

## Board of Public Utilities

### Special Meeting Agenda

Wednesday, October 16, 2013  
9:00 a.m., DPW Conference Room



City of South Haven

1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda

#### UNFINISHED BUSINESS

5. Board will be requested to review the Power Line Supply agreements and make a recommendation to City Council.
6. Next meeting is scheduled for Monday October 28, 2013 at 4:00 p.m. in the DPW Conference Room.
7. Board Member Comments
8. Adjourn

RESPECTFULLY SUBMITTED,

Roger C. Huff, P.E.  
Public Works Director



## Agenda Item #5

### Transformer Consignment Inventory Alliance Agreement Vendor Managed Inventory Alliance Agreement

#### City of South Haven

#### History:

On September 16, 2009, the City of South Haven (City) entered into three-year agreements with Power Line Supply (PLS) for Transformer Consignment Inventory and Vendor Managed Inventory. These agreements provide consignments consisting of various stock electrical power transformers and stock electrical products used by Department of Public Works (DPW) electric crews to perform their daily work. The Transformer Consignment Inventory Alliance Agreement included the following Term and Condition:

“Upon Termination City of South Haven will purchase inventory of established stock items and all items on order with the manufacturer.”

In September 2012, City staff prepared a Request for Proposals (RFP) for new agreements. On October 9, 2012, one submittal was received from PLS in response to the RFP. Since this new agreement would replace the old agreement, PLS requested closure of the old contract. Due to the term and condition quoted above, they requested that we pay the current inventory value of \$446,900.32 and take delivery of 68 transformers being held in consignment at PLS.

The City would like a continuing, but improved mutually beneficial working relationship with (PLS). Over the past year, City staff (City Manager and Public Works Director), the Mayor, the Board of Public Utilities Chairman, and the City’s attorney have been working with PLS to resolve the issue of the surplus transformers. As a result of those efforts, both parties have agreed in principle to the following proposal:

- Recognize that the City has already reduced the stock of transformers, previously held by PLS, to the extent of \$232,819.29 by purchasing 35 transformers. These transformers now are held in the City’s inventory located in South Haven.
- The City will pay PLS an amount equal to one half of the cost of the remaining transformers, presently being held by PLS, which have been identified as being held exclusively for the City. The current “cost” is \$427,297.21 and one half of that amount is \$213, 648.60, to be invoiced upon acceptance of this agreement.
- Under this agreement, PLS would continue to market these transformers to other customers and the City would provide reasonable assistance to PLS to help this effort (upon PLS’s reasonable request). The transformers would be offered to others at or near current market value. The parties may always mutually agree to accept lower amounts.

- In instances where PLS or the City receive valid offers for the sale of any or all transformers included in the Transformer Consigned Inventory Alliance agreement, the offer to purchase shall be provided in writing to The Senior Vice President of Power Line Supply Company and the Public Works Director of the City of South Haven for review. Upon acceptance by both parties, transformers shall be sold per the terms of the offer and proceeds distributed per the agreement between the parties.
- The proceeds from these transformers would be shared, with 50% of the sale price returned to the City upon completion of the sale.
- It would be understood that these transformers would be sold at or near current market value and prior to any new transformer acquisition of like specification units by PLS.
- Both Agreements (Transformer Consigned Inventory Alliance and Vendor Managed Inventory Alliance) shall remain in effect for a term of four years from the date of approval by both parties.

The intent of this proposal is that the City would help PLS cover part of the investment cost of the inventory of transformers which would be available for all of the PLS market. By sharing the actual sales price of the transformers at the time of sale, the City will be sharing in the decreased value of the transformers due to the market price change between current market prices and the cost of the transformers at the time of purchase. Additionally, by agreeing to this proposal, both parties would be able to avoid the possibly significant costs that could accompany litigation related to this matter with an unknown outcome.

The attached Draft Resolution and Draft Transformer Inventory Management Agreement have been prepared by the City's attorney. Once these documents have been approved and executed, the City and PLS will enter into extensions of the Transformer Consignment Inventory Alliance Agreement and the Vendor Managed Inventory Alliance Agreement. It is anticipated that this process may take several iterations for both parties to agree on the final form.

**Recommendation:**

Approve a recommendation to City Council to approve Transformer Inventory Management Agreement in the amount of \$213, 648.60.

Allow the City Manager to negotiate the final form of all related agreements.

**Attachments:**

Draft Resolution  
Draft Transformer Inventory Management Agreement

Respectfully submitted,

Roger Huff, P.E.  
Director

**CITY COUNCIL  
CITY OF SOUTH HAVEN**  
Van Buren and Allegan Counties, Michigan

Council member \_\_\_\_\_, supported by Council member \_\_\_\_\_,  
moved the adoption of the following resolution:

**RESOLUTION \_\_\_\_\_**

**A RESOLUTION TO APPROVE AN AGREEMENT  
BETWEEN POWER LINE SUPPLY COMPANY AND THE  
CITY OF SOUTH HAVEN FOR THE LIQUIDATION OF  
SURPLUS TRANSFORMERS UNDER CONSIGNED  
INVENTORY AGREEMENTS**

WHEREAS, in October 2009 the City of South Haven ("City") and Power Line Supply Company ("PLS") entered into a Vendor Managed Inventory Alliance Agreement, and Transformer Consigned Inventory Alliance Agreement ("Transformer Contracts") to improve operating efficiencies and reduce operating costs associated with the management of consigned inventory for distribution transformers; and

WHEREAS, the Transformer Contracts required the parties to mutually establish minimum and maximum inventory levels for transformer stock, and also required the City to purchase all inventory stock items upon expiration or other termination of the Transformer Contracts; and

WHEREAS, when the Transformer Contracts expired in October 2012 PLS and the City disagreed about the number of transformers PLS held for the City and the balance the City owed PLS; and

WHEREAS, a continued working relationship with PLS may be most cost effective for the City because dispute resolution could be costly and the results of dispute resolution proceedings are never certain; and

WHEREAS, the City Council believes resolution of the disagreement.

