

RESOLUTION NO. **SD23-008**
OF THE BOARD OF DIRECTORS OF
NEVADA COUNTY SANITATION DISTRICT NO. 1

RESOLUTION AUTHORIZING NEVADA COUNTY SANITATION DISTRICT NO. 1 TO ENTER INTO A FINANCING AND SERVICE AGREEMENT WITH XYLEM WATER SOLUTIONS INC. TO PROCURE 25 SUBMERSIBLE PUMPS AND ASSOCIATED CONTROLS AND HARDWARE/SOFTWARE FOR SEWER LIFT STATIONS IN LAKE WILDWOOD AND LAKE OF THE PINES AND AMEND THE SANITATION DISTRICT NO. 1 FISCAL YEAR 2023/24 BUDGET (4/5 AFFIRMATIVE VOTE REQUIRED)

WHEREAS, the Nevada County Sanitation District (NCSD) has determined that the District's Sewer Lift Stations are a priority Capital Improvement Project due to this infrastructure nearing the end of its service life and the critical nature of the infrastructure's role in protecting water quality in Nevada County; and

WHEREAS, five lift stations have been identified in Lake Wildwood Zone 1, and five lift stations have been identified in Lake of the Pines Zone 2, that are nearing the end of their service life, that require replacement and serve as a critical piece of sewer conveyance in each zone; and

WHEREAS, A solution has been identified that will serve the purposes of both improving the performance and reliability of the stations and assist NCSD in reducing operations, maintenance, and response costs; and

WHEREAS, Xylem Water Solutions, Inc., a supplier of Flygt pumps, offers a one-of-a-kind submersible pump solution with an integrated control system that is compatible with the existing infrastructure; and

WHEREAS, because Xylem Water Solutions, Inc. has a one-of-a-kind technology solution, it is appropriate to contract directly pursuant to Section 4.6 of the Nevada County Purchasing Policy; and

WHEREAS, NCSD has negotiated pricing of this contract to supply the pumps, controls, hardware/software and 10-year maintenance contract for a total cost of \$1,381,217.00; and

WHEREAS, both the Lake of the Pine and Lake Wildwood zones have sufficient funds to enter into a financing agreement with Xylem Water Solutions Inc. to fund the project; and

WHEREAS, NCSD has the means to install the pumps and controls utilizing district staff that will further reduce the overall cost of the project.

NOW, THEREFORE, BE IT HEREBY RESOLVED that the Nevada County Sanitation District No. 1 Board of Directors:

1. Authorizes the NCSD Chair and/or the Wastewater Operations Manager to execute the attached financing and service agreement, incorporated herein and made a part hereof, with Xylem Water Solutions Inc. to procure 25 submersible pumps, controls, and hardware and software.
2. Directs the Auditor/Controller to release fund balance of Fund 4728 Lake Wildwood \$197,500.00
3. Directs the Auditor/Controller to release fund balance of Fund 4740 Lake of the Pines \$197,500.00
4. Amend the Fiscal Year 2023/24 budget as shown below:

<u>Increase</u>					
4728	91005	709	2000	540710	\$197,500.00
4740	91005	709	2000	540710	\$197,500.00

PASSED AND ADOPTED at a regular meeting of the Board of Directors of the Nevada County Sanitation District No. 1, held on the 26th day of September, 2023, by the following vote:

Ayes: Directors Heidi Hall, Edward C. Scofield, Lisa Swarthout,
Susan Hoek and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

ATTEST:

JULIE PATTERSON HUNTER
Clerk of the Board of Directors

By: 


Edward C. Scofield, Chair

Life Cycle Service Contract

This Life Cycle Service Contract ("**Agreement**") will become effective when all Parties have signed it. The date this Agreement is signed by the last Party to sign it (as indicated by the date stated opposite or under that Party's signature) will be deemed the effective date of this Agreement.

1. Parties

Xylem Water Solutions, USA, Inc., a company incorporated and registered in Delaware (company number 45-2080074 with its registered office at 4828 Parkway Plaza Blvd., Suite 200, Charlotte, NC 28217 ("**Xylem**")

-and-

Nevada County Sanitation District, a special district of the County of Nevada, such county being a subdivision of the State of California ("**Customer**" or "**District**").

Xylem and Customer are each a "**Party**" and collectively the "**Parties.**"

2. Agreement

This Agreement is comprised of this document, all its Schedules, the Documentation, and any executed Statements of Work ("SOW"), all of which are incorporated by reference. All such documents will govern the provision of the Support Services. Customer may place orders under this Agreement by submitting separate SOW(s). This Agreement will commence on the Effective Date and will continue until otherwise terminated in accordance with Section 18 below.

2.1. This page and the following documents comprise this Agreement:

- (a) Schedule 1 – General Terms
- (b) Schedule 2 – Model Statement of Work / SOW*
- (c) Schedule 3 – Technical Specifications
- (d) Schedule 4 – Project Schedule
- (e) All executed SOWs between the Parties

*All SOWs mutually agreed to in writing and signed by the Parties will be added to Schedule 2

2.2. Customer and Xylem agree they have jointly participated in the drafting and negotiation of this Agreement. This Agreement may be executed in counterparts and together will constitute a single agreement.

Signed for and on behalf of Customer		Signed for and on behalf of Xylem
Name: Brad Torres		Name: Jeff Lucas
Position: Wastewater Operations Manager, Nevada County Sanitation District No. 1		Position: VP, Business Development Contractual Services
Date:		Date:

Schedule 1 – General Terms

1. DEFINITIONS

"Additional Services" means fee-based services not included in Xylem's division of work under the applicable SOW for which Customer is liable, including damage to the Equipment while at Customer's location, Subscription Services or related failures that are later determined to be for causes outside Xylem's control, Customer-related cybersecurity and related hardware/software issues, training, and consulting.

"Agreement Price" means the total price to be paid by Customer to Contractor under this Agreement as described in Schedule 2 but does accordingly not include the amounts paid for, for example, Additional Services or Repair of Collateral Damage.

"Assumption(s)" means the operating conditions specified in Exhibit A of Schedule 2.

"Assumption Violation(s)" means any deviation of one or more of the Assumptions, as specified in Exhibit XXX.

"Authorized Contractors" means independent contractors, licensors or subcontractors.

"Collateral Damage" means all physical damage to the Covered Unit(s) resulting from the failure of or defect in a part of an affected Covered Unit(s), other than (i) damage to the initially failing or defective part itself (which is addressed under Covered Maintenance or other Sections of this Agreement and is not considered Collateral Damage), (ii) damage to Inspect Only Components, and (iii) damage caused by an Excluded Event. The "initially failing or defective part" is a single part and not an assembly or group of parts or components.

"Customer Applications" means all Customer software programs that Customer uses on the cloud platform that comprises part of the Virtual Monitoring Services.

"Customer Data " means all data, records, files, images, graphics, audio, video, photographs, reports, forms and other content and material, in any format that Customer owns or is licensed to use by a party other than Xylem, with such rights pre-existing this Agreement, that are submitted, stored, posted, displayed, transmitted or otherwise used with the Virtual Monitoring Services that are not part the Life Cycle Service Contract and Additional Services.

"Contract Effective Date" means the date specified on page 1 or in Schedule 2 for an applicable Statement of Work.

"Covered Maintenance" means the following:

a) preventative maintenance, as specified in Schedule 3, of the Covered Unit(s) other than the Inspect Only Components (i) in accordance with Xylem's or its subcontractor's recommendations giving appropriate consideration to guidelines set forth in the latest published revision of the applicable Installation, Operation, and Maintenance Manual (IOM), (ii) as otherwise reasonably necessary, and (iii) in accordance with Prudent Industry Practices; and

b) repair or replacement of parts of the Covered Unit(s) other than the Inspect Only Components whenever the need arises pursuant to Prudent Industry Practices, including pump removal, disassembly, installation of Parts and reassembly.

i. Due to the urgency associated with Customer's work, it may be necessary from time to time for Customer to remove and or install a pump. This is both anticipated and permissible; no price adjustments will be made for such occurrence. Customer is to follow instructions in the IOM, teaching from Xylem technicians, and Prudent Industry Practices. Any damage due to mishandling or incorrect installation will be considered Additional Services and corrective actions will be billed at Time and Material rates.

"Covered Unit(s)" means the equipment identified as such in Schedule 3.

