that cannot always be avoided, even with the exercise of due care. Client also acknowledges that environmental and geotechnical conditions may vary from those encountered at the times and locations of explorations and data collection, and the limitation on available data may result in some level of uncertainty with respect to the interpretation of these conditions, despite due professional care. TriMedia does not and cannot guaranty specific results, such as the identification of all contamination or other geotechnical or environmental conditions or problems nor their resolution. TriMedia shall not be liable for any claim, damage, cost or expense (including but not limited to attorney fees) or other liability or loss not directly and solely caused by the negligent acts, errors or omissions of TriMedia. Under no circumstances shall TriMedia be liable for any attorney fees and/or costs arising from any claim related to this Agreement. The services set forth in referenced *Technical and Cost Proposal* and Client's acceptance will be accomplished in a timely and workmanlike manner by TriMedia. Time will be of the essence only if stated in this Agreement. If TriMedia is required to delay any part of its work to accommodate the requests or requirements of Client, regulatory agencies, or third parties, or due to any causes beyond the direct reasonable control of TriMedia, additional charges may be applicable, which Client agrees to pay. TriMedia may engage subcontractors on behalf of Client to perform any portion of the services under this Agreement.

3. **ADDITIONAL SERVICES:** Additional Services other than those performed as part of an Addendum, or any subsequent modifications to this Agreement, shall only be authorized by written amendment to this Agreement signed on behalf of Client and TriMedia. All Additional Services shall be performed by TriMedia in accordance with these Terms and Conditions. TriMedia shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this Agreement. Ordering work from TriMedia shall constitute acceptance of the terms of this Agreement. TriMedia shall be under no obligation to inform other parties of its activities or discoveries. Client acknowledges that TriMedia, at its sole and absolute discretion may notify third parties, including regulatory agencies, if in its opinion activities or discoveries reveal an imminent danger to human health or the environment.

4. **TERMINATION:** This Agreement may be terminated by either party upon seven (7) days prior written notice. In the event of termination, TriMedia shall be paid for all costs and fees up to the effective date of termination which shall be stated in the written notice. All drawings or other documents prepared by TriMedia shall remain the property of TriMedia

and need not be delivered to Client until all monies owed to TriMedia by Client (whether or not such monies have become due and payable) have been paid.

5. **PAYMENT:** TriMedia shall invoice for services rendered and incurred reimbursable expenses as provided in its Technical and Cost Proposal, and each invoice shall be due and payable within 15 days of the date of the invoice. Invoices over 30 days past due will be charged interest at the rate of 1-1/2% per month on the unpaid balance or the highest lawful rate, whichever is less. TriMedia may, after 10 days written notice to the Client, suspend performance of services until all past due amounts are paid. TriMedia shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. In the event legal action is necessary to enforce the payment of services rendered, TriMedia shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs if necessary to compel mediation and arbitration or incurred as a result of Client's breach of this Agreement, and expenses incurred by TriMedia in connection therewith, and in addition, the reasonable value of TriMedia's time and expenses spent in connection with such collection action, computed at TriMedia's prevailing Professional Rate Schedule and expense policies. In the event Client elects to pay TriMedia via VISA® or MasterCard® for all services rendered and reimbursable costs incurred, a 3.5% transaction fee surcharge will be added to each TriMedia invoice, with the total becoming immediately payable to TriMedia by Client.

6. **MEDIATION:** In an effort to resolve any conflicts that arise during the course of this Agreement, Client and TriMedia agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation. The Client and TriMedia further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. The parties shall work in good faith to identify a mediator agreeable to both parties.

7. **ARBITRATION:** Any dispute arising pursuant to any contract to which these Terms and Conditions apply that cannot be resolved by mediation, shall be submitted to arbitration in the City of Marquette, Michigan, in accordance with the rules of the American Arbitration Association, the award of the arbitrator to be final and binding on the parties. Judgment upon any award rendered may be enforced in any court having jurisdiction. The parties agree to consent to the jurisdiction of the Marquette County Michigan Circuit Court. Each party shall have the right to select an arbitrator who is an attorney licensed in Michigan with experience in environmental law matters as a member of the panel. The two arbitrators selected will jointly select a third neutral arbitrator who shall serve as the Chair of the panel.

8. **INSURANCE:** Upon request, TriMedia will furnish the Client a written description of insurance coverage then being maintained by TriMedia. Such insurance coverage specifically excludes any claim arising out of the Client's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, and administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. Any claim for punitive, exemplary, or multiplied damages, or statutory assessments, or any civil, administrative or criminal fines or penalties, or the return of or reimbursement for legal fees, costs or expenses, shall not be the obligation of TriMedia and are hereby specifically and categorically disclaimed.

9. **COST ESTIMATES:** Subject to the cost of labor, materials, competitive bidding and market conditions, any estimates of equipment, construction, maintenance or operating costs will be made based on TriMedia's experience. TriMedia does not warrant the accuracy of such estimates as compared to contractor's bids or actual costs incurred.

10. **INDEMNITY:** TriMedia agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damages and losses arising from negligent acts, errors or omissions of TriMedia in the performance of professional services under this Agreement, to the extent TriMedia is responsible for such damages and losses on a comparative basis of fault and responsibility between TriMedia and the Client, and subject to the Limit of Liability in Paragraph 17, below. The Client agrees, to the fullest extent permitted by law, to indemnify and hold TriMedia harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Client's willful or negligent acts, errors, or omissions and those of his or her contractors, subcontractors, or consultants or anyone for whom the Client is legally liable arising from the project that is the subject of this Agreement. TriMedia is not obligated to indemnify the Client in any manner whatsoever for the Client's own willful or negligent acts.

11. **FEDERAL RIGHT-TO-KNOW COMPLIANCE:** In compliance with the Federal *Hazard Communication Standard*, Client shall provide TriMedia with a list of hazardous chemicals in the work place, and related Material Safety Data Sheets, which employees may be exposed while performing work under this Agreement.

12. **SHOP DRAWINGS:** If shop drawings are provided under this Agreement, TriMedia will review, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment, and other information which may be utilized by the Client under this Agreement, only for conformance with the design concept of the project.

13. **OBSERVATION SERVICES:** If the project requires TriMedia to observe and/or monitor construction, demolition, abatement of building contaminants, operation and maintenance, and/or any other services by organizations other than TriMedia, TriMedia will observe, monitor, record, and/or document these services for conformity with the design concept of the project. TriMedia shall not be liable for any defects in workmanship for work performed by contractors, subcontractors, or consultants or anyone for whom the Client is relying upon.

14. **SITE SAFETY:** TriMedia shall not be liable to determine the methods and/or procedures utilized by contractors, subcontractors, or consultants for conformance with state and federal safety laws, regulations, guidance documents, and/or policies related in any manner whatsoever to the project. In instances where TriMedia issues a *Health and Safety Plan* (HASP) for the project, the HASP exclusively governs services to be performed by TriMedia. The HASP may be used by others to provide consistency with certain construction, demolition, abatement of building contaminants, operation and maintenance, and/or any other services required by the project by organizations other than TriMedia, but such reliance is at the sole discretion of the user of the HASP. TriMedia shall not be liable for any safety violations, injuries, up to and including death, for reliance on the HASP.

15. **UTILITIES AND SUBSURFACE OBJECTS:** Client represents and warrants that it has advised TriMedia of any known or suspected utilities at any site at which TriMedia is to do work hereunder, and unless TriMedia has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save TriMedia harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to work by TriMedia and resulting to, or caused by, contact with subsurface or latent objects, structures, lines or conduits where their actual or potential presence and location was not revealed to TriMedia by Client.

16. **ACCESS TO SITE:** Client will arrange and provide access to each site upon which it will be necessary for TriMedia to perform its work. Any work performed by TriMedia with respect to obtaining permission to enter upon and do work on the lands of others, as well as any work performed by TriMedia pursuant to this Agreement, shall be deemed as being done on behalf of Client and Client agrees to assume all risks thereof. TriMedia shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment; however, TriMedia has not included in its fee the cost of restoration for damage which may occur.

17. **LIMIT OF LIABILITY:** In recognition of the relative risks, rewards and benefits of this project to both the Client and TriMedia, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit liability of TriMedia, its sub-consultants, and all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever, or claims and expenses from any cause or causes, so that the total aggregate liability of TriMedia and to all those named shall not exceed the TriMedia total fee for its services rendered on this project. Should TriMedia or any of its professional employees be found to have been negligent in the performance of its work, or to have made and breached any express or implied warranty, representation or contract, the Client, all parties claiming through Client, and all parties claiming to have in any way relied upon work by TriMedia agree the maximum aggregate amount of the liability of TriMedia, its officers, employees and agents shall be limited to \$25,000.00, or the total amount of the fee paid to TriMedia for its work performed with respect to the Project, whichever amount is less. No action or claim, whether in tort, contract, or otherwise, may be brought against TriMedia, arising from or related to TriMedia work, more than one year after the earlier of the cessation of work or Notice of Project Completion by TriMedia.

18. **STATEMENT OF CONFIDENTIALITY:** TriMedia agrees to keep confidential and not disclose to any person or persons, other than TriMedia employees, sub-consultants or subcontractors, any data and information that is marked CONFIDENTIAL by the Client. These provisions however, shall not apply to information in whatever form that comes into public domain, nor shall it restrict TriMedia from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency, or other authority with proper jurisdiction, or if it is necessary for TriMedia to defend itself from suit or claim. In addition, TriMedia is specifically authorized to disclose information if, in TriMedia's sole professional opinion, the failure to disclose will or may result in an imminent and substantial endangerment to the public health, safety, welfare or the environment and Client fails to make such disclosure.

19. **CORPORATE PROTECTION:** It is intended by the parties of this Agreement that services provided by TriMedia in connection with this project shall not subject TriMedia employees, officers, or directors to any personal liability for the risks associated with this project. Therefore, the Client agrees that any claim or demand, (or suit to enforce the mediation and arbitration or other provision of this Agreement) shall only be directed and/or asserted against TriMedia, and not against any TriMedia employee, officer, or director. By accepting the terms of this Agreement, Client hereby releases and forever discharges TriMedia's employees, officers, directors and/or members from any and all such claims.

20. **CERTIFICATIONS, GUARANTEES, AND WARRANTIES:** TriMedia shall not be required to sign any documents, no matter by who requested, that would result in TriMedia having to certify, guarantee or warrant the existence of conditions whose

existence TriMedia cannot ascertain. The Client also agrees not to make resolution of any dispute with TriMedia or payment of any amount due to TriMedia in any way contingent upon TriMedia signing any such certification.

21. **INFORMATION PROVIDED BY OTHERS:** To the extent known, TriMedia shall indicate to the Client the information needed for rendering of services hereunder. The Client shall provide to TriMedia such information as is available to the Client and the Client's consultants and contractors, and TriMedia shall be entitled to rely upon the accuracy and completeness thereof. All draft and final reports, policies, procedures, compliance evaluations, studies, investigations, audits and/or plans specifically referenced in the TriMedia *Technical and Cost Proposal* will be prepared on behalf of the Client and are subject to final review and approval by the Client. Information and/or data developed by TriMedia will be prepared for the Client only. The Client is reminded that information and/or data developed by TriMedia are subject to professional interpretation, and other professionals may reach differing conclusions.

22. **ENTIRE AGREEMENT:** This Agreement contains the entire understanding between the parties. Client acknowledges that no representations, warranties, undertakings or promises have been made other than and except those expressly contained herein.

23. **INDEPENDENT CONTRACTOR:** The relationship between the Client and TriMedia created under this Agreement is that of an independent contractor. Neither the terms of this Agreement nor the performance thereof is intended to directly or indirectly benefit any person or entity not a party hereto and no such person or entity is intended to be or shall be construed as being a third-party beneficiary of this Agreement unless specified by name herein or in an Amendment hereto, executed by the Managing Member of TriMedia.

24. **SEVERABILITY/SECTION HEADINGS/SURVIVAL/WAIVER:** In the event any provision herein shall be deemed invalid or unenforceable, the other provisions hereof shall remain in full force and effect, and binding upon the parties hereto. The heading or title of a section is provided for convenience and information and shall not serve to alter or affect the provisions included herein. All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating responsibility or liability between the Client and TriMedia shall survive the completion of services and the termination of this Agreement. No waiver, discharge, or renunciation of any claim or right of TriMedia arising out of breach of this Agreement by Client shall be effective unless in writing signed by TriMedia and supported by separate consideration.

25. **GOVERNING LAW/ASSIGNS/WRITTEN NOTICE:** This Agreement shall be deemed to have been made in Marquette County, Michigan, and shall be governed by, and construed in accordance with the laws of the State of Michigan. Any action arising as a result of this Agreement shall be subject to mediation and arbitration in the County of Marquette, Michigan. Neither the Client nor TriMedia may delegate, assign, sublet or transfer its duties, responsibilities or interests in this Agreement, including but not limited to, monies that are due or monies that may be due, without the written consent of the other party. Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if delivered at or sent by registered or certified mail.

26. **RECORD MANAGEMENT** Upon completion of the project, TriMedia will complete an electronic file compilation which we will maintain for seven years. If requested by the Client within 14 days from the date of Notice of Project Completion, TriMedia will forward a hard copy file documents to the Client. The Client will be responsible for shipping costs. In the event the Client fails to notify TriMedia of its request for retention of the hard copy file documents, TriMedia will retain a certified record destruction contractor, at no cost to the Client, to destroy all file documents.

## **ENVIRONMENTAL TERMS AND CONDITIONS**

27. **HAZARDOUS MATERIALS:** Nothing contained within this Agreement shall be construed or interpreted as requiring TriMedia to assume the status of generator, transporter, or treatment, storage and/or disposal facility as those terms appear within the Federal *Resource Conservation and Recovery Act* or within any federal or state statute or regulation governing the generation, transportation, treatment, storage and disposal of pollutants.

28. **CLIENT'S DUTY TO NOTIFY TRIMEDIA:** Client represents and warrants that it has advised TriMedia of any known or suspected hazardous materials and pollutants at any site at which TriMedia is to do work hereunder, unless TriMedia is specifically engaged to locate, identify and/or characterize such materials and pollutants.

29. **TESTING LABORATORY SERVICES:** It is recognized that TriMedia may be asked by the Client to subcontract certain laboratory testing services on behalf of the Client. TriMedia agrees to do so only as an accommodation to the Client and in reliance upon the Client's assurance the Client will make no claim nor bring any action at law or in equity against TriMedia as a result of this subcontracted service. Unless otherwise agreed in writing by client, samples removed by TriMedia to an independent laboratory may, upon completion of testing, be disposed by the laboratory in an approved manner.

30. **LIMITATIONS OF PROCEDURES, EQUIPMENT, AND TESTS:** Information and data obtained by TriMedia may be considered evidence with respect to the detection, quantification and identification of pollutants, but any inference or conclusions drawn by TriMedia are necessarily opinions that are based upon TriMedia's professional judgment. In addition, such opinions shall not be construed as a representation of fact, or applying to.

**ACKNOWLEDGED AS REVIEWED AND AGREED BY:** CITY OF ESCANABA

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BY: MIKE FURMANSKI, ELECTRIC SUPERINTENDENT

---

DATE:

ATTACHMENT I

- PROFESSIONAL SERVICES AGREEMENT -

THIS AGREEMENT, by and between **City of Escanaba** hereinafter referred to as the CLIENT, of **1711 Sheridan Road, Escanaba, Michigan 49829** and TriMedia Environmental and Engineering Services, LLC hereinafter referred to as TriMedia, whose principal office is located at 1002 Harbor Hills Drive, Marquette, Michigan 49855.

WITNESSETH:

**PROJECT.** The CLIENT hereby contracts with TriMedia to perform the following described services, hereinafter collectively referred to as the PROJECT (including the TriMedia Technical and Cost Proposal): Professional Services to Update the Two Existing Spill Prevention Control and Countermeasures Plans, Develop a New SPCC Plan, and Present SPCC Plan Training for the City of Escanaba, Michigan.

**COMPENSATION.** TriMedia shall be paid for all services rendered on the following basis: Lump Sum as described in TriMedia Proposal Number 2015-4223 dated May 5, 2015. Compensation shall be paid by CLIENT to TriMedia as provided in Paragraph 5 of the Terms and Conditions attached hereto.

**CLIENT'S AGENT.** The CLIENT has appointed Mike Furmanski as the official AGENT of the CLIENT for the purpose of the PROJECT. As such, the AGENT shall be responsible for the execution of any document pertaining to this Agreement or any amendment thereto, and for approving all Change Orders, Addenda, and additional services to be performed by TriMedia and said AGENT has the express authority to bind CLIENT to all Terms and Conditions of this Agreement and all documents referenced in this Agreement.

