Committee of the Whole Agenda  
Tuesday, May 9, 2017  
7:30 PM Council Chambers 1st Floor

1. Roll Call
2. Items Removed/Added/Changed
3. Matters From The Public (For Items NOT On Agenda)
4. Consent Agenda

(The consent agenda is made up of items recommended by city staff that require recommendation to the full City Council by the COW. This agenda is placed as a separate item on the COW agenda. The items on the consent agenda are usually minor items, already budgeted, standard non-policy activities or outgrowths of earlier meetings and are voted on as a "package" in the interest of saving time on non-controversial issues. However, any council member may, by simple request, have an item removed and placed on the "regular" agenda.)

a. Ordinance 17-37 Declaring Certain Property To Be Surplus and Authorizing Sale Thereof  
   (RD 05/04/17)

Documents:

ORDINANCE 17-37 ESDA SURPLUS VEHICLE.PDF

5. Discussion: Ownership Of Batavia Dam (LMN) CD

Documents:

DAM OWNERSHIP RESEARCH 2017.PDF


Documents:

RES 17-59-R AUTHORIZE EXECUTION OF MASTER SERVICES AGRMT W/SIEMENS INDUSTRIES INC.PDF

7. Resolution 17-58-R Authorizing Execution Of An Agreement With Hitachi HVB, Inc. For 345kV Breaker Maintenance For $43,000 (RR 4/26/17) PU

Documents:

RES 17-58-R AUTHORIZE EXECUTION OF AN AGREEMENT FOR 345KV BREAKER MAINTENANCE WITH HVB.PDF

8. Project Status
9. Other
10. Adjournment
DATE: May 2, 2017
TO: Committee of the Whole – City Services
FROM: Randy Deicke, Fire Chief
SUBJECT: Ordinance 17-37 Declaring Surplus Property

I would like to recommend that we declare the following ESDA vehicles surplus property so that we may sell or auction the vehicles.

2003 Ford Explorer, VIN #1FMZU72KX3UB89656
2000 Dodge Dakota, VIN #1B7GG22X6YS738370

The vehicles are very old, rusted and difficult to maintain; and ESDA no longer has a need for them.

Recommended Committee / Council Action
Recommend that Ordinance 17-37, declaring the above listed property to be surplus property and authorizing the sale of thus vehicles, be put on the Consent Agenda for the May 15, 2017 City Council Meeting.

If you have any questions or require additional information, please contact me.

RD/cjc

cc: Jeffery D. Schielke, Mayor
    City Council
    Laura Newman, City Administrator
    Christine Simkins, Deputy City Clerk
    Peggy Colby, Finance Director
CITY OF BATAVIA, ILLINOIS
ORDINANCE 17-37

AN ORDINANCE DECLARING CERTAIN PROPERTY TO BE
SURPLUS AND AUTHORIZING SALE THEREOF

WHEREAS, in the opinion of the corporate authorities of the City of Batavia, it is no
longer necessary or useful to or for the best interest of the City to retain the following described
property:

2003 Ford Explorer, VIN #1FMZU72KX3UB89656
2000 Dodge Dakota, VIN #1B7GG22X6YS738370

NOW, THEREFORE, BE IT ORDAINED by the Mayor and City Council of the City
of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: Pursuant to Section 11-76-4 of the Illinois Municipal Code, the City
Council finds that the following described personal property:

2003 Ford Explorer, VIN #1FMZU72KX3UB89656
2000 Dodge Dakota, VIN #1B7GG22X6YS738370

and currently owned by the City, is no longer necessary or useful to the City of Batavia and the
best interest of the City will be served by the sale.

SECTION 2: Pursuant to Section 11-76-4, the City of Batavia Emergency Service and
Disaster Agency be, and is hereby authorized and directed to sell said above described property.

SECTION 3: This Ordinance shall be in full force and effect from and after its passage
and approval in the manner provided by law:

PRESENTED to and PASSED by the City Council of the City of Batavia, Illinois, this
15th day of May, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 15th day of May, 2017.

________________________________
Jeffery D Schielke, Mayor
### CITY OF BATAVIA, ILLINOIS ORDINANCE 17-37

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Mayor Schielke

**VOTE:**

- **Ayes:**
- **Nays:**
- **Absent:**
- **Abstention(s):**

**Total holding office:** Mayor and 14 aldermen

**ATTEST:**

__________________________
Christine Simkins, Deputy City Clerk
DATE: May 5, 2017
TO: Mayor & City Council
FROM: Laura Newman, City Administrator
RE: OWNERSHIP OF THE BATAVIA DAM

At the Committee of the Whole meeting on January 10, 2017, Rahat Bari requested approval of a contract with WBK Engineering to prepare IDNR-required signage and lighting plans. The need for signage and lighting was identified as a recommendation in a report following an inspection required by the city’s insurance carrier before they would consider covering liability associated with the dam. Council asked staff to undertake every effort to determine if there was any possibility that the dam’s ownership was either transferred to the State of Illinois, or whether there was evidence or reference to any inducement by the State that caused the City to acquire ownership in the parcels that encompass the dam. After an extensive and exhaustive search of documents including all past city council minutes there is no evidence that would suggest that anyone other than the City of Batavia has an ownership interest in the Batavia dam.

There exist a series of deeds that deed over the land for the dam and the dam itself to the City in 1975. The first series were signed from March through June 1975, and were recorded as documents 1341849-1341855 inclusive. They came from LaSalle Bank Trust 18701, Edwin and Helen Berndtson, Mary Elizabeth Holbrook, John VanNortwick, Batavia Park District and William Buchwalter VanNortwick. All of these were Quit Claim Deeds except for the LaSalle Bank one which was a Trustee’s Deed. These were all recorded on October 3, 1975.

At the City Council meeting held October 20, 1975, minutes from that meeting acknowledge that:

“Mayor Brown read a letter from the Department of Transportation, Division of Water Resources, stating that the funds appropriated for the Batavia Dam have been released. An agreement to satisfy the right-of-way requirements for the accomplishment of this work was enclosed. It was asked that copies of the documents by which the City obtained title to the Dam and of related real estate, together with a plat of the area, be furnished this State Department. Responsibility of the City for the maintenance of the existing dam structure has been deleted; however, maintenance of a new, when constructed, will be the City’s responsibility. The letter was signed by Robert G. Clem, Chief, Bureau of Right of Way and Permits.” See attached minutes, page 5, 3rd full paragraph.

This paragraph and in particular the highlighted phrase infer that the City obtained control over the parcels that constitute the dam for the purpose of being able to provide a legal right-of-way to the State so that it could perform “work” on the dam. In no way does this paragraph suggest any intent on the part of the State to take ownership of the dam, and in fact, later in the paragraph, by noting that the City would be responsible for future maintenance of the dam, suggests that dam ownership rested with the City, not the State.
In 1994, the City attempted to convey the dam to the State according to Ord 94-110 (attached), passed on December 5, 1994. However, no evidence exists that it was sent to the State and staff have verified that no such transfer was ever recorded by the State. A title search for the Batavia Dam shows the City as owner of the Dam.

In August 2016, when the City Attorney, Kevin Drendel was asked whether there was any basis for claiming that the City did not actually own the dam he responded: “... if all those transfers were done so that the City could turn around and transfer to the State, and if the City only took title for that reason, than we may have an out, either with the original property owners or the State. I am not sure what the authority is to make a promissory estoppel claim against the State; but if the City changed its position to its detriment by taking title to the dam based on the promise or understanding that the State would accept title of the dam from the City, then we might be able to demand the State take it or be able to undo the transfers of title to the City.” Unfortunately, in this case, it appears that the inducement was not for the State to take ownership, but rather so that they would undertake “work” on the dam at their expense.

Therefore, we request that Council makes a finding that there is no evidence of any other party except the City having an ownership interest in the Batavia Dam and that staff be directed to resume efforts to protect against potential liability and resume its project, in cooperation with the Batavia Park District, to study alternative solutions to allowing the Dam to further deteriorate.

CC: Mayor Schielke; Kevin Drendel; Department Heads

Atts:

City Council Meeting Minutes, 10/20/1975

Ord 94-110
MINUTES of a Regular Meeting of the City Council of the City of Batavia, Kane County, Illinois.

The City Council convened in regular session this 20th day of October, A.D. 1975, at 8:00 o'clock P. M. in the Council Chambers at the City Hall, 101 North Island Avenue, in the City of Batavia, Illinois, with His Honor Robert V. Brown, Mayor, presiding and Dorothy M. Fitz, City Clerk, and John W. Gosselin, City Attorney, attending.

The meeting was called to order by Mayor Brown with prayer led by Rev. David Moore. Pledge of Allegiance to the Flag was led by Alderman Sibr.

The Mayor directed the City Clerk to call the roll and the following Aldermen answered present:


Absent: Alderman Arthur Boyd.

Moved by Hanson, seconded by Scott, that the minutes of the regular meeting of October 6th be approved.
Unanimously approved by voice vote.

Moved by Kauth, seconded by Beckman, that the following applications be granted:


**WATER SERVICE:** Janet E. Bednarz, Ronald Jones, Charles Jackson, James Walter Graves, Jr., Mrs. B. Rogers, Johnie L. Thomason, Winnette Gilbert, Judith M. Matton, Dan David, George Kouzes, James C. Stubbs, Gerry Dunce, Jeanne A. Suchan.

**WATER CONNECTIONS:** Roger Watson, 1262 Trillium Court; Faganel Builders, Inc. for Charles Harris, 631 Kingsbury Court; Robert Plante, 128 Woodland Hills Road.

**SEWER CONNECTIONS:** Faganel Builders, Inc. for Charles Harris, 631 Kingsbury Court.

Unanimously approved by voice vote.

The following permits were reported as having been issued by John N. Schuler, Building Inspector: Dr. Richard Kunce, 131 Woodland Hills Road, swimming pool; Henry McDowell, 344 Douglas Road, reroof house and garage; Charles Harris, Lot 9, Unit 4, Breton Manor, residence; Terrell Miers, 725 N. Van Nortwick Avenue, fence; Bud Casey, 1269
Brandywine Circle, detached garage; Charles Littlejohn, 704 Park Street, partially reroof; David Dickenson, 310 S. Prairie Street, enclose porch; Dennis Smith, 403 S. Prairie Street, room additions; Richard Carey, 363 Thoria Road, fence.

REPORT OF THE COMMITTEE ON FINANCE

TO THE CITY COUNCIL OF THE CITY OF BATAVIA, ILLINOIS:

Your Committee on Finance hereby report that they examined all of the bills and payrolls presented to them and recommend the payment of the following, and that the City Clerk be directed to issue warrants on the City Treasurer, to the several claimants for the amounts allowed, as follows:

General Government..............................................$ 10,326.24
Protection to Persons and Property..........................27,019.67
Conservation of Health......................................... 96.00
Sanitation and Promotion of Cleanliness..................... 9,694.59
Streets and Sidewalks.......................................... 6,366.78
Electric......................................................... 13,251.80
Cemetery.......................................................... 620.59
Waterworks and Sewerage,
Operation and Maintenance................................... 6,878.53
Street Improvement Fund....................................... 33,111.29
Waterworks and Sewerage,
Improvement and Extension................................... 19,594.10
Waterworks and Sewerage Fund................................. 20,000.00

$ 147,159.59

Moved by Mueller, seconded by Sibr, Finance Committee report be approved as read.
Unanimously approved by voice vote.

Moved by Mueller, seconded by Sibr, that the October 17th payroll, in the amount of $37,910.30, be approved.
Unanimously approved by voice vote.

Mayor Brown called attention to the following:

Municipal Retailers', Use, and Service Occupation Tax:
August 1975 -- $19,274.25
August 1974 -- 19,326.34

Miss Carol Schroeder appeared before the City Council asking for permission to conduct an A.F.S. fruit sale, from door to door in the City of Batavia, during the period from October 26th through November 13th. Moved by Scott, seconded by Kauth, that the A.F.S. be allowed to canvass the City on this fruit sale, from October 26th through November 13th.
Unanimously approved by voice vote.

Dennis Smith, 403 S. Prairie Street, was recognized by Mayor Brown and appealed for permission to live in a 27-foot trailer for 2 to 3 weeks while remodeling is being done to his home, including tearing out walls and making room additions of living room, bedroom, kitchen, and basement stair hall. This trailer is to be parked at this address and is self-contained.
Moved by Beckman, seconded by Hanson, that the City Council give Mr. Smith permission to live in the trailer for a period not to exceed three weeks. Unanimously approved by voice vote.


Alderman Kauth told the Council that he had talked to the people at John and Eric's TV and they told him that the master antenna at Oak Terrace Trailer Court is in bad shape; much of the underground cable has deteriorated and there is not much that can be done, unless they establish a new master antenna.

The advice to be given Mr. Pierson was that he should talk with the people in the court and advise them that two master antennas be set up by someone competent, one for UHF and one for VHF, and run an adequate type of underground cable.

The 34 KV line was turned off for a short period of time the week prior and the interference cleared up. Mr. Schroeder has stated that he is going to trace the interference down.

Since Mr. Pierson was not present at this meeting, Mayor Brown asked that either Alderman Kauth, City Engineer William Boyd, or Superintendent of Electric George Schroeder get in touch with him to review the Committee's findings.

Alderman Boyd entered the meeting.

Alderman Scott told the Council of the need of a utility-type truck for the Fire Department. This would be used for loading dirty hoses after attending fires. Pickup trucks, owned by Firemen, have been used for this purpose. Also, the utility-type truck could be equipped with a 150-gallon water tank and a small pump to put out grass fires and automobile fires.

Alderman Scott stated that most of the financing for this purchase is allowed in this year's budget and hopefully the balance will be realized from the sale of the old emergency vehicle to the Electric Department. Moved by Scott, seconded by Kauth, that authorization be given to put this utility-type truck out for bids and get it ordered. (Specifications will be available Tuesday, October 28, 1975 and bids to be received up to 11 o'clock a.m., Monday, November 10, 1975.) Ayes—Ten. Nays—None. Motion carried.

Alderman Scott told the Council that two fire engines, both "old timers", are worthless to the Fire Department. These are Engine No. 1, a 1941 Chevrolet which could be sold to an antique dealer and Engine No. 5, a 1957 Chevrolet which could be sold to some small town. The pumper ordered about a year and a half ago will be received in the next 3 to 4 months and a place to keep it will be needed.

