

Operating Services Agreement

This Agreement for operating services is executed and made effective as of October 1, 2015 (the “Effective Date”), between ISC, Inc. (“ISC”), a non-profit corporation organized under the laws of the State of Indiana, and the City of Rochelle, Illinois, a municipality and political subdivision of the State of Illinois (“Client”) (each individually a “Party” and together “the Parties”).

WHEREAS, the Indiana Municipal Power Agency (“IMPA”) and Client previously entered into an Operating Services Agreement dated January 1, 2006 (the “IMPA Agreement”);

WHEREAS, IMPA has decided to no longer offer the type of services provided under the IMPA Agreement, but ISC, a subsidiary of IMPA, will offer those services;

WHEREAS, Client desires ISC to continue providing the services previously provided by IMPA under the IMPA Agreement;

WHEREAS, the IMPA Agreement will terminate on the Effective Date of this Agreement, as provided in separate notice from IMPA to Client;

NOW THEREFORE, in consideration of the covenants set forth herein, ISC and Client mutually agree as follows:

Article 1 — Scope of Work

1.1 Services

ISC shall perform operating services related to Client’s electric utility operations as described in Exhibit A and attached to this Agreement (the “Services”). In connection with certain of the Services, Client will appoint ISC as its agent to conduct all transactions on behalf of Client with PJM Interconnection, LLC (“PJM”). Client will execute such instruments as PJM may require with respect to ISC’s appointment and role as Client’s agent.

Client acknowledges that it will retain certain responsibilities and functions with respect to its operations in order to facilitate ISC’s performance of the Services. The parties agree to modify in writing the responsibilities and functions of ISC and Client identified in Exhibit A from time to time, as warranted or necessitated by modifications of the Services made pursuant to Section 1.2, or to conform to prevailing industry standards.

Client hereby designates the Superintendent of Electric Services or the Manager of Electric Operations to act as Client’s representative with respect to the Services to be performed under this Agreement. Such persons, acting individually or collectively, have complete authority to transmit instructions, receive information, interpret and define Client’s policies, decisions and approvals with respect to the Services, and otherwise to act on behalf of Client in all matters pertinent to the Services. Client’s Director of Public Works may designate replacement representatives by providing written notice of such designation to ISC.

1.2 Changes in Scope of Services

In the event Client requests a change in the Services set forth in Exhibit A, or ISC recommends a change in such Services, ISC shall submit to Client's representative a written proposal setting forth the changes to the scope of the Services and the change, if any, in the price for the Services. If Client accepts ISC's proposal, Client and ISC shall execute a written change to Exhibit A, authorizing ISC's performance of the revised scope of Services. ISC shall not perform any changes in the scope of Services except pursuant to a written change to Exhibit A.

Article 2 — Compensation and Terms of Payment

2.1 Compensation

As compensation for the services to be performed hereunder, client shall pay a flat fee of \$20,900.00 per month through December 31, 2016. ISC shall submit monthly invoices to Client, which shall be payable on receipt. On or about September 1, 2016, and on or about each September 1 thereafter, the Parties shall review the fee and may make changes therein as mutually agreed upon for the following calendar year. Pursuant to Exhibit A, the Services hereunder may include sales of Client's excess power, from time to time and in ISC's discretion, in the PJM market. Client agrees that PJM shall pay the net proceeds of such sales to Client. ISC will provide information with respect to such sales.

2.2 Expenses

Client shall reimburse ISC for its reasonable expenses incurred in connection with providing the Services, including expenses related to travel and transportation (e.g., airfare, car rental, cab fare, parking, *etc.*) meals, lodging, photocopying (at \$0.25 per page), long-distance telephone charges, and other out-of-pocket expenses, which shall be identified on the monthly invoice submitted to Client.

Article 3 — Standard of Care; Reliance on Data

3.1 ISC's Services

ISC shall perform the Services with the same degree of skill and care that it employs in performing similar services for itself and its member utilities.

3.2 Reliance on Data

ISC shall rely on the information made available, either directly by Client or by third parties retained by Client, as accurate without independent verification. ISC shall have no liability for errors or omissions in its Services attributable in whole or in part to ISC's reliance upon or use of data or other information so furnished by Client or by third parties, including, without limitation, PJM.

Article 4 — Term and Termination

4.1 Term

The Initial Term of this Agreement shall be from January 1, 2016 through December 31, 2016. This Agreement shall remain in effect thereafter for Successive one-year Terms, until it is terminated pursuant to Article 4.2. ISC reserves the right to adjust its rates and charges for the Services, as provided in Article 2.

4.2 Termination

This Agreement and Services provided hereunder may be terminated by Client or ISC upon written notice to be effective not less than forty-five (45) days after receipt thereof.

In connection with any termination under this Section, Client shall pay ISC all amounts due for all Services rendered and expenses incurred to the date of termination or, if later, the date ISC suspended its performance, plus reasonable costs incurred by ISC in terminating the Services.

Article 5 — Force Majeure

To the extent either party is prevented by *Force Majeure* from carrying out, in whole or in part, its obligations under this Agreement and such party (the "Claiming Party") gives notice and details of the *Force Majeure* to the other party as soon as practicable, then the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the occurrence of *Force Majeure*). The Claiming Party shall remedy the *Force Majeure* with all reasonable dispatch. For purposes of this Agreement, "*Force Majeure*" means an event or circumstance which prevents the Claiming Party from performing its obligations hereunder, which event or circumstance was not anticipated as of the effective date hereof and was not within the reasonable control of, or the result of the negligence of, the Claiming Party, and which, by the exercise of due diligence, the Claiming Party is unable to overcome or avoid or cause to be avoided.