**TERMS AND CONDITIONS.** Terms and Conditions of the Agreement, indicated below and attached hereto, shall apply to all work performed by TriMedia unless otherwise specifically agreed in writing.

**ADDITIONAL PROVISIONS; ENTIRE AGREEMENT.** The CLIENT and TriMedia mutually agree the rights and obligations of the parties under this Agreement shall be further governed by the Additional Provisions indicated below and attached hereto, and that such Additional Provisions, together with the Terms and Conditions attached hereof are the final expression and complete and exclusive statement of their agreement.

Additional Provisions

\_\_\_\_\_:

PLEASE INDICATE YOUR PREFERRED METHOD FOR RECEIVING INVOICES	<input type="checkbox"/> U.S. Mail Only	<input type="checkbox"/> Email Only	<input type="checkbox"/> U.S. Mail and Email
	Email Address: _____		

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement.

CLIENT: CITY OF ESCANABA

TRIMEDIA ENVIRONMENTAL & ENGINEERING SERVICES, LLC

\_\_\_\_\_  
Mike Furmanski  
ITS: Electric Superintendent

\_\_\_\_\_  
Thomas L. Anthos, CIH  
ITS: Member

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

## TERMS AND CONDITIONS

These Terms and Conditions, including all General Terms and Conditions and the duly noted (  ) Environmental Terms and Conditions, along with any supplemental Contract Addenda which are or may become applicable to the services described herein, are incorporated by reference into the attached TriMedia *Technical and Cost Proposal* and are incorporated by reference into this Agreement under which services are to be performed by TriMedia for the Client. No Agreement or understanding, oral or written, which in any way modifies or waives these Terms and Conditions shall be binding on TriMedia, whether contained in the Client's purchase order forms or otherwise, unless made in writing and executed by an authorized representative of TriMedia.

### GENERAL TERMS AND CONDITIONS

1. **PARTIES AND SCOPES OF WORK:** TRIMEDIA ENVIRONMENTAL AND ENGINEERING SERVICES, LLC ("TriMedia") shall include said company, or its particular division, subsidiary or affiliate performing the work. "Work" means the service(s) performed by TriMedia for Client or at Client's direction. This "Agreement" consists of the TriMedia *Technical and Cost Proposal*, its Professional Rate Schedule, Client's written acceptance, and these Terms and Conditions. "Client" refers to the person or business entity ordering or authorizing the work to be done by TriMedia. If Client is ordering the work on behalf of another, Client represents and warrants that Client is the duly authorized agent of said party. In such case the term "Client" also includes the principal for whom the work is being performed. Prices quoted and charged by TriMedia for its work are predicated solely upon the conditions expressed in this Agreement. Unless specifically provided, Client assumes sole responsibility for determining whether the quantity and the nature of the work ordered by Client is adequate and sufficient for Client's intended purpose. TriMedia shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this Agreement. Ordering work from TriMedia shall constitute acceptance of the terms of this Agreement. Client acknowledges that TriMedia, at its sole and absolute discretion may notify third parties, including regulatory agencies, if in its opinion activities or discoveries reveal an imminent danger to human health or the environment

2. **PERFORMANCE:** TriMedia will perform professional services with the degree of skill and care ordinarily exercised by qualified professionals performing the same type of services at the same time under similar circumstances in the same or similar locality. **The foregoing standard of care is in lieu of all other standards and warranties, expressed or implied, including warranties of marketability or fitness for a particular purpose.** Client agrees to notify TriMedia with reasonable specificity of any deficiencies in the services within 30 days of discovery, but in no event later than 120 days after substantial completion of services, and Client will give TriMedia a reasonable opportunity to correct the deficiencies. Client accepts the professional services provided by TriMedia and acknowledges such services entail risk of personal injury and property damage (including the risk that environmental contaminants may migrate or be moved from one location to another during the course of the services, i.e. environmental cross-contamination) that cannot always be avoided, even with the exercise of due care. Client also acknowledges that environmental and geotechnical conditions may vary from those encountered at the times and locations of explorations and data collection, and the limitation on available data may result in some level of uncertainty with respect to the interpretation of these conditions, despite due professional care. TriMedia does not and cannot guaranty specific results, such as the identification of all contamination or other geotechnical or environmental conditions or problems nor their resolution. TriMedia shall not be liable for any claim, damage, cost or expense (including but not limited to attorney fees) or other liability or loss not directly and solely caused by the negligent acts, errors or omissions of TriMedia. Under no circumstances shall TriMedia be liable for any attorney fees and/or costs arising from any claim related to this Agreement. The services set forth in referenced *Technical and Cost Proposal* and Client's acceptance will be accomplished in a timely and workmanlike manner by TriMedia. Time will be of the essence only if stated in this Agreement. If TriMedia is required to delay any part of its work to accommodate the requests or requirements of Client, regulatory agencies, or third parties, or due to any causes beyond the direct reasonable control of TriMedia, additional charges may be applicable, which Client agrees to pay. TriMedia may engage subcontractors on behalf of Client to perform any portion of the services under this Agreement.

3. **ADDITIONAL SERVICES:** Additional Services other than those performed as part of an Addendum, or any subsequent modifications to this Agreement, shall only be authorized by written amendment to this Agreement signed on behalf of Client and TriMedia. All Additional Services shall be performed by TriMedia in accordance with these Terms and Conditions. TriMedia shall have no duty or obligation to any party other than those duties and obligations expressly set forth in this Agreement. Ordering work from TriMedia shall constitute acceptance of the terms of this Agreement. TriMedia shall be under no obligation to inform other parties of its activities or discoveries. Client acknowledges that TriMedia, at its sole and absolute discretion may notify third parties, including regulatory agencies, if in its opinion activities or discoveries reveal an imminent danger to human health or the environment.

4. **TERMINATION:** This Agreement may be terminated by either party upon seven (7) days prior written notice. In the event of termination, TriMedia shall be paid for all costs and fees up to the effective date of termination which shall be stated in the written notice. All drawings or other documents prepared by TriMedia shall remain the property of TriMedia

and need not be delivered to Client until all monies owed to TriMedia by Client (whether or not such monies have become due and payable) have been paid.

5. **PAYMENT:** TriMedia shall invoice for services rendered and incurred reimbursable expenses as provided in its Technical and Cost Proposal, and each invoice shall be due and payable within 15 days of the date of the invoice. Invoices over 30 days past due will be charged interest at the rate of 1-1/2% per month on the unpaid balance or the highest lawful rate, whichever is less. TriMedia may, after 10 days written notice to the Client, suspend performance of services until all past due amounts are paid. TriMedia shall have no liability whatsoever to the Client for any costs or damages as a result of such suspension. In the event legal action is necessary to enforce the payment of services rendered, TriMedia shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs if necessary to compel mediation and arbitration or incurred as a result of Client's breach of this Agreement, and expenses incurred by TriMedia in connection therewith, and in addition, the reasonable value of TriMedia's time and expenses spent in connection with such collection action, computed at TriMedia's prevailing Professional Rate Schedule and expense policies. In the event Client elects to pay TriMedia via VISA® or MasterCard® for all services rendered and reimbursable costs incurred, a 3.5% transaction fee surcharge will be added to each TriMedia invoice, with the total becoming immediately payable to TriMedia by Client.

6. **MEDIATION:** In an effort to resolve any conflicts that arise during the course of this Agreement, Client and TriMedia agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation. The Client and TriMedia further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements. The parties shall work in good faith to identify a mediator agreeable to both parties.

7. **ARBITRATION:** Any dispute arising pursuant to any contract to which these Terms and Conditions apply that cannot be resolved by mediation, shall be submitted to arbitration in the City of Marquette, Michigan, in accordance with the rules of the American Arbitration Association, the award of the arbitrator to be final and binding on the parties. Judgment upon any award rendered may be enforced in any court having jurisdiction. The parties agree to consent to the jurisdiction of the Marquette County Michigan Circuit Court. Each party shall have the right to select an arbitrator who is an attorney licensed in Michigan with experience in environmental law matters as a member of the panel. The two arbitrators selected will jointly select a third neutral arbitrator who shall serve as the Chair of the panel.

8. **INSURANCE:** Upon request, TriMedia will furnish the Client a written description of insurance coverage then being maintained by TriMedia. Such insurance coverage specifically excludes any claim arising out of the Client's intentional, knowing, willful, or deliberate noncompliance with any statute, regulation, ordinance, and administrative complaint, notice of violation, notice letter, executive order, or instruction of any governmental agency or body. Any claim for punitive, exemplary, or multiplied damages, or statutory assessments, or any civil, administrative or criminal fines or penalties, or the return of or reimbursement for legal fees, costs or expenses, shall not be the obligation of TriMedia and are hereby specifically and categorically disclaimed.

9. **COST ESTIMATES:** Subject to the cost of labor, materials, competitive bidding and market conditions, any estimates of equipment, construction, maintenance or operating costs will be made based on TriMedia's experience. TriMedia does not warrant the accuracy of such estimates as compared to contractor's bids or actual costs incurred.

10. **INDEMNITY:** TriMedia agrees, to the fullest extent permitted by law, to indemnify and hold the Client harmless from damages and losses arising from negligent acts, errors or omissions of TriMedia in the performance of professional services under this Agreement, to the extent TriMedia is responsible for such damages and losses on a comparative basis of fault and responsibility between TriMedia and the Client, and subject to the Limit of Liability in Paragraph 17, below. The Client agrees, to the fullest extent permitted by law, to indemnify and hold TriMedia harmless from any damage, liability or cost (including reasonable attorney's fees and costs of defense) to the extent caused by the Client's willful or negligent acts, errors, or omissions and those of his or her contractors, subcontractors, or consultants or anyone for whom the Client is legally liable arising from the project that is the subject of this Agreement. TriMedia is not obligated to indemnify the Client in any manner whatsoever for the Client's own willful or negligent acts.

11. **FEDERAL RIGHT-TO-KNOW COMPLIANCE:** In compliance with the Federal *Hazard Communication Standard*, Client shall provide TriMedia with a list of hazardous chemicals in the work place, and related Material Safety Data Sheets, which employees may be exposed while performing work under this Agreement.

12. **SHOP DRAWINGS:** If shop drawings are provided under this Agreement, TriMedia will review, catalog data, schedules, shop drawings, laboratory, shop and mill tests of materials and equipment, and other information which may be utilized by the Client under this Agreement, only for conformance with the design concept of the project.

13. **OBSERVATION SERVICES:** If the project requires TriMedia to observe and/or monitor construction, demolition, abatement of building contaminants, operation and maintenance, and/or any other services by organizations other than TriMedia, TriMedia will observe, monitor, record, and/or document these services for conformity with the design concept of the project. TriMedia shall not be liable for any defects in workmanship for work performed by contractors, subcontractors, or consultants or anyone for whom the Client is relying upon.

14. **SITE SAFETY:** TriMedia shall not be liable to determine the methods and/or procedures utilized by contractors, subcontractors, or consultants for conformance with state and federal safety laws, regulations, guidance documents, and/or policies related in any manner whatsoever to the project. In instances where TriMedia issues a *Health and Safety Plan* (HASP) for the project, the HASP exclusively governs services to be performed by TriMedia. The HASP may be used by others to provide consistency with certain construction, demolition, abatement of building contaminants, operation and maintenance, and/or any other services required by the project by organizations other than TriMedia, but such reliance is at the sole discretion of the user of the HASP. TriMedia shall not be liable for any safety violations, injuries, up to and including death, for reliance on the HASP.

15. **UTILITIES AND SUBSURFACE OBJECTS:** Client represents and warrants that it has advised TriMedia of any known or suspected utilities at any site at which TriMedia is to do work hereunder, and unless TriMedia has assumed in writing the responsibility of locating subsurface objects, structures, lines or conduits, Client agrees to defend, indemnify and save TriMedia harmless from all claims, suits, losses, costs and expenses, including reasonable attorney's fees as a result of personal injury, death or property damage occurring with respect to work by TriMedia and resulting to, or caused by, contact with subsurface or latent objects, structures, lines or conduits where their actual or potential presence and location was not revealed to TriMedia by Client.

16. **ACCESS TO SITE:** Client will arrange and provide access to each site upon which it will be necessary for TriMedia to perform its work. Any work performed by TriMedia with respect to obtaining permission to enter upon and do work on the lands of others, as well as any work performed by TriMedia pursuant to this Agreement, shall be deemed as being done on behalf of Client and Client agrees to assume all risks thereof. TriMedia shall take reasonable measures and precautions to minimize damage to each site and any improvements located thereon as the result of its work and the use of its equipment; however, TriMedia has not included in its fee the cost of restoration for damage which may occur.

17. **LIMIT OF LIABILITY:** In recognition of the relative risks, rewards and benefits of this project to both the Client and TriMedia, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit liability of TriMedia, its sub-consultants, and all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever, or claims and expenses from any cause or causes, so that the total aggregate liability of TriMedia and to all those named shall not exceed the TriMedia total fee for its services rendered on this project. Should TriMedia or any of its professional employees be found to have been negligent in the performance of its work, or to have made and breached any express or implied warranty, representation or contract, the Client, all parties claiming through Client, and all parties claiming to have in any way relied upon work by TriMedia agree the maximum aggregate amount of the liability of TriMedia, its officers, employees and agents shall be limited to \$25,000.00, or the total amount of the fee paid to TriMedia for its work performed with respect to the Project, whichever amount is less. No action or claim, whether in tort, contract, or otherwise, may be brought against TriMedia, arising from or related to TriMedia work, more than one year after the earlier of the cessation of work or Notice of Project Completion by TriMedia.

18. **STATEMENT OF CONFIDENTIALITY:** TriMedia agrees to keep confidential and not disclose to any person or persons, other than TriMedia employees, sub-consultants or subcontractors, any data and information that is marked CONFIDENTIAL by the Client. These provisions however, shall not apply to information in whatever form that comes into public domain, nor shall it restrict TriMedia from giving notices required by law or complying with an order to provide information or data when such an order is issued by a court, administrative agency, or other authority with proper jurisdiction, or if it is necessary for TriMedia to defend itself from suit or claim. In addition, TriMedia is specifically authorized to disclose information if, in TriMedia's sole professional opinion, the failure to disclose will or may result in an imminent and substantial endangerment to the public health, safety, welfare or the environment and Client fails to make such disclosure.

19. **CORPORATE PROTECTION:** It is intended by the parties of this Agreement that services provided by TriMedia in connection with this project shall not subject TriMedia employees, officers, or directors to any personal liability for the risks associated with this project. Therefore, the Client agrees that any claim or demand, (or suit to enforce the mediation and arbitration or other provision of this Agreement) shall only be directed and/or asserted against TriMedia, and not against any TriMedia employee, officer, or director. By accepting the terms of this Agreement, Client hereby releases and forever discharges TriMedia's employees, officers, directors and/or members from any and all such claims.

20. **CERTIFICATIONS, GUARANTEES, AND WARRANTIES:** TriMedia shall not be required to sign any documents, no matter by who requested, that would result in TriMedia having to certify, guarantee or warrant the existence of conditions whose

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30. **LIMITATIONS OF PROCEDURES, EQUIPMENT, AND TESTS:** Information and data obtained by TriMedia may be considered evidence with respect to the detection, quantification and identification of pollutants, but any inference or conclusions drawn by TriMedia are necessarily opinions that are based upon TriMedia's professional judgment. In addition, such opinions shall not be construed as a representation of fact, or applying to.

**ACKNOWLEDGED AS REVIEWED AND AGREED BY:** CITY OF ESCANABA

\_\_\_\_\_  
BY: MIKE FURMANSKI, ELECTRIC SUPERINTENDENT

\_\_\_\_\_  
DATE:



March 27, 2015

P1527175

Mr. Mike Furmanski  
Electrical Superintendent  
City of Escanaba  
410 Ludington St.  
Escanaba, MI 49829

**RE: SPCC PLANS AND TRAINING, CITY OF ESCANABA, MICHIGAN**

Dear Mike:

Golder Associates Inc. (Golder) is pleased to submit this proposal that includes the following tasks:

- Prepare a new Spill Prevention, Control, and Countermeasure (SPCC) / Pollution Incident Prevention (PIP) Plan for a recently constructed substation
- Update an existing SPCC/PIP Plan for the Cold Storage Building
- Update an existing SPCC/PIP Plan for the West Substation
- Provide SPCC/PIP training to City of Escanaba employees who routinely handle products that could cause a sheen if spilled

**1.0 SPCC/PIP PLAN**

The purpose of an SPCC/PIP Plan is to comply with the applicable requirements under 40 CFR Part 112. The purpose of the written plan is to prevent the spill and discharge of oil products (e.g., petroleum, vegetable, and/or animal fat) into navigable waters (e.g., streams, creeks, rivers, and lakes) of the United States. SPCC Plans also address the spill response procedures and actions that must be implemented.

