

CITY OF ELROY
PUBLIC NOTICE

UTILITY COMMISSION SPECIAL MEETING

THE CITY OF ELROY UTILITY COMMISSION WILL HOLD A SPECIAL MEETING ON **MONDAY, JANUARY 30, 2023 AT 3:00 PM** AT CITY HALL LOCATED AT 1717 OMAHA STREET.

AGENDA

This meeting will follow Robert's Rules of Order, which provides common rules and procedures for deliberation and debate in order to place the whole membership on the same footing and speaking the same language.

1. Call to Order
2. Roll Call
3. Public Comment (5 min. limit)
4. Discussion and possible action on EPS Quote- Substation Breaker Diagnoses
5. Commission Communication
6. Adjourn

Bruce Lange
Utility Commission President

Notification of this meeting has been posted in accordance with Wisconsin's Open Meeting Laws. The Commission may take action on any item on the agenda. It is possible that members or a quorum of members from other governing bodies may be in attendance at the above-stated meeting to gather information; no action will be taken by any governmental body at the above-stated meeting other than the governmental body specifically referred to above in this notice. Upon reasonable notice, efforts will be made to accommodate the needs of disabled individuals through sign language interpreters or other auxiliary aids. For additional information or to request this service, contact Geena Skowronski, City Administrator, (462-2400) or by writing to Elroy Public Utilities, 1717 Omaha Street, Elroy, WI 53929.

ELECTRIC POWER SYSTEMS TESTING & ENGINEERING SERVICES

1361 Glary Road Green Bay, WI 54304 United States • www.epsii.com

Date: 1/19/23

Shawn Kuester

Elroy Electric and Water Utility

1717 Omaha Street

Elroy, WI 53929

Reference: EPS Quote GRB-BW-Q23036

1. PROJECT SUMMARY:

Electric Power Systems International Inc. (EPS) is pleased to offer professional services on Main Substation VCB Troubleshooting. This project is located in Elroy, Wisconsin. All testing will be in accordance with NETA Acceptance Testing Specifications as stated below.

2. SCOPE OF WORK:

Troubleshoot VCB breakers that are not spring charging properly.

3. PRICING: \$ 8,067.00

4. ELECTRIC POWER SYSTEMS RESPONSIBILITIES

- 4.1. Will provide the necessary field service engineers, technicians, tools and test equipment to complete the testing of the equipment as defined by project scope of work.
- 4.2. Will provide a full report to include scope of work, test dates, test data, problems found and recommendations.
- 4.3. Will perform a daily onsite JHA, Coordinate with customer to perform Lock-Out/Tag-Out (LOTO) activities, perform equipment inspections and report any items that are believed to have a potential for an unsafe work condition.

5. CUSTOMER RESPONSIBILITIES:

- 5.1. Supply adequate power for test equipment as required by project scope of work. 120v/15A, 480v/150A
- 5.2. Provide access and assistance for all electrical equipment and will be responsible for LOTO & safety grounding.

6. CLARIFICATIONS AND ASSUMPTIONS:

- 6.1. Quotes are valid for 90 days. EPS full terms & conditions can be released upon request by the client.
- 6.2. Testing will be completed based on NETA ATS 2017. All NETA optional testing is excluded.
- 6.3. The pricing assumes field technicians working Monday – Friday, 10 hour/days, consecutive day shifts.

Thank you,

Ben Swanson
Field Service Manager

1361 Glary Road
Green Bay, WI 54304
b.swanson@epsii.com
www.epsii.com

**ELECTRIC POWER SYSTEMS INTERNATIONAL, INC.
TERMS AND CONDITIONS OF SALES AND SERVICE**

1. Terms and Conditions of Sale

a. ELECTRIC POWER SYSTEMS INTERNATIONAL, INC. (the "Company") pursuant to the other documents (the "Purchase Order") attached hereto and incorporated herein has agreed to provide the services set forth in the Purchase Order to Elroy Electric and Water Utility (the "Purchaser").

b. The Terms and Conditions contained herein shall not be modified by oral, parol, or other extrinsic evidence, but may only be modified or supplemented by a written document duly executed and accepted by Company. The Terms and Conditions contained herein supersede any prior or contemporaneous agreements or correspondence between the parties. In the event of any conflict between the Terms and Conditions set forth herein and the Purchase Order, then in that event, the Purchase Order shall control.

