

Services Agreement

Between

Grand Rapids Public Utilities and City of LaPrairie

This Services Agreement (this “**Agreement**”), dated as of March 3, 2023 (the “**Effective Date**”), is by and between **Grand Rapids Public Utilities Commission**, a Minnesota public utilities commission created under Minnesota Statutes, sections 412.321 to 412.391 (“**Service Provider**”) and **City of LaPrairie**, a municipal government (“**Customer**” and together with Service Provider, the “**Parties**”, and each a “**Party**”).

WHEREAS Service Provider has the capability and capacity to provide **water, wastewater collection and treatment, and street light services** and certain **other various utility services** (“**Services**”); and

WHEREAS Customer desires to retain Service Provider to provide the Services, and Service Provider is willing to perform the Services under the terms and conditions hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Services.**

1.1 **Services.** Customer hereby engages Service Provider to provide water and wastewater collection and treatment services as described on **Exhibit A**.

1.2 **Additional Other Services.** Customer may request that Service Provider perform additional Services for utility billing and scheduled and/or requested maintenance. If Service Provider accepts such assignments, in its sole discretion, the Parties shall agree to the parameters of the additional services by executing an “Additional Services Authorization” in the form of **Exhibit B**. The additional services shall be considered “**Services**” under this Agreement, and shall be performed in accordance with and subject to the terms and conditions of this Agreement.

1.3 **Changes.** No changes will be made to the general scope of Services (including but not limited to, suspension of performance, changes in time of performance, schedule, quantities, or specifications) without the prior written consent of Service Provider in its reasonable discretion. If such changes affect the cost of or the time required for the performance of the Services, an equitable adjustment in the schedule and compensation under this Agreement shall be made.

2. **Service Provider Representatives.**

2.1 Service Provider shall designate employees or contractors that it determines, in its sole discretion, to be capable of filling the following positions:

(a) A primary contact to act as its authorized representative with respect to all matters pertaining to this Agreement (the “**Service Provider Contract Manager**”).

(b) A number of employees or contractors that it deems sufficient to perform the Services.

2.2 Service Provider shall give prompt notice to Customer of any changes of the Service Provider Contract Manager.

3. **Customer Obligations.** Customer shall:

3.1 Designate one elected official and one of its employees, at minimum, to serve as its primary contact with respect to this Agreement and to act as its authorized representative with respect to matters pertaining to this Agreement (the “**Customer Contract Manager**”), with such designation to remain in force unless and until a successor Customer Contract Manager is appointed.

3.2 Require that the Customer Contract Manager respond promptly to any reasonable requests from Service Provider for instructions, information, or approvals required by Service Provider to provide the Services.

3.3 Cooperate with Service Provider in its performance of the Services and provide access to Customer’s premises, employees, contractors, and equipment as required to enable Service Provider to provide the Services.

3.4 Take all steps necessary, including obtaining any required licenses or consents, to prevent Customer-caused delays in Service Provider’s provision of the Services.

Customer Contract Managers: *Mayor or Mayor Pro Tem of City of LaPrairie and City Clerk-Treasurer of City of LaPrairie.*

4. **Fees and Expenses.**

4.1 In consideration of the provision of the Services by the Service Provider and the rights granted to Customer under this Agreement, Customer shall pay the fees set out in **Exhibit C**. Payment to Service Provider of such fees and the reimbursement of expenses pursuant to this Section 4 shall constitute payment in full for the performance of the Services. Unless otherwise agreed between the Parties in writing, said fee will be payable within thirty (30) days of receipt by the Customer of an invoice from Service Provider.

4.2 Customer shall reimburse Service Provider for all reasonable expenses incurred in Service Provider’s performance of the Services, within thirty (30) days of receipt by the Customer of an invoice from Service Provider accompanied by receipts and reasonable supporting documentation.

4.3 Customer shall be responsible for all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity on any amounts payable by Customer hereunder; and to the extent

Service Provider is required to pay any such sales, use, excise, or other taxes or other duties or charges, Customer shall reimburse Service Provider in connection with its payment of fees and expenses as set forth in this Section 4.

4.4 All late payments shall bear interest at the lesser of (a) the rate of five percent (5 %) per month or minimum of \$5 or (b) the highest rate permissible under applicable law, calculated daily and compounded monthly. Customer shall also reimburse Service Provider for all reasonable costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under this Agreement or at law (which Service Provider does not waive by the exercise of any rights hereunder), Service Provider shall be entitled to suspend the provision of any Services if the Customer fails to pay any fees when due hereunder and such failure continues for ten (10) days following written notice thereof.

5. **Limited Warranty.**

5.1 Service Provider warrants that it shall perform the Services:

(a) In accordance with the terms and subject to the conditions set out in this Agreement and any Additional Services Authorization.

