

**Electronic Special Meeting of the Coldwater Board of Public Utilities  
Telephone Conferencing Meeting Notice  
Thursday, April 23, 2020 at 5:30 p.m.**

In accordance with Gov. Gretchen Whitmer and the Michigan Department of Health and Human Services' recommendations designed to help prevent the spread of Coronavirus Disease 2019 (COVID-19) and Executive Order 2020-48, replacing Executive Order 2020-15, both of which declared that public bodies subject to the Open Meetings Act may use telephone or video conferencing technology to meet and conduct business, the Coldwater Board of Public Utilities will hold such a meeting via telephone conferencing at **5:30 p.m. on Thursday, April 23, 2020**. For current and up-to-date information regarding the coronavirus, visit: <http://www.Michigan.gov/Coronavirus> or <http://www.CDC.gov/Coronavirus>.

Members of the public wishing to participate in the meeting through electronic means will have access to the meeting through the following methods:

**ELECTRONIC COLDWATER BOARD OF PUBLIC UTILITIES MEETING ACCESS**

For individuals who may wish to give public comment, the method for providing public comment during this remote-participation meeting is to call the following toll-free numbers:

**1-888-475-4499 or 1-877-853-5257 (Meeting ID: 875 7037 9439)** Participant ID is not required.

Callers wishing to give public comment may call in before the meeting starts and wait in a “virtual waiting room.” These instructions will be included in every official published agenda of the Coldwater Board of Public Utilities. Those calling in will be able to hear the audio of the CBPU Board meeting, but their microphone will be muted. Callers who do not wish to give public comment are encouraged to view the meeting live-streamed on YouTube by selecting CBPU Board meeting of April 23, 2020 at, [bit.ly/ColdwaterVideo](http://bit.ly/ColdwaterVideo) or view the meeting live on Skitter channel 61.

**ELECTRONIC COLDWATER BOARD OF PUBLIC UTILITIES MEETING PARTICIPATION**

The following are the procedures by which persons may contact members of the public body to provide input or ask questions about any business that will come before it.

- To help meeting flow and organization, all public comment will be taken at the beginning of the meeting and again at the end of the meeting.
- Phone-in audience: To make a public comment during a public comment period, enter \*9 on your telephone, and state your name and express your interest when called upon to do so.
- The time limit for an individual's public comments shall remain five minutes.

If you would like to contact the CBPU Board of Directors about any matter, on the agenda or otherwise, please do so via the email addresses below by 3:30 pm prior to the meeting and if you wish your email to be read at the meeting, please so specify in your email:

- CBPU President Christopher Stevens: [cstevens@coldwater.org](mailto:cstevens@coldwater.org)
- CBPU Vice President Scott Ohm: [sohm@coldwater.org](mailto:sohm@coldwater.org)
- CBPU Board Member Travis Machan: [tmachan@coldwater.org](mailto:tmachan@coldwater.org)
- CBPU Member John Wellet: [jwellet@coldwater.org](mailto:jwellet@coldwater.org)
- CBPU Member Terry Whelan: [twhelan@coldwater.org](mailto:twhelan@coldwater.org)
- CBPU Utility Director Jeff Budd: [jbudd@coldwater.org](mailto:jbudd@coldwater.org)

The City of Coldwater will provide necessary reasonable auxiliary aids such as YouTube viewing of the meeting complete with Closed Captioning. If other aids and services are needed for individuals with disabilities, please contact the CBPU Board Secretary at [nluce@coldwater.org](mailto:nluce@coldwater.org).

Technical support for this meeting is available by calling the CBPU Help Desk at [517-279-1330](tel:517-279-1330).

**COLDWATER BOARD OF PUBLIC UTILITIES  
BOARD OF DIRECTORS ELECTRONIC SPECIAL MEETING**

**Henry L. Brown Municipal Building**

Council Chamber

One Grand Street

Coldwater, Michigan

April 23, 2020

5:30 p.m.

**Any interested person or group may address the Coldwater Board of Public Utilities on any agenda item when recognized by the presiding officer or upon request of any Board Member. Also, any interested person or group may address the Coldwater Board of Public Utilities on any matter of CBPU concern not on the Agenda during the agenda item designated Public Comment. The comment of any member of the public or any special interest group may be limited in time. Such limitation shall not be less than five minutes unless otherwise explained by the presiding officer, subject to appeal by the Board.**

For individuals who may wish to give public comment, the method for providing public comment during this remote-participation meeting is to call the following toll-free numbers:

**1-888-475-4499 or 1-877-853-5257 (Meeting ID: 875 7037 9439)** Participant ID is not required.

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- Call to Order
- Roll Call
- Public Comment
- [Approval of Project IV Purchase Agreement](#)
- [Butters Avenue Substation MV Cable Bid Recommendation](#)
- [Phase II Fiber Construction Recommendations](#)
- Public Comment
- Adjournment

# Memo

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**To:** President Stevens and Members of the Board of Directors  
**From:** Jeffrey W. Budd, Director  
**Date:** April 22, 2020  
**Re:** Approval of Project IV Purchase Agreement

Attached for the Board's approval is the Agreement of Purchase for the 13.8MW Natural Gas Plant (Project IV) on Fillmore Road. This will effectively take the asset and debt off the MSCPA's balance sheet and incorporate unto the CBPU's balance sheet.

The agreed upon price is for the actual debt currently owed to PNC Bank. Coldwater is already 100% responsible for the debt and all costs associated with Project IV. This paper transaction will clean up any questions on ownership and costs associated with the project.

In addition to the plant itself, the CBPU will be assigned any and all maintenance contracts, air permits and gas supply contracts. These contracts are ultimately still the financial responsibility of the CBPU as the sole member in the project.

The MSCPA Board has discussed and is in favor of cleaning up its balance sheet and any perceived liability (however unlikely) to any of the other members. The MSCPA Board is scheduled to meet on Friday, April 24 to approve the agreement as well.

