



City Council Memorandum

To: Mayor Fasbender & City Council Members
From: Ryan Stempski – Public Works Director/City Engineer
Date: March 2, 2023
Item: Accept Proposal and Authorize Work – Hastings Hydro Facility Preventative Maintenance Program Development

Council Action Requested:

The Council is requested to authorize Public Works to enter into a contract with L&S Electric Inc. for the purposes of developing a preventative maintenance program for the Hastings Hydro Facility.

Background Information:

The Hastings Hydro Plant is a major asset for the City of Hastings and we believe it is the time for a comprehensive study on this aging facility. The complexities, regulation, and contract commitments need to be reviewed and analyzed to determine a full cost/benefit understanding of the entire works. This base line will allow the City to make more informed, data-based decisions regarding the Hydro Plant in the future. The study is anticipated to be completed by May 2023, therefore the information would be available for 2024 Budget planning efforts. L&S has a long history of work completed onsite and is ideally positioned to expedite the development of a preventative maintenance program. Furthermore, L&S is teaming with Barr Engineering to include their expertise in the hydroelectric field to complete the study.

Financial Impact:

The estimated cost for this proposal is \$46,790 and we had \$100,000 approved in the 2023 Budget for this work. The additional budget may be used to add scope or run additional iterations to be determined once the initial program is developed.

Attachments:

- L&S Proposal for the Hastings Hydro Facility Preventative Maintenance Program Development



INTEGRATED SOLUTIONS
LEGENDARY SERVICE

L&S Electric Inc.
10200 Durand Avenue
Sturtevant, WI 53177
U.S. Watts: 800-367-7676
Phone: 262-886-1875 Ext: 3724
Fax: 262-886-9202
Web: www.lselectric.com

To:	City of Hastings Public Works 1225 Progress Drive Hastings, MN 55033	Quote No:	12622-4DJ rev 1
Attn:	Ryan Stempski rstempski@hastingsmn.gov	Terms:	Net 30
Subject:	Hastings Hydro Facility Preventative Maintenance Program Development	Delivery:	3-4 weeks
		Freight:	Prepaid & Add
		Cust No:	1084201
		Prices:	Firm For 60 days
		Date:	January 11, 2023

Quote Summary:

L&S Electric and Barr Engineering are proposing the development of a preventative maintenance program for the City of Hastings' hydroelectric facility. We propose utilizing the Reliability Centered Maintenance (RCM) methodology to develop the preventative maintenance program. This methodology focuses on preserving the core functions of a system based upon the values imparted by the owner of the system. With our history of the work completed onsite and Barr engineering's expertise we plan to leverage this and plan to expedite the RCM process and use the RCM process to justify the costs and development of a preventative maintenance program to encompass all the equipment onsite.

The RCM process consists of the following four elements:

1. Identifying system boundary and functions
2. Identifying specific failure modes that could potentially produce unwanted functional failures
3. Prioritizing the importance of failure modes
4. Identifying applicable and effective preventive maintenance tasks for the high-priority failure modes

The first element identifies the system boundary and functions. Identification of the system boundary includes listing the equipment that will be covered in this program and identifying the functions of the entire system collectively as well as the individual system components. The following data are needed to complete the first element of this process:

- Equipment list
- OEM manuals-maintenance recommendations
- Engineering drawings or specifications
- Electrical single-line drawings

- Inspection reports

Barr will use the above data and information we have collected during our completed work onsite to develop system and equipment functions and a functional block flow diagram.

The second and third elements identify the specific failure modes that could hinder the system and equipment functions. Barr will perform a Failure Mode and Effects Analysis (FMEA) to identify the failure modes that could defeat the functions. We will also perform an initial prioritization of the functions and failure modes. The FMEA and the prioritization will be presented in chart form in a spreadsheet. We will review this spreadsheet and add observations and comments based on previous experience. We anticipate that this step may take several iterations. After the iterations between L&S and Barr are complete on this step, we will present the spreadsheet to COH for its review and comment.

