

PROCUREMENT CONTRACT

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**” or “**Licensee**”), and EATON, Cannon Technologies, INC. a corporation, located at 3033 Campus Drive – Suite 350N, Minneapolis, MN 55441 (“**Contractor**” or “**Licensor**”). 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 five Gateway 801 communication devices for GRPU automated meter information system. (“**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. This is a single source vendor purchase as this vendor was the vendor previously selected through the GRPU procurement policy for the automated information meter information system.

Accordingly, the Parties agree as follows:

Contract

1. **Term.** The effective date of this Contract is February 1, 2022. 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 June 30, 2022.

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 breach by Contractor, if after providing Contractor with written notice of such breach, Contractor has not commenced to cure the breach.

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 GRPUC's confidential information or GRPUC's work product information or make such other disposition thereof as GRPUC may direct in writing.

2. Contractor's Duties

2.1 The Contractor shall:

Provide goods listed as five (5) each Gateway 801 communication devices.

(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 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.

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.

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.

2.7 Contractor warrants that at the time GRPUC accepts the Goods: (A) Contractor has good title to the Goods, free and clear of any lien, security interest, or other encumbrance ("**Encumbrance**"). Contractor warrants to GRPUC that the products provided under this Agreement will be free from defects in material and workmanship when used in accordance with Contractor's operating instructions. Contractor will, if given prompt notice by GRPUC, correct, by repair or replacement at Contractor's option, any defect that appears under proper and normal use of the purchased products within one (1) year after installation of the products, but not exceeding eighteen (18) months from date of shipment. The furnishing of warranty repairs or replacement will not extend the original warranty period. Contractor will not be

liable for the following costs relating to the products to be repaired or replaced: (a) removal; (b) reinstallation; (c) transportation to Contractor's facilities; or (d) any other cost incidental to the foregoing. However, Contractor will pay for transportation of repaired or replaced products from Contractor's facilities to GRPUC's facilities.

2.8 Contractor warrants to GRPUC that the services provided under this Agreement will be free from material errors and from defects in workmanship, for a period of one year after the provision of the service at issue. Contractor, if given prompt notice by GRPUC, will, at its option, re-perform the services at issue or refund the purchase price of the services at issue. The options under this limited warranty are GRPUC's sole and exclusive remedy for failure of the products or services provided under this Agreement to be as warranted.

2.9 EXCEPT FOR THE EXPRESS WARRANTY SET FORTH ABOVE, CONTRACTOR MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, REGARDING THE PRODUCTS OR SERVICES, THEIR FITNESS FOR ANY PARTICULAR PURPOSE, THEIR MERCHANTABILITY, THEIR QUALITY, THEIR NONINFRINGEMENT, OR OTHERWISE. CONTRACTOR'S LIABILITY UNDER THIS WARRANTY SHALL BE LIMITED TO A REFUND OF THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES AT ISSUE. IN NO EVENT SHALL CONTRACTOR BE LIABLE FOR THE COST OF PROCUREMENT OR INSTALLATION OF SUBSTITUTE GOODS OR FOR ANY SPECIAL DAMAGES, CONSEQUENTIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, STATUTORY DAMAGES, EXEMPLARY DAMAGES, LOSS OF PROFITS, LOSS OF REVENUE, OR LOSS OF USE

2.10 Contractor has all risk of loss until delivery of the Goods.

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 Eleven Thousand Dollars and no cents (\$11,000.00) plus Two Hundred Twenty Dollars and no cents for shipping charges (\$220.00) in accordance with **Exhibit C**.

3.1.2 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Eleven Thousand Two Hundred Twenty Dollars and no cents (\$11,220.00).

3.2 Payment.

3.2.1 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.

4. **Authorized Representative**

GRPUC's Authorized Representative is Jeremy Goodell at the following business address: 500 SE 4th Street, Grand Rapids, MN, 55744 and the following telephone number: 218-326-7024 or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative is Jim Roche at the following business address, and the following telephone number: +1 763 543 7779, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify GRPUC.

5. **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.

6. **Miscellaneous.**

6.1 **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, which shall not be unreasonable withheld. 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.

6.2 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
500 SE 4th Street
Grand Rapids, MN 55744
Attn: Jeremy Goodell
Email: jjgoodel@grpuc.org

CANNON TECHNOLOGIES,
INC.
3033 Campus Drive – Suite350N
Minneapolis, MN
Attn: Jim Roche_ and EAS Internal
Sales
Email: jimfroche@eaton.com and
EASInternalSales@Eaton.com

7. **Limitation of Liability** THE REMEDIES OF THE GRPUC SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE ITS SOLE REMEDIES FOR ANY FAILURE OF CONTRACTOR TO COMPLY WITH ITS OBLIGATIONS HEREUNDER. NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL CONTRACTOR BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS, COST OF CAPITAL, CLAIMS OF CUSTOMERS OF GRPUC OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF CONTRACTOR ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED

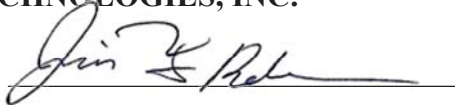
8. **Exhibits**

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

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

**EATON CANNON
TECHNOLOGIES, INC.**

By: 

Print Name: Jim Roche

Title: Product Line Manager, AMI

Date: 02/08/2022

Grand Rapids Public Utilities Commission

By: 

Print Name: Julie A. Kennedy

Title: General Manager

Date: 3/7/2022

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. Contractor must submitted to GRPUC's Authorized Representative insurance policies listed below upon written request. 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 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 **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.

Exhibit B: Specifications, Duties, and Scope of Work

5 EA GATEWAY 801 32801X42G55 \$2,200.00/each \$ 11,000.00

LEAD TIME 8 WEEKS, ARO

Commodity code 8517620050 5.000 Country of origin US Customer needs Yukon v7.5.1+ and RF Release Pkg FW v9.0+

Exhibit C: Price and Payment Schedule

5 Gateway 801 at \$2,200.00/each	\$11,000.00
Shipping	220.00
Total not to exceed	\$11,220.00

Payment will be made within 30 days after receipt and acceptance of the goods and receipt of an uncontested invoice. Paid by check in US Dollars.