2. Terms of Payment

a. Unless stated otherwise in Company's Purchase Order, the full invoice amount is due and payable within thirty (30) days of invoice date.

b. All invoices submitted by the Company to Purchaser shall be paid as set forth above. In the event invoices are not paid in accordance with such terms of payment, interest shall be charged on each invoice at one and one half (1-1/2%) percent per month on the unpaid balance (or at the maximum legal rate permitted), computed from the date payment is due (as set forth in 2.a. above) until the date paid.

c. In the event that the Company incurs legal expense(s) in enforcing its rights to receive timely payment of all invoices, Purchaser agrees to pay all reasonable attorney's fees, court costs, and other expenses incurred by the Company.

d. Any check or remittance received from or for the account of the Purchaser may be accepted and applied by Company against any indebtedness or obligation owing by Purchaser as shown by the books and records of Company without prejudice to or the discharge of the remainder of any such indebtedness or obligation regardless of any condition, statement, or notation appearing on, referring to or accompanying such check or remittance.

3. Payment

a. If, in the opinion of the Company, financial condition of the Purchaser at the time the parts or equipment is ready for shipment or services are ready for performance is such that the Company does not believe the Purchaser will make timely payment, the Purchaser may be requested before shipment or before performance of services, to arrange terms of payment reasonably satisfactory to the Company.

b. In the event of the insolvency, bankruptcy or default of the Purchaser, the Company shall be entitled to cancel any outstanding Purchase Order(s), to receive reimbursement for its reasonable and proper cancellation charges, and to retain possession of parts or equipment repaired or serviced under the Purchase Order until the charges are paid. If the charges are not paid within ninety (90) days of completion of the work and invoicing the Purchaser, Company, at its option, shall be entitled to sell the parts or equipment at a public or private sale upon the giving of written notice to the Purchaser at least five (5) days prior to such sale.

4. Quotations

a. Unless otherwise stated, Quotations are void unless accepted within ninety (90) days from the date thereof. During said period and prior to acceptance, all Quotations are subject to change upon notice. All Orders made thereon are not binding until and unless accepted in writing by the Company. Shipping dates are approximate and are based upon prompt in writing receipt of all necessary information and with approved drawings whenever required. Stenographic and clerical errors are subject to correction.

5. Price Policy

Prices are subject to change without notice. Applicable price adjustment clause(s) will be stated at the time of quotation and will be included as part of the quotation.

6. Delivery - Risk of Loss

All transportation costs shall be for the account of the Purchaser and shall be added to the invoice. The parts or equipment sent to the Company for repair shall be delivered by Purchaser F.O.B. the Company's Service Center. Repaired parts or equipment and other parts or equipment furnished by the Company shall be delivered to the Purchaser F.O.B. the Company's Service Center. Risk of loss of or damage to any parts or equipment furnished by the Company under the contract shall pass to the Purchaser F.O.B. the Company's Service Center. Title to any parts or equipment finished by the Company under the contract shall pass to Purchaser upon payment in full. Risk of loss or damage to the Purchaser's parts or equipment shall be with the Purchaser at all times.

7. Shipping Dates

Shipping and/or completion dates are approximate and are based on prompt receipt of all necessary information and approvals from the Purchaser. Unless the Purchaser stipulates on its Purchase Order that an earlier shipment is not permissible, the Company reserves the right to ship prior to the contract shipping date.

8. Force Majeure

a. The Company shall not be liable for failure to perform or for delay in performance due to fire, flood, strike labor issue(s), act of God, act of any governmental authority or of the Purchaser, embargo, fuel or energy shortage, car shortage, faulty castings or forgings, wrecks or delay in transportation, inability to obtain necessary labor, materials or manufacturing facilities from usual sources, unanticipated, hidden or concealed site conditions, or due to any cause beyond its reasonable control.

b. In the event of delay in performance due to any such cause, the date of delivery or time for completion will be extended by a period of time reasonably necessary to overcome the effect of such delay. The Company reserves the right to amend the purchase price as a result of increased costs from such delay.

9. Penalty Clauses

Under no circumstances shall the Company be liable or responsible for any penalty or liquidated damages of any kind, written or implied, nor shall Company be liable for any liabilities arising directly or indirectly out of such clauses, unless such penalty or liquidated damage provision has been accepted and approved by Company in writing by a duly authorized designated officer of the Company.