The fourth element is the identification of preventative maintenance activities to address the high- priority failure modes. Barr proposes to select the applicable and effective preventative maintenance tasks initially based on current practice and our initial cost estimates. This data will also be entered into the FMEA spreadsheet. We will review the new data and add additional tasks and comments based upon our expertise in these area. We anticipate that this step may take several iterations. After the iterations between L&S and Barr are complete on this step, we will present the spreadsheet to COH for its review and comment.

When all the reviews among L&S, Barr, and COH are complete, We will document the preventative maintenance program in a final report to be submitted to the COH.

Assumptions

L&S and Barr makes the following assumptions concerning this project:

- Since most of the data required to complete the first element of this process has been collected by us and made available to Barr, we will not include any site visits to COH in our proposal. If a site visit is determined to be needed, the additional time and expenses will be charged at Barr's standard rates.
- There will be a maximum of two iterations among Barr, L&S, and COH during the FMEA and second and third elements of this proposal. Additional time to complete more iterations will be charged at Barr's standard rates.
- There will be a maximum of two iterations among Barr, L&S, and COH during the fourth element of this proposal. Additional time to compete more iterations will be charged at Barr's standard rates.
- The scope of the equipment included in this project are the horizontal hydroelectric turbines and generators as well as the auxiliary support equipment for these units.

L&S proposes to begin this project in the first quarter of 2023 as suggested by the COH after we receive a notice to proceed. L&S proposes to complete the tasks on a time-and-materials basis. The estimated costs for the above scope on this project of \$46,790.00 will not be exceeded without your prior written

Schedule and Budget:

L&S proposes to begin this project in the first quarter of 2023 as suggested by the COH after we receive notice to proceed. L&S proposes to complete the tasks on a time-and-materials basis. The estimated costs for the above scope on this project of \$46,790.00 will not be exceeded without your prior written permission.

Thank you for the opportunity to quote your requirements. If you should have any questions or need any additional information, please feel free to contact me.

Sincerely,

Doug Junion | General Manager | Sturtevant Operations & Onsite Services | L&S Electric Inc

