

**City Council Regular Meeting Agenda**  
**City Council Chambers**  
**February 4, 2013**

1. 5:30 p.m. Call the Meeting to Order at City Hall (Mayor)
2. Persons with Unscheduled Business to Come Before the City Council (Mayor)
3. Review the Consent Agenda: (Mayor)
  - a. Minutes:
    - 3-5       ▪ 1.14.13       City Council Meeting
    - 6-7       ▪ 12.13.12       EDA Meeting
  - b. Applications:
    - 8-9       ▪ Planning Commission – Kathy Polzin
  
    - Vacancies on Boards & Commissions:
    - Park Board – 4
    - Planning Commission – 1
    - Cemetery Board – 2
    - Benson Area Tourism Board – 3
    - EDA - 1
  - c. Correspondence:
  - d. Travel:
    - CGMC Legislative Meeting - St. Paul - February 6-7, 2013 City Manager & Mayor
    - International Biomass Conference – Minneapolis – April 8-10, 2013
- 10   4.   Public Hearing - Small Cities Development Program Grant & Consider Resolution
- 11-12 5.   Consider 1<sup>st</sup> Reading of an Ordinance to Amend Title XIII: General Provisions, Chapter 130: General Offenses; §130.01 of the Benson City Code of 2003
- 13-14 6.   2013 Tobacco Compliance Contract
- 15-19 7.   MRES - RICE Dedicated Capacity Agreement
- 20-21 8.   Consider Conditional Use Permit – 1615 Minnesota Ave.
- 22-30 9.   Consider Conway, Deuth & Schmiesing Three Year Proposal
- 31-55 10.   Benson Heartland Express Revised Drug & Alcohol Testing Policy Revisions & Resolution
- 56-61 11.   Wellhead Protection Plan Part 2 – Stantec’s Proposal to Prepare
- 62-65 12.   Airport Hangar Pay Request #2 - \$216,222.34 & Change Order #2
- 66-67 13.   Consider Quote for Vermeer Chipper - \$23,395.40
14.   TH 29 Water Project Repair and Replacement
15.   Northwest Flood Project Engineering
  - Bridge Report
  - Revised Feasibility Report

16. Benson School Fire Alarm System
- 68 17. Renew Patrick McGeary's Phased Retirement Option
- 69 18. Pay Request Roof 1-RBR Inc. - Re-roofing City Hall - \$40,210.00
- 70 19. Pay Request – Load Management Supplies – Omni-Pro Software - \$10,975.00
20. Adjourn: Mayor

**Draft**

**MINUTES - BENSON CITY COUNCIL - REGULAR MEETING  
JANUARY 14, 2013**

The meeting was called to order at 5:30 p.m. by Mayor Kittelson. Members present: Gary Landmark, Sue Fitz, Ben Hess, Mike Fugleberg & Paul Kittelson. Members Absent: None. Also present: City Manager Rob Wolfington, Director of Finance Glen Pederson, Minnesota Department of Health Representative Terry Bovee and Jack Evenson.

Wolfington introduced Terry Bovee with the Minnesota Department of Health (MDH) who was here at 3:00 p.m. for an open house on the City of Benson's Wellhead Protection & Drinking Water Plan. Bovee approached the Council and gave a briefing of the requirements for the City of Benson's Wellhead Protection and Drinking Water Plan. He explained The City is in Phase two of a three phase project. Part of this phase is to educate the public in the Wellhead protection area about being good well and storage tank stewards in protecting groundwater. He stated there are grant monies to assist land owners to seal abandoned wells. He estimates the plan will be done before the end of the year. There will need to be a public hearing this fall, and about a three month approval period for the plan from the MDH. After approval the City will need to implement the plan, which if needed, MDH has grants to help with this process.

Mayor Kittelson opened the public hearing at 5:45 p.m. to consider changing the zoning classification of Lot 5 and the west ½ of Lot 6, Block 16 of Benson's Southside Addition from R-1, Low Density Residential to B-2, General Business. JAX K-Bid has moved into the lot north of this area, and would like to use these lots for his business. Wolfington reported that he had received two verbal approvals for the change. It was moved by Landmark, seconded by Fitz and carried unanimously to approve the 2<sup>nd</sup> Reading of An Ordinance to Amend the Zoning Map of the City of Benson Section 154.057 of the Benson City Code of 2003.

It was moved by Fitz, seconded by Hess and carried unanimously to approve the following minutes on the consent agenda:

- January 2, 2013 City Council Meeting
- November 5, 2012 Planning Commission Meeting
- December 17, 2012 Planning Commission Meeting

It was moved by Hess, seconded by Fugleberg and carried unanimously to approve a gambling permit for Swift County Pheasants Forever on March 1, 2013.

Vacancies on Boards and Commissions were noted. Wolfington stated there is an ad in the Monitor News advertising which ones have vacancies.

There was correspondence from Charter Communications announcing a rate increase in February 2013.

The Mayor will be in Mankato January 25-26, 2013 for the League of Minnesota Cities Conference. The City Manager and Mayor will be in St. Paul February 6-7, 2013 to attend the Coalition of Greater Minnesota Cities Legislative Meeting. Wolfington also stated this year's International Biomass Conference is in Minneapolis April 8-10, 2013. He has attended the Biomass Conference the past two years in St. Louis, MO and Denver, CO, and asked the Council if they would like representation there again this year. There was discussion by the Council and it was moved by Fitz, seconded by Fugleberg and carried unanimously to approve the City Manager to attend the International Biomass Conference in

Minneapolis, Minnesota April 8-10, 2013 if the Economic Development Authority also approves at their meeting on January 17, 2013.

It was moved by Landmark, seconded by Hess and carried unanimously to approve the following Fire Department Officers:

- Fire Chief Mark Schreck
- 1<sup>st</sup> Assistant Rob Lee
- 2<sup>nd</sup> Assistant Tom Ascherman
- Captain Dave Vollan
- Lieutenant Bob Hoberg
- Secretary Brad Pecora

It was moved by Hess, seconded by Fitz and carried unanimously to approve a pay request from MAAC, Inc. for the Benson Elevator South demolition in the amount of \$55,575.00.

Public Works Director Nelson presented three capital Improvement purchases for consideration. The first is a ¾ ton 4 wheel drive pickup for the Street Department. It was moved by Landmark, seconded by Fugleberg and carried unanimously to purchase the 2013 Chevrolet Silverado 2500 4x4 pickup in the amount of \$29,645.35.

The next capital purchase is for a one ton 4 wheel drive pick-up to replace the 1999 Ford used for plowing alleys by the Street Department. It was moved by Fitz, seconded by Fugleberg and carried unanimously to approve the purchase of a 2013 Chevrolet Silverado 3500 4 x 4 one ton diesel truck with a dump body and plow.

Lastly is a commercial mower for the Parks. It will replace the mower with cab and snow blower attachments. After reviewing the bid, it was moved by Fugleberg, seconded by Hess and carried unanimously to purchase a John Deere 1445 Series II mower with cab attachment for \$25,030.95.

It was moved by Fitz, seconded by Hess and carried unanimously to approve 2013 budgets for the EDA, Library Endowment, Storm Water, Concrete Projects, Perpetual Care Cemetery, Utility Fund and 10 year Capital Improvement Plan, Liquor Fund, Community Development Revolving Fund, Garbage Collection and Small Cities 2005 & 2009 Funds.

Wolfington stated Parkview Manor is having difficulties with their elevators, and will need to make some repairs or replacements. He said the Council may be called upon to help with this.

It was moved by Landmark, seconded by Fugleberg and carried unanimously to approve the December 2012 bills and warrants in the amount of \$767,090.13.

It was moved by Fitz, seconded by Landmark and carried unanimously to approve a second batch of bills and warrants in the amount of \$290,065.57.

Councilman Hess offered the following resolution:

**RESOLUTION DESIGNATING AUTHORIZED REREPRESENTATION  
(RESOLUTION NO. 2013-01)**

WHEREAS, THE Governing body of the City of Benson, Minnesota has entered into an agreement to establish The **Western Minnesota Municipal Power Agency (WMMPA)**, and as a member thereof is entitled to a representative who shall represent the Municipal Utility in the business of WMMPA.

NOW, THEREFORE, BE IT RESOLVED that Paul Kittelson be and is hereby authorized and appointed as the representative of the City of Benson, Minnesota, to represent the Municipal Utility in the business of WMMPA, with the powers, duties and responsibilities as provided in said agreement. The alternate representative, Robert Wolfington, is hereby authorized and appointed with equal powers.

Council Member Fugleberg seconded the foregoing Resolution and the following vote was recorded: AYES: Fugleberg, Landmark, Fitz, Hess. NAYS: None. Thereupon the Mayor declared Resolution 2013-01 duly passed and adopted.

Councilman Fugleberg offered the following resolution:

**RESOLUTION DESIGNATING AUTHORIZED REREPRESENTATION  
(RESOLUTION NO. 2013-02)**

WHEREAS, THE Governing body of the City of Benson, Minnesota has entered into an agreement to establish The **Missouri Basin Municipal Power Agency, d.b.a. Missouri River Energy Services (MRES)**, and as a member thereof is entitled to a representative who shall represent the Municipal Utility in the business of MRES.

NOW, THEREFORE, BE IT RESOLVED that Paul Kittelson be and he/she is hereby authorized and appointed as the representative of the City of Benson, Minnesota, to represent the Municipal Utility in the business of MRES, with the powers, duties and responsibilities as provided in said agreement. The alternate representative, Robert Wolfington, is hereby authorized and appointed with equal powers.

Council Member Landmark seconded the foregoing Resolution and the following vote was recorded: AYES: Fugleberg, Landmark, Fitz, Hess. NAYS: None. Thereupon the Mayor declared Resolution 2013-02 duly passed and adopted.

There being no other business, a motion was made by Landmark, seconded by Hess and carried unanimously to adjourn the meeting at 6:05 p.m.

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Clerk

W  
12/17/12

## **EDA Regular Meeting December 13, 2012**

**Members Present:** Paul Kittelson, Leroy Noreen Mike Fugleberg, & Rick Horecka  
**Members Absent:** Jon Buyck, Paul Estenson, and Elaine Mitteness  
**Also Present:** Rob Wolfington, Ben Wilcox, Belinda Sanders, Don & Tony Lenz, Jack Evenson, Chamber Manager Lacy Fahl, RDA Representative Jen Frost, and Troy Kennedy

Secretary Rob Wolfington called the meeting to order at 12:15 p.m.

It was moved by Kittelson, seconded by Noreen and carried unanimously to approve the November 15, 2012 minutes.

### **Future Products Loan Agreeemnt**

Don Lenz approached the EDA Board. Don Lenz said he met with Rob Wolfington, Glen Pederson City Finance Director and Assistant City Attorney Ben Wilcox November 19, 2012 and discussed a plan for him to pay back his loan and past due utility bills. Don said they agreed upon a 3 phase payment plan. Phase 1 would run December 2012 through April 2013 and would deal with catching up with his past due utility bill. He said when he got the agreement, he looked at it and said it wasn't what he understood the agreement would be. First he said what he could pay would depend on additional work force he could get . He has a letter from Dakota which would mean making outer wear for the oil field workers. He also said he had a large military contract for winter parkas, which he would be producing with a company in Moose Lake. He asked to set up phase 2 & 3 in April. He stated after receiving the agreement, no one from the City or the EDA called him about the agreement. He wants to go back and change the agreement as he felt he should have some credits coming. Wolfington said the first five payments deal with catching up with the past due utility bills. After that the agreement deals with accelerated loan payments to get the loan paid up. Wolfington asked Wilcox if he can split the agreement up into two separate agreements. Wilcox said he could have it ready no later than tomorrow morning. Lenz stated he had no qualms about phase 2 & 3. Kittelson said the EDA's concern right now is to take care of the delinquent utility bill. Wolfington stated the agreement will be ready for signature in the morning and a payment will take care of Future Products disconnection status.

### **J.A.X**

Jack Evenson stated he would like to revise his previous loan application. He is no longer going to be at his present location, and is in the process of purchasing the old West Side Tire property. He, Belinda Sanders and Jen Frost presented a revised Loan Application. He is asking for \$35,000. Wolfington stated the loan committee has already met and reviewed the application, and made a recommendation to approve the loan application. After discussion, it was moved by Horecka, seconded by Fugleberg to approve J.A.X. revised loan application with the same terms as the first loan, the motion carried unanimously.

**T & K Kennedy Excavating, Inc.**

Troy Kennedy approached the Committee. His existing loan balloon payment has come due. He is requesting extending his payments on the \$9,661.17 loan for the life of the loan, with the same terms. He stated business is doing well, and would hope to have the balance paid off in a year. It was moved by Noreen, seconded by Kittelson and carried to extend the loan under the same terms until paid off.

**Loan Profile**

The Loan Profile was reviewed.

**Other Business**

Reed Anfinson stated he is a member of the BIDC, which met a couple days ago. Among items discussed at the meeting was the BIDC Board decided not to contribute \$5,000 to helping market the creamery building.

Other items discussed were:

- CVEC earnings distribution
- Small Cities Grant
- Purchasing of old lumber yard on highway 9 west, and lots across from Glacial Plains on highway 12 east
- Progress of the elevator demolition
- Flood insurance rates for homeowners in the northwest corner of town

There being no other business, Kittelson made a motion, seconded by Horecka and carried unanimously to adjourn the meeting at 12:37 pm.

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Secretary

Attest: \_\_\_\_\_  
Board Member

**CITY OF BENSON**  
**APPLICATION FOR APPOINTMENT TO CITY BOARDS OR COMMISSIONS**

Dear Applicant:

We welcome you as an applicant for one of the City's boards or commissions. These groups play a very important role in Benson City Government. These boards and commissions serve as advisory bodies to the Benson City Council. They provide information and recommendations to the City Council so the Council can make sound decisions regarding issues and policy matters.

Please fill out the information requested below. You are encouraged to attach any additional information which you believe qualifies you for appointment to the board or commission you have selected.

