

**JOINT MEETING OF THE BIWABIK CITY COUNCIL AND PUBLIC UTILITIES
COMMISSION**

CITY OF BIWABIK/BIWABIK PUC

AGENDA

**MONDAY, JULY 24, 2017
5:00 P.M. SPECIAL MEETING**

**BIWABIK CITY HALL
321 N. MAIN STREET
BIWABIK, MN**

- 1. Call to Order/Roll Call**
- 2. Approval of Electric Infrastructure Acquisition Agreement**
- 3. Approval of Banner Permit – United Way of MN**
- 4. Adjourn**

**MUNICIPAL ELECTRIC INFRASTRUCTURE
ACQUISITION AGREEMENT**

BETWEEN

ALLETE POWER SYSTEMS, INC.

AND

BIWABIK PUBLIC UTILITIES COMMISSION

DATE: July__, 2017

THIS AGREEMENT is made this ___ day of July, 2017, by and between the City of Biwabik, a municipal corporation (the “City”, and ALLETE Power Systems, Inc., a Minnesota corporation (“APSI”), each which may be referred to herein individually as “Party” and collectively as Parties.”

WHEREAS, APSI has agreed to acquire the City’s electric distribution infrastructure via a cash payment representing the April 1, 2017 book value of the City’s electric distribution system; and

WHEREAS, APSI has agreed to provide a stable and predictable monthly distribution services charge for the City that will include regular system maintenance and reinvestment in the infrastructure over the term of the Agreement.

WHEREAS, the City will continue to provide electric utility service through its use of the electric distribution infrastructure and retains the right to set retail electric service rates, set electric service regulations for City customers, and manage customer interactions and electric service billing.

WHEREAS, throughout its ownership APSI will maintain the electric distribution infrastructure assets in accordance with good utility practices and work closely with the City regarding development and review of infrastructure improvement plans.

AGREEMENT

In consideration of the foregoing Recitals, each of which is incorporated by reference herein as an essential term hereof, and the mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

1. **Asset Purchase.** Within 30 days of execution of this Agreement, APSI will pay the City the book value (calculated as of July 30, 2017) of the Electric Distribution Infrastructure Assets owned by the City including power poles, transformers, conductors, and other equipment owned by the City; beginning at the high-side of the substation transformer and continuing up to the customer service points where City equipment is connected to customers’ equipment, all as further described on Exhibits A.1 and A.2 attached hereto, as well as any improvements, additions and deletions thereto during the Term of the Agreement (the “Assets”). The Assets exclude all decorative street lights, which shall remain owned and maintained by the City.
2. **Access and Use.** The City hereby grants APSI full access and use of its municipal real property, right of way, easements, licenses, permits and any other right, title or interest to own, use and maintain the Assets during the Term of this Agreement.
3. **Distribution Service Charge.** The City shall pay APSI a fixed Distribution Service Charge per month for use of the Assets during the initial 12 months of the Agreement.

The Distribution Service Charge shall be adjusted annually to be equal to fourteen percent (14%) of the Net Book Value as reported as of July 30th of each year covered under the Term of the agreement and shall be allocated to the City in 12 equal installments (rounded to the nearest whole dollar), annually beginning with the October billing. See Attachment B.

4. **Maintenance Fee.** APSI shall pay system maintenance costs as incurred by Biwabik for the electric distribution system on behalf of Biwabik. APSI shall charge the City a fixed monthly fee for maintaining the Assets and improvements thereto and vegetation management during the Term of the Agreement. See Attachment B.
5. **Ad Valorem Property Taxes.** Any applicable ad valorem property taxes on the Assets shall be a pass-through cost to the City and shall be added to the Distribution Service Charge. The amount of taxes payable by APSI for the calendar year shall be allocated to the City in 12 equal installments, added to the Distribution Service Charge after any such payments have been made by APSI.
6. **Planned System Investments.** Company will invest in the Assets according to a capital spending plan agreed to between APSI and the City by October 1 of each year. The initial capital spending plan is included in Attachment C.
7. **Unplanned Events.** As unplanned events occur, including, but not limited to a wind or ice storms, or equipment failure in excess of \$5,000 per occurrence/event, replacements will be added to the book value of the Assets and treated as unplanned capital expenditures. Unplanned events in excess of \$5,000 per year may be managed through delays of other planned capital investments or monthly maintenance work, as mutually agreed by Company and the City.
8. **Net Book Value.** APSI shall provide a report of the Net Book Value of the Assets, as of July 30th of each year covered under the Term of the agreement. The Net Book Value will be reported to the City by September 1 of each year.
9. **Term.** The Term of this Agreement (Agreement) will begin on July 1, 2017 (“Effective Date”) and will continue through at least July 30, 2027 (“Initial Term”), with written notice of cancelation to be provided at least one year prior to the termination date, with no prior right of cancelation except as noted below. If written cancelation notice is not delivered by either party prior to July 1, 2026, this Agreement shall continue until canceled by either party, provided that the canceling party provides at least one year prior written notice of cancelation to the other party.
10. **Due Authorization.** The execution, delivery and performance of this Agreement have been duly and validly authorized by all necessary action.
11. **No Breach.** Each Party has full power, authority and legal capacity to otherwise perform its obligations under this Agreement. The execution and delivery of this Agreement will not: (i) violate any provision of the articles of incorporation, bylaws