It is my recommendation the CBPU Board approve the attached Agreement of Purchase.

**AGREEMENT OF PURCHASE**

THIS AGREEMENT OF PURCHASE (the "Agreement") is made as of the Effective Date (defined below) between **CITY OF COLDWATER, a Michigan municipal corporation acting through its Board of Public Utilities**, with an address of One Grand Street, Coldwater, MI 49036 ("Purchaser") and **MICHIGAN SOUTH CENTRAL POWER AGENCY, a municipal Joint Action Agency operating as a public body and corporate of the State of Michigan pursuant to 1976 PA 448, as amended**, with an address of 168 Division St., Coldwater, MI 49036 ("Seller").

## RECITALS

- A. Seller is the owner of certain improvements, and personal property described below as the "Property" which property is located upon the Lands (as defined in the Fundamental Purchase Provisions below).
- B. Purchaser is the owner and record titleholder of the Land which are described on Exhibit B and referenced in the Fundamental Purchase Provisions below and prior to the Effective Date Purchaser has been in possession of and operated and maintained the Property.
- C. Purchaser desires to purchase, and Seller desires to sell, said Property upon the terms and conditions set out hereinafter.

NOW, THEREFORE, in consideration of the terms, covenants, and conditions set forth in this Agreement, Seller and Purchaser hereby agree as follows:

1. **Fundamental Purchase Provisions.** Unless otherwise defined herein, capitalized terms used in this Agreement shall have the meanings listed in the following Fundamental Purchase Provisions.

Property: A gas fired electrical power generation plant (the "Plant"), as more particularly described in Exhibit "A" attached hereto, including all equipment, supplies, and improvements associated with the Plant (excepting the parking lot improvements installed by Purchaser) that are located upon that certain parcel of real property owned by Purchaser and consisting of approximately 3.472 acres as described on Exhibit B (the "Land"), together with all of Sellers interest in all assignable warranties on the equipment, licenses, and permits to operate the Plant.

Subject State: Michigan.

Purchase Price: A sum that is equal to all costs and expenses necessary to fully retire Seller's loan with PNC Bank as evidenced by the Seller's Power Supply System Revenue Bonds, Series 2014 (the "Loan"), including the outstanding principal balance together with any interest due as of the first day of the calendar month immediately following Closing.

Initial Deposit: \$100.00

Effective Date: The date upon which this Agreement is executed by Seller and Purchaser

Closing: To occur as soon as possible, but no later than 60 days of the Effective Date hereof.

Inspection Period: Sixty (60) days.

Expiration Date  
Of Offer: Ten (10) days after Seller's receipt of a signed copy hereof signed by Purchaser.

2. **Agreement to Sell and Convey.** Seller hereby agrees to sell and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, subject to the terms and conditions hereinafter set forth, all of Seller's right, title and interest in and to the Property which shall include all of Seller's right, title, and interest, if any, in and to:

(a) all buildings, structures, fixtures, tangible personal property, and improvements on the real property at the time of the execution of this Agreement (the "Improvements");

(b) all of Seller's interests if any in easements benefitting, and rights of access appurtenant to, the real property;

(c) all of Seller's interests if any in rights and appurtenances pertaining to the real property, including any adjacent streets, roads, alleys, accesses, and rights-of-way;

(d) Seller's interest in and to the Renewable Operating Permits issued by MDEQ Air Quality Division, being Permit No. 80-14-2016 ("Air Permit").

(e) Seller's interest in the contracts described on Exhibit "F" (the "Service Contracts").

3. **Purchase Price; Deposit.** The Purchase Price shall be paid on the Closing date in exchange for a bill of sale (the "Bill of Sale") from Seller at which time the other closing documents described herein shall be executed and exchanged.

4. **Conditions to Purchaser's Obligations.** Purchaser's obligation to purchase the Property shall be contingent upon these following contingencies being satisfied and/or waived by Purchaser within the Inspection Period.

(a) **Title Review.** Purchaser may, at its sole cost, obtain from a title company a title search or a commitment for an owner's policy of title insurance on the Land and perform such lien and/or title searches on the Property as Purchaser deems necessary ("Title Review"). Seller does not have and has not undertaken any obligation to cure any items specified in the Title Review.

(b) **Inspections.** Purchaser may, at its sole cost and expense, have all aspects of the Property investigated and inspected by person(s) of Purchaser's choosing. In no event shall Seller have any obligation to repair and correct any condition affecting the Property.

(c) **Financing.** Purchaser's obligations hereunder shall be contingent upon the issuance and sale of bonds supported by the full faith and credit of the City of Coldwater in such amounts and on such terms as Purchaser may determine acceptable in an amount sufficient to pay the Purchase Price and cover all costs of issuance. Seller shall not be obligated to incur any obligation or costs in connection with Purchaser's issuance of bonds and all costs and expenses incurred by Purchaser in connection therewith shall be borne by Purchaser.

If Purchaser is dissatisfied with the results of its investigations, the state and quality of title, or its inability to obtain financing pursuant to paragraphs 5(a), 5(b), and 5(c) above, Purchaser may terminate this Agreement by providing written notice to Seller at any time prior to the expiration of the Inspection Period. Upon issuance of such notice of termination, this Agreement shall terminate and neither party shall have any other liability hereunder. Purchaser's failure to terminate this Agreement prior to the Closing shall be deemed a waiver of all such contingencies.

5. **Permitted Exceptions.** Purchaser acknowledges that the Land may be subject to the following (the "Permitted Exception"): (i) easements and rights of public utilities and all other items of record, including those matters which would be referenced in a Title Commitment and matters which would be disclosed by an accurate survey of the Property, (ii) covenants, conditions, private easements and restrictions of record, (iii) real estate taxes and assessments for the then current year that are not due and payable as of the date of Closing, and (iv) encumbrances

or exceptions to title that would be shown on the Title Commitment and/or Survey. Purchaser's consummation of the purchase of the Property shall constitute an acceptance by Purchaser of all such Permitted Exceptions, all aspects of the Property including the condition thereof and any matters affecting the Property.