Moved by Scott, seconded by Sibr, that the Council attempt to advertise, get bidders, and sell Engines No. 1 and No. 5 for the best possible price to be obtained; No. 5 to remain here until delivery is taken on the new pumper. Ayes—Ten. Nays—None. Carried.

Alderman Scott told the Council of the need to purchase a base station with encoder for installation in the console of the Tri-Cities.
Communication Center. This will be at a cost to Batavia of $2,900 to $3,000. This amount is covered by this year's budget for the Fire Department.
It will be necessary to waive bids because this equipment must be compatible with the Motorola equipped console.
Moved by Scott, seconded by Tracy, that the City buy the radio equipment and encoder from the Motorola Company at approximately a total figure of $2,900; bids to be waived on this equipment because it must be compatible with what the Police Department has already put out on purchase.
Ayes--Ten. Nays--None. Motion carried.

Alderman Sibr reported that the Tri-City Ambulance budget for 1976 has been presented and Batavia's share is about 19 percent less than it was last year. Mr. Bob Becker and Alderman Sibr have redesigned the management reports and a copy had been given each Alderman. Alderman Sibr further stated that it does not appear that they will be coming back to the City for any assessment for new equipment within the next year. Quarterly reports will be available within the year.

Alderman Hanson read a letter from the Plan Commission, dated October 17, 1975, reporting on the meeting of October 15, 1975, as follows:

1. "An informal discussion was held, pertaining to a request from Ralph Beck and Tom Taggart regarding:
(a) property at 420 South Batavia Avenue to be considered for Professional Offices; and (b) to consider amending the Zoning Ordinance to permit Professional Offices and Commercial Uses as Conditional Uses in R-5 Districts."

Owners of neighboring property were heard in regard to the Beck-Taggart request.

"No action was taken and the Plan Commission advised that the appropriate petition be submitted if they wished to pursue the matter further."

2. "In regard to the revised Preliminary Plan for Paramount Industries, a motion was made by Murray:
'that the Plan Commission approves the overall revised (9/22/75) Preliminary Plan of Paramount, which includes provisions for 50' right-of-ways for all roads with additional 10' utility easements on each side of said roads, upon final review and approval by the Fire Chief.'"

"The Plan Commission suggests that prior to any consideration for further development of properties west of Paramount, be contingent upon the provision of the extension of Douglas Road westerly to Kirk Road at a four-way intersection."

Moved by Hanson, seconded by Kauth, that this letter be accepted and placed on file.
Unanimously approved by voice vote.

Mayor Brown asked that the Planning Committee and Street Committee get
together and have a meeting in regard to that missing link that is involved between Paramount and Berggren.

Alderman Tracy read a letter from the Knights of Columbus of the Tri-Cities requesting permission to conduct an annual Tootsie Roll Sale from October 31st through November 1st.
Moved by Tracy, seconded by Hanson, that this letter be accepted, placed on file, and that the Knights of Columbus be granted approval for their drive.
Unanimously approved by voice vote.

Mayor Brown read a letter of resignation from the Police Community Relations Council which was submitted by Margaret Hill.
Moved by Hanson, seconded by Scott, that the letter be accepted and a letter of thanks be sent to Margaret Hill.
Unanimously approved by voice vote.

Mayor Brown read a letter from the Department of Transportation, Division of Water Resources, stating that the funds appropriated for the Batavia Dam have been released. An agreement to satisfy the right-of-way requirements for the accomplishment of this work was enclosed. It was asked that copies of the documents by which the City obtained title to the Dam and of related real estate, together with a plat of the area, be furnished this State Department. Responsibility of the City for the maintenance of the existing dam structure has been deleted; however, maintenance of a new dam, when constructed, will be the City's responsibility.
This letter was signed by Robert G. Clem, Chief, Bureau of Right of Way and Permits.

Mayor Brown read the Agreement wherein the City agrees to grant the State full right and authority to enter upon properties occupied by the dam and its appurtenances during the completion of the dam work, also hold the State harmless from any claims arising from incidents occurring during this construction.
Moved by Boyd, seconded by Hamilton, that authorization be given for the Mayor to sign and City Clerk attest the Agreement with the State of Illinois Department of Transportation, Division of Water Resources, in regard to repair and construction of the dam.
Unanimously approved by voice vote.

The improvements of Route 25, Wilson Street and Route 31, Wilson Street were discussed in detail by Mayor Brown.

There being no further business, it was moved by Beckman, seconded by Sibr, that the meeting adjourn.

DOROTHY M. PITZ
City Clerk
CITY OF BATAVIA

ORDINANCE 94-110

AN ORDINANCE AUTHORIZING CONVEYANCE
OF THE NORTH BATAVIA DAM TO THE STATE OF ILLINOIS

ADOPTED BY THE
MAYOR AND CITY COUNCIL
OF THE
CITY OF BATAVIA
THIS 5th DAY OF December, 1994

Published in pamphlet form
by authority of the Mayor
and City Council of the
City of Batavia,
Kane County, Illinois, this
5th day of December, 1994
ORDINANCE 94-110

AN ORDINANCE AUTHORIZING CONVEYANCE
OF THE NORTH BATAVIA DAM TO THE STATE OF ILLINOIS

WHEREAS, the North Batavia Dam, (the legal description of which is attached hereto as Exhibit 1), is an important asset to the City of Batavia, and protects and enhances the character of the Fox River Shoreline within the City, and

WHEREAS, the North Batavia Dam is in need of substantial repairs, and

WHEREAS, the State of Illinois is the appropriate entity to repair and maintain said structure, and

WHEREAS, it would be in the best interest of the public health, safety and welfare to convey said North Batavia Dam to the State of Illinois in order to accomplish such repairs and maintenance,

BE IT HEREBY ORDAINED by the City Council of the City of Batavia, Kane County, Illinois as follows:

SECTION 1: That the Mayor and City Clerk are authorized to execute the deed attached hereto as Exhibit 2, conveying the North Batavia Dam to the State of Illinois

SECTION 2: That this Ordinance shall be in full force and effect upon its passage, presentation and publication according to law.

PRESENTED to the City Council of the City of Batavia, Illinois, on the 5th day of December, 1994.

PASSED by the City Council of the City of Batavia, Illinois, on the 5th day of December, 1994.

APPROVED by me as Mayor of said City of Batavia, Illinois, on the 5th day of December, 1994.

Ayes 9
Nays 0
Absent 1
Abstentions (counted as ayes/nays) 0
Total Holding Office 10
EXHIBIT 1

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 15 AND PART OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE CREST OF THE DAM ACROSS FOX RIVER, NORTH 30 DEGREES 30 MINUTES EAST 44 FEET FROM AN IRON BOLT IN THE SOUTHWEST END OF THE DAM; THENCE NORTH 81 DEGREES WEST 294 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 28 SECONDS WEST TO THE INTERSECTION OF THE NORTH LINE OF FAYETTE STREET EXTENDED SOUTHWESTERLY; THENCE NORTHEASTERLY ALONG SAID NORTH LINE TO THE EAST BANK OF THE FOX RIVER; THENCE SOUTHERLY ALONG SAID EAST BANK TO THE INTERSECTION OF THE NORTH LINE OF CHURCH STREET EXTENDED SOUTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID NORTH LINE TO THE WEST BANK OF THE FOX RIVER; THENCE NORTHERLY ALONG SAID WEST BANK TO THE POINT OF BEGINNING; IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.
QUIT CLAIM DEED
Statutory (ILLINOIS)
(Corporation to Individual)

THE GRANTOR  CITY OF BATAVIA, an Illinois Municipal Corporation

a corporation created and existing under and by virtue of the laws of the State of Illinois and duly authorized to transact business in the State of Illinois, for the consideration of Ten & No/100--------- DOLLARS,
in hand paid,
and pursuant to authority given by the Boxx Boxx City Council of said corporation, CONVEYS AND QUIT CLAIMS TO

THE STATE OF ILLINOIS

(NAME AND ADDRESS OF GRANTEE)
all interest in the following described Real Estate situated in the County of KANE
in the State of Illinois, to wit:

THAT PART OF THE SOUTHEAST 1/4 OF SECTION 15, AND PART OF THE NORTHEAST 1/4 OF SECTION 22, TOWNSHIP 39 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE CREST OF THE DAM ACROSS FOX RIVER, NORTH 30 DEGREES 30 MINUTES EAST 44 FEET FROM AN IRON BOLT IN THE SOUTHWEST END OF THE DAM; THENCE NORTH 81 DEGREES WEST 294 FEET; THENCE NORTH 35 DEGREES 21 MINUTES 28 SECONDS WEST TO THE INTERSECTION OF THE NORTH LINE OF FAYETTE STREET EXTENDED SOUTHWESTERLY; THENCE NORTHEASTERLY ALONG SAID NORTH LINE TO THE EAST BANK OF THE FOX RIVER; THENCE SOUTHERLY ALONG SAID EAST BANK TO THE INTERSECTION OF THE NORTH LINE OF CHURCH STREET EXTENDED SOUTHWESTERLY; THENCE SOUTHWESTERLY ALONG SAID NORTH LINE TO THE WEST BANK OF THE FOX RIVER; THENCE NORTHERLY ALONG SAID WEST BANK TO THE POINT OF BEGINNING; IN THE CITY OF BATAVIA, KANE COUNTY, ILLINOIS.

a part of Parcel 12-15-455-0002

Address(es) of Real Estate:

In Witness Whereof, said Grantor has caused its corporate seal to be hereunto affixed, and has caused its name to be signed to these presents by its Mayor/Boxx Boxx City Clerk/Boxx Boxx, this ______ day of ____________________, 19______.
DATE: May 5, 2017
TO: Committee of the Whole - Utilities
FROM: Rahat Bari, P.E. City Engineer
SUBJECT: Resolution 17-59-R Authorize the Mayor to execute an Master Services Agreement (MSA) with Siemens Industry Inc. to provide Electric Utility Consultant Services

Summary: The City of Batavia Electric Utility periodically requires maintenance on the electric apparatus within the substations that is considered a professional service. These services include commissioning, testing, and repair of apparatus in the yard. This memo serves to enter into a Master Services Agreement with Siemens Industries Inc. to streamline the terms and conditions of performing such services.

Background: Siemens Industries Inc has previously provided maintenance testing services at our Substations including working at Paramount Substations in April 2017. The quality of their work was excellent and their reporting of any emergent maintenance items was prompt and thorough. Electric Utility Staff has been impressed both with the responsiveness of the local representative and the aforementioned quality of work performed by the field crews. Staff feels that the City should enter into a Master Services Agreement with Siemens Industries Inc which would streamline future installation and maintenance tasks between our organizations by having an agreed upon set of terms and conditions. They will also provide hourly costs in the event that we require their services in the event of an emergency. The Agreement has been reviewed by both Siemens Industries Inc. and City of Batavia Attorneys with minimal changes to the City’s standard Master Services Agreement document. The Agreement can be found in Attachment 1.

Staff recommendations:
- Recommend the Committee and City Council approve Resolution 17-59-R to Authorize Execution of a Master Engineering Services Agreement with Siemens Industries Inc.
CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-59-R

AUTHORIZING EXECUTION OF A MASTER SERVICES AGREEMENT WITH SIEMENS INDUSTRIES INC

WHEREAS, the City of Batavia owns and operates an electric utility; and

WHEREAS, in connection therewith, it is necessary and appropriate to retain maintenance, testing, and emergency services in regards to the electric apparatus of the Electric Utility; and

WHEREAS, Siemens Industries Inc. has the appropriate expertise and experience necessary to provide said maintenance and testing and has submitted qualifications for said services; and

WHEREAS, the City of Batavia desires to execute a Master Services Agreement with Siemens Industries Inc;

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to execute a Master Services Agreement with Siemens industries Inc. for professional engineering services. The Master Services Agreement between the City of Batavia and Siemens industries Inc is attached hereto as Exhibit “1”.
PRESENTED to and PASSED by the City Council of the City of Batavia, Illinois, this 15th day of May, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 15th day of May, 2017.

_______________________________
Jeffery D. Schielke, Mayor

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<td>Mayor Schielke</td>
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ATTEST:

______________________________
Ellen Posledni, City Clerk

Total holding office: Mayor and 14 aldermen
Exhibit 1
AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT entered into this ______ day of ____________, 20__ by the CITY OF BATAVIA, 100 North Island Ave, Batavia, IL 60510, hereinafter called the CITY, and insert consultant name, company address, hereinafter called the CONSULTANT.

WITNESSETH: That in consideration of the mutual covenants and agreements herein contained, the parties hereto do mutually agree as follows:

1. **ENGAGEMENT OF CONSULTANT:** The CITY, acting pursuant to its vested authority, does hereby hire the CONSULTANT and the CONSULTANT agrees to perform professional engineering, surveying, environmental science and management services as requested by the CITY as more fully described and on the terms provided herein below. City contact person name or designated representative, will act as the liaison for the CITY and Consultant contact person name, or designated representative, will act as liaison for the CONSULTANT for administration of this Agreement. This Agreement for Professional services can only be amended or revised by a written agreement signed by both parties.

   The relationship of the CONSULTANT to the CITY shall be that of an independent CONSULTANT rendering professional services. The CONSULTANT shall have no authority to execute contracts or to make commitments on behalf of the CITY and nothing contained herein shall be deemed to create the relationship of employer and employee or principal and agent between the CITY and the CONSULTANT.

2. **CHARACTER AND EXTENT OF SERVICES:** The CONSULTANT shall perform certain professional engineering, surveying, environmental science and management services as requested. Such services to include, but not limited to, the following types of work:
   - Engineering and surveying tasks for various municipal infrastructure projects
   - Development of studies, plans and reports
   - Design plans and specifications and contract documents
   - Resident engineering services during construction
   - Assistance with matters related to streams and wetlands
   - Reviews of various engineering plans on behalf of the city for both public and private improvements.

   The CONSULTANT shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the Agreement. The CONSULTANT shall obtain, at its own expense, all permits and
licenses, if any, that may be required to operate the business of the CONSULTANT by federal, state, and local regulations and laws.