1.800.367.7676 | Cell 262.770.1811 | Ofc 715.241.3724 | Fax 715.241.3725

djunion@lselectric.com | www.lselectric.com

Standard Terms and Conditions of L & S Electric, Inc. – 2022

X-A-01

1. **Agreement of Sale.** Unless a separate contract is executed by both parties, which shall govern this order, the following shall apply:
 - a. In consideration hereof, "Buyer" seeks to purchase from L & S Electric, Inc. (the "Seller") the product, part, equipment, accessories, or material ("Goods") and/or scope of work ("Services") described in the applicable quotation of Seller ("Quote") and Seller seeks to provide such to Buyer.
 - b. Any of the terms and provisions of Buyer's order ("Purchase Order") which are additional or different with the terms and provisions hereof, shall not be binding on the Seller and shall not be considered applicable to the sale or shipment of Goods and/or performance of Services hereunder. Buyer shall be bound by these Terms and Conditions ("Terms") upon: (i) issuing a purchase order; (ii) Seller begins to order materials or begins Services; (iii) Seller ships Goods to Buyer, and/or (iv) Buyer accepts delivery of Goods and/or allows Services, whichever occurs first.
 - c. This writing is intended by the Seller and Buyer as a final and exclusive expression of this agreement and no course of dealing or usage of trade or course of performance shall be relevant to explain or supplement any term expressed in these Terms. No waiver or modification of any of the Terms shall be valid unless it is made in writing and signed by both parties. The failure of the Seller to enforce any right possessed under the Terms shall not constitute a waiver thereof or establish a custom.
 - d. In the event of conflict between contract documents and for scope of work clarity, the order or precedent shall be: (i) any duly executed Change Orders, (ii) the Quote, (iii) these Terms and Conditions, (iv) the Purchase Order (excluding all terms and conditions thereof), and (v) Buyer's drawings, designs and specifications.
2. **Prices and Term of Payment.** Except as may be set forth in the Quote or other mutually agreed contract document, standard terms of payment are cash in full within thirty (30) days of invoice date. All orders are subject to the approval of the Seller's Credit Department and the Seller may require full or partial payment in advance, prorated or milestone payments shall become due as shipments or other deliverables are made or as set in the Quote. If Buyer fails to comply with terms of payment, or otherwise materially breaches, Seller reserves the right to cancel the unfilled portion of any contractor order, but Buyer shall remain liable for all unpaid accounts and for any other damages due Seller as a result of Buyer's breach of these Terms. To the extent allowed under law, Seller may charge the maximum lawful interest rate on past due amounts. Any expenses associated with collections on past due invoices shall be paid by Buyer. Buyer is responsible for all sales, use, occupation, excise or similar tax which Seller invoices as a separate line item, unless a valid tax exemption certificate, acceptable to the appropriate taxing authorities, is provided at time of order.
 - a. **Goods:** Prices listed in the Quote are estimates. Seller reserves the right to modify prices based on supplier cost changes. Prices are not firm until confirmed by the suppliers at time of shipment.
 - b. **Services:** Prices shall be based on the applicable time and material ("T&M") rate sheet or lump sum total figure in the Quote.
3. **Delivery of Goods and Freight.** Delivery shall be made via Seller's truck when at all possible, with the risk of loss on Seller until time of delivery. In the case that the Buyer is either out of Seller's delivery territory or Buyer requires the material prior to Seller's delivery date, material will be shipped via the best common carrier, f.o.b. manufacturer's facility, where the risk of loss, delay, and damage in transit is on Buyer. Seller will take commercially reasonable efforts to comply with delivery times. However, Seller may be reliant on suppliers for deliverables which may limit Seller's ability to meet requested specific delivery times. Accordingly, Seller disclaims "time is of the essence", or other definitive delivery date/time commitments and will make deliveries as and when Seller is commercially able. Seller will communicate anticipated delivery timing as it becomes available. Any penalty clause or a liquidated damage provision for failure to meet shipment are not acceptable unless specifically approved in writing by an officer of the Seller and included in the Quote.
4. **Changes.** Seller shall have the right, with the prior approval of Buyer, to make changes in the Goods and to substitute equivalent Goods where such changes or substitutions are deemed necessary by Seller to prevent delays in manufacture or delivery or to improve the performance, producibility, stability, control, utility, maintenance or appearance of the Goods provided that such changes or substitutions shall not adversely affect the price, time of delivery, or performance of the equipment nor significantly affect its design, weight or balance. The cost of such changes shall be borne by Seller. Either party shall have the right to propose changes in the Goods or the Services to the other party prior to delivery provided that no such change shall be binding on either party until incorporated into a Change Order to this effect, executed by an authorized representative.
5. **Held Orders.** For any order held, suspended, delayed or rescheduled at the request of the Buyer, Seller may, at its sole option:
 - a. **For Goods:** (i) require full or partial payment, based on a prorated portion of the contract price plus any additional expenses and costs resulting from such a delay, (ii) pass through increases in prices of Goods when suspension or hold is lifted, and/or (ii) store the Goods at the sole cost and risk of loss of the Buyer. Payment for such price, expenses and costs, in any such event, shall be due by Buyer within thirty (30) days from date of Seller's invoice. Any order so held delayed or rescheduled beyond six (6) months will be treated as a Buyer termination. In the event of nonpayment or abandoned Goods, Seller may dispose of any stored Goods for which payment has not been received without any liability to Buyer. Buyer shall still owe for such storage fees and the contract price.
 - b. **For Services:** (i) charge for full or partial payment, based on a prorated portion of the contract price plus any additional expenses and costs resulting from the delay, including but not limited to demobilization, remobilization, hotel accommodations, travel expenses, subcontract labor cost increases, equipment rental charges, and/or (ii) extend the project schedule for additional time to perform.
6. **Titles.** The title to and right of possession of the Goods (or any part or portion thereof) furnished by the Seller shall remain in the Seller and the Goods shall remain personal property until paid for in full, and the Buyer shall do all acts necessary to perfect and maintain such right and title in the Seller.
7. **Warranty.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, THIS WARRANTY SHALL BE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER STATUTORY, EXPRESS, VERBAL OR IMPLIED (WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE AND WARRANTIES ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE ARE HEREBY WAIVED).
 - a. **Goods.** Seller shall assign, to the extent able, any warranty of the Goods. For that Warranty Period, the Goods shall: (i) strictly conform to the description and specifications in the Quote; (ii) are free from defects in workmanship, materials and design, to the extent designed by Seller; and (iii) be new, unless mutually agreed otherwise. Continued use or possession of the Goods after the expiration of the Warranty Period shall be conclusive evidence that the warranty is fulfilled to the full satisfaction of the Buyer, who agrees thereafter to make no further claim on the Seller.