"Documentation" means Xylem's product guides and other end user documentation for the Life Cycle Service Contract available online or otherwise through the Life Cycle Service Contract, as may be updated by Xylem from time to time to reflect the then-current Life Cycle Service Contract.

"Equipment" means any and all Xylem-owned equipment, components, and goods provided by Xylem to Customer under this Agreement, which will at all times remain the sole and exclusive property of Xylem, except for any Equipment specifically being purchased and identified in Schedule 2.

"Equipment Services" means, as an indivisible part of the Life Cycle Service Contract that entail, either: (a) in the case Equipment, Xylem's provision of the Equipment and services to the Equipment, as specified in this Agreement and the respective SOW; or (b) in the case where Xylem's work scope applies to Customer's existing equipment, Xylem's provision of the services specified in this Agreement and the respective SOW.

"Excluded Event" means an Excusable Event, an Assumption Violation, the use of goods or services provided by a party other than Contractor or Contractor's subcontractors acting under this Agreement, the presence of foreign objects or contaminants including, without limitation, chemicals, salt air and harmful gases in the physical environment affecting the Covered Unit(s), or improper operation or Routine Maintenance of a Covered Unit or other equipment.

"Excusable Event" means (i) causes beyond Parties reasonable control that could not have been avoided or overcome through the exercise of reasonable diligence; or (ii) acts of god, act (or failure to act) of governmental authorities or third parties not engaged by the Party claiming the Excusable Event, fires, severe weather conditions, earthquakes, strikes or other labor disturbances, floods, war (declared or undeclared), armed conflict, pandemics, epidemics, civil unrest, riot, acts or threats of terrorism, or delays in transportation; (iii) acts (or omissions) of the other Party including failure to timely perform its obligations under this Agreement; or (iv) a Party's supplier experiencing any of the above, thereby hindering Party to fully perform. The Party claiming that an Excusable Event has occurred shall notify the other Party of any such Excusable Event.

"Inspect Only Components" means those components or parts associated with or attached to the Covered Unit(s) but not included in Covered Maintenance and identified as such in Schedule 3, Table 1.

"Intellectual Property" means all (a) patents, patent disclosures, and inventions (whether patentable or not), (b) trademarks, service marks, trade dress, trade names, logos, corporate names and domain names, together with all of the goodwill associated therewith, (c) copyrights, copyrightable works and works of authorship (whether copyrightable or not), including computer programs, mask works, data collections, and databases, (d) trade secrets, know-how, and other confidential or proprietary information, and (e) all other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights.

"IOM" means the publication Installation, Operation, and Maintenance manual for FLYGT model 6020.181/091, Concertor as in effect as of Contract Effective Date, or any successor thereto.

"Life Cycle Services" means the aggregate of the Life Cycle Service Contract and the Equipment Services purchased by Customer pursuant to an SOW. Life Cycle Services do not include Additional Services, which would be purchased separately under the Change Order process.

"Monitoring & Performance System(s)" means components, equipment and a system or systems which may be used from time to time by Xylem for monitoring of Facility equipment and/or provision of performance information and or performance support, generally consisting of hardware, software, and a connection to a source of technical oversight or review. Currently, Xylem brand for such system is FLYGT Cloud.

"Model Statement of Work" means the template that the Parties will use as the basis for each actual SOW into which the Parties enter respective to this Agreement.

"Part(s)" means any new, repaired, or refurbished part, material, component and other goods furnished by Xylem, or its subcontractors or suppliers, under this Agreement for the Covered Unit(s).

"Party" means Owner or Xylem individually and "Parties" means Owner and Xylem collectively.

"Prudent Industry Practices" means the exercise of that degree of skill and diligence, and of such practices, methods, and acts, at a minimum, as would ordinarily be expected in the motor and mechanical pump industries from prudent owners, operators and service providers acting lawfully, reliably, reasonably timely and safely in connection with water pumping facilities and equipment similar to the applicable lift stations and the Covered Unit(s).

"Repair Services" means repair work, which can be performed in a repair service shop or at the Site, including, but not limited to, machining, welding, grinding, polishing, cleaning, inspection, disassembly or re-assembly and machine tool work such as lathe work or vertical bore mill work.

"Statement of Work" or "SOW" means a binding ordering agreement that specifies the Life Cycle Service Contract deliverables to be provided under this Agreement and, as applicable, any Additional Services purchased by Customer, that is entered into between Xylem and Customer from time to time, including any addenda and supplements.

"Service Term" means the term of Life Cycle Service Contract purchased by Customer which will commence on the start date specified in the applicable SOW and continue for the respective specified term, and any respective renewals.

"Time and Material Rates" means (i) Xylem's published or standard hourly rates for field services in effect at the time services are performed applied to the number of hours of such services, including travel time and travel and living expenses (including standard per diems, if applicable) authorized by Customer in advance, plus (ii) the published or standard price of Parts supplied by Xylem as in effect at the time the Parts are shipped, plus (iii) the market price of parts, materials and non-Xylem subcontracted labor and services, including craft labor, purchased by Xylem, as shown by invoices for the same, together with a markup of twenty-five percent (25) of such invoices, plus (iv) the then-applicable published price or other mutually agreed to price for any Repair Services.

"Virtual Monitoring and Performance Services" means the cloud platform-based portion of the Life Cycle Service Contract made available by Xylem to Customer and/or the software made available by Xylem to Customer online via the applicable customer logins, as applicable, all of which form an indivisible component of the Life Cycle Service Contract.

2. BASIS OF AGREEMENT

Xylem will make the Life Cycle Services available to Customer in accordance with the terms and conditions of this Agreement, the Documentation, and the relevant SOW during the Service Term, solely for Customer's internal business purposes.

Xylem's Affiliates and its Authorized Contractors may perform certain aspects of the Services provided that Xylem will remain fully responsible for ensuring that any of Xylem's obligations under this Agreement performed by its Affiliates and/or its Authorized Contractors are carried out in accordance with this Agreement.

Customer's affiliates and its Authorized Contractors may access certain aspects of the Services and Customer Data hosted or provided through such Services provided that Customer remain fully responsible for ensuring that any of Customer's obligations under this Agreement performed by its affiliates and its Authorized Contractors are carried out in accordance with this Agreement. Customer's use of the Virtual Monitoring Services includes the right to access all functionality available in the respective SOW's specified Life Cycle Services during the Term.

So long as Xylem does not materially degrade the functionality, as described in the Documentation, of the Virtual Monitoring Services during the applicable Term (i) Xylem may modify the systems and environment used to provide the Virtual Monitoring Services to reflect changes in technology, industry practices and patterns of system use, and (ii) update the Documentation accordingly. Subsequent updates, upgrades, enhancements to the Virtual Monitoring and Performance Services made generally available to all customers will be made available to Customer at no additional charge, but the purchase of Virtual Monitoring and Performance Services is not contingent on the delivery of any future functionality or features. New features, functionality or enhancements to the Virtual Monitoring and Performance Services may be marketed separately by Xylem and may require the payment of additional fees. Xylem will determine, in its sole discretion, whether access to such new features, functionality or enhancements will require an additional fee.

3. DIVISION OF RESPONSIBILITIES

This Article 3 sets out the non-SOW specific Division of Responsibility ("DOR") that applies to this Agreement and all SOWs. Each SOW, however, is unique and therefore will specify the SOW-specific DOR that, in conjunction with this Article 3, will apply to the given SOW.

3.1 Customer

- 3.1.1 **Representations & Warranties.** Customer represents and warrants that (i) it has the legal authority to enter into this Agreement, and (ii) it will use the Services in accordance with the terms and conditions set forth in this Agreement and in compliance with all applicable laws, rules, and regulations, and (ii) it will make all undisputed payments due under this Agreement per the payment terms.
- 3.1.2 **Customer Obligations.** Customer will (i) access and use the Life Cycle Services in accordance with this Agreement and applicable laws and government regulations, (ii) use commercially reasonable efforts to ensure proper Equipment Services operation and prevent unauthorized access to or use of the Life Cycle Services, and notify Xylem promptly of any such improper or unauthorized access or use, and (iii) take commercially reasonable steps, with implementation of a minimum standard such as ISA/IEC-62443-3-3 (security level 1 or better), necessary to ensure compliance with and security of the Equipment, including Xylem's cloud platform and software solutions.
- 3.1.3 **Customer Data.** Customer has and will maintain all rights as are required to allow Xylem to provide the Life Cycle Services to Customer as set forth in this Agreement, including without limitation to send (or allow transmission of) the Customer Data to Xylem pursuant to this Agreement and to allow Xylem to access, use, and store Customer Data to provide the Life Cycle Services pursuant to this Agreement. Customer is responsible for its legal and regulatory compliance in its use of any Life Cycle Services.