3. TASK ORDERS/SPECIFIC HOURLY RATE BASIS: Prior to commencement of any service to be performed through a task order, the CITY and CONSULTANT shall mutually agree upon and execute a task order for the specified service utilizing the general form of task order attached hereto as Exhibit "B" and by this reference incorporated herein. The task order shall describe the services to be provided, the time for performance of the service, the fee provisions for the services, and any provisions additional to this agreement. Execution by the CITY and CONSULTANT of subsequent task orders shall incorporate such subsequent task orders into this agreement.

Services to be performed on a specific hourly rate basis shall not require a task order, but shall only be performed upon authorization from the City Administrator or designated Department Head.

4. ITEMS TO BE FURNISHED AND RESPONSIBILITY OF CITY: The CITY will provide or perform the following:

a. Provide full information as to CITY requirements of the Project.

b. Assist the CONSULTANT by placing at his disposal all available information pertinent to the site of the Project including previous reports, calculations, drawings, plats, reports, surveys, utility records, and any other data relative to design and construction of the Project.

c. Examine all studies, reports, sketches, estimates, specifications, drawings, proposals, and other documents presented by the CONSULTANT and render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of the CONSULTANT.

d. Advertise for hearings and proposals for bidders, open the proposals at the appointed time and place, and pay for all costs incidental thereto.

e. Obtain approval of all governmental authorities having jurisdiction over the Project and such approvals and consents from such other individuals or bodies as may be necessary for completion of the Project.

5. COMPLETION TIMES: The services called for under the various phases of Section 2 of this Agreement shall be completed as follows:

Services required for these tasks shall be completed within the times mutually determined by the CITY and the CONSULTANT as outlined in the applicable Task Order.
6. **PROFESSIONAL FEES:** For the services furnished by the CONSULTANT as described under Section 2 and Section 3 of this Agreement, the CITY agrees to pay the CONSULTANT the fees as set forth herein:

According to Exhibit A - Schedule of Hourly Rates on a time spent basis plus reimbursement for direct non-salary expenses such as laboratory testing, soil reports, reproduction expenses, out of town travel costs, long distance telephone calls, and outside consultants. Outside subconsultant’s billings shall be marked up by a factor of ____ times the subconsultant billing.

7. **PAYMENT:** Monthly payments, payable according to Section 8 of this Agreement, based on the documented amount due.

8. **CITY PAYMENT SCHEDULE:** The CITY will process for payment all statements received by the 10th day of each month for work done from the 1st day of the prior month.

9. **FACILITIES TO BE FURNISHED BY THE CONSULTANT:** The CONSULTANT shall furnish and maintain a central office, drafting space, and equipment suitable and adequate for the prosecution of the work that is normal to the functioning of an established consulting engineering and surveying practice.

10. **TERMINATION:** The CITY or CONSULTANT may terminate this Agreement by giving thirty (30) days written notice to the other party. In such event, the CITY shall forthwith pay the CONSULTANT in full for all work previously authorized and performed prior to notice of termination. In the event of termination, the CONSULTANT agrees to cooperate reasonably with any consulting engineer thereafter retained by the CITY in making available information developed as the result of work previously performed by the CONSULTANT. If no notice of termination is given, relationships and obligations created by this Agreement, unless otherwise expressly provided, shall be terminated upon completion of all applicable requirements of the Agreement.

    The City may, at any time by written order, require the CONSULTANT to stop all or part of the services required by this Agreement. Upon receipt of such an order the CONSULTANT shall immediately comply with its terms and take all steps to minimize the occurrence of costs allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.

    The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day’s written notice to the CONSULTANT if the City is dissatisfied with the services of the CONSULTANT, provided that the City has previously notified the CONSULTANT of its dissatisfaction in writing stating the reasons therefor and allowing the CONSULTANT a minimum of thirty (30) days to adjust and meet the City’s expectations. The City further reserves the right to
cancel the whole or part of the Agreement immediately for cause, if the CONSULTANT fails to perform any of the provisions in the Agreement or fails to make delivery within the time stated, provided that notice is given in writing to the CONSULTANT of the default, and the CONSULTANT is given ten (10) days to cure the default or to begin curing the default and diligently continues to cure the default, if the default is of the nature that cannot be cured in such time. The CONSULTANT will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, or floods.

Should any of the key personnel become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the CONSULTANT within thirty (30) days, and/or no temporary replacement personnel is provided by the CONSULTANT immediately following the commencement of the subject Key Personnel’s unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract

The City reserves the right to terminate in whole or any part of this Agreement, upon written notice to the CONSULTANT, in the event of default by the CONSULTANT. Default is defined as failure of the CONSULTANT to perform any of the provisions of this contract or failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated.

The CONSULTANT shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the CONSULTANT.

Upon termination, the CONSULTANT shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the CONSULTANT before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the CONSULTANT a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the CONSULTANT shall stop all work until said Agreement is reached.

11. **ARBITRATION:** All claims, disputes, and other matters in question arising out of, or related to, this Agreement or the breach thereof, shall be decided by arbitration in accordance with the Rules of the American Arbitration Association.
This agreement so to arbitrate shall be specifically enforceable under the prevailing arbitration law.

Notice of the demand for arbitration shall be filed in writing with the other party of this Agreement and with the American Arbitration Association. The demand shall be made within a reasonable time after the claim, dispute, or other matter in question has arisen. In no event shall the demand for arbitration be made after institution of legal or equitable proceedings based upon such claim, dispute, or other matter in question would be barred by applicable statute of limitations.

The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in any court having jurisdiction.

In the event of a claim, jurisdiction and venue shall be in KANE County, ILLINOIS.

12. **INDEMNIFICATION:** The CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all third party claims, losses or liability, or any portion thereof, to the extent arising from injury or death to persons or damage to tangible property occasioned by the negligent act, omission, or failure of the CONSULTANT, its officers, agents and employees, in performing the work required by this Agreement. Provided, however, Consultant shall be given prompt notice of any claim for indemnification and the right at Consultant's expense to settle and to defend or control the defense of any suit or claim requiring indemnification, and Consultant shall not be responsible for indemnifying or holding harmless CITY against Liabilities that are caused by CITY’s own negligence or willful misconduct, or by the negligence or willful misconduct of CITY’s employees. In the event that the Liabilities are the result of the joint or concurrent negligence of Consultant and CITY, Consultant’s duty of indemnification shall be in the same proportion that the negligence of Consultant contributed thereto.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of $1,000,000 per occurrence and $10,000,000 aggregate, including Broad Form Contractual Liability insurance, in an amount not less than $1,000,000 per occurrence and $2,000,000 policy limit subject to the terms and conditions of the policy.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than $2,000,000 combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.
The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of $2,000,000 aggregate/occurrence.

The CONSULTANT shall secure and maintain in force throughout the duration of this Agreement, Workers’ Compensation insurance, as required by statute, by an insurance company licensed to write worker’s compensation in the State of Illinois. Employer’s Liability, in an amount not less than $500,000 each accident, $500,000 disease-policy limit and $500,000 disease-each employee.

The insurance provided by CONSULTANT shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The CONSULTANT shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the CONSULTANT allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The CONSULTANT and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the CONSULTANT is providing architectural, engineering, or surveying services, CONSULTANT shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the CITY requires contractors or subcontractors working on CITY projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the CITY as an insured, the CITY shall require said contractors or subcontractors to name the CONSULTANT as an additional insured.

13. **ASSIGNMENT**: The CONSULTANT shall not assign this Agreement, or any of the work or services covered by this Agreement, without the express written consent of the CITY.

14. **STANDARD FOR PERFORMANCE**: The CONSULTANT shall perform its services in accordance with generally accepted engineering and consultant standards and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this Agreement. The CONSULTANT warrants that it is technically qualified and entirely conversant with the requirements of the work to be provided pursuant to this Agreement; and
that it has sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.

1. (a) Labor. All labor provided by Consultant ("Labor") is warranted to be free from defects in workmanship. (b) Product. Consultant warrants all materials, products, equipment and parts ("Product") provided by Consultant is free from defects in material and workmanship. (c) Tools. Any specialized tools, equipment and instruments ("Tools") for which a usage charge or rent is made to CITY shall be adequate for the work specified in this Agreement. (d) Collectively clauses (a), (b), and (c) are the "Limited Warranties".

2. CITY shall have 12 months from the shipment of Product and Tools, and 90 days from the date of performance of Labor to provide Consultant with written notice of claim of breach of the Limited Warranties ("Warranty Period").

3. The Limited Warranties are conditioned on (a) CITY storing, installing, operating, using and maintaining the Labor, Product and Tools in compliance with any parameters set forth in the Agreement or Consultant instructions, (b) no repairs, modifications or alterations being made to the Labor, Product and Tools other than by Consultant or its authorized representatives, (c) CITY discontinuing use, to the extent reasonably necessary, of the Labor, Product or Tools after it has or should have had knowledge of a defect, (d) CITY providing written notice of any warranty claims within the Warranty Period, (e) at Consultant' discretion, CITY either removing and shipping the Labor, Product or Tools, or non-conforming part thereof to Consultant, at CITY's expense, or CITY granting Consultant access to the Labor, Product, or Tools at reasonable times and locations to assess warranty claims, and (f) CITY not being in default of any obligation to pay Consultant.

4. The Limited Warranties exclude any parts, products, goods, supplies or equipment comprising part of the Products that are not manufactured by Consultant or not bearing its nameplate ("3rd Party Goods"). To the extent permitted, Consultant hereby assigns any warranties made to Consultant for such 3rd Party Goods. Consultant shall have no liability to CITY under any legal theory for such 3rd Party Goods or any related assignment of warranties. Also excluded from the Limited Warranties are (a) consumable and expendable items including but not limited to filters, fuses, lamps; such consumables are installed and demonstrate material conformance to this Agreement; (b) damage or defect caused by normal wear and tear, chemical action or abrasive materials; (c) damage or defect caused by negligent or improper operation, misuse, unsuitable replacement parts or supplies, accidental or intentional damage, or improper or unauthorized erection, installation, commissioning, repairs or maintenance, except to the extent performed by Consultant.

5 CITY's sole and exclusive remedies for breach of the Limited Warranties are limited to Consultant' choice of repair, re-performance or replacement of the non-conforming part of the Product or Labor, or refund of the purchase price. The warranty on repaired or replaced parts of the Product or Labor is limited to the remainder of the original Warranty Period. CITY is responsible for any labor or cost required to gain access to the defect, including removal, disassembly, or
reinstallation of any equipment, materials or structures necessary to permit Consultant to assess or perform its warranty obligations, and shipping costs to and from the Consultant factory or repair facility.

6 THE LIMITED WARRANTIES SET FORTH IN THIS SECTION ARE CONSULTANT’S SOLE AND EXCLUSIVE WARRANTIES. CONSULTANT MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO COMPLIANCE OF THE PRODUCT OR LABOR WITH REQUIREMENTS OF ANY LAW, REGULATION OR SPECIFICATION, WHICH ARE HEREBY EXPRESSLY DISCLAIMED.

15. **OPINIONS OF COST:** The CONSULTANT has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or other competitive bidding or market conditions, and its opinions of probable project or construction costs are to be made on the basis of its experience and qualifications and represents its judgment as an experienced and qualified professional, familiar with the construction industry. However, the CONSULTANT cannot and does not guarantee that proposals, bids, or actual project or construction costs will not vary from the opinions of probable costs prepared by it.

16. **CONSTRUCTION AND SAFETY:** The CONSULTANT shall not be responsible for the means, methods, techniques, sequences, or procedures of construction selected by contractors or the safety precautions and programs incidental to work of contractors. It is the intent that the construction contractors will be held responsible for means and methods of construction and all safety issues.

17. **SUBMITTAL REVIEW:** Review of proposed contractor substitutions of materials and equipment by CONSULTANT is only for general conformance with the design concept of the Project and general compliance with the information given in the Contract Documents. The review does not affect the contractor's responsibility to perform all contract requirements.

18. **OWNERSHIP AND REUSE OF DOCUMENTS:** The originals of all documents, including drawings and specifications, prepared by CONSULTANT pursuant to this Agreement shall remain the property of CONSULTANT and are instruments of service in respect of the Project. The CONSULTANT shall provide the CITY with reproducible copies of all documents, drawings, specifications, and other work products that shall be the property of the CITY. Such documents, drawings, and specifications are not intended nor represented by the CONSULTANT to be suitable for reuse by the CITY or others on extensions of the services provided for the intended project or on any other project. The basic survey notes and sketches,
charts, computations, and other data prepared or obtained by the CONSULTANT pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

Any reuse without written verification or adaptation by the CONSULTANT for the specific purpose intended will be at the CITY's sole risk and without liability or legal exposure to the CONSULTANT, and the CITY shall indemnify and hold harmless the CONSULTANT from all claims, damages, losses, and expenses including attorney's fees arising out of or resulting therefrom.

The above provisions also apply to electronic media files. The CONSULTANT shall provide the CITY with "AutoCAD drawing (dwg)" and “pdf” files of work performed for and paid for by the CITY at the request of the CITY, with the following provisions:

a. The documents are protected by the rules and regulations of U.S. Copyright Laws.

b. The use or reuse of original or altered electronic files by the CITY or others the CITY has released these files to, except for the City’s purposes stated herein, will be at the CITY’s own risk and liability.

c. The CONSULTANT shall be indemnified and held harmless by the CITY to the fullest extent of the law from any and all claims, suit, liability, demands, or costs arising out of the use or release of the information contained on the files except for the City’s purposes stated herein.

d. The CONSULTANTS shall perform its services in accordance with generally accepted engineering and consultant standards within the consulting engineering industry and shall be responsible for the professional and technical soundness and accuracy of all work and services furnished pursuant to this agreement.

19. CITY-PROVIDED INFORMATION: CONSULTANT is entitled to rely on all information furnished or to be furnished by CITY. CITY agrees to hold harmless and indemnify CONSULTANT, its officers, agents, and employees from any and all claims of any kind arising out of or relating to any claims caused by an error or omissions in information provided by the CITY which were the cause of the claim for damages and provided, further, that the CONSULTANT's reliance on such information was reasonable under the circumstances. All information, worksheets, reports, design calculations, plans, and specifications as provided by the City shall be the sole property of the City unless otherwise specified in this agreement.
20. **THIRD-PARTY BENEFICIARIES:** It is recognized that the services performed by CONSULTANT are for the benefit of the CITY and no other party. There are no third party beneficiaries to this Agreement.