6. **Representations and Warranties of Seller.** Seller represents and warrants to Purchaser as to the following matters, each of which is true and correct as of the Effective Date, and each of which shall be true and correct as of the date of Closing. As used in this Section, the phrase "to Seller's knowledge" means the actual knowledge of the General Manager executing this Agreement on behalf of Seller, after investigation and inquiry.

(a) Except as may be disclosed to Purchaser by Seller in writing during the term hereof, Seller has received no written notice from any governmental agency alleging a violation of any statute, ordinance, regulation or code with respect to the Property which violation has not been cured.

(b) There are no pending nor, to Seller's knowledge, threatened matters of litigation, administrative action or examination, claim or demand relating to the Property or Seller's interest in the Property. Further, to Seller's knowledge, Seller is not in default of any contract or agreement relating to the Property.

(c) There is no pending nor, to Seller's knowledge, contemplated or threatened eminent domain, condemnation or other governmental taking or proceeding relating to the Property or any part thereof.

(d) Seller's governing board has reviewed this Agreement and has approved and authorized the execution of the Agreement and the performance of any and all required, necessary, and appropriate actions necessary to consummate the transactions contemplated herein.

Purchaser acknowledges and agrees that the warranties and representations set forth above shall survive the Closing for a period of one hundred twenty (120) days and if Purchaser fail to deliver to Seller written notice by the date which is one hundred twenty (120) days from Closing, asserting that Seller has breached such representations, then all such claims shall be deemed waived. If, prior to Closing, Purchaser receives written notice from Seller or from any other source that any material representation or warranty of Seller is untrue and which cannot be remedied or Purchaser becomes aware that any representation or warranty of Seller is untrue, Purchaser shall, as Purchaser's sole and exclusive remedy, be entitled to terminate this Agreement by written notice delivered to Seller on or before the Closing and, except for the terms and provisions of this Agreement which specifically survive the termination of this Agreement, the parties shall have no further obligations hereunder this Agreement. If Purchaser fails to terminate this Agreement, Purchaser shall be deemed to have waived the breach of such representation or warranty and shall have no further right to terminate this Agreement as a result of the breach of such representation or warranty. Seller does not, by this Agreement, represent or warrant that there will be no changes in any of the matters referred to in Seller's representations or warranties after the date same are made through the acts and/or omissions of persons other than Seller, and shall have no liability or responsibility in the event that any representation or warranty becomes false or misleading as a result of any change in circumstances after the date such representations or warranties are made due to the acts and/or omissions of persons other than Seller.

7. **Closing.** Seller and Purchaser shall consummate the transactions contemplated by this Agreement at a closing (the "Closing") through one or more escrows pursuant to escrow instructions acceptable to Seller and Purchaser. The attorneys for Seller and Purchaser are authorized to execute such letter of escrow instructions, any amendments thereto and all directions or communications thereunder.

8. **Seller's Obligations at the Closing.** At the Closing, Seller shall:

(a) execute and deliver to Purchaser the Bill of Sale conveying and releasing whatever interest Seller has in the Property, in the form attached hereto as Exhibit "D";

(b) execute and deliver to Purchaser a closing statement itemizing the Purchase Price which is not subject to adjustments thereto except as provided herein;

(c) execute and deliver a form of assignment and assumption of the Service Contracts described on Exhibit "F", substantially in the form attached hereto as Exhibit "E";

(d) execute and deliver an assignment and assumption of the Air Permit in form acceptable to Purchaser and Seller;

(e) execute and deliver a quit claim deed in the form attached hereto as Exhibit "B"; and

(f) execute and deliver to Purchaser such other documents or instruments as may be required under this Agreement, or as otherwise required in Purchaser's reasonable opinion to effectuate the Closing.

9. **Purchaser's Obligations at Closing.** Subject to the terms, conditions, and provisions hereof, and contemporaneously with the performance by Seller of its obligations under Section 8 above, Purchaser shall:

(a) pay to Seller or as Seller directs in writing the Purchase Price as provided in Section 3;

(b) execute and deliver an assignment and assumption of the Air Permit.

(c) Execute and deliver an Assignment and Assumption of Service Contract substantially in the form attached hereto as Exhibit "C";

(d) execute and deliver to Seller such other documents or instruments as may be required under this Agreement or as otherwise required in Seller's reasonable opinion to effectuate the Closing.

10. **Closing Costs.** Each party shall pay their own attorneys' fees. Any and all other costs and expenses of the Closing shall be paid by Purchaser.

11. **Prorations.** Water and Sewer Rents and all other charges on the Property which have been levied upon or become a lien against the property as of the Closing and/or which are otherwise due and payable, shall be paid by Seller. Purchaser shall be responsible to pay any installments of special assessments which are due after Closing.

12. **Possession.** Seller shall deliver exclusive possession of the Property to Purchaser at Closing.

13. **Inspection.** From and after the Effective Date, Seller agrees that Purchaser and its agents and representatives shall be entitled to enter the Plant and to fully inspect the Property and perform any other due diligence investigation relating to Purchaser's proposed ownership of the Property. As to any such investigation, Purchaser shall restore the Property to the same condition as existed prior to any such investigation, and shall not: (i) perform any invasive tests without Seller's prior consent or (ii) interfere with the possessory rights of Seller.