NOW, THEREFORE, BE IT RESOLVED AS FOLLOWS:

1. The Transformer Inventory Management Agreement attached as **Exhibit A** is approved in all respects.
2. That all resolutions or parts of resolutions are, to the extent of any conflict with this resolution, rescinded.

YEAS: Council members: \_\_\_\_\_

NAYS: Council members: \_\_\_\_\_

ABSTAIN: Council members: \_\_\_\_\_

ABSENT: Council members: \_\_\_\_\_

**RESOLUTION DECLARED ADOPTED.**

**Exhibit A**

**Transformer Inventory Management Agreement**

## TRANSFORMER INVENTORY MANAGEMENT AGREEMENT

This Transformer Inventory Management Agreement is made as of October \_\_\_, 2013, between the City of South Haven, a Michigan municipal corporation, the principal business address of which is 539 Phoenix Street, South Haven, MI 49090 (the "City") and Power Line Supply Company, a Michigan corporation, with an address of 420 Roth Street, P.O. Box 88, Reed City, MI 49677 ("PLS").

### RECITALS

- A. The City and PLS entered into a Transformer Consigned Inventory Alliance Agreement and Vendor Managed Inventory Alliance Agreement, each with an effective date of October 1, 2009 (collectively, the "Transformer Contracts").
- B. The parties have disagreed over whether the City authorized the number of items to be ordered and the corresponding balance owed PLS, resulting in 68 excess transformers currently held by PLS (the "Surplus Transformers").
- C. The parties desire to resolve this disagreement, and provide for the joint liquidation of the Surplus Transformers, pursuant to the terms and conditions in this Agreement.

### TERMS AND CONDITIONS

#### 1. Purchase and Sale of Surplus Transformers.

1.1. Upon the execution of this Agreement, PLS will provide the City with a written invoice in the amount of \$213,648.60, which dollar amount represents approximately one-half of the retail value of the Surplus Transformers as agreed to between the parties. The City will pay the invoiced amount to PLS upon receipt of the invoice.

1.2. PLS will, at its sole cost and expense, warehouse, transport, as necessary, and exercise best efforts to market and sell the Surplus Transformers to existing customers and other third-party purchasers. However, the City will, upon PLS's reasonable request, and at PLS's sole cost and expense, provide reasonable assistance to facilitate PLS's efforts to market and sell the Surplus Transformers. PLS will market the Surplus Transformers at a sales price that equals or is near current fair market value. All purchase offers must be submitted in writing to PLS's Senior Vice President and the City's Public Works Director for review within 3 days of receipt of the offer. The completion of any sale of Surplus Transformers requires PLS's and the City's joint acceptance of the purchase offer, and the parties may agree to sell the Surplus Transformers at any price, including, without limitation, less than the fair market value of any or all of the Surplus Transformers. Upon acceptance by both parties of a purchase offer, the Surplus Transformers will be sold in accordance with the terms of the accepted offer, and the City and PLS will equally share the net proceeds of such sale. PLS must remit payment to the City of the City's portion of sale proceeds within 5 days of the completion of any sale of Surplus Transformers.

2. Extension of Transformer Contracts. The Transformer Contracts expired on October 1, 2012. Upon execution of this Agreement, PLS and the City will enter into an extension of the Transformer Contracts that revises and extends the expiration date to October 1, 2016. The revised Transformer Contracts will be subject to the terms and conditions of this Agreement.

3. Release and Waiver. PLS forever releases and discharges the City, and the City forever releases and discharges PLS including their respective agents, officers, employees, and attorneys, of and from any and all claims, obligations, debts, damages, losses, demands, and costs, whether known or unknown, and whether arising before or after the date of this Agreement, which PLS or City had, has, claims to have had, or may later have against the other, arising out of or related in any way to the

Transformer Contracts, including any and all correspondence, representations, or acts made in connection with the Transformer Contracts.

4. Miscellaneous.

A. This Agreement constitutes the sole and entire agreement of the parties with respect to its subject matter, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, with respect to such subject matter. This Agreement may only be modified by an agreement in writing signed by each party.

B. No party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. This Agreement will be binding upon and inure to the benefit of the parties to this Agreement, and their respective permitted successors and assigns.

C. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission will be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

The parties have signed this Agreement, effective as of the date first set forth above.

**CITY OF SOUTH HAVEN**

**POWER LINE SUPPLY COMPANY**

By: \_\_\_\_\_  
Robert Burr, Mayor

By: \_\_\_\_\_  
Jeff Stauffer, Senior Vice President

By: \_\_\_\_\_  
Amanda Morgan, clerk