or comparable governing documents or instruments, (ii) violate any applicable laws or injunction applicable to any Party, (iii) require any filing with, permit, or other authorization by a governmental body, authorization, consent or approval of, or the giving of any notice to, any person, (iv) result in a violation or breach of, or constitute (with or without due notice or lapse of time or both) a default (or give another person any rights of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, franchise, permit (including, but not limited to, any permits, approvals or authorizations of any governmental body).

12. Limitation of Liability. During the Term of this Agreement (i) APSI will not be liable to the City or any third party, whether in contract, in tort (including negligence and strict liability) or otherwise for any loss or damage suffered or alleged; (ii) nor shall APSI be liable to the City or any third party for loss of use of equipment or power system, interruption or disturbance of service for any cause other than gross negligence or willful misconduct; and (iii) APSI will not be liable for the City's loss of profits or revenues or the loss of use thereof, claims of customers of the City, or for any special, indirect, incidental or consequential loss or damage whatsoever arising out of the acquisition, ownership, operation and maintenance of the Assets during the term hereof, whether such claim arises by the City or by any individual. Any liability of APSI under this Agreement shall not exceed the value of the Assets..**13**

Survival of Representations and Warranties, Covenants and Agreements. Each of the representations and warranties of the Parties in any exhibit, schedule, certificate, instrument or document delivered by or on behalf of any of the Parties pursuant to this Agreement will survive the execution date of the Agreement.

14.

Notices. All notices hereunder will be in writing and will be given by personal delivery, via facsimile transmission (receipt telephonically confirmed), by overnight courier (prepaid), or by certified or registered first class mail, postage prepaid, return receipt requested, sent to each Party, at its address as set forth below or at such other address or in such other manner as may be designated by such Party in written notice to each of the other Parties:

If to APSI: ALLETE Power Systems, Inc.
 30 West Superior Street
 Duluth, Minnesota 55802
 Attention:

If to City: City of Biwabik
 City Hall
 321 North Main Street
 Biwabik, MN 55708

12. Entire Agreement. This Agreement, including the documents, instruments, and agreements to be executed by the Parties pursuant hereto, contains the entire agreement of the Parties and supersedes all prior or contemporaneous agreements and

understandings, oral or written, between the Parties with respect to the subject matter hereof.

13. **Amendments.** No purported amendment, modification or waiver of any provision of this Agreement will be effective unless in a writing specifically referring to this Agreement and signed by all of the Parties to be bound by such amendment, modification or waiver.
14. **Successors and Assigns.** This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign this Agreement or its rights hereunder, or any other agreement contemplated by this Agreement, or delegate any obligations of such Party hereunder, except with the prior written consent of the other Party; provided, however, that any Party may assign this Agreement or its rights hereunder, or any other agreement contemplated by this Agreement, to an Affiliate of such Party so long as the assigning Party remains primarily liable for any and all obligations so assigned.
15. **Governing Law and Jurisdiction.** This Agreement, including the documents, instruments and agreements to be either or both executed and delivered by the Parties pursuant hereto, will be construed, governed by and enforced in accordance with the internal laws of the state of Minnesota, without giving effect to the principles of comity or conflicts of laws thereof.
16. **Counterparts and Electronic Signatures.** This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same Agreement.
17. **Headings.** The headings of the articles, sections and subsections of this Agreement are intended for the convenience of the Parties only and will in no way be held to explain, modify, construe, limit, amplify or aid in the interpretation of the provisions hereof.
18. **Severability.** In the event that any provision of this Agreement is declared or held by any court of competent jurisdiction to be invalid or unenforceable, such provision will be severable from, and such invalidity or unenforceability will not be construed to have any effect on, the remaining provisions of this Agreement, unless such invalid or unenforceable provision goes to the essence of this Agreement, in which case the entire Agreement may be declared invalid and not binding upon any of the Parties.
19. **Waiver.** No failure on the part of a Party to exercise and no delay in exercising any right hereunder will operate as a waiver thereof nor will any single or partial exercise of any right hereunder preclude any other or further exercise thereof or the exercise of any other right.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed individually or by duly authorized representatives as of the day, month and year first above written.