The United States Environmental Protection Agency (USEPA) administers and enforces the SPCC planning requirements. The USEPA requires all facilities that are required to develop and implement a SPCC Plan to complete the following:

- Maintain a copy of the final, Professional Engineer (PE) certified SPCC Plan on site
- Comply with SPCC regulations
- Provide Training - Train any employee on site who routinely handles oil/oil products (e.g., lube oils, hydraulic fluid, cooking oil, gasoline, diesel) on the content of the SPCC Plan and the applicable procedures they must follow to prevent a spill or release from that facility
- Certify the SPCC Plan - A PE must certify any technical changes that occur (e.g., change of the inspection procedures; name change of the person responsible for ensuring the SPCC Plan is being implemented and maintained, etc.) or changes that affect the physical conditions of the facility regarding the prevention, control, and/or countermeasures that would eliminate or minimize oil spills or releases from the facility (e.g., adding new oil storage containers of 55 gallons or greater, adding or modifying the secondary containment structures around oil/oil product storage drums/containers, other physical changes that affect bulk oil storage)

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Golder Associates Inc.  
2247 Fox Heights Lane, Suite A  
Green Bay, WI 54304 USA  
Tel: (920) 491-2500 Fax: (920) 491-2510 www.golder.com

Golder Associates: Operations in Africa, Asia, Australasia, Europe, North America and South America

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The State of Michigan also requires a PIP Plan under the Part 5 Rules at Sites that meet the minimum requirements for storage of any polluting material (a single container having 660 gallons of storage capacity or greater or a total capacity of 1,320 gallons above ground storage). Generally, both the SPCC and PIP Plan requirements can be met in one document.

## **2.0 SCOPE OF SERVICES**

### **2.1 Cold Storage and West Substation SPCC/PIP Plan Updates**

Golder will review existing plans and perform site visits to confirm the existing SPCC plans incorporate the oil storage containers and oil filled equipment noted during the site visit. Updated plans will be provided on Golder's SPCC template that includes the following:

- Michigan PE Certification
- General SPCC Information
- Facility Information
- Facility Location Figure
- Facility Plan View Figure that Identifies Oil Storage Locations and Exit Routes
- Spill Prevention Measures
- Spill Response, Cleanup and Reporting Procedure
- Site Inspection Requirements
- Employee Training Requirements
- Identification of sources of significant materials
- Contact information for:
  - Emergency Services
  - USEPA Regional
  - State Environmental Agency Spill Response Contacts

### **2.2 New Substation SPCC Plan**

Golder will perform a site visit to the new substation to document the oil storage containers and oil filled equipment located onsite. Subsequent to the site visit, Golder will develop a new SPCC plan on Golder's template. The template will include all of the items presented in above in Section 2.1.

### **2.3 SPCC/PIP Plan Training**

Golder will provide four hours of training to facility managers and employees who routinely handle oil/oil products (e.g., lube oils, hydraulic fluid, cooking oil, gasoline, diesel) on the content of the SPCC/PIP Plan and the applicable procedures they must follow to prevent a spill or release from that facility.

## **3.0 SCHEDULE AND REPORTING**

Golder can schedule the site visits within one week of receiving authorization to proceed. Once the site visits are completed, Golder will provide draft SPCC/PIP plans within two weeks. Golder understands the draft SPCC/PIP plans will be reviewed by a facility manager for accuracy before it is finalized and certified by a Michigan Professional Engineer. SPCC/PIP Plan training can be scheduled within one month of submitting the final SPCC/PIP plans.

#### 4.0 QUALIFICATIONS

The following are qualifications and limitations regarding the preparation of the SPCC Plan Update:

- This proposal does not include sampling storage tank contents, the interior of any buildings, or the floors of any buildings
- No subsurface work is proposed as part of this scope of services
- The City of Escanaba is responsible for all submittals and regulatory and local approving authority fees, if any
- The City of Escanaba will provide to Golder such documents, drawings, and figures of the above ground storage tank (AST) and underground storage tank (UST) locations, including size, capacity, and tank material construction to identify and locate the storage tanks and petroleum storage areas for Golder to use in the SPCC Plan Update
- The City of Escanaba will provide information regarding previously notified petroleum leaks or spills which occurred during the previous five years
- No survey location work is proposed as part of this scope of services
- This proposal does not include major CAD work to prepare tank storage location drawings or outfall drawings for the facility. The proposal includes minor CAD work to include an un-scaled site plan.
- AST Integrity Testing will be performed by the City of Escanaba or by others as subcontractor to the City of Escanaba
- The City of Escanaba will provide a copy of the facility tank inspection program (if appropriate), SPCC/PIP Plans, and name of the facility's spill response contractor so that the information can be included and referenced in the SPCC Plan Update
- The City of Escanaba will accompany Golder fieldstaff during site visits

#### 5.0 COSTS, TERMS, AND CONTRACT CONDITIONS

Golder proposes to complete this work for a lump sum amount of \$8,500. This total amount will not be exceeded unless authorized in writing by the City of Escanaba. Additional charges incurred by Golder as a result of a client requested delay or work stoppage shall be considered fully reimbursable (via written change order). Golder's Terms and Conditions are attached for proposed scope of services contained herein. If you concur with our scope of services and cost, please sign the Proposal Acceptance Form and return a copy to us.

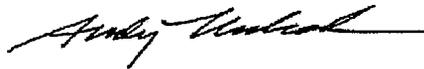
We appreciate this opportunity to provide you with this proposal. If you have any questions or if you need more information, please call Jeff Piaskowski at 920-370-4959.

Sincerely,

**GOLDER ASSOCIATES INC.**



Jeff Piaskowski, PE  
Project Engineer



Andy Nickodem, PE  
Associate and Senior Consultant

Attachments:

Golder Associates Inc. Terms and Conditions  
Proposal Acceptance Form



**ATTACHMENT 1**  
**GOLDER ASSOCIATES INC. TERMS AND CONDITIONS**



## 1. STANDARD OF CARE

Services performed by GOLDER will be conducted in a manner consistent with that level of care and skill ordinarily exercised by other professionals currently practicing under similar conditions in the same locality, subject to the time limits and financial, physical or other constraints applicable to the Services. No warranty, express or implied is made.

## 2. INVOICES AND PAYMENT TERMS

Unless otherwise specified in any proposal, GOLDER will submit monthly invoices to CLIENT and a final bill upon completion of Services. CLIENT shall notify GOLDER within ten (10) days of receiving an invoice of any dispute with the invoice and the parties shall promptly resolve any disputed items. Full payment is due prior to delivery of GOLDER's final deliverable. Payment on undisputed invoice amounts is due upon receipt of invoice by CLIENT and is past due thirty (30) days from the date of the invoice. CLIENT agrees to pay a finance charge of one and one-half percent (1-1/2%) per month (18% per annum), or the maximum rate allowed by law, on past due accounts. If payment remains past due sixty (60) days from the date of the invoice, then GOLDER shall have the right to suspend or terminate all Services under this Agreement, without prejudice or penalty. CLIENT will pay all reasonable demobilization and other suspension or termination costs. CLIENT agrees to pay attorneys' fees, legal costs and all other collection costs incurred by GOLDER in pursuit of past due payments.

Where the cost estimate for the Services is "not to exceed" a specified sum, GOLDER shall notify CLIENT before each limit is exceeded, and shall not continue to provide Services beyond such limit unless CLIENT authorizes an increase in the amount of the limitation. If a "not to exceed" limitation is broken down into budgets for specific tasks, the task budget may be exceeded without CLIENT authorization as long as the total limitation is not exceeded.

## 3. CHANGES

CLIENT and GOLDER recognize that it may be necessary to modify the scope of Services, schedule, and/or cost estimate proposed in this Agreement. Such changes shall change the Services, schedule, and/or the cost, as may be equitable under the circumstances. GOLDER shall notify CLIENT in a timely manner when it has reason to believe a change to the Agreement is warranted. GOLDER shall prepare a change order request outlining the changes to the scope, schedule, and/or cost of the project. CLIENT has a duty to promptly consider the change order request and advise GOLDER in a timely manner in writing on how to proceed. If after a good faith effort by GOLDER to negotiate modifications to the scope of Services, schedule, and/or cost estimate, an agreement has not been reached with the CLIENT, then GOLDER shall have the right to terminate this Agreement, without prejudice or penalty, upon written notice to the CLIENT.

## 4. DELAYS AND FORCE MAJEURE

A. If site or other conditions prevent or inhibit performance of Services or if unrevealed hazardous materials or conditions are encountered, Services under this Agreement may be delayed. CLIENT shall not hold GOLDER responsible for damages or delays in performance caused by acts or omissions of CLIENT, its subcontractors, governmental authorities, regulatory agencies, civil or labor unrest, acts of God, nature, or terror, disruptions of the Internet, GOLDER's electronic telecommunications or hosting services or any other events that are beyond the reasonable control of GOLDER. In the event of any such delays, the contract completion date shall be extended accordingly and CLIENT shall pay GOLDER for Services performed to the delay commencement date plus reasonable delay charges. Delay charges shall include personnel and equipment rescheduling and/or reassignment adjustments and all other related costs incurred including but not limited to, labor and material escalation, and extended overhead costs, attributable to such delays.

- B. Delays in excess of thirty (30) days within the scope of this Article shall, at the option of either party, make this Agreement subject to termination or to renegotiation.

## 5. INDEPENDENT JUDGMENTS OF CLIENT

If the Services include the collection of samples and data, then GOLDER's obligation to perform those Services is subject to CLIENT's assumption of all Subsurface Risks (such risks being more fully described in Article 12, Subsurface Risks). GOLDER will not be responsible for the independent conclusions, interpretations, interpolations or decisions of CLIENT, or others, relating to the Services. Under no circumstances do GOLDER's Services include making any recommendation, or giving any advice as to whether CLIENT should or should not proceed with any transaction regarding any site related to the Services. CLIENT assumes all responsibility and risk associated with decisions it makes based on the Services.

## 6. INDEMNIFICATION

- A. GOLDER agrees to indemnify, but not defend, CLIENT and its officers, directors, and employees from and against all claims, damages, losses or expenses arising from personal injury, death, or damage to third-party property, and for reimbursement of defense costs, to the extent that all such claims, damages, losses, expenses, or costs are finally determined to result directly from GOLDER's negligence. Such indemnification, as limited by Article 7, Limitation of Liability, shall be CLIENT's sole and exclusive remedy against GOLDER.
- B. CLIENT shall, at all times, defend, indemnify and save harmless GOLDER and its subcontractors, consultants, agents, officers, directors and employees from and against all claims, damages, losses and expenses (including but not limited to reasonable attorneys' fees, and court and arbitration costs), arising out of or resulting from the Services of GOLDER, including but not limited to claims made by third parties, or any claims against GOLDER arising from the acts, errors or omissions of CLIENT, its employees, agents, contractors and subcontractors or others. To the fullest extent permitted by law, such indemnification shall apply regardless of breach of contract or strict liability of GOLDER. Such indemnification shall not apply to the extent that such claims, damages, losses or expenses are finally determined to result directly from GOLDER's negligence.

## 7. LIMITATION OF LIABILITY

- A. CLIENT shall immediately notify GOLDER in writing of any deficiencies or suspected deficiencies arising directly or indirectly from GOLDER's negligent acts, errors or omissions. Failure by CLIENT to notify GOLDER shall relieve GOLDER of any further responsibility and liability for such deficiencies. To the extent permitted by law, CLIENT and GOLDER agree that all liability arising directly or indirectly from this Agreement or the Services of GOLDER shall expire no later than one (1) year from the date of GOLDER's acts, errors, or omissions or prior to the last date allowed in the applicable statute of limitation, whichever occurs first in time.
- B. CLIENT agrees to limit the liability of GOLDER, its affiliates, and their respective employees, officers, directors, agents, consultants and subcontractors ("GOLDER Group") to CLIENT, its employees, officers, directors, agents, consultants and subcontractors, whether in contract, tort, or otherwise, which arises from GOLDER's acts, negligence, errors or omissions, such that the total aggregate liability of the GOLDER Group to all those named shall not exceed Fifty Thousand Dollars (\$50,000) or GOLDER's total fee for the Services rendered under this Agreement, whichever is greater.
- C. Neither party shall be responsible to the other for lost revenues, lost profits, cost of capital, claims of customers, loss of data or any other special, indirect, consequential or punitive damages.

## 8. INSURANCE

A. GOLDER maintains insurance coverage with the following limits:

- (i) Workers' Compensation in compliance with statutory limits
- (ii) Automobile Liability  
Combined Single Limit \$1,000,000
- (iii) Commercial General Liability:  
Each Occurrence \$1,000,000  
General Aggregate \$2,000,000
- (iv) Professional Liability Insurance  
Any One Claim \$1,000,000  
Policy Aggregate \$3,000,000

B. CLIENT shall not require GOLDER to sign any document or perform any Service which in the judgment of GOLDER would risk the availability or increase the cost of its Professional or Commercial General Liability insurance.

## 9. PROFESSIONAL WORK PRODUCT

- A. The Services provided by GOLDER are intended for one time use only. All documents, including but not limited to, reports, plans, designs, boring logs, field data, field notes, laboratory test data, calculations, and estimates and all electronic media prepared by GOLDER are considered its professional work product (the "Documents"). GOLDER retains all rights to the Documents.
- B. CLIENT understands and acknowledges that the Documents are not intended or represented by GOLDER to be suitable for reuse by any party, including, but not limited to, the CLIENT, its employees, agents, subcontractors or subsequent owners on any extension of a specific project not covered by this Agreement or on any other project, whether CLIENT's or otherwise, without GOLDER's prior written permission. CLIENT agrees that any reuse unauthorized by GOLDER will be at CLIENT's sole risk and that CLIENT will defend, indemnify and hold GOLDER harmless from any loss or liability resulting from the reuse, misuse or negligent use of the Documents.

## 10. DATA AND INFORMATION

CLIENT shall provide to GOLDER all reports, data, studies, plans, specifications, documents and other information ("Project Information") which are relevant to the Services. GOLDER shall be entitled to rely upon the Project Information provided by CLIENT or others and GOLDER assumes no responsibility or liability for the accuracy or completeness of such. CLIENT waives any claim against GOLDER, and agrees to defend, indemnify and hold GOLDER harmless from any claim or liability for injury or loss allegedly arising from errors, omissions, or inaccuracies in the Project Information. GOLDER will not be responsible for any interpretations or recommendations generated or made by others, which are based, whole or in part, on GOLDER's data, interpretations or recommendations.

## 11. RIGHT OF ENTRY

CLIENT will provide for the right of entry for GOLDER, its subcontractors, and all necessary equipment in order to complete the Services under this Agreement. If CLIENT does not own the site, CLIENT shall obtain permission and execute any required documents for GOLDER to enter the site and perform Services. It is understood by CLIENT that in the normal course of work some surface damage may occur, the restoration of which is not part of this Agreement.

## 12. SUBSURFACE RISKS

- A. Special risks occur whenever engineering or related disciplines are applied to identify subsurface conditions. Even a comprehensive sampling and testing program implemented in accordance with a professional Standard of Care may fail to detect certain conditions. The environmental, geological, geotechnical, geochemical, hydrogeological and other conditions that GOLDER interprets to exist between sampling points may differ from those that actually exist. Furthermore, CLIENT recognizes that, passage of time, natural occurrences, direct or indirect human intervention at or near the site may substantially alter discovered conditions.
- B. Subsurface sampling may result in damage or injury to underground structures or utilities and unavoidable contamination of certain subsurface areas not known to be previously contaminated such as, but not limited to, a geologic formation, the groundwater, or other hydrous body. GOLDER will adhere to the standard of care during the conduct of any subsurface investigation. When the Services include subsurface sampling, CLIENT waives any claim against GOLDER, and agrees to defend, indemnify and hold GOLDER harmless from any claim or liability for injury, loss, or expense (including but not limited to legal fees) which may arise as a result of alleged or actual cross-contamination caused by any subsurface investigation or any damage or injury to underground structure, formation, body, or utilities.