10. Warranty

a. The Company expressly warrants, subject to the terms, conditions, and limitations contained herein that: (a) any replacement or other parts furnished by it, or any work done by it on the Purchaser's equipment shall be free of defects in workmanship and materials, (b) any specialized tools, equipment and instruments for the use of which a charge is made to the

Purchaser shall be adequate for the work to be performed, and (c) the services performed by it will be competent.

b. The Company shall, upon prompt written notice from the Purchaser, correct any failure to conform to any of the applicable foregoing warranties which is first manifested within a period of one (1) year after completion of the work, or shipment of the part. Such correction may, in the case of item (a) above, and at the election of the Company, be limited to the repair or replacement F.O.B. the Company's Service Center, of the defective part or parts furnished by it. In the case of any other breach of the foregoing warranty, the Company shall furnish its services or specialized tools, equipment and instruments, to the same extent as provided on the original work. It is understood and agreed that, unless otherwise agreed to in writing by the Company, the Company assumes no responsibility with respect to the suitability of the Purchaser's equipment or with respect to any latent defects in the same. In no event shall the Company be responsible for providing working access to the defect (which working access shall be the sole responsibility of the Purchaser), including the removal, disassembly, replacement or reinstallation of any equipment, materials or structures to the extent necessary to permit the Company to perform its warranty obligations, or transportation costs to and from the Company factory or repair facility, or for damage to equipment components or parts, resulting in whole or in part from improper maintenance or operation, or from their deteriorated condition. The condition of any tests shall be mutually agreed upon and the Company shall be notified of, and may be present at all tests that may be made.

c. The above warranty term does not apply to products which have a useful life, under normal use, inherently shorter than the one (1) year period indicated above in which instance the warranty shall extend only to that period of its useful life. The Company's sole responsibility with respect to products manufactured by the supplier is to extend to Purchaser the same warranty it receives from the supplier.

d. The Company warrants that any engineering studies performed by it will conform to good professional standards then existing at the time of performance. Any portion of the study which does not so conform shall be corrected by the Company upon notification in writing by the Purchaser within six (6) months after completion of the study.

e. All warranty work shall be performed on a single shift straight time basis, Monday through Friday. In the event that the product requires correction of warranty items on an overtime schedule, the premium portion of such overtime shall be for the Purchaser's account.

f. These warranties shall not apply to any work which (i) has been improperly repaired or altered (other than by Company); (ii) has been subjected to misuse, negligence or accident; (iii) has been installed, commissioned and used in a manner contrary to Company's instructions; (iv) is comprised of materials provided or design stipulated by Purchaser; (v) is used equipment; (vi) has been damaged by or subjected to abrasion, corrosion, or chemicals and gasses due to the physical environment or other conditions exceeding those specified, including without limitation temperature or dirt.

g. EXCEPT AS EXPRESSLY SET FORTH HEREIN, COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, IN CONNECTION WITH THIS PURCHASE ORDER AND THE TRANSACTIONS CONTEMPLATED HEREBY, THE FOREGOING EXPRESS WARRANTIES ARE THE SOLE AND EXCLUSIVE WARRANTIES, AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES AND MERCHANTABILITY OF FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM ANY COURSE OF DEALING OR USAGE OR TRADE ARE EXPRESSLY DISCLAIMED HEREIN, WITH THE EXCEPTION SOLELY OF THE WARRANTY OF TITLE AND WARRANTY AGAINST PATENT INFRINGEMENT.

11. Limitation of Liability

a. THE COMPANY AND ITS CONTRACTORS, SUBCONTRACTORS, SUPPLIERS, AND OTHER AGENTS SHALL, UNDER NO CIRCUMSTANCES OR EVENT, BE LIABLE TO PURCHASER IN EITHER CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, FOR ANY INDIRECT, SPECIAL,

INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OR FOR LOSS OF PROFITS OR REVENUE, OR LOSS OF USE OF EQUIPMENT OR POWER SYSTEM ARISING DIRECTLY OR INDIRECTLY OUT OF THE WORK OR SERVICES PERFORMED BY THE COMPANY OR THE PARTS AND EQUIPMENT UTILIZED OR PROVIDED HEREIN. THE LIMITATION OF LIABILITY SET FORTH HEREIN SHALL ALSO APPLY TO ALL CLAIMS OF CUSTOMERS OF PURCHASER AND ANY DAMAGES SUSTAINED BY SUCH CUSTOMERS.