- 3.1.4 Restrictions.** Customer will not (a) license, sublicense, sell, resell, rent, lease, transfer, distribute, or otherwise similarly exploit the Life Cycle Services; (b) use or permit others to use any security testing tools in order to probe, scan or attempt to penetrate or ascertain the security of the Virtual Monitoring and Performance Services; (c) copy, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Life Cycle Services or any part thereof or otherwise attempt to discover any source code or modify the Virtual Monitoring and Performance Services; or (d) disclose any benchmark or performance tests of the Life Cycle Services.

3.2 Xylem

- 3.2.1 Representations & Warranties.** Xylem represents and warrants that (i) Xylem has the legal authority to enter into this Agreement; (ii) the Life Cycle Services will materially conform with the scope details in Schedules 2, 3 and 4; (iii) the functionality and security of the Virtual Monitoring Services will not be materially decreased during the Subscription Term; and (iv) Life Cycle Services will be performed in a competent and workmanlike manner, to a commercially reasonable standard, and consistent with any applicable Xylem published instructions, policies, and relevant IOM's. Customer agrees that cyber security of operational technology is not an exact science and that commercially reasonable steps to secure the product is based on a finite set of test cases, and does not provide comprehensive protection against all possible malware or unauthorized intrusions. Xylem disclaims any representation or warranty that the Life Cycle Services will operate free from interruption or error due to cyber-attacks, malicious or otherwise, or from disruptions in internet connectivity (e.g., latency or packet loss).

- 3.2.2 Xylem Obligations.** Xylem will provide all the Equipment and data specified in each SOW, maintain all rights required to provide such services, and use commercially reasonable efforts in order to provide the Life Cycle Services.

- 3.2.3 Remedies.** Except as specified in Article 10 and any SOW(s), for any failure of any Life Cycle Services, as applicable, to conform to the above respective representations, Xylem's liability and Customer's sole and exclusive remedy will be for Xylem, in the case of a breach of the warranty set forth in Section 3.2.1 (ii), (iii), and/or (iv), to use commercially reasonable efforts to correct such failure; or, in the case of a breach of the warranty set forth in Section 3.2.1 (iv) to repair or replace the affected Life Cycle Services Equipment. If the foregoing remedies are not commercially practicable, Xylem may, in its sole discretion, terminate the applicable SOW upon providing Customer with prior written notice thereof, and, as Customer's sole and exclusive remedy, refund to Customer (a) in the case of breach of the warranty set forth in Section 3.2.1 (ii) or (iii), any Life Cycle Services fees paid by Customer with respect to the unexpired portion of the current Life Cycle term for the non-conforming Life Cycle Services; or (b) in the case of breach of the warranty set forth in Section 3.4 (iv), any fees paid by Customer for the unused portion of Equipment giving rise to the breach. In addition, Xylem will be immediately entitled to take possession of all Xylem owned Equipment.

- 3.3 Designated Contact and Cooperation.** Each Party will designate in each SOW an individual who will be the primary point of contact between the parties for all matters relating to the Additional Services to be performed thereunder. Customer will cooperate with Xylem, will provide Xylem with accurate and complete information, will provide Xylem with such assistance and access as Xylem may reasonably request, and will fulfill its responsibilities as set forth in this Agreement and the applicable SOW. If applicable, while on Customer premises for Additional Services, Xylem personnel will comply with reasonable Customer rules and regulations regarding safety, conduct, and security made known to Xylem.

- 4. DATA PRIVACY.** In performing the Virtual Monitoring Services, Customer will comply with the Xylem Privacy Policy available at <https://www.xylem.com/en-us/support/privacy>. Customer acknowledges that it has read and understood Xylem's privacy policy and agrees to the use of personal data outlined therein. The collection and use of personal data by Customer is Customer's responsibility. The Xylem Privacy Policy is subject to change at Xylem's discretion; however, Xylem's policy changes will not result in a material reduction in the level of protection provided for Customer Data during the Life Cycle Term.

5. **INVENTORY USE**

Customer shall permit Xylem to use, for Covered Maintenance, repair of Collateral Damage, or Additional Services, parts, including spare pumps, and spare parts, which Customer has in storage on or after the Contract Effective Date. If Xylem uses spare pumps or Parts for the performance of Covered Maintenance, Xylem shall deliver or cause to be delivered a replacement spare pump or spare Parts at Xylem's expense within a reasonable time (considering among other things the repair and transportation time and anticipated schedule of Covered Maintenance) after Xylem has used Customer's spare pump or spare Parts. Xylem may at its option, replace such spare pump or spare Parts with new, refurbished, or repaired Parts. If Xylem uses such spare pumps or parts, to perform repair of Collateral Damage or Additional Services and such spare pumps or spare Parts are of a type then manufactured and sold by Xylem, Xylem shall provide a new, refurbished, or repaired replacement, as mutually agreed, as Additional Services at Time and Material Rates. Customer shall retain title to and properly keep and store any and all spare pumps or spare Parts at the Site during the Term. If any spare pump or spare Parts is found to be unsuitable for use due to improper storage or maintenance, Xylem shall provide a replacement part as Additional Services at Time and Material Rates.

6. **OTHER SERVICES**

Upon customer request and mutual agreement, Xylem will provide Customer with Additional Services as set forth in the applicable SOW. Each SOW will include, at a minimum (i) a description of the Additional Services and any Deliverable to be delivered to Customer; (ii) the scope of Additional Services; (iii) the schedule for the provision of the Additional Services; and (iv) the applicable fees and payment terms for such Additional Services, if not specified elsewhere.

7. **CHANGE ORDERS**

Changes to an SOW will require, and become effective only when, fully documented in a written change order (each a "**Change Order**") signed by duly authorized representatives of each Party prior to implementation of the changes. Changes may include, for example, changes to the scope of work and any corresponding changes to the estimated fees and schedule. Change Orders will be deemed part of, and subject to, this Agreement.

8. **FEES AND PAYMENT**

8.1. **Fees.** Customer will pay all fees specified in each SOW and any applicable additional fees if Customer exceeds any (if any) applicable limits specified in the SOW. Except as otherwise specified in this Agreement or in an SOW (i) fees are payable in United States dollars, (ii) fees are based on Services purchased, regardless of usage, (iii) payment obligations are non-cancelable and fees paid are non-refundable, (iv) all Services will be deemed accepted upon delivery, and (v) the Life Cycle Services purchased cannot be decreased during the relevant Service Term. Customer will reimburse Xylem for any out-of-pocket expenses incurred by Xylem in connection with its performance of Services that are not otherwise covered under Schedule 3. Xylem will provide Customer with reasonably detailed invoices for such expenses. All amounts payable under this Agreement will be made without setoff or counterclaim, and without any deduction or withholding.

8.2. **Invoicing and Payment.** Unless otherwise specified in an SOW, fees for Life Cycle Services specified in an SOW will be invoiced in advance on a quarterly basis, and all fees and expenses for any additional Xylem services requested by Customer will be invoiced monthly in arrears per the applicable agreed amount or, if not agreed prior to Customer's requirement for Xylem's performance, on a time and materials basis. Except as otherwise stated in the applicable SOW, Customer agrees to pay all invoiced amounts within thirty (30) days of invoice date. If Customer fails to pay any amounts due under this Agreement by the due date, in addition to any other rights or remedies it may have under this Agreement or by matter of law (i) Xylem reserves the right to suspend the Life Cycle Services upon ten (10) days' notice, until such amounts are paid in full, and (ii) Xylem will have the right to charge interest at a rate equal to the lesser of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law until Customer pays

all amounts due; provided that Xylem will not exercise its right to charge interest if the applicable charges are under reasonable and good faith dispute and Customer is cooperating diligently to resolve the issue.