.....  
**BOARD OR COMMISSION PREFERENCE:**

- |   |  |
|---|--|
| <input type="checkbox"/> Airport Advisory Commission    | <input type="checkbox"/> Housing & Redevelopment Authority |
| <input type="checkbox"/> Benson Area Tourism Board      | <input type="checkbox"/> Library Board                     |
| <input type="checkbox"/> Cemetery Board                 | <input type="checkbox"/> Park Board                        |
| <input type="checkbox"/> Economic Development Authority | <input checked="" type="checkbox"/> Planning Commission    |
| <input type="checkbox"/> Hospital Board                 | <input type="checkbox"/> Utilities Board                   |

**RETURN APPLICATION TO:**

Office of the City Manager  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215  
Telephone: 320-843-4775  
Date Received:   1  /  1  /  

**PERSONAL INFORMATION:**

Name Kathryn M Polzer Address 203 17th St South

Telephone: Home 320-843-2812 Business - 0 - Zip 56215

How long have you been a resident of Benson? 21 years

Have you served previously on any of Benson's boards or commission? YES  NO

Have you served previously on any city board/commission in any other community? YES  NO

Are any members of your immediate family in the same household presently employed by the City of Benson or serving on any of the City's boards or commissions? YES  NO

Occupation: retired Name of Employer: \_\_\_\_\_

I am a member of the following civic organizations: RBA Board

Please list your special interests, education, past experiences, etc., which you feel would benefit the City of Benson by your appointment to the board/commission you have indicated a preference to above:

1. I am interested in the now and the future of my city.

2. I like to see things happen in my city to further benefit our citizens on all levels.

"Thank You for Your Consideration" Kathy Byrne

Do you have any additional comments? \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

#### DESCRIPTION OF BENSON'S BOARDS AND COMMISSIONS

**Airport Commission** - Makes recommendations to the City Council for the use, management, and operation of the airport and shall advise the Council in all matters concerning the Airport.

**Cemetery Committee** - Advises and assists the City Council and City staff in the administration, maintenance and improvement of the Benson City Cemetery.

**Housing and Redevelopment Authority** - This Authority is a public corporation empowered to undertake certain types of redevelopment projects and low rent housing assistance programs pursuant to the provisions of the M.S.A. 462.411 thru 462.711. These projects may include such activities as planning, acquisition, demolition, clearance, rehabilitation and construction for the purpose of providing decent, safe and sanitary housing for persons of low and moderate income and the improvement and restoration of stagnant, undeveloped land.

**Library Board** - Acts as an advisory body to the City Council by providing information and make recommendations to the City Council on library matters.

**Park Board** - Acts as an advisory body to the City Council by making recommendations to the Council on issues associated with City parks, playgrounds, the swimming pool, skating rinks, and other related functions.

**Planning Commission** - Acts as an advisory body to the City Council by reviewing variance requests, subdivisions, plats, zoning regulations, etc. In addition, they work on developing long-range planning goals and objectives.

**Utilities Board** - Advises and assists the City Council and Director of Public Works in the administration and improvement of public utilities.

**RESOLUTION AUTHORIZING THE CITY OF BENSON TO APPLY TO THE  
DEPARTMENT OF EMPLOYMENT AND ECONOMIC DEVELOPMENT FOR A  
SMALL CITIES DEVELOPMENT PROGRAM GRANT  
(RESOLUTION 2013- )**

BE IT RESOLVED that the City of Benson act as the legal sponsor for the project contained in the SCDP Application to be submitted on or before February 28<sup>th</sup>, 2013 and that the City of Benson Mayor, Paul Kittelson and the City Manager, Rob Wolfington are hereby authorized to apply to the Department of Employment and Economic Development for funding of this project on behalf of the City of Benson.

BE IT FURTHER RESOLVED that the City of Benson has the legal authority to apply for financial assistance, and the institutional, managerial and financial capability to ensure adequate construction, operation, maintenance and replacement of the proposed project for its design life.

BE IT FURTHER RESOLVED that the City of Benson has not violated any Federal, State or local laws pertaining to fraud, bribery, graft, kickbacks, collusion, conflict of interest or other unlawful or corrupt practice.

BE IT FURTHER RESOLVED that upon approval of its application by the State, City of Benson may enter into an agreement with the State of Minnesota for the approved project, and that the City of Benson certifies that it will comply with all applicable laws and regulations as stated in all contract agreements.

NOW, THEREFORE BE IT RESOLVED that the City of Benson Mayor, Paul Kittelson and Benson City Manager, Rob Wolfington, or their successors in office, are hereby authorized to execute such agreements and amendments thereto, as are necessary to implement the project on behalf of the Applicant.

**AN ORDINANCE TO AMEND TITLE XIII: GENERAL PROVISIONS, CHAPTER  
130: GENERAL OFFENSES; § 130.01 OF THE BENSON CITY CODE OF 2003**

The City of Benson does ordain:

Title XIII, Chapter 130, § 130.01 is hereby deleted and replaced with the following:

**§ 130.01 FIREARMS, BOWS AND ARROWS, AND FIREWORKS**

*(A) Firearms.*

- (1) The term "Firearm" means any gun that discharges shot or a projectile by means of an explosive, gas, spring or compressed air.
- (2) No person shall fire or discharge any firearm within city limits.
- (3) No person shall carry a firearm within the city limits unless it is encased and unloaded, except as provided by Minnesota Statutes Chapter 624.
- (4) This section shall not apply to a licensed peace officer while acting in the course of his or her duties.

*(B) Replica Firearms.*

- (1) The term "Replica Firearm" means a device or object that is not defined as a dangerous weapon, and that is a facsimile or toy version of, and reasonably appears to be a pistol, revolver, shotgun, sawed-off shotgun, rifle, machine gun, rocket launcher, or any other firearm. The term Replica Firearm includes, but is not limited to, all Airsoft guns and devices or objects that are designed to fire only blanks.
- (2) The term "Public Place" means any building or establishment, place, or public street or highway, where the business, social or governmental activity ordinarily conducted is generally held, open to the public; specifically including, but not limited to, such locations as governmental buildings, meeting halls, centers for art and culture, places of amusement, liquor or beer establishments, and restaurants. It shall also include the yard or cartilage surrounding any residential dwelling or other building which is visible from the street or neighboring structures.
- (3) No person shall carry on or about his or her person or possess a Replica Firearm in a Public Place.

*(C) Bows and Arrows.*

- (1) The term "Bow and Arrow" means any device or combination of devices designed to propel any arrow from a cord connecting the two ends of a bow by pulling on the cord, thus bending the bow and then releasing the cord. It shall not mean devices of this type easily identifiable as toys.
- (2) No person shall fire a bow and arrow or crossbow within city limits.

*(D) Fireworks.*

(1) The term "Firework" means any substance or combination of substances or article prepared for the purpose of producing a visible or an audible effect by combustion, explosion, deflagration, or detonation, and includes blank cartridges, toy cannons, and toy canes in which explosives are used, the type of balloons which require fire underneath to propel them, firecrackers, torpedoes, skyrocketes, Roman candles, daygo bombs, or other fireworks of like construction, and any fireworks containing any explosive or inflammable compound, or any tablets or other device containing any explosive substance and commonly used as fireworks.

(2) No person shall discharge any fireworks within city limits, except as permitted by Minnesota Statutes Chapter 624.

(E) *Conditional Use Permit.* This ordinance does not prohibit the lawful use of firearms, replica firearms, bows and arrows, or fireworks when permitted by the city with a Conditional Use Permit.

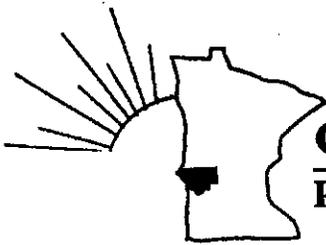
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**ATTEST as to form:** \_\_\_\_\_

**First Reading:** \_\_\_\_\_

**Second Reading:** \_\_\_\_\_

**Publication:** \_\_\_\_\_



**COUNTRYSIDE**  
Public Health



**Public Health**  
Prevent. Promote. Protect.

January 29, 2013

City of Benson  
1410 Kansas Ave  
Benson, MN 56215

*Val -  
PLEASE PLACE  
ON CC Agenda  
Feb 4, 13  
RJB*

Rob,

Enclosed you will find two copies of the 2013 Tobacco Compliance contracts. Please sign, keep one copy for your records and return the other to the Swift County address below. Please let Cindy Skulstad (320.564.3010 or [cskulstad@countyside.co.swift.mn.us](mailto:cskulstad@countyside.co.swift.mn.us)) or Liz Auch (320.843.4546 or [lauch@countyside.co.swift.mn.us](mailto:lauch@countyside.co.swift.mn.us)) know if you have questions or concerns.

Thank You,

Lacy Joyce  
Fiscal Officer

[www.countrysidepublichealth.org](http://www.countrysidepublichealth.org)

**BIG STONE**  
47 NW 2nd St. • Suite 104  
ORTONVILLE, MN 56278  
(320) 839-6135 V/TTY  
866-277-5587

**CHIPPEWA**  
719 No. 7th St. • Suite 308  
MONTEVIDEO, MN 56265  
(320) 269-2174 V/TTY  
800-894-0192

**LAC QUI PARLE**  
422 5th Avenue • Suite 305  
MADISON, MN 56256  
(320) 598-7313 V/TTY  
800-255-0736

**SWIFT**  
201 13th St. S.  
BENSON, MN 56215  
(320) 843-4546 V/TTY  
800-657-3291

**YELLOW MEDICINE**  
415 9th Avenue, Suite 105  
GRANITE FALLS, MN 56241  
(320) 564-3010 V/TTY  
800-407-3628

AN EQUAL OPPORTUNITY EMPLOYER

## AGREEMENT

THIS AGREEMENT, Made on this day of 25<sup>th</sup> of January, 2013 between City of Benson, hereinafter called City, and Countryside Public Health, hereinafter called Countryside.

WITNESSETH:

WHEREAS, City has a youth anti-tobacco ordinance which requires yearly, mandatory compliance checks of tobacco retailers in City, and

WHEREAS, these mandatory compliance checks are to be conducted in order to ensure that City retail establishments are not selling tobacco products to minors, and

WHEREAS, Countryside is in the business of providing compliance check services to Counties,

NOW, THEREFORE, In consideration thereof, the parties hereto agree as follows:

1. City agrees to retain Countryside for the purpose of assisting the County Sheriff's Office with compliance checks.
2. Countryside will conduct compliance checks and administer all services necessary to successfully implement the compliance checks program including but not limited to: i) recruitment and training of youth compliance checkers, and ii) follow-up activities surrounding the compliance checks. City will pay Countryside One Hundred and twenty-five dollars (\$125.00) per retail establishment licensed to sell tobacco products in the City. This One Hundred and twenty-five dollars (\$125.00) payment will cover an unlimited number of compliance checks in a licensed retail establishment, but a compliance check must be completed at least once yearly for each licensed retail establishment in the City. The One Hundred and twenty-five dollars (\$125.00) payment for each retail establishment will come due after completion of at least one compliance check in a respective establishment and under no circumstance shall City be required to pay Countryside prior to any services rendered. If a retail establishment has been issued a license for less than a full year's term, Countryside shall charge City a prorated fee.
3. Countryside agrees to itemize all bills for services sent to City.
4. This agreement shall be effective through **December 31, 2013**.

IN WITNESS WHEREOF. The parties have executed this agreement the day and year first above written.

\_\_\_\_\_  
Authorizing Representative

  
\_\_\_\_\_  
Elizabeth Auch, Administrator/DON  
Countryside Public Health



3724 West Avera Drive  
PO Box 88920  
Sioux Falls, SD 57109-8920  
Telephone: 605.338.4042  
Fax: 605.978.9360  
www.mrenergy.com

January 29, 2013

*Val -  
cc NTG 4 Feb*

City of Benson  
Attention: Rob Wolfington  
1410 Kansas Ave  
Benson, MN 56215

Re: MRES Members with DCA or CPA Agreements

Dear Rob:

The Environmental Protection Agency (EPA) recently announced their final regulations for Reciprocating Internal Combustion Engine (RICE). While the regulations were relaxed somewhat regarding how many hours diesel generators may operate each year, the existing Dedicated Capacity Agreement (DCA) and Capacity Purchase Agreement (CPA) require Missouri River Energy Services (MRES) members to be able to operate their diesel generators for more hours than is permitted under the final RICE rules. Thus if a member wants to continue to receive payments under the DCA or CPA agreement, then the member will have to comply with the RICE rules.

Since the new RICE regulations take effect in May of this year, MRES encourages you to act promptly to complete any upgrades necessary for your generating units to comply. Under our DCA and CPA Agreements, MRES will not be able to continue payments to your utility unless your units are in compliance.

Please inform MRES of the status of your compliance activities and your projections on when you expect to complete any necessary upgrades. Please do not hesitate to call me with any questions you may have on the RICE regulation requirements or on your DCA/CPA Agreements terms.

Sincerely,

A handwritten signature in black ink that reads "Raymond J. Wahle".

Raymond J. Wahle, P.E.  
Director, Power Supply & Operations

## Val Alsaker

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**From:** Rob Wolfington  
**Sent:** Thursday, January 31, 2013 9:32 AM  
**To:** Val Alsaker  
**Subject:** FW: Benson - NESHAP RICE Conference Call

Val,

Please copy of attachment and include it with the MRES letter from Ray as an agenda item.

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**From:** Andy Koob [mailto:adk@dgrnet.com]  
**Sent:** Tuesday, January 29, 2013 4:30 PM  
**To:** 'Elliot Nelson (E-mail)'; 'Rob Wolfington (E-mail)'; Travis Zipf; Dave Johnson  
**Subject:** RE: Benson - NESHAP RICE Conference Call

All,

Please find attached the revised schedule, which includes the addition of the "MRES Notification" task that we discussed during our conference call.

From the DCA:

6.10 MRES and the Municipality shall jointly identify and schedule the planned outages for the Plant. The planned outages shall be scheduled to conform with the needs and economics of MRES' generating plans. The Municipality shall use its best efforts to adhere to the schedule and shall not plan an outage of all or any part of the Plant without prior approval of MRES.

We should contact MRES mid-February after we have met to review the plans and specifications and associated schedule for the project.

Andy

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**From:** Andy Koob  
**Sent:** Monday, January 28, 2013 11:35 AM  
**To:** 'Elliot Nelson (E-mail)'  
**Cc:** 'Rob Wolfington (E-mail)'; Travis Zipf; Dave Johnson  
**Subject:** RE: Benson - NESHAP RICE Conference Call

Elliot,

Please find attached 2 items for review during our conference call this afternoon:

1. Updated Project Schedule (this is aggressive - assuming no extension is granted)
2. Engine Run-Hours Summary

If possible, I'd also like to talk about the status of our Overhead-Underground master plan project.

Best Regards,

**Andy Koob, P.E.**

**DGR Engineering**

1302 South Union Street

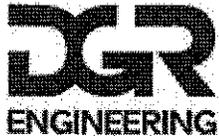
1/31/2013

## **ESTIMATED PROJECT SCHEDULE**

Power Plant Equipment Upgrades  
City of Benson, Minnesota  
Rev 1 – January, 2013

<b><u>Task</u></b>	<b><u>Proposed Timeframe</u></b>
Major Materials – Specifications Complete	Complete
Major Materials – Released for Construction	January 28, 2013
Construction Contract – 95% Plans & Specs to City for Review	February 11, 2013
Construction Contract – Meet with City to Discuss Project Notify MRES of Project Schedule and Intent	Week of February 18
Construction Contract – Bidding Authorized by City Council, Set Bid Date	February 18, 2013
Formal Stack Testing – Release RFP	March 7, 2013
Construction Contract – Bid Opening Formal Stack Testing – Quotes Due	March 14, 2013
Major Materials – Equipment Delivery	March 15, 2013
Construction Contract – Award by City Council Formal Stack Testing – Award by City Council	March 18, 2013
Formal Stack Testing – Notice Issued to EPA	April 5, 2013
Construction Start	April 8, 2013
Construction Ends, Installation Ready for Testing	May 3, 2013
EPA Testing Complete – Units Operational	July 15, 2013
Final Project Cleanup Complete	August 2, 2013

Rock Rapids, IA 51246  
phone: 712-472-2531  
fax: 712-472-2710



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**From:** Andy Koob  
**Sent:** Friday, January 25, 2013 4:53 PM  
**To:** 'Elliot Nelson (E-mail)'  
**Cc:** 'Rob Wolfington (E-mail)'; Travis Zipf; Dave Johnson  
**Subject:** Benson - NESHAP RICE Conference Call

Elliot,

Travis mentioned that you'd like to have a conference call to discuss a few items related to the Power Plant NESHAP project, including an updated schedule. How does 2:30 PM on Monday sound?