CITY:

City of Biwabik

APSI:

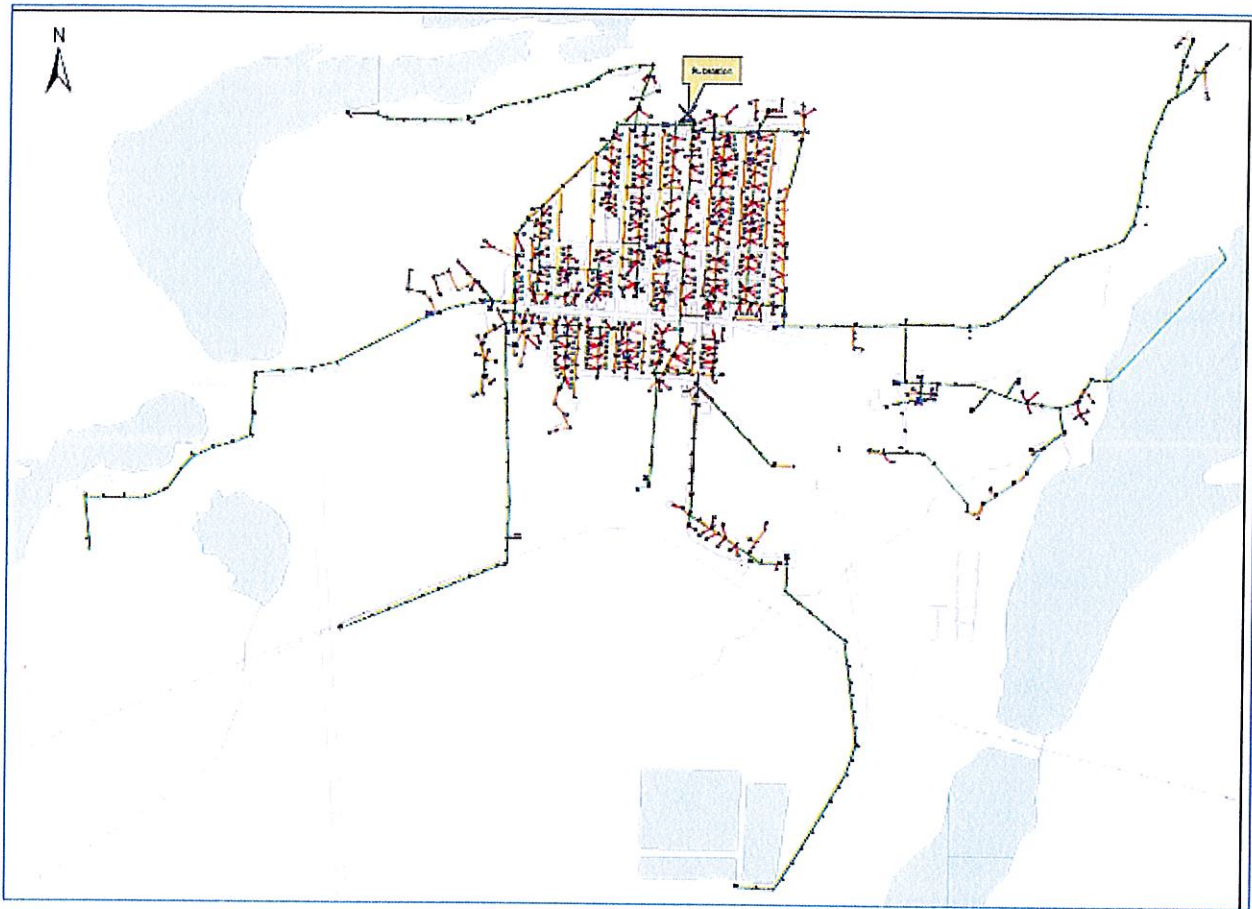
ALLETE Power Systems, Inc.

