

## MATERIALS AND/OR SERVICE CONTRACT

**THIS CONTRACT** made and entered into this 14 day of February, 2019 by and between **XYLEM WATER SOLUTIONS USA, INC.**, hereinafter referred to as “**Independent Contractor**,” whose mailing address is 15132 Park of Commerce Blvd. Suite 102, Jupiter, FL 33478, and the **CITY OF RIVIERA BEACH UTILITY SPECIAL DISTRICT, FLORIDA**, a municipal corporation, hereinafter referred to as “**District**,” whose address is 600 West Blue Heron Boulevard, Riviera Beach, Florida, 33404.

**WHEREAS**, the **HERNANDO COUNTY, FLORIDA** posted an Invitation to Bid, to wit, **BID No.:18-T00028/DK** hereinafter the “**BID**” for Submersible Sewage Pumps and Accessories, the terms of which are incorporated herein by reference; and

**WHEREAS**, Independent Contractor was the successful responsible bidder; and

**WHEREAS**, the **BID** allowed for and encouraged the successful bidder to extend such terms and conditions to other governmental agencies; and

**WHEREAS**, Independent Contractor desires to extend such to the District.

**NOW THEREFORE**, in consideration of the mutual covenants and promises set forth herein, the parties to this Contract do hereby agree as follows:

1. Independent Contractor agrees to be bound by all the terms and conditions as set forth in the Bid.

2. To the extent that there exists a conflict between the **BID** and this Contract, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

3. That the District does hereby retain the services of the Independent Contractor for the purpose of providing all materials, labor, and equipment in order to supply Flygt Submersible Sewage Pumps and Accessories as set forth more fully in Exhibit “A” attached hereto and incorporated herein by reference.

4. Work must begin within ten (10) calendar days from the date of receipt of official notice to proceed and shall be carried on at a rate to insure its full completion from the date of official notice to proceed until the end date of this contract (**May 7, 2020**), the rate of progress and time of completion being essential conditions of this contract.

5. If the contract work is not fully complete according to the terms of this Contract within the limits herein stipulated, the Independent Contractor shall pay the District, not as a penalty, but as liquidated damages, a sum equal to one hundred dollars (\$100) for each day elapsing between expiration of such time limit and the date of full completion, providing, however, that the time limits herein stated are subject to extension without payment of damages, as provided in section 14, herein.

6. The District agrees to compensate the Independent Contractor in the amount not to exceed \$125,000 per year, as set forth in more detail in the fee proposal, attached hereto as Exhibit "B". The total and cumulative amount of this contract shall not exceed the amount of funds annually budgeted for these services. The District shall not reimburse the Independent Contractor for any travel costs incurred as a direct result of the Independent Contractor providing deliverables to the District in pursuance of the scope of work contained in herein or in an exhibit.

7. Independent Contractor hereby represents that it has complied and shall continue to comply with all applicable Federal and State statutes and local ordinances. Further, Independent Contractor shall be solely responsible for obtaining and complying with all necessary permits, approvals and authorizations, required for the work to be performed pursuant to the terms of this Contract from any federal, state, regional, county, or city agency.

8. The Independent Contractor represents that it has, or will secure at its own expense, all necessary personnel, equipment and materials required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the District.

9. All of the services required hereunder shall be performed by the Independent Contractor or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. All of the Independent Contractor's personnel (and all Subcontractors) while on District premises will comply with all District requirements governing conduct, safety and security.

10. The Independent Contractor agrees that it is fully responsible to the District for the acts and omissions of subcontractors and of persons either directly or indirectly employed by the Independent Contractor. Nothing contained herein shall create any contractual relationship between any subcontractor and the District.