14. **ACKNOWLEDGEMENT.** PURCHASER UNDERSTANDS AND ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATION OR WARRANTIES WHATSOEVER, ORAL OR WRITTEN, EXPRESS OR IMPLIED, TO PURCHASER WITH RESPECT TO THE CONDITION, STATE OF REPAIR OR OPERABILITY OF THE PROPERTY OR THE LAND (INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATIONS, ORDERS OR REQUIREMENTS, INCLUDING THE EXISTENCE IN, ON, OR UNDER THE PROPERTY OF ANY HAZARDOUS MATERIALS OR SUBSTANCES, SOIL OR SUB-SOIL CONDITIONS, ALL IMPROVEMENTS THEREON, THE STRUCTURAL PORTIONS THEREOF, AND THE PROPERTY, MECHANICAL, PLUMBING, ELECTRICAL, SEWER, SANITARY DISPOSAL, HEATING, VENTILATING AND AIR CONDITIONING SYSTEMS AND OTHER BUILDING SERVICE EQUIPMENT THEREIN), WITH RESPECT TO THE SUITABILITY OR FITNESS FOR THE PURCHASER'S INTENDED USE OR PURPOSE OR WITH RESPECT TO THE APPRECIATION OR INCOME POTENTIAL OF THE PROPERTY OR THE LAND, THE ZONING OF THE LAND, THE PLATTING OF THE LAND, THE AVAILABILITY OR ADEQUACY OF UTILITIES TO THE PROPERTY OR THE LAND, ACCESS TO THE PROPERTY AND/OR LAND, REQUIREMENTS IN CONNECTION

WITH ANY DEVELOPMENT OF THE PROPERTY OR ANY OTHER MATTER WHATSOEVER. PURCHASER FURTHER HEREBY ACKNOWLEDGES AND AGREES THAT PURCHASER HAS INVESTIGATED OR WILL INVESTIGATE ALL MATTERS OF CONCERN TO PURCHASER WITH RESPECT TO THE PROPERTY AND THE LAND AND THAT PURCHASER IS NOT RELYING AND HEREBY EXPRESSLY WAIVES ANY RELIANCE ON ANY REPRESENTATION OR WARRANTY, ORAL OR WRITTEN, EXPRESS OR IMPLIED, OF SELLER WITH RESPECT TO SUCH MATTERS. PURCHASER AGREES TO PURCHASE THE PROPERTY AND ALL IMPROVEMENTS THEREON AND MECHANICAL SYSTEMS THEREIN DELIVERED TO PURCHASER, AS IS, WHERE IS, WITH ALL FAULTS. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, PURCHASER HEREBY RELEASES SELLER FROM ANY LIABILITY, CLAIMS, DAMAGES, EXPENSES OF ANY KIND OR NATURE, OR ANY OTHER CLAIM RESULTING FROM THE PRESENCE, REMOVAL OR OTHER REMEDIATION OF HAZARDOUS MATERIALS OR SUBSTANCES IN, ON, UNDER OR ABOUT THE PROPERTY AND THE LAND OR WHICH HAS MIGRATED FROM ADJACENT LANDS ONTO THE PROPERTY AND THE LAND OR FROM THE PROPERTY OR THE LAND ONTO ADJACENT LAND. THE PROVISIONS OF THIS SECTION 14 SHALL SURVIVE THE CLOSING.

15. **Hazardous Materials.** For purposes hereof, "Hazardous Materials" shall mean (i) substances defined as "hazardous substances", "hazardous materials", "hazardous waste", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, as amended, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq.; (ii) those substances defined as "hazardous waste" in Part 261 of Title 40 of the Code of Federal Regulations promulgated pursuant to said laws; (iii) asbestos in any form, urea formaldehyde foam insulation, transformers, or other equipment which contain dielectric fluid or other fluids containing levels of polychlorinated biphenyls; and (iv) any other chemical, material, or substance, exposure to which is prohibited, limited, or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of the Property or of property adjacent to or upstream from the Property.

16. **Further Assurances.** Seller and Purchaser agree to perform such other acts, and to execute, acknowledge, and/or deliver subsequent to the Closing such other instruments, documents and other materials as Seller or Purchaser may reasonably request in order to effectuate the consummation of the transactions contemplated herein and to vest title to the Property in Purchaser.

17. **Default by Seller.** In the event that Seller should fail to consummate the transactions contemplated by this Agreement for any reason, excepting Purchaser's default or the failure of any of the conditions to Seller's obligations hereunder to be satisfied or waived, Purchaser may terminate this Agreement by giving prompt written notice thereof to Seller, or specifically enforce this Agreement; provided, however, that in the event that such failure of Seller was beyond Seller's reasonable control, Purchaser's sole remedy shall be to so terminate this Agreement; provided, further, in the event Purchaser elects to specifically enforce this Agreement it must institute such action within thirty (30) days following Seller's default, failing which Purchaser shall be deemed to have waived the right to pursue specific performance.

18. **Default by Purchaser.** In the event Purchaser should fail to consummate the transaction contemplated herein for any reason, except default by Seller or the failure of any of the conditions to Purchaser's obligations hereunder to be satisfied or waived, Seller may terminate this Agreement by giving prompt written notice thereof to Purchaser, or specifically enforce this Agreement.

19. **Attorney's Fees.** Should either Seller or Purchaser employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any matter arising under this Agreement or to recover damages for the breach of this Agreement, the losing party in any final judgment agrees to pay the prevailing party all reasonable costs, charges, and expenses, including reasonable attorney's fees, expended or incurred by it in connection therewith.

20. **Brokerage Commissions.** Each party represents to the other that no brokers have been involved in this transaction. Seller and Purchaser agree that if any claims for brokerage commissions are ever made against Seller or Purchaser in connection with this transaction, all claims shall be handled and paid by the party whose actions or

alleged commitments form the basis of such claim. The obligation of each party under this Section 21 shall survive the Closing.

21. **Risk of Loss.** All risk of loss or damage to the Property prior to Closing, including, without limitation, loss by fire, windstorm, or other casualty, shall rest with Seller. If, prior to the Closing, the Property is damaged as a result of fire or other casualty, Seller shall give Purchaser written notice thereof and either party shall have the option, exercisable by written notice to the other party within thirty (30) days after the occurrence of such damage or casualty, to terminate this Agreement, in which event neither Seller nor Purchaser shall have any further obligations under this Agreement and the Purchaser shall receive the prompt return of the Deposit. If neither party terminates this Agreement within such period, the transaction will proceed as contemplated herein, without an adjustment to the Purchase Price, and, at Closing, the Seller shall assign to the Purchaser all of Seller's right, title and interest in any insurance claims relative to the casualty.