- **Non-excitation Goods:** Unless the Quote states differently, the standard Warranty Period shall be one (1) year from the shipment of the Goods.
 - **Excitation Goods:** The Warranty Period for excitation products shall be effective for a period of two (2) years. The applicable Warranty Period shall begin after signing of the Certificate of Commercial Operation ("COCO") or 90 days after equipment delivery, whichever is first.
 - **Remedies:** If a defect occurs during the Warranty Period, Buyer shall provide prompt written notice to Seller and as the sole and exclusive remedy, Seller shall repair or replace the Goods, f.o.b Seller's factory, unless such defect was caused by an act of Buyer, including but not limited to: misuse; improper storage, maintenance, installation; unauthorized modification; or incorporation into other equipment not provided by Seller. All labor-related costs including, but not limited to: of disassembly, in-and-out charges, and transportation shall be borne by Buyer. The warranty provides for the supply of replacement hardware due to failure of components during intended operation. Labor required to replace hardware due to warranty claims shall be the responsibility of the Buyer. Costs associated with materials being damaged due to improper field installation, where installations were not performed by Seller, shall not be the responsibility of Seller.
 - **Return of Goods.** No Goods shall be returned to the Seller without written authorization and shipping instructions first having been obtained from the Seller under a warranty claim or due to non-conforming goods. In event of non-conforming Goods, Buyer must provide written notice to Seller within seven (7) days of delivery, and to the extent applicable, Seller shall pass through the remedies of the original equipment manufacturer.
- b. **Services.** Unless the Quote states differently, if Services are provided by Seller, Buyer shall, at the time of the completed Services review the work. If Buyer feels that the Services do not conform to the specifications and description in the Quote, Buyer must provide written notice to Seller to allow Seller to cure by repairing, reperforming, correcting, or replacing work that fails to conform to these warranties, including without limitation the removal of any non-conforming Services. Any Services not rejected within three (3) business days after completion shall be deemed accepted.
8. **Force Majeure.** The Seller will not be considered to be in default or in breach of its obligations for any delay or failure in performance under these Terms resulting from circumstances reasonably beyond the control of Seller, including but not limited to: any act of God, weather delays or nature, act of civil or military authority, embargo, public enemy, or other governmental act, regulation or request, fire, flood, epidemic, pandemic, casualties or accident, strike, slowdown or other labor difficulty, industry wide supply chain delays, delays in transportation and shortage of cars, fuel, power, labor or materials, war, riot or any other delay beyond Seller's control that affects its ability to perform hereunder. In the event of such delay, the date of delivery and/or performance will be extended for a period equal to the time lost because of the delay. No term or condition of any Purchase Order will modify or nullify this provision. Seller shall provide written notice to Buyer within a reasonable time of the event giving rise to the claim. Seller shall exercise commercially reasonable efforts to mitigate and communicate with Buyer.
9. **CONSEQUENTIAL DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THESE TERMS, WHETHER DUE TO BREACH OF CONTRACT, TORT, NEGLIGENCE, WARRANTY, STRICT LIABILITY OR OTHERWISE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE WHETHER OR NOT SUCH LOSS OR DAMAGE IS CAUSED BY THE FAULT OR NEGLIGENCE OF SUCH PARTY, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, LOSS OF USE OF EQUIPMENT OR FACILITIES, COST OF PURCHASED OR REPLACEMENT POWER OR CLAIMS OF CUSTOMERS DUE TO LOSS OF SERVICE, OR LOSS OF ANTICIPATED BUSINESS SUFFERED OR INCURRED BY THE OTHER PARTY.
