



SERVICES AGREEMENT

Date: September 15, 2023

Contract No. 138-2024

Safety Management Services

This Services Agreement (the "Agreement") is made as of October 1, 2023, between the Minnesota Municipal Utilities Association (MMUA) and the Grand Rapids Public Utilities, each a "Party" and collectively, the "Parties."

PART I – Scope of Services

PART II – Duration / Amendment / Renewal

PART III – Obligations

PART IV – Standard Terms and Conditions

The terms of this Agreement are hereby accepted by the Parties.

Grand Rapids Public Utilities

Minnesota Municipal Utilities
Association

By _____

By _____

Title _____

Title Chief Executive Officer

Date _____

Date _____

PO # _____

PART I – SCOPE OF SERVICES

MMUA will provide/deliver for the term of this Agreement:

1. The services of a person engaged by MMUA, in the capacity of Regional Safety Coordinator.
2. The assigned Regional Safety Coordinator will:
 - a. Plan, organize and/or conduct regular monthly safety meetings at Grand Rapids Public Utilities.
 - b. Develop and maintain a standard safety management record keeping and reporting system at Grand Rapids Public Utilities.
 - c. The record system will include (check those covered by this Agreement):
 - ☒ Required OSHA records
 - ☒ Required DOT records
 - ☒ Required ADA records
 - ☒ Provide written program
 - ☒ Provide annual site inspection
 - ☒ Provide interpretation and clarification of OSHA rules.
 - d. Visit Grand Rapids Public Utilities unless circumstances lend a different location approved by Grand Rapids Public Utilities management (collectively, the “Services”).
 - Tier service level: 2
 - Number of days per year: 24
3. The Services will be provided in the following city departments:
 - a. Grand Rapids Public Utilities # of employees 35
 - b. _____ # of employees _____
 - c. _____ # of employees _____
 - d. _____ # of employees _____
 - e. _____ # of employees _____

PART II – TERM/ RENEWAL/ AMENDMENT

1. TERM/RENEWAL: This Agreement shall remain in force from October 1, 2023 until December 31, 2024. Thereafter, it shall continue automatically for successive twelve-month calendar year periods unless terminated by either Party providing written notice at least sixty (60) days in advance of the end of the then-current term.
2. AMENDMENT: This Agreement may be amended or modified upon the mutual agreement of both Parties but only if in writing, signed by the Parties, dated, and appended to this Agreement.

PART III – OBLIGATIONS

1. COMPENSATION: For the Services, Grand Rapids Public Utilities shall pay MMUA an annual fee of \$27,319.95 in the first year. Such compensation shall be due and payable according to the selected payment terms below.

Payment terms for the fee agreed to above shall be based on one of the following options (select one):

- ☒ Full 15-month payment (October 1, 2023 to December 31, 2024) (\$34,150.00), contract amount will be billed on an annual basis thereafter, consistent with the amount communicated by MMUA each September as described below.
- ☐ Annual payment (\$27,319.95)
- ☐ Quarterly payments (\$6,830.00 each)

For any term less than twelve (12) full calendar months, the fee shall be a portion of the annual fee, pro-rated based on the number of calendar months or partial calendar months in which the Services are provided as a percentage of twelve (12).

For years after the first year, the annual fee will be adjusted to reflect the cost of the Services for the coming twelve-month period. This fee will be set by the MMUA Board of Directors and provided to Grand Rapids Public Utilities in a written notice within 30 days of the Board's action.

2. OTHER CITY OBLIGATIONS:

- Provide workspace for Regional Safety Coordinator when on-site.
- Provide clerical support for Regional Safety Coordinator.
- Schedule participation of employees in regular safety meetings.
- Provide the required training for employees as recommended by the Regional Safety Coordinator.
- Provide to MMUA in a timely manner any information MMUA indicates is needed to perform the services hereunder. MMUA may rely on the accuracy of information provided by Grand Rapids Public Utilities and its representatives.
- Provide annual written evaluation of services of MMUA and its Regional Safety Coordinator.