11. All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the DISTRICT shall be mailed (and emailed) to:

WILLIE HORTON, EXECUTIVE DIRECTOR  
CITY OF RIVIERA BEACH, UTILITY SPECIAL DISTRICT  
600 WEST BLUE HERON BLVD.  
RIVIERA BEACH, FLORIDA 33404  
WHORTON@RIVIERABCH.COM

and if sent to the Independent Contractor shall be mailed (and emailed) to:

**ERIC JOHNSON, SALES REPRESENTATIVE  
XYLEM WATER SOLUTIONS USA, INC.  
15132 PARK OF COMMERCE BLVD. SUITE 102  
JUPITER, FL 33478  
561-848-1200  
[ERIC.JOHNSON@XYLEMINC.COM](mailto:ERIC.JOHNSON@XYLEMINC.COM)**

12. The District is exempt from payment of Florida State Sales and Use Taxes. The District will sign an exemption certificate submitted by the Independent Contractor. The Independent Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the District, nor is the Independent Contractor authorized to use the City's Tax Exemption Number in securing such materials.

13. Prior to execution of this Contract by the District the Independent Contractor shall provide certificates evidencing insurance coverages as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the Independent Contractor has obtained insurance of the type, amount, and classification as required for strict compliance with this ARTICLE and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the District's representative. Compliance with the foregoing requirements shall not relieve the Independent Contractor of its liability and obligations under this Contract.

14. The Independent Contractor shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence to protect the Independent Contractor from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the Independent Contractor or by anyone directly employed by or contracting with the Independent Contractor.

15. The Independent Contractor shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the Independent Contractor from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the Independent Contractor or by anyone directly or indirectly employed by the Independent Contractor.

16. The Independent Contractor shall maintain, during the life of this Contract, adequate Workers' Compensation Insurance and Employer's Liability Insurance in at least such amounts as are required by law for all of its employees per Florida Statute 440.02.

17. All insurance, other than Workers' Compensation, to be maintained by the Independent Contractor shall specifically include the District as an "Additional Insured."

18. The Independent Contractor shall indemnify and save harmless and defend the District, its agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action which may arise from any negligent act or omission of the Independent Contractor, its agents, servants, or employees in the performance of services under this Contract.

19. The Independent Contractor further agrees to indemnify, save harmless and defend the District, its agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of any conduct or misconduct of the Independent Contractor not included in the paragraph above and for which the District, its agents, servants or employees are alleged to be liable. Nothing contained in this provision shall be construed or interpreted as consent by the District to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, Florida Statutes.

20. The Independent Contractor shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the Independent Contractor or its subcontractors and without their fault or negligence. Such causes include, but are not limited to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions. Upon the Independent Contractor's request, the District shall consider the facts and extent of any failure to perform the work and, if the Independent Contractor's failure to perform was without it or its subcontractors fault or negligence, as determined by the District, the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the District's rights to change, terminate, or stop any or all of the work at any time. If the Independent Contractor is delayed at any time in the process of the work by any act or neglect of the District or its employees, or by any other contractor employed by the District, or by changes ordered by the District or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the Independent Contractor's control, or by delay authorized by the Engineer pending negotiation or by any cause which the Engineer shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the District may decide. In the case of continuing cause of delay, only one (1) claim is necessary.

21. The Independent Contractor does not have the power or authority to bind the District in any promise, agreement or representation other than as specifically provided for in this Contract.

22. The District reserves the right to make changes in the scope of work, including alterations, reductions therein or additions thereto. Upon receipt by the Independent Contractor of the District's notification of a contemplated change, the Independent Contractor shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the District of any estimated change in the completion date, and (3) advise the District if the contemplated change shall effect the Independent Contractor's ability to meet the completion dates or schedules of this Contract. If the District so instructs in writing, the Independent Contractor shall suspend work on that portion of the work affected by a contemplated change, pending the District's decision to proceed with the change.

23. If the District elects to make the change, the District shall initiate a Contract Amendment and the Independent Contractor shall not commence work on any such change until

such written amendment is signed by the Independent Contractor and approved and executed by the Executive Director for the District.

24. All materials and/or work to be furnished and/or installed by the Independent Contractor under this Contract shall be guaranteed by the Independent Contractor for a period of one year from the date of final acceptance thereof by the District against defects in design, workmanship, or materials. Upon receipt of notice from the District of failure or defect of any part covered under such warranty/guaranty period, the affected part, parts, or materials shall be replaced promptly with new parts or materials by the Independent Contractor at no expense to the District. In the event the Independent Contractor fails to make the necessary repairs or replacements within 30 days after notification by the District, the District may accomplish the work at the expense of the Independent Contractor.