10. **LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR ELSEWHERE, WHERE SELLER'S LIABILITY HAS NOT OTHERWISE BEEN LIMITED AND TO THE EXTENT ALLOWED UNDER THE LAW, SELLER'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY, OR ANY INDIVIDUAL OR ENTITY CLAIMING THROUGH SUCH PARTY, FOR ANY CLAIM OF ANY KIND, REGARDLESS OF THE FORM OF ACTION, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, ESTOPPEL, COMMON LAW, TORT, CONTRACT, OR STRICT LIABILITY, IN EQUITY, OR ANY OTHER THEORY, ARISING OUT OF, RESULTING FROM OR RELATING TO THESE TERMS, INCLUDING ANY MAINTENANCE ORDERS, SHALL NOT EXCEED THE SUM OF THE FEES ACTUALLY PAID BY THE BUYER TO SELLER UNDER THE APPLICABLE PURCHASE ORDER GIVING RISE TO THE CLAIM.
11. **Mutual Indemnification.** Each party ("Indemnifying Party") shall indemnify, defend and hold harmless the other party, its officers, agents, subcontractors, ("Indemnified Parties") from any and all third-party claims, losses, expenses, costs, or damage of any kind allowed under these Terms, including reasonable outside attorneys' fees, ("Claims"), which are caused by the sole and exclusive fault of the Indemnifying Party or by another for which it is responsible. Buyer shall indemnify Seller as to any claims, losses, expenses, costs, or damage of any kind allowed under these Terms related to or resulting from Buyer's drawings, specifications, designs, uses of Goods provided hereunder, and any patent or intellectual property infringement arising therefrom.
12. **Termination.** Either Party may terminate these Terms or the Purchase Order, in whole or in part, for cause as of the date specified in a termination notice if the other Party: (a) files for bankruptcy; (b) breaches any other material obligation under these Terms and fails to take action to cure any such breach within ten (10) calendar days after receipt of written notification of any such breach. Either Party may terminate these Terms or the Purchase Order for convenience, in whole or in part, at any time by giving the other party at least thirty (30) days prior written notice of the termination date. In event of termination, Buyer shall make payment to the Seller for all work performed and in progress prior to the date of termination as a prorated portion of the contract price, plus reasonable wrap-up costs, including cancellation fees and restocking charges.
13. **Confidential Information.** "Confidential Information" means all information whether of a technical, business, financial or other nature (including, without limitation, trade secrets, know-how and information relating to the technology, customers, business plan, copyrights, trademarks, patents, promotional and marketing activities, finances and other business affairs) that is or may be disclosed or imparted by one party ("Disclosing Party") to the other ("Receiving Party"), whether or not marked "confidential", including both the existence and content of discussions between the parties with respect to a potential or actual business transaction or relationship as well as these Terms. Confidential Information may be in any written format, including an email and electronic media, or orally. The Receiving Party shall protect the Confidential Information of the Disclosing Party to the extent it would protect its own confidential information, but in no event not less than a commercially reasonable standard of care. This provision shall not apply to any information which is (i) now or becomes generally available to the public in the future, other than through acts or omissions of the Receiving Party or its Representatives in violation of these Terms, (ii) lawfully obtained by the Receiving Party from sources independent of Disclosing Party without receiving Party's knowledge of the information being governed by a confidentiality agreement or obtained under a legal or fiduciary obligation, or (iii) independently developed by the Receiving Party or the Receiving Party's Representatives without reference to the Confidential Information of the Disclosing Party. The fact that information included in the Confidential Information is or becomes otherwise available to the Receiving Party or its Representatives under clauses (i) through (iii) above shall not relieve the Receiving Party or its Representatives of the prohibitions of the confidentiality provisions of these Terms respect to the balance of the Confidential Information. If disclosure is requested under law, immediate written notice shall be provided to the Disclosing Party to allow time to seek an injunction or other protective measures, should they desire.

