

**PROCUREMENT
CONTRACT
(Short Form)**

This Procurement Contract (“**Contract**”) is by and between the Grand Rapids Public Utilities Commission, located at 500 SE 4th St, Grand Rapids, MN 55744 (“**GRPUC**”), and Brown and Caldwell, located at 30 7th Street East, Suite 2500, St. Paul, MN 55101-2201 (“**Contractor**”). GRPUC and Contractor may be referred to jointly as the “**Parties**” or individually as a “**Party**.”

Recitals

- A. GRPUC has solicited and received quotations from contractors for scenario planning services associated with the major industrial customer of the utility. (“**Solicitation**”);
- B. Contractor provided a response to the Solicitation indicating its interest in and ability to provide the goods or services requested in the Solicitation; and
- C. Subsequent to an evaluation in accordance with the terms of the Solicitation and negotiation, the Parties desire to enter into a contract.

Accordingly, the Parties agree as follows:

Contract

1. **Term.** The effective date of this Contract is August 23, 2021. The Contractor must not begin work under this Contract until this Contract is fully executed and the Contractor has been notified by GRPUC’s Authorized Representative to begin the work. This Contract will terminate upon the first of the following to occur:

- 1.1 November 30, 2021.
- 1.2 All of Contractor’s obligations have been satisfactorily fulfilled.
- 1.3 GRPUC may cancel this Contract at any time, with or without cause, upon ten (10) days’ written notice to the Contractor.
- 1.4 GRPUC may terminate this Contract immediately in the event of a material breach by Contractor.
- 1.5 The Parties may terminate this Contract at any time by mutual written agreement.

Upon receipt of any notice of termination Contractor shall immediately stop performance to the extent specified in such notice. In no event shall GRPUC be liable for any loss of revenue or profit incurred by Contractor as a result of any termination. Upon termination of this Contract, or earlier upon GRPUC’s request, Contractor shall deliver to GRPUC all items requested by GRPUC containing any confidential information or work product information or make such other disposition thereof as GRPUC may direct in writing; provided, however, Contractor may retain copies of its work product (which will be subject to GRPUC’s ownership of same as stated in Section 7) and one (1) archival copy of any confidential information used in the performance of

work under this Contract.

2. Contractor's Duties

2.1 The Contractor shall:

Anticipated tasks to complete the review include the following:

1. Prepare and provide Request for Information (RFI).
2. Review WWTF design documents and operations data. Review existing operations associated with landfilling solids from the WWTF.
3. Estimate GRPUC avoided cost for solids treatment based on the SIU paying 100% of landfill costs while a portion of the WAS is from domestic waste.
4. Present alternative operation scenarios and estimated costs to continue solids management and disposal if SIU is shut down. Costs for operations scenarios "concept-level" estimates. Information will be provided in a PowerPoint presentation and technical memorandum format.

(The services (if any) to be provided by Contractor to GRPUC are referred to as the "**Services.**") The goods (if any) to be provided by Contractor to GRPUC are referred to as the "**Goods.**"). Contractor's precise duties, specifications, deliverables, and completion dates related to the Goods and Services are more specifically described in **Exhibit B**.

2.2 GRPUC may make changes to the general scope of Goods and Services by written or oral notice to Contractor. If such changes affect the cost of or the time required to provide the Goods and Services, an equitable adjustment in the schedule and compensation under this Contract shall be made. GRPUC and Contractor may agree to additional Services or Goods by written amendment to this Contract.

2.3 Contractor agrees that all Goods and Services shall be provided, and all of Contractor's obligations performed, in accordance with all applicable laws and other legal requirements without extra charge or expense. Contractor will be responsible for a violation of any such legal requirements and will indemnify, defend, and hold harmless GRPUC from and against any expense or cost incurred by reason of any such violation by Contractor.

2.4 Contractor warrants and represents that the Goods and Services will be provided in a manner that is consistent with the level of care and skill exercised by members of Contractor's profession currently working under similar conditions. All Goods and Services not conforming to this standard will be considered defective and Contractor shall, at no cost to GRPUC, promptly and satisfactorily correct all such defective Goods and Services. Payment shall be withheld for Goods or Services found by GRPUC to be unsatisfactory or in violation of legal requirements.

