

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 Novaspect Inc., located at 1124 Tower Rd, Schaumburg, IL 60173 (“**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 2 pneumatic valves for filter system at water plant. (“**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 May 31, 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 July 31st 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.

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.

2. Contractor's Duties

2.1 The Contractor shall:

2.2 Provide, per Exhibit B, 2 Pratt 081FF-0255-SS-L: FLG class 150B Pratt 2FII Butterfly Valve with Dynatorque De- Clutchcable Manual Gear Override, designed to accept Field Q Actuator assembly.

2.3 Provide, per Exhibit B, 2 Bettis RPED0350DA Double acting Pneumatic Actuator, with VAC V200E Electro-Pneumatic positioner with (2) Auxillary Limit Switches, and Fisher 67CFR Filter Regulator, designed to fit 8" Pratt Valve.

(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**.

2.4 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.

2.5 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.

2.6 Contractor warrants and represents that the (i) the Goods provided by Contractor shall materially conform to the description in Contractor's proposal referenced in Exhibit B hereto and shall be free from defects in material and workmanship and/or (ii) the Services provided by Contractor shall be performed in a timely and workmanlike manner. Contractor warrants (a) the Goods through the earlier of (i) eighteen (18) months from delivery or (ii) twelve (12) months from initial operation and/or (b) the Services ninety (90) days from the performance of Services (each, as applicable, the "Warranty Period"). Products purchased by Contractor from a third party for resale to GRPUC ("Resale Products") shall carry only the warranty extended by the original manufacturer, and GRPUC agrees that Contractor has no liability for Resale Products beyond making a reasonable commercial effort to arrange for procurement and shipping of the Resale Products. If GRPUC discovers any warranty defects, GRPUC must notify Contractor thereof in writing during the applicable warranty period. If GRPUC gives Contractor prompt written notice of breach of this warranty within the Warranty Period, Contractor shall, at its sole option and as GRPUC's sole and exclusive remedy, repair or replace the subject parts, re-perform the Services or refund the purchase price. All costs of dismantling, reinstallation and freight under this warranty clause shall be borne by GRPUC unless and to the extent the defective goods were installed by Contractor. All replacements or repairs necessitated by inadequate maintenance, normal wear and usage, unsuitable power

sources or environmental conditions, accident, misuse, improper installation (unless installed by Contractor), modification, repair, use of unauthorized replacement parts, storage or handling, inaccurate and/or incomplete GRPUC-supplied data, or any other cause not the fault of Contractor are not covered by this warranty. THE WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE EXCLUSIVE, AND CONTRACTOR MAKES NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PURPOSE. Payment shall be withheld for Goods or Services found by GRPUC to be unsatisfactory or in violation of legal requirements.

2.7 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.

2.8 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.

2.9 For a Contract with Goods: 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.

2.10 NOTWITHSTANDING ANYTHING TO THE CONTRARY, CONTRACTOR AND GRPUC AGREE NEITHER PARTY (INCLUDING AFFILIATES OR CONTRACTORS OF SAME) SHALL BE LIABLE FOR ANY DELAY IN PERFORMANCE NOR SHALL A PARTY’S LIABILITY INCLUDE INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE DAMAGES WHETHER OR NOT A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH CLAIM INCLUDING, WITHOUT LIMITATION, LOSS OF TIME, OR LOSS OF ANTICIPATED PROFITS OR REVENUE. IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL CONTRACTOR’S (INCLUDING ITS AFFILIATES OR SUBCONTRACTORS) LIABILITY ARISING IN CONNECTION WITH THE CONTRACT EXCEED THE PRICE OR FEES PAID TO CONTRACTOR FOR THE SPECIFIC GOODS OR SERVICES PROVIDED BY CONTRACTOR GIVING RISE TO THE CLAIM OR CAUSE OF ACTION.

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 Five Hundred and Thirty-Six Dollars and thirty cents. (\$11,536.30) in accordance with **Exhibit C**.

Shipping expenses shall not exceed a total of \$500 dollars.

Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Twelve Thousand Thirty-Six Dollars and thirty cents (\$12,036.30).

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 Kevin Madden at the following business address: 1124 Tower Rd, Schaumburg, IL 60173, and the following telephone number: 1-224-366-8280, 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 of Contractor, for claims incurred by GRPUC due to 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. 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. **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
500 SE 4th Street
Grand Rapids, MN 55744
Attn: Steve Mattson
Email: srmattson@grpuc.org

Novaspect Inc.
1124 Tower Rd
Schaumburg, IL 60173
Attn: Kevin Madden
Email: kmadden@novaspect.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.

Novaspect Inc.

By: Guy Fortier
Digitally signed by Guy Fortier
Date: 2022.06.01 09:46:27
-05'00'

Print Name: Guy Fortier

Title: Commercial Risk Mgr.

Date: June 1, 2022

Grand Rapids Public Utilities Commission

By: Julie Kennedy

Print Name: Julie A. Kennedy

Title: General Manager

Date: 6/1/2022

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. 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. Contractor can use umbrella insurance coverage to suffice minimum limits:
 - 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

Contractor shall provide 2 Pratt 081FF-0255-SS-L: FLG class 150B Pratt 2FII Butterfly Valves with Dynatorque De- Clutchcable Manual Gear Override, designed to accept Field Q Actuator assembly.

Provide 2 Bettis RPED0350DA Double acting Pneumatic Actuators, with VAC V200E Electro-Pneumatic positioner with (2) Auxillary Limit Switches, and Fisher 67CFR Filter Regulator, designed to fit 8" Pratt Valve.

Reference Contractor's quotation N-446392-1 dated 04/12/2022.

Exhibit C: Price and Payment Schedule

The Contractor will be paid Eleven Thousand Five Hundred and Thirty-Six Dollars and Thirty Cents. (\$11,536.30).

Shipping expenses shall not exceed a total of \$500 dollars.

Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Twelve Thousand Thirty-Six Dollars and Thirty Cents (\$12,036.30).

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