(b) Using personnel of commercially reasonable skill, experience, and qualifications.

(c) In a timely, workmanlike, and professional manner in accordance with generally recognized industry standards for similar services.

5.2 Service Provider's sole and exclusive liability and Customer's sole and exclusive remedy for breach of this warranty shall be as follows:

(a) Service Provider shall use reasonable commercial efforts to promptly cure any material breach; provided, that if Service Provider cannot cure such material breach within thirty (30) days after Customer's written notice of such material breach, Customer may, at its option, terminate the Agreement by serving written notice of termination in accordance with Section 8.23.

(b) In the event the Agreement is terminated pursuant to Section 5.2(a) above, Customer shall promptly pay Service Provider for fees incurred prior to the date of termination.

(c) The foregoing remedy shall not be available unless Customer provides written notice of such breach within fifteen (15) days after Service Provider's performance of the Services at issue.

5.3 SERVICE PROVIDER MAKES NO WARRANTIES EXCEPT FOR THAT PROVIDED IN SECTION 5.1, ABOVE. ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE EXPRESSLY DISCLAIMED.

6. **Intellectual Property.** All intellectual property rights, including copyrights, patents, patent disclosures and inventions (whether patentable or not), trademarks, service marks, trade secrets, know-how and other confidential information, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, derivative works and all other rights (collectively, “**Intellectual Property Rights**”) in and to all documents, work product and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of the Service Provider in the course of performing the Services (collectively, the “**Deliverables**”) shall be owned by Service Provider. Service Provider hereby grants Customer a license to use all Intellectual Property Rights in the Deliverables free of additional charge and on a non-exclusive, non-transferable, non-sublicensable, and perpetual basis solely to the extent necessary to enable Customer to make reasonable use of the Deliverables and the Services.

7. **Confidentiality.** In connection with Service Provider’s provision of Services under this Agreement (“**Purpose**”), Service Provider may disclose to Customer, or Customer may otherwise receive access to, confidential or proprietary information of Service Provider (“**Confidential Information**”). Customer shall use the Confidential Information solely for the Purpose and shall not disclose or permit access to Confidential Information other than to its employees, officers, and advisors (collectively, “**Representatives**”) who: (a) need to know such Confidential Information for the Purpose; (b) know of the existence and terms of this Agreement; and (c) agree to be bound by the confidentiality terms contained herein. Customer shall safeguard the Confidential Information from unauthorized use, access, or disclosure using at least the degree of care it uses to protect its most sensitive information and no less than a reasonable degree of care. Customer shall promptly notify Service Provider of any unauthorized use or disclosure of Confidential Information and cooperate with Service Provider to prevent further use or disclosure. Customer will be responsible for any breach of this paragraph caused by its Representatives. If Customer is required by law (including, without limitation, the Minnesota Government Data Practices Act) or court order to disclose Confidential Information, Customer shall provide Service Provider with prompt written notice thereof, so that Service Provider may seek a protective order or other appropriate remedy, as well as notice of the terms and circumstances surrounding such request or requirement. Customer and its Representatives will use reasonable efforts to obtain and will not oppose action by Service Provider to obtain such protective order or other appropriate remedy. If such protective order or other remedy is not obtained, then Customer will furnish only that portion of the Confidential Information which Customer is advised by Customer’s legal counsel is legally required and will exercise all reasonable efforts to obtain assurance that confidential treatment, if available, will be accorded such Confidential Information.

8. **Term, Termination, and Survival.**

8.1 This Agreement shall commence as of the Effective Date and shall continue thereafter until **December 31, 2024** (“**Term**”), unless sooner terminated pursuant to this Section 8.

8.2 Either Party may terminate this Agreement at any time by giving written notice to the other Party at least one hundred twenty (120) calendar days prior to the effective date of the termination.

8.3 Upon issuance of the cancellation notice, or no later than sixty (60) days prior to the end of the Agreement, the Service Provider and Customer agree to meet and discuss continuation of the Agreement. If a new Agreement has not been approved, the terms of this Agreement shall continue to apply until a cancellation notice given or subsequent contract has been approved.

8.4 Either Party may terminate this Agreement, effective upon written notice to the other Party (the “**Defaulting Party**”) if the Defaulting Party:

(a) Materially breaches this Agreement, and the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such material breach.

(b) Becomes insolvent or admits its inability to pay its debts generally as they become due.

(c) Becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law.

(d) Is dissolved or liquidated or takes any corporate action for such purpose.

(e) Makes a general assignment for the benefit of creditors.

(f) Has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

8.5 Regardless of the reason for termination, Service Provider shall be paid for the Services performed prior to the effective date of termination based upon the payment terms of this Agreement.

8.6 Notwithstanding anything to the contrary in Section 8.4(a), Service Provider may terminate this Agreement before the expiration date of the Term on written notice if Customer fails to pay any amount when due hereunder and such failure: (a) continues for five (5) days after Customer’s receipt of written notice of nonpayment; or (b) occurs more than once in any twelve (12) month period.