9. PROPRIETARY RIGHTS

- 9.1. Ownership.** No Intellectual Property is assigned to Customer under this Agreement. Excluding Customer Data, Xylem will own or continue to own all right, title, and interest in and to the Intellectual Property associated with the Equipment and Life Cycle Services and related documentation, including any derivations and/or derivative works (the "Xylem IP"). To the extent, if any, that any ownership interest in and to such Contractor IP does not automatically vest in Contractor by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Xylem all right, title, and interest that Customer may have in and to such Xylem IP. Notwithstanding the prior sentence, Customer does not grant or assign to Xylem any right, title or interest in or to any Customer Data, and Customer reserves all rights in and to Customer Data. "Customer Data" means the (i) End User data collected by the Virtual Monitoring Services ("Collected Customer Data"), (ii) all Intellectual Property associated with the Collected Customer Data, and (iii) all Intellectual Property arising out of Customer's use or Customer's modification of the Collected Customer Data. Additionally: (i) Xylem may aggregate and anonymize the Collected Customer Data for use by Xylem (the "Aggregated and Anonymous Data"), and Xylem will own all right, title and interest in and to such Aggregated and Anonymous Data; and (ii) any Xylem IP used by Xylem to create Aggregated and Anonymous Data will remain the Intellectual Property of Xylem. Customer agrees not to reverse engineer any Xylem Equipment or Life Cycle Services purchased or provided under this Agreement.

Xylem reserves all rights in and to the Virtual Monitoring Services and Documentation not expressly granted to Customer under this Agreement. Customer will not delete or in any manner alter the copyright, trademark, and other proprietary notices of Xylem.

- 9.2. Customer Data and Customer Applications.** Consistent with Section 9.1, Customer hereby grants Xylem, its Affiliates, and applicable Authorized Contractors all necessary rights to host, use, process, store, display, and transmit Customer Data and Customer Applications solely as necessary for Xylem to provide the Services in accordance with this Agreement.

Customer represents that it has, and warrants that it will maintain, all rights as required to allow Xylem to compile, use, store, and retain aggregated Customer Data, including without limitation in combination with other Xylem customers' data, for internal or marketing uses (provided that no such marketing use will include any information that can identify Customer or its customers). Subject to the limited licenses granted in this Agreement, Xylem acquires no right, title or interest from Customer or Customer licensors hereunder in or to Customer Data and Customer Applications, including any respective intellectual property rights. Customer reserves all rights in and to the Customer Data that are not expressly granted to Xylem pursuant to this Agreement.

10. SOFTWARE AUTHORIZATION

Customer acknowledges that Xylem is engaged in the business of providing water and wastewater solutions and systems additionally providing wireless and wired communications and database systems for managing and monitoring remote equipment in a supervisory manner and the Customer desires to use and benefit from Xylem's communications and database system which is to be installed on-site at the Customer's premises.

Customer acknowledges and understands that by utilizing Xylem's products, services, website and/or data-based information, the Customer agrees to be bound to Xylem's terms.

Customer understands that Xylem makes no representations, promises, warranties or guarantees that there will be no interruptions in service or delays in performing service or as to the quality, usefulness, completeness and reliability of such service and further acknowledges that Xylem utilized wireless data

services that may be provided by various participating carriers and that such providers disclaim any and all liability arising from the Customer's use of Xylem's products and/or services.

Customer further understands that Xylem has no control of, or responsibility for, the paging, cellular, radio, telephone, Internet, or other communication medium which the Customer may rely upon for delivery of alarm or other messages sent by Xylem.

Xylem does not guarantee that your subscribed services will be active and available 100% of the time and will not be held liable for any losses in the event that there is a failure of service with respect to error free 24/7/365 performance or functionality of the Equipment and Virtual Monitoring Services.

Customer agrees that in the event Xylem is found to be liable for any loss or damage arising out of mistakes, interruptions, delays, errors or defects in Xylem's products or services under this Article 10 that such liability will not exceed the total amount paid by the Customer to Xylem for the latter's services provided for the previous six (6) months. Xylem system and diagnostics performed by Xylem engineering will determine if the outage is a carrier outage or Xylem provided equipment.

Customer agrees that the protocols, communications access, software access, service access and other items associated with the provision of the system remain the property of Xylem.

Customer agrees to grant Xylem access to the hardware and software associated with this service for the purposes of troubleshooting, updating of license keys and system enhancement.

Customer acknowledges and agrees that Xylem's products and services are intended to monitor and notify Customer of events only relating to Xylem provided mechanical equipment and are not intended to be used to monitor life-safety, burglary or fire detection, and reporting systems.

11. CONFIDENTIALITY

11.1. Definition of Confidential Information. "Confidential Information" means all confidential or proprietary information of a Party ("Disclosing Party") disclosed to the other Party ("Receiving Party"), whether orally or in writing that is designated as confidential or reasonably should be understood to be confidential given the nature of information and the circumstances of disclosure. Without limiting the coverage of these confidentiality obligations, the parties acknowledge and agree that Confidential Information of each Party will include the terms and conditions of this Agreement (including pricing and other terms set forth in all SOWs hereunder), related benchmark or similar test results, other technology and technical information, security information, security audit reports, and business and marketing plans, except that Xylem may reference and use Customer's name, logos and the nature of the Services provided hereunder in Xylem's business development and marketing efforts.

11.2. Exceptions. Confidential Information will not include information that (i) is or becomes publicly available without a breach of any obligation owed to the Disclosing Party, (ii) is already known to the Receiving Party at the time of its disclosure by the Disclosing Party, without a breach of any obligation owed to the Disclosing Party, (iii) following its disclosure to the Receiving Party, is received by the Receiving Party from a third party without breach of any obligation owed to Disclosing Party, or (iv) is independently developed by Receiving Party without reference to or use of the Disclosing Party's Confidential Information.

11.3. Protection of Confidential Information. The Receiving Party will use the same degree of care used to protect the confidentiality of its own Confidential Information of like kind (but in no event less than reasonable care), and, except with Disclosing Party's written consent, will (i) not use any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement and (ii) limit access to Confidential Information of Disclosing Party to those of its and its Authorized Contractors, Affiliates' employees, contractors and agents who need such access for purposes specific to this Agreement and who have a duty or obligation of confidentiality no less stringent than that set forth in this Agreement.

- 11.4. **Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent required by applicable law, regulation or legal process, provided that the Receiving Party (i) provides prompt written notice to the extent legally permitted, (ii) provides reasonable assistance, at Disclosing Party's cost, in the event the Disclosing Party wishes to oppose the disclosure, (iii) limits disclosure to that required by law, regulation or legal process and (iv) uses reasonable efforts to ensure that such Confidential Information is afforded confidential treatment.
- 11.5. **Term.** At all times during the Term, and for a period of 10 years thereafter, Receiving Party will, and will cause its officers, agents and employees to, keep and maintain in strict confidence, and refrain from disclosing or using for any other purpose than the activities contemplated by this Agreement, all Confidential information of Disclosing Party.
- 11.6. Upon termination of this Agreement for any reason, Receiving Party will immediately discontinue and permanently refrain from any further use of any Confidential Information and will promptly return to Disclosing Party all Confidential Information, including all copies, reproductions, summaries or extracts containing Confidential Information whether prepared by or in the possession of Receiving Party or its officers, directors, representatives or agents, however, that Receiving Party may retain copies of Confidential Information that are stored on Receiving Party's IT backup and disaster recovery systems until the ordinary course deletion thereof. Receiving Party will continue to be bound by the terms and conditions of this Agreement with respect to such Confidential Information. The rights of the Disclosing Party under this Section 10 are in addition to any rights Disclosing Party has at law or in equity or otherwise for the protection of intellectual property, including trade secrets.
- 11.7. Receiving Party acknowledges and agrees that any breach of this Agreement will cause irreparable harm and injury to Disclosing Party for which money damages alone would be an inadequate remedy. Accordingly, and irrespective of the Agreement's specified Dispute Resolution process, Disclosing Party may petition and obtain, without bond, from a court of law or equity both temporary and permanent injunctive relief to prevent or mitigate a breach by Receiving Party of any such covenants. Receiving Party waives any claim or defense that Disclosing Party has an adequate remedy at law in any such proceeding. Nothing herein will limit the equitable or available remedies at law for Disclosing Party.
12. **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, XYLEM MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND XYLEM HEREBY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY WITH RESPECT TO ERROR FREE PERFORMANCE OR FUNCTIONALITY OF THE VIRTUAL SUBSCRIPTION SERVICES. .