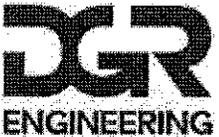
We will provide you with an updated schedule prior to the call.

Some additional information for your review is included below. I'm assuming you are particularly interested in No. 2.

**Andy Koob, P.E.**

### **DGR Engineering**

1302 South Union Street  
Rock Rapids, IA 51246  
phone: 712-472-2531  
fax: 712-472-2710



Please accept the following which summarize key elements of the final amendments to the NESHAP regulation.

1. For **non-emergency** diesel generating units, the compliance date for emission control equipment installation remains at May 3, 2013.
2. In a June 2012 proposal, EPA proposed that a diesel generator could be considered **emergency** and be allowed to peak shave up to 50 hours per year until April 2017. This was not finalized. However, EPA did finalize a provision allowing the use of existing **emergency** engines up to 50 hours per year, until May 3, 2014, for peak shaving or non-emergency demand response to generate income for a facility, or to otherwise supply power as part of a financial arrangement with another entity if the engines are operated as part of a peak shaving (load management) program with the local distribution system operator and the power is provided only to the facility itself or to support the local distribution system. This extension provides additional time so that these sources that wish to engage in peak shaving can come into compliance with the applicable requirements for non-emergency engines.
3. EPA has specified in the final amendments that existing **emergency** RICE at area sources can be used for 50 hours per year as part of a financial arrangement with another entity if all of the following conditions

1/31/2013

are met:

- a. The engine is dispatched by the local balancing authority or local transmission and distribution system operator.
- b. The dispatch is intended to mitigate local transmission and/or distribution limitations so as to avert potential voltage collapse or line overloads that could lead to the interruption of power supply in a local area or region.
- c. The dispatch follows reliability, emergency operation or similar protocols that follow specific NERC, regional, state, public utility commission or local standards or guidelines.
- d. The power is provided only to the facility itself or to support the local transmission and distribution system.
- e. The owner or operator identifies and records the specific NERC, regional, state, public utility commission or local standards or guidelines that are being followed for dispatching the engine. The local balancing authority or local transmission and distribution system operator may keep these records on behalf of the engine owner or operator.

Engines operating in systems that do not meet the conditions described here will **not be considered emergency** engines if they operate for these purposes as part of a financial arrangement with another entity.

4. For engines that are certified to Tier 3 (Tier 2 for engines above 560 kW) emission standards and were installed prior to June 12, 2006, no further action is required. Although certainly possible, much of the equipment installed in the Midwest in 2006 and earlier did not meet Tier 3 (Tier 2 for engines above 560 kW). These standards became effective January 1, 2007. California has more stringent emission requirements, so many of the occurrences are on the west coast.

Application for Conditional Use Permit

Planning Commission  
City of Benson  
Benson, MN 56215

Number: 2013-01  
Date of Application: 1/14/13  
Application Fee: \$150.00

NAME OF APPLICANT JAX of BENSON ZONE R-2

ADDRESS 1615 MINNESOTA AVE PARCEL NO. \_\_\_\_\_

PROPERTY AT \_\_\_\_\_ LOT # 304 BLOCK 16

ADDITION Southside

Pursuant to Minnesota Statute Section 15.99, an application for a conditional use permit shall be approved or denied within sixty (60) days from the date of its official and complete submission unless extended pursuant to Statute or a time waiver is granted by the applicant. If applicable, processing of the application through required state or federal agencies shall extend the review and decision-making period an additional sixty (60) days unless this limitation is waived by the applicant.

1. I am requesting a Conditional Use Permit to: SELL USED AUTOMOBILES, BUSES,  
TRAILERS ETC.

2. Special Conditions:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 3. Attach one Plot Plan to scale showing present and proposed improvements or location.
- 4. ATTACH: Abstractor's Certified Property Certificate showing property owners names and addresses within 350 feet of the outer boundaries of the property in question.
- 5. The Planning Commission will hold a Public Hearing on this case on February 4,  
2013, at 12:00 pm in the City Council Chambers, 1410 Kansas Avenue, Benson, MN. The applicant is advised to attend this meeting.

CERTIFICATE

I certify that I am the applicant named herein; that I have familiarized myself with the rules and regulations with respect to preparing and filing this application; that the foregoing statements and answers herein contained and the information on the attached maps or plot plans and any other papers submitted herewith are in all respects true and accurate to the best of my knowledge and belief.

SIGNATURE: [Signature] PHONE: 320-444-2303

ADDRESS: 1615 Minnesota Ave.

6. The Benson City Council will receive the report and recommendation from the Planning Commission at their next meeting following the public hearing. The applicant is also advised to attend this meeting.
7. Criteria for Conditional Use Permits. No conditional use permit shall be granted or renewed unless the Planning Commission makes a finding that all of the following criteria are met:
  - a. Compliance with and effect upon the Comprehensive Plan, including public facilities and capital improvement plans.
  - b. The establishment, maintenance or operation of the conditional use will promote and enhance the general public welfare and will not be detrimental to or endanger the public health, safety, morals or comfort.
  - c. The conditional use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
  - d. The establishment of the conditional use will not impede the normal and orderly development and improvement of surrounding property for uses permitted in the district.
  - e. The conditional use shall, in all other respects, conform to the applicable regulations of the district in which it is located.
  - f. The conditional use complies with the general and specific performance standards as specified by Section 154.178 of the City of Benson Zoning Ordinance.

8. STAFF COMMENTS: \_\_\_\_\_ DATE \_\_\_\_\_

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9. PLANNING COMMISSION: \_\_\_\_\_ APPROVE \_\_\_\_\_ DENY \_\_\_\_\_ DATE \_\_\_\_\_

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10. CITY COUNCIL: \_\_\_\_\_ APPROVE \_\_\_\_\_ DENY \_\_\_\_\_ DATE \_\_\_\_\_

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11. A CONDITIONAL USE PERMIT IS (APPROVED) (DISAPPROVED) FOR REQUEST AS FOLLOWS:

---



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\_\_\_\_\_  
 ZONING ADMINISTRATOR  
 DATE: \_\_\_\_\_



**PROPOSAL TO PROVIDE  
PROFESSIONAL AUDITING SERVICES  
FOR THE CITY OF BENSON  
BENSON, MINNESOTA**

**Date Submitted:** January 16, 2013

Contact: Darrin D. Ogdahl, CPA  
Direct Phone: (320) 214-2908  
Benson Office: (320) 843-2302  
Toll-free: (888)388-1040  
Fax: (320) 843-2229  
Email: [dogdahl@cdscpa.com](mailto:dogdahl@cdscpa.com)

**Conway, Deuth & Schmiesing, PLLP**  
1209 Pacific Avenue, Suite 3  
Benson, Minnesota 56201

**CDS**  
& Conway, Deuth  
& Schmiesing, PLLP  
Certified Public Accountants & Consultants

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Quality | Dedication | Integrity

January 16, 2013

Glen Pederson, Finance Director/City Clerk  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215

Dear Mr. Glen Pederson:

On behalf of Conway, Deuth & Schmiesing, PLLP (CDS), I am pleased to submit this proposal for the preparation and audit of the financial statements for the City of Benson for the fiscal years ending December 31<sup>st</sup>, 2012, 2013 and 2014. We appreciate the opportunity to bid these services, and your consideration of our firm.

The attached proposal addresses the information you requested, including the qualifications of our firm, the depth and breadth of the services we will provide your City, and our commitment to meet the deadlines while providing the highest quality work through a process that is both efficient and effective.

We are best qualified to perform the engagement for the City of Benson based on our core values which are at the foundation of our firm: exceptional quality of service, team dedication to standards, and integrity.

### Exceptional Quality of Service

- Our commitment to provide quality auditing services on every engagement,
- Our experience in providing auditing and accounting services to other cities, and
- Our assurance that the audit process is both efficient and effective.

### Team Dedication to Standards

- Our dedication to meet the timetable of work to be completed,
- Our dedicated government audit team is aware and committed to meeting the organization's needs and reporting deadlines, and
- Our Partners actively participate throughout the entire audit process.

### Integrity

- We are devoted to keeping abreast of issues your entity is facing through participation in local and state organizations,
- We place an importance on continuity of staffing, and
- We are committed to year round access including prompt responses to your questions.

Members: American Institute of Certified Public Accountants, Minnesota Society of Certified Public Accountants

#### Willmar Office

331 Third Street SW, Ste. 2  
P.O. Box 570  
Willmar, MN 56201  
Phone: (320) 235-3311  
Toll-Free: (888) 388-1040

#### Benson Office

1209 Pacific Avenue  
Ste. 3  
Benson, MN 56215  
Phone: (320) 843-2302

#### Morris Office

401 Atlantic Avenue  
Morris, MN 56267  
Phone: (320) 589-2602

[www.cdscpa.com](http://www.cdscpa.com)

#### Litchfield Office

820 Sibley Avenue N  
Litchfield, MN 55355  
Phone: (320) 693-7975

#### St. Cloud Office

2351 Connecticut Avenue  
Ste. 110  
Sartell, MN 56377  
Phone: (320) 252-7565  
Toll Free: (800) 862-1337

If you have any questions regarding the content of our proposal, please feel free to call me at (320) 214-2908. We look forward to hearing from you soon.

Sincerely,

CONWAY, DEUTH & SCHMIESING, PLLP

A handwritten signature in black ink, appearing to read "D. Ogdahl". The signature is written in a cursive style with a large initial "D" and a stylized "O".

Darrin D. Ogdahl  
Certified Public Accountant  
Partner

## OUR SERVICES FOR THE CITY OF BENSON

Our services would include, but are not limited to, the following:

- Performing an audit of your basic financial statements for the years ending December 31<sup>st</sup>, 2012, 2013 and 2014, in accordance with generally accepted auditing standards; *Government Auditing Standards*; and the provisions of the Federal Single Audit Act of 1996 and U.S. Office of Management and Budget (OMB) *Circular A-133, Audits of State and Local Governments*, and other federal, state and local requirements, as applicable.
- Issuing a report on the fair presentation of the financial statements and an “in-relation to” report on the supporting schedules in conformity with generally accepted accounting principles.
- Providing separate reports required by *Government Auditing Standards*, the Single Audit Act (as applicable) and the *Minnesota Legal Compliance Audit Guide for Political Subdivisions*.
- Preparation of the financial statements for the City.
- Presenting audit results and comments relating to your financial statements and internal controls to the Office of State Auditor.
- Preparing and submitting the Federal Audit Clearinghouse Form, if applicable.
- Providing information on upcoming GASB Statements.
- Ongoing access throughout the year to answer your questions.



## About Conway, Deuth & Schmiesing, PLLP



### FIRM QUALIFICATIONS AND EXPERIENCE

Conway, Deuth & Schmiesing, PLLP is a local, multi-office firm with offices in Benson, Willmar, Morris, Litchfield and St. Cloud, Minnesota. Our staff includes fourteen partners, thirty-seven staff accountants (a total of twenty-eight Certified Public Accountants), and ten support staff members. Our firm performs examinations for over forty governmental and quasi-governmental organizations in Minnesota, including over twenty municipalities, and our staff has developed a great deal of expertise on these engagements.

Our governmental audit staff consists of twelve individuals, including three partners and two managers. We have a dedicated government audit team that is aware and committed to meeting your organization's needs and the reporting deadlines. The proposed engagement for the City of Benson would be served by staff from our Benson and Willmar offices. Our Partner, Darrin Ogdahl, CPA would serve on this engagement. Additionally, a Manager as well as a quality technical reviewer, with a governmental background, will also be assigned to the engagement for a final quality review prior to issuance of the financial statements and management letter.

## ENGAGEMENT TEAM MEMBERS

Our experienced engagement team will provide you with the highest standard of excellence throughout your engagement. We have an engagement partner that will actively participate throughout the entire audit process. We estimate that there will be 4 individuals assigned to the engagement on a full-time basis from our Benson and Willmar offices.



**Supervising Partner – Darrin D. Ogdahl, CPA**, 17 years of experience with a focus on auditing government organizations. Darrin has been with Conway, Deuth & Schmiesing, PLLP since 1994. He graduated from Southwest Minnesota State University with a Bachelor of Science degree in Accounting. He received his CPA certification from the Minnesota State Board of Accountancy in 1997 and was promoted to Partner in 2008. Darrin’s practice focuses on government auditing, non-profit and for profit auditing, as well as tax preparation and planning. Darrin is current with his CPE requirements, including the standards for governmental auditors. Darrin is a member of the American Institute of Certified Public Accountants (AICPA) and the Minnesota Society of Certified Public Accountants (MNCPA). He is a member of the School District Audit Review Task Force through the Minnesota Society of Certified Public Accountants. Darrin is also the Chair of our internal Accounting and Auditing Committee at Conway, Deuth & Schmiesing, PLLP.



**Manager – Patty K. Grube, CPA**, 15 years of experience, including a Fortune 500 Company. Patty has been with Conway, Deuth & Schmiesing, PLLP since 1997. She graduated from Southwest Minnesota State University with a B.S. degree in Accounting. She received her CPA certification from the Minnesota State Board of Accountancy in 1997 and was promoted to Manager in 2010. Patty’s practice focuses on government auditing, non-profit and for-profit auditing, as well as tax preparation and consulting for business and individuals. Patty is current with her CPE requirements, including the standards for governmental auditors. Patty is a member of the American Institute of Certified Public Accountants (AICPA) and the Minnesota Society of Certified Public Accountants (MNCPA). Patty serves as President of the Benson Chamber.

## ENGAGEMENT TEAM MEMBERS (CONT'D)



**Governmental Auditor – Wendy D. Martin**, 6 years of auditing experience and 8 years of accounting. Wendy graduated from St. Olaf College in Northfield, MN in 2002 with a Bachelor of Science degree in Economics with a concentration in Financial Management. Wendy was promoted to Senior Accountant in 2009. Wendy specializes in auditing of governmental and non-profit organizations including Community Action Agencies.