2.5 Contractor shall be responsible for all its employees, agents, subcontractors, and invitees and their health and safety. Contractor shall ensure that all persons who perform the Services or produce or deliver the Goods are professionally competent and properly qualified and will remove any person GRPUC deems incompetent, careless, or otherwise objectionable.

2.6 Contractor is solely responsible and assumes full and exclusive liability for the payment of all contributions or taxes to be paid on or to persons employed by Contractor, and for payment of all sales, use, or other taxes of whatever nature levied or assessed against GRPUC arising out of the furnishing of the Services or production or delivery of the Goods, and will indemnify, defend, and hold harmless GRPUC from any such liability.

3. Consideration and Payment

3.1 Consideration. GRPUC will pay for performance by the Contractor under this Contract as follows:

3.1.1 Compensation. The Contractor will be paid Twenty Thousand Dollars (\$20,000) in accordance with **Exhibit C**.

3.1.2 No expenses will be paid beyond the total contract amount of \$20,000.

3.1.3 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Twenty Thousand Dollars (\$20,000.00).

3.2 Payment.

3.1.1 Invoices. GRPUC will pay the Contractor within thirty (30) days following receipt of an undisputed invoice that complies with **Exhibit C**. GRPUC may pay the Contractor in advance in its sole discretion. Payment will only be made for Goods received or Services actually performed that have been accepted by GRPUC.

3.1.2 Retainage. No more than ninety percent (90%) of the amount due under this Contract may be paid until Contractor has performed all of its obligations under this Contract to GRPUC's satisfaction.

4. Authorized Representative

GRPUC's Authorized Representative is Steve Mattson, Manager of Water and Wastewater, at the following business address: 500 SE 4th Street, Grand Rapids, MN, 55744, and the following telephone number: 2218-326-7195 or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative is **Tracy Ekola** at the following business address: 30 7th Street East, Suite 2500, St. Paul, MN 55101-2201 and the following telephone number: 320.250.6147 or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify GRPUC.

5. Indemnification. Contractor will indemnify, defend, and hold harmless GRPUC, its agents, and employees, in relation to any expenses, damages, claims or causes of action, including reasonable attorney's fees, to the extent caused by any negligent or wrongful act, error or omission, breach of contract, or infringement of any intellectual property right by Contractor, any third party that Contractor has a business relationship with, or any of Contractor's agents or employees.

6. **Subcontracting.** Contractor may not subcontract all or any portion of this Contract without GRPUC's prior written consent, which GRPUC may grant or withhold in its sole discretion. If an approved subcontractor is determined to be performing unsatisfactorily by GRPUC, Contractor will ensure that the subcontractor is no longer used for this Contract. The provisions of the Contract shall apply with equal force and effect to all approved subcontractors and no subcontract will terminate the primary responsibility of Contractor hereunder. Contractor will pay all subcontractors in accordance with applicable law and the agreement between Contractor and the subcontractor.

7. **Ownership.** Contractor agrees that all legal right, title, and interest to intellectual property, data, documents, photographs, drawings, analyses, graphs, reports, physical property or other subject matter ("**GRPUC Property**") prepared, delivered, procured, or produced in relation to Contractor's obligations under this Contract shall vest in GRPUC upon Contractor's receipt of payment in full therefor as required by this Contract. Contractor will perform all acts necessary to ensure that all GRPUC Property is the sole property of GRPUC, and that neither Contractor nor its employees, agents, or subcontractors retain any interest in and to the GRPUC Property.

8. **GRPUC Audits.** The Contractor's books, records, documents, and accounting procedures and practices relevant to this Contract are subject to examination by GRPUC for six (6) years from the expiration or termination of this Contract. After reasonable notice, Contractor shall make such books, records, documents, and accounting procedures and practices available to GRPUC for its examination and audit.