Xylem will not be responsible for any deterioration of performance attributable to latencies in the public internet or point-to-point network connection operated by a third party. Customer expressly acknowledges and agrees that Xylem does not and cannot control the flow of data to or from Xylem's networks and other portions of the Internet, and that such flow depends in part on the performance of Internet services provided or controlled by third parties, and that at times, actions or inactions of such third parties can impair or disrupt data transmitted through, and/or Customer's connections to, the Internet or point-to-point data connection (or portions thereof). Although Xylem will use commercially reasonable efforts to take actions Xylem may deem appropriate to mitigate the effects of any such events, Xylem cannot guarantee that such events will not occur. Accordingly, Xylem disclaims any and all liability resulting from or relating to such events.

13. **MUTUAL INDEMNIFICATION**

- 13.1. **Indemnification by Xylem.** Xylem will indemnify, defend and hold Customer harmless from and against any judgments, settlements, costs, and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit, or proceeding made or brought against Customer by a third party

alleging that the use of the Subscription Services hereunder infringes or misappropriates the valid intellectual property rights of a third party (a "**Claim Against Customer**"); provided that Customer (a) promptly gives Xylem written notice of the Claim Against Customer; (b) gives Xylem sole control of the defense and settlement of the Claim Against Customer (provided that Xylem may not settle any Claim Against Customer unless the settlement unconditionally releases Customer of all liability); and (c) provides to Xylem all reasonable assistance, at Xylem's expense. In the event of a Claim Against Customer, or if Xylem reasonably believes the Virtual Subscription Services may infringe or misappropriate, Xylem may in Xylem's sole discretion and at no cost to Customer (i) modify the Virtual Subscription Services so that they no longer infringe or misappropriate, without breaching Xylem's warranties hereunder, (ii) obtain a license for Customer's continued use of Virtual Subscription Services in accordance with this Agreement, or (iii) terminate Customer's subscriptions for such Virtual Subscription Services and refund to Customer any prepaid fees covering the remainder of the term of such subscriptions after the effective date of termination. Irrespective of the foregoing, Xylem will have no obligation to indemnify, defend, or hold Customer harmless from any Claim Against Customer to the extent it arises or results from (i) Customer Data or Customer Applications, (ii) use by Customer after notice by Xylem to discontinue use of all or a portion of the Subscription Services, (iii) use of Subscription Services and, as applicable, Additional Services by Customer in combination with equipment or software not supplied by Xylem where the Subscription Service itself would not be infringing, (iv) or Customer's breach of this Agreement.

13.2. Indemnification by Customer. Customer will indemnify, defend, and hold Xylem harmless from and against any judgments, settlements, costs and fees reasonably incurred (including reasonable attorney's fees) resulting from any claim, demand, suit or proceeding made or brought against Xylem by a third party alleging that Customer Data or Customer Application violates applicable law or a third party's rights (a "**Claim Against Xylem**"); provided that Xylem (a) promptly gives Customer written notice of the Claim Against Xylem; (b) gives Customer sole control of the defense and settlement of the Claim Against Xylem (provided that Customer may not settle any Claim Against Xylem unless the settlement unconditionally releases Xylem of all liability); and (c) provides to Customer all reasonable assistance, at Customer's expense.

13.3. Exclusive Remedy. This Section 13 states the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described in this Section.

14. LIMITATION OF LIABILITY

14.1. Limitation of Liability. OTHER THAN EACH PARTY'S OBLIGATIONS SET FORTH IN SECTION 13 (MUTUAL INDEMNIFICATION) AND SECTION 10 (SOFTWARE AUTHORIZATION), NEITHER PARTY'S TOTAL AGGREGATE LIABILITY RELATING TO THIS AGREEMENT INCLUDING ALL SOWS (WHETHER IN CONTRACT OR TORT OR UNDER ANY OTHER THEORY OF LIABILITY) WILL EXCEED THE AMOUNT PAID OR PAYABLE BY CUSTOMER FOR THOSE SERVICES GIVING RISE TO SUCH CLAIM UNDER THE APPLICABLE SOW IN THE 12 MONTHS PRECEDING THE APPLICABLE INCIDENT.

14.2. Exclusion of Certain Damages. NEITHER PARTY WILL HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS OR REVENUES, LOSS OF OPPORTUNITY OR CONTRACT, LOSS OF REPUTATION, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW. CUSTOMER UNDERSTANDS AND AGREES THAT SMART EQUIPMENT IS NOT VULNERABILITY-FREE AND/OR INTERRUPTION-FREE. XYLEM BEARS NO RISKS ASSOCIATED WITH THE CONTROL, OPERATION, AND/OR USE OF EQUIPMENT DRIVING CUSTOMER PROCESSES, AND BEARS NO RISK ASSOCIATED WITH CUSTOMER'S OPERATIONS.

15. FORCE MAJEURE

In the event either party is prevented from performing any of its obligations under the Agreement or any SOW by Force Majeure, that party's obligations with respect to the Agreement or applicable SOW will be suspended during the period of such Force Majeure. "Force Majeure" means any event or circumstance beyond a parties reasonable control, including but not limited to: (A) acts of God, such as natural disasters, drought, fire, floods, earthquakes, tsunamis; (B) war (declared or undeclared), riots, insurrection, rebellion, acts of the public enemy, acts of terrorism, sabotage, blockades, governmental authorities acts or inactions, embargoes; (C) disease, pandemics, epidemics; (D) currency restrictions; and (E) labor shortages or disputes; unavailability of materials, fuel, power, energy or transportation facilities; failures of Xylems or subcontractors to effect deliveries. In all such cases, for suspensions, the time for performance will be extended in an amount equal to the period necessary for the affected party to recover from the event, provided that the affected party will, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notify the unaffected party of the delay and of the anticipated duration and consequence thereof. The affected party will resume performance of its obligations hereunder with the least possible delay.

16. INSURANCE

Customer must maintain specific insurance coverages when in custody of Xylem's equipment from Subcontractor: Statutory Workers' Compensation and Employer's Liability in compliance with country and/or state laws; Automobile Liability including owned, hired, and non-owned vehicles; Commercial General Liability and Contractor Pollution Liability, inclusive of completed operations coverage, on a primary and noncontributory basis including broad form contractual liability coverage. Minimum per occurrence limits of \$1MM and defense cost must be supplementary payments. Claims-made policies are not acceptable. Equipment must be covered by Customer's equipment policy for the full replacement value of the equipment. Customer must provide a Certificate of Insurance with endorsements naming Xylem as an additional insured and loss payee. Insurance must be on a primary and non-contributory basis with a waiver of subrogation. Expiration dates, limits, and deductibles for each policy must also be noted, along with a provision for notice of cancellation, non-renewal, or material change to the certificate holder of not less than 30 days. Customer will provide a Certificate of Insurance with endorsements as evidence of coverage before Customer will release Equipment.

17. GOVERNING LAW AND DISPUTE RESOLUTION

This Agreement and all respective SOWs will be exclusively governed and construed according to the laws of the jurisdiction where Xylem's office is located to which this Agreement has been submitted (without reference to principles of conflicts of laws). This Article 17 will survive any termination, cancellation, or expiration of the Agreement. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER WILL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

The Parties will endeavor to settle any dispute in connection with this Agreement or any contract through amicable consultations. If settlement cannot be reached within thirty (30) calendar days after the date of notification by one Party to the other Party, then the given dispute will be referred to and finally resolved in accordance with Schedule 2 (Specific Terms).

To encourage prompt and equitable resolution of any litigation, each party hereby irrevocably waives its rights to a trial by jury in any litigation related to this Agreement.

18. TERM AND TERMINATION

- 18.1. Term of Agreement.** This Agreement commences on the Contract Effective Date and expires on the 10-year anniversary of the Contract Effective Date; provided, however, that its terms and conditions will apply to and govern any SOW with a term that extends past the Agreement expiry date. Should this Agreement be terminated by either Party for Cause, all SOWS will contemporaneously terminate. If a Party terminates for cause, Section 18.3 will apply.

"Cause" means: (a) payment default not remedied within ten (10) days of notice to do so, provided that three or more defaults will be deemed chronic default and no remedy period will be required for Xylem to terminate; (b) a Party experiences a material adverse change in its business or financial situation, or a change in Common Control; (c) a Party is liquidated, dissolved, or otherwise ceases to do business, becomes bankrupt or insolvent, or makes an assignment for the benefit of its creditors, or all or a substantial part of its assets become subject to a writ of attachment or seizure or a receiver or custodian is appointed for all or a substantial part of its assets, or a Party seeks remedies under any statute for the relief of debtors, or petitions under any federal or state bankruptcy or insolvency law are filed by or against a Party; (d) a Party breaches Article 11 (Confidentiality); and (e) a Party materially breaches any other obligation under this Agreement which is incapable of remedy. In cases where the breach is capable of remedy, if a Party fails to commence to remedy the breach and has not shown due diligence in the continued pursuit to remedy within thirty (30) days of the other Party's written notice of breach, the non-breaching Party's termination will become effective immediately on the thirty-first day after such notice was issued.