b. THE LIMITATION OF LIABILITY CONTAINED IN SUBPARAGRAPH a. ABOVE, BY WAY OF ILLUSTRATION, AND NOT BY WAY OF LIMITATION SHALL PERTAIN TO ANY AND ALL LIABILITY ARISING DIRECTLY OR INDIRECTLY OUT OF THE PERFORMANCE OR BREACH THEREOF OF ANY PURCHASE ORDER BY THE COMPANY, AND FROM ANY LIABILITY ASSOCIATED WITH THE MANUFACTURE, SALE, DELIVERY, INSTALLATION, SUPERVISION, DIRECTION, MAINTENANCE, REPAIR, OR USE OF ANY EQUIPMENT COVERED OR FURNISHED UNDER THE PURCHASE ORDER WHETHER SUCH DAMAGES ARISE IN contract, warranty, in tort (including negligence or otherwise).

c. THE TOTAL AMOUNT OF ANY AND ALL CUMULATIVE RECOVERY AGAINST THE COMPANY AND ITS CONTRACTORS, SUPPLIERS, SUBCONTRACTORS, AND OTHER AGENTS SHALL NOT UNDER ANY CIRCUMSTANCES WHATSOEVER EXCEED THE LESSER OF THE AMOUNT OF THE PURCHASE ORDER, INCLUDING ANY AND ALL CHANGES THERETO, OR THE AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS (\$250,000).

12. Insurance

During the performance of the Work, the Company shall obtain and maintain the following insurance:

a. Workman's Compensation Insurance and Employer's Liability Insurance as required by law;

b. Comprehensive General Liability Insurance with a limit of \$1,000,000 each occurrence/aggregate for bodily injuries and with a limit of \$1,000,000 each accident/aggregate for property damage.

c. Automobile Liability Insurance with a combined limit of \$1,000,000 bodily injury and property damage.

If Purchaser so requests, the Company shall furnish Purchaser with certificates evidencing the foregoing coverage.

13. Nuclear Insurance – Indemnity

With respect to nuclear projects, the Purchaser or the owner of the facility shall have complete and proper insurance protection against liability and property damage which may result from a nuclear incident, and shall agree to indemnify the Company, its suppliers, employees, contractors, and subcontractors of and from any and all claims, actions, causes of actions, or lawsuits resulting from a nuclear incident.

14. Returns

No equipment, product, parts, or supplies may be returned without first securing the prior written approval and terms for return from the Company. The return of all of the aforesaid items shall not be permitted without a properly executed returned goods authority form accepted by the Company. All of such items returned which do not provide instructions strictly in accordance with the Company's authority or without charges prepaid will not be accepted. The Company reserves the right to refuse any of such items for credit. All materials returned and accepted will be subject to a minimum twenty percent (20%) restocking charge.

15. Termination

After acceptance by the Company, a Purchase Order shall not be terminated, in whole or in part, by the Purchaser except by agreement in writing from the Company and any such agreement will be contingent upon payment of reasonable charges based upon expenses already incurred and commitments made by the Company plus a charge of ten (10%) percent of the contract price to compensate for indirect costs resulting from the termination.

16. Patents

Subject to those limitations set forth herein and more specifically paragraphs 10 and 11, the Company will, at its own expense, defend any suit which may be brought against the Purchaser based on a claim that any equipment, materials, or services furnished by the Company under contract constitutes an infringement of any United States letters patent (provided the Company is notified promptly of such suit and copies of all papers therein are delivered to the Company), and the Company agrees to pay all judgments and costs recovered in any such suit and to reimburse the Purchaser for costs or expenses incurred in the defense of any such claim or suit. In case said apparatus or any part is held to constitute infringement and the use of the equipment, materials, or services is enjoined, the Company shall, at its own expense, either procure for the Purchaser the right to continue using the apparatus or part or replace with non-infringing equipment, materials, or services or modify it so it becomes non-infringing, or remove the equipment, materials, or services and refund the purchase price and the transportation and installation cost thereof. The indemnity obligations of this Section shall not apply to (i) equipment or programming specified by the Purchaser, (ii) modification made to equipment by the Purchaser or at its request, or (iii) use of equipment in combination with other equipment not supplied or approved by the Company hereunder. The foregoing states the entire liability of the Company for patent infringement by the equipment, materials, or services or any part thereof.

