

RELEASE AND SETTLEMENT AGREEMENT

This release and settlement agreement ("AGREEMENT") is entered into between the CITY OF RATON (including RATON PUBLIC SERVICE COMPANY) on its behalf and on behalf of all parties insured under policy of insurance FBP9321731 (hereinafter collectively referred to as "RATON" or "RELEASOR") and the HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY ("HSB" or "RELEASEE").

RECITALS

WHEREAS, HSB issued a policy of insurance numbered FBP9321731 which was in effect between November 30, 2011 and November 30, 2012 (hereinafter referred to as the "POLICY"), which among other terms, conditions, limitations and exclusions provided first party property equipment breakdown insurance coverage for equipment located at 1130 Santa Fe Drive, Raton, New Mexico (hereinafter referred to as the "PROPERTY");

WHEREAS, on or about October 18, 2012, RATON suffered damage to a spark-ignited reciprocating engine manufactured by Wärtsilä at its facility (hereinafter referred to as the "LOSS");

WHEREAS, RATON made claims under the POLICY as a result of the damage to the Wärtsilä engine (the "CLAIMS") for Property Damage which was assigned HSB Claim No. PH-00335841;

WHEREAS, issues and disputes have arisen between RATON and HSB regarding the amount due and owing for the CLAIMS under the POLICY; and

WHEREAS, the parties hereto desire to resolve and settle disputes between themselves without the necessity of litigation, appraisal or other dispute resolution means.

RELEASE

NOW THEREFORE, the parties to this Agreement agree to the following terms of settlement and release:

1. Upon execution of this agreement by **RATON**, and in consideration of the payment of Two Million Five Hundred Eighty Four Thousand Dollars (\$2,584,000) (the "settlement payment"), which, along with prior payments of \$3,666,000 represents payment of the **POLICY** limit, **RATON** on behalf of itself and each and all of its past, present and future owners, partners, parents, subsidiaries, affiliates, officers, directors, shareholders, employees, representatives, agents, attorneys, predecessors, successors and assigns, and all persons named as insureds, additional insureds, or loss payees under the **POLICY**, does fully, finally and forever release, remise, relinquish and discharge **THE HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY**, including, but not

limited to, each and all of its past, present and future parents, subsidiaries, affiliates, divisions, business units, officers, directors, shareholders, employees, representatives, agents, attorneys, predecessors, successors and assigns of and from any and all past, present and future, known or unknown, foreseen or unforeseen, asserted or unasserted, claims, demands, disputes, disagreements, matters, controversies, actions, lawsuits, causes of action, whether based on contract, quasi-contract, statute, tort or any other theory in law or equity, liabilities, losses, injuries and/or damages of any kind whatsoever, whether contractual, compensatory, consequential, statutory, or punitive, including, but not limited to, physical loss of or damage to real or personal property, equipment breakdown accident to covered equipment, any other consequential loss or damage, extra expense or any other expenses, costs, or fees, loss or damage arising out of any claimed breach of contract, loss or damage arising out of any claimed breach of any implied covenant of good faith and/or fair dealing, any other bad faith, vexatious or unreasonable delay, or other exemplary damages, penalties, or fees of any kind, interest of any kind, attorney's or other professional fees, costs and/or expenses, which **RATON** ever had, now has, can, shall, or may ever have against **HSB** based upon, arising out of, or in any way relating to the **POLICY**, the **CLAIMS** or the **LOSS as defined herein**.

2. **RELEASOR** expressly acknowledges and agrees that the release set forth immediately above is a general release and that **RELEASOR** expressly waives and assumes the risk of any and all claims for loss, injury, or damage which exist as of the effective date of this **AGREEMENT based upon, arising out of, or in any way relating to the POLICY, the CLAIMS or the LOSS**, but of which **RELEASOR** does not know or suspect exist, whether through oversight, error, negligence, ignorance, or otherwise, and which, if known, would materially affect the **RELEASOR'S** decision to enter into this **AGREEMENT**. **RELEASOR** also acknowledges that it has accepted this settlement as a complete compromise of all matters involving **RELEASEES** and disputed issues of law and fact with respect to the **POLICY**, the **CLAIMS** or the **LOSS** and assumes the risk that the facts or law may be other than it believes. **RELEASOR** further acknowledges that this **AGREEMENT** is a complete compromise of all matters involving the **POLICY**, the **CLAIMS** or the **LOSS** and shall be binding upon and inure to the benefit of the **RELEASOR**, **RELEASEE**, and each and all of their respective heirs, successors and permitted assigns.

3. The settlement payment referenced in Paragraph 1 above, shall be made to **RELEASOR** within 30 days of HSB's receipt of a fully executed Purchase Order and a Limited Notice to Proceed with the replacement of the Wärtsilä engine and which replacement is in conformity with the Zachry Engineering Report dated February 13, 2015 for the purchase and installation of a nominal 4.3 MW natural gas reciprocating internal combustion engine.