18.2. Renewal of Subscription Services. Subscription of services maybe renewed or extended by Customer after Contract Effective Date with pricing adjustment by Xylem due to scope, risk, inflation, or value.

18.3. Termination. A Party may terminate this Agreement (or, at such Party's option, the individual SOW(s) affected by the applicable breach), for Cause (i) upon 30 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such same 30 day period, or (ii) automatically if the other Party becomes the subject of a petition in bankruptcy or other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Upon termination of an SOW for cause by Customer and upon Customer's written request, Xylem will refund, on a *pro rata* basis, any fees paid under the respective SOW that cover the remainder of the applicable Services Term after the effective date of termination Upon termination of an SOW for cause by Xylem, all amounts owed by Customer under the respective SOW will become immediately due and payable and Xylem will be immediately entitled to take possession of all Xylem owned Equipment. In no event will any termination relieve Customer of the obligation to pay all fees payable to Xylem for the period prior to the effective date of termination.

18.4. Survival. Section 9 (Proprietary Rights), 11 (Confidentiality), 12 (Disclaimer), 13 (Mutual Indemnification), 14 (Limitation of Liability), 18.3 (refund upon Termination), 17 (Governing Law and Dispute Resolution), Jurisdiction (Schedule 2) and 19 (General Provisions) and any other rights and obligations of the parties under this Agreement that by their nature are reasonably intended to survive termination or expiration, will survive any termination or expiration of this Agreement.

19. GENERAL PROVISIONS

19.1 Federal Government End Use Provisions (only applicable for the U.S.). If the Life Cycle Services are being or have been acquired with U.S. Federal Government funds, or Customer is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure or transfer of the Services, or any related documentation of any kind, including technical data, manuals or Xylem Property is a "commercial item," as that term is defined in 48 C.F.R. 2.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995), as applicable. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the software and Services with only those rights set forth in this Agreement and any amendment hereto.

19.2 Life Cycle Service Analyses. Xylem may (i) compile statistical and other information related to the performance, operation and use of the Equipment and Virtual Monitoring Services, and (ii) use, and share

data from the Equipment and Life Cycle Services environment in aggregated form for security and operations management (iii) to create statistical analyses, and (iv) for research and development purposes (collectively referred to as ("**Life Cycle Service Analyses**"). Life Cycle Service Analyses will not incorporate any information, including Customer Data, in a form that could serve to identify Customer or an individual. Xylem retains all intellectual property rights in Life Cycle Service Analyses.

- 19.3 No Third-Party Beneficiaries.** Except as expressly provided for in this Agreement, a person who is not a party to this Agreement will not have any rights under this Agreement.
- 19.4 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous written or oral statements regarding the subject matter of this Agreement. Customer has not entered into this Agreement in reliance upon, and it will have no remedies in respect of, any statement (whether made by Xylem or any other person) and whether made to the Customer that is not expressly set out in this Agreement.
- 19.5 Amendments.** No modifications, alterations amendments, or variations of this Agreement will be binding unless set forth in writing and signed by both Parties.
- 19.6 Severability.** If any provision of this Agreement is determined to be invalid or unenforceable under applicable law, the invalidity of the given provision will not invalidate the remaining provisions of this Agreement, and the parties will endeavor to mutually agree to a replacement provision that, in concept and substance, attains the goal of the invalidated provision.
- 19.7 No Waiver.** Any waiver must be in writing and validly executed by both Parties. The failure of either Party to require performance of the other Party of any obligations under this Agreement will not affect the right to require that performance at a later time.
- 19.8 Order of Priority**
(a) The front page titled "Life Cycle Service Contract"
(b) Schedule 2 (Any mutually agreed/signed SOWs)
(c) Schedule 1 (General Terms)
(d) Schedule 3 (Technical Specifications)
(e) Schedule 4 (Project Schedule)
- 19.9 Notices.** All notices provided under this Agreement will be in writing and, other than for service of process which must comply with applicable civil procure requirements for delivery, will be deemed to have been properly given when delivered personally or by courier, or two (2) days after being mailed by registered or certified mail, postage paid, return receipt requested to the addresses set out on page 1 of this Agreement.
- 19.10 Assignment.** No right or interest in this Agreement will be assigned by either party without the prior written consent of the other party except that Xylem may assign its rights and/or delegate its duties in whole or in part to any affiliated company. Xylem will notify Customer of any such assignment or delegation. Xylem will be released of all its obligations and/or liabilities hereunder upon written assumption by its transferee of such obligations and/or liabilities.
- 19.11 Remedies.** To the extent that this Agreement provides either party with a specified remedy for a given breach or default that remedy is the sole and exclusive remedy available to the exclusion of any and all other remedies that may be available at law, in equity or otherwise.
- 19.12 Use of New Technology.** Xylem may, from time to time in the performance of its work under this Agreement, develop and use improved Parts and/or Services which may or may not be generally commercially available on the Contract Effective Date. It is anticipated that any such development and use, which shall be at Xylem's option, will be done in an effort to extend Parts' lives and/or increase the

interval between certain maintenance outages and/or improve Covered Unit performance. The potential for such improved Parts, and the possibility of enhanced productivity and subsequent maintenance cost reduction for Xylem, is a factor used by Xylem in establishing the price. Thus, no reduction in the Agreement Price shall be made in the case that such productivity is realized by Xylem during the Term of this Agreement Installation of such an improved Part in the Covered Unit is subject to the consent of the Customer, which consent shall not be unreasonably withheld.

19.13 Use of Commercially Available Technology. Xylem shall use reasonable efforts to inform the Customer if a type of part to be repaired or replaced by Xylem during its performance of this Agreement (a "current part") is commercially available from Xylem in an upgraded design (an "upgraded part"). If the current part and the upgraded part are both generally made available for sale by Xylem at the date of supply under this Agreement, Xylem may elect to supply either the current part or the upgraded part, provided that if the upgraded part is supplied, it shall be supplied at no additional cost to the Customer and shall be supplied only with the consent of Customer, which consent shall not be unreasonably withheld. If the current part is not generally made available for sale by Xylem at the date of supply and an upgraded part is so available, Xylem shall supply the upgraded part at no additional cost to the Customer. If the current part and the upgraded part are both generally made available for sale by Xylem at the date of supply and Xylem elects to use the current part, at the written request of the Customer, Xylem shall instead supply the upgraded part and the Customer shall pay (i) any difference between the Time and Material Rates price of the upgraded part and the Time and Material Rates price of the current part it is replacing and (ii) any incremental cost or loss incurred by Xylem as a result of utilizing the upgraded part including, without limitation, any detrimental impact upon the performance commitment.

19.14 Use of Refurbished Parts. In performance of its scope of work under this Agreement, Xylem may use Parts which have been previously installed at this Customer location or another facility and subsequently refurbished by Xylem; provided, that, (a) nothing in this Section 19.14 shall limit any of Xylem's obligations under any other provision of this Agreement.

20. DELIVERY, PASSAGE OF TITLE, RISK OF LOSS

20.1 Delivery

20.1.1 General Delivery Terms. Xylem shall be responsible for scheduling delivery of Parts for Xylem's Covered Maintenance under this Agreement, pursuant to any work schedule discussed and agreed with Customer. Partial deliveries will be permitted.

20.1.2 Shipment to Storage. If any of the Parts cannot be received by Customer when ready due to any cause not attributable to Xylem, Xylem may ship and deliver such Parts to storage at a location mutually agreed to by the Parties. If such Parts are placed in storage, including storage at the facility where manufactured, the following conditions shall apply: (a) title and risk of loss shall thereupon pass to Customer; (b) any amounts otherwise payable to Xylem upon delivery or shipment shall be payable promptly following presentation of Xylem's invoices and certification of cause for storage; (c) all reasonable expenses incurred by Xylem, such as for preparation for and placement into storage, handling, inspection, preservation, , storage, removal charges and any taxes shall be payable by Customer promptly following submission of Xylem's invoices; and (d) when conditions permit and upon payment of all amounts due hereunder, Xylem shall resume delivery of the Parts to the originally agreed point of delivery. Xylem will have no obligation to the Customer to arrange insurance while Customer's goods are in storage at storage location and Customer will be solely responsible for obtaining insurance coverage.