8.7 The rights and obligations of the Parties set forth in this Section 8.7 and in Sections 6, 7, 9, 10 and 11, and any right or obligation of the Parties in this Agreement which, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

9. **Limitation of Liability.**

9.1 IN NO EVENT SHALL SERVICE PROVIDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY

CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SERVICE PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AGGREGATE AMOUNTS PAID OR PAYABLE TO SERVICE PROVIDER PURSUANT TO THIS AGREEMENT IN THE SIX (6) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

10. **Indemnification.** Customer shall, to the fullest extent permitted by law, indemnify, defend, and hold harmless Service Provider, and its commissioners, officers, employees and agents, from and against any and all claims, damages, losses, liabilities, suits, judgments, actions, and all expenses (including attorneys' fees and disbursements) arising out of any negligent or wrongful act, error or omission, breach of contract, or infringement of any intellectual property right by Customer or any of its Representatives or subcontractors; provided that nothing herein shall require Customer to indemnify or hold harmless an indemnitee hereunder to the extent such claim is caused by the intentional misconduct or gross negligence of such indemnitee.

11. **Insurance.** During the Term Customer shall, at its own expense, maintain and carry commercial general liability insurance per Minnesota State Statutes with a financially sound and reputable insurer. Upon Service Provider's request, Customer shall provide Service Provider with a certificate of insurance from Customer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Service Provider as an additional insured. Customer shall provide Service Provider with thirty (30) days' advance written notice in the event of a cancellation or material change in Customer's insurance policy. Except where prohibited by law, Customer shall require its insurer to waive all rights of subrogation against Service Provider's insurers and Service Provider.

12. **Force Majeure.** In the event delay is caused by circumstances beyond either Party's control, including but not limited to fire, strike, war, riots, acts of God, epidemic, pandemic, and/or acts of civil or military authority, the Agreement shall be extended to provide for such delay. Promptly after such an occurrence, the Parties shall begin discussions as to mutually acceptable adjustments to or alternate methods of proceeding with the affected Services, and the impact, if any, on project schedules and costs.

13. **Non-Exclusivity.** Service Provider shall be free to provide services similar to the Services to any other person on terms and conditions Service Provider deems acceptable in its sole discretion.

14. **Entire Agreement.** This Agreement, including and together with any related Additional Services Authorization, exhibits, schedules, attachments and appendices, constitutes

the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, regarding such subject matter.

15. **Notices.** Any notice or other communication to any party in connection with this Agreement 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.

Notice to Service Provider:

Grand Rapids Public Utilities Commission
Attn: General Manager
500 SE 4th St
Grand Rapids, MN 55744
Email: jakennedy@grpuc.org

Notice to Customer:

City of LaPrairie
Attn: Lisa Mrnak
15 Park Drive
LaPrairie, MN 55744
Email: cityhall@laprairiemn.com

16. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision had never constituted a part hereof, and the remaining provisions shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance therefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision there shall be added automatically as part of this Agreement a legal, valid, and enforceable provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible.

17. **Amendment and Waiver.** No purported amendment, modification, or waiver of any provision hereof shall be binding unless set forth in a written document signed by all Parties (in the case of amendments or modifications) or by a Party to be charged thereby (in the case of waivers). Any waiver shall be limited to the circumstance or event specifically referenced in the written waiver document and shall not be deemed a waiver of any other term hereof or of the same circumstance or event upon any recurrence thereof.

18. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns. Customer shall not assign, transfer, delegate or subcontract any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Service Provider. No

assignment or delegation shall relieve the Customer of any of its obligations under this Agreement. Service Provider may assign any of its rights or delegate any of its obligations to any affiliate or to any person acquiring all or substantially all of Service Provider's assets without Customer's consent.

19. **Previous Agreements.** This Agreement shall become effective and be in full force and effect following agreement to and adoption by the Grand Rapids Public Utilities Commission and City of LaPrairie, and shall rescind any prior Agreements to the extent that they are inconsistent herewith relative to this Agreement.

20. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. The details of the method and manner for performance of the Services by Service Provider shall be under its own control, Customer being interested only in the results thereof. The Service Provider shall be solely responsible for supervising, controlling and directing the details and manner of the completion of the Services. Nothing in this Agreement shall give the Customer the right to instruct, supervise, control, or direct the details and manner of the completion of the Services. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

19.1 **Property.** No fixed assets or personal or real property will be jointly or cooperatively held, acquired, or disposed of pursuant to this agreement.

21. **No Third-Party Beneficiaries.** Subject to Section 10, this Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

22. **Choice of Law.** This Agreement is made pursuant to and shall be governed, performed, construed, and enforced according to the laws of the State of Minnesota, without regard to conflicts of law principles.