## 13. DISPOSAL OF SAMPLES, MATERIALS AND CONTAMINATED EQUIPMENT

- A. All samples obtained pursuant to this Agreement remain the property and responsibility of CLIENT. Uncontaminated soil and rock samples or other specimens maybe disposed of thirty (30) days after submission of the work product due pursuant to the Proposal. Upon written request, GOLDER will store uncontaminated samples for longer periods of time or transmit the samples to CLIENT for a mutually acceptable charge.
- B. All contaminated samples and materials (containing or potentially containing hazardous constituents), including, but not limited to soil cuttings, contaminated purge water, and/or other environmental wastes obtained pursuant to this Agreement remain the property and responsibility of CLIENT and shall be returned to CLIENT for proper disposal. All laboratory and field equipment that cannot readily and adequately be cleansed of its hazardous contaminants shall become the property and responsibility of CLIENT. All such equipment shall be charged and turned over to CLIENT for proper disposal. Alternate arrangements to assist CLIENT with proper disposal of such equipment, materials and samples may be made at CLIENT's direction and expense. In such event, CLIENT agrees to have a representative available to sign all certifications, manifests, and other documents reasonably required by GOLDER and associated with the transportation, treatment and disposal, or handling of hazardous substances, waste or materials from the project property site, and derived from GOLDER's performance of the Services, including investigation derived wastes. If such CLIENT representative is unavailable and GOLDER is required to execute any such documents on CLIENT's behalf, CLIENT acknowledges that GOLDER shall be acting only as offeror or agent on behalf of CLIENT. It is understood and agreed that GOLDER is not, and has no responsibility as, a handler, generator, operator, treater, storer, arranger, transporter, or disposer of hazardous substances, waste or materials found or identified at or around the project site property. CLIENT agrees to waive any claim against GOLDER and to defend, indemnify and hold GOLDER harmless from and against any claims, losses, damages, expenses (including, but not limited to, legal fees), and liabilities of any type arising out of the discovery and disposal of any alleged or actual hazardous substances, wastes or materials found or identified at or around the project site property.

## 14. CONTROL OF WORK AND JOB-SITE SAFETY

- A. GOLDER shall be responsible only for its activities and that of its employees and subcontractors. GOLDER's Services under this Agreement are performed for the sole benefit of the CLIENT and no other entity shall have any claim against GOLDER because of this Agreement or the performance or nonperformance of Services hereunder. GOLDER will not direct, supervise or

control the work of other consultants and contractors or their subcontractors. GOLDER does not guarantee the performance of, and shall have no responsibility for, the acts or omissions of any other contractor, subcontractor, supplier or other entities furnishing materials or performing any work on the project.

- B. Insofar as job site safety is concerned, GOLDER is responsible only for the health and safety of its employees and subcontractors. Nothing herein shall be construed to relieve CLIENT or any other consultants or contractors from their responsibilities for maintaining a safe job site. GOLDER shall not advise on, issue directions regarding, or assume control over safety conditions and programs for others at the job site. Neither the professional activities of GOLDER, nor the presence of GOLDER or its employees and subcontractors, shall be construed to imply that GOLDER controls the operations of others or has any responsibility for job site safety.

## 15. PUBLIC RESPONSIBILITY

CLIENT has a duty to comply with applicable codes, standards, regulations and ordinances, with regard to public health and safety. While GOLDER performs the Services it will endeavor to alert CLIENT to any matter of which GOLDER becomes aware and believes requires CLIENT's immediate attention to help protect public health and safety, or which GOLDER believes requires CLIENT to issue a notice or report to certain public officials, or to otherwise comply with applicable codes, standards, regulations or ordinances. If CLIENT decides to disregard GOLDER's recommendations in these respects, (i) GOLDER shall determine in its sole judgment if it has a duty to notify public officials, and (ii) GOLDER has the right immediately to terminate this Agreement upon written notice to the CLIENT and without penalty.

## 16. NOTIFICATION AND DISCOVERY OF HAZARDOUS MATERIALS

- A. Prior to commencing the Services and as part of Project Information defined in Article 10, Data and Information, CLIENT shall furnish to GOLDER all documents and information known to CLIENT that relate to past or existing conditions of the site and surrounding area, including the identity, location, quantity, nature or characteristics of any hazardous materials or suspected hazardous materials or subterranean utilities. GOLDER may rely on such information and documents. CLIENT hereby warrants that, if it knows or has any reason to assume or suspect that hazardous materials may exist at the project site, it has so informed GOLDER.
- B. CLIENT acknowledges that if unanticipated hazardous materials or suspected hazardous materials are discovered on the project site property or on properties surrounding or adjacent to such site, it is CLIENT's responsibility, and not GOLDER's, to inform the owner of any affected property not owned by CLIENT of such discovery. CLIENT also recognizes that any such discovery may result in a significant reduction of the property's value. CLIENT waives any claim against GOLDER and agrees to defend, indemnify and hold harmless GOLDER from any claim or liability for injury or loss of any type arising from the discovery of hazardous materials or suspected hazardous materials on the project property site or on surrounding property, whether or not owned by CLIENT. CLIENT agrees that discovery of unanticipated hazardous materials shall constitute a changed condition for which GOLDER shall be fairly compensated.

## 17. TERMINATION

Either party may terminate this Agreement as a result of a material breach of the other party if the other party does not commence and continue to cure the breach within thirty (30) days of receipt of written notice of the breach from the non-breaching party. In the event of termination, GOLDER shall be paid for Services performed to the termination notice date, reasonable termination expenses, and a portion of its anticipated profits not less than the percentage of the contract services performed as of the termination notice date. GOLDER may complete such analyses and records as are necessary to complete its files and may also complete a report on the Services performed to the date of notice of

termination or suspension. The expenses of termination or suspension shall include all direct costs of GOLDER in completing such analyses, records and reports.

## 18. DISPUTES

- A. All disputes, claims, and causes one party makes against the other, at law or otherwise, including third party or "pass-through" claims for indemnification and/or contribution, which amount to a claim of more than \$50,000 shall be initiated, determined, and resolved by arbitration in accordance with the American Arbitration Association and judgment upon the award rendered by the Arbitrator(s) may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, any claims by GOLDER against CLIENT involving failure to make payment pursuant to Article 2, Invoices and Payment Terms, as well as an alleged misappropriation or misuse of GOLDER's Intellectual Property pursuant to article 19, or confidential information may be resolved through any legal or equitable means or any form of alternative dispute resolution.
- B. In the event that one party makes a claim against the other, at law or otherwise, and then fails to prove such claim, then the prevailing party shall be entitled to all costs, including attorneys' fees incurred in defending against the claim.

## 19. INTELLECTUAL PROPERTY

- A. If the Services require GOLDER to provide CLIENT with the right to use or access proprietary GOLDER software, programs, information management solutions, hosting services, technology, designs, information or data ("GOLDER Products"), GOLDER grants CLIENT during the term of the project a non-exclusive, non-transferable, non-assignable license to use the GOLDER Products for CLIENT's internal purposes, solely in connection with the Services. Except for this limited license, GOLDER expressly reserves all other rights in and to the GOLDER Products.
- B. GOLDER's Right to Use CLIENT Materials - If the Services require CLIENT to provide GOLDER with the right to use or access proprietary CLIENT software, programs, technology, information or data ("CLIENT Products"), CLIENT grants GOLDER a perpetual, non-exclusive, non-transferable, non-assignable, royalty free world-wide license to use and access the CLIENT Product as necessary to provide CLIENT with Services.
- C. Intellectual Property General - GOLDER shall own all Intellectual Property (as hereinafter defined) associated with the Services and the GOLDER Products, together with any modifications, updates or enhancements to said Intellectual Property. GOLDER grants no right or license to such Intellectual Property to CLIENT except as expressly provided in this Agreement. CLIENT conveys to GOLDER any interest in any such Intellectual Property rights that, notwithstanding the foregoing, would otherwise be deemed by law to vest in CLIENT. "Intellectual Property" includes patents, patent applications, trademarks, trademark applications, copyrights, moral rights or other rights of authorship and applications to protect or register the same, trade secrets, industrial rights, know-how, privacy rights and any other similar proprietary rights under the laws of any jurisdiction in the world. GOLDER may use and publish the CLIENT's name and give a general description of the Services rendered by GOLDER for the purpose of informing other clients and potential clients of GOLDER's experience and qualifications.
- D. GOLDER shall use reasonable efforts to provide the Services without infringing on any valid patent or copyright and without the use of any confidential information that is the property of others; provided, however, reasonable efforts of GOLDER shall not include a duty to conduct or prepare a patent or copyright search and/or opinion. If GOLDER performs its Services in a manner consistent with the above, then to the fullest extent permitted by law, CLIENT shall indemnify, defend and hold harmless GOLDER and its officers, directors, agents and employees against all liability, cost, expense, attorneys' fees, claims, loss or damage arising from any alleged or actual patent or copyright infringement resulting from the Services under this Agreement.

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## 20. INFORMATION MANAGEMENT

- A. CLIENT acknowledges that electronic media is susceptible to unauthorized modification, deterioration, and incompatibility and therefore CLIENT cannot rely upon the electronic media versions of the Documents. In the event of any discrepancy, GOLDER's hardcopy shall prevail.
- B. Some GOLDER Products may be offered to CLIENT via the Internet and some GOLDER Products may utilize wireless radio communications. Atmospheric, meteorological, topographical and other conditions can affect the performance of any wireless device, software or technology (including, but not limited to information management solutions, hosting services, ftp and extranet services), just as application size, traffic, bottlenecks and other conditions can affect Internet access and upload and download speeds. CLIENT acknowledges that these types of conditions and other similar conditions are beyond the reasonable control of GOLDER and that GOLDER makes no representations or guarantees that CLIENT will be able to access any particular GOLDER Product at any given time without any error or interruption.

## 21. MISCELLANEOUS

- A. This Agreement supersedes all other agreements, oral or written, and contains the entire agreement of the parties. No cancellation, modification, amendment, deletion, addition, waiver or other change in this Agreement shall have effect unless specifically set forth in writing signed by the party to be bound thereby. Titles in this Agreement are for convenience only.
- B. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns provided that it may not be assigned by either party without consent of the other. It is expressly intended and agreed that no third party beneficiaries are created by this Agreement, and that the rights and remedies provided herein shall inure only to the benefit of the parties to this Agreement.
- C. CLIENT acknowledges and agrees that GOLDER can retain subconsultants, who may be affiliated with GOLDER, to provide Services for the benefit of GOLDER. GOLDER will be responsible to CLIENT for the Services and work done by all of its subconsultants and subcontractors, collectively to the maximum amount stated in Article 7 Limitation of Liability. CLIENT agrees that it will only assert claims against and seek to recover losses, damages or other liabilities from GOLDER and not GOLDER's affiliated companies. To the maximum extent allowed by law, CLIENT acknowledges and agrees it will not have any legal recourse, and waives any expense, loss, claim, demand, or cause of action, against GOLDER's affiliated companies, and their employees, agents, officers and directors.
- D. No waiver of any right or remedy in respect of any occurrence on one occasion shall be deemed a waiver of such right or remedy in respect of such occurrence on any other occasion.
- E. All representations and obligations (including without limitation the obligation of CLIENT to indemnify GOLDER in Article 6 and the Limitation of Liability in Article 7) shall survive indefinitely the termination of the Agreement. CLIENT acknowledges that it may not use GOLDER's name or any reference to the Services in any press release or public document without the express, written consent of GOLDER.
- F. Any provision, to the extent found to be unlawful or unenforceable, shall be stricken without affecting any other provision of the Agreement, so that the Agreement will be deemed to be a valid and binding agreement enforceable in accordance with its terms.
- G. All questions concerning the validity and operation of this Agreement and the performance of the obligations imposed upon the parties hereunder shall be governed by the laws of Georgia unless the law of another jurisdiction must apply for this Agreement to be enforceable.

- H. All notices required or permitted to be given hereunder, shall be deemed to be properly given if delivered in writing via facsimile machine, e-mail, regular mail, hand delivery or express courier addressed to CLIENT or GOLDER, as the case may be, at the addressee set forth in the Proposal Acceptance Form in regard to the CLIENT, and as listed on the Proposal in regard to GOLDER, with postage thereon fully prepaid if sent by mail or express courier.
  
- I. CLIENT represents and warrants that the individual signing the Proposal Acceptance Form is an authorized representative of CLIENT and has authority to bind the CLIENT.

**ATTACHMENT 2  
PROPOSAL ACCEPTANCE FORM**



GOLDER ASSOCIATES INC.
PROPOSAL ACCEPTANCE FORM
(Terms and Conditions)

PROPOSAL NUMBER: P1527175

RE: SPCC Plans and Training, City of Escanaba, Michigan

SUBMITTED this 27th day of March, 2015

BY: Jeff Piaskowski, for Golder Associates Inc.

The Proposal dated March 27, 2015, attached hereto and the Golder Associates Inc. Terms and Conditions (GAIUS F34 RL3, dated 1/2011), comprise the entire Agreement between Golder Associates Inc. and Client.

ACCEPTED this \_\_\_ day of \_\_\_, 20\_\_\_

BY: (Authorized Representative's Signature on Behalf of Client)

NAME: (Print or Type)

TITLE: (Print or Type)

FOR: Client Name and Address (Print or Type)

Phone: Fax:

Table with 2 columns: Billing information (Please address invoices to) and Delivery/Notice information (Please address deliverables and notices to). Includes addresses for Atlanta, GA and Green Bay, WI.

BY: (Authorized Representative's Signature on Behalf of Golder Associates Inc.)

NAME: (Print or Type)

TITLE: (Print or Type)

NB#~~4~~  
CC-EAC  
5-13-15

MEMORANDUM

To: Jim O'Toole

From: Mike Furmanski *MF*

Date: 07MAY15

Re: Pole Bid of May 5, 2015

The City Electric Department uses a variety of wooden poles on our distribution system. We are getting low on our stock of various sizes and classes of wooden poles. Bids were sent to 6 suppliers, with 4 suppliers submitting 4 bids. The vendors quoted different quantities to reach full truck loads. The bids were received as follows:

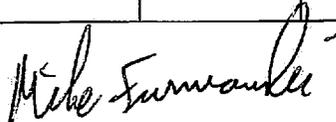
Vendor	# of Poles	Bid Amount
Thomasson	129	\$37,781.48
Bell Lumber & Pole	101	\$32,602.00
Border States	117	\$39,064.93
Power Line Supply	110	\$37,230.00

All bids received meet our specifications. I am recommending we accept the bid from Thomasson Company of Philadelphia, MS for a total of 129 poles for \$37,781.48.

Wood Pole Bid Tab sheet 05MAY15

Bidder	Size, Class, and Quantity						Lead Time	Total Price	Bond/Check
	30'CL4 (20)	40'CL2 (15)	40'CL4 (30)	45'CL2 (15)	45'CL4 (15)	50'CL4 (5)			
Powerline Supply	180	450	298	543	312	427	4-5wks	<del>321</del>	Bond
border States	189.60	392.66	312.89	481.05	359.51	413.76	1-2 wks		Bond
Thomason Company	160.33	358.30	274.12	425	305.86	412.88	2-3wks		check
Bell Lumber	184	463	312	432	327	364	<del>8.5wks</del>		Bond

Witnessed by:

  
 Kimberly Peterson 5/5/15  
 Tom Peterson 5/5/15



## **POLE SPECIFICATIONS**

- Poles shall be pressure treated with penta full length to 8 pounds per cubic foot retention, in accordance with A.W. P. A. specifications
- Poles must be drilled, machine shaved, and roofed to accommodate City of Escanaba specifications, which are attached
- Poles must be dated and branded with length and class ten (10) feet from butt
- Poles must conform to A.S.A. specifications and dimensions for wood poles
- Poles must be pressure treated after drilling

### **NOTE:**

If additional poles can be added to make full truckloads for all shipments, please balance the load with 40' c14 poles

No CCA bids will be accepted

Poles are to be unloaded upon delivery at the City of Escanaba pole yard

**The City of Escanaba reserves the right to refuse to pay for any poles which, in the opinion of the Electrical Superintendent, are unsatisfactory for use in the City of Escanaba**

**ANY QUESTIONS REGARDING THESE SPECIFICATIONS SHOULD BE DIRECTED TO:**

**MIKE FURMANSKI  
ELECTRIC SUPERINTENDENT  
CITY OF ESCANABA  
ESCANABA, MI 49829  
TELEPHONE: (906) 786-0061**

## BIDDER'S PROPOSAL

DATE: April 20, 2015

We, the undersigned, agree to furnish the City of Escanaba, Michigan, wooden poles of the various sizes and classes listed below in accordance with the attached specifications, which are part of this proposal, at the following price:

**DELIVERY: F.O.B. CITY OF ESCANABA  
ESCANABA, MI 49829**

**DELIVERY DATE: 2-3 weeks ARO**

Pole Size/Cl	Min qty.	Qty quoted	specie	Price/ea	Price/Total
30'CL4	20	<u>20</u>	<u>SYP</u>	<u>160.33</u>	<u>3,206.60</u>
40'CL2	15	<u>15</u>	<u>SYP</u>	<u>358.30</u>	<u>5,374.50</u>
40'CL4	30	<u>44</u>	<u>SYP</u>	<u>274.12</u>	<u>12,061.28</u>
45'CL2	15	<u>15</u>	<u>SYP</u>	<u>425.00</u>	<u>6,375.00</u>
45'CL4	15	<u>15</u>	<u>SYP</u>	<u>305.86</u>	<u>4,587.90</u>
50'CL4	5	<u>5</u>	<u>SYP</u>	<u>412.88</u>	<u>2,064.40</u>

Grand Total: 33,669.68

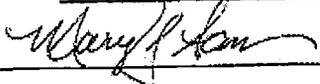
Certified Check, Cashier's Check or  
Bidder's Bond enclosed in the amount of:  
(must be included to qualify)

\$ 3,366.97

### SUBMITTED BY:

FIRM: Thomasson Company

ADDRESS: P.O. Box 490  
Philadelphia, MS 39350

BY: 

PRINTED: Mary J. Sam

TITLE: Sales

PHONE/FAX: 601-650-3952



hereby grants

# National Women's Business Enterprise Certification

to

## Thomasson Company

who has successfully met WBENC's standards as a Women's Business Enterprise (WBE).  
This certification affirms the business is woman-owned, operated and controlled; and is valid through the date herein.