20.1.3 Delivery of Parts. For shipments to a Facility located within the same country as the country of manufacture or origin of shipment, Xylem will deliver Parts DAP Customer's designated delivery location (per INCOTERMS 2020)

20.2 Passage of Title

- 20.2.1 Title will transfer to Customer upon delivery to Customer's designated delivery location. Title to Parts to be shipped from a country other than the United States shall pass to Customer after the Parts have been cleared for export and have arrived in international waters or international air space. Title to service work in progress at the Site shall pass as such services are performed. Notwithstanding anything to the contrary in this Agreement, Customer grants to Xylem a continuing security interest in and a lien upon the Parts supplied by Xylem under this Agreement and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Customer of all of its obligations to Xylem under the Agreement and all such other sales, and Customer will have no right to sell, encumber or dispose of the Parts. Customer's respective insurance policy for any such Xylem claim will include a waiver of subrogation in favor of Xylem. Customer will execute any and all financing statements and other documents and instruments and do and perform any and all other acts and things which Xylem may consider necessary, desirable, or appropriate to establish, perfect or protect Xylem's title, security interest and lien. In addition, Customer authorizes Xylem and its agents and employees to execute any and all such documents and instruments and do and perform any and all such acts and things, at Customer's expense, in Customer's name and on its behalf. Such documents and instruments may also be filed without the signature of Customer to the extent permitted by law.
- 20.2.2 **Passage of Title to Xylem.** Xylem shall have the right, at its option, to take title to and possession of, and remove from the Site, any parts or components of the Covered Unit(s) which have been replaced with Parts supplied by Xylem under this Agreement. Title to such parts and components shall pass from Customer to Xylem at the Site upon completion of the Outage during which the replacement Part is installed. Customer warrants to Xylem good title to such parts and components, free and clear of all liens, encumbrances and claims arising by or through any act or omission of Customer; provided, that CUSTOMER MAKES NO OTHER WARRANTIES WHATSOEVER WITH RESPECT TO SUCH PARTS, AND CUSTOMER HEREBY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

20.3 Risk of Loss

- 20.3.1 **Risk of Loss.** Risk of Loss will transfer to Customer upon delivery to Customer's designated delivery location.

Schedule 2 –Statement of Work

Xylem Responsibilities

Under this SOW, Xylem shall provide the New Material, Covered Maintenance, Repair of Collateral Damage, Additional Services, Agreement Management, and Monitoring and Performance Services. As described herein as a Life Cycle Services Contract over the term.

1. New Material:

Xylem shall provide New Material as defined in Schedule 3, Technical Specification; table 1. Defined New Material shall consist of 25 new Concertor Pumps for 10 Lift Stations, 10 Controllers for said pumps, 10 Flygt Cloudgate Modems, and associated hardware as listed. These 25 pumps, 10 controllers, and Flygt Cloudgate Modems are the Covered Units. For clarity, the associated hardware/Inspect Only Components are not considered as part of the Covered Unit.

2. Covered Maintenance:

For each Covered Unit as described in Schedule 3, from the Contract Effective Date to the Contract End Date applicable to such Covered Unit(s), Xylem shall provide Parts and Services necessary for the Covered Maintenance of the Covered Unit(s). At a mutually agreed date in the middle of each calendar year, Xylem's representative(s) and Customer's representative(s) shall meet to discuss maintenance planning and related Outages for the following calendar year. Where Customer and Xylem have agreed in advance that a particular Covered Maintenance event will be performed during a given time period, more detailed scheduling of the event work scope will be presented by Xylem as early as practical, and for any Covered Maintenance event that requires an Outage, such scheduling will be presented at a pre-Outage meeting. For any non-emergency Covered Maintenance, such pre-Outage meeting will occur approximately six (6) months prior to the anticipated start of that Covered Maintenance event. A post-Outage meeting will be scheduled after completion of each such Covered Maintenance event. The Assumptions are a significant factor in determining the anticipated Covered Maintenance schedule and work scope used by Xylem to develop the Agreement Price. If any Assumption Violation(s) occurs such that Xylem or the manufacturer recommends that periodic inspections be performed more frequently than anticipated, or that additional work be performed during maintenance Outages, the inspection interval and the Covered Maintenance program assumed by Xylem will be adjusted in accordance with Xylem's or the manufacturer's reasonable recommendations. Any Parts or services Xylem must provide or perform resulting from an Assumption Violation(s) shall be provided as Additional Services. In performing Covered Maintenance, Xylem shall not be responsible for the cost of removal or replacement of systems, structures, or parts of the Facility other than the subject Covered Unit(s) and such work and such costs beyond removal of the Covered Unit(s) as necessary for the performance of Covered Maintenance shall be paid as Additional Services.

3. Repair of Collateral Damage:

For each Covered Unit, from the Maintenance Start Date of the Covered Unit to the performance End Date applicable to such Covered Unit, Xylem shall provide and perform Repair of Collateral Damage for that Covered Unit.

The Customer shall pay Xylem for Parts and Services for Repair of Collateral Damage at the Time and Material Rates in effect at the time the work is performed less a ten percent (10) discount on Technical Advisory Services, Repair Services, and non-capital Parts; and twenty percent (20) discount on Capital Parts.

If the Covered Unit requires Repair of Collateral Damage during the Term of this Agreement, the Customer shall promptly notify Xylem in writing and promptly make the Covered Unit available for correction. Xylem shall thereupon correct any defect by (i) performing necessary Services, and (ii) at its option repairing and re-installing defective components of the Covered Unit or delivering necessary replacement Parts and installing such Parts.

4. Additional Services:

Xylem shall furnish Parts and services needed in the following circumstances, each of which shall constitute the provision of Additional Services under this Agreement:

- a) To assess the condition of, and to correct and address damage and other impact to, a Covered Unit and its maintenance arising from an Excluded Event;
- b) When requested by the Customer, to remedy defects arising from parts and/or services provided or performed by parties other than Xylem or Xylem's subcontractors acting under this Agreement; and
- c) To perform commercially available conversions, modifications and upgrades, and other work not constituting Covered Maintenance, Repair of Collateral Damage or Extra Work under the foregoing subsections, pursuant to this Agreement, to the extent mutually agreed upon by the Customer and Xylem.

Additional Services shall be provided at Time and Material Rates in effect at the time the work is performed less a ten percent (10) discount on Technical Advisory Services, Repair Services, and non-capital Parts; and a twenty percent (20) discount on Capital Parts.

5. Agreement Management:

As part of Xylem's management of this Agreement, commencing on or before the Contract Effective and continuing through the Term of the Agreement, Xylem will designate for this Agreement one or more individual(s), from time to time, each of whom shall function as and be denominated the "Single Point of Contact" or "SPOC". The SPOC will serve as a contact point for the Customer for matters respecting this Agreement. Other Xylem personnel and performance support methods may also be used by Xylem in connection with performance of this Agreement. The individual(s) and the title "Single Point of Contact" may change from time to time during the Term of this Agreement provided that Xylem will have an individual at all times required under this Agreement serving such a role regardless of the specific individual or job title used. The Customer shall have the right to approve the initially designated SPOC (s), such approval not to be unreasonably withheld. At any time thereafter, Xylem shall have the right to request, and therefore receive a qualified replacement of the SPOC for reasonable cause. Such replacement SPOC shall be mutually agreed to by the Parties. Site visits to be mutually agreed to by both parties.

The SPOC will diligently perform the following functions:

- Coordinate Covered Maintenance, Repair of Collateral Damage and Additional Services activities with the Customer
- Schedule and support periodic meetings
- Coordinate responses to technical inquiries
- Coordinate technical advice based on Xylem's current engineering, manufacturing, installation and operation practices as applicable to the Covered Units
- Work in a cooperative nature with the Customer's operations and maintenance personnel to ensure the mutually beneficial success of the Agreement

6. Monitoring and Performance Services:

Xylem in its performance of this Agreement, Xylem shall provide and install a Monitoring & Performance System(s), to monitor the Covered Units and/or its equipment and/or assist Xylem in its performance under this Agreement. Xylem's current brand for this service is Flygt Cloud. Xylem reserves the right to change the brand and or functionality of such system(s) as they develop.

7. Services and Other Deliverables

The following is the complete list of Services Xylem will provide under this SOW.

