

**Town of Little Elm, Texas
Standard Contract for Services**

This Agreement is made by and between the Town of Little Elm, Texas, a Texas home-rule municipality (hereinafter referred to as the "Town") and [Xylem Water Solutions USA, Inc.](#) (hereinafter referred to as the "Provider") for [RFP 2024-16 Submersible Sewage Pump and Installation for Wastewater Treatment Plant](#), (hereinafter referred to as the "Project"). In consideration of the premises, covenants and mutual promises contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Town and the Provider hereby agree as follows:

1. **EMPLOYMENT OF THE PROVIDER.** The Town agrees to retain the Provider for, and the Provider agrees to provide services relative to, the following Project: [RFP 2024-16 Submersible Sewage Pump and Installation for Wastewater Treatment Plant](#) (hereinafter also referred to as "Services") in accordance with the terms and conditions as set forth in this Agreement and in Exhibit A, attached hereto and incorporated herein by reference.
2. **SCOPE OF SERVICES.** The Services to be performed are specified in [Exhibit A](#). Deviations from the agreed-upon scope of work of such Services may be authorized from time to time by the Town in writing.
3. **SCHEDULE OF WORK.** The Provider agrees to begin work upon receipt of written authorization from the Town. Time is of the essence for this Agreement and work is to commence immediately.
4. **CONTRACT PERIOD.** The contract period for this Agreement is for the duration of the project. All pricing is to remain firm during this contract period.
5. **COMPENSATION.** The Provider's total compensation for services to be performed and expenses to be incurred is specified in [Exhibit A](#), attached hereto and incorporated herein by reference.
6. **PAYMENTS.** Payments will be processed on a monthly basis with payment available within thirty (30) days after the Town's receipt of the invoice for the previous month's Services or as set forth in [Exhibit A](#).
7. **INVOICING.** Invoices should be prepared and submitted to the Town for payment in accordance with Exhibit A. Invoices should be mailed to Accounts Payable, Town of Little Elm, 100 W. Eldorado, Little Elm, TX 75068, or emailed to accounts.payable@littleelm.org.
8. **RIGHTS OF WITHHOLDING.** The Town may withhold any payment or partial payment otherwise due the Provider on account of unsatisfactory performance by the Provider. The amount to be withheld will be calculated based on the work not performed and the impact to the Town. Any payment or partial payment that may be withheld for unsatisfactory performance can be used to remedy the lack of performance and, if so used, will not be paid to the Provider.
9. **INFORMATION PROVIDED BY THE TOWN.** Although every effort has been or will be made to furnish accurate information, the Town does not guarantee the accuracy of information it furnishes to the Provider.
10. **INSURANCE.** The Provider shall provide proof that it has obtained and will continue to maintain throughout the duration of this Agreement the insurance requirements set forth in Exhibit A. Failure to maintain the required insurance may result in immediate termination of this Agreement.
11. **INDEMNIFICATION.** THE PROVIDER AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO INDEMNIFY AND HOLD HARMLESS THE TOWN, ITS OFFICERS, AGENTS, SERVANTS AND EMPLOYEES (HEREINAFTER COLLECTIVELY REFERRED TO AS "INDEMNITEES") FROM AND AGAINST SUITS, ACTIONS, CLAIMS, LOSSES, ANY DAMAGE, LIABILITY, AND FROM AND AGAINST ANY COSTS AND EXPENSES, INCLUDING, IN PART, ATTORNEY'S FEES INCIDENTAL TO THE DEFENSE OF SUCH SUITS,

ACTIONS CLAIMS, LOSSES, DAMAGES OR LIABILITY ON ACCOUNT OF INJURY, DISEASE, SICKNESS, INCLUDING DEATH, TO ANY PERSON OR DAMAGE TO PROPERTY INCLUDING, IN PART, THE LOSS OF USE RESULTING THEREFROM, ARISING FROM ANY NEGLIGENT ACT, ERROR OR OMISSION OF THE PROVIDER, ITS OFFICERS, EMPLOYEES, SERVANTS, AGENTS OR SUBCONTRACTORS, OR ANYONE ELSE UNDER THE PROVIDER'S DIRECTION AND CONTROL, AND ARISING OUT OF, RESULTING FROM, OR CAUSED BY THE PERFORMANCE OR FAILURE OF PERFORMANCE OF ANY WORK OR SERVICES UNDER THIS AGREEMENT, OR FROM CONDITIONS CREATED BY THE PERFORMANCE OR NON-PERFORMANCE OF SAID WORK OR SERVICES. IN THE EVENT ONE OR MORE OF THE INDEMNITEES IS DETERMINED BY A COURT OF LAW TO BE JOINTLY OR DERIVATIVELY NEGLIGENT OR LIABLE FOR SUCH DAMAGE OR INJURY, THE PROVIDER SHALL BE OBLIGATED TO INDEMNIFY INDEMNITEES AS PROVIDED HEREIN ON A PROPORTIONATE BASIS IN ACCORDANCE WITH THE FINAL JUDGMENT, AFTER ALL APPEALS ARE EXHAUSTED, DETERMINING SUCH JOINT OR DERIVATIVE NEGLIGENCE OR LIABILITY. THIS INDEMNIFICATION IS SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE, § 271.904(A) AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002(B), AS SAME MAY BE APPLICABLE TO PROVIDER AS A MATTER OF LAW.