21. **ACCESS TO RECORDS CLAUSE:** The CITY and other authorized representatives of the state and federal governments shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examination, excerpt, and transcriptions.

All such records and all other records pertinent to this Agreement and work undertaken under this Agreement shall be retained by the CONSULTANT for a period of three years after the completion of the CITY’s project, unless a longer period is required to resolve audit findings or litigation. In such cases, the CITY shall request a longer period for record retention.

22. **PROHIBITED INTERESTS:** No member of the governing body of the CITY and no other elected or appointed officer, employee, or agent of the CITY who exercises any functions or responsibilities in connection with the planning and carrying out of the program, shall have any personal financial interest, direct or indirect, in this contract; and the CONSULTANT shall take appropriate steps to assure compliance.

23. **INTEREST OF CONSULTANT AND EMPLOYEES:** The CONSULTANT covenants that he presently has no interest and shall not acquire any interest, direct or indirect, in the study area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The CONSULTANT further covenants that in the performance of this Agreement, no person having such interest shall be employed.

24. **NOTICE:** Any notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to CONSULTANT: 
Consultant Name  
Attention: Contact Person  
Address

If to the CITY: 
City of Batavia  
Attention: Contact Name  
100 N. Island Avenue  
Batavia, IL  60510

with copy to:  
City Attorney
25. **NON-DISCRIMINATION:** The CONSULTANT shall not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.

26. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the CONSULTANT as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement.

27. **BINDING EFFECT:** This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.

28. **LAW AND VENUE:** This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

29. **ILLINOIS PREVAILING WAGES:** To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website [http://www.state.il.us/agency/idol/](http://www.state.il.us/agency/idol/). Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.

Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.
If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

30. NEITHER PARTY SHALL BE LIABLE TO THE OTHER, WHETHER IN CONTRACT, WARRANTY, FAILURE OF A REMEDY TO ACHIEVE ITS INTENDED OR ESSENTIAL PURPOSES, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNITY OR ANY OTHER LEGAL THEORY, FOR LOSS OF USE, REVENUE OR PROFIT, OR FOR COSTS OF CAPITAL OR OF SUBSTITUTE USE OR PERFORMANCE, OR FOR INDIRECT, SPECIAL, LIQUIDATED, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY OTHER LOSS OR COST OF A SIMILAR TYPE, OR FOR CLAIMS BY THE OTHER PARTY’S CUSTOMERS. EACH PARTY’S MAXIMUM LIABILITY UNDER THIS CONTRACT SHALL BE THE PURCHASE ORDER VALUE; HOWEVER, THIS LIMITATION SHALL NOT BE CONSTRUED TO CAP OR LIMIT IN ANY WAY LIABILITY FROM THIRD PARTY INDEMNIFICATION CLAIMS, DAMAGES OR LOSSES; NOR IN NO WAY IMPACT OR LIMIT INSURANCE PROCEEDS FOR POLICIES REQUIRED UNDER THIS AGREEMENT.

THE PARTIES AGREE THAT THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS ARTICLE ARE SEPARATE AND INDEPENDENT FROM ANY REMEDIES WHICH CITY MAY HAVE HEREUNDER AND SHALL BE GIVEN FULL FORCE AND EFFECT WHETHER OR NOT ANY OR ALL SUCH REMEDIES SHALL BE DEEMED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE.
IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF BATAVIA

ATTEST:

____________________________

(SEAL)

Consultant Name

ATTEST:

____________________________

(SEAL)
EXHIBIT "A"

SCHEDULE OF RATES
FOR
CONSULTANT NAME

NOTES:

1. THE RATES LISTED ABOVE ARE VALID UNTIL DECEMBER 31ST, 20__.

2. THE RATES FOR REIMBURSABLES SUCH AS POSTAGE, DOCUMENT FEES AND IN-HOUSE PRINTINGS/DISCS ARE APPLIED BASED ON THE NORMAL ON-GOING CHARGES.

3. THE ABOVE RATES DO NOT INCLUDE THE SERVICES OF OTHER PROFESSIONALS OR COMPANIES REQUIRED TO PERFORM WORK TO ASSIST CONSULTANT NAME GROUP IN THE PERFORMANCE OF A TASK ORDER.
EXHIBIT "B"

TASK ORDER NO. _______________

REGARDING GENERAL AGREEMENT BETWEEN CITY OF BATAVIA

AND

CONSULTANT NAME

Project Description:

Scope of Services:

Time of Performance:

Estimated Fee for Services:

Proposed: _____________________________ Date

Approved:

City of Batavia
City Approver Date
The easement agreement that the City of Batavia has with Department of Energy for facilities to be located at Fermi Lab requires the City to perform certain maintenance activities on the 345kV transmission system at Fermi Lab. There is a window to perform maintenance on the 345kV Power Circuit Breaker on the east end of the Kautz Road Line in July 2017. These transmission lines are taken out of service for minimum amount of times and the City needs to perform the maintenance during these windows. These maintenance windows only occur when the experiment schedules allow. The maintenance on the breakers must be performed while the lines are de-energized.

Staff has budgeted $60,000 in 2017 for the maintenance of the 345 kV Breakers. Staff has secured a quote, from the manufacturer of the breakers for labor, materials, and expenses to perform the maintenance of the breaker for $39,167.62. Staff is requesting approval for $43,000, which is the quoted amount plus a ten percent contingency for the work in 2017.

The City has just performed some maintenance on the 138kV system and the costs quoted for 354 kV by the manufacturer are reasonable. The 345kV breakers are very specialized equipment and the best course of action is to have the manufacturer perform the maintenance. HVB performed the maintenance on the PI Line (north) breaker in 2016. This is the reason Staff is recommending to waive formal bidding and to contract with Hitachi HVB for the maintenance.

Attached are the documents supporting the memo and Resolution.

Staff recommends waiving formal bidding and approval of Resolution 17-58-R Authorizing Execution of an Agreement with Hitachi HVB, Inc. for 345kV Breaker Maintenance for $43,000.
CITY OF BATAVIA, ILLINOIS
RESOLUTION 17-58-R

AUTHORIZING EXECUTION OF AN AGREEMENT FOR 345kV BREAKER MAINTENANCE WITH HITACHI HVB, INC. FOR $43,000

WHEREAS, the City of Batavia owns and operates an electric utility; and

WHEREAS, the City of Batavia has entered into an easement agreement, with the United States Department of Energy, to place facilities on the property occupied by Fermi Lab; and

WHEREAS, the terms of that agreement require the City of Batavia to perform maintenance on the 345kV breaker on the east ends of the “KRS Line”; and

WHEREAS, it is in the best interests of the City of Batavia to accept the proposal from Hitachi HVB, Inc., the breaker manufacturer, to perform maintenance on the 345kV breaker on the east end of the “KRS Line”; and

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Batavia, Kane and DuPage Counties, Illinois, as follows:

SECTION 1: That the Mayor and City Clerk are hereby authorized to enter into a contract with Hitachi HVB, Inc. for an amount not to exceed $43,000.00, which is the quoted amount plus a 10% contingency, attached hereto as Exhibit 1.

PRESENTED to and PASSED by the City Council of the City of Batavia, Illinois, this 15th day of May, 2017.

APPROVED by me as Mayor of said City of Batavia, Illinois, this 15th day of May, 2017.

_______________________________
Jeffery D. Schielke, Mayor
<table>
<thead>
<tr>
<th>Ward</th>
<th>Aldermen</th>
<th>Ayes</th>
<th>Nays</th>
<th>Absent</th>
<th>Abstain</th>
<th>Aldermen</th>
<th>Ayes</th>
<th>Nays</th>
<th>Absent</th>
<th>Abstain</th>
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<tbody>
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<td>Brown</td>
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<td></td>
<td>Mayor Schielke</td>
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**VOTE:**

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<thead>
<tr>
<th>Ayes</th>
<th>Nays</th>
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<th>Abstentions</th>
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</thead>
</table>

Total holding office: Mayor and 14 aldermen

**ATTEST:**

______________________________
Ellen Posledni, City Clerk
Exhibit 1
## Scope of Work

12 year maintenance without the internal inspection.

## Field Service Engineer

<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>QTY</th>
<th>Unit</th>
<th>Material &amp; Equipment</th>
<th>Labor</th>
<th>Other</th>
<th>Extended Total</th>
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<tbody>
<tr>
<td>1</td>
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<tr>
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## Overtime Charges

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<th>No</th>
<th>Description</th>
<th>QTY</th>
<th>Unit</th>
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<td>9</td>
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## Field Service Engineer

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<th>Unit</th>
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## Overtime Charges

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<tr>
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<th>Description</th>
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<th>Unit</th>
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## Freight

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<th>Description</th>
<th>QTY</th>
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<th>Material &amp; Equipment</th>
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## Payment Terms

Net 30 days

***Quotation valid for up to 90 days after receipt date***

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Hitachi T&D Solutions, Inc. must have a signed and executed purchase order, which exhibits this estimate, sent back to our office before any scheduling or travel arrangements can be made or committed to. If the customer requests cancellation of service once an engineer or technician is on route or has started said service, all costs will be charged to the customer.

Prices for travel and living are estimates only. Actual prices may vary and customer may be subjected to higher rates due to short-notice booking, seasonal increases, or similar factors.

Time durations for labor are estimates only. Actual durations that may be billed vary according to many circumstances, including customer preparedness and inclement weather. Hitachi T&D Solutions accepts no liability for such delays.

Any and all costs incurred during the duration of this service are subject to a 15% surcharge. Such costs may not be listed on this quotation.

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Kevin Case
770-495-1755 ext. 101 or kevin.case@hitachi-tds.com
1. **Definitions.** Unless Seller otherwise agrees:

1.1 "Buyer" means the entity to which Seller is providing Products or Services under the Contract.

1.2 "Contract" means the documents that comprise the agreement between Buyer and Seller for the sale or lease of Products or Services, including these Terms and Conditions and any other documents incorporated therein by reference, such as, the final quotation, the agreed scope(s) of work, and Seller’s order acknowledgement.

1.3 "Leased Equipment" means all Products Seller has agreed to lease to Buyer under the Contract, as well as all equipment of Seller which will be located at the Site during all or some portion of the term of the Contract without Seller’s personnel present, such as remote diagnostic equipment.

1.4 "Product(s)" means all equipment, parts, materials, supplies, and other goods Seller has agreed to supply to Buyer under the Contract, including Leased Equipment and Refurbished Parts.

1.5 "Refurbished Parts" means used Products that have been repaired and/or reconditioned by Seller for resale.

1.6 "Seller" means Hitachi HV, Inc., as the entity providing Products or performing Services under the Contract.

1.7 "Services" means all services Seller has agreed to perform for Buyer under the Contract.

1.8 "Site" means the premises where Products are delivered or Services are performed, not including Seller’s premises from which it performs remote Services.

1.9 "Terms and Conditions" means these Terms and Conditions for Sale and Lease of Products and Services.

2. **Payment.** Except as otherwise agreed by Seller in writing, and upon approved credit, the following payment terms apply:

2.1 Buyer shall pay Seller all invoiced amounts in United States (“U.S.”) dollars, without right of set-off, within 30 days from date of invoice. Seller shall be entitled to payment of all charges associated with Seller’s performance of Services as Services are performed. For each Contract for Products with a price of U.S. $500,000.00 or more, partial payments of the Contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price shall be received before scheduled shipment. If Buyer fails to fulfill any condition of its payment obligations Seller may suspend performance and delivery. Any costs incurred by Seller in accordance with such suspension (including storage costs) shall be payable by Buyer upon submission of Seller’s invoices. Buyer shall pay a monthly late payment charge computed at the rate of 1.5% or the maximum interest rate permitted by applicable law, whichever is less, on any past-due amount for each calendar month (or fraction thereof) that the payment is overdue and all costs of Seller’s collection efforts including reasonable attorneys’ fees.

2.2 Unless otherwise agreed in the Contract, in any transaction in which Buyer and Seller are domiciled in separate countries, Buyer shall establish an irrevocable and unconditional letter of credit payable at sight draft allowing for pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract and certification of the charges and grounds for such payment. The letter of credit shall be confirmed by a bank that is acceptable to Seller and shall be payable at the counters of the advising bank. Seller shall pay all banking charges. Seller will not begin performance until the letter of credit becomes operative. Buyer will increase the amounts and/or extend the validity period(s) and make appropriate modifications to any letter of credit within 5 business days of Seller’s notification that such increase or extension is necessary to provide for payments to become due.

2.3 If at any time Seller reasonably determines that Buyer’s financial condition does not justify the continuation of Seller’s performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract pursuant to Article 13.

3. **Taxes and Duties.** Unless otherwise specified in the Contract, Seller shall be responsible for and must pay directly, all corporate and individual taxes measured by net income or profit imposed by any governmental authority on Seller, its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Seller Taxes"). Buyer shall be responsible for and must pay directly when due and payable all taxes, duties, fees, or other charges of any nature (including, but not limited to, ad valorem, consumption, excise, franchise, gross receipts, import, license, property, sales, stamp, storage, transfer, turnover, use, or value-added taxes, and any and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto), other than Seller Taxes, imposed by any governmental authority on Seller or its employees or subcontractors due to the execution of any agreement or the performance of or payment for work hereunder ("Buyer Taxes").

All payments due and payable by Buyer to Buyer hereunder shall be made in the full amount of the Contract price, free and clear of all deductions and withholding for Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts to Seller to cause the amounts Seller actually receives, net of deducted or withheld Buyer Taxes, to equal the full Contract price. Buyer shall provide to Seller within 1 month accurate official receipts from the appropriate governmental authority for deducted or withheld taxes.

4. **Delivery; Title Transfer; Risk of Loss; Storage.**

4.1 Seller shall deliver Products to Buyer EXW Seller’s facility (Incoterms 2000) unless otherwise expressly agreed by parties in a non-pre-printed writing. Partial deliveries will be permitted. If Products delivered do not correspond in quantity, type or those itemized in the invoice for the shipment, Buyer will notify Seller within 10 days after receipt. Seller may deliver any or all Products in advance of the delivery schedule.