9. **Miscellaneous.**

9.1 General. No provision of this Contract may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in writing and signed by all the Parties. No waiver by a Party shall be deemed a waiver of similar or dissimilar provisions or conditions at the same or at any prior or subsequent time. No agreement or representations, oral or otherwise, express or implied, with respect to the subject matter hereof have been made by any Party which are not expressly set forth in this Contract. The validity, interpretation, construction and performance of this Contract shall be governed by the internal laws of Minnesota. If any provision of this Contract shall be held or made invalid by a court decision, statute, rule or otherwise, the remainder of this Contract shall not be affected thereby. This Contract shall be binding on, and shall inure to the benefit of the Parties hereto and their respective successors and permitted assigns. Contractor may not assign Contractor's rights or obligations hereunder without the prior written consent of GRPUC. This Contract may be executed in any number of counterparts, each of which shall for all purposes be deemed to be an original and all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page of this Contract in Portable Document Format (PDF) or by facsimile transmission shall be as effective as delivery of a manually executed original counterpart of this Contract. In the event a Party institutes any legal proceeding against another Party regarding this Contract, the prevailing Party is entitled to receive the costs incurred by such Party, including reasonable attorneys' fees. In performing its obligations under this Contract, Contractor and its employees and agents shall act in the capacity of independent contractors and not as an employee, partner, joint venturer, or agent of GRPUC. When Contractor's employees are working on the premises of GRPUC, wherever located, they shall observe the

working rules, policies, and procedures of GRPUC, including, but not limited to, its respectful workplace policy. The Parties must comply with the Minnesota Government Data Practices Act in relation to this Contract. Contractor certifies that neither it nor its principals are presently debarred or suspended by any federal, state, or local government or agency or political subdivision thereof. Neither Party will publicize anything in relation to this Contract without the other Party's prior written consent. Contractor shall not use or disclose any confidential information it receives from GRPUC except as is necessary to perform under this Contract. The obligations of Contractor hereunder shall survive the expiration or earlier termination of this Contract. Each of the Parties shall take such further actions as may be reasonably required to carry out the provisions of this Contract.

9.2 Notices. Any notice or other communication to any Party in connection with this Contract shall be in writing and shall be sent by hand-delivery, email, fax, overnight courier, or United States mail (postage prepaid) addressed to the address set forth below. All periods of notice shall be measured from the date of delivery thereof if hand-delivered, from the date of sending thereof if sent by email or fax (effective upon confirmation of receipt), from the first day after the date of sending if sent by overnight courier, or from three (3) business days after the date of mailing if mailed. Any Party may change such Party's address for notices by notice given not less than ten (10) calendar days prior to the effective date of the change.

GRPUC
Address:

Attn: _____

Email: _____

Fax: _____

Contractor
Address:

30 7th Street, Suite 2500

St. Paul, MN 55101-2201

Attn: Tracy Ekola

Email: TEkola@brwncald.com

Fax: _____

10. Exhibits

The following Exhibits are attached and incorporated into this Contract. In the event of a conflict between the terms of this Contract and its Exhibits (including any supplements), or between Exhibits (including any supplements), the order of precedence is first the Contract, and then in the following order:

Exhibit A: Insurance Requirements

Exhibit B: Specifications, Duties, and Scope of Work

Exhibit C: Price and Payment Schedule

11. Force Majeure and COVID-19

Neither Party shall be responsible for delays caused by circumstances beyond its reasonable control, including, but not limited to (1) strikes, lockouts, work slowdowns or stoppages, or accidents and (2) acts of God. In addition to the foregoing, Contractor shall not be responsible for delays caused by (A) failure of GRPUC to furnish information or to approve or disapprove Contractor's work product

within a reasonable period of time after written request therefor from Contractor, to the extent such failure has a direct causal impact on Contractor's ability to perform under this Contract, and (B) faulty performance or nonperformance by GRPUC, GRPUC's independent consultants or contractors, or governmental agencies, if Contractor has: (i) provided written notice to GRPUC explaining the faulty performance or nonperformance, (ii) provided GRPUC a reasonable opportunity to cure such faulty performance or nonperformance, and (iii) such faulty performance or nonperformance has a direct causal impact on Contractor's ability to perform under this Contract. Neither Party shall be liable for damages resulting from a force majeure event, nor shall a Party be deemed to be in breach of this Contract as a result thereof.

While the Parties have made reasonable efforts to incorporate into their plans for the project any known current project impacts of the COVID-19 pandemic, the Parties have not accounted for, and are not responsible for, unknown future changes due to the COVID-19 pandemic, including, without limitation, additional restrictions by government agencies or others (such as the availability of the site for access or the availability of GRPUC or Contractor staff or others) to the extent they delay or otherwise impact the project.

Either Party shall provide the other Party with prompt written notice of any delay or failure to perform that occurs by reason of force majeure or COVID-19 and work in good faith to equitably address any unexpected impacts therefrom.

12. Consequential Damages

Regardless of any other term of this Contract, in no event shall either Party be responsible or liable to the other for any incidental, consequential, or other indirect damages.