WBENC National WBE Certification was processed and validated by Women's Business Enterprise Council – South, a WBENC Regional Partner Organization.

Expiration Date: 03/31/2016  
WBENC National Certificate Number: 2005110173

*Blanca E. Robinson*

Authorized by Blanca E. Robinson, President,  
Women's Business Enterprise Council – South



NAICS Codes: 423990, 321114, 423310

UNSPSC Codes: 30103608, 24112701, 11121616, 30103603, 30102904, 30102907, 25121716, 25121702



ORIGINAL DOCUMENT PRINTED ON CHEMICAL REACTIVE PAPER WITH MICROPRINTED BORDER



The Citizens Bank  
Philadelphia, Mississippi

CASHIER'S CHECK

900012244

85-215  
653

NOTICE TO CUSTOMERS  
THE PURCHASE OF AN INDEMNITY BOND MAY BE REQUIRED  
BEFORE ANY CASHIER'S CHECK OF THIS BANK WILL BE  
REPLACED OR REFUNDED IN THE EVENT IT IS LOST,  
MISPLACED OR STOLEN.

DATE April 20, 2015

REMITTER THOMASSON COMPANY

\$\*\*\*\*\*3,366.97

PAY THREE THOUSAND THREE HUNDRED SIXTY-SIX AND 97/100

TO THE ORDER OF CITY OF ESCANABA, MI

PURPOSE

*Craig Nash*

TWO SIGNATURES REQUIRED OVER \$25,000

THIS DOCUMENT CONTAINS HEAT SENSITIVE INK. TOUCH OR PRESS HERE. RED IMAGE DISAPPEARS WITH HEAT.

⑈900012244⑈ ⑆065302154⑆ ⑈00015917⑈

SECURE  
SAFE  
SECURE

Details on back. Security Features Included



778 - 1<sup>st</sup> Street NW + P.O. Box 120786  
New Brighton, MN 55112-0024

Phone: 651-633-4334  
Fax: 651-633-8852  
www.blpole.com

City of Escanaba, MI  
Mike Furmanski

Date: 29-Apr-2015  
Reference: Pole Bid May 2015  
Bell Quote: 81574  
Fax:  
Email:

Southern Yellow Pine Poles, produced in compliance with RUS Bulletin 1728F-700 for timber quality, dimensions and pressure treated with Pentachlorophenol and oil. Framed per RUS Drawing W1.1G (M20A). WQC inspection charges are included.

<u>Quantity</u>	<u>Species</u>	<u>Class/Length</u>	<u>Total Price</u>	<u>Extended</u>
15	SYP	2/45	\$432.00	\$6,480.00
15	SYP	4/45	\$327.00	\$4,905.00
20	SYP	4/30	\$184.00	\$3,680.00
15	SYP	2/40	\$403.00	\$6,045.00
31	SYP	4/40	\$312.00	\$9,672.00
5	SYP	4/50	\$364.00	\$1,820.00

FOB: STORAGE DECK - Escanaba, MI

**Total Quantity: 101**

**Total Bid: \$32,602.00**

Shipment: Commencing 5 weeks after receipt of order via self-unloading truck. For a 2-3 week lead time please apply an additional 10% delivered price.

Terms: Net 30 Days

Freight is subject to fuel surcharge increases as they may occur.

Prices may be considered firm through completion of shipment.

This quotation is valid for acceptance through May 15, 2015 and is being offered on the basis of order placement for all/or a proportionate share of each class and length protecting full truckload quantity.

Stock is subject to availability at the time of the order placement.

Thank you for the opportunity to quote on your wood pole requirements. We look forward to being of service.

Bell Lumber & Pole Company

Sarah Dunlavy, North Central Region Sales Representative

This quote does not include any sales, use or other tax that may apply to the customer. Customer will provide specific sales, use or other tax documentation, including tax resale or exemption certificates for all shipment destinations. In the absence of receiving resale or exemption certificates from the customer, Bell Lumber & Pole Company will charge sales or use tax on invoices, when required by law.

By accepting this quote and ordering the products described above, Customer agrees to the following: Bell Lumber & Pole Company ("Bell") makes no warranty, express or implied, relating to the poles including, without limitation, warranties of merchantability or fitness for a particular purpose. Customer hereby grants Bell a purchase money security interest in the poles sold hereunder, together with all products and proceeds thereof, and authorizes Bell to file financing statements with respect thereto. The terms and conditions set forth herein contain the entire agreement between Customer and Bell with respect to the subject matter hereof, supersede all other written and oral communications, and may not be modified or waived except in writing. This agreement shall be deemed to have been made in the State of Minnesota, shall be governed by Minnesota law, and the parties agree to jurisdiction and venue in any federal or state court located in Hennepin County, Minnesota, with respect to any dispute hereunder. Bell is not liable to Customer for any incidental, consequential, special or punitive damages relating to the poles and this agreement shall in no event exceed the price paid by Customer to Bell hereunder. Any payment not made when due shall accrue a late charge of one and one-half percent (1.5%) per month or, if lower, the maximum rate permitted by law. Customer shall reimburse Bell for any expenses, including reasonable attorneys' fees, incurred by Bell in enforcing its rights hereunder.

## BIDDER'S PROPOSAL

DATE: April 29, 2015

We, the undersigned, agree to furnish the City of Escanaba, Michigan, **wooden poles of the various sizes and classes listed below** in accordance with the attached specifications, which are part of this proposal, at the following price:

**DELIVERY: F.O.B. CITY OF ESCANABA**  
**ESCANABA, MI 49829**

**DELIVERY DATE: 5 weeks ARO**

Pole Size/Cl	Min qty.	Qty quoted	specie	Price/ea	Price/Total
30'CL4	20	<u>20</u>	<u>SYP</u>	<u>\$184.00</u>	<u>\$3,680.00</u>
40'CL2	15	<u>15</u>	<u>SYP</u>	<u>\$403.00</u>	<u>\$6,045.00</u>
40'CL4	30	<u>31</u>	<u>SYP</u>	<u>\$312.00</u>	<u>\$9,672.00</u>
45'CL2	15	<u>15</u>	<u>SYP</u>	<u>\$432.00</u>	<u>\$6,480.00</u>
45'CL4	15	<u>15</u>	<u>SYP</u>	<u>\$327.00</u>	<u>\$4,905.00</u>
50'CL4	5	<u>5</u>	<u>SYP</u>	<u>\$364.00</u>	<u>\$1,820.00</u>

**Grand Total: \$32,602.00**

**Certified Check, Cashier's Check or  
Bidder's Bond enclosed in the amount of:  
(must be included to qualify)**

**\$ 3,260.20**

### **SUBMITTED BY:**

FIRM: Bell Lumber & Pole Company

ADDRESS: 778 1st St NW, New Brighton, MN 55112

BY: *Diana Oberg for Sarah Dunlavy*

PRINTED: Sarah Dunlavy

TITLE: North Central Sales Representative

PHONE/FAX; 715-492-0188

**Marsh & McLennan Agency LLC**

7225 Northland Dr N #300  
Minneapolis, MN 55428  
Phone: 763-746-8000 Fax:

<b>MEMO</b>		<b>Page 1</b>
<b>4/28/2015</b>		

**Diana Oberg**  
**Bell Lumber & Pole Co.**  
**778 1st Street Northwest/PO Box 120786**  
**New Brighton, MN 55112**

**City of Escanaba, Michigan**  
**RE: Pole Bid May 2015 Various Classes & Sizes**  
**5/5/2015**

**Enclosed is the Bid Bond for the above referenced job. If you need anything further, please let us know.**  
**Thank you.**

**Tracy Corbett**

## BID BOND

---

**CONTRACTOR:**

*(Name, legal status and address)*

**Bell Lumber & Pole Co.**

**778 1st Street Northwest/PO Box 120786**

**New Brighton, MN 55112**

**SURETY:**

*(Name, legal status and principal place of business)*

**Old Republic Surety Company**

**PO Box 1635**

**Milwaukee, WI 53201**

**OWNER:**

*(Name, legal status and address)*

**City of Escanaba, Michigan**

**410 Lundington Street**

**Escanaba, MI 49829**

**BOND AMOUNT: Ten Percent of the Bid Submitted**

**PROJECT:**

*(Name, location or address, and Project number, if any)*

**Pole Bid May 2015 Various Classes & Sizes**

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

---

**The Company executing this bond vouches that this document conforms to the American Institute of Architects Document A310, 2010 edition**

Signed and sealed this 5th day of May, 2015.

[Signature]  
(Witness)

[Signature]  
Bell Lumber & Pole Co. (Seal)  
(Principal)  
President  
(Title)

[Signature]  
(Witness)

Old Republic Surety Company (Seal)  
(Surety)  
[Signature]  
(Title) Patricia H. Borchers Attorney-in-Fact

STATE OF MINNESOTA

On this 5th day of May, 2015, before me appeared Patricia H. Borchers to me personally known, who, being duly sworn, did say that he or she is the Attorney-in-Fact of Old Republic Surety Company, that the seal affixed to the foregoing instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors and said acknowledged said instrument to be the free act and deed of said corporation.

*Tracy Corbett*  
notary public



# OLD REPUBLIC SURETY COMPANY

## POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS That OLD REPUBLIC SURETY COMPANY, a Wisconsin stock insurance corporation, does make, constitute and appoint:

WENDY M. SCHMID, CHRISTINE M. SCOTT, WILLIAM D. JEATRAN, PATRICIA H. BORCHERS, JEFFREY SETTEM, EMILY B. TSCHIMPERLE, OF MINNEAPOLIS, MN

its true and lawful Attorney(s)-in-Fact, with full power and authority, not exceeding \$50,000,000, for and on behalf of the company as surety, to execute and deliver and affix the seal of the company thereto (if a seal is required), bonds, undertakings, recognizances or other written obligations in the nature thereof, (other than bail bonds, bank depository bonds, mortgage deficiency bonds, mortgage guaranty bonds, guarantees of installment paper and note guaranty bonds, self-insurance workers compensation bonds guaranteeing payment of benefits, asbestos abatement contract bonds, waste management bonds, hazardous waste remediation bonds or black lung bonds), as follows:

ALL WRITTEN INSTRUMENTS IN AN AMOUNT NOT TO EXCEED AN AGGREGATE OF TWO MILLION DOLLARS (\$2,000,000) FOR ANY SINGLE OBLIGATION REGARDLESS OF THE NUMBER OF INSTRUMENTS ISSUED FOR THE OBLIGATION

and to bind OLD REPUBLIC SURETY COMPANY thereby, and all of the acts of said Attorneys-in-Fact, pursuant to these presents, are ratified and confirmed. This document is not valid unless printed on colored background and is multi-colored. This appointment is made under and by authority of the board of directors at a special meeting held on February 18, 1982. This Power of Attorney is signed and sealed by facsimile under and by the authority of the following resolutions adopted by the board of directors of the OLD REPUBLIC SURETY COMPANY on February 18, 1982.

RESOLVED that, the president, any vice-president, or assistant vice president, in conjunction with the secretary or any assistant secretary, may appoint attorneys-in-fact or agents with authority as defined or limited in the instrument evidencing the appointment in each case, for and on behalf of the company to execute and deliver and affix the seal of the company to bonds, undertakings, recognizances, and suretyship obligations of all kinds; and said officers may remove any such attorney-in-fact or agent and revoke any Power of Attorney previously granted to such person.

RESOLVED FURTHER, that any bond, undertaking, recognizance, or suretyship obligation shall be valid and binding upon the Company (i) when signed by the president, any vice president or assistant vice president, and attested and sealed (if a seal be required) by any secretary or assistant secretary, or (ii) when signed by the president, any vice president or assistant vice president, secretary or assistant secretary, and countersigned and sealed (if a seal be required) by a duly authorized attorney-in-fact or agent, or (iii) when duly executed and sealed (if a seal be required) by one or more attorneys-in-fact or agents pursuant to and within the limits of the authority evidenced by the Power of Attorney issued by the company to such person or persons.

RESOLVED FURTHER, that the signature of any authorized officer and the seal of the company may be affixed by facsimile to any Power of Attorney or certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the company, and such signature and seal when so used shall have the same force and effect as though manually affixed.

IN WITNESS WHEREOF, OLD REPUBLIC SURETY COMPANY has caused these presents to be signed by its proper officer, and its corporate seal to be affixed this 14TH day of AUGUST, 2014.

OLD REPUBLIC SURETY COMPANY

*Phyllis M. Johnson*  
Assistant Secretary



*Alan Pavlo*  
President

STATE OF WISCONSIN, COUNTY OF WAUKESHA-SS

On this 14TH day of AUGUST, 2014, personally came before me, Alan Pavlo and Phyllis M. Johnson, to me known to be the individuals and officers of the OLD REPUBLIC SURETY COMPANY who executed the above instrument, and they each acknowledged the execution of the same, and being by me duly sworn, did severally depose and say; that they are the said officers of the corporation aforesaid, and that the seal affixed to the above instrument is the seal of the corporation, and that said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority of the board of directors of said corporation.

*Kathryn R. Pearson*  
Notary Public  
My commission expires: 9/28/2014



(Expiration of notary commission does not invalidate this instrument)

### CERTIFICATE

I, the undersigned, assistant secretary of the OLD REPUBLIC SURETY COMPANY, a Wisconsin corporation, CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and furthermore, that the Resolutions of the board of directors set forth in the Power of Attorney, are now in force.

40-2243

Signed and sealed at the City of Brookfield, WI this 5th day of May, 2015.



*James E. Scheraga*  
Assistant Secretary

MARSH & MCLENNAN AGENCY LLC

THIS DOCUMENT HAS A COLORED BACKGROUND AND IS MULTI-COLORED ON THE FACE. THE COMPANY LOGO APPEARS ON THE BACK OF THIS DOCUMENT AS A WATERMARK. IF THESE FEATURES ARE ABSENT, THIS DOCUMENT IS VOID.



**BORDER STATES**  
Supply Chain Solutions™

Border States Electric Supply  
Electrical Wholesale Supply of Utah | Western Extralite

Border States Electric - PWK  
N29W23606 Woodgate Ct E  
Pewaukee WI 53072-6248  
Phone: 262-347-2199

City of Escanaba  
Attn City Hall-Accounts Payable  
P.O. Box 948  
Escanaba MI 49829-0948

**Quote**

BSE Quote: 23610655  
Sold-to Acct #: 8611  
Valid From: 04/20/2015 To: 05/21/2015  
PO No: 2015 POLE QUOTATION  
PO Date: 04/29/2015

Created By: Frederick Mitchell  
Tel No: 262-347-2142  
Fax No: 906-774-1716

**Inco Terms:**  
PPA FREIGHT ALLOWED

**Payment Terms:**  
Net 25th prox

**Taxes, if applicable, are not included.**

**Order Note:**  
SOUTHERN PINE, 0.45 PENTA PER CITY OF ESCANABA SPECIFICATIONS. POLES WILL BE DELIVERED TO ESCANABA POLE YARD VIA:  
SELF UNLOADING BOOM TRUCK. ESTIMATED 1 - 2 WEEKS ARO.