22. **Assignability.** Purchaser shall not assign its obligations hereunder without the consent of Seller. Seller shall not assign any interest in the Property or its obligations hereunder without the consent of Purchaser.

23. **Notices.** Any notice to be given or to be served upon either party hereto in connection with this Agreement must be in writing and shall be given by certified or registered mail (return receipt requested), or by overnight express delivery or facsimile (followed by hard copy by either of the two preceding methods of delivery). Such notice shall be given to the parties hereto at the addresses set forth on the signature page of this Agreement and be deemed delivered upon delivery or on the date when the receiving party first refuses to accept such delivery. Either party may at any time, by giving five (5) days written notice to the other, designate any other address in substitution of any of the foregoing addresses to which such notice shall be given and other parties to whom copies of all notices hereunder shall be sent.

24. **Acknowledgement/Post Closing Adjustments.** Purchaser operated the Plant for an extended time prior to the Effective Date and has reimbursed Seller for all expenses relating to Plant maintenance and operation, as well as Seller's financing costs and principal payments to date of the closing. Purchaser agrees that it shall continue to reimburse Seller for all of Seller's expenses of Plant ownership maintenance and operation until all such expenses relating to the ownership and operation of the Plant are billed to and paid by Purchaser. Seller agrees to complete any reimbursement due to Purchaser for overpayment of these costs. Purchaser shall pay all costs and expenses associated with, and shall be solely responsible for, completing the assignment to Purchaser of the Air Permit, obtaining any required consents required to the assignment of the Service Contracts and obtaining a release of Seller from the obligation of Seller under the Air Permit and Service Contracts. Until such time as the Air Permit is transferred to Purchaser and the Service Contracts are placed in Purchaser's name, Purchaser shall be solely responsible for the compliance with all terms and conditions of the Air Permit and the Service Contracts and shall reimburse Seller for all costs, expenses, and liability incurred by Seller thereunder regardless of when occurring. This paragraph shall survive the Closing.

25. **Binding Effect.** This Agreement shall be binding upon and shall inure to the benefit of the Seller and Purchaser and their respective successors and assigns.

26. **Entire Agreement.** This Agreement represents the entire agreement between Seller and Purchaser with respect to the subject matter hereof, and all prior agreements between Seller and Purchaser with respect to such subject matter shall have no further force or effect, including, without limitation, any proposal letters.

27. **Governing Law.** This Agreement shall be governed by, and construed in accordance with, the laws of the Subject State, without giving effect to principals of conflicts of law. Venue for any litigation shall be in the Circuit Court for Branch County, Michigan.

28. **Modification.** This Agreement may only be modified or otherwise amended by a written instrument executed by duly authorized representatives of Seller and Purchaser.

29. **Time of Essence.** Time is of the essence of this Agreement. In the event this Agreement is not accepted by Seller on or before the Expiration Date of the Offer, and a copy thereof delivered to Purchaser, then this Agreement shall be null and void, and all offers set forth herein shall be deemed withdrawn.

30. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

(signature page follows)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase, effective as of the Effective Date.

PURCHASER:

**CITY OF COLDWATER, a Michigan municipal corporation by its Board of Public Utilities**

By \_\_\_\_\_  
*Print Name:* Jeffrey W. Budd

Its Director

Date of Execution: \_\_\_\_\_

Send Notices To:

Director  
Coldwater Board of Public Utilities  
1 Grand Street  
Coldwater, MI 49036  
Phone: (517) 279-6924  
Fax: (517) 279-0805

With a Copy To:

Megan R. Angell, City Attorney  
City of Coldwater  
One Grand Street  
Coldwater, MI 49036  
(517) 279-6902

SELLER:

**MICHIGAN SOUTH CENTRAL POWER AGENCY, a Michigan public agency**

By \_\_\_\_\_  
*Print Name:*

Its \_\_\_\_\_

Date of Execution: \_\_\_\_\_

Send Notices To:

General Manager  
Michigan South Central Power Agency  
168 Division Street  
Coldwater, MI 49036  
Phone: (517) 279-6961  
Fax: (517) 279-6969

With a Copy To:

Joseph M. Fazio, Esq.  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main Street, 7<sup>th</sup> Floor  
Ann Arbor, Michigan 48104-1400  
(734) 663-2445 / (734) 747-7147 fax

**SCHEDULE OF EXHIBITS**

A – Property

B – Form of Deed

C – Form of Assignment and Assumption Agreement

D – Form of Bill of Sale

E – Form of Assignment of Service Contracts

F – Service Contracts

**EXHIBIT A**

**PROPERTY**

All personal property including all fixtures located on the real property described on Exhibit B as of the Effective Date including:

A gas fired electrical power generation plant (the "Plant"), including all equipment, supplies, structures and improvements associated with the Plant (excepting the parking lot improvements installed by Purchaser) that are located upon that certain parcel of real property owned by Purchaser and consisting of approximately 3.472 acres as described on Exhibit B (the "Land"), together with all of Sellers interest in all assignable warranties on the equipment, licenses, and permits to operate the Plant.

**EXHIBIT B**

**FORM OF DEED**

**QUIT CLAIM DEED**

For the consideration of \$1.00, MICHIGAN SOUTH CENTRAL POWER AGENCY, a municipal Joint Action Agency operating as a public body and corporate of the State of Michigan pursuant to 1976 PA 448, as amended, whose address is 168 Division St., Coldwater, MI 49036, the Grantor, does hereby quit claim to THE CITY OF COLDWATER, a Michigan municipal corporation acting through its Board of Public Utilities, with an address of One Grand Street, Coldwater, MI 49036, the Grantee, the following described property in the City of Coldwater, County of Branch, State of Michigan:

See Exhibit A attached hereto and made a part hereof.