14. **Buyer Provided Documentation.** Buyer is to provide all necessary project related information prior to the project award per the Quote, consistent with the mutually agreed upon schedule. Buyer is to verify the accuracy of the provided information prior to submitting it to Seller. Any discrepancies between the Buyer-supplied documentation and/or variations in actual site conditions from those indicated in the Buyer-supplied documentation as discovered during the project phase, may result in additional charges applicable via duly executed change order(s). If the Buyer supplied drawings are not verified by Seller, any design and/or drawing updates associated with said are done at the Buyer's risk, Seller shall not be responsible for any discrepancies. Seller is available to provide services on a time and materials ("T&M") basis to help verify and update the documentation. Buyer shall indemnify Seller as to any losses related to or resulting from Buyer's drawings, specifications, designs, product uses, and any patent or intellectual property infringement arising therefrom.
15. **Buyer Project Support.** Buyer is to provide knowledgeable operations, electrical and mechanical personnel familiar with site conditions to assist Seller's personnel during data collection site visits and project commissioning as stated in the Quote. Additional charges may result if the appropriate Buyer personnel are not available. System delays/waiting time and or weather delays, not due to Seller's equipment, should be reasonable and may result in additional charges.
16. **Intellectual Property.** All Confidential Information, proprietary knowledge, trade secrets, business knowhow, copyrights, and other intellectual property rights owned by a party prior to this Purchase Order or created outside of this Purchase Order, shall be held and solely owned by that party ("Background Intellectual Property"). Either party may use the Background Intellectual Property of the other party only to the extent required to perform hereunder. To the extent that Background Intellectual Property is necessary to reap the benefits of this agreement, a party shall give the other party a worldwide, non-exclusive, fully paid, perpetual, non-transferable license as to the necessary Background Intellectual Property for the sole and limited purpose that the party can use the Goods as contemplated hereunder. Upon final and full payment of the purchase price, Seller hereby assigns to Buyer, to the extent able, licenses to the embedded software in the Goods, which are owned by a third party and licensed to Seller in connection with the Goods, subject to all end user licensing agreements of the third party.
- a. **PLC Programming Source Code.** To the extent applicable, Seller clarifies that the PLC programming source code of the governor and/or excitation control systems ("Software") is noncommercial software that has been developed by Seller at private expense and shall not be deemed to have been produced under work produced for the equipment included in this quotation and is Seller's Background Intellectual Property. The Software, including modifications of the Software, is restricted Software, developed at private expense and is trade secret, which is confidential, privileged and proprietary to Seller as Seller's Background Intellectual Property. Software is being provided under restricted rights licenses. The Software delivered under these Terms may not be used, reproduced, or disclosed by Buyer except as follows. The Software may only be:
- Used or copied for use with the governor and/or excitation control system for which it was acquired;
 - Used or copied for use with a backup processor if the processor on which it was installed is inoperative;
 - Reproduced for safekeeping (archives) or backup purposes;
 - Modified, adapted, or combined with other processor software, provided that the modified, adapted, or combined portions of the derivative Software incorporating any of the delivered, processor Software shall be subject to same restrictions set forth in these Terms;
 - Disclosed to and reproduced for use by support service contractors or their subcontractors, subject to the same restrictions set forth in these Terms (except that this limitation will not apply if Seller no longer supports such Software); and
 - Used or copied for use with a replacement processor.
- b. **Third Party software.** Notwithstanding any other provision in these Terms or any Purchase Order, the Buyer shall have only restricted rights in the Software required to be delivered or otherwise provided to the Buyer under these Terms. Ownership of all other software, which is not Seller's Background Intellectual Property and owned by another third party, which Seller is required to be delivered or otherwise provided to the Buyer under these Terms, will reside with the applicable third party, upon Buyer agreeing to the end user licensing agreement of the third-party software provider.
17. **Successors and Assigns.** These Terms shall inure to the benefit of and be binding upon the successors and permitted assigns of the parties. Either party may assign with the written permission of the other party, which may be withheld for any reason.

Governing Law. All Purchase Orders shall be governed by and construed according to the laws of the State of Wisconsin