Wendy is current with her CPE requirements, including the governmental standards for auditors.

Wendy is a member of the Minnesota Society of Public Accountants (MNCPA). She is on the City Audit Review and the School District Audit Review Task Forces through the Minnesota Society of Certified Public Accountants. Wendy is a 2012 graduate of the Willmar Lakes Area Chamber of Commerce Leadership Perspectives program.



**Certified Public Accountant – Kari C. Steinbeisser**, 1 1/2 years of experience. Kari has been with Conway, Deuth & Schmiesing, PLLP since 2010. She graduated from St. Cloud State University with a B.S. degree in Accounting. She received her CPA certification from the Minnesota State Board of Accountancy in 2011. Kari's practice

focuses on government auditing. She is current with her CPE requirements, including the standards for governmental auditors. Kari is a member of the American Institute of Certified Public Accountants (AICPA) and the Minnesota Society of Certified Public Accountants (MNCPA). Kari is active with the United Way of West Central Minnesota as a member of ADVANCE. She is also a member of the Willmar Lakes Area Chamber of Commerce NeXt organization and is participating in the 2012-2013 Leadership Perspectives program.

**PROFESSIONAL FEE SCHEDULE  
FOR THE CITY OF BENSON  
FOR THE AUDIT OF THE 2012-2014 FINANCIAL STATEMENTS**

TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR FISCAL YEAR ENDING 12-31-2012	<b><u>\$19,850.00</u></b>
TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR FISCAL YEAR ENDING 12-31-2013	<b><u>\$20,675.00</u></b>
TOTAL ALL-INCLUSIVE MAXIMUM PRICE FOR FISCAL YEAR ENDING 12-31-2014	<b><u>\$21,550.00</u></b>

The above fee does not include any procedures necessary under the Single Audit Act. A Single Audit would be necessary only if the City were to receive and expend more than \$500,000 of Federal Funds. The fee for the Single Audit Act is based on the number of programs tested and billed at our normal hourly rates, which vary according to the degree of experience of the personnel assigned. The approximate cost for a Single Audit would be \$3,250.00.

We would be available throughout the year for any additional accounting and consulting services at your request. We are a full service firm able to assist you with a wide variety of tasks. These services would be billed at our normal hourly rates as specified above. Rates for accounting and consulting services vary according to the degree of experience of the personnel assigned. Additional accounting services requested or required will be discussed with you prior to procedures performed.

I certify that I am entitled to represent Conway, Deuth & Schmiesing, PLLP, empowered to submit this bid, and authorized to sign a contract with the City of Benson.

  
\_\_\_\_\_  
Darrin D. Ogdahl, CPA

# **Benson Heartland Express**

## **DRUG AND ALCOHOL TESTING POLICY**

**Policy adopted 10/4/10, Policy revised on 01/23/13**

**Rob Wolfington  
City Manager**

**FTA DRUG AND ALCOHOL TESTING PROGRAM**

Revised 01/29/13

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**APPENDIX A: LOCAL RESOLUTION & CERTIFICATION**

**APPENDIX B: ALCOHOL FACT SHEET**

## **1. PURPOSE**

In accordance with the City of Benson's commitment for a safe workplace, the City of Benson (hereinafter called "City") will not hire or employ individuals who use illegal drugs or alcohol registering at defined concentration levels. Part of our mission is to ensure that this service is delivered safely, efficiently, and effectively by establishing a drug and alcohol-free work environment, and to ensure that the workplace remains free from the effects of drugs and alcohol in order to promote the health and safety of employees and the general public. It is recognized that use of alcohol and/or illegal drugs on and off the job eventually takes a toll on job performance and can put employees' and the public's safety at risk. The use, sale or possession of illegal narcotics, illegal drugs or controlled substances while on the job, on duty or on any City facility or property is a disqualifying or dischargeable offense.

Additionally, the purpose of this policy is to establish guidelines to maintain a drug and alcohol-free workplace in compliance with the Drug-Free Workplace Act of 1988. This policy is intended to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry. Specifically, the Federal Transit Administration (FTA) of the U. S. Department of Transportation has published 49 CFR Part 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result. The U. S. Department of Transportation (USDOT) has also published 49 CFR Part 40, as amended, that sets standards for the collection and testing of urine and breath specimens.

It is the City's intention to comply fully with the DOT regulations governing drug and alcohol use and testing, and the requirements of the DOT regulations have been incorporated into this Policy. In the event DOT regulations are amended, this Policy and the applicable term(s), condition(s) and/or requirement(s) of this Policy shall be deemed to have been amended automatically at that time, without the need for redrafting, in order to reflect and be consistent with DOT regulations. In such case, the City reserves the right to apply the amended requirements immediately, and without giving prior notice to safety sensitive employees and/or applicants, unless such notice is required by DOT or another applicable law. The City reserves the right to amend the list of positions covered by this policy and the supervisory positions required to attend training without redrafting the entire policy. It is also the City's intention to comply with any applicable state requirements governing drug and/or alcohol testing which are not preempted by DOT regulations. The City also intends to comply with the applicable requirements of the Drug-Free Workplace Act of 1988, the Americans With Disabilities Act and the Family and Medical Leave Act. For purposes of this Policy and the City's drug and alcohol testing program, performing a "safety-sensitive function" means operation of a revenue service vehicle (whether or not the vehicle is in revenue service). Maintenance of a revenue service vehicle or equipment used in revenue service, dispatchers or person controlling the movement of revenue service vehicles and any other transit employee who is required to hold a Commercial Drivers License (CDL). Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment used in revenue service. A list of safety-sensitive positions who perform one or more of the above mentioned duties is provided in subdivision 28 herein.

Any job applicant applying for a position who refuses or fails a pre-employment drug test will not be hired for that position. Any employee covered by this policy who refuses or fails a drug and/or alcohol test will immediately be removed from performing safety sensitive duties.

It is understood that a policy cannot address every situation that may arise, and in those situations which are not covered in this policy, each shall be handled on its individual merits by the Program Manager.

## **2. APPLICABILITY**

The Drug and Alcohol Testing Policy applies to all safety-sensitive employees (full-or part-time) when performing any transit related business. A safety-sensitive function is any duty related to the safe operation of mass transit service including the operation of a revenue service vehicle (whether or not the vehicle is in revenue service), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, dispatchers or person controlling the movement of revenue service vehicles and any other transit employee who is required to hold a Commercial Drivers License. Maintenance functions include the repair, overhaul, and rebuild of engines, vehicles and/or equipment. A list of safety-sensitive positions that perform one or more of the mentioned duties is shown in Section 28 of the policy. Supervisors are only safety-sensitive if they perform one of the above functions.

## **3. DEFINITIONS**

**Accident.** An occurrence associated with the operation of a revenue service vehicle even when not in revenue service or which requires a Commercial Drivers License to operate, if as a result:

- ◆ An individual dies;
- ◆ An individual suffers a bodily injury and immediately receives medical treatment away from the scene of the accident; or,
- ◆ One or more vehicles incur disabling damage as the result of the occurrence and are transported away from the scene by a tow truck or other vehicle.

**Adulterated specimen.** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol.** The intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols contained in any beverage, mixture, mouthwash, candy, food, or medication.

**Alcohol Concentration.** Expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath-testing device.

**Canceled Test.** A drug test that has been declared invalid by a Medical Review Officer. A

anceled test is neither positive nor negative.

**Commercial Driver's License (CDL).** Vehicles with sixteen or more passengers (including the driver) are considered a commercial motor vehicle, which requires the driver to have a commercial drivers license to operate that vehicle.

**Covered Employee.** An employee who performs a safety-sensitive function including an applicant or transferee who is being considered for hire into a safety-sensitive function (see Section 28 for a list of covered employees).

**Designated Employer Representative (DER).** An employee authorized by the employer to take immediate action to remove employees from safety-sensitive duties and to make required decisions in testing. The DER also receives test results and other communications for the employer, consistent with the requirements of 49 CFR Part 40, as amended, and 655.

**Department of Transportation (DOT).** Department of the federal government which includes the US Coast Guard, Federal Transit Administration, Federal Railroad Administration, Federal Highway Administration, Federal Motor Carrier Safety Administration, Research and Special Programs, and the Office of the Secretary of Transportation.

**Dilute specimen.** A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**Disabling damage.** Damage, which precludes departure of any vehicle from the scene of the occurrence in its usual manner in daylight after simple repairs. Disabling damage includes damage to vehicles that could have been operated but would have been further damaged if so operated, but does not include damage which can be remedied temporarily at the scene of the occurrence without special tools or parts, tire disablement without other damage even if no spare tire is available, or damage to headlights, taillights, turn signals, horn, mirrors or windshield wipers that make them inoperative.

**Evidentiary Breath Testing Device (EBT).** A Device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the NHTSA conforming product list.

**Medical Review Officer (MRO).** A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

**Negative Dilute.** A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

**Negative test result.** A verified presence of the identified drug or its metabolite below the

minimum levels specified in 49 CFR Part 40, as amended. An alcohol concentration of less than 0.02 BAC is a negative test result.

**Non-negative test result.** A test result found to be adulterated, substitute, invalid, or positive for drug metabolites. Non-negative results are considered a positive test or refusal to test if MRO cannot determine legitimate medical explanation.

**Performing a safety-sensitive function.** A covered employee is considered to be performing a safety-sensitive function and includes any period in which he or she is actually performing, ready to perform, or immediately available to perform such functions.

**Positive test result.** A verified presence of the identified drug or its metabolite at or above the minimum levels specified in 49 CFR Part 40, as amended. A positive alcohol test result means a confirmed alcohol concentration of 0.04 BAC or greater.

**Prohibited drug.** Marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

**Revenue Service Vehicles.** All transit vehicles that are used for passenger transportation service or that require a CDL to operate. Includes all ancillary vehicles used in support of the transit system.

**Safety-sensitive functions.** (a) the operation of a transit revenue service vehicle even when the vehicle is not in revenue service; (b) the operation of a non-revenue service vehicle by an employee when the operation of such a vehicle requires the driver to hold a Commercial Drivers License (CDL); (c) maintaining a revenue service vehicle or equipment used in revenue service; (d) controlling the movement of a revenue service vehicle; and (e) carrying a firearm for security purposes.

**Substance Abuse Professional (SAP).** A licensed physician (medical doctor or doctor of osteopathy) or state licensed or certified family and marriage therapist, psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

**Substituted specimen.** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

**Verified negative test.** A drug test result reviewed by a medical review officer and determined to have no evidence of prohibited drug use above the minimum cutoff levels established by the Department of Health and Human Services (DHHS).

**Verified positive test.** A drug test result reviewed by a medical review officer and determined to

have evidence of prohibited drug use above the minimum cutoff levels specified in 49 CFR Part 40 as amended.

**Validity testing.** The evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether certain adulterants of foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted.

#### **4. EDUCATION AND TRAINING**

Every covered employee will receive a copy of this policy and will have access to the corresponding federal regulations including 49 CFR Parts 40 and 655. In addition, all covered employees will undergo a minimum of 60 minutes of training on the signs and symptoms of drug use including the effects and consequences of drug use on personal health, safety, and the work environment. The training includes manifestations and behavioral cues that may indicate prohibited drug use.

All supervisory personnel or company officials who are in a position to determine employee fitness for duty will receive 60 minutes of reasonable suspicion training on the physical, behavioral, and performance indicators of probable drug use and 60 minutes of additional reasonable suspicion training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Information on the signs, symptoms, health effects, and consequences of alcohol misuse is presented in Attachment A.

#### **5. PROHIBITED SUBSTANCES**

Prohibited substances address by this policy includes the following.

- A. Illegally Used Controlled Substances is prohibited at all times in the workplace unless a legal prescription has been written for the substance. This includes, but is not limited to: marijuana, amphetamines, opiates, phencyclidine (PCP), cocaine and ecstasy (MDMA) as well as any drug not approved for medical use by the U.S. Drug Enforcement Administration of the U.S. Food and Drug Administration. Illegal use includes use of any illegal drug, misuse of legally prescribed drugs, and the use of illegally obtained prescription drugs. Also, the medical use of marijuana, or the use of hemp related products, which can cause drug or drug metabolites to be present in the body above the minimum thresholds, is a violation of this policy.

Federal Transit Administration drug testing regulations (49 CFR Part 655) require that all covered employees be tested for marijuana, cocaine, amphetamines, opiates, phencyclidine and ecstasy as described in Section 7 of this policy. Illegal use of these five drugs is prohibited at all times and thus, covered employees may be tested for these drugs anytime that they are on duty.

- B. **Legal Drugs:** The appropriate use of legally prescribed drugs and non-prescription medications is not prohibited. However, the use of any substance which carries a warning label that indicates that mental functioning, motor skills, or judgement may be adversely affected must be reported to a supervisor and the employee is required to provide a written release from their doctor or pharmacist indicating that the employee can perform their safety-sensitive functions.
- C. **Alcohol:** The use of beverages containing alcohol (including any mouthwash, medication, food, candy) or any other substances such that alcohol is present in the body while performing safety-sensitive job functions is prohibited. An alcohol test can be performed on a covered employee under 49 CFR Part 655 just before, during, or just after the performance of safety-sensitive job functions.

## **6. PROHIBITED CONDUCT**

- A. All covered employees are prohibited from reporting for duty or remaining on duty any time there is a quantifiable presence of a prohibited drug in the body above the minimum thresholds defined in 49 CFR Part 40, as amended.
- B. Each covered employee is prohibited from consuming alcohol while performing safety-sensitive job functions or while on-call to perform safety-sensitive job functions. If an on-call employee has consumed alcohol, they must acknowledge the use of alcohol at the time that they are called to report to duty. The covered employee must take an alcohol test, if the employee claims ability to perform his or her safety-sensitive functions.
- C. The Benson Heartland Express shall not permit any covered employee to perform or continue to perform safety-sensitive functions if it has actual knowledge that the employee is using alcohol.
- D. Each covered employee is prohibited from reporting to work or remaining on duty requiring the performance of safety-sensitive functions while having an alcohol concentration of 0.04 or greater regardless of when the alcohol was consumed.
- E. No covered employee shall consume alcohol for eight (8) hours following an involvement in an accident or until they submit to the post-accident drug/alcohol test, whichever occurs first.
- F. No covered employee shall consume alcohol within four (4) hours prior to the performance of safety-sensitive job functions.

## **7. TESTING REQUIREMENTS**

Analytical urine drug testing and breath testing for alcohol will be conducted as required by 49

CFR Part 40, as amended. All covered employees shall be subject to testing prior to employment, for reasonable suspicion, following an accident, and random as defined in Section's 10, 11, 12 and 13 of this policy. All covered employees who have tested positive for drugs or alcohol on a random, reasonable suspicion, or post-accident will be tested prior to returning to duty after completion of the Substance Abuse Professional's recommended treatment program and subsequent release to duty. Follow-up testing will also be conducted following return-to-duty for a period of one to five years, with at least six tests performed during the first year. The duration and frequency of the follow-up testing above the minimum requirements will be at the discretion of the Substance Abuse Professional.