Tax Parcel ID #12-304-000-001-500-01

together with all applicable building and use restrictions, and easements

If the land being conveyed is unplatted, the following is deemed to be included: This property may be located within the vicinity of farmland or a farm operation. Generally accepted agricultural and management practices which may generate noise, dust, odors, and other associated conditions may be used and are protected by the Michigan right to farm act.

The Grantor grants to Grantee the right to make all divisions under Section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967, as amended. The forgoing transfer of rights to make divisions is not intended to constitute a guarantee by Grantor that such number of divisions or any number of divisions are available.

Exempt from state and county transfer taxes claimed under MCL 207.526(h)(i) and MCL 207.505(5)(h)(i).

DATED: \_\_\_\_\_, 2020

**MICHIGAN SOUTH CENTRAL POWER AGENCY, a  
municipal Joint Action Agency operating as a public body  
and corporate of the State of Michigan pursuant to 1976  
PA 448, as amended**

By: \_\_\_\_\_  
*Print name:*

Its: \_\_\_\_\_

STATE OF )  
 )ss.  
COUNTY OF )

This instrument was acknowledged and executed before me this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, the \_\_\_\_\_ of MICHIGAN SOUTH CENTRAL POWER AGENCY, a municipal Joint Action Agency operating as a public body and corporate of the State of Michigan pursuant to 1976 PA 448, as amended, on behalf of the agency.

\_\_\_\_\_  
Notary Public  
\_\_\_\_\_ County, \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
[Notary's Seal]

PREPARED BY AND RECORDED  
AT THE REQUEST OF:  
Joseph M. Fazio, Esq.  
Miller, Canfield, Paddock and Stone, P.L.C.  
101 North Main, Seventh Floor  
Ann Arbor, Michigan 48104  
(734) 663-2445

WHEN RECORDED RETURN TO:

Grantee

SEND SUBSEQUENT TAX BILLS TO:

Grantee

Exhibit A  
to Quit Claim Deed

(Legal Description)

**All that part of the Southeast 1/4 of Section 29, Town 6 South, Range 6 West, City of Coldwater, Branch County, Michigan, described as follows:**

Beginning at the Northeast corner of the Southeast 1/4 of Section 29 and running thence S00°07'52"E, along the Indian Reserve Line, 708.00 feet; thence N89°56'16"W 205.33 feet to a capped rebar set; thence N00°07'52"W 315.67 feet to a capped rebar set; thence N89°56'16"W 15.00 feet to a capped rebar set; thence N00°07'52"W 392.33 feet to a capped rebar set on the north line of the Southeast 1/4 of Section 29; thence S89°56'16"E, along said line, 220.33 feet to the point of beginning.

This parcel contains 3.472 acres, more or less.

Subject to easements and building and use restrictions of record.

**Tax Parcel No. 12-304-000-001-500-01**

EXHIBIT C

ASSIGNMENT AND ASSUMPTION  
AGREEMENT

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS GENERAL ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Assignment”) is made this \_\_\_ day of -----, 2020 (the “Effective Date”) by and between **MICHIGAN SOUTH CENTRAL POWER AGENCY, a municipal Joint Action Agency operating as a public body and corporate of the State of Michigan pursuant to 1976 PA 448, as amended** (“Assignor”) and **CITY OF COLDWATER, a Michigan municipal corporation acting through its Board of Public Utilities** (“Assignee”).

WHEREAS, Seller and Purchaser have entered into that certain Agreement of Purchase dated as of April \_\_\_, 2020 (the “Agreement”) respecting the sale of certain Property. Any capitalized term utilized herein and not otherwise defined, shall have the meaning ascribed in the Agreement.

WHEREAS, under the Agreement, Assignor is obligated to assign to Assignee any and all of its right, title and interest in and to all Service Contracts, the Air Permit, and any and all warranties on the equipment, licenses, and permits to operate the Plant (all as defined in the Agreement).

NOW, THEREFORE, effective as of the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee hereby agree as follows:

1. Assignor hereby assigns, sets over and transfers to Assignee all of Assignor’s rights, powers, title and interest in and to the Service Contracts, the Air Permit, and any and all warranties on the equipment, licenses, and permits to operate the Plant, and Assignee hereby accepts such Assignment.

2. Assignor hereby covenants that Assignor will, at no cost or liability to Assignor, and at any time and from time to time, upon written request therefor, execute and deliver unto Assignee any new or confirmatory instruments which Assignee may reasonably request in order to fully confirm and vest in Assignee all of Assignor’s interests in and to the Service Contracts, the Air Permit, and any and all warranties on the equipment, licenses, and permits to operate the Plant.

3. Assignee agrees to assume, perform and observe each and every covenant, agreement, condition and obligation of Assignor under or pursuant to the Service Contracts, Air Permits, and any warranties, pursuant to the Agreement, and to pay and discharge in full when due all of Assignor’s liabilities under or pursuant to the Service Contracts and the Air Permit, pursuant to the Agreement, and Assignee agrees to be solely responsible for any and all liabilities, damages, claims, costs and/or expenses (including reasonable attorneys’ fees) arising out of and/or in any

way relating to the Service Contracts and the Air Permit pursuant to the Agreement.

4. Except as provided in the Agreement, this Assignment is made by Assignor without any express or implied warranties or representations of any kind whatsoever.

5. This Assignment shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Assignor and Assignee and may not be modified or amended in any manner other than by a written agreement signed by the party against whom enforcement of such modification or amendment is sought.

6. This Assignment shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Michigan.

7. This Assignment may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one in the same instrument.

8. This Assignment and the obligations of the parties hereunder shall survive the closing of the transaction referred to in the Agreement and shall not be merged therein.

IN WITNESS WHEREOF, Assignor and Assignee have executed this instrument as of the date first set forth above.