Article 6 — General Provisions

6.1 Relationship of the Parties

The parties acknowledge and agree that ISC shall act as Client's agent with respect to all matters involving PJM, as provided in Article 1.1 and Exhibit A. In all other respects, ISC is an independent contractor with respect to the Services performed hereunder. In its sole discretion, ISC may have the Services performed by a related or affiliated entity, in which case ISC shall remain responsible for such Services and Client shall look solely to ISC as if the services were performed by ISC. Neither ISC nor its agents, employees or subcontractors shall be deemed to be servants or employees of Client.

6.2 Limitation on Liability; Indemnification

- 6.2.1 **Limitation on Liability.** ISC shall not be liable to Client for any loss, cost, damage, or expense incurred by Client as a result of any action or failure to act, under any circumstances, by ISC (or its employees, agents, or contractors) in performing any of the Services, unless such loss, cost, damage, or expense is the result of gross negligence or intentional wrongdoing on the part of ISC. Under no circumstances shall ISC be liable to Client for any act or omission on the part of PJM or those entities involved in the supply of fuel to Client's generators. Notwithstanding any other provision of this Agreement, the maximum aggregate liability of ISC to Client in connection with all losses, costs, damages or expenses arising under this Agreement shall be limited to the aggregate amount of fees paid to ISC by Client pursuant to this Agreement during the Term in which the losses, costs, damages or expenses occurred.
- 6.2.2 **Indemnification.** Subject to Section 6.2.1, each party shall, to the extent permitted by law, indemnify, defend and save the other party harmless from any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demands, suits, recoveries, costs and expenses, court costs, attorney fees and all other obligations by or to third parties, arising out of or resulting from the indemnifying party's performance of its obligations under this Agreement.
- 6.2.3 **No Consequential Damages.** Notwithstanding Section 6.2.1, neither party shall be liable to the other for any indirect, incidental, special, consequential, punitive, multiple, or exemplary damages (including, without limitation, lost profits or revenue, or loss of goodwill) arising out of, due to, or in connection with either party's performance or nonperformance under this Agreement, or any of its obligations herein, whether based on contract, tort (including negligence), strict liability, warranty or otherwise.

6.3 Assignment

This Agreement shall not be assignable by either party without the prior written consent of the other party. Any such assignment shall be null and void and without effect.

6.4 Notices

All notices pertaining to this Agreement shall be in writing and shall be sufficient when sent by hand delivery, United States mail, overnight courier service or facsimile transmission to:

Client: City of Rochelle
333Lincoln Highway
P.O. Box 456
Rochelle, Illinois 61068
Attn: Director of Public Works

Fax No. 815-562-5861

ISC: ISC, Inc.
11610 North College Avenue
Carmel, Indiana 46032
Attn: President
Fax No. 317-575-3372

6.5 Entire Agreement

This Agreement shall constitute the entire agreement between the parties hereto and supersedes any and all prior agreements, representations, understandings, proposals or communications, whether oral or written. This Agreement shall not be varied, supplemented, qualified or interpreted by any prior course of dealing between the parties hereto or by any usage of trade. This Agreement may be amended or modified only by a written document executed by ISC and Client. In the event of a conflict between this document and any exhibit hereto, the terms and provisions of this document shall control. In the event Client issues a purchase order to ISC in connection with the execution of this Agreement or a modification of the scope of Services pursuant to Section 1.2, no preprinted terms thereon shall become a part of this Agreement. Any such purchase order, whether or not signed by ISC, shall be considered to be a document solely for Client's internal operations management.

6.6 Interpretation

- 6.6.1 The validity, interpretation, and performance of this Agreement, and each of its provisions, shall be governed by the laws of the State of Indiana and any litigation hereunder shall be commenced in the federal or state courts sitting in the State of Indiana.
- 6.6.2 Headings and titles of articles, sections, paragraphs, and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement.
- 6.6.3 Indemnities against, releases from, and limitations on liability, and limitations on remedies expressed herein, as well as waivers of rights hereunder, including, but not limited to, subrogation rights, shall apply in the event of breach of contract or warranty, tort (including negligence), strict liability, or other basis of liability of the Party indemnified or released, or against whom liability has been limited or remedies have been waived. Such indemnities, releases, waivers and limitations shall also extend to the officers, directors, employees, licensors, agents, subcontractors, vendors and related entities of such Party.
- 6.6.4 In the event any portion or all of this Agreement is held to be void or unenforceable, the Parties agree to negotiate in good faith to reach an equitable agreement which shall effect the intent of the parties as originally set forth herein.

6.6.5 This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one in the same instrument.

6.7 Attorneys' Fees

If any Party institutes any legal suit, action or proceeding against the other Party to enforce this Agreement or concerning any issues arising out of or relating to this Agreement, the prevailing party in the suit, action or proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the suit, action or proceeding, including reasonable attorneys' fees, court costs and other related litigation expenses, even if not otherwise recoverable by law (including, without limitation, all fees, taxes, costs and expenses incident to appellate, bankruptcy and post-judgment proceedings).

IN WITNESS WHEREOF, the parties hereto have executed this contract document as of the date and year first above written.

ISC, Inc.

City of Rochelle, Illinois

By: _____
Raj. G. Rao
President

By: _____

Attest: _____