23. **Venue.** Any dispute arising in connection with this Agreement shall be venued in Itasca County, Minnesota.

24. **Waiver of Jury Trial.** Due to the expense and time required for a trial by jury, the Parties hereby knowingly and voluntarily waive any right to trial by jury in the event of litigation regarding the performance or enforcement of this Agreement.

25. **Counterparts.** This Agreement may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the Effective Date by their respective duly authorized officers.

City of LaPrairie

By 

Name: JONATHAN BOLEN

Title: MAYOR

Grand Rapids Public Utilities Commission

By _____

Name: _____

Title: _____

EXHIBIT A

DESCRIPTION OF SERVICES

Water, Wastewater Collection and Treatment, and Street Light Usage/Commodity Services

EXHIBIT B
FORM OF ADDITIONAL SERVICES AUTHORIZATION

1. Grand Rapids Public Utilities Commission (GRPUC) shall invoice customers based upon the rate schedule set by LaPrairie. GRPUC will update LaPrairie's customer rates upon request. LaPrairie will have the option to participate in GRPUC's water and sewer rate studies at a pro-rated share of the study cost.
2. GRPUC shall indicate the amounts due for water, sanitary sewage and street light services as applicable separately on each customer invoice.
3. Customers shall be invoiced monthly.
 - a) GRPUC will read all water meters remotely on a monthly basis. Water meters must be equipped with a GRPUC-specified node to be read electronically. Estimated bills may be utilized if for some reason meter readings are not available.
4. Customer account changes shall be handled through GRPUC.
5. Customer billing estimates, questions and complaints related to the billing process will be handled directly by GRPUC. Questions and complaints relating to issues other than the billing process will be directed to LaPrairie.
6. GRPUC shall collect payments from LaPrairie's customers and shall remit revenues received to LaPrairie within thirty days of receipt.
7. GRPUC will send a Delinquent notice to LaPrairie's water/sewer customers. GRPUC shall not pursue credit and collection activity against LaPrairie's customers, beyond sending the above Delinquent notice to customers. GRPUC will provide LaPrairie a list of uncollectible accounts so that LaPrairie can pursue collection activities.
8. GRPUC shall provide LaPrairie with a monthly revenue report including water usage for each customer, and total usage billed for all customers.
9. GRPUC shall provide LaPrairie with a customer and address report when requested by LaPrairie.
10. GRPUC will comply with all Cold Weather Shutoff Rule requirements.

11. GRPUC shall process all changes for accounts as directed by the customer and shall reflect such changes on the next invoice submitted to the customer.
12. GRPUC will provide and mail to each customer notice of the annual Drinking Water Quality Report.
13. GRPUC shall provide a budget payment plan for those customers that wish to be on a budget.
14. For new construction services we will be billing the City of LaPrairie for the water meter, water node, and inspection fees for connection and meter.
15. All maintenance, emergency services, equipment replacement, etc. shall be handled by GRPUC and billed to LaPrairie on a monthly basis.
16. All state sales taxes, and any other applicable taxes collected through the billing services, will be remitted and reported to the appropriate agency by GRPUC
17. GRPUC shall provide customers of LaPrairie the same options to make utility bill payments as GRPU customers
18. GRPUC shall provide customers of LaPrairie with online services to interact with their accounts the same as GRPUC customers.

EXHIBIT C PAYMENT TERMS

UTILITIES PROVIDED SERVICES

Water, Wastewater Collection and Treatment, and Street Lighting usage and cost of service fees are listed on the Grand Rapids Public Utilities Commission website.

In consideration of the services provided by GRPUC to LaPrairie pursuant to this Agreement, LaPrairie shall pay to GRPUC the following cost of services and monthly charges:

UTILITY BILLING SERVICES

Monthly Charges: GRPUC shall invoice, and LaPrairie shall pay a **monthly fee of \$995.60** for LaPrairie customer billing, which includes; a per customer meter read, a per customer invoice mailed, meter read where GRPUC provides the sewer collection service and LaPrairie provides the water service. This monthly charge shall be subject to annual review and adjustment due to increases in GRPUC costs.

MAINTENANCE SERVICES

Monthly Charges: GRPUC shall invoice, and LaPrairie shall pay, a **monthly fee of \$731.00** for LaPrairie weekly Lift Station maintenance.

Any additional services requested by LaPrairie and provided or arranged by GRPUC, shall be on a time and material basis, based upon current billable rates charged by GRPUC or at GRPUC's actual cost if services are provided by a third party.

REQUESTED MAINTENANCE SERVICES

Any additional services requested by LaPrairie and provided or arranged by GRPUC, shall be on a **time and material basis**, based upon current billable rates charged by GRPUC or at GRPUC's actual cost if services are provided by a third party.