17. Taxes

Prices quoted are exclusive of any present or future federal, state or local sales, use or excise taxes. In states where such sales, use or excise taxes apply, they will be added to the invoice as a separate item unless the Purchaser has furnished an acceptable tax exemption certification from such tax prior to shipment.

18. Scrap Materials

All scrap materials become the property of the Company.

19. Containers

An extra charge will be made for returnable containers and special shipping devices. A refund will be made only if the containers are returned in good condition to the factory or other point designated by the Company within ninety (90) days from the date of original shipment charges prepaid.

20. Site Exclusions

The Company shall not be liable or responsible in any way for any liability arising from any unanticipated, hidden or concealed site conditions of Purchaser's site or for injury to person(s) or property which is caused by such condition.

21. Confidential Information

All financial, statistical, operating and personnel materials and information, including, but not limited to, manuals, designs, drawings and specifications, and computer software programs and related documentation relative to or utilized in the Company's business or in the business of any

affiliate or subsidiary of the Company is acknowledged by the Purchaser to be the valuable and confidential property of the Company. The Purchaser shall keep and maintain the confidentiality of such information and shall instruct its agents, employees, contractors, and subcontractors of the requirement that such information remain confidential. The Purchaser shall not disclose, photocopy, or otherwise duplicate any such materials without the prior written consent of the Company. Any unauthorized use of such materials or information by the Purchaser shall not affect the Company's ownership rights or the confidential status of such information.

22. Non-Solicitation

Purchaser agrees that it will not directly or indirectly engage, employ, solicit, or contact with a view toward the engagement or employment any person who is employed by or who acts as an independent contractor on behalf of the Company during the timeframe during services are rendered to Purchaser, and for a period of one (1) year after the completion of the project. In the event of any threatened breach of this non-solicitation provision, Company shall be entitled to injunctive relief by way of an Order to Show Cause, Temporary Restraining Order, Temporary Injunction, and Permanent Injunction without the necessity of posting bond.

23. Default/Breach

In addition to all other remedies available to Company, the Purchaser shall be liable and responsible to Company for any and all reasonable attorney's fees, costs, and expenses incurred with respect to enforcing the provisions of the terms and conditions of this Agreement including, but not limited to, all payment obligations required hereunder in the event of any default or breach of any terms and conditions contained herein by Purchaser.

24. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the state of Missouri.

25. Forum Selection Provision

[The Company and Purchaser and all persons claiming any rights or privileges hereunder agree that the Circuit Court of St. Louis County, Missouri or the United States District Court for the Eastern District of Missouri shall be the sole and exclusive forum for the commencement and prosecution of any lawsuit. The Company and Purchaser agree to waive any and all objections they have to such forum and to jurisdiction, and agree that this provision is reasonable and affords access to the courts to all parties concerned hereunder. This section may be used by any party as a bar to any action filed in any other jurisdiction or in any other venue.]

26. Customer Responsibilities

Our delivery of the services provided herein at the fees set forth herein are dependent, among other things, upon your involvement in all aspects of the services rendered; your ability to provide accurate and complete information as required; your timely and effective completion of any responsibilities assigned to you; and timely decisions and approval by your management. You will be required to provide adequate work facilities either onsite or offsite, as may be reasonably acceptable to us.

27. Entire Agreement

The terms and conditions herein, including all documents executed by the parties and pertaining hereto, constitute the entire agreement and understanding between the parties and supersedes any prior understandings, agreements, or representations by or among the parties, whether oral or written.

28. Amendment and Waivers

No changes, deletions, additions, or amendment to the Purchase Order and Terms and Conditions contained herein shall be valid unless in writing duly executed by each of the parties hereto.

29. Severability

Any term or provisions of the Purchaser Order and the Terms and Conditions contained herein that is invalid or unenforceable in any situation shall not affect the validity or enforceability of the remaining Terms and Conditions contained herein, and said remaining provisions shall continue with full force and effect as if such unenforceable or invalid provision shall not have been inserted in the first instance.

Accepted by: _____

Title: _____

PO #: _____

Date: _____