25. If applicable, the Independent Contractor shall continuously maintain adequate protection of all work from damage, and shall protect such work and the District's property from injury or loss arising during the term of the Contract. Except for any such damage, injury, or loss which may be directly due to errors caused by the District or employees of the District, the Independent Contractor shall adequately protect adjacent property, as provided by the law, and shall provide guard fences, lights, and any other necessary materials to carry out such protection.

26. Until acceptance of the work by the District, the District's property shall be under the charge and care of the Independent Contractor and the Independent Contractor shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the Independent Contractor shall repair, restore and make good, without additional charge any work occasioned by any of the above causes before its completion and acceptance by the District.

27. This Contract and any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to its execution, its validity, the obligations provided herein, performance or breach shall be governed and interpreted according to laws of the State of Florida. Any and all legal action necessary to enforce the Contract will be held in Palm Beach County.

28. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

29. All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract. Moreover, in the event of litigation arising from this Contract, all parties voluntarily and intentionally waive any right to a trial by jury. The parties hereunder hereby acknowledge

that this waiver provision is a material inducement for each party agreeing to enter into this Contract.

30. In accordance with Palm Beach County ordinance number 2011-009, the Independent Contractor understands that this Contract may be subject to investigation and/or audit by the Palm Beach County Inspector General. The Independent Contractor has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance. The contractor further understands and agrees that in addition to all other remedies and consequences provided by law, the failure of the contractor or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the District to be a material breach of this Contract justifying its termination.

31. This Contract is subject to any and all applicable conflict of interest provisions found in the CITY procurement ordinance (4010), the Palm Beach County Code of Ethics and Ch. 112, Part III, Florida Statutes. During the term of this Contract and any renewals or extensions thereof, Independent Contractor shall continue to disclose to the District any possible conflicts of interests. The Independent Contractor's duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of the District.

32. The Independent Contractor shall comply with Florida's Public Records Act, and if determined to be acting on behalf of the City as provided under section 119.0701, Florida Statutes, by agreeing to:

- (a) Keep and maintain all public records by the City to perform the services.
- (b) Upon request from the City's custodian of public records or designee, provide the City with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Contract and following completion of this Contract if the Contractor does not transfer the records to the City.
- (d) Upon completion of this Contract, transfer, at no cost, to the City all public records in possession of the Contractor or keep and maintain public records required by the City to perform the service. If the Contractor transfers all public records to the City upon completion of the Contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records or designee, in a format that is compatible with the information technology systems of the City.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS OR DESIGNEE AT Claudene Anthony, District Clerk, 600 West Blue Heron Blvd. Riviera Beach Florida, 33404, 561-845-3419 crobinson@rivierabch.com**

33. Time is of the essence in all respects under this Contract.

34. Failure of the District to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of District's right to enforce or exercise said right(s) at any time thereafter.

**SIGNATURES ON FOLLOWING PAGE**

**CONTRACT WITH THE DISTRICT OF RIVIERA BEACH**

**IN WITNESS WHEREOF**, the Parties unto this Contract have set their hands and seals on the day and date first written above.

DISTRICT OF RIVIERA BEACH

XYLEM WATER SOLUTIONS, INC.

BY: \_\_\_\_\_  
TONYA DAVIS JOHNSON  
CHAIRPERSON

BY:  \_\_\_\_\_  
ERIC JOHNSON  
SALES REPRESENTATIVE

ATTEST:

(SEAL)

BY: \_\_\_\_\_  
CLAUDENE L. ANTHONY, CMC  
CERTIFIED MUNICIPAL CLERK  
DISTRICT CLERK

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

BY: \_\_\_\_\_  
DAWN S. WYNN  
DISTRICT ATTORNEY

BY: \_\_\_\_\_  
WILLIE HORTON  
EXECUTIVE DIRECTOR

DATE: \_\_\_\_\_

\_\_\_\_\_  
Purchasing Dept. initials