A drug test can be performed any time a covered employee is on duty. An alcohol test can be performed just before, during, or after the performance of a safety-sensitive job function.

All safety-sensitive employees will be subject to urine drug testing and breathe alcohol testing as a condition of ongoing employment. Any safety-sensitive employee who refuses to comply with a request for testing shall be removed from duty and subject to discipline. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations. Employees who are suspected of providing false information in connection with a drug test, or are suspected of falsifying test results through tampering, contamination, adulteration, or substitution will be required to undergo an observed collection. Verification of the above listed actions will be considered a test refusal and will result in the employee's removal from duty and discipline. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations. Refusal can also include an inability to provide sufficient urine specimen or breath sample without a valid medical explanation, as well as verbal or written declaration, obstructive behavior, physical absence resulting in the inability to conduct the test within the specified time frame, or refusing to undergo observed testing when requested by the collector or the MRO.

## **8. DRUG TESTING PROCEDURES**

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the U.S. Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures set forth in 49 CFR Part 40, as amended. The procedures will be performed in a private, confidential manner and every effort will be made to protect the employee, the integrity of the drug testing procedures, and the validity of the test result.

The drugs that will be tested for include marijuana, cocaine, opiates, amphetamines, phencyclidine and ecstasy. After the identity of the donor is checked using picture identification, a urine specimen will be collected using the split specimen collection method described in 49 CFR Part 40, as amended. Each specimen will be accompanied by a DOT Chain of Custody and Control Form and identified using a unique identification number that attributes the specimen to the correct individual. The specimen analysis will be conducted at a DHHS certified laboratory. Specimen validity testing will be conducted on all urine specimens provided for under DOT authority. Specimen validity testing is the evaluation of the specimen to determine if it is consistent with normal human urine. The purpose of validity testing is to determine whether

certain adulterants or foreign substances were added to the urine, if the urine was diluted, or if the specimen was substituted. For those specimens that are not negative, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the amounts of the drug(s) and/or its metabolites identified by the GS/MS test are above the minimum thresholds established in 49 CFR Part 40, as amended.

The test results from the DHHS certified laboratory will be reported to a Medical Review Officer (MRO). An MRO is a licensed physician with detailed knowledge of substance abuse disorders and drug testing. The MRO will review the test results to ensure the scientific validity of the test and to determine whether there is a legitimate medical explanation for a confirmed positive, substitute, or adulterated test result. The MRO will attempt to contact the employee to notify the employee of the non-negative laboratory result, and provide the employee with an opportunity to explain the confirmed laboratory test result. The MRO will subsequently review the employee's medical history/medical records, as appropriate, to determine whether there is a legitimate medical explanation for a non-negative laboratory result. If no legitimate medical explanation is found, the test will be verified positive or refusal to test and reported to the Drug and Alcohol Program Manager (DAPM). If a legitimate explanation is found, the MRO will report the test result as negative to the DAPM and no further action will be taken. If the test is invalid with out a medical explanation, a retest will be conducted under direct observation.

Any covered employee who questions the results of a required drug test under paragraphs 11 through 15 of this policy may request that the split sample be tested. The split sample test must be conducted at a second DHHS-certified laboratory with no affiliation with the laboratory that analyzed the primary specimen. The test must be conducted on the split sample that was provided by the employee at the same time as the primary sample. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in 49 CFR Part 40, as amended. The employee's request for a split sample test must be made to the Medical Review Officer within 72 hours of notice of the original sample verified test result. Requests after 72 hours will only be accepted at the discretion of the MRO if the delay was due to documentable facts that were beyond the control of the employee. Employees do not have access to a test of their split specimen following an invalid result.

If the analysis of the split specimen fails to confirm the presence of the drug(s) detected in the primary specimen, if the split specimen is not able to be analyzed, or if the results of the split specimen are not scientifically adequate, the MRO will declare the original test to be canceled and will direct the transit system to retest to the employee under direct observation.

The split specimen will be stored at the initial laboratory until the analysis of the primary specimen is completed. If the primary specimen is negative, the split will be discarded. If the primary is positive, the split will be retained for testing if so requested by the employee through the MRO. If the primary specimen is positive, it will be retained in frozen storage for one year and the split specimen will also be retained for one year. The Benson Heartland Express will guarantee that the cost for the split specimen test is covered in order for a timely analysis of the sample.

### Observed Collections:

Consistent with 49 CFR Part 40, as amended, observed collections are required in the following circumstances:

- A. Anytime the laboratory reports to the MRO that a specimen is invalid, the MRO reports to that there was not an adequate medical explanation for the result;
- B. Anytime that the original specimen was positive, adulterated, or substituted test result had to be cancelled because the test of the split specimen could not be performed;
- C. Anytime the collector observes materials brought to the collection site or the employee's conduct clearly indicates an attempt to tamper with a specimen;
- D. Anytime the temperature on the original specimen was out of the accepted temperature range of 90°F – 100°F ; or

The employee who is being observed will be required to raise his or her shirt, blouse, or dress/skirt, as appropriate, above the waist; and lower clothing and underpants to show the collector, by turning around that they do not have a prosthetic device.

### 9. ALCOHOL TESTING PROCEDURES

Tests for breath alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA)-approved Evidential Breath Testing Device (EBT) operated by a trained Breath Alcohol Technician (BAT). Alcohol screening tests may be performed using a non-evidential testing device, which is also approved by NHSTA. If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. The confirmatory test must occur on an EBT. The confirmatory test will be conducted at least fifteen minutes after the completion of the initial test. The confirmatory test will be performed using a NHTSA-approved EBT operated by a trained BAT. The EBT will identify each test by a unique sequential identification number. This number, time, and unit identifier will be provided on each EBT printout. The EBT printout, along with an approved alcohol testing form, will be used to document the test, the subsequent results, and to attribute the test to the correct employee. The test will be performed in a private, confidential manner as required by 49 CFR Part 40, as amended. The procedure will be followed as prescribed to protect the employee and to maintain the integrity of the alcohol testing procedures and validity of the test result.

A safety-sensitive employee who has confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of this policy. The employee will be immediately removed from safety-sensitive duties and will be referred to a SAP for evaluation. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations.

A test result for an employee who has a confirmed alcohol concentration of 0.02 to 0.039 is not considered positive, however the employee shall still be removed from duty for at least eight hours. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations. An alcohol concentration of less than 0.02 will be considered a negative test.

The Benson Heartland Express affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process. If at any time the integrity of the testing procedures or the validity of the test results is compromised, the test will be canceled. Minor inconsistencies or procedural flaws that do not impact the test result will not be a canceled test.

## **10. PRE-EMPLOYMENT TESTING**

All applicants for covered transit safety-sensitive positions shall undergo urine drug testing prior to hire or transfer into a covered position that requires the performance of a safety-sensitive function.

- A. All offers of employment of covered positions shall be extended conditional upon the applicant passing a drug test. An applicant shall not be hired into a covered position unless the applicant takes a drug test with verified negative results.
- B. A non-covered employee shall not be placed, transferred or promoted into a covered position until the employee takes a drug test with verified negative results.
- C. If an applicant fails a pre-employment drug test, the conditional offer of employment shall be rescinded. Evidence of the absence of drug dependency from a Substance Abuse Professional that meets with 49 CFR Part 40, as amended, and a negative pre-employment drug test will be required prior to further consideration for employment.
- D. When an employee, being placed, transferred, or promoted from a non-covered position to a covered position, submits a drug test with a verified positive result, the employee shall be subject to disciplinary action. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations.
- E. If a pre-employment/pre-transfer test is canceled, applicant will be required to take and pass another pre-employment drug test.
- F. In instances where a covered employee is on extended leave for a period of 90 days or more and is taken out of the random testing pool, the employee will be required to take a pre-employment drug test under 49 CFR Part 655 and have negative test results prior to the conduct of safety-sensitive job functions.
- G. Applicants are required to report previous DOT covered employer drug and alcohol test results. *Failure to do so will result in the employment offer being rescinded.*

## **11. REASONABLE SUSPICION TESTING**

All safety-sensitive employees will be subject to a reasonable suspicion drug and/or alcohol test when there are reasons to believe that drug or alcohol use is impacting job performance and safety. Reasonable suspicion shall mean that there is objective evidence, based upon specific, contemporaneous, articulable observations of the employee's appearance, behavior, speech or body odor that are consistent with possible drug use and/or alcohol misuse. Reasonable suspicion referrals must be made by at least one supervisor who is trained to detect the signs and symptoms of drug use and alcohol use, and who reasonably concludes that an employee may be adversely affected or impaired in their work performance due to possible prohibited substance abuse or alcohol misuse. A reasonable suspicion alcohol test can only be conducted just before, during, or just after the performance of a safety-sensitive job function. *However, under the City's authority, a reasonable suspicion drug test can be performed any time the covered employee is on duty.*

Examples of reasonable suspicion include, but are not limited to, the following:

- A. Physical signs and symptoms consistent with prohibited substance use or alcohol misuse.
- B. Evidence of the manufacture, distribution, dispensing, possession, or use of controlled substances, drugs, alcohol, or other prohibited substance.

An employee who refuses an instruction to submit to a drug/alcohol test shall not be permitted to finish his or her shift and shall immediately be placed on administrative leave pending disciplinary action. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations.

A written record of the observations which led to a drug/alcohol test based on reasonable suspicion shall be prepared and signed by the supervisor making the observation prior to the release of the test results. This written record shall be submitted to the Benson Heartland Express management and shall be attached to the forms reporting the test results.

## **12. POST-ACCIDENT TESTING**

All safety-sensitive employees will be required to undergo urine and breath testing if they are involved in an accident with a transit revenue service vehicle that results in a fatality regardless of whether or not the vehicle is in revenue service. This includes all surviving covered employees that are operating the vehicle at the time of the accident and any other whose performance cannot be completely discounted as a contributing factor to the accident. In addition, a post-accident test will be conducted if an accident results in injuries requiring immediate transportation to a medical treatment facility; or one or more vehicles incurs disabling damage, unless the operator's performance can be completely discounted as a contributing factor to the accident. The accident definition may include some incidents where an individual is injured even though there is no vehicle collision.

- A. As soon as practicable following an accident, as defined in this policy, the transit supervisor investigating the accident will notify the transit employee operating the transit vehicle and all other covered employees whose performance could have contributed to the accident of the need for the test. The supervisor will make the determination using the best information available at the time of the accident.
- B. The appropriate transit supervisor shall ensure that an employee, required to be tested under this section, is tested as soon as practicable, but no longer than 8 hours after the accident for alcohol, and within 32 hours for drugs. If a drug or alcohol test is not performed within two hours of the accident, the supervisor will document the reason(s) for the delay. If the alcohol test is not conducted within 8 hours, or the drug test within 32 hours, attempts to conduct the test must cease and the reasons for the failure to test documented.
- C. Any covered employee involved in an accident must refrain from alcohol use for eight (8) hours following the accident, or until they undergo a post-accident alcohol test.
- D. An employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying a supervisor of their location if they leave the scene of the accident prior to submission to such test, may be deemed to have refused to submit to testing.
- E. Nothing in this section shall be construed to require the delay of necessary medical attention for the injured following an accident, or to prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.
- F. In the rare event that the transit system is unable to perform an FTA drug and alcohol test (i.e., employee is unconscious, employee is detained by law enforcement agency), the transit system may use drug and alcohol post-accident test results administered by state and local law enforcement officials in lieu of the FTA test. The state and local law enforcement officials must have independent authority for the test and the employer must obtain the results in conformance with state and local law.

### **13. RANDOM TESTING**

All covered employees will be subjected to random, unannounced testing. The selection of employees shall be made by a scientifically valid method of randomly generating an employee identifier from the appropriate pool of safety-sensitive employees.

- A. The dates for administering unannounced testing of randomly selected employees shall be spread reasonably throughout the calendar year.

- B. The number of safety-sensitive employees randomly selected for drug/alcohol testing during the calendar year shall be not less than the percentage rates established by Federal regulations identified in 49 CFR Part 655.45(b).
- C. Each covered employee shall be in a pool from which the random selection is made. Each covered employee in the pool shall have an equal chance of selection each time the selections are made. Employees will remain in the pool and subject to selection, whether or not the employee has been previously tested. There is no discretion on the part of management in the selection and notification of the individuals who are to be tested.
- D. Random tests can be conducted at any time during an employee's shift for drug testing. Alcohol random tests can be performed just before, during, or just after the performance of a safety-sensitive duty. Tests can occur during the beginning, middle, or end of an employee's shift.
- E. Employees are required to proceed immediately to the collection site upon notification of their random selection.

#### **14. RETURN-TO-DUTY TESTING**

All safety-sensitive employees who previously tested positive on a drug or alcohol test or refused a test, must test negative for drugs, alcohol (below 0.02 for alcohol), or both and be evaluated and released by the SAP before returning to work. For an initial positive drug test a return-to-duty test is required and an alcohol test is allowed. For an initial positive alcohol test a return-to-duty alcohol test is required and a drug test is allowed. Following the initial assessment, the SAP will recommend a course of rehabilitation unique to the individual. Before scheduling the return to duty test, the SAP must assess the employee and determine if the required treatment has been completed. The SAP should schedule the return-to-duty test only when the employee is known to be drug- and alcohol-free and there is no risk to public safety.

#### **15. FOLLOW-UP TESTING**

Safety-sensitive employees will be required to undergo frequent, unannounced drug and alcohol testing following their return-to-duty. The follow-up testing will be performed for a period of one to five years with a minimum of six tests to be performed the first year. The frequency and duration of the follow-up tests (beyond the minimums) will be determined by the SAP reflecting the SAP's assessment of the employee's unique situation and recovery progress. Follow-up testing should be frequent enough to deter and/or detect a relapse. Follow-up testing is separate and in addition to the random, post-accident, reasonable suspicion and return-to-duty testing.

#### **16. RESULT OF A NEGATIVE DILUTE DRUG TEST**

When a negative dilute drug result of 2-5 mg/dL is reported by the Medical Review Officer the employee will be required to undergo another test. The MRO will direct the test to be conducted

under observation. Should the second test result in a negative dilute result, the test will be considered negative and no additional testing will be required unless directed to do so by the MRO. A drug test with the result of a negative dilute (dilute level >5 mg/dl) will not be re-tested.

**17. BEHAVIOR THAT CONSTITUTES A TEST REFUSAL**

As noted below, refusal to submit to a drug/alcohol test shall be considered a positive test result.

