

**NORTH CAROLINA
DURHAM COUNTY****SERVICE CONTRACT**

THIS CONTRACT is made, and entered into this the **20th day of March, 2018**, by and between the **COUNTY of DURHAM**, a political subdivision of the State of North Carolina, (hereinafter referred to as "COUNTY"), and **XYLEM DEWATERING SOLUTIONS, INC. dba GODWIN PUMPS OF AMERCIA**, a corporation duly authorized to do business in the state of North Carolina, (hereinafter referred to as "CONTRACTOR").

For and in consideration of mutual promises to each as herein after set forth, the parties hereto do mutually agree as follows:

1. **SCOPE OF SERVICES.** CONTRACTOR hereby agrees to provide the services and/or materials under this contract pursuant to the provisions and specifications identified in "Attachment 1" (hereinafter collectively referred to as "Services"). Attachment 1 is hereby incorporated herein and made a part of this contract. Time is of the essence with respect to all provisions of this contract that specify a time for performance.

The COUNTY will perform on-going contract monitoring to ensure that the terms of this contract are complied with. CONTRACTOR agrees to cooperate with the COUNTY in its monitoring process and provide documentation and/or information requested during the term of this Agreement for the purpose of monitoring the services provided by CONTRACTOR.

2. **TERM OF CONTRACT.** The Term of this contract for services is from **March 20, 2018 to June 30, 2018**, unless sooner terminated as provided herein.
3. **PAYMENT TO CONTRACTOR.** CONTRACTOR shall receive from COUNTY an amount not to exceed **Fifteen thousand and No/100 Dollars (\$15,000.00)** as full compensation for the provision of Services. COUNTY agrees to pay CONTRACTOR at the rates specified for Services performed to the satisfaction of the COUNTY, in accordance with this contract, and Attachment 1. Unless otherwise specified, CONTRACTOR shall submit an itemized invoice to COUNTY by the end of the month during which Services are performed. A Funds Reservation number may be assigned to encumber the funds associated with this contract and must appear on all invoices and correspondence mailed to Purchaser. Payment will be processed promptly upon receipt and approval of the invoice by COUNTY.
4. **INDEPENDENT CONTRACTOR.** COUNTY and CONTRACTOR agree that CONTRACTOR is an independent contractor and shall not represent itself as an agent or employee of COUNTY for any purpose in the performance of CONTRACTOR's duties under this Contract. Accordingly, CONTRACTOR shall be responsible for payment of all federal, state and local taxes as well as business license fees arising out of CONTRACTOR's activities in accordance with this Contract. For purposes of this contract taxes shall include, but not be limited to, Federal and State Income, Social Security and Unemployment Insurance taxes.

CONTRACTOR, as an independent contractor, shall perform the Services required hereunder in a professional manner and in accordance with the standards of applicable professional organizations and licensing agencies.

5. **INDEMNIFICATION.** To the fullest extent permitted by laws and regulations, CONTRACTOR shall indemnify and hold harmless the COUNTY and its officials, agents, and employees from and against all claims, damages, losses, and expenses, direct, indirect, or consequential (including but not limited to fees and charges of engineers or architects, attorneys, and other professionals and costs related to court action or mediation) arising out of or resulting from CONTRACTOR's performance of this Contract or the actions of the CONTRACTOR or its officials, employees, or subcontractors under this Contract or under contracts entered into by the CONTRACTOR in connection with this Contract. This indemnification shall survive the termination of this Contract.

In claims against any person or entity indemnified under this provision by an employee of the CONTRACTOR, a subcontractor, an employee of a subcontractor, or an agent of the CONTRACTOR or a subcontractor, the indemnification obligation under this provision shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the CONTRACTOR or a subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

- 6. INSURANCE.** CONTRACTOR shall procure and maintain for the duration of the contract the following insurance coverage from an insurance company(s) possessing a rating of A-VII or higher from the A.M. Best Company and licensed to do business in North Carolina. All of the policies required of the CONTRACTOR shall contain a waiver of subrogation provision to waive all rights of recovery under subrogation or otherwise against the COUNTY. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "waiver of subrogation" this contract shall govern. CONTRACTOR shall advise the COUNTY of any cancellation, non-renewal, or material change in any policy within ten (10) days of notification of such action and provide updated certificates of insurance evidencing renewals within fifteen (15) days of expiration. CONTRACTOR'S insurance shall be primary and any insurance or self-funded liability programs maintained by the COUNTY shall not contribute with respect to the CONTRACTOR's insurance. COUNTY shall not be listed as an additional insured on any Insurance Policy or Certificate of Insurance of the CONTRACTOR. In the event CONTRACTOR'S Insurance Policy or Certificate of Insurance conflicts with the aforesaid language concerning "additional insured" this contract shall govern.