12. **TRANSFER OF INTEREST.** Neither the Town nor the Provider may assign or transfer their interests in this Agreement without the prior written consent of the other Party. Such consent shall not be unreasonably withheld. This Agreement is binding on the Town, the Provider, and their successors and assigns. Nothing herein is to be construed as creating a personal liability on the part of any Town officer, employee or agent.
13. **AUDITS AND RECORDS.** At any time during normal business hours and as often as the Town may deem necessary, the Provider shall make available to the Town for examination all of its records with respect to all matters covered by this Agreement, and will permit the Town to audit, examine and make copies, excerpts, or transcripts from such records. The Town may also audit all contracts, invoices, payroll records of personnel, conditions of employment and other data relating to this Agreement.
14. **EQUAL EMPLOYMENT OPPORTUNITY.** The Provider shall not discriminate against any employee or applicant for employment because of age, race, color, religion, sex, national origin, disability or any other protected characteristic. The Provider shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their age, race, color, religion, sex, national origin, disability or any other protected characteristic. Such actions shall include, but not be limited to the following: employment, promotions, demotion, transfers, recruitment or recruitment advertising, layoffs, terminations, selection for training (including apprenticeships), and participation in recreational activities.

The Provider agrees to post in conspicuous places, accessible to employees and applicants for employment, notices setting forth the provisions of the nondiscrimination clause. The Provider will, in all solicitations or advertisements for employees placed by or on behalf of the Provider, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

The Provider will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each sub-Provider, except that the foregoing provisions shall not apply to contracts or subcontracts for customary office supplies.

The Provider shall keep records and submit reports concerning the racial and ethnic origin(s) of applicant employment and employees as the law may require.

15. **SECURITY BREACH NOTIFICATION.** Provider shall have policies and procedures in place for the effective management of Security Breaches, as defined below. In the event of any actual, attempted, suspected, threatened, or reasonably foreseeable circumstance Provider experiences or learns of that either compromises or could reasonably be expected to comprise Town data through unauthorized use, disclosure, or acquisition of Town data

("Security Breach"), Provider shall immediately notify Town of its discovery. After such notification, Provider shall, at its own expense, immediately: Investigate to determine the nature and extent of the Security Breach. Contain the incident by taking necessary action, including, but not limited to, attempting to recover records, revoking access, and/or correcting weaknesses in security. Report to Town the nature of the Security Breach, the Town data used or disclosed, the person who made the unauthorized use or received the unauthorized disclosure, what Provider has done or will do to mitigate any harmful effect of the unauthorized use or disclosure, and the corrective action Provider has taken or will take to prevent future similar unauthorized use or disclosure.

16. **SECURITY BREACH DEFINED.** The unauthorized acquisition of or access to Customer Data by an unauthorized person that compromises the security, confidentiality, or integrity of Customer Data, including instances in which internal personnel access systems in excess of their rights or use systems inappropriately. "Security Breach" shall also be deemed to include any breach or security, confidentiality, or privacy as defined by any applicable law, rule regulation, or order.

15. **TERMINATION OF CONTRACT.** The Town may terminate this Agreement upon thirty (30) days written notice to the Provider, except in the event (i) the Provider is in breach of this Agreement, or (ii) the Provider fails to comply with the terms of Exhibit A. If either of the foregoing conditions exists, the Town shall notify the Provider and the Provider shall be given seven (7) days to cure such breach or failure to comply. Should the Provider fail to cure to the satisfaction of the Town, the Town may terminate this Agreement upon written notice as provided herein.

Furthermore, the Town retains the right to terminate this Agreement at the expiration of each Town budget period (September 30) during the term of this Agreement, even without prior notice as described in the preceding sentence.