Behavior that Constitutes a Test Refusal	Drug Test	Alcohol Test
1) Failure to appear for a test in the time frame specified by the employer**	X	X
2) Failure to remain at the testing site until the testing process is complete**	X	X
3) Failure to provide a urine specimen, saliva, or breath specimen, as applicable.	X	X
4) Failure to permit the observation or monitoring of specimen donation when so required	X	X
5) Failure to provide sufficient amount of urine or volume of breath without a valid medical explanation for the failure.	X	X
6) Failure to take an additional test when directed by the employer or collector	X	X
7) Failure to undergo a medical examination when directed to do so by the MRO or employer	X	X
8) Failure to cooperate with any part of the testing process (e.g., refuse to empty pockets when directed by the collector, behave in a confrontational way that disrupts the collection process, fail to wash hands after being directed to do so by the collector).	X	X
9) For an observed collection, failure to follow the observer's instructions to raise your clothing above the waist, lower clothing and underpants, and to turn around to permit the observer to determine if you have any type of prosthetic or other device that could be used to interfere with the collection process.	X	
10) Possess or wear a prosthetic or other device that could be used to interfere with the collection process.	X	
11) Admit to the collector or MRO that you adulterated or substituted the specimen	X	
12) Failure to sign the certification on Step 2 of the Alcohol Test Form		X
13) Failure to refrain from the use of alcohol for eight (8) hours following an accident without first having submitted to post-accident drug and alcohol testing.		X
14) Failure to remain readily available for a post-accident, including notifying a supervisor of their location if they leave the scene of the accident prior to submission to such test.	X	X

\*\*For pre-employment tests only, failure to appear, aborting the collection before the test commences, or failure to remain at site prior to commencement of test is NOT a test refusal.

## **18. RESULT OF POSITIVE DRUG/ALCOHOL TEST**

Any covered employee who tests positive for the presence of illegal drugs, tests positive for alcohol with a BAC at or above .04, or refuses to submit to testing, will be immediately removed from safety sensitive duties and referred for evaluation by a Substance Abuse Professional (SAP) in accordance with Part 40, as amended. A SAP is a licensed or certified physician, psychologist, social worker, employee assistance professional, or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. No employee will be allowed to return to duty requiring the performance of safety-sensitive job functions without the approval of the SAP.

A positive drug and/or alcohol test will also result in disciplinary action as specified herein. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations.

- A. As soon as practicable after receiving notice of a verified positive drug test result, a confirmed alcohol test result, or a test refusal, the Drug and Alcohol Program Manager will contact the employee's supervisor to have the employee cease performing any safety-sensitive function.
- B. The employee shall be referred to a SAP for an assessment. The SAP will evaluate the employee to determine what assistance is necessary to resolve problems associated with prohibited drug use or alcohol misuse.
- C. Refusal to submit to a drug/alcohol test shall be considered a positive test result. Refer to the City of Benson's personnel policy to determine the additional consequences for policy violations.

## **19. DISCIPLINARY ACTION**

Following a positive drug or alcohol (BAC at or above 0.04) test result or test refusal, for the first time, the employee is immediately removed from safety-sensitive duties, referred to a substance abuse professional (SAP) and the City of Benson's personnel policies and/or the AFSCME Union #2538, MN Council's Labor Contract.

Following a BAC of 0.02 or greater but less than 0.04 – the employee is immediately removed from safety-sensitive duties for at least eight (8) hours unless a retest results in the employee's alcohol concentration of less than 0.02.

Disciplinary action against the employee shall include:

- (a) Mandatory referral to Substance Abuse Professional for assessment, formulation of a treatment plan, and execution of a return-to-work agreement;
- (b) Failure to execute, or remain compliant with the return-to-work agreement shall result in

termination from employment. Compliance with the return-to-work agreement means that the employee has submitted to an observed drug/alcohol test immediately prior to returning to work; the result of that test is negative; in the judgment of the SAP the employee is cooperating with his/her SAP recommended treatment program; and, the employee has agreed to periodic unannounced follow-up testing

(c) Refusal to submit to a periodic unannounced follow-up observed drug and/or alcohol test shall be considered a direct act of insubordination and shall result in termination.

(d) A periodic unannounced follow-up observed drug/alcohol test which results in a verified positive shall result in termination from employment.

The second instance of a verified positive drug or alcohol ( $\geq 0.04$  BAC) test result including a sample submitted under the random, reasonable suspicion, return-to-duty, or follow-up drug/alcohol test provisions herein shall result in termination from employment.

The cost of any treatment or rehabilitation services will be paid directly by the employee or their insurance provider. The employee will be permitted to take accrued sick leave or administrative leave to participate in the SAP prescribed treatment program. If the employee has insufficient accrued leave, the employee shall be placed on leave without pay until the SAP has determined that the employee has successfully completed the required treatment program and releases him/her to return-to-duty. Any leave taken, either paid or unpaid, shall be considered leave taken under the Family and Medical Leave Act.

## **20. GRIEVANCE AND APPEAL**

The consequences specified by 49 CFR Part 40, § 40.149 paragraph (a) (5) and paragraph (c) for a positive test or test refusal are not subject to arbitration.

## **21. INFORMATION DISCLOSURE**

Drug/alcohol testing records shall be maintained by the Drug and Alcohol Program Manager and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.

- A. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP referrals and follow-up testing plans.
- B. Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, Department Supervisor, and Personnel Manager only on a 'need to know' basis.

- C. Records will be released to a subsequent employer only upon receipt of a written request from the employee.
- D. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the preceding. The information will only be released with binding stipulation from the decision maker will only make it available to parties in the preceding.
- E. Records will be released to the National Transportation Safety Board during an accident investigation.
- F. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- G. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over the Benson Heartland Express or the employee.
- H. If a party seeks a court order to release a specimen or part of a specimen contrary to any provision of CFR Part 40, as amended, necessary legal steps to contest the issuance of the order will be taken.
- I. In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the FTA.

**22. DRUG AND ALCOHOL PROGRAM MANAGER (DAPM) AND DESIGNATED EMPLOYER REPRESENTATIVE (DER)**

FTA regulations require that a single contact person be identified to answer questions for this policy. Any questions regarding this policy or any other aspect of the substance abuse program should be addressed to the following transit system representatives:

**Drug and Alcohol Program Manager (DAPM)**

Name:	Rob Wolfington
Title:	City of Benson
Address:	1410 Kansas Ave.
	Benson, MN 56215
Telephone number:	320-843-4775
Fax Number:	320-842-7151

Designated Employer Representative (DER):  
(if different from the DAPM)

Name:	Valerie Alsaker
Title:	Drug Testing Coordinator
Address:	1410 Kansas Ave.
	Benson, MN 56215
Telephone number:	320-843-4775
Fax Number:	320-842-7151

A complete copy of regulation 49 CFR Part 40, as amended, is available for review.

**23. MEDICAL REVIEW OFFICER**

Name:	St. Louis MRO, Inc.-Horacio Marafioti
Title:	Medical Review Officer
Address:	3895 Jeffco Blvd.
	Arnold, MO 63010
Telephone number:	636-461-1300
Fax Number:	636-461-1691

**24. SUBSTANCE ABUSE PROFESSIONAL**

Name:	Jerry Johnson Ade Services
Title:	NCACI, LADC, SAP
Address:	100 2 <sup>nd</sup> Ave. S, Suite 205
	Sauk Rapids, MN 56379
Telephone number:	320-240-8009
Fax Number:	320-240-7906

**25. CONSORTIUM**

Name:	Minnesota Municipal Utility Association
Title:	Steve Downer, Executive Director
Address:	12805 Hwy 55, Suite 212
	Plymouth, MN 55441-3859
Telephone number:	800-422-0119
Fax Number:	612-551-0459

**26. DHHS CERTIFIED LABORATORY**

Name:	Quest Diagnostics
Title:	DHHS Certified Lab
Address:	10101 Renner Blvd.
	Lenexa, KS 66219
Telephone number:	800-877-7484
Fax Number:	

**27. EMPLOYEE ASSISTANCE PROGRAM**

Name:	Jerry Johnson Ade services
Address:	100 2 <sup>nd</sup> Ave. S., Suite 205
	Sauk Rapids, MN 56379
Telephone Number:	320-240-8009
Cell Phone Number:	320-291-5696

**28. SAFETY-SENSITIVE FUNCTIONS \***

List the job titles of those that perform safety-sensitive job functions:

1. Transit Drivers

\* or any others who operate a revenue service vehicle (whether or not the vehicle is in revenue service), dispatch (anyone who controls revenue service vehicles' movement), maintenance of a revenue service vehicle or equipment used in revenue service, security personnel who carry firearms, and any other employee who holds a Commercial Driver's License.

**29. POLICY MODIFICATION**

The transit system has the right to modify this policy as changes in regulation or law occurs.

## **APPENDIX A**

### **Alcohol Fact Sheet**

Alcohol is a socially acceptable drug that has been consumed throughout the world for centuries. It is considered a recreational beverage when consumed in moderation for enjoyment and relaxation during social gatherings. However, when consumed primarily for its physical and mood-altering effects, it is a substance of abuse. As a depressant, it slows down physical responses and progressively impairs mental functions.

#### **Signs and Symptoms of Use**

- ◆ Dulled mental processes
- ◆ Lack of coordination
- ◆ Odor of alcohol on breath
- ◆ Possible constricted pupils
- ◆ Sleepy or stuporous condition
- ◆ Slowed reaction rate
- ◆ Slurred speech

(Note: Except for the odor, these are general signs and symptoms of any depressant substance.)

#### **Health Effects**

The chronic consumption of alcohol (average of three servings per day of beer (12 ounces), whiskey (1 ounce), or wine (6 ounce glass) over time may result in the following health hazards:

- ◆ Decreased sexual functioning
- ◆ Dependency (up to 10 percent of all people who drink alcohol become physically and/or mentally dependent on alcohol and can be termed "alcoholic)
- ◆ Fatal liver diseases
- ◆ Increased cancers of the mouth, tongue, pharynx, esophagus, rectum, breast, and malignant melanoma.
- ◆ Kidney disease
- ◆ Pancreatitis
- ◆ Spontaneous abortion and neonatal mortality
- ◆ Ulcers
- ◆ Birth defects (up to 54 percent of all birth defects is alcohol related).

#### **Social Issues**

- ◆ Two-thirds of all homicides are committed by people who drink prior to the crime.
- ◆ Two to three percent of the driving population is legally drunk at any one time. This rate has doubled at night and on weekends.

- ◆ Two-thirds of all Americans will be involved in an alcohol-related vehicle accident during their lifetimes.
- ◆ The rate of separation and divorce in families with alcohol dependency problems is 7 times the average.
- ◆ Forty percent of family court cases are alcohol problem related.
- ◆ Alcoholics are 15 times more likely to commit suicide than are other segments of the population.
- ◆ More than 60 percent of burns, 40 percent of falls, 69 percent of boating accidents, and 76 percent of private aircraft accidents are alcohol related.

### **The Annual Toll**

- ◆ 24,000 people will die on the highway due to the legally impaired driver.
- ◆ 12,000 more will die on the highway due to the alcohol-affected driver.
- ◆ 15,800 will die in non-highway accidents.
- ◆ 30,000 will die due to alcohol-caused liver disease.
- ◆ 10,000 will die due to alcohol-induced brain disease or suicide.
- ◆ Up to another 125,000 will die due to alcohol-related conditions or accidents.

### **Workplace Issues**

- ◆ It takes one hour for the average person (150 pounds) to process one serving of an alcoholic beverage from the body.
- ◆ Impairment in coordination and judgment can be objectively measured with as little as two drinks in the body.
- ◆ A person who is legally intoxicated is 6 times more likely to have an accident than a sober person.

**RESOLUTION IMPLEMENTING THE FEDERAL TRANSIT ADMINISTRATION  
REGULATIONS ON DRUG USE AND ALCOHOL MISUSE  
(RESOLUTION 2013- )**

**WHEREAS**, the City desires to comply with all applicable Federal regulations governing workplace anti-drug and alcohol programs in the transit industry including the Federal Transit Administration (FTA) of the U.S. Department of Transportation regulations published in 49 C.F.R. § 655, as amended, that mandates urine drug testing and breath alcohol testing for safety-sensitive positions, and prohibits performance of safety-sensitive functions when there is a positive test result, and the regulations published in 49 C.F.R. § 40, as amended, that sets standards for the collection and testing of urine and breath specimens; and

**WHEREAS**, the City of Benson has an obligation to insure that its employees perform their jobs safely, efficiently and in a professional manner.

**WHEREAS**, the City of Benson recognizes that alcoholism and other drug dependencies has a significant potential for causing safety hazards for transit system employees.

**NOW THEREFORE**, the purpose of this document is set forth the Benson Heartland Express Drug & Alcohol Testing Policy regarding urine drug testing and breath alcohol testing for safety-sensitive positions in accordance with the terms of 49 CFR Part 655. I further certify that the employee training conducted under this part meets the requirements of 49 CFR Part 655.

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(Mayor)

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(Date)

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(City Manager)

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(Date)



**Stantec Consulting Services Inc.**  
2335 Highway 36 West  
St. Paul MN 55113  
Tel: (651) 636-4600  
Fax: (651) 636-1311

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**Stantec**

January 29, 2013

Elliot Nelson  
City of Benson  
1410 Kansas Avenue  
Benson, MN 56215

Re: City of Benson Part 2 Wellhead Protection Plan

Dear Mr. Nelson,

The purpose of this letter is to provide you with a proposed scope of services for the completion of your Part 2 Wellhead Protection Plan. These services are designed to meet Minnesota Department of Health (MDH) requirements for the completion of this plan, while providing you with a tool to manage the groundwater resources that you rely upon for drinking water supplies.

### **Wellhead Protection Plan Background**

The MDH completed the draft Part 1 Wellhead Protection Plan for Benson in late 2012. The Part 1 plan delineates the area from which the City's wells are receiving its water within the aquifer in a 10-year time frame. The plan also identifies the vulnerability of the underlying aquifer to contamination.

The MDH held a scoping meeting on January 14, 2013 with Benson to outline the requirements for the completion of the Part 2 Wellhead Protection Plan. Following the meeting, the MDH will send a Part 2 Scoping Decision Notice to the City, outlining these requirements in writing.

Stantec's experience with wellhead protection planning allows us to anticipate what will be required to complete the Part 2 plan. Based on the anticipated contents of the Scoping Decision Notice, the following is an outline of proposed tasks required to complete your plan.

### **Part 2 Wellhead Protection Plan**

#### **Task 1: Data Collection and Assembly**

Data collection and assembly often represents one of the largest portions of the Part 2 planning effort. Data pertaining to land use, the physical environment, public utilities, and water quantity/quality must be incorporated into the plan. The largest amount of time and effort is spent creating the *Potential Contaminant Source Inventory (PCSI)* for the delineated wellhead protection areas. The PCSI lists possible sources of contamination within the delineated wellhead protection area that may pose a potential hazard to drinking water quality.