3. MMUA OBLIGATIONS:

- Employ, assign, and supervise Regional Safety Coordinator.
- Plan, organize, and/or conduct regular monthly safety meetings on-site.
- Develop and maintain a standard safety management record keeping and reporting system on-site, including required OSHA records, required DOT records, required ADA records, and maintenance of safety manuals.
- Monitor safety training/certificate/licensure requirements, and recommend needed training.
- Prepare or oversee the preparation of required state and federal reports related to OSHA, DOT, and ADA compliance.
- Document safety meetings and training provided.
- Provide a standard interpretation of laws, rules, and regulations pertaining to safety management.

PART IV – STANDARD TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** In performing the Services, MMUA is an independent contractor and shall not be considered an employee, agent, partner, joint venturer, or representative of Grand Rapids Public Utilities for any purpose.
2. **STANDARD OF CARE:** Grand Rapids Public Utilities acknowledges that MMUA undertakes to provide the Services to Grand Rapids Public Utilities as a member of MMUA and, similarly to other members of MMUA, consistent with its nonprofit purpose and that in so doing, MMUA affords to Grand Rapids Public Utilities a convenience, cost savings, and efficiency otherwise not available to Grand Rapids Public Utilities from other service providers. Grand Rapids Public Utilities acknowledges that MMUA will exercise its best efforts to perform the Services in accordance with current rules and practices but also acknowledges that the ultimate responsibility for an interpretation of law lies with Grand Rapids Public Utilities and its attorney and that the application of such law and of the appropriate methods and practices also lies with Grand Rapids Public Utilities in the exercise of its best judgment with reasonable and due regard for the safety of its employees and other third persons. MMUA assumes no responsibility under this Agreement other than to render the Services in good faith. It shall not be responsible for any action of Grand Rapids Public Utilities, its agents, or employees.
3. **SCOPE AND SCHEDULE CHANGES:** The fees agreed to in Part III constitute MMUA's estimate of the effort and charges required to perform the Services. Any services not expressly set forth in this Agreement are excluded from the obligations of MMUA. If MMUA is delayed in performing the Services by any act of war, force majeure, or other circumstance beyond its control, then the schedule of performance shall be extended for the number of days as the occurrence delays performance, and the compensation limits under the Agreement shall be equitably adjusted, if necessary, to compensate MMUA for any additional costs due to the delay.
4. **BENEFICIARY.** The Services are solely for the benefit of Grand Rapids Public Utilities. Nothing contained in this Agreement shall create any duties, liabilities, or obligations on the part of MMUA toward any person other than Grand Rapids Public Utilities.
5. **FINANCING CHARGES FOR LATE PAYMENTS:** If Grand Rapids Public Utilities fails to pay undisputed invoiced amounts within thirty (30) days after delivery of invoice, additional charges shall become due and payable at a rate of 1½ percent per month (or the maximum percentage allowed by law, whichever is lower) on the unpaid amounts. All payments shall first be credited against any accrued interest. If Grand Rapids Public Utilities fails to pay invoiced amounts within sixty (60) days after delivery of invoice, MMUA in its sole discretion may suspend the Services without incurring any liability or waiving any right established hereunder or by law.
6. **WORK PRODUCT:** Grand Rapids Public Utilities shall preserve and protect MMUA's proprietary and copyright interests, rights, and privileges with respect to works of general application provided by MMUA to Grand Rapids Public Utilities. The Parties may use and duplicate materials developed by MMUA specifically for Grand Rapids Public Utilities pursuant to this Agreement without obligation of royalty or first seeking consent.
7. **INSURANCE:** Each Party shall procure and maintain at its own expense the following minimum insurance coverages to be in force for the duration of this Agreement:

- a. General Liability. Commercial General Liability Insurance in a minimum amount of \$1,000,000 per occurrence; \$2,000,000 annual aggregate. The policy shall cover liability arising from premises, operations, products-completed operations, personal injury, advertising injury, and contractually assumed liability. Each Party shall endorse as additional insureds the other Party, its respective elected and appointed officials, employees, and agents, on its policy.
 - b. Automobile Liability. Business automobile liability insurance, including owned, hired, and non-owned automobiles, with a minimum combined single liability limit of \$1,000,000 per occurrence.
 - c. Professional (Errors and Omissions) Liability. Professional Liability Insurance for all claims a Party may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to this Agreement. Each Party shall carry the following minimum limits: \$1,000,000 per occurrence; \$2,000,000 annual aggregate. If such insurance is discontinued, extended reporting period/tail coverage must be obtained by the Party to fulfill this requirement.
 - d. Workers' Compensation. Each Party shall maintain Workers' Compensation insurance for all its respective employees in accordance with the statutory requirements of the State of Minnesota and/or the state(s) in which Grand Rapids Public Utilities is legally obligated to carry such insurance. Each Party shall also carry Employers' Liability Coverage with minimum limits as follows:
 - \$500,000 – Bodily Injury by Disease per employee
 - \$500,000 – Bodily Injury by Disease aggregate
 - \$500,000 – Bodily Injury by Accident
 - e. Additional Insurance Conditions.
 - i. Each Party shall deliver to the other Party a Certificate of Insurance as evidence that the above coverages are in full force and effect no later than the first day on which service is to commence or December 31, 2023, whichever comes later.
 - ii. The insurance requirements may be met through any combination of primary and umbrella/excess insurance. In that case, the other Party must be named as an additional insured on any umbrella/excess policy held by the other in fulfillment of this requirement.
 - iii. The policies held by each Party shall be primary insurance and non-contributory to any other valid and collectible insurance available with respect to any claim arising out of the Services.
8. MUTUAL INDEMNIFICATION: To the fullest extent permitted by law, each Party shall defend, indemnify, and hold harmless the other Party, its respective employees, officials, and agents from and against all claims, actions, damages, losses, and expenses, including reasonable attorney fees and costs, arising out of the other Party's negligence, performance, or failure to perform its obligations under this Agreement. The indemnification obligation shall apply to subcontractor(s), or anyone directly or indirectly employed or hired by a Party, or anyone for whose acts the Party may be liable. The obligations in this section shall survive the completion or termination of this Agreement.

9. DISPUTE RESOLUTION: In the event that a dispute arises between the Parties as to the interpretation or performance of this Agreement, then upon written request of either Party, representatives with settlement authority for each Party shall meet and confer in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, they shall make every effort to settle the dispute through mediation or other alternative dispute resolution methods. If the Parties are unable to resolve the dispute through these methods, either Party may commence an action in Hennepin County District Court.
10. ENTIRE AGREEMENT; HEADINGS: This Agreement constitutes the entire understanding and agreement of the Parties, and any and all prior agreements, oral discussions, understandings, and representations are hereby terminated and canceled in their entirety and are of no further force and effect. Headings are for convenience and are not a part of this Agreement.
11. CHOICE OF LAW: The laws of the state of Minnesota shall govern the validity of this Agreement, the construction of its terms, and the interpretation of the rights and duties of the Parties.
12. ASSIGNMENT: This Agreement will inure to the benefit of the Parties hereto and shall be binding on them and their respective legal representatives, successors, and assigns. Provided, however, neither Party hereto may assign any of its rights herein to any person without the prior written consent of the other Party.
13. DRAFTING: The Parties agree that they participated equally in, and are jointly responsible for, the drafting of this Agreement. In the event of any dispute, any ambiguity in this Agreement shall not be construed against either Party.
14. COUNTERPARTS: This Agreement may be executed in counterpart copies by the Parties and each counterpart, when taken together with the other, shall be deemed one and the same executed Agreement.