By: _____
Name: _____
Its: _____

By: _____
Name: _____
Its: _____

ATTACHMENT A.1

MUNICIPAL ELECTRIC INFRASTRUCTURE MAP



ATTACHMENT A.2

MUNICIPAL ELECTRIC INFRASTRUCTURE

Book Value
July 30, 2017

SUBSTATION	\$203,116
POLES	155,785
WIRE PRIMARY	126,599
STORM REBUILD	97,359
CABLE SECONDARY	73,991
WIRE SECONDARY	44,813
CROSSARMS	34,474
TRANSFORMERS OH	33,022
CABLE PRIMARY	27,596
STREET LIGHTS	26,610
CUTOUT LINE	25,283
ANCHOR	24,747
PEDESTALS	18,539
CUTOUT TRANSFORMER	5,431
SPAN GUY	370
ARRESTER O.H. LINE	314
TOTAL	\$898,049

To be reported annually as of July 30th.

ATTACHMENT B

ANNUAL FEES

DISTRIBUTION SERVICE CHARGE	\$125,727
ANNUAL MAINTENANCE FIXED FEE	<u>35,000</u>
	160,727
 BILLED MONTHLY	 \$13,394

The Distribution Service Charge shall be adjusted annually to be equal to fourteen percent (14%) of the Net Book Value as reported as of July 30th of each year covered under the Term of the agreement and shall be allocated to the City in 12 equal installments (rounded to the nearest whole dollar), annually beginning with the October billing.

ATTACHMENT C

PLANNED INFRASTRUTURE INVESTEMENTS DURING THE FIRST YEAR

	Count	Spend
Pole Replacements	3	\$12,000
Transformer Replacements	9	<u>18,000</u>
		\$30,000

Details of the MP inventory purchase

The handout chart shows the Electric Utility fund's fixed expenses.

The following will try to explain the advantages of the Electric Utility entering into the MP agreement.

- 1- We still owe MP \$102,000 for the Sept. 2016 storm damage.
 - 2- We have 124 transformers that need replacement.
 - 3- We have 22 poles that need to be replaced. One was replaced behind old City Hall in June 2017. Cost \$10,000-\$13,000.
 - 4- MP's capital plan is to change poles and transformers, \$30,000 worth of work each year, replacing 3 poles and 9 transformers, at MP's internal rates. If the Electric Utility hired MP or another contractor it would cost a lot more, \$4-5,000 per pole, and \$2-3000 per transformer. Up to \$42,000.
 - 5- The cost of disposing transformers is separated into two areas, \$1.00 per pound to process the PCB's, a transformer weighs 350 lbs. Then they have to be transported to Utah, which cost about \$700 to \$1000 each. \$43,000 for PCB's, and \$86,000 to \$124,000 for transportation.
 - 6- Future storm damage as bad or worse than the Labor Day, 2016, would put the Electric Utility into Jeopardy.
 - 7- The PUC has participated in the phase 4 city project for \$200,000- or the first 5 years payments. \$100,000 of that is part of the \$898,000 MP will pay for the physical inventory.
 - 8- MP will do all the Vegetation Management. In 2014 the Electric Utility paid \$50,000 for Vegetation Management. MP estimates they will spend \$100,000 in the next year for vegetation mgmt.
 - 9- MP has increased rates to retail customers, but Biwabik PUC experienced no rate increase. Our average cost is 7.3 cent per KWH. We operate on, and our fixed expenses come from the difference of our rates, or 3.0 cents per KWH.
 - 10- After 10 years we can repurchase the updated utility inventory for the same \$900,000.
- Conclusion: Without a monstrous rate hike the Electric Utility could not operate!
It is not our intention to burden our rate payers when Mp has offered a solution.

Calculations to determine MP offer

Total Revenue Electric Fund 2016	\$693,183.00
Commercial = 40%	
Residential = 58%	
Municipal = 2%	
Total paid MP 2016	\$439,816.00
Balance cash on hand	\$253,367.00
Less \$13000 MP maint. Etc	\$156,000.00
Balance after MP Payment	\$ 97,367.00
Int. on \$800,000 at 3.3%	\$ 26,400.00
Int. on present MS investments	<u>\$ 8,000.00</u>
Available to BUC Electric Fixed Expenses	\$ 131,767.00
Estimated Fixed Expenses \$80,000	

CITY OF BIWABIK
BANNER APPLICATION

Applicant: United way of Northeastern MN
Contact Information: Mail: 1229 W Lake St. Chisholm
Phone: 218-254-3329
Email: china@unitedway.net

Physical Location of Banner:

Lot(s): _____ Block: _____
Plat: _____
Street Address: _____

} where Att of
July Banner
is hung.

Square Footage of Banner: 33" H x 30 ft long

Square Footage of Wall Banner is to be Attached to: _____

Dates Banner Will Be Displayed: From 7/19 To 8/20

Submitted by: Erin Shay

Signature: *Erin Shay* Date: 7/1/17

Approved: _____ Date: _____