## **Stantec**

**Elliot Nelson**  
**City of Benson**  
Page 2 of 4

### **Re: Part 2 Wellhead Protection Plan**

Benson's draft Drinking Water Supply Management Area (DWSMA) is close in size to the previously delineated area and is considered moderately vulnerable to contamination. Most of the effort to complete the PCSI will concentrate on identifying and locating any groundwater wells or storage tanks within the wellhead protection area.

#### Task 2: Development of Management Plan

The management plan comprises the heart of the Part 2 Wellhead Protection Plan. The management plan identifies changes to the water supply system, changes to area land use, problems and opportunities in managing contamination sources, and outlines goals and objectives to mitigating contamination risks. An action plan is developed to meet these goals and objectives, identifying specific tasks to implement following the MDH approval of the plan.

Development of the management plan will require close coordination with City staff to ensure that the plan reflects the goals of City and is feasible, given the available staffing and resources. Since the City already has the previous management plan in place, that plan will be used as a starting point to create the amended plan. Goals, objectives, and implementation items that were successful the first time around may be included in the amended plan. Goals, objectives, and implementation items that weren't as successful may need to be modified, eliminated, or replaced based on alternate options available to City staff. Stantec will work with Benson to identify possible alternate management strategies.

#### Task 3: Reporting

The report is the document that summarizes the data elements and outlines the management plan. Results of the PCSI will be mapped both on printouts and as GIS-compatible shape files.

Upon completion of the draft report, it will be presented to City staff for their review and comments. Following a meeting with City staff to refine and revise the report, the final report must then be submitted to all affected local units of government for a required 60 days review period. Following the 60-day review period, a public hearing must also be held to present the report to the general public. Once the public hearing has been held and any relevant comments are incorporated into the plan, the report is then submitted to the MDH for review and approval. The approval process takes 90 days. Following MDH approval, the final approved plan is then delivered to City staff.

Report deliverables include two hard copies of the draft report for City staff, electronic copies of the draft report for local government review, six electronic copies for MDH approval, and finally, ten hard copies of the approved plan report for City staff. Additionally, electronic copies (on CD-ROM) will be presented to City staff for archival purposes.

# Stantec

Elliot Nelson  
City of Benson  
Page 3 of 4

## Re: Part 2 Wellhead Protection Plan

### Task 4: Meetings

The Part 2 planning process generally requires four meetings total:

Potential Contamination Source Inventory Review: This meeting presents our findings of potential contamination sources to City staff. The inventory is then revised with help from City staff. Often, staff members with extensive history with the City will be aware of potential contamination sources that are not listed in the State's databases.

Management Plan Review Meeting: This meeting is held to review the management plan and to discuss how the plan should be shaped to reflect the City's desired approach to management of potential contamination sources. Getting direct input from City staff is vital to ensure that the finished plan best meets the City's goals for wellhead protection planning. In order to save time and expense for the City, this meeting may be incorporated with the PCSI Review meeting or held remotely by telephone.

Draft Review Meeting: Following completion of the draft report, a meeting is held with City staff to conduct a final review and revision to the plan to ensure that the draft sent to local units of government and the MDH meets the City's needs and expectations. This meeting may be held by telephone to reduce time and expense for the City.

Public Hearing: Following the local government review period, the City is required to conduct a public hearing. Stantec staff will attend this hearing and give a brief presentation, outlining the contents of the Part 2 plan for the City and the general public. Stantec staff will then remain to answer any questions posed by the City or the general public.

### **Budget and Schedule**

The budget is based on the anticipated content of the MDH's Part 2 Scoping Decision Notice letter. The proposed budget is presented on Table 1. ~~The budget is based on the anticipated content of the MDH's Part 2 Scoping Decision Notice letter. The proposed budget is presented on Table 1. The budget is expected to accurately reflect the cost of all expenses associated with the project.~~

Table 1 – Proposed Costs

<b>Project Task</b>	<b>Proposed Cost</b>
Task 1 – Data Assembly	\$3,125
Task 2 – Management Plan	\$2,000
Task 3 – Reporting	\$2,250
Task 4 – Meetings	\$2,500
Expenses	\$800
<b>Total</b>	<b>\$10,675</b>

**Re: Part 2 Wellhead Protection Plan**

A schedule for completion of this project is presented on Table 2. The MDH previously identified March 2013 as the due date on which the plan must be submitted for their review. However, since the MDH delayed the completion of the Part 1 plan and because the plan contains new wells not present in the earlier plan, an extension will be given to Benson. The new due date for this extension is not yet known, but is assumed to be approximately March 2014. The proposed schedule shows that we expect the actual submittal will take place in October 2013.

Table 2 – Estimated Schedule

<b>Project Milestone</b>	<b>Proposed Completion</b>
City Approves Stantec Work Plan	February 2013
Data Collection	May 2013
Draft Management Plan Completed	May 2013
City Review of Draft	June 2013
Local Government Review (60 days)	July-August 2013
Public Hearing	September 2013
Submittal of Plan to MDH for Approval*	October 2013*
MDH Approval of Plan (following 90 day review period)	January 2014
Plan Implementation Begins	February 2014

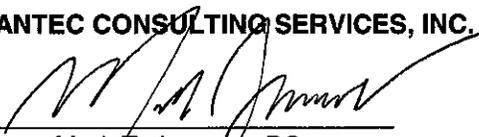
\*due date for submittal is likely to be March 2014

If this proposal, and the attached terms and conditions, are acceptable to you, please have an authorized City representative sign and return one copy of this letter proposal to Mark Janovec at Stantec.

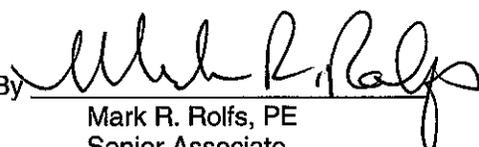
If you have any questions or comments regarding the above work plan, please contact me at (651) 604-4831 or [mark.janovec@stantec.com](mailto:mark.janovec@stantec.com). We are looking forward to working with you on the successful completion of your Wellhead Protection Plan.

Sincerely,

**STANTEC CONSULTING SERVICES, INC.**

By   
Mark T. Janovec, PG  
Project Manager

Date 1/29/2013

By   
Mark R. Rolfs, PE  
Senior Associate

Date 1/30/2013

**CITY OF BENSON**

By \_\_\_\_\_  
(signature)

\_\_\_\_\_  
(printed name and title)

Date \_\_\_\_\_



**Stantec**

The following Terms and Conditions are attached to and form part of the Proposal for Professional Services to be performed by STANTEC and together, when the CLIENT authorizes STANTEC to proceed with the services, constitute the AGREEMENT.

**DESCRIPTION OF WORK:** STANTEC shall render the services described in the Proposal (hereinafter called the "SERVICES") to the CLIENT.

**TERMS AND CONDITIONS:** No terms, conditions, understandings, or agreements purporting to modify or vary these Terms and Conditions shall be binding unless hereafter made in writing and signed by the CLIENT and STANTEC. In the event of any conflict between the Proposal and these Terms and Conditions, these Terms and Conditions shall take precedence. This AGREEMENT supercedes all previous agreements, arrangements or understandings between the parties whether written or oral in connection with or incidental to the PROJECT

**COMPENSATION:** Payment is due to STANTEC upon receipt of invoice. Failure to make any payment when due is a material breach of this AGREEMENT and will entitle STANTEC, at its option, to suspend or terminate this AGREEMENT and the provision of the SERVICES. Interest will accrue on accounts overdue by 30 days at the lesser of 1.5 percent per month (18 percent per annum) or the maximum legal rate of interest. Unless otherwise noted, the fees in this agreement do not include any value added, sales, or other taxes that may be applied by Government on fees for services. Such taxes will be added to all invoices as required.

**NOTICES:** Each party shall designate a representative who is authorized to act on behalf of that party. All notices, consents, and approvals required to be given hereunder shall be in writing and shall be given to the representatives of each party.

**TERMINATION:** Either party may terminate the AGREEMENT without cause upon thirty (30) days notice in writing. If either party breaches the AGREEMENT and fails to remedy such breach within seven (7) days of notice to do so by the non-defaulting party, the non-defaulting party may immediately terminate the Agreement. Non-payment by the CLIENT of STANTEC's invoices within 30 days of STANTEC rendering same is agreed to constitute a material breach and, upon written notice as prescribed above, the duties, obligations and responsibilities of STANTEC are terminated. On termination by either party, the CLIENT shall forthwith pay STANTEC all fees and charges for the SERVICES provided to the effective date of termination.

**ENVIRONMENTAL:** Except as specifically described in this AGREEMENT, STANTEC's field investigation, laboratory testing and engineering recommendations will not address or evaluate pollution of soil or pollution of groundwater.

Where the SERVICES include storm water pollution prevention (SWPP), sedimentation or erosion control plans, specifications, procedures or related construction observation or administrative field functions, CLIENT acknowledges that such SERVICES proposed or performed by STANTEC are not guaranteed to provide complete SWPP, sedimentation or erosion control, capture all run off or siltation, that any physical works are to be constructed and maintained by the CLIENT's contractor or others and that STANTEC has no control over the ultimate effectiveness of any such works or procedures. Except to the extent that there were errors or omissions in the SERVICES provided by STANTEC, CLIENT agrees to indemnify and hold STANTEC harmless from and against all claims, costs, liabilities or damages whatsoever arising from any storm water pollution, erosion, sedimentation, or discharge of silt or other deleterious substances into any waterway, wetland or woodland and any resulting charges, fines, legal action, cleanup or related costs.

**PROFESSIONAL RESPONSIBILITY:** In performing the SERVICES, STANTEC will provide and exercise the standard of care, skill and diligence required by customarily accepted professional practices normally provided in the performance of the SERVICES at the time and the location in which the SERVICES were performed.

**LIMITATION OF LIABILITY:** The CLIENT releases STANTEC from any liability and agrees to defend, indemnify and hold STANTEC harmless from any and all claims, damages, losses, and/or expenses, direct and indirect, or consequential damages, including but not limited to attorney's fees and charges and court and arbitration costs, arising out of, or claimed to arise out of, the performance of the SERVICES, excepting liability arising from the sole negligence of STANTEC. It is further agreed that the total amount of all claims the CLIENT may have against STANTEC under these Terms and Conditions, including but not limited to claims for negligence, negligent misrepresentation and breach of contract, shall be strictly limited to the lesser of professional fees paid to STANTEC for the SERVICES or five hundred thousand dollars (\$500,000). No claim may be brought against STANTEC more than two (2) years after the cause of action arose. As the CLIENT's sole and exclusive remedy under these Terms and Conditions any claim, demand or suit shall be directed and/or asserted only against STANTEC and not against any of STANTEC's employees, officers or directors.

**INDEMNITY FOR MOLD CLAIMS:** It is understood by the parties that existing or constructed buildings may contain mold substances that can present health hazards and result in bodily injury, property damage and/or necessary remedial measures. If, during performance of the SERVICES, STANTEC knowingly encounters any such substances, STANTEC shall notify the CLIENT and, without liability for consequential or any other damages, suspend performance of services until the CLIENT retains a qualified specialist to abate and/or remove the mold substances. The CLIENT agrees to release and waive all claims, including consequential damages, against STANTEC, its subconsultants and their officers, directors and employees arising from or in any way connected with the existence of mold on or about the project site whether during or after completion of the SERVICES. The CLIENT further agrees to indemnify and hold STANTEC harmless from and against all claims, costs, liabilities and damages, including reasonable attorneys' fees and costs, arising in any way from the existence of mold on the project site whether during or after completion of the SERVICES, except for those claims, liabilities, costs or damages caused by the sole gross negligence and/or knowing or willful misconduct of STANTEC. STANTEC and the CLIENT waive all rights against each other for mold damages to the extent that such damages sustained by either party are covered by insurance.



**Stantec**

**DOCUMENTS:** All of the documents prepared by or on behalf STANTEC in connection with the PROJECT are instruments of service for the execution of the PROJECT. STANTEC retains the property and copyright in these documents, whether the PROJECT is executed or not. These documents may not be used for any other purpose without the prior written consent of STANTEC. In the event STANTEC's documents are subsequently reused or modified in any material respect without the prior consent of STANTEC, the CLIENT agrees to defend, hold harmless and indemnify STANTEC from any claims advanced on account of said reuse or modification.

STANTEC cannot guarantee the authenticity, integrity or completeness of data files supplied in electronic format ("Electronic Files"). CLIENT shall release, indemnify and hold STANTEC, its officers, employees, consultants and agents harmless from any claims or damages arising from the use of Electronic Files. Electronic files will not contain stamps or seals, remain the property of STANTEC, are not to be used for any purpose other than that for which they were transmitted, and are not to be retransmitted to a third party without STANTEC's written consent.

**FIELD SERVICES:** STANTEC shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with work on the PROJECT, and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents. STANTEC shall not be responsible for the acts or omissions of any contractor, subcontractor, any of their agents or employees, or any other persons performing any of the work in connection with the PROJECT.

**GOVERNING LAW/COMPLIANCE WITH LAWS:** The AGREEMENT shall be governed, construed and enforced in accordance with the laws of the jurisdiction in which the majority of the SERVICES are performed. STANTEC shall observe and comply with all applicable laws, continue to provide equal employment opportunity to all qualified persons, and to recruit, hire, train, promote and compensate persons in all jobs without regard to race, color, religion, sex, age, disability or national origin or any other basis prohibited by applicable laws.

**DISPUTE RESOLUTION:** If requested in writing by either the CLIENT or STANTEC, the CLIENT and STANTEC shall attempt to resolve any dispute between them arising out of or in connection with this AGREEMENT by entering into structured non-binding negotiations with the assistance of a mediator on a without prejudice basis. The mediator shall be appointed by agreement of the parties. If a dispute cannot be settled within a period of thirty (30) calendar days with the mediator, if mutually agreed, the dispute shall be referred to arbitration pursuant to laws of the jurisdiction in which the majority of the SERVICES are performed or elsewhere by mutual agreement.

**ASSIGNMENT:** The CLIENT and STANTEC shall not, without the prior written consent of the other party, assign the benefit or in any way transfer the obligations under these Terms and Conditions or any part hereof.

**SEVERABILITY:** If any term, condition or covenant of the AGREEMENT is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions of the AGREEMENT shall be binding on the CLIENT and STANTEC.