Cust Item	BSE Item	Material MFG - Description	Quantity	Price	Per UoM	Value
	000010	- UOSPPE04030 CLASS 4-30' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	20 EA	189.60 / 1	EA	3,792.00
	000020	- UOSPPE02040 CLASS 2-40' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	15 EA	392.66 / 1	EA	5,889.90
	000030	- UOSPPE04040 CLASS 4-40' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	47 EA	312.89 / 1	EA	14,705.83
	000040	- UOSPPE02045 CLASS 2-45' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	15 EA	481.05 / 1	EA	7,215.75
	000050	- UOSPPE04045 CLASS 4-45' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	15 EA	359.51 / 1	EA	5,392.65
	000060	- UOSPPE04050 CLASS 4-50' SYP PENTA Cust Material #: ESTIMATED 1 - 2 WEEKS ARO.	5 EA	413.76 / 1	EA	2,068.80

**Total Value**

**39,064.93**

To access BSE's Terms and Conditions of Sale, please go to  
<https://www.borderstateselectric.com>

This quote has not been reviewed for compliance with the Buy American Act or the American Recovery and Reinvestment Act requirements. BSE reserves the right to amend both our bill of material and our proposal accordingly if BAA/ARRA compliance is required.

## BIDDER'S PROPOSAL

DATE: 4-29-2015

We, the undersigned, agree to furnish the City of Escanaba, Michigan, wooden poles of the various sizes and classes listed below in accordance with the attached specifications, which are part of this proposal, at the following price:

DELIVERY: F.O.B. CITY OF ESCANABA  
 ESCANABA, MI 49829

DELIVERY DATE: 1-2 Weeks ARO

Pole Size/Cl	Min qty.	Qty quoted	specie	Price/ea	Price/Total
30'CL4	20	<u>20</u>	<u>SYP</u>	<u>\$189.60</u>	<u>\$3792.00</u>
40'CL2	15	<u>15</u>	<u>SYP</u>	<u>\$392.66</u>	<u>\$5889.90</u>
40'CL4	30	<u>47</u>	<u>SYP</u>	<u>\$32.89</u>	<u>\$14705.83</u>
45'CL2	15	<u>15</u>	<u>SYP</u>	<u>\$481.05</u>	<u>\$7215.75</u>
45'CL4	15	<u>15</u>	<u>SYP</u>	<u>\$357.51</u>	<u>\$5392.65</u>
50'CL4	5	<u>5</u>	<u>SYP</u>	<u>\$413.76</u>	<u>\$2068.80</u>

Grand Total: \$39,064.93

Certified Check, Cashier's Check or Bidder's Bond enclosed in the amount of:  
 (must be included to qualify)

\$ 101.

**SUBMITTED BY:**

FIRM: Borden States Electric  
13410 27600 Windgate Court E  
 ADDRESS: Dowdaker, WI 53022

BY: Justin Glass

PRINTED: Justin Glass

TITLE: Bidder's Proposal

PHONE/FAX: (262) 347-2142 Fax: (262) 347-0550

## NOTICE TO BIDDERS

Sealed bids will be received by the City of Escanaba at the office of the City Clerk, on or before 2p.m. e.s.t, on: **TUESDAY, MAY 5, 2015**

The bids will be publicly opened and read in Room 101 in the City Hall located at 410 Ludington Street, Escanaba, Michigan at said date and time.

Bidder's proposals, and/or specifications may be obtained from the office of the City Clerk, located at 410 Ludington Street, Escanaba, Michigan, 49829. No bids will be considered unless the proposal form and /or specifications (furnished by the City of Escanaba, Michigan), are properly completed and enclosed in a sealed envelope, marked:

### **POLE BID MAY 2015 VARIOUS CLASSES & SIZES**

In addition, the City of Escanaba, Michigan will not consider any proposal which has not been received prior to the published time, date and year of bid opening. (FAX transmittals will not be accepted.)

**A Certified Check, Cashier's Check, or Bidder's Bond, drawn payable, without condition, to the City of Escanaba, Michigan, in an amount not less than 10% of the bid, will be submitted with each proposal as a guarantee that if the bid is accepted, the bidder will furnish materials or services as stated in his or her proposal. On failure of the successful bidder to fulfill the conditions of his or her proposal, he or she shall forfeit said deposit to the City of Escanaba, Michigan as liquidated damages. The acceptance of the proposal will be contingent upon the bidder's acceptance of this provision.**

The City of Escanaba, Michigan reserves the right to reject any or all bids, or any part thereof at its discretion, and to waive any irregularities in the bidding. The City of Escanaba, Michigan may also split bids at its discretion. The City further reserves the right to negotiate directly with any and all bidders concerning any matter related to any bid.

All City of Escanaba, Michigan bids are prepared to afford all vendors the equal opportunity for fair and equitable competition. The City of Escanaba, Michigan assumes no liability or responsibility for any errors or oversights in the preparation and/or publication of bids.

Thomas J. Penegor  
Purchasing Agent  
City of Escanaba

## POLE SPECIFICATIONS

- Poles shall be pressure treated with penta full length to 8 pounds per cubic foot retention, in accordance with A.W. P. A. specifications
- Poles must be drilled, machine shaved, and roofed to accommodate City of Escanaba specifications, which are attached
- Poles must be dated and branded with length and class ten (10) feet from butt
- Poles must conform to A.S.A. specifications and dimensions for wood poles
- Poles must be pressure treated after drilling

### **NOTE:**

If additional poles can be added to make full truckloads for all shipments, please balance the load with 40' cl4 poles

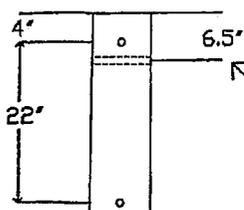
No CCA bids will be accepted

Poles are to be unloaded upon delivery at the City of Escanaba pole yard

**The City of Escanaba reserves the right to refuse to pay for any poles which, in the opinion of the Electrical Superintendent, are unsatisfactory for use in the City of Escanaba**

**ANY QUESTIONS REGARDING THESE SPECIFICATIONS SHOULD BE DIRECTED TO:**

**MIKE FURMANSKI  
ELECTRIC SUPERINTENDENT  
CITY OF ESCANABA  
ESCANABA, MI 49829  
TELEPHONE: (906) 786-0061**



Through-bolt holes must be parallel and in the same plane

HOLES: Drill 11/16" diameter.

All poles must be bored and roofed before treatment.

Anti-split bolt hole

Tolerance:

Holes

On the branded side +/- 1/8" from the centerlines of the holes.

On the side opposite the brand +/- 1/4" from the centerlines of the holes.

Location - measured from roof

Brand side +/- 1/4"

Opposite side +/- 1/2"

Diameter +/- 1/16"

Bottom of brand or center of metal disk shall be 10' +/- 1' from pole butt.

If insured warranted pole, Brand "IW".

Manufacturer's mark and Date of Treatment, (Month and Year).

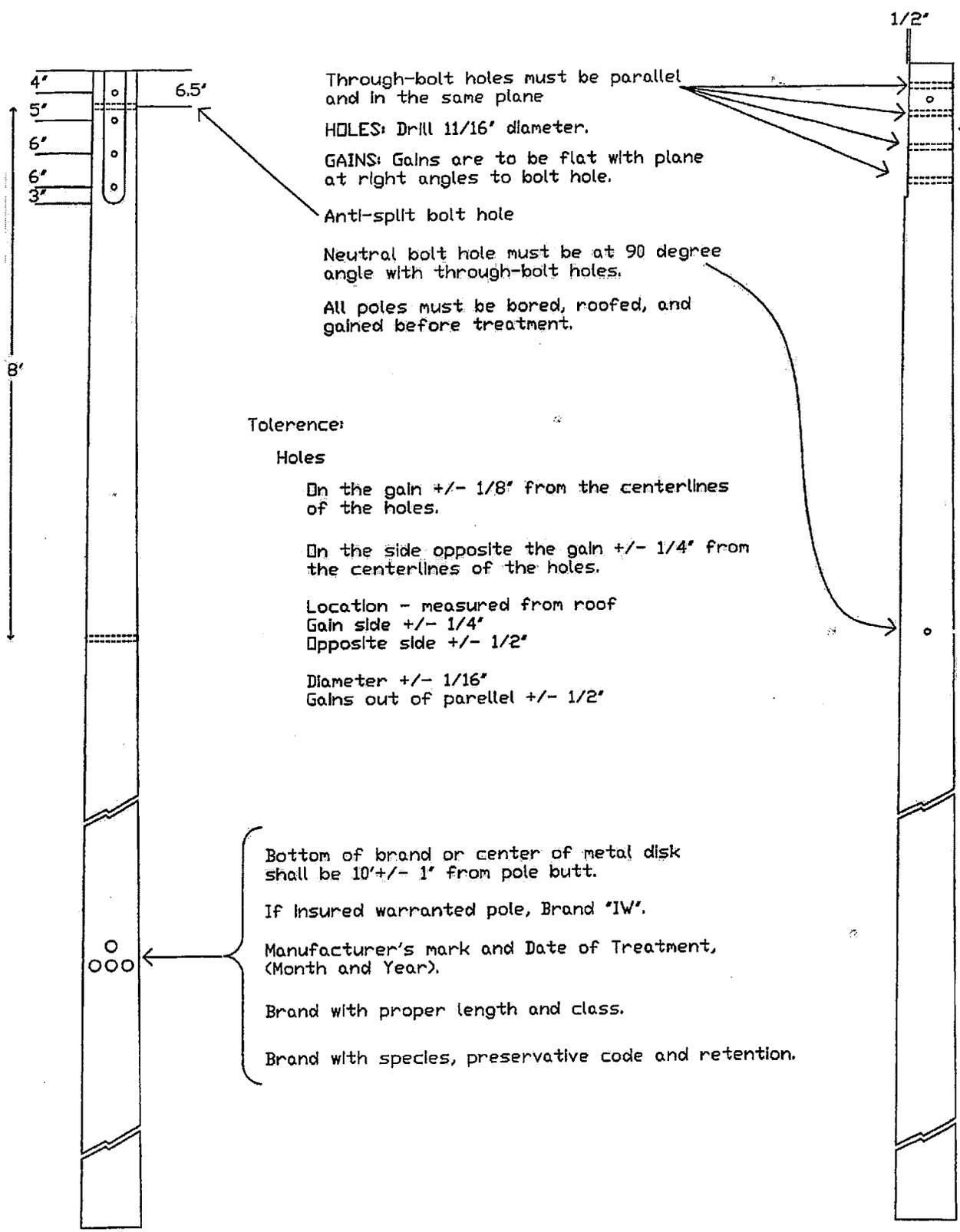
Brand with proper length and class.

Brand with species, preservative code and retention.



Brand butt with proper length and class

POLE FRAMING GUIDE
CITY OF ESCANABA
30' cl4 pole
DEC 2007



Through-bolt holes must be parallel and in the same plane  
 HOLES: Drill 11/16" diameter.  
 GAINS: Gains are to be flat with plane at right angles to bolt hole.

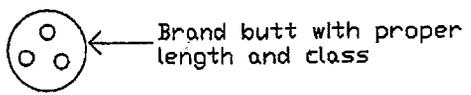
Anti-split bolt hole  
 Neutral bolt hole must be at 90 degree angle with through-bolt holes.  
 All poles must be bored, roofed, and gained before treatment.

Tolerance:

Holes

- On the gain +/- 1/8" from the centerlines of the holes.
- On the side opposite the gain +/- 1/4" from the centerlines of the holes.
- Location - measured from roof  
 Gain side +/- 1/4"  
 Opposite side +/- 1/2"
- Diameter +/- 1/16"  
 Gains out of parallel +/- 1/2"

Bottom of brand or center of metal disk shall be 10' +/- 1" from pole butt.  
 If Insured warranted pole, Brand "IW".  
 Manufacturer's mark and Date of Treatment, (Month and Year).  
 Brand with proper length and class.  
 Brand with species, preservative code and retention.



45' and over

# AIA Document A310™ – 2010

## Bid Bond

**CONTRACTOR:**

(Name, legal status and address)

Border States Industries, Inc. dba  
Border States Electric Supply  
PO Box 2767  
Fargo, ND 58108-2767

**SURETY:**

(Name, legal status and principal place of business)

Travelers Casualty and Surety Company of America  
One Tower Square, 2SHS  
Hartford, CT 06183

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

**OWNER:**

(Name, legal status and address)

City of Escanaba  
410 Ludington Street  
Escanaba, MI 49829

**BOND AMOUNT:** Ten Percent (10%) of the Amount of Bid

**PROJECT:**

(Name, location or address, and Project number, if any)

Project: 2015 Pole Bid  
2015 Utility Pole Proposal, Estimated 100 poles, 6 different styles

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 20th day of

April, 2015

  
(Witness)

Border States Industries, Inc. dba  
Border States Electric Supply

(Principal)

(Seal)

(Title)

Travelers Casualty and Surety Company of America

(Surety)

(Seal)

  
(Witness)

  
(Title) Martin E. Fisher, Attorney-in-Fact

**CAUTION:** You should sign an original AIA Contract Document, on which this text appears in RED. An original assures that changes will not be obscured.

init:

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**ACKNOWLEDGMENT OF PRINCIPAL**

STATE OF North Dakota )

COUNTY OF Cass )

On this 20 day of April, 2015, before me, a

Notary Public in and for the State of North Dakota, personally  
appeared Jeremy Welsand known to me to be

CFO of the Principal described in the within

instrument and who executed the same and acknowledged to me that he/she executed  
the same for and on behalf of said Principal.

(SEAL)

Laura Klimek

**LAURA KLIMEK  
Notary Public  
State of North Dakota  
My Commission Expires April 14, 2018**

**ACKNOWLEDGMENT OF SURETY**

STATE OF North Dakota )

COUNTY OF Cass )

On this 20th day of April, 2015, before me

personally came Martin E. Fisher to me known, who being by me duly

sworn, did depose and say the he/she resides in Fargo, ND that he/she is the

Attorney-in-Fact of Travelers Casualty and Surety Company of America, the corporation  
described in and which executed the above instrument; that he/she knows the seal of said  
corporation; that the seal affixed to said instrument is such corporate seal; that it was so  
affixed by order of the Board of Directors of said corporation; and the he/she signed his/her  
name thereto by like order.

(SEAL)

Gail T. Hayes

**GAIL T. HAYES  
Notary Public  
State of North Dakota  
My Commission Expires Jan, 27, 2021**



POWER OF ATTORNEY

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company

Attorney-In Fact No. 228574

Certificate No. 006111385

KNOW ALL MEN BY THESE PRESENTS: That Farmington Casualty Company, St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company are corporations duly organized under the laws of the State of Connecticut, that Fidelity and Guaranty Insurance Company is a corporation duly organized under the laws of the State of Iowa, and that Fidelity and Guaranty Insurance Underwriters, Inc., is a corporation duly organized under the laws of the State of Wisconsin (herein collectively called the "Companies"), and that the Companies do hereby make, constitute and appoint

James M. Padden, Martin E. Fisher, Gail T. Hayes, and Daniel W. Werner

of the City of Fargo, State of North Dakota, their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign, execute, seal and acknowledge any and all bonds, recognizances, conditional undertakings and other writings obligatory in the nature thereof on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

IN WITNESS WHEREOF, the Companies have caused this instrument to be signed and their corporate seals to be hereto affixed, this 6th day of October, 2014.

Farmington Casualty Company
Fidelity and Guaranty Insurance Company
Fidelity and Guaranty Insurance Underwriters, Inc.
St. Paul Fire and Marine Insurance Company
St. Paul Guardian Insurance Company

St. Paul Mercury Insurance Company
Travelers Casualty and Surety Company
Travelers Casualty and Surety Company of America
United States Fidelity and Guaranty Company



State of Connecticut
City of Hartford ss.

By: [Signature]
Robert L. Raney, Senior Vice President

On this the 6th day of October, 2014, before me personally appeared Robert L. Raney, who acknowledged himself to be the Senior Vice President of Farmington Casualty Company, Fidelity and Guaranty Insurance Company, Fidelity and Guaranty Insurance Underwriters, Inc., St. Paul Fire and Marine Insurance Company, St. Paul Guardian Insurance Company, St. Paul Mercury Insurance Company, Travelers Casualty and Surety Company, Travelers Casualty and Surety Company of America, and United States Fidelity and Guaranty Company, and that he, as such, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

In Witness Whereof, I hereunto set my hand and official seal.
My Commission expires the 30th day of June, 2016.



