

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 Ziegler Power Systems, a division of Ziegler Inc. located at 901 West 94th Street, Minneapolis, MN 55420 (“**Contractor**”). GRPUC and Contractor may be referred to jointly as the “**Parties**” or individually as a “**Party**.”

Recitals

A. GRPUC has solicited and received quotation from Ziegler Power Systems (“**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 April 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 December 31, 2023.

1.2 Each parties’ obligations have been satisfactorily fulfilled.

1.3 Either party may cancel this Contract at any time, with or without cause, upon ten (10) days’ written notice to the other party.

1.4 Either party may terminate this Contract immediately in the event of a breach by the other party.

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 except for GRPUC’s payment to Contractor for work completed prior to 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 make such other disposition thereof as GRPUC may direct in writing; provided, however, Contractor shall not be obligated to return, destroy or subject to any

other disposition of the Confidential Information otherwise required by law or any internal compliance policy or procedure related to automatic safeguarding or back-up storage of data.

2. Contractor's Duties

The Contractor shall provide: Generator for Lift Station No. 2 as further detailed set forth in Exhibit B.

One CATERPILLAR emergency standby generator set to mount in outdoor insulated/sound rated 70 dBa @23 feet. Model D60GC Diesel 120/240 volts, 3 phase with one mainline circuit breaker and automatic transfer switch service entrance rated.

(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.").

2.1 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.

2.2 Contractor agrees that all Goods and Services shall be provided, and all of Contractor's obligations performed, in accordance with all applicable laws in effect at the time of the Contract and other legal requirements without extra charge or expense. GRPUC agrees to comply with all applicable laws in effect at the time of the Contract, including, but not limited to, permits, licenses, assessments, and other governmental charges on account of possession and use of Goods by GRPUC. Each party will be responsible for a violation of any such legal requirements and will indemnify, defend, and hold harmless the other party from and against direct expense or cost incurred by reason of any such violation.

2.3 Goods are subject to a limited warranty ("Limited Warranty") as provided by the manufacturer, which will either be included in a written warranty statement with the Goods or the manufacturer's standard limited warranty in force when the Goods are delivered to and accepted by GRPUC. GRPUC's failure to follow warranty conditions may result in voiding the Limited Warranty. 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, subject to Contractor's Service Department Labor Warranty, as it exists from time to time, and available upon request. EXCEPT FOR THE MANUFACTURER'S LIMITED WARRANTY FOR THE GOODS AND CONTRACTOR'S LIMITED SERVICE DEPARTMENT WARRANTY FOR SERVICES, ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE, ARE EXPRESSLY DISCLAIMED. Payment shall be withheld for Goods or Services found by GRPUC to be unsatisfactory or in violation of legal requirements.

2.4 GRPUC agrees to take all reasonable steps necessary to provide for a safe worksite, and shall notify Contractor if, during the term of this Contract, GRPUC observes or otherwise learns of any conditions which pose a threat to the safety of persons or property or is in violation of any applicable laws, rules, regulations or codes. Contractor shall ensure that all persons who perform the Services or deliver the Goods are professionally competent and properly qualified and will remove any person GRPUC deems incompetent, careless, or otherwise objectionable.

2.5 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 delivery of the Goods as required by law. GRPUC further agrees to pay all sales, use, or other taxes are required by law.

2.6 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. Upon full and final payment, 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 FOB Jobsite.

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 Six Thousand Five Hundred Dollars. (\$36,500.00) F.O.B. Jobsite. **Exhibit C.**

3.1.2 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Thirty Six Thousand Five Hundred dollars. (\$36,500.00)

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 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 Logan Cameron at the following business address: 8050 County Road 101 Shakopee, MN 55379, and the following telephone number: (952)887-4574, or

his/her successor. If the Contractor's Authorized Representative changes at any time during this Contract, the Contractor must immediately notify GRPUC.

Indemnification. GRPUC shall indemnify, defend, and hold harmless Contractor, its officers, directors, employees, agents, assigns and successors, against any and all losses, liability, claims or causes of action, damages, costs or expenses, including reasonable attorney's fees for death, personal injury, or damage to property (collectively, "Losses") to the proportionate extent the same have been proximately caused by the negligence or willful misconduct of, or breach of this Contract by, GRPUC or its officers, directors, employees or agents. Contractor shall indemnify, defend, and hold harmless GRPUC its officers, directors, employees, agents against any and all losses, liability, claims or causes of action, damages, costs or expenses, including reasonable attorney's fee for death, personal injury, or damage to property (collectively, "Losses") to the proportionate extent the same have been proximately caused by the negligence or willful misconduct of, or breach of this Contract, by Contractor or its officers, directors, employees or agents in the performance and furnishing of Services under this Contract.