- a. Deliver the Equipment specified in Schedule 3
- b. Perform initial startup protocol and warranty registration

- c. Develop and execute the delivery plan in Schedule 4
- d. Provide Customer with password protected access to Xylem's Cloud SCADA System
- e. Provide Customer with the following training:
 - i. Virtual Subscription Services software immersion training
 - ii. Equipment Services operation and maintenance training
- f. Provide Customer with the O&M Manuals respective to the equipment
- g. Xylem will respond to any equipment failures within 24 hours of notification by the Customer

8. Customer Responsibilities (Support to be provided by District during installation and maintenance)

- a. Schedule installation maintenance activities with Xylem
- b. Hydraulic isolation of lift stations as required
- c. Electrical isolation of lift stations as required, following the stricter of Customer lock out tag out procedures or Xylem's lock out tag out procedures
- d. Procurement and installation of pump guide rails
- e. Procure and install discharge connections
- f. Supply of land power to the control panel
- g. Supply any confined space entry
- h. Provide local Safety Protocols and training and/or certifications as necessary to work at or near the lift station(s)
- i. Provide any site specific PPE or EHS equipment such as barricades, safety cones, traffic control, signage, and access to facility and specifically lift stations
- j. Should any bypass be required, Customer shall provide all bypass equipment and services
- k. Customer shall rotate (spin) each impeller and shaft of each spare pump every month using Prudent Industry Practices
- l. Receive, unload, inventory, and store material for this project
- m. Any site-specific anchoring and bracing of equipment inside the wet well (including anchor bolts for all discharge connections)
- n. Pouring of concrete pad for LS#24

9. Pricing and Payment Terms

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Yearly Price	\$170,000	\$180,200	\$191,012	\$202,473	\$214,621	\$35,109	\$37,215	\$39,448	\$41,815	\$44,324
Lump Sum	\$225,000									

Initial Lump sum of \$225,000 US Dollars for the delivery of twenty five (25) Concertor Pumps, to be invoiced upon delivery of the 20th pump to the Customer designated location and payable 30 days after invoice date.

Yearly fee of \$170,000 US Dollars, for the first year and escalated annually by 6% for the first five years, will be invoiced quarterly beginning on October 1, 2023 and payable 30 days after invoice date.

All calculations using whole dollar using standard rounding processes.

10. Term and Termination of SOW. This SOW will commence on [DATE] and will remain in full force and effect until [DATE].

10.1 Termination for Default

10.1.1 In the case of Termination for Cause pursuant to Section 18 of the Agreement, the Customer will pay Xylem the amount specified in Section 10.1.3 below ("Termination Amount") and, all payments required under this Agreement for Xylem's performance prior to the effective date of such termination and all payments due prior to such termination date shall be paid in accordance with this Agreement. The foregoing specified in this SOW Section 10 shall be the sole and exclusive rights and liabilities of Xylem, on account of termination for default and/or Insolvency and the breach giving rise to such termination.

10.1.2 The Parties recognize the difficulties involved in proving actual loss suffered. Accordingly, instead of requiring such proof, Customer and Xylem agree that the Termination Amount shall be paid as liquidated damages in lieu of any/all such actual damages and not as a penalty.

10.1.3 Termination Amounts. The table below specifies the Termination Amount applicable to a termination effective during each year.

Time Period after	The Termination Amount is:
Year 1	\$800,338.00
Year 2	\$630,338.00
Year 3	\$460,338.00
Year 4	\$290,338.00
Year 5	\$120,338.00
Year 6	\$96,270.00
Year 7	\$72,202.00
Year 8	\$50,000.00

10.1.4 Obligations Prior to Termination. Termination or expiration of this Agreement shall not relieve either Party of any obligation arising out of work performed prior to termination.

Signed for and on behalf of **Nevada County
Sanitation District**

Signed for and on behalf of **Xylem**

Name: Brad Torres
Position: Wastewater Operations Manager,
Nevada County Sanitation District

Name: Jeff Lucas
Position: VP, Business Development Contractual
Services

Date:

Date:

Exhibit A

Recommended Operating conditions include:

Liquid Temperature:	Maximum 40 ⁰ C (104 ⁰ F)
Liquid Density:	110 kg/m3 (9.2 lb. for each US gal) maximum
pH of the pumped media (liquid):	4.5-14
Depth of immersion:	Maximum 20m (65ft)

Schedule 3– Technical Specifications

Anticipated Schedule & Scope of Work

1 New Material:

Table 1

QTY	Covered Units/Equipment	Notes
17	Part Number Pending - 7.5hP 240V Pump, Concertor	LS#6, LS#8, LS#10, LS#11, LS#28, LS#29, LS#31
8	6020.091-0082 – 10hP 460V Pump, Concertor	LS#5, LS#24, LS#30,
10	MultiSmart Powered by Nexicon for Concertor	
10	14-50 01 71 -KIT,FLYGTCLLOUD CLOUDGATE 4G+ MODEM VERIZ/ATT HIGH GAIN DOME	
QTY	Inspect Only Components	Notes
10	Power Supply and Other Misc. Parts, other misc. consumable TBD, Terminal Blocks, Additional Wire from third party, DIN Rail	
20	748 18 90 - KIT, SLIDING BRACKET DN80 CI+ FOR 3" DISCHARGE 2"GB GREY EPO	
20	582 88 03 - SENSOR, ENM-10 0.95-1.1 40'	
10	84 62 31 -SENSOR, LEVEL LTU801 0-5M 12M	
10	14-40 41 41 - TRANSFORMER,34KVA 230D/460Y+ NEMA 3R FLOOR MOUNT	
20	14-60 30 26 -BATTERY, PM 12120, 12V 12AMP	
6	Panels	LS#8, LS#10, LS#11, LS#29, LS#30, LS#31
3	Transformer to take voltage to 460V	LS#5, LS#24, LS#30,
20	540 13 05 CONNECTION, DISCH 4X4" CI	
10	14-40 02 55 KIT, SURGE PROTECTION 460V+ STRIKESORB	
20	Adapter 748 18 63	Adapter elbows
	Spare Parts	Notes
4	Pressure Transducers - 846233 0-5 meter range, 30 meter cable	
2	Controllers	
2	Gateways	
2	I/O Expansion Cards	
1	HMI	

2 Covered Maintenance:

- a. Provide the following Covered Maintenance services for the Covered Units for the Term of the SOW
 - i. On a 12,000 operating hour basis, perform an external visual inspection, oil change, and any other factory recommended maintenance for the wastewater pumps as deemed necessary or unnecessary with The Use of New Technology
 - ii. On a daily basis, monitor equipment functionality of wastewater pumps via FLYGTCloud
- b. Provide the following unplanned maintenance services for the Covered Units for the Term; provided, however, that these services will not apply to any failures determined by Xylem to be caused by foreign objects, operation outside of Xylem's recommended parameters, handling damage by Customer, or similar events:
 - i. Perform repairs to Covered Units as required due to a mechanical failure deemed by Xylem to be caused by defect or other warrantable causes
 - ii. Perform repair to Covered Units as required due to issues resulting from 12,000 operating hour inspection

Schedule 4 - Delivery Plan

Day 1	Agreement signatures by both Parties
Day 8	Order Review
Day 10	Xylem to order new material as detailed in Schedule 3, Table 1
Day 20	Meeting between the Parties to plan installation at lift stations
Day 45	Materials arrived, inventoried at Customer location
Day 50	Material inventory physically verified by both Parties
Day 55-65	Installation of material at two or more lift stations
Day 65	Setup of FLYGT Cloud SCADA account for Customer contacts
Day 65-75	Installation of material at three or more lift station s
Day 75	Setup of FLYGT Cloud SCADA account for Customer contacts
Day 75-85	Installation of material at remaining lift stations
Day 85	Setup of FLYGT Cloud SCADA account for Customer contacts
Day 85-95	Commissioning of System and Product Training
Day 95	Review of Training and Product Performance
Day 96-98	Clean up punch list

"This Contract, which is made available to you is the sole and exclusive property of Xylem Inc. No third-party will acquire any proprietary rights in Xylem's equipment, systems, trade-secrets, software, technology, inventions (whether or not patentable), patents, patent applications, documentation, specifications, designs, data, databases, methods, processes or know-how ("Xylem Proprietary Technology") as provided or discussed herein. Any modifications or improvements to Xylem Proprietary Technology resulting herefrom will be the sole and exclusive property of Xylem."