[Signature]
Marie C. Tetreault, Notary Public

## NOTICE TO BIDDERS

Sealed bids will be received by the City of Escanaba at the office of the City Clerk, on or before 2p.m. e.s.t, on: **TUESDAY, MAY 5, 2015**

The bids will be publicly opened and read in Room 101 in the City Hall located at 410 Ludington Street, Escanaba, Michigan at said date and time.

Bidder's proposals, and/or specifications may be obtained from the office of the City Clerk, located at 410 Ludington Street, Escanaba, Michigan, 49829. No bids will be considered unless the proposal form and /or specifications (furnished by the City of Escanaba, Michigan), are properly completed and enclosed in a sealed envelope, marked:

### **POLE BID MAY 2015 VARIOUS CLASSES & SIZES**

In addition, the City of Escanaba, Michigan will not consider any proposal which has not been received prior to the published time, date and year of bid opening. (FAX transmittals will not be accepted.)

**A Certified Check, Cashier's Check, or Bidder's Bond, drawn payable, without condition, to the City of Escanaba, Michigan, in an amount not less than 10% of the bid, will be submitted with each proposal as a guarantee that if the bid is accepted, the bidder will furnish materials or services as stated in his or her proposal. On failure of the successful bidder to fulfill the conditions of his or her proposal, he or she shall forfeit said deposit to the City of Escanaba, Michigan as liquidated damages. The acceptance of the proposal will be contingent upon the bidder's acceptance of this provision.**

The City of Escanaba, Michigan reserves the right to reject any or all bids, or any part thereof at its discretion, and to waive any irregularities in the bidding. The City of Escanaba, Michigan may also split bids at its discretion. The City further reserves the right to negotiate directly with any and all bidders concerning any matter related to any bid.

All City of Escanaba, Michigan bids are prepared to afford all vendors the equal opportunity for fair and equitable competition. The City of Escanaba, Michigan assumes no liability or responsibility for any errors or oversights in the preparation and/or publication of bids.

Thomas J. Penegor  
Purchasing Agent  
City of Escanaba

## BIDDER'S PROPOSAL

DATE: 4-23-15

We, the undersigned, agree to furnish the City of Escanaba, Michigan, wooden poles of the various sizes and classes listed below in accordance with the attached specifications, which are part of this proposal, at the following price:

DELIVERY: F.O.B. CITY OF ESCANABA  
ESCANABA, MI 49829

DELIVERY DATE: 4-5 weeks ARO

Pole Size/Cl	Min qty.	Qty quoted	specie	Price/ea	Price/Total
30°CL4	20	<u>20</u>	<u>SYP</u>	<u>\$180</u>	<u>\$3600</u>
40°CL2	15	<u>15</u>	<u>SYP</u>	<u>\$450</u>	<u>\$6750</u>
40°CL4	30	<u>40</u>	<u>SYP</u>	<u>\$298</u>	<u>\$11920</u>
45°CL2	15	<u>15</u>	<u>SYP</u>	<u>\$543</u>	<u>\$8145</u>
45°CL4	15	<u>15</u>	<u>SYP</u>	<u>\$312</u>	<u>\$4680</u>
50°CL4	5	<u>5</u>	<u>SYP</u>	<u>\$427</u>	<u>\$2135</u>

Grand Total: \$37,230

Certified Check, Cashier's Check or  
Bidder's Bond enclosed in the amount of:  
(must be included to qualify)

\$3,723

### SUBMITTED BY:

FIRM: PowerLine Supply/HydroLake

ADDRESS: 6151 W. Gerwoude Dr. McBain, MI 49601

BY: Jennifer Rood

PRINTED: Jennifer Rood

TITLE: Inside Sales

PHONE/FAX: 231-825-2233 ext. 7002 / 231-825-2107



# Document A310™ – 2010

Conforms with The American Institute of Architects AIA Document 310

## Bid Bond

### CONTRACTOR:

(Name, legal status and address)

Power Line Supply Company  
420 Roth Street  
Reed City, MI 49677

### SURETY:

(Name, legal status and principal place of business)

Liberty Mutual Insurance Company  
175 Berkeley Street  
Boston, MA 02116

### Mailing Address for Notices

Liberty Mutual Insurance Company  
Attention: Surety Claims Department  
1001 4th Avenue, Suite 1700  
Seattle, WA 98154

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

Any singular reference to Contractor, Surety, Owner or other party shall be considered plural where applicable.

### OWNER:

(Name, legal status and address)

City of Escanaba  
410 Ludington Street  
Escanaba, MI 49829

**BOND AMOUNT:** Ten Percent (10%) of Amount Bid

### PROJECT:

(Name, location or address, and Project number, if any)

Pole Bid May 2015  
Various Classes & Sizes

The Contractor and Surety are bound to the Owner in the amount set forth above, for the payment of which the Contractor and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein. The conditions of this Bond are such that if the Owner accepts the bid of the Contractor within the time specified in the bid documents, or within such time period as may be agreed to by the Owner and Contractor, and the Contractor either (1) enters into a contract with the Owner in accordance with the terms of such bid, and gives such bond or bonds as may be specified in the bidding or Contract Documents, with a surety admitted in the jurisdiction of the Project and otherwise acceptable to the Owner, for the faithful performance of such Contract and for the prompt payment of labor and material furnished in the prosecution thereof; or (2) pays to the Owner the difference, not to exceed the amount of this Bond, between the amount specified in said bid and such larger amount for which the Owner may in good faith contract with another party to perform the work covered by said bid, then this obligation shall be null and void, otherwise to remain in full force and effect. The Surety hereby waives any notice of an agreement between the Owner and Contractor to extend the time in which the Owner may accept the bid. Waiver of notice by the Surety shall not apply to any extension exceeding sixty (60) days in the aggregate beyond the time for acceptance of bids specified in the bid documents, and the Owner and Contractor shall obtain the Surety's consent for an extension beyond sixty (60) days.

If this Bond is issued in connection with a subcontractor's bid to a Contractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

When this Bond has been furnished to comply with a statutory or other legal requirement in the location of the Project, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

Signed and sealed this 24th day of April, 2015.

\_\_\_\_\_  
(Witness)

Power Line Supply Company  
(Principal) \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Title) Lori Marshall, Inside Sales

\_\_\_\_\_  
(Witness)

Liberty Mutual Insurance Company  
(Surety) \_\_\_\_\_ (Seal)

\_\_\_\_\_  
(Title) Julie Denman, Attorney-in-Fact

**THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.**

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 6379192

American Fire and Casualty Company      Liberty Mutual Insurance Company  
The Ohio Casualty Insurance Company      West American Insurance Company

**POWER OF ATTORNEY**

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Brian Cook; Drew Brach; Julie Denman

all of the city of GRAND RAPIDS, state of MI each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 9th day of December, 2013.



American Fire and Casualty Company  
The Ohio Casualty Insurance Company  
Liberty Mutual Insurance Company  
West American Insurance Company

By: David M. Carey  
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA      ss  
COUNTY OF MONTGOMERY

On this 9th day of December, 2013, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



By: Teresa Pastella  
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows.

**ARTICLE IV - OFFICERS - Section 12. Power of Attorney.** Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings.** Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation -** The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization -** By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 24th day of April, 2015.



By: Gregory W. Davenport  
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Notary Acknowledgement of Surety

State of Michigan }  
County of Ionia } ss:  
Acting in Kent County }

On **April 24, 2015**, before me, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared **Julie Denman**

known to me to be Attorney-in-Fact of **Liberty Mutual Insurance Company** the corporation described in and that executed the within and foregoing instrument, and known to me to be the person who executed the said instrument in behalf of the said corporation, and he duly acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year stated in this certificate above.

My Commission Expires July 8, 2018

  
\_\_\_\_\_  
Alison Faye Proctor, Notary Public

NB#5

CC-EAC

5-13-15

MEMORANDUM

To: Jim O'Toole

From: Mike Furmanski *MAF*

Date: 07MAY15

Re: Cable purchase

The Electric Department recently received quotes for 750 mcm cable. This cable is needed to rectify a code violation we recently became aware of. The quotes received were as follows:

Border States Electric	\$6.326/ft, plus freight
Power Line Supply	\$6.80/ft, plus freight
RESCO	\$8.68/ft, freight included
WESCO	\$10.72/ft, freight included

I am recommending accepting the quote from Border States Electric of Green Bay, WI for a not-to-exceed total of \$12,000.00



**BORDER STATES**  
Supply Chain Solutions™

Border States Electric Supply  
Electrical Wholesale Supply of Utah | Western Extralite

Border States Electric - PWK  
N29W23606 Woodgate Ct E  
Pewaukee WI 53072-6248  
Phone: 262-347-2199

City of Escanaba  
Attn City Hall-Accounts Payable  
P.O. Box 948  
Escanaba MI 49829-0948

**Quote**

**BSE Quote:** 23627376  
**Sold-to Acct #:** 8611  
**Valid From:** 05/05/2015 **To:** 05/12/2015  
**PO No:** 750 MCM  
**PO Date:** 05/05/2015

**Created By:** Benjamin Schaefer  
**Tel No:** 262-347-2111  
**Fax No:** 262-347-0550

**Inco Terms:**  
FOB ORIGIN

**Payment Terms:**  
Net 25th prox

**Taxes, if applicable, are not included.**

Cust Item	BSE Item	Material MFG - Description	Quantity	Price	Per UoM	Value
	000010	- 750-61 MB AL 15KV 133% XLP 24X12 RESJKT ***** CURRENTLY IN STOCK SUBJECT TO PRIOR SALES PLUS FREIGHT 3254 LB MATERIAL WEIGHT QUOTING BASE PRICING SUBJECT TO +/- METAL ESCALATION FROM A BEGINNING ALUMINUM BASE OF \$99.111/CWT AND BEGINNING COPPER BASE OF 275.28/CWT ADJUSTED AT TIME OF SHIPMENT. ***** ****	1,588 EA	6,326.09 / 1,000	EA	10,045.83

**Total Value** **10,045.83**

To access BSE's Terms and Conditions of Sale, please go to  
<https://www.borderstateselectric.com>

This quote has not been reviewed for compliance with the Buy American Act or the American Recovery and Reinvestment Act requirements. BSE reserves the right to amend both our bill of material and our proposal accordingly if BAA/ARRA compliance is required.



**Quote**  
**2308137-00**

**JESSICA BROCKMAN**  
Utility Sales  
Phone: 859-572-8427  
Fax: 859-572-8390  
Email: jbrockman@generalcable.com

<b>Customer Number</b> Y02108	<b>Quote Submission Date</b> 5/6/2015
<b>POWER LINE SUPPLY COMPANY</b> 3155 E SYCAMORE LN MOORESVILLE, IN 46158	<b>Job Name</b> CITY OF ESCANABA
	<b>Contact</b>
	<b>Phone</b>
	<b>Fax</b>
	<b>Email</b>
	<b>Salesman</b> HV

**Metal Escalation** Aluminum: 0.99707 per 1 LB (MW-US TRANSACTION (WEEKLY))  
Copper 2.94 per 1 LB (AMM-COMEX (DAILY))

Prices are adjustable at time of shipment unless noted

Item	Product	Qty	UOM	Stock	Unit Price	Price per	Extended Amount
1.00/001	604665 750 FA 220E-RN PE SI 3RS 5000	1,300	FT	Stock			
	<b>Product Notes</b>	<p>1/3 750 KCMIL (61K) CPR FILLED AL 0.220" EPR, 133% INSUL. LEVEL, 105C INSULATION DIAMETER: MIN:1.430" MAX:1.520" 24X12 AWG CU CN WIRES 0.060" LEDPE JACKET, 3-RES 15KV RATED, EMPOWER<sup>®</sup> FILL, STRANDPILE<sup>®</sup> CUSTOMER NAME: MV STOCK, RJS U-1 ACCEPTED CUSTOMER SPEC: INDUSTRY STANDARD CUST PART NO.: NONE INDUSTRY SPEC: AIEC CS8-07, ICEA S-94-649</p>					
	<b>Item Comments</b>	<p>stock avail thru the epr cut to length program: Standard tolerance for cuts is -0% /+10% All cut lengths will be packaged on non-returnable wooden reels, unless otherwise specified. Cut to length material is non-refundable and non- returnable If sufficient material is in stock for cut, lead time will be 5 business days after receipt of order.</p>					
	<b>Shipping Warehouse</b>	DUQUOIN, IL 62832					
	<b>Metal Weight(s)</b>	Aluminum 703.00 LB per 1000 FT / Total 913.90 LB Copper 508.00 LB per 1000 FT / Total 660.40 LB					
	<b>Product Weight</b>	2,160.40 LB per 1000 FT / Total 2,808.52 LB					
<b>Line Total</b>							

*EPR  
not  
TAXLP*

*6.80/ft  
plus  
freight*

Quote Expiration Date 5/20/2015

Terms and Conditions to follow on the last page(s). Please note any exceptions or additions.

Stock availability and lead times subject to change at time of order. Standard terms and conditions apply. This quote is valid for the bill of material listed. Revisions are subject to General Cable acceptance prior to order.

Quote Print Date 5/6/2015

5/6/2015

Page

1 / 9

Zimbra

mfurmanski@escanaba.org

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**RE: 750 cable quote**

---

**From :** Steve C. Brietzman <SBrietzman@resco1.com> Thu, May 07, 2015 09:45 AM  
**Subject :** RE: 750 cable quote  1 attachment  
**To :** 'Mike Furmanski - Electric SuperIntendent'  
<mfurmanski@escanaba.org>  
**Cc :** Russ Winter <RWinter@resco1.com>

Mike,  
Following is the quote you requested.  
Please review and call with any questions you may have.  
Have a good day.

Qty. 1300' - 750mcm, alum, 220mil, TRXLP, 15kv, 1/3 concentric neutral, jacketed.  
\$ 8.68/ft Factory stock subject to prior sale. Freight allowed.

Please let me know if we can be of help on this.  
Thank you.

Best Regards,  
Steve Brietzman  
Inside Sales Representative



800-356-9370 x307  
sbrietzman@resco1.com

Zimbra

mfurmanski@escanaba.org

---

**RE: 750 cable quote**

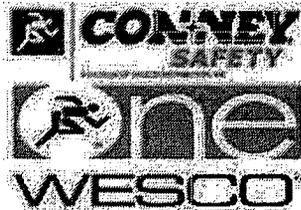
---

**From :** Chris Ritzenhein <critzenhein@wescodist.com> Thu, May 07, 2015 08:45 AM  
**Subject :** RE: 750 cable quote 2 attachments

**To :** Mike Furmanski - Electric SuperIntendent  
<mfurmanski@escanaba.org>, Lori S. Manack  
<lori\_manack@uscco.com>, Steve C. Brietzman  
<sbrietzman@resco1.com>, John Roberts  
<jroberts@championinc.com>, Dave Johnson  
<davej@primesupplyup.com>

\$10.72 ea. 1 x 1300 stock Houston freight allowed

Chris Ritzenhein  
Sales Representative  
Wesco Distribution  
630 East Blvd  
Kingsford, MI 49801  
Ph: 906-776-0911  
Fx: 906-776-0922  
Cell: 906-282-2659  
[www.wescodirect.com](http://www.wescodirect.com)  
[www.wesco.com](http://www.wesco.com)



Unless there are different or additional terms and conditions contained in master agreement

that modify Wesco's standard terms, buyer agrees that any pricing or quote attached or

included in this email and any resulting purchase order will be governed by Wesco's terms

and conditions dated 010107 available at:

[http://www.wesco.com/terms\\_and\\_conditions\\_of\\_sale.pdf](http://www.wesco.com/terms_and_conditions_of_sale.pdf)

Which terms are incorporated herein by reference and made part hereof.

Please contact the seller identified on this quote if you require a printed copy.

NB # 6  
CC-EAC.

5-13-15

MEMORANDUM

To: Jim O'Toole

From: Mike Furmanski *MF*

Date: 07MAY15

Re: West Side Substation

One of the voltage regulators in the West Side Substation failed last year and new regulators were purchased. We have been able to limp along with the old regulators and now would like to replace them. Krause Power Engineering and I came up with a list of items that new to be replaced, tested, and modified in the substation. Energis High Voltage Resources was asked to provide an estimate to do the work we need to have done. I would like to seek Council approval of the Energis proposal.



1361 Glory Road  
Green Bay, WI 54304  
Office 920 632 7929  
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May 4, 2015

Mike Furmanski  
Escanaba Electric Utility  
1711 Sheridan Road  
Escanaba, MI 49829

**RE: 104639 EEU WestsideSub Regulator Replacement and Substation  
Equipment Testing (rev 01)**

Dear Mike,

We are pleased to offer you the following time and material estimate for regulator replacement and substation equipment testing work at the Westside Substation in Escanaba, MI.