IN WITNESS WHEREOF, the parties hereto by their duly authorized representatives have executed this Contract effective as of the effective date set forth above.

Brown and Caldwell

Grand Rapids Public Utilities Commission

By: 

By: _____

Print Name: Tracy Ekola

Print Name: _____

Title: Vice President

Title: _____

Exhibit A: Insurance Requirements

- 1 **Notice to Contractor and Insurer.** Contractor shall not commence work under the Contract until it has obtained all the insurance described below and GRPUC has approved such insurance. Contractor shall maintain such insurance throughout the term of this Contract. GRPUC reserves the right to immediately terminate this Contract if the Contractor is not in compliance with the insurance requirements. All insurance policies must be open to inspection by GRPUC, and copies of policies must be submitted to GRPUC's Authorized Representative upon written request; provided, however, if GRPUC requires submission of copies of policies, Contractor may redact confidential and proprietary information therefrom. The Contractor's insurance companies waive the right to assert the immunity of GRPUC as a defense to any claims made under said insurance.

- 2 **Additional Insurance Conditions.** The following apply to the Contractor and Contractor's subcontractor: Contractor's policy(ies) shall be primary insurance to any other valid and collectible insurance available to GRPUC. Contractor agrees to notify GRPUC within five (5) business days of receipt of any insurance cancellation notice. Contractor is responsible for payment of Contract-related insurance premiums and deductibles. Contractor's policy(ies) shall include legal defense fees in addition to its policy limits with the exception of professional liability. Contractor's insurance companies must either (1) have an AM Best rating of A- (minus) and a Financial Size Category of VII or better, and be authorized to do business in Minnesota, or (2) be domiciled in Minnesota and have a Certificate of Authority/Compliance from the Minnesota Department of Commerce if they are not rated by AM Best. An Umbrella or Excess Liability insurance policy may be used to supplement the Contractor's policy limits to satisfy the full policy limits required by the Contract.

- 3 **Coverages.** Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:
 - 3.1 **Commercial General Liability Insurance** coverage that would be maintained by a reasonable contractor in Contractor's profession performing a similar contract, with the following minimum limits:
 - \$1,500,000 – per occurrence
 - \$1,500,000 – annual aggregate
 - \$1,500,000 – annual aggregate – applying to Products/Completed Operations

 - 3.2 **Commercial Automobile Liability Insurance** coverage that would be maintained by a reasonable contractor in Contractor's profession performing a similar contract, with the following minimum limits:
 - \$1,500,000 – per accident Combined Single limit for Bodily Injury and Property Damage

 - 3.3 **Workers' Compensation Insurance.** Contractor shall obtain and maintain for the duration of the Contract, statutory workers' compensation insurance and employer's liability insurance as required under the laws of the State of Minnesota.

3.4 Professional Liability, Errors, and Omissions. This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual negligent act, error, or omission related to Contractor's professional services required under the Contract. Insurance minimum limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

Any deductible will be the sole responsibility of the Contractor.

Exhibit B: Specifications, Duties, and Scope of Work

Brown and Caldwell professional services should answer the following questions for the Grand Rapids Public Utilities:

- What is GRPUC avoided cost for solids treatment based on the significant industrial user (SIU) paying 100% of all landfill costs even though a portion of the waste activated sludge (WAS) is from domestic waste?
- What would GRPUC need to do to continue to process the domestic waste stream if the SIU shut down? Provide alternative operation concept scenarios and estimated costs.

Duties and scope of work as follows:

1. Prepare and provide Request for Information (RFI).
2. Review WWTF design documents and operations data. Review existing operations associated with landfilling solids from the WWTF.
3. Estimate GRPUC avoided cost for solids treatment based on the SIU paying 100% of landfill costs while a portion of the WAS is from domestic waste.
4. Present alternative operation scenarios and estimated costs to continue solids management and disposal if SIU is shut down. Costs for operations scenarios “concept-level” estimates. Information will be provided in a PowerPoint presentation and technical memorandum format.

Exhibit C: Price and Payment Schedule

The total obligation and liability of GRPUC under this Contract will not exceed Twenty Thousand Dollars (\$20,000.00).

No additional expenses will be paid above the \$20,000.00 contract price.

Grand Rapids Public Utilities will pay non-contested invoices within 30 days of receipt of invoice.