**Assignor:**

**MICHIGAN SOUTH CENTRAL POWER  
AGENCY, a Michigan public agency**

By: \_\_\_\_\_

Print Name:

Its:

**SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION AGREEMENT**

**Assignee:**

**CITY OF COLDWATER, a Michigan municipal  
corporation, by its Board of Public Utilities**

By: \_\_\_\_\_  
Print Name: Jeffrey W. Budd  
Title: Director

**EXHIBIT D**

**FORM OF BILL OF SALE**

**BILL OF SALE**

THIS BILL OF SALE is made this \_\_\_ day of \_\_\_\_\_, 2020 (the “Effective Date”) by **MICHIGAN SOUTH CENTRAL POWER AGENCY, a municipal Joint Action Agency operating as a public body and corporate of the State of Michigan pursuant to 1976 PA 448, as amended** (“Seller”) in favor of **CITY OF COLDWATER, a Michigan municipal corporation acting through its Board of Public Utilities** (“Purchaser”).

WHEREAS, Seller and Purchaser have entered into that certain Agreement of Purchase dated as of April \_\_\_, 2020 (the “Agreement”) respecting the sale of certain Property described in the Agreement. Any capitalized term utilized herein and not otherwise defined, shall have the meaning ascribed in the Agreement.

WHEREAS, Seller desires to transfer and convey to Purchaser all of its interest in the Property in accordance with the applicable provisions of the Agreement.

NOW, THEREFORE, effective as of the Effective Date, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby agrees as follows:

1. Seller does hereby grant, convey, release and deliver to Purchaser all of Seller’s right, title and interest, if any, in and to any and all items of Property, owned by Seller and located on the Land, together with all warranties and guaranties received by Seller or otherwise held by Seller in connection therewith to the extent transferable.

2. Seller will, at no cost or liability to Seller, at any time and from time to time upon written request therefor, execute and deliver to Purchaser such documents as Purchaser may reasonably request in order to confirm the foregoing transfer to Purchaser of the Property and Improvements.

3. Seller warrants that Seller owns and is conveying good legal title to the Property, free and clear of all liens and encumbrances, and except for such title warranty the Property is conveyed without any express or implied warranties or representations of any kind whatsoever.

4. This Bill of Sale shall be binding upon and inure to the benefit of the successors, assigns, personal representatives and heirs of Purchaser and Seller and may not be modified or amended in any manner other than by a written agreement signed by the party against whom enforcement of such modification or amendment is sought.

5. This Bill of Sale shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Michigan.

6. This Bill of Sale may be executed in multiple counterparts, each of which shall be deemed an original, and all of which, together, shall constitute one in the same instrument.

7. This Bill of Sale and the obligations of the parties hereunder shall survive the closing of the transaction referred to in the Agreement and shall not be merged therein.

IN WITNESS WHEREOF, Seller and Purchaser have executed this instrument as of the date first set forth above.

**SELLER:**

**MICHIGAN SOUTH CENTRAL POWER AGENCY, a Michigan public agency**

By: \_\_\_\_\_  
Print Name:  
Its:

**SIGNATURE PAGE TO BILL OF SALE**

**PURCHASER:**

**CITY OF COLDWATER, a Michigan municipal corporation by its Board of Public Utilities**

By: \_\_\_\_\_

Print Name: Jeffrey W. Budd

Title: Director

**EXHIBIT E**  
**FORM OF ASSIGNMENT OF CONTRACTS**

**EXHIBIT F**

**SERVICE CONTRACTS**

Jenbacher Preventative Maintenance Parts Agreement effective November 11, 2015, by and between Interstate Power Systems, Inc., and Michigan South Central Power Agency;

Constellation NewEnergy – Gas Division, LLC and Michigan South Central Power Agency “Base Contract for Sale and Purchase of Natural Gas” effective June 28, 2018;

Constellation NewEnergy – Gas Division, LLC Transaction Confirmation for gas delivery period 5/1/2020 – 9/30/2020;

Michigan Gas Utilities Agent/Pooling Verification Agreement dated July 16, 2018;

MSCPA Project IV Operating Agreement effective September 3, 2015, between Michigan South Central Power Agency and Coldwater Board of Public Utilities; contacts updated January 8, 2020.

Michigan Air Emissions Reporting System.

Michigan Tier II Management System.

# Memo

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**To:** President Stevens and Members of the Board of Directors  
**From:** Andrew Cameron, Electrical Engineer  
**Date:** April 21, 2020  
**Re:** Butters Avenue Substation MV Cable Bid Recommendation

Bids for the MV underground cable for the Butters Avenue substation circuit exits have been received. Bids were requested from three vendors and two responded. As per the attached bid tabulation, Power Line Supply (PLS) submitted the low bid in the amount of \$131,200.

The Butters Avenue substation MV cable bid includes the underground conductor that will be used to connect the electrical substation to the overhead distribution lines. These will be the new circuits that leave the substation and interconnect with the rest of the Coldwater electric system. This includes 12,000' of 500kCM 15kV Cu cable and 3,000' of 750kCM 15kV Cu cable.

Coldwater has worked with PLS for a number of years on securing material and equipment to build and maintain the electrical power system in the City. Coldwater currently has a VMI contract with Power Line Supply, in which they store material in Coldwater that can be available in the event of an emergency.

Additionally, cable prices are roughly 25% below their recent highs, therefore now is a good time to purchase.

To that end, staff recommends awarding the bid for the Butters Avenue substation MV underground cable to Power Line Supply for a cost of \$131,220.