6.1 Commercial General Liability: Insurance Services Office (ISO) Form CG 00 01 on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than **\$1,000,000** per occurrence and **\$2,000,000** aggregate.

6.2 Commercial Automobile Liability: ISO Form CA 00 01 covering any auto with limit not less than **\$1,000,000** per accident for bodily injury and property damage.

6.3 Worker's Compensation and Employers Liability: as required by The State of North Carolina, with statutory limits, and Employers Liability Insurance with a limit of no less than \$1,000,000 per occurrence.

By requiring insurance herein, the COUNTY does not represent that coverage and limits will necessarily be adequate to protect CONTRACTOR, and such coverage and limits shall not be deemed as a limitation on CONTRACTOR's liability under the indemnities granted to the COUNTY in this Contract. CONTRACTOR shall provide the COUNTY a valid certificate of insurance, in advance of the performance of any work, exhibiting coverage required. CONTRACTOR shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein.

The failure of the COUNTY at any time to enforce the insurance provisions, to demand such certificates of insurance, or to identify a deficiency shall not constitute a waiver of those provisions, nor reduce obligations of the CONTRACTOR to maintain such insurance or to meet its obligations under the indemnification provisions. Notwithstanding the foregoing, nothing contained in this section shall be deemed to constitute a waiver of the governmental immunity of the COUNTY, which immunity is hereby reserved to the COUNTY.

7. TERMINATION.

7.1. EVENT OF DEFAULT. Any one or more of the following acts or omissions of the Contractor shall constitute an Event of Default hereunder:

- a. Failure to perform the Services satisfactorily or on schedule,
- b. Failure to submit any report required hereunder; and/or
- c. Failure to perform any other covenant, term, or condition of this Agreement.

Upon the occurrence of an Event of Default, the County may take one or more or all of the following actions:

1. Give Contractor written Notice of the Event of Default, specifying the Event of Default and requiring it to be remedied within, in the absence of greater or lesser specification of time, seven (7) calendar days from the date of the notice; and if the Event of Default is not timely remedied, terminate the agreement, effective two (2) days after giving the Contractor written Notice of Termination; and/or
2. Deduct any and all expenses incurred by the County for damages caused by the Contractor's Event of Default; and/or
3. Treat the agreement as breached and pursue any of its remedies at law or in equity, or both, including damages and specific performance.

7.2 TERMINATION FOR CONVENIENCE. This Contract may be terminated, without cause, by either party upon thirty (30) days written notice to the other party. This termination notice period shall begin upon receipt of the Notice of Termination.

Termination of this Contract, under either section 7.1 or 7.2, shall not form the basis of any claim for loss of anticipated profits by either party.

- 8. COUNTY NOT RESPONSIBLE FOR EXPENSES.** COUNTY shall not be liable to CONTRACTOR for any expenses paid or incurred by CONTRACTOR, unless otherwise agreed in writing.
- 9. EQUIPMENT.** CONTRACTOR shall supply, at its sole expense, all equipment, tools, materials, and/or supplies required to provide Services hereunder, unless otherwise agreed in writing.
- 10. COMPLIANCE WITH LAWS.** CONTRACTOR shall abide by all statutes, rules, regulations, laws, and executive orders Federal, State and Local as they relate to, but are not limited to, (i) services in general, (ii) payment of employees, subcontractors and agents, (iii) the Fair Labor Standards Act and (iv) the Wage and Hour Division. In the event CONTRACTOR is determined by the final order of a court or appropriate agency to be in violation of any Federal, State or Local statute, rule, regulation, law or executive order or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY and CONTRACTOR may be declared ineligible for further COUNTY contracts.
- 11. HEALTH AND SAFETY.** CONTRACTOR shall be responsible for initiating, maintaining and supervising all safety precautions and programs required by OSHA and all other regulatory agencies while providing Services under this Contract.
- 12. NON-DISCRIMINATION IN EMPLOYMENT.** CONTRACTOR shall not discriminate against any employee or applicant for employment because of age, sex, race, creed, national origin, or disability. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed and that employees are treated fairly and legally during employment with regard to their age, sex, race, creed, national origin, or disability. In the event CONTRACTOR is determined by the final order of an appropriate agency or court to be in violation of any non-discrimination provision of federal, state or local law or this provision, this Contract may be canceled, terminated or suspended in whole or in part by COUNTY, and CONTRACTOR may be declared ineligible for further COUNTY contracts.
- 13. EMPLOYMENT ADVERTISING REQUIREMENTS.** CONTRACTOR shall post local job openings, in connection with this contract, with the City of Durham's Office of Economic and Workforce Development, the North Carolina Department of Commerce-Division of Employment Services (formerly ESC, Employment Security Commission) and with the Durham County Department of Social Services throughout the term of this Agreement; provided that the foregoing requirement does not limit CONTRACTOR'S ability to advertise and/or otherwise post job openings with other organizations or media outlets.