4.2 Title to Products shall pass to Buyer upon delivery as set forth in Section 4.1. Title to Services shall pass to Buyer as performed. Title to Leased Equipment shall remain with Seller at all times.

4.3 Risk of loss of the Products shall pass from Seller to Buyer upon delivery in accordance with the Incoterms 2000 delivery term set forth in Section 4.1.

4.4 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed freight forwarder. If Seller places Products in storage or if Products are detained at any port under this Section 4.4, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed; (ii) any amounts otherwise payable to Seller upon delivery or shipment shall be payable upon presentation of Seller’s invoices; (iii) all expenses and charges incurred by Seller, as well as storage, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Seller’s invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed upon point of delivery.

4.5 Title to Refurbished Parts to be used in repair or recondition of Buyer’s equipment shall pass as set forth in Section 4.2. Buyer shall at all times bear the risk of loss for Buyer’s equipment provided to Seller for repair or recondition by Seller during the term of the Contract, whether at the Site, Seller’s facility or in transit to or from Seller’s facility. If Services for repair and/or recondition to Buyer’s equipment are to be performed at Seller’s facility, Buyer shall be responsible for transporting such equipment to and from Seller’s facility. Buyer shall reimburse Seller at Seller’s then current storage rate if such equipment remains at Seller’s facility beyond 10 days after notification such Services have been completed.

5. **Excusable Delays.** Seller shall not be liable nor in breach or default of its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer’s suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the requisite work of Buyer’s other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment.
6. Compliance with Laws, Codes and Standards.
6.1 Seller represents that Products will be produced and Services will be performed in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to nonegregation and equal employment opportunity.
6.2 The Contract price will be equitably adjusted to reflect additional costs incurred by Seller resulting from a change in industry specifications, codes or standards, or changes in applicable laws and regulations.
6.3 All transactions hereunder shall at all times be subject to and conditioned upon compliance with all applicable trade control laws and regulations. Buyer hereby agrees that it shall not transship, re-export, divert or direct Products other than in and to the ultimate country of destination specified on Buyer's order or declared as the country of ultimate destination on Seller's invoice, except as permitted by applicable laws and regulations.
6.4 Notwithstanding any other provisions herein, Buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even though Seller may apply for such. Buyer and Seller shall provide each other reasonable assistance in obtaining required authorizations. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted, or not renewed and Buyer shall not be relieved hereby of its obligations to pay Seller for Products and Services.

7. Warranty.
7.1 Seller warrants to Buyer that: (i) Products shall be shipped free from defects in material, workmanship and title; and (ii) Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Unless Seller expressly agrees otherwise in writing, any items not manufactured by Seller (including incidental materials and consumables used in the performance of Services) shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Reconditioned Parts and Products installed during performance of Services shall be sold "as is."
7.2 Unless otherwise stated in the Contract, the warranty period for Products shall be 1 year from first use or 18 months from delivery, whichever occurs first, except that used Products installed during performance of Services, other than Reconditioned Parts, are warranted for 30 days from the date of Service. Unless otherwise stated in the Contract, the warranty period for Services shall be 1 year from completion, and repair Services shall have a warranty period of 30 days from completion.
7.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing within the applicable warranty period. Seller shall thereupon: (i) at Seller's option, repair or replace the defective Products; or (ii) perform the defective Services. No Products shall be returned to Seller without having secured approval and terms for return from Seller's authorized representative. If in Seller's reasonable judgment Products cannot be repaired or replaced or Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable warranty period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.
7.4 Seller shall not be responsible for removal or replacement of systems, structures or other parts of Buyer's facility. Buyer shall bear the costs of de-installation, re-installation and transportation of Products to Seller and back to Buyer. All decontamination work necessary for the correction of defects shall be performed by Buyer at Buyer's expense.
7.5 These warranties and remedies are conditioned upon the proper storage, installation, operation, and maintenance of Products and conformance with the operation instruction manuals provided by Seller or its suppliers or subcontractors. Seller does not warrant Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Seller. Any modification or repair of any of Products or Services not authorized by Seller shall render the warranty null and void.
7.6 This Article 7 sets forth the exclusive remedies for all claims based on failure of, or defect in, Products or Services, whether the failure or defect arises before or during the applicable warranty period and whether a claim, however instituted, is based on contract, indemnity, warranty, tort/extracontractual liability (including negligence), strict liability or otherwise. The foregoing warranties are exclusive and are in lieu of all other warranties and guarantees whether written, oral, implied or statutory. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE SHALL APPLY.

8. Limitation of Liability.
8.1 The total liability of Seller, on all claims of any kind (excluding claims for death or bodily injury), whether in contract, warranty, indemnity, tort/extracontractual liability (including negligence), strict liability, or otherwise, arising out of the performance or breach of the Contract or use of any Products or Services shall not exceed the price of the specific Products or Services giving rise to the claim. All Seller's liability under the Contract shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim of such liability accruing during the applicable warranty period by an action timely commenced in accordance with the applicable statute of limitations or statute of repose, but in no event greater than one year after the expiration of such warranty period.
8.2 In no event, whether as a result of breach of contract, warranty, tort/extracontractual liability (including negligence), strict liability, indemnity, or otherwise, shall Seller be liable for loss of profit or revenues, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.
8.3 If Buyer cannot obtain for Seller from any reseller, end-customer or subsequent purchaser(s), the protections specified in this Article 8, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by any reseller, end-customer or subsequent purchasers of Products or Services against Seller for loss or damage arising out of the performance or non-performance of Products or Services provided under the Contract.
8.4 If Seller furnishes Buyer with advice or assistance that is not required under the Contract, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.
8.5 For the purposes of this Article 8, the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.
8.6 The provisions of this Article 8 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract, except to the extent that such provisions further restrict Seller's liability.

9.1 Any dispute involving a non-U.S. Buyer and arising out of or in connection with these Terms and Conditions or the Contract, including any question regarding its existence, validity or termination, that cannot be settled by negotiation of the parties shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). The number of arbitrators shall be 1 unless the amount in dispute exceeds U.S. $1,000,000.00, in which event it shall be 3. When 3 arbitrators are involved, each party shall have the right to nominate an arbitrator, and the Chairman shall be appointed by ICC International Court of Arbitration. The seat, or legal place, of arbitration shall be New York, New York, U.S.
9.2 Any claim involving a U.S. Buyer brought by either party against the other party for claims arising out of or related to these Terms and Conditions or the Contract shall be brought in the U.S. District Court for the Northern District of Georgia, U.S., or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Forsyth County, Georgia, U.S., and the parties hereto consent to the exclusive jurisdiction of such courts in respect of all such claims. Each party hereby submits to and accepts generally and unconditionally the jurisdiction of those courts with respect to its respective person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by the mailing thereof by registered or certified mail, postage prepaid to the other party at the address for the party.
9.3 The validity, performance and all matters relating to the interpretation and effect of these Terms and Conditions and the Contract shall be construed and interpreted in accordance with the laws of the State of Georgia, U.S., excluding its law on the conflict or choice of laws, provided that any provision of such law invalidating any provision of these Terms and Conditions or modifying the intent of the parties as expressed in these Terms and Conditions shall not apply.
10. Confidentiality and Use of Trademarks and Trade Names.

10.1 In connection with the Contract, Seller and Buyer (as to information disclosed, the “Disclosing Party”) may each provide the other party (as to information received, the “Receiving Party”) with Confidential Information. “Confidential Information” as used herein means: (i) all pricing for Products and Services, (ii) all terms of the Contract, and (iii) all information that is designated in writing as “confidential” or “proprietary” by the Disclosing Party at the time of written disclosure, or within 10 days after oral disclosure, by label, stamp or other written communication. The obligations of this Article 10 shall not apply to as any portion of the Confidential Information which: (i) is or becomes generally available to the public other than as a result of disclosure by the Receiving Party, its representatives or its affiliates; (ii) is or becomes available to the Receiving Party or its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party’s knowledge, subject to a confidentiality obligation to the Disclosing Party; (iii) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; or (iv) is approved in advance for disclosure in writing by an authorized representative of the Disclosing Party, to the extent of such approval.

10.2 The Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) of Products and Services, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees or agents who have a need to know in order for Receiving Party to perform its obligations hereunder or to use Products or Services. The Receiving Party agrees to advise any recipient of such Confidential Information of the terms and conditions of this Article 10 and to take reasonable steps to ensure compliance.

10.3 If the Receiving Party is required by legal process or by order of a competent court or government agency to disclose any Confidential Information, such party agrees to (i) provide the Disclosing Party with prompt notice, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Article 10, and (ii) strictly limit disclosure of such information to the extent of such process or order. Any disclosure by Disclosing Party pursuant to process or order shall not alter the confidential nature or status of Confidential Information.

10.4 Nothing herein shall be construed as granting to the Receiving Party any license under any invention, patent, trademark or copyright now or hereinafter owned or controlled by the Disclosing Party.

10.5 Buyer shall not disclose Confidential Information to Seller in connection with performance hereunder unless it is required to do so to enable Seller to perform work hereunder. If Buyer does disclose Confidential Information, Buyer warrants that it has the right to disclose such information, and Buyer shall indemnify and hold Seller harmless against any claims or damages resulting from improper disclosure by Buyer.

10.6 Notwithstanding anything to the contrary herein, this Article 10 shall not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

10.7 Buyer shall not publish, distribute, or use any information developed under, or about the existence of, the Contract or use the Hitachi HVB, Inc. name (or the name of any division or affiliate thereof), logo, trademark, service mark, or trade name for the purpose of advertising, making a news release, creating a business reference or for product or service endorsement without the prior written approval of Seller’s authorized representative. Buyer acknowledges that all brand names, trade names, and trademarks of Seller are the exclusive property of Seller and that Buyer will not acquire any rights relating to the brand names, trade names, or trademarks by purchasing Products hereunder.


11.1 Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at the Site. If, in Seller’s reasonable opinion, the safe execution of the Contract at the Site is, or is apt to 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 the Site or personnel or Seller’s persons or interests, Seller may remove some or all of its personnel from the Site or supervise performance of all or any part of the Contract at a location separately determined by Seller. Buyer shall assist in any evacuation. Any such removal hereunder shall be considered to be an excusable delay.

11.2 Before issuing its purchase order, Buyer shall advise Seller in writing of all applicable Site-specific rules, safety codes, and laws that apply to Products and Services.

11.3 Site equipment operation is the responsibility of Buyer. If Buyer requests or permits Seller’s personnel to operate equipment at the 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 injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Seller personnel.


12.1 Buyer shall provide Seller access to the Site and any other facilities free of charge, including the operating and development environment and information, as necessary for Seller’s performance hereunder.

12.2 Seller shall promptly, and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract; or (ii) unknown physical conditions at the Site, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Buyer shall promptly investigate the conditions. If it is determined that such conditions do materially differ and cause an increase in Seller’s cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and time for performance shall be made and the Contract modified in writing accordingly.

12.3 If, at the Site, Seller encounters toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any applicable statute, ordinance or regulation (collectively, “Hazardous Materials”) that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally such hazardous conditions so that the work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Seller’s cost of or time required for performance of any part of the work, an equitable adjustment shall be made to the price and schedule. Buyer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Seller’s work at the Site.

12.4 Buyer shall indemnify and hold Seller harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are: (i) present on the Site prior to the commencement of Seller’s work; (ii) improperly handled or disposed of by Buyer; or (iii) brought or produced on the Site by parties other than Seller.

13. Termination and Suspension.

13.1 Buyer shall have the right to terminate the Contract (or any portion thereof) for cause if Seller: (i) 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; or (ii) substantially breaches its material obligations heretofore (but only in respect to a material obligation for which the Contract does not provide exclusive remedies), provided that: (a) Buyer shall first have provided Seller with written notice of the nature of such breach and of Buyer’s intention to terminate the Contract as a result of such breach; and (b) Seller shall have failed, within 30 days after receipt of such notice (or such extended period as is considered reasonable by the parties), to either: (1) commence to cure such breach and diligently thereafter to pursue such cure; or (2) provide reasonable evidence that no such breach has occurred. If Buyer terminates the Contract as provided in this Section 13.1, Buyer shall pay to Seller: (i) the portion of the Contract price allocable to Products completed or partially completed before the termination; (ii) all fees for Leased Equipment (“Lease Fees”) incurred to date; and (iii) all hours for Services performed at Seller’s then-current standard time and material rates.

13.2 Buyer shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) 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; or (ii) there is an excusable delay (as per Article 5 above) longer than 120 days; or (iii) 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 (iv) Buyer materially fails to comply with any terms of the Contract, including but not limited to, failure to make any payment when due or to fulfill any payment conditions. If Seller elects to continue to ship Products to Buyer or perform Services, Seller’s actions shall not constitute a waiver of any default by Buyer or in any way affect Seller’s legal remedies for such default.
13.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 13.1 above, Buyer shall pay Seller for all Products completed or partially completed, Lease Fees incurred and Services performed before the effective date of termination, plus a cancellation charge equal to 15% of the Contract price allocable to the uncompleted Products, unfinished term on Leased Equipment and unperformed Services. 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.

13.4 Any reasonable expenses incurred by Seller in connection with a suspension or termination, including expenses for repossession, fee collection or costs of storage during suspension, shall be payable by Buyer upon submission of Seller’s invoice(s). Performance of Seller’s obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.


14.1 Subject to the terms of the Contract, Seller shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (collectively, a “Claim”) alleging that Products or Services infringe a patent in effect in the country of delivery; provided that: (i) Buyer promptly notifies Seller in writing of any such Claim; (ii) Buyer makes no admission of liability and gives Seller sole authority, at Seller’s expense, to direct and control all defense, settlement, and compromise negotiations; and (iii) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

14.2 Seller shall have no obligation or liability with respect to any Claim based upon: (i) any Products or Services that have been altered, modified, or revised; (ii) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (iii)乙方 Buyer to implement any update provided by Seller that would have prevented the Claim; (iv) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (v) Products or Services made or performed to Buyer’s specifications.