5. **DAMAGES; MAXIMUM LIABILITY.** IN NO EVENT WILL CONTRACTOR, ITS EMPLOYEES, AGENTS, OFFICERS AND DIRECTORS BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, ENCHANCED, INDIRECT, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, DIMINUTION OF VALUE, LOSS OF USE, DOWNTIME OR INTERRUPTION OF BUSINESS, ARISING OUT OF OR RELATING TO THIS CONTRACT, GOODS OR SERVICES, REGARDLESS OF: (A) WHETHER THE DAMAGES WERE FORESEEABLE; (B) WHETHER OR NOT CONTRACTOR WAS ADVISED OF THE POSSIBILITY OF DAMAGES; AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) ON WHICH THE CLAIM IS BASED. IN NO EVENT SHALL CONTRACTOR'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS CONTRACT, GOODS OR SERVICES, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF FEES ACTUALLY PAID BY GRPUC TO CONTRACTOR. THE FOREGOING LIMITATIONS APPLY EVEN IF GRPUC'S REMEDIES UNDER THIS CONTRACT FAIL THEIR ESSENTIAL PURPOSE.

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.** All intellectual property rights in the Goods, including patents, trademarks, internet domain names, works of authorship, expressions, designs, and design registrations, whether or not copyrightable, trade secrets, and all other intellectual property rights (collectively, "Intellectual Property") are the sole and exclusive property of manufacturer. GRPUC will not acquire any ownership rights to any Intellectual Property under this Contract. 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. Neither party may assign the party's rights or obligations hereunder without the prior written consent of the other party. 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 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 venture, or agent of GRPUC. 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. "Confidential Information" shall be conspicuously marked as "Confidential" at the time of disclosure, and does not include information that: (a) is or becomes publically available, (b) is already known by Contractor, (c) was or becomes available to Contractor from a source other than GRPUC, provided that the source of such information is not known to Contractor to be bound by an obligation of confidentiality, (d) was or is independently developed by Contractor, or (e) is required to be disclosed by applicable law, rule, regulation or governmental or judicial process. 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 Force Majeure. Contractor shall be excused for the period of any delay or failures in the performance of any of its obligations under this Contract when prevented from performing such obligations by cause or causes beyond its reasonable control, including, without limitation, the following: accidents, failures of utilities or public services, delays in manufacture or transportation, supply shortages, embargoes, epidemics or pandemics or public health emergencies, government laws, acts of war, terrorism, riots, civil unrest, fire, earthquakes or other natural disasters, weather conditions, strikes or labor controversies, cyber-attacks, or other casualties or acts of God, including supplier or sub-supplier or subcontractor delays caused by any of the above

8.3 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 (effective upon confirmation of receipt) 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

Ziegler Power Systems
Address:
8050 County Road 101
Shakopee, MN 55379
Attn: Logan Cameron
Email: Logan.Cameron@zieglercat.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.

**Ziegler Power Systems, a division of Ziegler
Inc.**

Grand Rapids Public Utilities Commission

By: 

By: _____

Print Name: Marc Kocina
Marc Kocina
Vice President
Title: Ziegler Power Systems

Print Name: Julie A. Kennedy

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.

- 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

Provide the following Generator and Equipment for lift station no. 2

QUANTITY: One (1) new CATERPILLAR emergency standby generator set mounted in

Outdoor insulated/sound attenuated enclosure rated 70dBA @ 23 feet.

MODEL: D60GC – Diesel

RATING: 60kW – Stand By Rated

VOLTAGE: 120/240 volts, 3 phase, 60 HZ, 1800 RPM

BREAKER: One (1) mainline circuit breaker w/shunt trip; 200 amp, 3 pole

SWITCHGEAR: One (1) Service Entrance Rated, Automatic Transfer Switch

200 amp, 3 pole, Nema 3R outdoor enclosure w/heater, engine exerciser

WARRANTY: Five (5) years, 2500 hours manufacturer's warranty

INSTALLATION: Not included

Exhibit C: Price and Payment Schedule

Price for Generator and Equipment is Thirty-Six Thousand Five Hundred dollars. (\$36,500.00).
Price does not include state or local sales and/or use taxes.

Shipping is F.O.B Jobsite.

The Total obligation and liability of GRPUC under this Contract will not exceed Thirty-Six
Thousand Five Hundred dollars. (\$36,500.00).

Total: \$36,500.00

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