**Scope of Services**

**Option One: Replace Regulators and Perform Substation Maintenance**

Energis to travel to Escanaba to perform the following services:

- Replace Regulators
    - Remove three (3) Allis 1000A, 7.2kV voltage regulators
    - Remove three (3) 1200A regulator by-pass switches (narrow profile)
    - Test three (3) new Cooper 1303A voltage regulators
    - Install three (3) Cooper regulators
    - Install (3) S&C non-sequential, 1200A regulator by-pass switches (wide profile) on to existing structure
    - Modify or drill existing steel as required
    - Move or modify existing bus connections as required
    - Install new 1590AAC power leads as required
    - Transfer or extend the neutral and/or ground connections as required using 500 CU
    - Take DGA and oil quality sample from each new regulator
  - Substation Maintenance
    - Test substation batteries
    - Test (3) HU differential relay tests, including trip checks
    - Test (4) CO overcurrent relay tests
    - Perform gas-space sudden-pressure relay test/trip test
    - Test Marc V 69kV S&C circuit switcher
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- Test power transformer:
    - Oil leaks
    - Bushing tests
    - TTR
    - Winding resistance
    - DGR and oil quality sample
  - Test (3) G&W Viper reclosers/SEL 351R recloser controls, including addition of 81U underfrequency load shedding programming/testing

**Assumptions:**

- Time and materials estimate
- No PCB oil handling – will need to be proven by documentation
- No parts or materials or consumables are included
- Oil is not included

**Estimate: \$ 21,998.00**

**Option Two: Disposal of Regulators**

- Energis to dispose of three (3) Allis regulators.
- This price is only valid if Option1 is accepted.

**Estimate: \$ 1,758.00**

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If you have any questions, please feel free to call me at either number below.

Sincerely,

*Olko Bohn-Hagedorn*

Project Manager  
Energis High Voltage Resources, Inc.  
920-632-7929 (Office), 715-584-2501 (Cell)

## Terms & Conditions

1. **Acceptance and Governing Provisions.** No Proposal shall be binding upon Seller until accepted in writing by an authorized representative of Buyer. Seller's performance of its obligations under this Proposal is conditioned upon Buyer's acceptance of the terms and conditions set forth herein (the "Terms") and Buyer's agreement to be bound by and comply with the Terms. These Terms, the terms on the face of this document and all referenced attachments constitute the entire agreement between Buyer and Seller, and no amendment or modification shall be binding on Seller unless signed by an officer of Seller. The failure of Seller to object to provisions contained in any purchase order, proposal or other document of Buyer shall not be construed as a waiver by Seller of the Terms or an acceptance of any such provisions. Any conflicting or additional terms or conditions set forth by Buyer in a purchase order, proposal or other document are not binding upon Seller, and Seller hereby expressly objects thereto.

2. **Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER MAKES NO WARRANTY OF ANY KIND WHATSOEVER, AND SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

3. **Delivery and Delay.** Unless otherwise agreed to in writing signed by Seller: (a) any goods ordered by Buyer shall be delivered F.O.B. point of shipment, with delivery to the initial carrier constituting delivery to Buyer; (b) title to the goods and risk of damage or loss shall pass to Buyer upon delivery to the initial carrier; (c) transportation costs shall be paid by Buyer; and (d) Buyer shall have sole responsibility for filing any claims with any carrier for delay, loss or damage. Dates of delivery or performance of services are estimates only and are based on timely receipt from Buyer of all information required by Seller to provide the goods or services. Seller shall not be liable for any delay beyond its reasonable control or caused by accident, bad weather, embargo, act of Buyer or third parties, labor disputes, transportation shortages, national emergency, riots, non-delivery of suppliers, delays of carriers or delivery agents, inability to obtain labor, materials or manufacturing facilities, acts of God or government restrictions, prohibitions or requirements. In the event of any such delay, Seller's time period for delivery of goods or performance of services shall be extended accordingly. REGARDLESS OF THE CAUSE, SELLER SHALL HAVE NO LIABILITY FOR PENALTIES OF ANY NATURE AS A RESULT OF A DELAY. During any period of shortage due to the stated or similar causes, Seller may prorate its supply of goods and services among its internal demand and its customers in whatever manner it chooses.

4. **Limitation of Liability.** Seller shall not be liable under any theory of relief, including, without limitation, breach of warranty, breach of contract, tort (including negligence), strict liability, or otherwise, arising out of or related to this Proposal or Seller's acts or omissions, for: (a) incidental, special or consequential damages of any nature, including, without limitation, loss of profits, damage to property or loss of use; or (b) any damage or loss in excess of the purchase price actually paid by Buyer. Any action by Buyer must be commenced within one (1) year after the cause of action has accrued.

5. **Changes and Substitutions.** Any changes requested by Buyer are not effective unless accepted in writing by an authorized representative of Seller. Any changes accepted by Seller which affect the specifications or scope of work of this Proposal shall entitle Seller, as appropriate, to an adjustment to the price, delivery or performance schedule or other terms affected by such change. Seller may furnish suitable substitutes for goods unobtainable due to regulations of governmental authorities or unavailability of materials from suppliers. Details of design, construction and services in this Proposal are approximate and subject to revision by Seller. If changes in performance of services or in materials, design, layout or arrangement of goods are desired or required by conditions of which Seller was unaware or which were unforeseen by Seller, the price is subject to revision.

6. **Prices and Payment.** Unless other terms have been expressly stated by Seller in writing, Seller's prices: (a) are F.O.B. point of shipment; (b) do not include customs duties or any domestic or foreign sales, use, excise or similar taxes under existing or future laws (with Buyer to be charged for same, unless Buyer has provided Seller with an appropriate tax exemption certificate); (c) are valid for thirty (30) days from the proposal date; and (d) do not include costs for installation of goods. All quoted prices are subject to correction for clerical errors. Unless otherwise noted on the face hereof, the payment terms shall be net thirty (30) days from the date of invoice. Pro-rata payments shall become due with partial shipments of goods or partial delivery of services. Seller shall charge one and one-half percent (1 1/2%) per month (or such lower percentage as required by applicable law) of the unpaid invoice balance, commencing thirty (30) days following the invoice date. Any delay in delivery or performance of an installment shall not relieve Buyer of its obligation to accept and make payment for remaining installments. If Buyer is notified by Seller

that the goods are ready for shipment and there is an unreasonable delay in shipment for reasons beyond Seller's control (including Buyer's failure to provide shipping instructions), the date of completion shall be treated as the date of shipment for payment purposes, and completed goods shall be held at Buyer's risk of loss or damage, with Buyer paying all storage and insurance expenses. Seller may, at its option, decline to deliver goods or provide services, except for cash, or stop goods in transit whenever, for any reason, if Seller doubts Buyer's financial responsibility or stability.

7. **SAFETY.** BUYER SHALL TAKE ALL NECESSARY PRECAUTIONS, AT ALL TIMES, FOR THE HEALTH AND SAFETY OF SELLER'S PERSONNEL AT BUYER'S SITE. THESE INCLUDE, BUT ARE NOT LIMITED TO: PROVIDING TO SELLER FOR REVIEW, AND INSTRUCTING SELLER'S PERSONNEL REGARDING, BUYER'S SAFETY PRACTICES; PROPER AND SAFE HANDLING OF, AND PROTECTION OF SELLER'S PERSONNEL FROM EXPOSURE TO HAZARDOUS MATERIALS; ENERGIZATION AND DE-ENERGIZATION OF ALL POWER SYSTEMS (ELECTRICAL, MECHANICAL AND HYDRAULIC) USING SAFE AND EFFECTIVE LOCK-OUT/TAG-OUT PROCEDURES; AND CONDUCTING PERIODIC SAFETY MEETINGS. SELLER MAY, FROM TIME TO TIME, CONDUCT SAFETY AUDITS TO ENSURE THE EXISTENCE OF A SAFE SITE AND WORKING CONDITIONS AND MAKE RECOMMENDATIONS TO BUYER CONCERNING THEM. WHETHER OR NOT SELLER CONDUCTS SAFETY AUDITS OR MAKES RECOMMENDATIONS, BUYER WILL REMAIN RESPONSIBLE FOR PROVIDING A WORK ENVIRONMENT THAT IS SAFE AND THAT COMPLIES WITH ALL APPLICABLE LEGAL REQUIREMENTS. BUYER WILL MAKE ITS LOCAL MEDICAL FACILITIES AND RESOURCES AVAILABLE TO SELLER PERSONNEL WHO NEED MEDICAL ATTENTION, FOR THE DURATION OF THEIR NEEDS. IF, IN SELLER'S OPINION, THE SAFE EXECUTION OF THIS PROPOSAL AT BUYER'S SITE IS, OR COULD BE, IMPERILED BY SECURITY CONCERNS, LOCAL CONDITIONS, WAR (DECLARED OR UNDECLARED), ARMED CONFLICT OR THREATENED CONFLICT, CIVIL UNREST, TERRORIST ACTS OR THREATS, THREAT TO SAFETY OR WELL-BEING OF BUYER'S SITE OR PERSONNEL OR SELLER'S PERSONS OR INTERESTS, THE PRESENCE OF OR THREAT OF EXPOSURE TO HAZARDOUS MATERIALS, OR UNSAFE WORKING CONDITIONS, SELLER MAY, IN ADDITION TO OTHER RIGHTS OR REMEDIES AVAILABLE TO IT, EVACUATE SOME OR ALL OF ITS PERSONNEL FROM THE SITE, SUSPEND PERFORMANCE OF ALL OR ANY PART OF THIS PROPOSAL AND/OR TRANSFER SUCH PERFORMANCE AND SUPERVISE IT AT A LOCATION SOLELY DETERMINED BY SELLER. BUYER SHALL ASSIST IN ANY EVACUATION. ANY DELAY THAT RESULTS SHALL BE CONSIDERED EXCUSABLE. BEFORE ISSUING ITS PURCHASE ORDER, BUYER SHALL ADVISE SELLER IN WRITING OF ALL APPLICABLE SITE-SPECIFIC RULES, REGULATIONS, SAFETY CODES AND LAWS THAT APPLY TO THE GOODS AND SERVICES TO BE PROVIDED BY SELLER. IF BUYER REQUIRES OR PERMITS SELLER'S PERSONNEL TO OPERATE BUYER'S EQUIPMENT AT BUYER'S SITE, BUYER SHALL INDEMNIFY AND SAVE SELLER, ITS EMPLOYEES AND AGENTS, HARMLESS FROM EXPENSE AND LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES) INCURRED BY OR IMPOSED UPON SELLER, ITS EMPLOYEES AND AGENTS, BASED UPON EXPOSURE TO HAZARDOUS MATERIALS, INJURY TO PERSONS (INCLUDING DEATH) OR DAMAGE TO PROPERTY RESULTING FROM OPERATION OF EQUIPMENT AT BUYER'S SITE BY SELLER PERSONNEL.

8. **Inspection and Acceptance.** Inspection of goods and services at Seller's facility by Buyer, or Buyer's representatives, will be permitted insofar as such inspection does not interfere with Seller's obligations herein and provided that complete written details of such inspection are submitted to Seller ten (10) days in advance. The goods and services shall be deemed accepted, and any claim of Buyer against Seller with respect to this Proposal shall be waived and not enforceable, unless: (i) Buyer has promptly inspected the goods and services, and written notice from Buyer of any defect has been received by Seller within forty-eight (48) hours of rejection of any goods or services inspected at Seller's facility or, if no facility inspection has taken place within thirty (30) days following any delivery of goods or performance of services; and (ii) Seller has been given by Buyer reasonable advance notice and authorization to attend any tests designed to demonstrate that goods or services are defective, and the test conditions are mutually agreed to by Buyer and Seller. Goods may not be returned without obtaining written authorization and shipping instructions from an authorized representative of Seller.

9. **Termination and Suspension.** Seller shall have the right to suspend or cancel this Proposal (or any portion thereof) immediately for cause if: (a) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors or files for protection from creditors under any bankruptcy or insolvency laws; (b) there is an excusable delay lasting longer than one hundred twenty (120) days; (c) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; or (d) Buyer fails to comply with any terms herein, including, but not limited to, failure to make any payment when due or to fulfill any payment conditions. If this Proposal (or any portion thereof) is cancelled for any reason other than those set forth above, Buyer shall pay Seller for all goods provided or ordered on behalf of Buyer, and services performed before the effective date of termination, plus a cancellation charge equal to the higher of (i) twenty-five percent (25%) of the purchase price set forth in this Proposal or (ii) any loss of Seller, including, without limitation, engineering costs, reconditioning costs, labor, materials and Seller's profit margin. The following shall apply when determining the amount due from Buyer for services



performed before the date of termination: (i) for services performed under time and material pricing, Buyer shall pay for all hours performed at Seller's then-current standard time and material rates and (ii) for services performed under a firm fixed price, Buyer shall pay (a) the applicable price for all milestones achieved and (b) for any milestone not yet achieved, all hours performed in connection with the unachieved milestone(s) at Seller's then-current standard time and material rates. Buyer shall pay any reasonable expenses incurred by Seller in connection with a cancellation, including expenses for repossession, fee collection, demobilization/remobilization or costs of storage upon submission of Seller's Invoice(s).

10. **Indemnification.** Buyer shall defend, hold harmless, and indemnify Seller and its officers, members, directors, employees, agents and representatives from and against all damages, claims, liabilities and expenses (including attorneys' fees) arising out of or resulting in any way from (a) any breach of Buyer's obligations under this Proposal and (b) any other act or omission of Buyer, related to this Proposal. This provision shall survive the termination of this Proposal and/or the completion of Seller's obligations hereunder.

11. **Insurance.** Buyer shall obtain, maintain and pay for such insurance as may be required by Seller or by law and comprehensive general liability insurance protecting Seller against claims for bodily injury or death or for damage to property occurring in connection with the performance of Seller's obligations under this Proposal, with limits in amounts as required by Seller. Buyer agrees to furnish Seller a copy of its insurance certificate prior to Seller providing its services or the goods in connection with this Proposal and Buyer agrees that said insurance policy will not be cancelled before final completion of the services or delivery of the goods provided under this Proposal. Buyer shall purchase and maintain insurance that will protect Buyer from claims arising out of Seller's obligations under this Proposal, whether the obligations are performed by Seller, or any of Seller's consultants, subcontractors or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Any and all insurance policies to be obtained hereunder shall name Seller as an additional insured hereunder and shall not be cancelled without prior written consent to Seller. The Seller and Buyer waive all rights against each other for damages caused by perils to the extent covered by the proceeds of any insurance policy, except such rights as they may have to the insurance proceeds.

12. **Miscellaneous.** The contract resulting from the acceptance of this Proposal shall be interpreted in accordance with the laws of the State of Wisconsin. Both parties irrevocably submit to the exclusive jurisdiction of the Circuit Court of Brown County, Wisconsin, for any action or proceeding relating to this Proposal. No waiver of any of the provisions contained in this Proposal shall be valid unless made in writing and executed by Seller. Failure of Seller to insist upon strict performance of the terms of this Proposal shall not constitute a waiver of any of the provisions of this Proposal or waiver of any other default. This Proposal contains the entire understanding between the parties related to the transactions contemplated herein and supersedes all prior or contemporaneous agreements or understandings. No modification, amendment, discharge or change of this Proposal shall be valid unless set forth in writing and signed by both parties. This Proposal shall not be construed against one party in favor of the other by reason of draftsmanship. This Proposal is not assignable by Buyer.

13. **Waste Materials.** If the service to be performed by Seller under this Proposal in any way concern waste materials of Buyer, then Buyer grants Seller the authority to enter into any agreement Seller deems necessary with Seller's contractors or subcontractors with respect to such waste materials. Furthermore, Buyer represents and warrants that Buyer is under no legal restraint which would prohibit the transfer of possession of such waste materials from Buyer to Seller's contractors or subcontractors and Buyer shall, upon request of Seller, execute any and all documentation necessary to effectuate such transfer of possession. If Seller requests that work areas located at Buyer's facilities or premises be secured, Buyer shall cooperate with Seller in securing such work areas and in preventing anyone other than Seller, Seller's contractors or subcontractors, and their respective personnel from entering the designated work areas. Buyer represents and warrants that it has delivered to Seller all information Buyer has regarding the waste materials and the surface and subsurface conditions in the vicinity of the premises where Seller is to perform its services and if Buyer receives information that the waste materials present, or may present, a hazard or risk to persons or the environment, Buyer shall promptly report and deliver such information to Seller.