14.3 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option: (i) procure for Buyer the right to continue using Products or Service, or portion thereof; (ii) modify or replace it in whole or in part to make it non-infringing; or (iii) failing (i) or (ii), take back Products or Services and refund any fees received by Seller attributable to the infringing Product or Service.

14.4 This states Seller’s entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

14.5 Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Seller, only the indemnity of the manufacturer/developer, if any, shall apply.

15. Changes.

15.1 Each party may at any time propose changes in the schedule or scope of Products or Services. If mutually agreed, the changes will be documented in a written change order, signed by authorized representatives of each party, along with any equitable adjustments in the Contract price or schedule. Seller is not obligated to proceed with the changed schedule or scope until the change order is signed.

15.2 All Products delivered shall conform to Seller’s part or version number specified or (at Seller’s option) its equivalent or the superseding number subsequently assigned by Seller. In the event the number ordered is no longer available, Seller is authorized to ship a valid interchangeable Product without notice to Buyer.

16. Inspection and Factory Tests. The quality control exercised by Seller in its manufacture of Products shall be in accordance with Seller’s normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer’s requests to witness Seller’s factory tests of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include restricted areas where development work or work of a proprietary nature is being conducted. Seller shall not be liable for any injuries sustained by Buyer or Buyer’s employees, agents, or inspectors while on Seller’s property. Buyer is responsible for the cost of any specially requested or non-routine testing.

17. General Clauses.

17.1 UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY SELLER, PRODUCTS AND SERVICES HEREUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. No response by Seller to any request for proposal, bid, acceptance by Seller, or agreement between the parties shall constitute consent to nuclear use absent an express affirmation of consent to nuclear use by Seller. Buyer hereby: (i) accepts Products and Services in accordance with the restrictions set forth herein; (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users; and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including special, incidental and consequential damages, arising from use of Products and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that Seller’s liability is based on negligence or strict liability. If Seller expressly agrees in writing to any such nuclear use, Seller’s special terms and conditions for nuclear applications and protections against nuclear liability shall be attached and incorporated fully herein by reference.

17.2 Seller may assign or novate its rights and obligations under the Contract, in part or in whole, to any entity directly or indirectly controlling, controlled by, or under common control with Seller without Buyer’s consent. Buyer agrees to execute such documents as may be necessary to effect the assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller’s prior written consent shall be void.

17.3 If any provision of the Contract is found to be void or unenforceable the remainder of the Contract shall not be affected and the parties hereby agree that they will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and which is valid and enforceable.

17.4 The covenants intended by Seller to be enforceable after termination or cancellation of the Contract survive termination or cancellation thereof, including without limitation Articles 2 through 14 and Article 17.

17.5 The Contract represents the entire agreement between the parties, and no modification, amendment or waiver shall be binding on either party unless agreed in writing by the parties’ authorized representatives.

17.6 If Products or Services to be furnished under the Contract are to be used in the performance of a U.S. Government contract or subcontract, and a U.S. Government contract number shall appear on Buyer’s purchase order, those clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

17.7 This Contract may be executed in multiple counterparts that together shall constitute one agreement.

17.8 Except as provided in Article 8 of these Terms and Conditions, the Contract is for the benefit of the parties hereto and not for any third party.

17.9 Failure on the part of Seller to enforce any right pursuant to these Terms and Conditions or the Contract shall not constitute a waiver of such rights or any other rights.
## Spare Parts Quote

**Customer Contact:**
C. BATAVIA  
Bob Rodge 630-454-2657  
rrodge@cityofbatavia.net

**Hitachi Contact:**
JACKSON, MICHAEL  
770 495-1755 Ext 116  
Mike.Jackson@hitachi-tds.com

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**Minimum Order:** $350.00 ($50 Minimum with Credit Card)  
**Projected Lead Time:** 05/26/2017  
**Freight Terms:** Freight Pre-pay and Add  
**Purchase Order Terms:** Default (A/R & A/P)  
**Validity Expiration:** 5/26/2017

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**Quote Total**  
US$ 12,827.62

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A minimum of 30% Restocking Charge will apply for cancelled orders.  
We accept Visa and MasterCard.

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7250 McGinnis Ferry Road, Suwanee, GA 30024  
www.hitachi-tds.com  
Tel: 770-495-1755 - Fax: 770-623-9214 - Toll Free: 866-362-0798
1. Definitions. Unless Seller otherwise agrees:

1.1 "Buyer" means the entity to which Seller is providing Products or Services under the Contract.

1.2 "Contract" means the documents that comprise the agreement between Buyer and Seller for the sale or lease of Products or Services, including these Terms and Conditions and any other documents incorporated therein by reference, such as, the final quotation, the agreed scope(s) of work, and Seller’s order acknowledgement.

1.3 "Leased Equipment" means all Products Seller has agreed to lease to Buyer under the Contract, as well as all equipment which will be located at the Site during all or some portion of the term of the Contract without Seller’s personnel’s possession, such as remote diagnostic equipment.

1.4 "Product(s)" means all equipment, parts, materials, supplies, and other goods Seller has agreed to supply to Buyer under the Contract, including Leased Equipment and Refurbished Parts.

1.5 "Refurbished Parts" means products that have been repaired and/or reconditioned by Seller for resale.

1.6 "Seller" means Hitachi IVHB, Inc., as the entity providing Products or performing Services under the Contract.

1.7 "Services" means all services Seller has agreed to perform for Buyer under the Contract.

1.8 "Site" means the premises where Products are delivered or Services are performed, not including Seller’s premises from which it performs remote Services.

1.9 "Terms and Conditions" means these Terms and Conditions for Sale and Lease of Products and Services.

2. Payment. Except as otherwise agreed to by Seller in writing, and upon approved credit, the following payment terms apply:

2.1 Buyer shall pay Seller all invoiced amounts in United States (“U.S.”) dollars, without right of set-off, within 30 days from date of invoice. Seller shall be entitled to payment of all charges associated with Seller’s performance of Services as Services are performed. For each Contract for Products with a price of U.S. $500,000.00 or more, partial payments of the Contract price shall be made as invoiced starting upon order placement, such that 80% of the Contract price shall be 2.2 Unless otherwise agreed in the Contract, in any transaction in which Buyer and Seller are domiciled in separate countries, Buyer shall establish an irrevocable and unconditional letter of credit payable at sight draft allowing for pro-rata payments for partial deliveries, storage, export shipment, price adjustments, cancellation or termination, and all other payments due from Buyer under the Contract and certification of the charges and grounds for such payment. The letter of credit shall be confirmed by a bank that is acceptable to Seller and shall be payable at the counters of the advising bank. Buyer shall pay all banking charges. Seller will not begin performance until the letter of credit becomes operative.

2.3 If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller’s performance, Seller may require full or partial payment in advance or be entitled to suspend or terminate the Contract pursuant to Article 13.

3. Warranty.

3.1 Seller warrants to Buyer that:

3.1.1 Products shall be shipped free from defects in material, workmanship and title; and

3.1.2 Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.

3.2 If at any time Seller reasonably determines that Buyer's financial condition does not justify the continuation of Seller’s performance, Seller may require full or partial payment in advance or shall be entitled to suspend or terminate the Contract pursuant to Article 13.

4. Delivery; Title Transfer; Risk of Loss; Storage.

4.1 Seller shall deliver Products to Buyer EXW Seller’s facility (Incoterms 2000) unless otherwise expressly agreed by parties in a non-pre-printed writing. Partial deliveries will be permitted. If Products delivered do not correspond in quantity, type or price to those itemized in the invoice for the shipment, Buyer will so notify Seller within 10 days after receipt. Seller may deliver any or all Products in advance of the delivery schedule.

4.2 Title to Products shall pass to Buyer upon delivery as set forth in Section 4.1. Title to Services shall pass to Buyer as performed. Title to Leased Equipment shall remain at all times with Seller.

4.3 Risk of loss of the Products shall pass from Seller to Buyer upon delivery in accordance with the Incoterms 2000 delivery term set forth in Section 4.1.

4.4 If any Products cannot be shipped to or received by Buyer when ready due to any cause not attributable to Seller, Seller will notify Buyer and then may ship Products to a storage facility, including a facility within the place of manufacture, or to an agreed forwarder. If Seller places Products in storage or if Products are detained at any port under this Section 4.4, the following conditions shall apply: (i) title and all risk of loss or damage shall immediately pass to Buyer if they had not already passed; (ii) any amounts otherwise payable to Seller upon shipment or delivery shall be payable upon presentation of Seller’s invoices; (iii) all expenses and charges incurred by Seller, such as for preparation for and placement into storage, handling, inspection, preservation, insurance, storage, demurrage, removal and any taxes shall be payable by Buyer upon submission of Seller’s invoices; and (iv) when conditions permit and upon payment of all amounts due hereunder, Seller shall resume delivery of Products to the originally agreed upon point of delivery.

4.5 Title to Refurbished Parts to be used in repair or recondition of Buyer’s equipment shall pass as set forth in Section 4.2. Buyer shall at all times bear the risk of loss for Buyer’s equipment provided to Seller for repair or recondition by Seller during the term of the Contract, whether at the Site, Seller’s facility or in transit to or from Seller’s facility. If Services for repair and/or recondition to Buyer’s equipment are to be performed at Seller’s facility, Buyer may be responsible for transporting such equipment to and from Seller’s facility. Buyer shall reimburse Seller at Seller’s then current storage rate if such equipment remains at Seller’s facility beyond 10 days after notification such Services have been completed.

5. Excusable Delays. Seller shall not be liable nor be breach of or default on its obligations under the Contract to the extent performance of such obligations is delayed or prevented, directly or indirectly, due to causes beyond its reasonable control, including, but not limited to, acts of God, fire, terrorism, war (declared or undeclared), epidemics, material shortages, insurrection, acts (or omissions) of Buyer or Buyer’s suppliers or agents, any act (or omission) by any governmental authority, strikes, labor disputes, transportation shortages, or vendor non-performance. The delivery or performance date shall be extended for a period equal to the time lost by reason of delay, plus such additional time as may be reasonably necessary to overcome the effect of the delay. If Seller is delayed by any acts (or omissions) of Buyer, or by the prerequisite work of Buyer’s other contractors or suppliers, Seller shall be entitled to an equitable price and performance adjustment.

6. Compliance with Laws, Codes and Standards.

6.1 Seller represents that Products will be produced and Services will be performed in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to nonsegregation and equal employment opportunity.

6.2 The Contract price will be equitably adjusted to reflect additional costs incurred by Seller resulting from a change in industry specifications, codes or standards, or changes in applicable laws and regulations. Seller may charge Buyer for additional costs incurred.

6.3 All transactions hereunder shall at all times be subject to and conditioned upon compliance with all applicable trade control laws and regulations. Buyer hereby agrees that it shall not transship, re-export, divert or direct Products other than in and to the ultimate country of destination specified on Buyer’s order or declared as the country of ultimate destination on Seller’s invoice, except as permitted by applicable laws and regulations.

6.4 Notwithstanding any other provisions herein, Buyer shall timely obtain any required authorization, such as an export license, import license, foreign exchange permit, work permit or any other governmental authorization, even though Seller may apply for such. Buyer and Seller shall provide each other reasonable assistance in obtaining required authorizations. Seller shall not be liable if any authorization is delayed, denied, revoked, restricted, or not renewed and Buyer shall not be relieved hereby of its obligations to pay Seller for Products and Services.

7. Warranty.

7.1 Seller warrants to Buyer that:

7.1.1 Products shall be shipped free from defects in material, workmanship and title; and

7.1.2 Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications. Unless Seller expressly agrees otherwise in writing, any items not manufactured by Seller (including incidental materials and consumables used in the performance of Services) shall carry only the warranty that the original manufacturers provide, and Seller gives no warranty on behalf of the manufacturers of such items. Furthermore, used Products other than Refurbished Parts and Products installed during performance of Services shall be sold “as is.”

7.2 Unless otherwise stated in the Contract, the warranty period for Products shall be 1 year from first use or 18 months from delivery, whichever occurs first, except that used Products installed during performance of Services, other than Refurbished Parts, are warranted for 30 days from the date of Service. Unless otherwise stated in the Contract, the warranty period for Services shall be 1 year from completion, and repair Services shall have a warranty period of 30 days from completion.

7.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing within the applicable warranty period. Seller shall thereupon: (i) at Seller’s option, repair or replace the defective Products; or (ii) re-perform the defective Services. No Products will be returned to Seller without having secured approval and terms for return from Seller’s authorized representative. If in Seller’s reasonable judgment Products cannot be repaired or replaced or Services cannot be re-performed, Seller will refund or credit monies paid by Buyer for that portion of Products or Services that do not meet the above warranties. Any repair, replacement or reperformance by Seller hereunder shall not extend the applicable warranty period. The parties shall mutually agree on the specifications of any test to determine the presence of a defect.

7.4 Seller shall not be responsible for removal or replacement of systems, structures or other parts of Buyer’s facility. Buyer shall bear the costs of de-installation, re-installation and transportation of Products to Seller and back to Buyer. All decontamination work necessary for the correction of defects shall be performed by Buyer at Buyer’s expense.
7.5 These warranties and remedies are conditioned upon the proper storage, installation, operation, and maintenance of Products and conformance with the operation instruction manuals provided by Seller or its suppliers or subcontractors. Seller does not warrant Products or any repaired or replacement parts against normal wear and tear or damage caused by misuse, accident, or use against the advice of Seller. Any modification or repair of any of Products or Services not in Seller's reasonable opinion, the safety of Seller from those indicated in the Contract; otherwise, Seller shall be liable for loss of profit or revenues, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages.

8.1 The total liability of Seller, on all claims of any kind (excluding claims for death or bodily injury), whether in contract, warranty, tort/extracontractual liability (including negligence), strict liability or otherwise, arising out of the performance or breach of the Contract or use or Products or Services shall not exceed the price of the specific Products or Services giving rise to the claim. All Seller's liability under the Contract shall terminate upon the expiration of the applicable warranty period, provided that Buyer may enforce a claim of such liability accruing during the applicable warranty period by an action timely commenced in accordance with the applicable statute of limitations or statute of repose, but in no event greater than one year after the expiration of such warranty period.

