

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**”), and **SCHWING BIOSET**, a Minnesota Corporation located at 350 SMC Drive Somerset, WI 54025 (“**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 contractor Line 50 from Quote NO: 60714839. 39314706 WMT screw 20” x 17’-1” RH 304SST GRMN (“**Solicitation**”); this good is purchased from a single source vendor in which the custom screw conveyor project bidders were vetted per the previous GRPU purchasing policy and Schwing Bioset is the sole vendor for this good.

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 February 10, 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 After delivery of the goods. Delivery is estimated to be 10-12 weeks from receipt of order.

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. Contractor shall be duly compensated for work completed to date in the unlikely event of cancellation.

1.4 GRPUC may terminate this Contract immediately in the event of a 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 GRPUC may only receive work product from Contractor if GRPUC compensates Contractor for any work product produced by Contractor.

2. Contractor's Duties

2.1 The Contractor shall:

One screw conveyor from Quote No. 60714839 Line 50 /39314706 WMT SCREW 20" X 17'-1" RH 304 SST GRMN

(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, GRPUC in accordance with the indemnification detailed below.

2.4 Seller warrants its new equipment against defects in material and workmanship under normal use and service, and which shall not have been subject to misuse, negligence, or accident, for a period of one (1) year that shall commence upon startup or ninety (90) days from delivery, whichever occurs first. Seller will replace or repair free of charge, F.O.B. jobsite, such part or parts thereof as in its sole judgment shall be deemed defective. Due to the specialized nature of Seller material handling equipment, Seller field service technicians shall not be restricted in adjusting or repairing Seller furnished equipment, regardless of collective bargaining agreements entered into by other parties. This warranty shall not apply to any equipment manufactured by us which shall have been loaded or operated beyond its rated capacity as specified by Seller. Damage resulting from improper installations or alterations outside our plant will be considered as misuse and not as a defect. Certain parts of the equipment provided by Seller such as the pumping cylinders, valves, pumping rams, screw flights, sliding frame components, trough liners for screws etc. in contact with material, are subject to normal wear. This normal wear is not covered under this warranty. Seller shall not be liable for consequential damages or injuries of any kind, or for expenses, losses, or delays incidental to any failure. Seller reserves the right to make changes and improvements in its product without incurring any obligation to install any such changes or improvements in its

products previously manufactured. All warranty is void if equipment is not serviced by a Schwing Bioaset certified technician from delivery through termination of warranty period. In the event of a defect or issue with Schwing Bioaset supplied equipment, buyer shall notify Schwing Bioaset in writing of said defect and offer Schwing Bioaset reasonable opportunity to cure. This warranty is in lieu of any other warranty expressed or implied or any other obligation or liability on the part of Seller, and no other person is authorized to make any representations or warranties beyond those herein expressed. Without limiting the generalities of the foregoing, **THERE IS NO IMPLIED WARRANTY OF MARKETABILITY AND NO IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.**

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. No taxes are included in this order. The amount of any applicable present or future state/local sales/use tax or other government charge upon the production, sale, shipment, and/or use of the goods covered by this quotation shall be paid directly to the taxing authorities by purchaser. Upon request purchaser to provide us with an exemption certificate acceptable to the taxing authorities.

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**”), and (B) the Goods are in good condition and are adequate for the uses to which they are being put. Contractor shall execute and deliver such additional documents and take such further actions as may be necessary to transfer Contractor’s right, title and interest in the Goods to GRPUC, free and clear of any Encumbrances. Contractor has all risk of loss until GRPUC accepts 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 Thirty Five thousand two hundred and forty three and fifty two cents (\$35,243.52) in accordance with **Exhibit C**.

3.1.2 All goods are quoted Exworks. Any and all freight charges shall be added to the sales price. Freight charges are not to exceed two thousand dollars (\$2,000)

3.1.3 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Thirty seven thousand two hundred and forty three and fifty two cents (\$37,243.52).

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 Steve Mattson at the following business address: 500 SE 4th Street, Grand Rapids, MN, 55744 and the following telephone number: 218.326.7195, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative is Jay Boughner Aftermarket Support at the following business address: 350 SMC Drive, Somerset, WI 54025, and the following telephone number: 715-504-1433, or his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify GRPUC.

Indemnification. Seller agrees to indemnify and hold Buyer harmless from the amount of any final judgment entered against Buyer for injury or death to any person (including employees of Buyer and Seller) or damage to tangible property of Buyer and based solely upon: (a) Seller's defective manufacture of equipment sold to Buyer; (b) Seller's violation of any applicable laws, rules or regulations in connection with the manufacture of said equipment, or (c) Seller's gross negligence or intentional misconduct. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.

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.

Ownership. Contractor retains sole ownership of all Intellectual property produced by Contractor. Contractor offers GRPUC a single use perpetual license to utilize the intellectual property. All fabrication drawings remain the sole property of Contractor and will not be shared with GRPUC.

7.

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.

8. Miscellaneous.

8.1 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.

8.2 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:
500 SE 4th Street
Grand Rapids, MN 55744
Attn: Steve Mattson
Email: srmattton@grpuc.org

Schwing Bioiset
Address:
350 SMC DRIVE
Somerset, WI 54025
Attn: Jay Boughner
Email:
jboughner@schwingbioiset.com

9. 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.

SCHWING BIOSET

Grand Rapids Public Utilities Commission

By: Jay Boughner _____

By: _____

Print Name: Jay Boughner

Print Name: Julie A. Kennedy

Title: Aftermarket Support

Title: General Manager

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. 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 occurrence Combined Single limit for Bodily Injury and Property Damage

The following coverages should be included: Owned, Hired, and Non-owned Automobile.

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.

Exhibit B: Specifications, Duties, and Scope of Work

One screw conveyor from Quote No. 60714839 Line 50 Part number 39314706 WMT SCREW 20" X
17'-1" RH 304 SST GRMN

Exhibit C: Price and Payment Schedule

The Contractor will be paid Thirty Five thousand two hundred and forty three and fifty two cents (\$35,243.52) for one screw 39314706 304SS screw conveyor. Plus freight charges not to exceed two thousand dollars (\$2,000)

The Total obligation and liability of GRPUC under this Contract will not exceed thirty seven thousand two hundred and forty three and fifty two cents (\$37,243.52).

Total \$37,243.52.00

Payment after receipt and acceptance of goods by Grand Rapids Public Utilities.

Payment 30 days after receipt of an uncontested invoice and acceptance of goods by Grand Rapids Public Utilities.