# BID TABULATION

**OWNER:**  
**COLDWATER BPU**  
**ONE GRAND STREET**  
**COLDWATER, MI 49036**

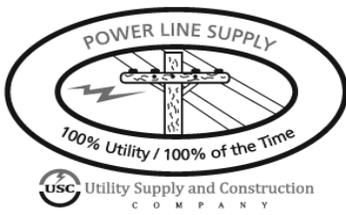
**BUTTERS SUBSTATION DISTRIBUTION CIRCUITS**  
**MV UNDERGROUND CABLE**

**ENGINEER:**  
**GRP ENGINEERING, INC.**  
**459 BAY STREET**  
**PETOSKEY, MI 49770**

BIDDERS	MFG	500kCM 15kV CU POWER CABLE	750kCM 15kV CU POWER CABLE	TOTAL BID PRICE	COMMENTS
<b>Border States Electric</b> 1734 A Airpark Dr Grand Haven, MI 49417					No Bid
<b>Irby</b> 5846 Venture Way Mt. Pleasant, MI 48858	Okonite	\$7.972 / Ft \$95,664.00	\$12.305 / Ft \$36,915.00	\$132,579.00	
<b>Power Line Supply</b> 420 Roth Street Reed City, MI 49677	Okonite	\$7.89 / Ft \$94,680.00	\$12.18 / Ft \$36,540.00	\$131,220.00	Low Bid

**GRP Engineering, Inc.**

By: \_\_\_\_\_  
 Michael P. McGeehan, P.E.



Power Line Supply  
 420 Roth Street Suite A  
 Reed City, MI 49677  
 USA  
 231-832-2297

# QUOTATION

Order Number	
12438921	
Order Date	Page
4/17/2020 14:23:56	1 of 1

**Bill To:**

Coldwater Non-Vmi  
 One Grand Street  
 Coldwater, MI 49036

**Ship To:**

Coldwater Non-Vmi  
 180 S. Sprague St.  
 Coldwater, MI 49036

517-278-3028

Requested By: Mr. Denny Steele

Customer ID: 100161

PO Number		Freight	Carrier	Taker
115-23-3131 and 3135 Quote		Prepaid		LINDSAY_HOLMQUIST

Quantities					Item ID Item Description	Pricing UOM/Size	Unit Price	Extended Price
Ordered	Allocated	Remaining	UOM Unit Size	Disp.				

**Order Note:** FOB RC. Freight prepaid and allowed.

12,000.0000	0.0000	12,000.0000	FT	(001) 115-23-3131	FT	1.0	7.8900	94,680.00
			1.0	Wire 15kv Cu 1/C 500 Class B C-RD SS 220 Okoguard EPR 032 SC ERP -				<b>Lead Time Days ARO: 0</b>

**Order Line Notes:** REELS:  
 6 @ 2000 62X34X32 NR  
 (REEL WIDTH 41.5)

**Order Line Notes:** LENGTH TOLERANCE: MINIMUM -0%  
 MAXIMUM +03%

3,000.0000	0.0000	3,000.0000	FT	(002) 115-23-3135	FT	1.0	12.1800	36,540.00
			1.0	Wire 750 Cmpct Copper Okoguard Epr-Sc Okos Sh 220-032-110 15Kv				<b>Lead Time Days ARO: 0</b>

**Order Line Notes:** REELS:  
 3 @ 1000 50X32X24 NR  
 (REEL WIDTH 37.5)

**Order Line Notes:** LENGTH TOLERANCE: MINIMUM -0%  
 MAXIMUM +03%

Total Lines: 2 THIS QUOTATION AND/OR ACKNOWLEDGEMENT ARE SUBJECT TO OUR  
 STANDARD TERMS OF SALE WHICH CAN BE ACCESSED AT:  
[HTTPS://WWW.USCCO.COM/TERMS/TACA.ASPX](https://www.uscco.com/terms/taca.aspx) OR WE WILL SEND YOU A  
 COPY UPON YOUR REQUEST BY CALLING 1-800-832-2297

**SUB-TOTAL:** 131,220.00  
**TAX:** 0.00

**AMOUNT DUE:** 131,220.00  
 U.S. Dollars



# Memo

**To:** President Stevens and Members of the Board of Directors

**From:** Jeffrey W. Budd, Director

**Date:** April 22, 2020

**Re:** Phase II Fiber Construction Recommendations

Aspen Wireless received construction bid packages from the following four vendors:

<b>PHASE 2 CONSTRUCTION BIDS</b>				
	<b>Western Telecom</b>	<b>NC Underground</b>	<b>B&amp;M Ashmund</b>	<b>Challenger</b>
Aerial fiber installation	\$ 361,022.06	\$ 454,738.14	\$ 341,145.49	\$ 321,723.52
Fiber splicing	\$ 342,080.00	\$ 459,062.50	\$ 326,264.00	\$ 306,273.00
Underground infrastructure	\$ 797,011.00	\$ 535,358.75	\$ 845,476.25	NO BID
Under fiber installation	\$ 116,036.50	\$ 134,298.18	\$ 107,923.76	\$ 124,464.86
<b>Totals</b>	<b>\$ 1,616,149.56</b>	<b>\$ 1,583,457.57</b>	<b>\$ 1,620,809.50</b>	<b>\$ 752,461.38</b>

To expediate the project, Aspen recommends splitting the awards in the following manner. Winning construction vendors have agreed to the splitting of the awards. A 15% contingency has been added to each award below:

<b>RECOMMENDED CONSTRUCTION AWARDS with 15% CONTINGENCY</b>				
	<b>Western Telecom</b>	<b>NC Underground</b>	<b>B&amp;M Ashmund</b>	<b>Challenger</b>
Aerial fiber installation	\$ 207,587.68	\$ -	\$ 196,158.66	\$ -
Fiber splicing	\$ 393,392.00	\$ -	\$ -	\$ -
Underground infrastructure	\$ -	\$ 615,662.56	\$ -	\$ -
Under fiber installation	\$ 66,720.99	\$ -	\$ 62,056.16	\$ -
<b>Totals</b>	<b>\$ 667,700.67</b>	<b>\$ 615,662.56</b>	<b>\$ 258,214.82</b>	<b>\$ -</b>

Staff requests Board approval of the following vendor awards with total construction cost of Phase II of FTTX project not to exceed \$1,541,578.05.

Western Telecom	\$667,700.67
NC Underground	\$615,662.56
B&M Ashmund	\$258,214.82