8.2 In no event, whether as a result of breach of contract, warranty, tort/extracontractual liability (including negligence), strict liability, indemnity, or otherwise, shall Seller be liable for loss of profit or revenues, loss of use of Products or Services or any associated equipment, interruption of business, cost of capital, cost of cover, downtime costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive or exemplary damages. 8.3 If Buyer cannot obtain for Seller from any reseller, end-customer or subsequent purchaser(s), the protections specified in this Article 8, Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims made by any reseller, end-customer or subsequent purchasers of Products or Services against Seller for loss or damage arising out of the performance or non-performance of Products or Services provided under the Contract.

8.4 If Seller furnishes Buyer with advice or assistance that is not required under the Contract, the furnishing of such advice or assistance will not subject Seller to any liability, whether in contract, indemnity, warranty, tort (including negligence), strict liability or otherwise.

9.5 For the purposes of this Article 8, the term "Seller" shall mean Seller, its affiliates, subcontractors and suppliers of any tier, and their respective agents and employees, whether individually or collectively.

9.6 The provisions of this Article 8 shall prevail over any conflicting or inconsistent provisions contained in any of the documents comprising the Contract, except to the extent that such provisions further restrict Seller's liability.


9.1 Any dispute involving a non-U.S. Buyer and arising out of or in connection with these Terms and Conditions or the Contract, including any question regarding its existence, validity or termination, that cannot be settled by negotiation of the parties shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC Rules"). The number of arbitrators shall be 1 unless the amount in dispute exceeds U.S. $1,000,000.00, in which case the number shall be 3. When 3 arbitrators are involved, each party shall have the right to nominate an arbitrator, and the Chairman shall be appointed by ICC International Court of Arbitration. The seat, or legal place, of arbitration shall be New York, New York, U.S.

9.2 The arbitration shall be conducted in the English language. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in these Terms and Conditions and the Contract, and if a solution is not found herein, shall apply the law as described in Section 9.3. The decision of the arbitrators shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authorities to appeal for revision of such decisions.

9.3 Any claim involving a U.S. Buyer brought by either party against the other party for claims arising out of or related to these Terms and Conditions or the Contract shall be brought in the U.S. District Court for the Northern District of Georgia, U.S., or in the event that court lacks jurisdiction to hear the claim, in the appropriate state courts of Forsyth County, Georgia, U.S., and the parties hereeto consent to the exclusive jurisdiction of such courts in respect of all such claims. Each party hereby submits to and accepts generally and unconditionally the jurisdiction of such courts with respect to its respective person and property, and irrevocably consents to the service of process in connection with any such action or proceeding by personal delivery to the party or by the mailing thereof by registered or certified mail, postage prepaid to the other party at the address for the party.

9.4 The validity, performance and all matters relating to the interpretation and effect of these Terms and Conditions and the Contract shall be construed and interpreted in accordance with the laws of the State of Georgia, U.S., excluding its law on the conflict or choice of laws, provided that any provision of such law invalidating any provision of these Terms and Conditions or modifying the intent of the parties as expressed in these Terms and Conditions shall not apply.

10. Confidentiality and Use of Trademarks and Trade Names.

10.1 In connection with the Contract, Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information. "Confidential Information" as used herein means: (i) all pricing for Products and Services, (ii) all terms of the Contract, and (iii) all information that is designated in writing as "confidential" or "proprietary" by the Disclosing Party at the time of written disclosure, or within 10 days after oral disclosure, by label, stamp or other written communication. The obligations of this Article 10 shall not apply as to any portion of the Confidential Information which: (i) is or becomes generally (ii) is or becomes available to the Receiving Party by its representatives or affiliates on a non-confidential basis from a source other than the Disclosing Party when such source is not, to the best of the Receiving Party's knowledge, subject to a confidentiality obligation to the Disclosing Party; (iii) is independently developed by the Receiving Party, its representatives or affiliates, without reference to the Confidential Information; or (iv) is approved in advance for disclosure in writing by an authorized representative of the Disclosing Party, to the extent of such approval.

10.2 The Receiving Party agrees: (i) to use the Confidential Information only in connection with the Contract and permitted use(s) of Products and Services, and (ii) to take reasonable measures to prevent disclosure of the Confidential Information, except to its employees or agents who have a need to know in order for Receiving Party to perform its obligations hereunder or to use Products or Services. The Receiving Party agrees to advise any recipient of such Confidential Information of the terms and conditions of this Article 10 and to take reasonable steps to ensure compliance.

10.3 If the Receiving Party is required by legal process or by order of a competent court or government agency to disclose any Confidential Information, such party agrees to: (i) provide the Disclosing Party with prompt notice, to the extent practicable, so that the Disclosing Party may seek an appropriate protective order or waive compliance by the Receiving Party with the provisions of this Article 10, and (ii) strictly limit disclosure of such information to the extent of such notice or order. Any disclosure by Disclosing Party pursuant to process or order shall not alter the confidential nature or status of Confidential Information.

10.4 Nothing herein shall be construed as granting to the Receiving Party any license under any invention, patent, trademark or copyright now or hereinafter owned or controlled by the Disclosing Party.

10.5 Buyer shall not disclose Confidential Information to Seller in performance with performance hereunder unless it is required to do so to enable Seller to perform work hereunder. If Buyer does disclose Confidential Information, Buyer warrants that it has the right to disclose such information, and Buyer shall indemnify and hold Seller harmless against any claims or damages resulting from improper disclosure by Buyer.

10.6 Notwithstanding anything to the contrary herein, this Article 10 shall not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

10.7 Buyer shall not publish, distribute, or use any information developed under, or about the existence of, the Contract or use the Hitachi HVB, Inc. name (or the name of any division or affiliate thereof), logo, trademark, service mark, or trade name for the purpose of advertising, making a news release, creating a business reference or for product or service endorsement without the prior written approval of Seller's authorized representative. Buyer acknowledges that all brand names, trade names, and trademarks of Seller are the exclusive property of Seller and that Buyer will not acquire any rights relating to the brand names, trade names, or trademarks by purchasing Products hereunder.


11.1 Buyer shall take all necessary precautions, at all times, for the health and safety of Seller personnel at the Site. If, in Seller's reasonable opinion, the safe execution of the Contract at the Site is, or apt to 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 the Site or personnel or Seller's persons or interests, Seller may remove some or all of its personnel from the Site or supervise performance of all or any part of the Contract at a location solely determined by Seller. Buyer shall assist in any evacuation. Any such removal hereunder shall be considered to be an event of Force Majeure.

11.2 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 Products and Services.

11.3 Site equipment operation is the responsibility of Buyer. If Buyer requires or permits Seller’s personnel to operate equipment at the 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 injury to persons (including death) or damage to property resulting from operation of equipment at the Site by Seller personnel.


12.1 Buyer shall provide Seller access to the Site and any other facilities free of charge, including the operating and development information and environment, as necessary for Seller's performance hereunder.

12.2 Seller shall promptly, and, if feasible, before such conditions are disturbed, notify Buyer in writing of: (i) subsurface or latent physical conditions at the Site differing materially from those indicated in the Contract; or (ii) unknown physical conditions at the Site, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. Buyer shall promptly investigate the conditions. If it is determined that such conditions do materially differ and cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and time for performance shall be made.

12.3 If, at the Site, Seller encounters toxic substances, hazardous substances or hazardous wastes (as such terms may be defined in any applicable statute, ordinance or regulation (collectively, "Hazardous Materials") that require special handling or disposal, Buyer shall immediately take whatever precautions are required to eliminate legally such hazardous conditions so that the work under the Contract may safely proceed. If any such Hazardous Materials cause an increase in Seller's cost of time required for performance of any part of the work, an equitable adjustment shall be made to the price and schedule. Buyer agrees to properly dispose of all Hazardous Materials produced or generated in the course of Seller's work at the Site.

12.4 Buyer shall indemnify and hold Seller harmless for any and all claims, damages, losses, causes of action, demands, judgments and expenses arising out of or relating to any Hazardous Materials which are: (i) present on the Site prior to the commencement of Seller's work; (ii) improperly handled or disposed of by Buyer; or (iii) brought or produced on the Site by others other than Seller.

13. Termination and Suspension.
13.1 Buyer shall have the right to terminate the Contract (or any portion thereof) for cause if Seller: (i) 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; or (ii) substantially breaches its material obligations hereunder (but only with respect to a material obligation for which the Contract does not provide exclusive remedies), provided that: (a) Buyer shall first have provided Seller with written notice of the nature of such breach and of Buyer's intention to terminate the Contract as a result of such breach; and (b) Seller shall have failed, within 30 days after receipt of such notice (or such extended period as is considered reasonable by the parties), to: (i) commence to cure such breach and diligently thereafter to pursue such cure; or (ii) provide reasonable evidence that no such breach has occurred. If Buyer terminates the Contract as provided in this Section 13.1, Buyer shall pay to Seller: (i) that portion of the Contract price allocable to Products completed or partially completed before the termination; (ii) all fees for Leased Equipment (“Lease Fees”) incurred to date; and (iii) all hours for Services performed at Seller’s then-current standard time and material rates.

13.2 Seller shall have the right to suspend or terminate the Contract (or any portion thereof) immediately for cause if: (i) 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; or (ii) there is an excusable delay (as per Article 5 above) lasting longer than 120 days; (iii) 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 (iv) Buyer materially fails to comply with any of the terms of the Contract, including but not limited to, the quality control exercised by Seller in its manufacture of Products shall be in accordance with Seller’s normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer’s requests to witness Seller’s factory tests of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include

13.3 If the Contract (or any portion thereof) is terminated for any reason other than those set forth in Section 13.1 above, Buyer shall pay Seller for all Products completed or partially completed, Lease Fees incurred and Services performed before the effective date of termination, plus a cancellation charge equal to 15% of the Contract price allocable to the uncompleted Products, unfinished term on Leased Equipment and unperformed Services. 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.

13.4 Any reasonable expenses incurred by Buyer in connection with a suspension or termination, including expenses for repossession, fee collection or costs of storage during suspension, shall be payable by Buyer upon submission of Buyer’s invoice(s). Performance of Seller’s obligations shall be extended for a period of time reasonably necessary to overcome the effects of any suspension.


14.1 Subject to the terms of the Contract, Seller shall indemnify Buyer against any damages, costs and expenses arising out of any suit, claim, or proceeding (collectively, a “Claim”) alleging that Products or Services infringe a patent in effect in the country of delivery (provided there is a corresponding patent issued by the U.S. or an European Union member state), or U.S. copyright in effect in the country of delivery; provided that: (i) Buyer promptly notifies Seller in writing of any such Claim; (ii) Buyer makes no admission of liability and gives Seller sole authority, at Seller’s expense, to direct and control all defense, settlement, and compromise negotiations; and (iii) Buyer provides Seller with full disclosure and assistance that may be reasonably required to defend any such Claim.

14.2 Seller shall have no obligation or liability with respect to any Claim based upon: (i) any Products or Services that have been altered, modified, or revised; (ii) the combination, operation, or use of any Products or Services with other products when such combination is part of any allegedly infringing process; (iii) failure of Buyer to implement any update provided by Seller that would have prevented the Claim; (iv) unauthorized use of Products or Services, including, without limitation, a breach of the provisions of the Contract; or (v) Products or Services made or performed to Buyer’s specifications.

14.3 Should any Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option: (i) procure for Buyer the right to continue using Products or Service, or portion thereof; (ii) modify or replace it in whole or in part to make it non-infringing; and (iii) failing (i) or (ii), take back Products or Services and refund any fees received by Seller attributable to the infringing Product or Service.

14.4 This states Seller’s entire liability for indemnification for patent, trademark, copyright, and trade secret infringement for Products and Services.

14.5 Notwithstanding the foregoing, with respect to any Products or Services, or portions thereof, which are not manufactured/developed by Seller, only the indemnity of the manufacturer/developer, if any, shall apply.

15. Changes.

15.1 Each party may at any time propose changes in the schedule or scope of Products or Services. If mutually agreed, the changes will be documented in a written change order, signed by authorized representatives of each party, along with any equitable adjustments in the Contract price or schedule. Seller is not obligated to proceed with the changed schedule or scope until the change order is signed.

15.2 All Products delivered shall conform to Seller’s part or version number specified or (at Seller’s option) its equivalent or the superseding number subsequently assigned by Seller. In the event the number ordered is no longer available, Seller is authorized to ship a valid interchangeable Product without notice to Buyer.

16. Inspection and Factory Tests. The quality control exercised by Seller in its manufacture of Products shall be in accordance with Seller’s normal quality control policies, procedures and practices. Seller shall attempt to accommodate Buyer’s requests to witness Seller’s factory tests of Products, if such witnessing can be arranged without delaying the work. Such access shall be limited to areas directly concerned with Products ordered by Buyer and shall not include restricted areas where development work or work of a proprietary nature is being conducted. Seller shall not be liable for any injuries sustained by Buyer or Buyer’s employees, agents, or inspectors while on Seller’s property. Buyer is responsible for the cost of any specially requested or non-routine testing.

17. General Clauses.

17.1 UNLESS OTHERWISE EXPRESSLY AGREED IN WRITING BY SELLER, PRODUCTS AND SERVICES HEREBEUNDER ARE NOT INTENDED FOR USE IN ANY NUCLEAR OR NUCLEAR RELATED APPLICATIONS. No response by Seller to any request for proposal, bid, acceptance by Seller, or agreement between the parties shall constitute consent to nuclear use absent an express affirmation of consent to nuclear use by Seller. Buyer hereby: (i) accepts Products and Services in accordance with the restriction set forth herein; (ii) agrees to communicate such restriction in writing to any and all subsequent purchasers or users; and (iii) agrees to defend, indemnify and hold harmless Seller from any and all claims, losses, liabilities, suits, judgments and damages, including special, incidental and consequential damages, arising from use of Products and Services in any nuclear or nuclear related applications, whether the cause of action be based in tort, contract or otherwise, including allegations that Seller’s liability is based on negligence or strict liability. If Seller expressly agrees in writing to any such nuclear use, Seller’s special terms and conditions for nuclear applications and protections against nuclear liability shall be attached and incorporated fully herein by reference.