4. **RELEASOR** enters into this **AGREEMENT** as a free and voluntary act in the full and final compromise and settlement of a disputed claim, and that such compromise and settlement, including payment of the settlement, shall not be construed as an admission of any obligation, debt, or liability of any kind whatsoever by **RELEASEE**, any and all such obligations, debts and/or liabilities having been previously and continuously disputed and/or denied.
5. That this **AGREEMENT** sets forth and contains the entire, integrated agreement and understanding of and between **RELEASOR** and **RELEASEE**, and supersedes and merges any and all prior or contemporaneous agreements, understandings, promises, representations, or statements relating to the subject matter hereof.
6. That no promises, agreements, representations, or statements, whether oral or written, have been made or relied upon by **RELEASOR** as consideration for this **AGREEMENT**, except those expressly set forth in this **AGREEMENT**, and that the signing of this **AGREEMENT** has not been induced by any representative of **RELEASEE** or anyone on their behalf.
7. That this **AGREEMENT** may not be altered, amended, or modified at all, except by a writing duly signed by **RELEASOR** and **RELEASEE**.
8. That this **AGREEMENT** is the jointly-drafted product of arms-length negotiations and the language contained within and comprising the substance of this **AGREEMENT** shall not be presumptively construed against **RELEASEE** on the ground that they drafted the **AGREEMENT** or based on their status as an insurance company.
9. That the terms of this **AGREEMENT** are contractual and not a mere recital.
10. That this **AGREEMENT** shall be governed by and construed in accordance with the laws of the State of New Mexico, excluding its choice of law rules and provisions.
11. That there are no liens, claims, charges, assignments, or encumbrances of any kind based upon, arising out of, or in any way relating to the **CLAIM** and/or any of the other matters released herein, and that **RELEASOR** expressly agrees to exclusively assume any and all liability for any and all liens, claims, charges, assignments, or encumbrances of any nature, by whomever made, which may exist or that may be hereafter imposed, such that **RELEASEE** shall have no further obligation whatsoever with regard to any such liens, etc.
12. That **RELEASOR** shall bear all attorneys' fees, costs and/or expenses arising from the actions of their own counsel in connection with the **CLAIM**, the other matters released herein and all related matters.
13. That **RELEASOR** has not sold, transferred, conveyed, or assigned to any other person or entity any of their right, title and interest in and to the **POLICY**, the **CLAIMS**, or the **LOSS**

and that they have not lost or otherwise had any such right, title and/or interest extinguished or taken away.

14. That **HSB** and **RATON** understand and agree that this **AGREEMENT** does not impair and is not intended to impair **RATON'S** or **HSB'S** respective claims against Wärtsilä arising from the **LOSS**, whether arising in contract, tort, statute, subrogation or equity.
15. That **RELEASOR** is the sole and lawful owner of all right, title and interest in and to the **POLICY**, the **CLAIMS or the LOSS**, and that no other person or entity has any such right, title and/or interest.
16. That **RELEASOR** has secured any and all necessary approvals for the making and execution of this **AGREEMENT** from any and all necessary persons or entities with any interest in or to the **POLICY**, the **CLAIMS or the LOSS**, and the settlement amount.
17. That **RELEASOR** has taken any and all necessary governmental, municipal, corporate and/or internal legal actions to duly approve the making and performance of this **AGREEMENT**, and that no further corporate or other internal approval is necessary or required.
18. That **RELEASOR** has fully read and understood this **AGREEMENT**, that it voluntarily accepts and approves all of the terms of this **AGREEMENT**, and that it agrees to be permanently bound by this **AGREEMENT**.
19. That the persons executing this **AGREEMENT** for and on behalf of **RELEASOR** are legally competent and fully authorized to execute this **AGREEMENT** for and on behalf of **RELEASOR** and each and all of their respective owners, partners, parents, subsidiaries, affiliates, officers, directors, shareholders, employees, representatives, agents, attorneys, predecessors, successors and assigns.
20. That this **AGREEMENT** shall be effective upon execution by **RELEASOR**.

IN WITNESS WHEREOF, the undersigned has hereunto fully and properly executed this **AGREEMENT** for and on behalf of **RELEASOR** and **RELEASEE** as of the date set forth below.

CITY OF RATON (on behalf of itself and all persons and/or entities within the definition of "**RELEASOR**") set forth herein)

By: Sandra Mantz

Name: Sandra Mantz

Title: Mayor of Raton

and

By: Kathy McQueary

Name: KATHY McQUEARY

Title: PRESIDENT - RATON PUBLIC SERVICE CO

Date: June 3, 2015

HARTFORD STEAM BOILER INSPECTION AND INSURANCE COMPANY
(on behalf of itself and all persons and/or entities within the definition of "RELEASEE" set forth herein)

By: _____

Name: _____

Title: _____

Date: _____