

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**” or “**Licensee**”), and EATON, Cannon Technologies, Inc., located at 3033 Campus Drive – Suite 350N, Minneapolis, Minnesota, 55441 (“**Contractor**” or “**Licensor**”). 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 MultiSpeak AMI Yukon Interface, setup fee, and annual Yukon software Support to communicate between automated metering system and the mPower outage management system. (“**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 January 5, 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 March 31, 2022 excluding annual support contract.

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, if Contractor has not cured the breach within ten (10) business days after written notice from GRPUC or fails to commence curing the breach if the breach cannot be reasonably cured within ten (10) business days.

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 of GRPUC's confidential information or GRPUC's work product information or make such other disposition thereof as GRPUC may direct in writing.

2. Contractor's Duties

2.1 The Contractor shall:

Install MultiSpeak to the automated meter information (AMI) Yukon and interface between AMI system and the outage management system from mPower. This includes MultiSpeak setup and annual Yukon software support P81-RF.

This is a single source vendor contract with EATON – Cannon Technologies, Inc. due to the previously bid and selected vendor EATON in which GRPU purchased Yukon AMI software.

(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 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..

2.4 Contractor warrants and represents that the Goods and 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.

2.5 Software Warranty: Licensor warrants to Licensee that for a period of ninety (90) days from the date of shipment of the software set forth on Exhibit B (“**Licensed Software**”) from Licensor to Licensee, the Licensed Software shall perform in substantial conformity with any specifications or performance criteria published in any documentation related to the Licensed Software (“**Software Documentation**”) provided by Licensor to Licensee. Licensor does not warrant that the use of the Licensed Software will be uninterrupted or error-free. Licensor warrants that the Licensed Software accurately receives, provides and processes date data, within from and between centuries, leap years and other years. Licensee shall have no rights with respect to the foregoing warranties and the warranties shall be deemed not to apply to Licensee unless: (i) the Licensed Software is used on the designated Yukon system operating at GRPU, which Licensor has confirmed to Licensee in writing, a) in a proper manner, b) in compliance with this Agreement and with all Software Documentation, and c) solely for use as required to operate the Licensed Software as set forth in the Software Documentation; (ii) no modifications or alterations to the Licensed Software have been made other than by Licensor or other than with Licensor's prior written consent; and (iii) no act or cause beyond

the reasonable control of Licensor has occurred that was a substantial factor causing the failure of the Licensed Software to meet the warranty terms.

2.6 In the event that Licensee claims that Licensor has breached any of its warranty obligations hereunder, Licensee's sole and exclusive remedy for a breach of this limited warranty shall be that Licensor will at its option, either repair or replace any defective Licensed Software so that the Licensed Software performs in accordance with the warranties set forth above. Licensee and Licensor agree that in the event that Licensor determines that this exclusive remedy is unable to bring the Licensed Software into conformity with the warranty, Licensee's exclusive remedy shall be to terminate this Agreement and receive a full refund from Licensor of the compensation paid by Licensee pursuant to Section 3 of this Contract. EXCEPT AS SPECIFICALLY STATED IN THIS CONTRACT, LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN RELATION TO THE LICENSED SOFTWARE OR THEIR USE BY LICENSEE, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS. LICENSOR DOES NOT WARRANT THAT LICENSEE OR ANY USER OF THE LICENSED SOFTWARE WILL ACHIEVE ANY PARTICULAR RESULT OR BENEFIT FROM THE USE OF THE PRODUCT LICENSED OR SERVICE RECEIVED HEREUNDER.

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.

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 Four Thousand One Hundred Seventy Dollars (\$4,170.00) in accordance with **Exhibit C**.

3.1.2 Total obligation. The total obligation and liability of GRPUC under this Contract will not exceed Four Thousand One Hundred Seventy Dollars (\$4,170.00).

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 Jeremy Goodell at the following business address: 500 SE 4th Street, Grand Rapids, MN, 55744 and the following telephone number: 218.326.7024, or his/her successor or delegate, and has the responsibility to monitor the Contractor's performance.

Contractor's Authorized Representative is Tom Thorson, Sales Representative at the following business address: 3033 Campus Drive – Suite 350N, Minneapolis, MN, 55441, and the following telephone number: 763.543.7777, 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, for third party claims for bodily injury (including death) and property damage, to the extent caused by the gross negligence or intentional misconduct of Contractor 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. **License.** Licensor hereby grants Licensee a non-exclusive, non-sublicensable, and non-transferable license to use the Licensed Software in accordance with the terms of this Contract and the Software Documentation.

8. **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. Any audits shall exclude information Contractor deems confidential or proprietary in nature. All audits shall be at the sole cost and expense of GRPUC.

9. **Miscellaneous.**

9.1 **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, which shall not be unreasonably withheld. 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.

9.2 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: Jeremy Goodell
Email: jjgoodell@grpuc.org

Contractor EATON – Cannon
Technologies, Inc.
Address: 3033 Campus Drive –
Suite 350N, Minneapolis, MN,
55441
Attn: Jill Skarsten
Email: jillrskarsten@eaton.cm

10. Limitation of Liability. THE REMEDIES OF THE PARTIES SET FORTH IN THIS CONTRACT ARE EXCLUSIVE AND ARE THEIR SOLE REMEDIES FOR ANY FAILURE OF THE OTHER PARTY TO COMPLY WITH THEIR OBLIGATIONS HEREUNDER. NOTWITHSTANDING ANY PROVISION IN THIS CONTRACT TO THE CONTRARY, IN NO EVENT SHALL A PARTY BE LIABLE IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE FOR DAMAGE TO PROPERTY OR EQUIPMENT OTHER THAN PRODUCTS SOLD HEREUNDER, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF PRODUCTS (OTHER THAN PRODUCTS SOLD HEREUNDER), COST OF CAPITAL, CLAIMS OF CUSTOMERS OR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, REGARDLESS OF WHETHER SUCH POTENTIAL DAMAGES ARE FORESEEABLE OR IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL CUMULATIVE LIABILITY OF A PARTY ARISING FROM OR RELATED TO THIS CONTRACT WHETHER THE CLAIMS ARE BASED IN CONTRACT, IN TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, SHALL NOT EXCEED THE PRICE OF THE PRODUCT OR SERVICES ON WHICH SUCH LIABILITY IS BASED. THIS PARAGRAPH DOES NOT APPLY TO GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

11. 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.

EATON – Cannon Technologies, Inc.

Grand Rapids Public Utilities Commission

By: 

By:  01/05/2022

Print Name: Jim Roche

Print Name: Julie A. Kennedy

Title: Product Line Manager, AMI

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 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 promptly notify GRPUC 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.

3.4 **Professional Liability, Errors, and Omissions.** This policy will provide coverage for all claims the Contractor may become legally obligated to pay resulting from any actual or alleged negligent act, error, or omission related to Contractor's professional services required under the Contract. Insurance minimum limits are as follows:

\$2,000,000 - per claim or event

\$2,000,000 - annual aggregate

- Any deductible will be the sole responsibility of the Contractor.

Exhibit B: Specifications, Duties, and Scope of Work

Install MultiSpeak AMI Yukon Interface with GRPU outage management system vendor mPower.

Annual Yukon Software Support P81-RF

Exhibit C: Price and Payment Schedule

MultiSpeak AMI Yukon Interface with GRPU outage management system	\$2,500.00
MultiSpeak setup fee	\$1,170.00
Annual Yukon Software Support P881-RF	\$500.00
TOTAL	\$4,170.00

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