17.2 Seller may assign or novate its rights and obligations under the Contract, in part or in whole, to any entity directly or indirectly controlling, controlled by, or under common control with Seller without Buyer’s consent. Buyer agrees to execute such documents as may be necessary to effect the assignment or novation. The delegation or assignment by Buyer of any or all of its duties or rights under the Contract without Seller’s prior written consent shall be void.

17.3 If any provision of the Contract is found to be void or unenforceable the remainder of the Contract shall not be affected and the parties hereby agree that they will replace any such void or unenforceable provision with a new provision that achieves substantially the same practical or economic effect and which is valid and enforceable.

17.4 The covenants intended by Seller to be enforceable after termination or cancellation of the Contract survive termination or cancellation thereof, including without limitation Articles 2 through 14 and Article 17.

17.5 The Contract represents the entire agreement between the parties, and no modification, amendment or waiver shall be binding on either party unless agreed in writing by the parties’ authorized representatives.

17.6 If Products or Services to be furnished under the Contract are to be used in the performance of a U.S. Government contract or subcontract, and a U.S. Government contract number shall appear on Buyer’s purchase order, those clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

17.7 This Contract may be executed in multiple counterparts that together shall constitute one agreement.

17.8 Except as provided in Article 8 of these Terms and Conditions, the Contract is for the benefit of the parties hereto and not for any third party.

17.9 Failure on the part of Seller to enforce any right pursuant to these Terms and Conditions or the Contract shall not constitute a waiver of such rights or any other rights.
AGREEMENT

THIS AGREEMENT, made this 15th day of May, 2017 by and between the CITY OF BATAVIA, (hereinafter referred to as the “City”), and Hitachi HVB, Inc., (hereinafter referred to as the “Company), with regard to certain services in connection with the 345kV Breaker Maintenance (PI Line Breaker) Project (hereinafter referred to as the “Project”.)

NOW THEREFORE, the City and the Company, in consideration of the mutual covenants hereinafter set forth, agree to as follows:

1. The Company agrees to perform services in connection with the Project as hereinafter stated. The Company shall at all times observe and comply with all laws, ordinances, and regulations of the federal, state, and local governments, which may in any manner affect the preparation of proposals or the performance of the Agreement.

2. The Company has made a proposal to the City, dated 4/26/2017, attached hereto Exhibit 1 and expressly made a part hereof.

3. This contract will constitute the entire agreement and understanding by and between the parties hereto, and it shall not be considered modified, altered, changed, or amended in any respect unless done so in writing with signatures by both the City and the Company.

4. The terms and conditions of this agreement will be the sole terms and conditions followed for this Agreement, unless otherwise approved in writing by the City Attorney and attached as an exhibit to this agreement. Any and all terms and conditions contained in Company’s Proposal will be superseded by the terms and conditions of this agreement.

5. The Company shall obtain, at its own expense, all permits and licenses which may be required to complete the Agreement, and/or required by federal, state, and local regulations and laws.

6. The City does not discriminate on the basis of handicapped status in the admission of, access to, or treatment of employment in its programs and activities.

7. Illinois Prevailing Wages: To the extent the proposed contract calls for the construction of a “public work,” within the meaning of the Illinois Prevailing Wage Act, 820 ILCS 130/.01 et seq. (“the Act”), Contractor shall not pay less than the prevailing rates of wages to all laborers, workmen, and mechanics performing work under this contract, and shall comply with the requirements of the Illinois Wages of Employees on Public Works Act 820 ILCS 130/1-12, to the extent they are applicable, including, without limitation, the submission of certified monthly payroll reports as required by 820 ILCS 130/5. The contractor is advised that failure to timely submit such reports shall be cause for the withholding of payments otherwise due the contractor until compliance with the reporting requirements is achieved. The current Illinois Department of Labor Prevailing Wage Rates for the County of Kane are available at their website http://www.state.il.us/agency/idol/. Prevailing wage rates are subject to revision monthly. Copies of the current prevailing wage rates are also available at the Kane County Purchasing Department, 719 Batavia Avenue, Geneva, Illinois.
Any bond furnished under this contract shall include such provisions as will guarantee the faithful performance of such prevailing wage clause as provided by the contract.

The Contractor and each of his Sub-Contractors shall pay each of his employees engaged in work on the project under this Contract in full (less deductions made mandatory by law) not less often than once each week.

If a contractor or subcontractor deems the work is not subject to the Act, the contractor or subcontractor shall then submit to the City, a letter indicating receipt of this notice and their determination that the Act does not apply. If the contractor or subcontractor believes the work is not subject to the Prevailing Wage Act, and it is later determined by the Illinois Department of Labor or a court of competent jurisdiction that prevailing wages should have been paid, the contractor shall indemnify and hold the City harmless therein for all costs and penalties incurred by the City related to the violation, including reasonable attorneys fees incurred by the City to defend such an action.

8. Any payment made to the Company shall be strictly on the basis of quantum meruit. The Company shall submit to the City a detailed breakdown of hourly rates billed to date with each pay request. The detailed breakdown shall be based on the hourly rate breakdown contained in the approved proposal. The City will pay the Company for the performance of the Agreement as follows:

a. Monthly payments based on actual work satisfactorily completed, less 10% retainage until final completion of the work

b. The total Agreement payment will not exceed $50,000.

c. Additions or deductions to the approved total amount for services must be authorized in writing by the City. Any out of scope work must be authorized in writing by the City. Any work performed without written approval from the City shall be solely at the expense of the Company.

d. Final payment to the Company will be made once the project has been completed, all paperwork completed and turned into the City of Batavia and/or State of Illinois, and approved with the State of Illinois and/or the City of Batavia.

9. The Company shall perform those phases of the Project to which this Agreement applies, and shall give consultation and advice to the City during the performance of the services.

10. The Company shall secure and maintain in force throughout the duration of this Agreement, Comprehensive General Liability including Products Liability/Completed Operations insurance naming the City as an additional insured written on an occurrence basis with a minimum coverage of $1,000,000 per occurrence and $2,000,000 policy limit, including Broad Form Contractual Liability insurance, in an amount not less than $1,000,000 per occurrence and $2,000,000 policy limit subject to the terms and conditions of the policy.

The Company shall secure and maintain in force throughout the duration of this Agreement, Automobile Liability insurance in an amount not less than $1,000,000...
combined single limit. Said insurance is to be extended to cover hired and non-owned vehicles.

The Company shall secure and maintain in force throughout the duration of this Agreement, Umbrella or Excess Liability coverage of $2,000,000.

The Company shall secure and maintain in force throughout the duration of this Agreement, Workers’ Compensation insurance, as required by statute, by an insurance company licensed to write worker’s compensation in the State of Illinois. Employer’s Liability, in an amount not less than $500,000 each accident, $500,000 disease-policy limit and $500,000 disease-each employee.

The insurance provided by Company shall be primary, and not contributory to any insurance purchased by the City. All insurance policies required by this contract shall be underwritten by insurance companies with a minimum A.M. Best rating of A. The certificate of insurance shall provide that it will not be canceled, reduced, or materially changed without providing the City thirty (30) days advance notice, via certified mail.

The Company shall not commence work under this contract until they have obtained all insurance required and such insurance has been approved by the City, nor shall the Company allow any subcontractors (hereafter Subs) to commence work on their subcontract until the same insurance has been obtained by the Sub. The Company and their Subs shall maintain all insurance for not less than one (1) year after completion of this contract.

If the Company is providing architectural, engineering, or surveying services, Company shall also file a certificate of insurance for professional liability, errors and omissions coverage subject to final acceptance by the City of said coverage.

In the event the City requires contractors or subcontractors working on City projects to acquire and provide proof of insurance covering public liability, death, and property damage naming the City as an insured, the City shall require said contractors or subcontractors to name the Company as an additional insured.

11. The Company shall provide the services as required herein in accordance with the Project Schedule.

12. The Company shall attend conferences and visit the site of the work as may be outlined in the Request for Proposal at any reasonable time when requested to do so by the City.

13. The Company represents and warrants that they are technically qualified and entirely conversant with the requirements of this Project; and that they have sufficient properly trained, organized, and experienced personnel and/or subcontractors to perform the services enumerated herein.

14. The City and the Company each binds themselves and their partners, successors, executors, administrators, and assigns to the other party of this Agreement and to the partners, successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, and as noted in the attachments, neither the City not the Company shall assign, subcontract, or transfer their interest in this
Agreement without the written consent of the other. Nothing herein will be construed as creating any personal liability on the part of any officer or agent of any public body, which may be a party hereto, nor will it be construed as giving any rights or benefits hereunder to anyone other than the City and Company.

The Company may subcontract portions of the work upon written approval from the City. These Subs shall conform, in all respects, to the applicable provisions specified and shall further be subject to approval by the City. The Company shall identify all proposed Subs who will furnish services under the terms of this proposal. The work to be done by the Subs must be outlined in detail in the proposal submitted by the Company. None of the services to be furnished by the Company may be subcontracted, assigned, or transferred to any other party or parties without the written consent if the City. The consent to subcontract, assign, or otherwise transfer any portion of the services to be furnished by the Company will not be construed to relieve the Company of any responsibility for the fulfillment of this Agreement. Any request for payment to the company, for work that was subcontracted, must be supported with a waiver of lien and contractor’s affidavit indicating the subcontractor has been paid and waives any lien on the project or funds for the project.

15. The Company shall indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, losses or liability, or any portion thereof, arising from injury or death to persons or damage to property occasioned by the negligent act, omission, or failure of the Company, its officers, agents and employees, in performing the work required by this Agreement

16. The City agrees to review each and every phase of the Project as in the aforementioned proposal in a timely manner. Upon approval of each phase, the Company shall then proceed to the next phase.

17. All drawings, specifications, reports, and any other project documents prepared by the Company in connection with any or all of the services to be furnished hereunder shall be delivered to the City for the expressed use of the City. The Company does have the right to retain original documents, but shall cause to be delivered to the City such quality of documents so as to assure total reproducibility of the documents delivered. All information, worksheets, reports, design calculations, plans, and specifications shall be the sole property of the City unless otherwise specified in the negotiated agreement. The Company agrees that the basic survey notes and sketches, charts, computations, and other data prepared or obtained by the Company pursuant to the Agreement will be made available, upon request, to the City without cost and without restriction or limitations as to their use. All field notes, test records, and reports shall be available to the City upon request.

18. The City reserves the right by written amendment to make changes in requirements, amount of work, or engineering time schedule adjustments. The Company and the City shall negotiate appropriate adjustments acceptable to both parties to accommodate any changes.

19. The City may, at any time by written order, require the Company to stop all or part of the services required by this Agreement. Upon receipt of such an order the Company shall immediately comply with its terms and take all steps to minimize the occurrence of costs
allocable to the services covered by the order. The City will pay for costs associated with suspension provided, they are deemed reasonable by the City.

20. The City reserves the right to terminate the whole or any part of this Agreement, upon ten (10) calendar day’s written notice to the Company. The City further reserves the right to cancel the whole or part of the Agreement, if the Company fails to perform any of the provisions in the Agreement of fails to make delivery within the time stated. The Company will not be liable to perform if situations arise by reason of acts of God or public enemy, acts of City, fires, or floods.

a. Should any of the key personnel identified in the Proposal become unavailable to work on the project, and no permanent substitute personnel reasonably satisfactory to the City is provided by the Company within thirty (30) days, and/or no temporary replacement personnel is provided by the Company immediately following the commencement of the subject Key Personnel’s unavailability, the City may, at its election, declare such contract terminated and at an end, reserve the right to maintain and action to recover damages arising due to breach of contract

b. The City reserves the right to terminate in whole or any part of this contract, upon written notice to the Company, in the event of default by the Company. Default is defined as failure of the Company to perform any of the provisions of this contract of failure to make sufficient progress so as to endanger performance of this contract in accordance with its terms. In the event of default and termination, the City may procure, upon such terms and in such manner as the City may deem appropriate, supplies or services similar to those so terminated. The Company shall be liable to the City for all excess costs for such similar supplies or service unless evidence is submitted to the City that in the sole opinion of the City clearly proves that failure to perform the contract was due to causes beyond the control and without the fault or negligence of the Company.

c. Upon termination, the Company shall cause to be delivered to the City all surveys, reports, permits, agreements, calculations, drawings, specifications, partially and completed estimates, and data, as well as products of computer aided drafting, design, and writing that have been paid for by the City. Cost of termination incurred by the Company before the termination date will be reimbursed by the City only, if prior to the effective termination date, the City receives from the Company a list of actions necessary to accomplish termination and the City agrees in writing that those actions be taken. Upon receipt of the termination notice, the Company shall stop all work until said Agreement is reached.

21. The City agrees to notify the Company at least twenty-four (24) hours in advance of the need for personnel or services.

22. Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including the City’s Contractors, if any.
23. An notice relating to claims for damages or relating to allegations of default shall be in writing and shall be made by certified or registered mail, postage prepaid, return receipt requested, or reliable overnight courier, to the parties as follows:

If to Company: Hitachi HVB, Inc.
Attention: Kevin Case
7250 McGinnis Ferry Rd
Suwanee, GA 30024

If to the City: City of Batavia
Attention: City Clerk
100 North Island Avenue
Batavia, IL 60510

with copies to: City of Batavia
Attention: Bob Rogde
200 N. Raddant Road
Batavia, IL 60510

and: City of Batavia
Attention: City Attorney
100 North Island Avenue
Batavia, IL 60510

24. This Agreement contains the entire agreement between the parties. No other writing, discussion or any other communication about possible terms is to be construed as forming part of the agreement between the parties. Any terms and conditions submitted by the Company as part of its proposal are specifically disavowed and such terms and conditions shall not supersede this Agreement.

25. This Agreement shall be binding upon the partners, heirs, successors, executors, administrators, and assigns of all the parties hereto.

26. This Agreement shall be construed in accordance with the laws of the State of Illinois. Venue for any litigation arising from this Agreement shall be limited to the Courts of the Sixteenth Judicial Circuit, Kane County, Illinois.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first above written.

CITY OF BATAVIA, an Illinois Municipality, Company,

By: __________________________  By: ________________________________
Mayor President
4/26/2017
Re: 345 kV Breaker Maintenance – Hitachi HVB, Inc.

Attest: Attest:

By: __________________________ By: ________________________________
    City Clerk                     Secretary