State of Minnesota  
 Department of Transportation  
 Office of Aeronautics  
 Airport Development Section

STATEMENT OF CONSTRUCTION WORK PERFORMED

State Project Number: 7601-33

Municipality: BENSON

Project Description: 8. 4-Unit T-Hangar;Mill&Ovrly Txwy

Agreement: 01867

Region: W FAA Proj Number: 3-27-0011-08-12

FY: 2013 Estimate Number: 2

Construction Costs Through: 16-JAN-2013

Item Number	Construction Item	Unit of Measure	Funding Rate FAA-ST -MUN	Unit Price	Quantity	Amount	Previously Completed Quantity	Completed This Report Quantity	Completed to Date Quantity	Completed to Date Amount
001	Mobilization	LS	090 000 010	11,556.00	1.000	11,556.00	0.500	0.000	0.500	5,778.00
002	Traffic Provisions	LS	090 000 010	1,800.00	1.000	1,800.00	1.000	0.000	1.000	1,800.00
003	Haul Routes	LS	090 000 010	3,000.00	1.000	3,000.00	0.500	0.500	1.000	3,000.00
004	Contractors Site	LS	090 000 010	600.00	1.000	600.00	1.000	0.000	1.000	600.00
005	Common Excavation	CY	090 000 010	12.48	500.000	6,240.00	375.000	125.000	500.000	6,240.00
006	Subgrade Excavation	CY	090 000 010	12.48	250.000	3,120.00	250.000	0.000	250.000	3,120.00
007	Granular Material (CV)	CY	090 000 010	34.86	250.000	8,715.00	250.000	0.000	250.000	8,715.00
008	Water	MGal	090 000 010	64.14	7.000	448.98		7.000	7.000	448.98
009	Topsoil Stripping	SY	090 000 010	0.90	675.000	607.50	675.000	0.000	675.000	607.50
010	Topsoil Placement	SY	090 000 010	0.90	1,500.000	1,350.00		1,500.000	1,500.000	1,350.00
011	6" Aggregate Base	SY	090 000 010	7.38	675.000	4,981.50	675.000	0.000	675.000	4,981.50
012	Wearing Course Mixture	Ton	090 000 010	66.90	255.000	17,059.50		255.000	255.000	17,059.50
013	Binder Course Mixture	Ton	090 000 010	66.90	85.000	5,686.50		141.000	141.000	9,432.90
014	Bituminous Material for Mixtur	Ton	090 000 010	660.00	21.000	13,860.00		26.000	26.000	17,160.00
015	Bituminous Tack Coat	Gal	090 000 010	3.18	215.000	683.70		215.000	215.000	683.70
016	Txturing and Profiling Bit Sfc	SY	090 000 010	4.26	1,438.000	6,125.88		1,438.000	1,438.000	6,125.88
017	Pavement Marking	LS	090 000 010	2,640.00	1.000	2,640.00		1.000	1.000	2,640.00
018	Sodding	SY	090 000 010	6.00	900.000	5,400.00		0.000		0.00
019	Water	MGal	090 000 010	18.00	54.000	972.00		0.000		0.00
020	Wood Fiber Blanket	SY	090 000 010	2.40	600.000	1,440.00		0.000		0.00
021	Silt Fence	LF	090 000 010	24.00	25.000	600.00		25.000	25.000	600.00
022	Hangar Electrical Construction	LS	090 000 010	28,503.60	1.000	28,503.60		0.000		0.00
023	Prefabricated Metal Hangar Bld	LS	090 000 010	235,048.59	1.000	235,048.59	0.050	0.710	0.760	178,636.93
***	*** CHANGE ORDERS ***		*** *** ***			0.00		0.000		0.00
col	C.O. #1 - agg base+items 13/14	sqyd	090 000 010	1.50	0.000	0.00		1,438.000	1,438.000	2,157.00

Contract Totals: 360,438.75

Completed to Date: 271,136.89

State of Minnesota  
 Department of Transportation  
 Office of Aeronautics  
 Airport Development Section

STATEMENT OF CONSTRUCTION WORK PERFORMED

State Project Number: 7601-33

Municipality: BENSON

Project Description: 8. 4-Unit T-Hangar;Mill&Ovrly Txwy

Agreement: 01867

Region: W FAA Proj Number: 3-27-0011-08-12

FY: 2013 Estimate Number: 2

Construction Costs Through: 16-JAN-2013

Item Number	Construction Item	Unit of Measure	Funding Rate FAA-ST -MUN	Unit Price	Quantity	Amount	Previously Completed Quantity	Completed This Report Quantity	Completed to Date Quantity	Completed to Date Amount
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	TOTAL	FEDERAL	STATE	LOCAL
Construction Prorates: A		90.0000 %	0.0000 %	10.0000 %
Previously Completed:	43,534.43	39,180.05	0.00	4,354.38
Completed This Report:	227,602.46	204,843.11	0.00	22,759.35
Completed to Date:	271,136.89	244,023.16	0.00	27,113.73

Retainage Computation for Payment to		Everstrong Construction			
Total Completed to Date:		271,136.89	244,023.16	0.00	27,113.73
Less 5 % Retainage:		13,556.84	12,201.16	0.00	1,355.68
Sub Total Payment:		257,580.05	231,822.00	0.00	25,758.05
Less Previous Payments:		41,357.71	37,221.00	0.00	4,136.71
Contractors Payment This Estimate:		216,222.34	194,601.00	0.00	21,621.34

State of Minnesota  
Department of Transportation  
Office of Aeronautics  
Airport Development Section

Construction Report and Cost Estimate

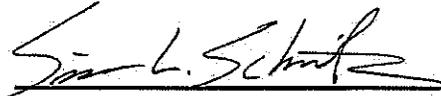
State Project Number: 7601-33  
Municipality: BENSON  
Project Description: 8. 4-Unit T-Hangar; Mill & Ovrly Txwy  
Contractor's Name: Everstrong Construction

Agreement: 01867  
Region: W FAA Proj Number: 3-27-0011-08-12  
FY: 2013 Estimate Number: 2  
Construction Costs Through: 16-JAN-2013

CERTIFICATION OF WORK PERFORMED

I have examined the materials furnished and work performed by the Contractor on the above project. To the best of my knowledge the quantities are correct and in accordance with the plans and specifications. I recommend this estimate for payment. If a Statement of Engineering Services is attached, I certify the engineering costs shown are correct.

Dated: 1/23/13 Title: Project Manager

  
Engineer's Signature

This is to certify that the quantities as shown herein are a fair estimate for the period covered by this Report.

Dated: 1-24/13 Title: CEO

  
Everstrong Construction

CERTIFICATION BY AN OFFICIAL OF BENSON

I hereby certify this report (and the attached Statement of Engineering Services) was approved for payment by the Municipal Council at the regular (special) meeting held on the \_\_\_\_\_ Day of \_\_\_\_\_.

Title: \_\_\_\_\_

\_\_\_\_\_ BENSON Approval

January 22, 2013

CHANGE ORDER

Change Order No. 2      Airport      TKDA      AIP. 3-27-0011-08-12  
Benson Municipal      Project No. 15121.001      SAP. A7601-33

Sponsor      Sponsor's Address      Date Prepared      Amount of Contract  
City of Benson      1410 Kansas Avenue      01/16/2013      \$360,438.75 (present)  
Benson, MN 56215                \$370,135.09 (revised)

Contractor      Contractor's Address      Completion Dates  
Everstrong      36379 US Highway 71.      Contract      Revised  
Construction, Inc.      Redwood Falls, MN 56283      120 Days      120 Days

CHANGES ORDERED

Additional Bituminous and Base Preparation

Additional bituminous surfacing was needed in order to properly pave the taxiway to the new hangar. The original plan called for milling of the existing bituminous surface and overlaying with 2" of new bituminous. Upon inspection, the existing surface is thinner and more severely deteriorated than anticipated. It was necessary to mill off the entire bituminous surface, compact and regrade the aggregate base and pave bituminous.

Binder Course Mixture    56 Tons @ \$66.90/Ton = \$3,746.40  
Bituminous Material      5 Tons @ \$660.00/Ton = \$3,300.00  
Aggregate Base Prep.    1,438 SY @ \$1.50/Ton = \$2,157.00

Hangar Electrical Construction

Square D QO loadcenters and 600 amp connection to the main service.

Additional Hangar Electrical Construction of \$492.94.

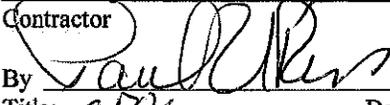
Total Cost of Change Order No. 2    \$9,696.34

The foregoing is in accordance with your contract dated September 10, 2012 and the aforementioned change, and the work affected thereby is subject to all contract stipulations and covenants.

APPROVED:  
CITY OF BENSON

By \_\_\_\_\_  
Title: \_\_\_\_\_ Date \_\_\_\_\_

ACCEPTED:  
Everstrong Construction, Inc.  
Contractor

By   
Title: CEO Date 1-24-2013

TKDA  
ENGINEERS-ARCHITECTS-PLANNERS

By  1/23/13  
Project Manager      Date

Investment Proposal for:  
CITY OF BENSON  
1410 KANSAS AVE  
BENSON, MN 56215  
Phone: (320) 843-4775



Kelly Walstad  
2900 Main Ave  
Moorhead, MN 56560  
Phone: (701) 526-2252  
Mobile: (701) 238-6632  
Fax: (701) 526-2253

Thank you for allowing me the opportunity to quote you this equipment. We appreciate your business. Kelly

**Equipment: NEW 2012 VERMEER BC1000XL**

List Price \$31,746.00

**Key Features**

- BC1000XL15VP BC1000XL BRUSH CHIPPER
- BC1000XL019 BASIC DISCHARGE DEFLECTOR
- BC1000XL027 5200LBS (DOM) AXLE, 16" TIRES, TONGUE, HITCH
- BC1000XL068 BASIC INSTRUMENTATION CUMMINS 74 & 85 HP
- BC1000XL086 BASIC SOUND REDUCTION
- BC1000XL401 BC1000XL 74HP CUMMINS TIER 4I

(12 inch throat)

**Serial Number**

1VRY11191C1018265 (24 Approximated Hours)

Equipment Price \$26,984.00

**Purchase Price of this Unit: \$26,984.00**

**TRADE INFORMATION**

1992 VERMEER 935 - 1VRD10152N1000348

Hrs 853 Allowance \$5,000.00

(9 inch throat)

**Credit for all Trades: (\$5,000.00)**

**PROPOSAL SUMMARY**

Equipment Total	\$26,984.00
Total Trade-In Allowance	(\$5,000.00)
Sub Total	\$21,984.00
Estimated sales tax to apply (MNST MN STATE TAX 6.875%)	\$1,511.40

**Total Investment \$23,495.40**

**Kelly Walstad**  
Sales Representative  
Vermeer Sales & Service  
kwalstad@rdoequipment.com

# RDO-Vermeer Promise™ - Uptime Guaranteed™



## The RDO-Vermeer Promise™ - Uptime Guaranteed™ includes\*:

- Equipment Walk-Around and New Ownership Training
- Balance of Basic Factory Warranty
- Free Loaner For Warranty Repairs
- Free Travel Time During Basic Factory Warranty
- Free After Sales Inspection
- Free Inspection for Warranty Purposes
- Guaranteed Field Service Response Time (within 4 hours)
  - During normal store hours of operation, 8:00 am - 5:00 pm, Monday through Friday, excluding holidays.
- Guaranteed Parts Availability During the Warranty Period
- Lifetime Equipment Operation and Safety Training Sessions
- Lease or Retail Finance Plan (Optional and tailored to customer)
- Extended Warranty Options Available (Optional and tailored to customer)
- GPS Monitoring (Optional and tailored to customer)
- Preventive Maintenance Plan (Optional and tailored to customer)

\*Please refer to the RDO-Vermeer Promise™ Customer Agreement for complete details.

(VERD12612)



January 18, 2013

PERA ID No. 314175

LISA KENT  
CITY OF BENSON  
1410 KANSAS AVE  
BENSON MN 56215-1718

Re: Patrick McGeary

Dear Lisa Kent:

The phased retirement option (PRO) agreement will be ending on March 4, 2013 for Patrick McGeary. This agreement is limited to one year. An employer may extend the individual's employment for periods of up to one year. No more than four renewals may occur.

Participation in PERA's phased retirement program stops at the conclusion of the employee's initial or renewed agreement, whichever is later. When an employee's participation in the phased retirement program ends, the employer must promptly inform PERA. Similarly, employers must notify PERA if an employee covered by a PRO agreement terminates public service.

Enclosed is a new phased retirement option (PRO) agreement form to be completed by both the employer and the employee if you decide to offer a PRO renewal. If you do agree to a PRO renewal with Patrick McGeary, this form must be returned to PERA as soon as possible. Enclosed is a verification of termination form that should be completed if there is not a PRO renewal.

If you have any questions regarding this matter, please feel free to contact our office.

Sincerely,

A handwritten signature in black ink that reads 'Kim Lantz'.

Kim Lantz  
Benefit Claims Processor

PS/lc

cc: Patrick McGeary

# ROOF 1 - RBR Inc.

## "Invoice"

  
 1/17/13

PO Box 157, Freeport, Mn. 56331

Phone: 320-836-ROOF (7663)  
 Fax: 320-836-7662    Cell Phone: 320-304-ROOF (7663)

**City Of Benson**

Attn: Mr. Glen Pederson  
 1410 Kansas Ave.  
 Benson, Mn. 56215  
 Phone: 320-843-5445  
 Fax: 320-842-7151

From: Roof 1-RBR Inc.  
 Pages: 1 of 1  
 Date: 1/14/13  
 CC:

Quantity	Description	Price	Amount/Total
1	Reroofing City Hall Building Per Orig Proposal Signed 9/17/12	<b>\$37,028.00</b>	\$37,028.00
1	Fabricate & Install New Prefinished Metal Coping, Counterflashing, Keeper & Accessories Per Verbal Quote	<b>\$2,461.00</b>	\$2,461.00
1	Install New Wood Blocking As Required Verbal Quote T&M Not To Exceed \$1200	<b>\$1,200.00</b>	\$1,200.00
<b>Total Billing:</b>			<b>\$40,689.00</b>
<b>Prior Payment:</b>			
<b>Owner Discount On T&amp;M:</b>			<b>\$479.00</b>
<b>Total Due To Date:</b>			<b>\$40,210.00</b>

This account is subject to a Finance Charge for late Payment. Payment is due upon completion of work. Finance charges of 1 1/2 % or (18% per year) will be added to a balance past due.

**Omni-Pro Software, Inc.**

23608 458th Avenue  
 Madison, SD 57042  
 USA

Voice: 605-256-3337  
 Fax: 605-256-3929

**INVOICE**

Invoice Number: 20387  
 Invoice Date: Jan 29, 2013  
 Page: 1

*Duplicate*

Bill To:
City of Benson Electric Utility 1410 Kansas Avenue Benson, MN 56215 USA

Ship to:
City of Benson Electric Utility 1410 Kansas Avenue Benson, MN 56215 USA

Customer ID	Customer PO	Payment Terms	
Benson AMR		Net 30 Days	
Sales Rep ID	Shipping Method	Ship Date	Due Date
	UPS Ground		2/28/13

Quantity	Item	Description	Unit Price	Amount
100.00	C31_GE	Meter Module	89.00	8,900.00
100.00	C31_485	Adapter	20.00	2,000.00
		Shipping		75.00
Subtotal				10,975.00
Sales Tax				
Total Invoice Amount				10,975.00
Payment/Credit Applied				
<b>TOTAL</b>				<b>10,975.00</b>

Check/Credit Memo No: