



MISC 2009101962



SEP 18 2009 08:56 P 6

misc
 FEE 3050 FB 00-44644
 6 BKP _____ C/O _____ COMP _____
 1 DEL _____ SCAN _____ FV _____

N

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 9/18/2009 08:56:47.66



2009101962

CUSTOMER AGREEMENT
(Inside Meter Installation)

This Customer Agreement (this "Agreement") is made and entered this 15 day of September, 2009, by and between OMAHA PUBLIC POWER DISTRICT ("OPPD"), a public corporation and political subdivision of the State of Nebraska and RM6 HOLDINGS LLC ("Customer").

WHEREAS, Customer owns buildings, facilities and equipment now present or constructed in the future at the property (the "Customer Premises") legally described as follows:

Lot 164 of Woodbridge, a subdivision as surveyed, platted, and recorded in Douglas County, Nebraska.

WHEREAS, OPPD's Meter Specifications Manual ("Meter Manual") requires meter installations on the outside of buildings and facilities;

WHEREAS, Customer has requested that it be permitted to have electrical meter(s) located in the interior of the Customer Premises, as follows:

(See Exhibit A attached hereto and by this reference incorporated herein)

; and

WHEREAS, OPPD has agreed to allow the location of certain electrical meter sockets or socket panels inside the Customer Premises, as provided in and subject to the conditions contained in this Agreement.

NOW THEREFORE, in consideration of the aforesaid and for other good and valuable consideration, the parties hereto agree as follows:

1. **Interior Installation of Meter(s).** Customer, at its own cost and expense, shall install an electrical meter socket or socket panels in the interior of the Customer Premises consistent with the plans and specifications marked Exhibit A, attached hereto and by this reference incorporated herein. [For Customer's ease of reference, the plans and specifications shown on Exhibit A must include a site plan, meter room plan, shop drawings of the meter room and metering equipment and associated wiring and must be reviewed and approved in advance by OPPD.] Any material changes to, or variations from, such plans and specifications shall be presented by Customer and approved by OPPD. Such installation shall be in a workmanlike manner and in compliance with the Meter Manual (other than exterior installation) and all other applicable rules and regulations. At all times following installation, Customer shall repair and maintain the Meter Room (as hereinafter defined) consistent with Exhibit A, the Meter Manual, the District's Service Regulations and all other applicable rules and regulations. During the term of this Agreement, Customer shall adhere to all OPPD meter specifications other than the requirement for the meter to be placed outside. At all times, Customer shall maintain the Meter Room clear of all impediments and obstructions in order to permit OPPD uninhibited and safe access to the meter panel. In the event that OPPD elects to, or is required to, install at the Customer Premises special equipment to transmit meter reading electronically to the exterior of the building to allow for automated reading by OPPD's automated meter reading equipment, the Customer shall pay for such special equipment to transmit the meter reading data, and maintenance or replacement of such equipment, as outlined on Exhibit B attached hereto and by this reference incorporated herein.

2. **OPPD Access.** Customer hereby grants OPPD full and free access to the portion of the Customer Premises where the electrical meter(s) and meter panel are located, together with a right of ingress and egress thereto (collectively, the "Meter Room"), at such times as may be necessary and/or desirable for OPPD. The parties acknowledge and agree that it is essential that OPPD be permitted to enter the Customer Premises in order to access the Meter Room on a 24 hours per day, 7 days per week, 365 days per year basis. In the event that Customer or its tenants or agents change locks to the Customers Premises, Customer shall immediately notify OPPD and deliver to OPPD's Meter Services Building at 4440 Jones Plaza a new key within ten (10) days. Customer shall not take any action or allow any action

RETURN TO:
 OMAHA PUBLIC POWER DISTRICT
 % Land Rights 5E/EP2
 444 South 16th Street Mall
 Omaha, NE 68102-2247

to be taken that restricts OPPD's access to the Meter Room, and shall promptly, upon notice from OPPD, take all actions necessary to remove any impediments to OPPD's access to the Meter Room.

3. **Lock Box.** OPPD shall be permitted to install a lock box at the exterior of the Customer Premises which lock box shall contain a key(s) (provided by Customer) to allow OPPD to access the Meter Room. Use by OPPD of the key(s) located in the lock box must allow OPPD access to the Meter Room without necessity of OPPD contacting Customer, its tenants or security providers. Customer shall not permit any other person use of or access to such lock box.

4. **Failure to Maintain Access.** In the event (i) OPPD is unable to gain immediate and full access to the Meter Room as and when desired or necessary, or (ii) Customer fails or refuses to provide a working key for the lock box as provided in Section 3 above, or (iii) Customer breaches any covenant herein contained and fails to cure such breach to the satisfaction of OPPD within thirty (30) days notice thereof, OPPD, in its sole discretion, may:

- (a) assess Customer a charge in the amount of \$250 per occurrence, which charge shall attach to the House Meter (H/M) and shall increase annually on the anniversary date of this agreement based on the change in the Bureau of Labor Statistics (BLS) for CPI-U-all items, with a minimum annual increase of 3 percent (3%);
- (b) terminate electrical service to the Customer Premises upon written notice to Customer; and/or
- (c) elect to terminate this Agreement upon written notice to Customer and require Customer to immediately install an exterior electric meter socket or socket panels at the Customer Premises as required by the Meter Manual.

5. **Liability and Indemnity.** In the event that OPPD is unable to access, or is delayed in accessing, the Meter Room to cut electrical power to the Customer Premises due, in whole or in part, to inability to timely access the Meter Room, Customer hereby waives any liability for damage to the Customer Premises if OPPD is unable to cut electrical power to Customer Premises. To the maximum extent permitted by law, Customer shall indemnify, defend and hold harmless OPPD against and from all liabilities that arise from or are related to an act or omission of the Customer, its agents and tenants and any third party with respect to the Meter Room, unless such liabilities are caused by OPPD or its subcontractors. Notwithstanding any other provision in this Agreement, neither party shall be liable to the other for any punitive, consequential, incidental or special damages, or alleged lost profits, incurred or alleged to have been incurred as a result of interior electrical meters installed under this Agreement and access thereto.

6. **Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties and their successors or assigns and subsequent owners of the Customer Premises; provided, however, Customer may not assign or otherwise transfer this Agreement or the rights and privileges herein granted to a third party without the prior written consent of OPPD, which consent shall not be unreasonably withheld. Customer agrees that this Agreement shall run with the land, and acknowledges and agrees that OPPD may record this Agreement, or a memorandum of this Agreement, with the register of deeds of the county.

7. **Notices.** All notices or other communications which are required or permitted herein shall be in writing and sufficient if delivered personally, sent by facsimile transmission followed by written confirmation of receipt, sent by overnight commercial air courier (such as Federal Express), or sent by registered or certified mail, postage prepaid, return receipt requested, to the parties at their addresses or facsimile numbers set forth below.

8. **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the statutory and decisional law of the State of Nebraska, without regard to conflicts of laws principles.

9. **Termination.** Customer may elect to terminate this Agreement as to any Meter Room shown on Exhibit A if OPPD is no longer supplying electrical distribution service to the Customer Premises and, in such event, OPPD shall within a reasonable time provide to the Customer a release from the terms of this agreement suitable for recording with the Register of Deeds for the applicable county.

10. **Assignment.** Any property rights granted herein shall continue if a successor or assign of OPPD continues to require the Meter Room in order to provide electric service to the Customer Premises.

11. **Entire Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the subject matter hereof. All prior agreements, representations, statements, and negotiations are hereby superseded. This Agreement may be amended only by a writing executed by both parties. If

there is a conflict between the terms of this Agreement and the terms of the applicable rate schedule, the District's Service Regulations, or the Meter Manual, then the terms of this Agreement shall govern. This Agreement shall be executed by the duly authorized representative of the owner of record of the Customer Premises.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first written above.

Omaha Public Power District

Rmb Holdings LLC
(Print full Customer name.)

Date: 9-15-09

Date: 9.1.09

Signature: Cheryl Limbach

Signature: [Signature]

By: Cheryl Limbach

By: Kenneth M. Franasiak

Title: MANAGER - Distribution Services - OPPI

Title: Manager

Address: 444 S. 16th St
Omaha, NE

Address: 3949 Forest Parkway
Ste 100, Wheatfield, NY 14120

Phone No.: 402-552-4938

Phone No.: 716-693-0006

Facsimile No.: _____

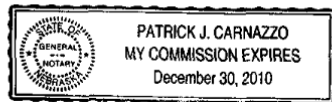
Facsimile No.: 716-693-3590

STATE OF NEBRASKA)
) ss:
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me, a Notary Public, on this 15 day of September, 2009 by Cheryl Limbach, a duly authorized representative of Omaha Public Power District.

[Signature]
Notary Public

New York
STATE OF ~~NEBRASKA~~)
) ss:
Erie
COUNTY OF ~~DOUGLAS~~)



The foregoing instrument was acknowledged before me, a Notary Public, on this 1st day of September, 2009, by Kenneth M. Franasiak, a duly authorized representative of Rmb Holdings LLC.

[Signature]
Notary Public
DEBORAH K. HARRIS
Notary Public, State Of New York
Qualified in Erie County
My Commission Expires June 16, 2010

W439642.6

EXHIBIT "A" SITE PLAN

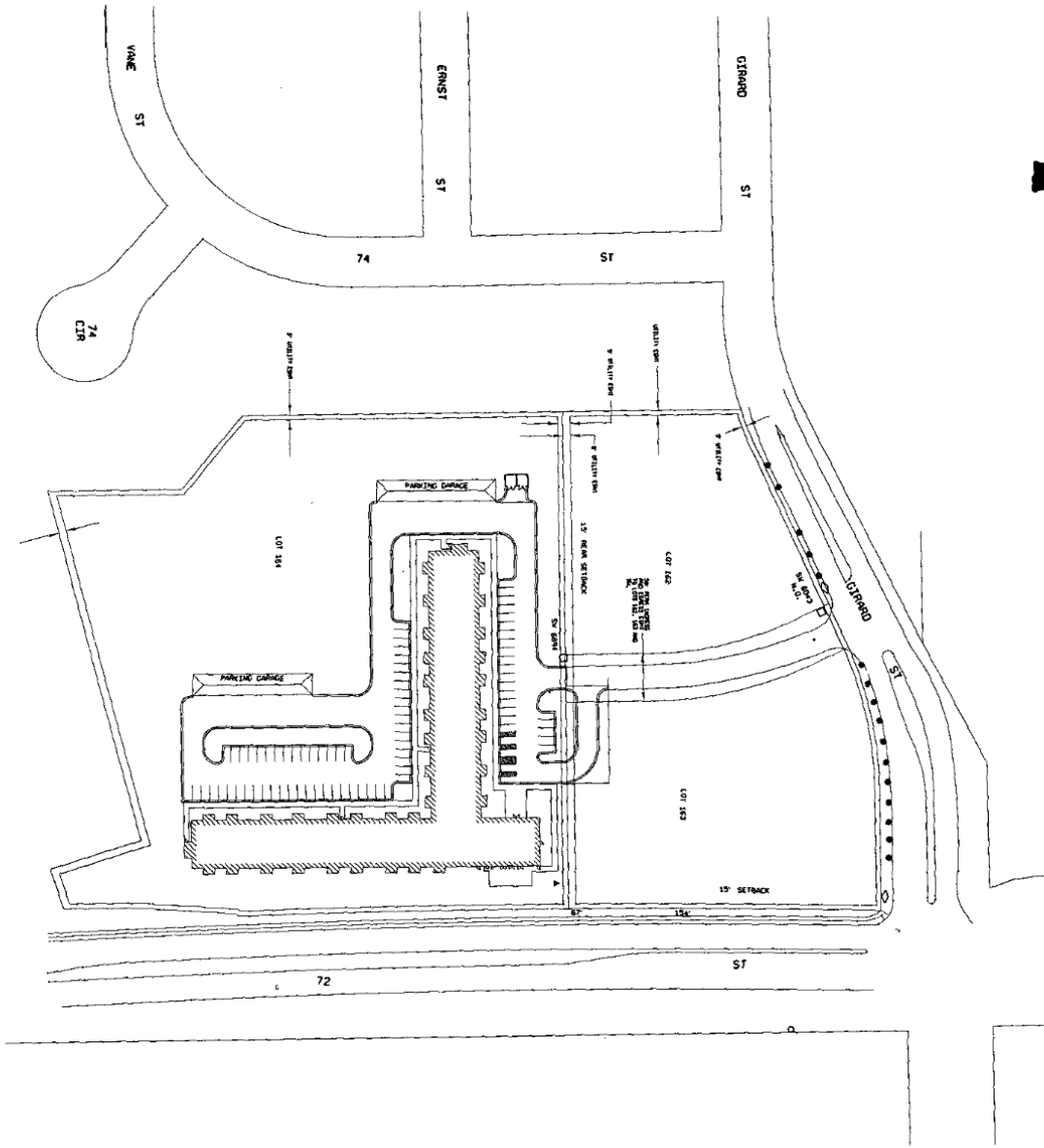


EXHIBIT B

METER READING SPECIAL EQUIPMENT

The extra cost for a RF repeater is \$1,000 and the customer/owner will be required to bring electrical service to the repeater at their cost. This is only needed when OPPD cannot read the internally mounted meters, in some cases, the repeater and the antenna will not be needed. The physical dimension of the device is 9 1/2" high x 5 1/2" wide x 3" deep and weight is 3.9 lbs.