In the event of any termination hereunder, the Provider consents to the Town's selection of another Provider to assist the Town in any way in completing the Services. The Provider further agrees to cooperate and provide any information requested by the Town in connection with the completion of the Services.

The Provider shall be compensated for Services performed and expenses incurred for satisfactory work up to the termination date in that the Provider shall receive a portion of fees and expenses permitted under this Agreement in direct proportion to percentage of work actually completed up to the termination date. This provision shall not deprive the Town of any remedies against the Provider that may be available under applicable law.

16. **PROVIDER'S REPRESENTATIONS.** The Provider hereby represents to the Town that the Provider is financially solvent and possesses sufficient experience, licenses, authority, personnel, and working capital to complete the Services required under this Agreement.
17. **TOWN APPROVAL FOR ADDITIONAL WORK.** No payment, of any nature whatsoever, will be made to the Provider for additional work without the Town's written approval before such work begins.
18. **PERFORMANCE BY PROVIDER.** All Services provided by the Provider hereunder shall be performed in accordance with the highest professional standards and in accordance with Exhibit A, and the Provider shall be responsible for all Services provided hereunder whether such services are provided directly by the Provider or by any sub-Providers hired by the Provider. The Provider shall perform all duties and Services and make all decisions called for hereunder promptly and without unreasonable delay. The Provider shall not utilize sub-Providers to perform Services without the Town's prior written consent.

19. **DAMAGE.** In all instances where Town property and/or equipment is damaged by the Provider's employees, a full report of the facts, extent of the damage and estimated impact on the Provider's schedule shall be submitted to the Town by 8:00 a.m. of the following Town business day after the incident. If damage may result in further damages to the Town or loss of Town property, the Provider must notify Police Dispatch immediately. The Provider shall be fully liable for all damage to Town property or equipment caused by the Provider's officers, employees, agents or sub-Providers.
20. **TOWN OBJECTION TO PERSONNEL.** If at any time after entering into this Agreement, the Town has any reasonable objection to any of the Provider's personnel, or any personnel retained by the Provider, then the Provider shall promptly propose substitutes to whom the Town has no reasonable objection, and the Provider's compensation shall be equitably adjusted to reflect any difference in the Provider's costs occasioned by such substitution.
21. **COMPLIANCE WITH LAWS.** The Provider warrants and covenants to the Town that all Services will be performed in compliance with all applicable federal, state, county and Town laws, rules, and regulations including, but not limited to, the Texas Industrial Safety and Health Act and the Workers Right-to-Know Law. All necessary precautions shall be taken to assure that safety regulations prescribed by OSHA and the Town are followed.
22. **NON-BINDING MEDIATION.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved informally by the Town and the Provider, the Town and the Provider agree to submit such disagreement to non-binding mediation before pursuing any other legal remedy.
23. **ENTIRE CONTRACT.** This Agreement together with Exhibit A and B, attached hereto and any other exhibit attached hereto contains the entire contract between the Town and the Provider concerning the Services for the Project. There will be no understandings or contracts other than those incorporated herein. This Agreement may not be modified except by an instrument in writing signed by the Parties hereto. In the event of a conflict between an attachment to this Agreement and this Agreement, this Agreement shall control.
24. **MAILING ADDRESSES.** All notices and communications concerning this Agreement are to be mailed or delivered to the addresses shown below unless and until the other Party is otherwise notified in writing of a different address:

Town of Little Elm
Rebecca Hunter, CPPB
Purchasing Manager
100 W. Eldorado
Little Elm, TX 75068
rhunter@littleelm.org

Xylem Water Solutions USA, Inc.
Name:
Title:
Street Address:
City, State, Zip:
Email:

Any notices and communications required to be given in writing by one Party or the other shall be considered as having been given to the addressee on the date in the notice or communication is placed in the United States Mail or hand-delivered.

25. **LEGAL CONSTRUCTION.** If any one or more of the provisions contained in this Agreement for any reason is held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been included.
26. **GOVERNING LAW.** The validity of this Agreement and any of its terms or provisions as well as the rights and duties of the Parties hereunder, shall be governed by and construed in accordance with Texas law. Exclusive venue for any legal action concerning this Agreement shall be located in Denton County, Texas.

27. **COUNTERPARTS.** This Agreement may be signed in multiple counterparts, each of which shall be deemed to be an original.
28. **EFFECTIVE DATE.** This Agreement shall be effective once it is signed by the Town and the Provider, as indicated below.

EXECUTED in single or multiple originals, this _____ day of _____, 2024.

TOWN OF LITTLE ELM

Xylem Water Solutions USA, Inc.

Matt Mueller, Town Manager

Type/Print Name and Title