This information will be updated by the Contractor and submitted to the Sheriff's Office annually, 90 days prior to the renewal or extension of the contract. Personnel without a currently approved background check will have their access to those buildings restricted.

- 17. AUDIT RIGHTS.** For all Services being provided hereunder, COUNTY shall have the right to inspect, examine, and make copies of any and all books, accounts, invoices, records and other writings relating to the performance of the Services. Audits shall take place at times and locations mutually agreed upon by both parties. Notwithstanding the foregoing, CONTRACTOR must make the materials to be audited available within one (1) week of the request for them.
- 18. DISPUTE RESOLUTION PROCEDURE.** To prevent disputes and litigation, it is agreed by the parties that any claim or dispute between COUNTY and the CONTRACTOR, arising from this Agreement or the services and/or materials being provided by the CONTRACTOR, shall be sent to the Durham County Manager who shall appoint a qualified mediator to address the issue. Such request shall be submitted to the County Manager in writing within ten (10) days of the claim or dispute. Upon receipt of a timely written claim, the Manager, or his designee, shall notify the Mediator who will conduct a mediation and notify the CONTRACTOR in writing of the decision within forty five (45) calendar days from the date of the submission of the claim or dispute, unless the Mediator requires additional time to gather information or allow the parties to provide additional information. The Mediator's orders, decisions and decrees shall be non-binding. Mediation, pursuant to this provision, shall be a pre-condition to initiating litigation concerning the dispute. During the pendency of any dispute and after a determination thereof, parties to the dispute shall act in good faith to mitigate any potential damages including utilization of schedule changes and alternate means of providing services and/or materials. The costs of mediation shall be divided equally between parties to the dispute.

The mediation session shall be private and shall be held in Durham County, North Carolina. Mediation under this provision shall not be the cause for a delay of services and/or materials being provided which is the focus of the dispute.

If the disputed issue cannot be resolved in mediation or either party disagrees with the results of the mediation, the parties may seek resolution in the General Court of Justice in the County of Durham and the State of North Carolina. If a party fails to comply in strict accordance with the requirements of this provision, the non-complying party specifically waives all of its rights provided hereunder, including its rights and remedies under State law.

- 19. EXISTENCE.** CONTRACTOR warrants that it is a corporation or otherwise legal entity duly organized, validly existing, and in good standing under the laws of the State of North Carolina and is duly qualified to do business in the State of North Carolina and has full power and authority to enter into and fulfill all the terms and conditions of this contract.
- 20. CORPORATE AUTHORITY.** By execution hereof, the person signing for CONTRACTOR below certifies that he/she has read this contract and that he/she is duly authorized to execute this contract on behalf of the CONTRACTOR.
- 21. SUCCESSORS AND ASSIGNS.** CONTRACTOR shall not assign its interest in this Contract without the written consent of COUNTY. CONTRACTOR has no authority to enter into contracts on behalf of COUNTY.

22. NOTICES. All notices which may be required by this contract or any rule of law shall be effective when received by certified mail sent to the following addresses:

**COUNTY OF DURHAM
ATTN: PURCHASING DEPARTMENT
4TH FLOOR, 200 EAST MAIN STREET
DURHAM, NORTH CAROLINA 27701**

**CONTRACTOR
XYLEM DEWATERING SOLUTIONS, INC.
300 SIGMA DRIVE
GARNER, NORTH CAROLINA 27529**

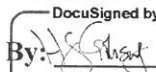
23. HEADINGS. The subject headings of the sections are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions. This contract shall be deemed to have been drafted by both parties and no interpretation shall be made to the contrary.

24. GOVERNING LAW. This Contract shall be governed by and in accordance with the laws of the State of North Carolina. All actions relating in any way to this Contract shall be brought in the General Court of Justice in the County of Durham and the State of North Carolina.

25. ENTIRE CONTRACT. This contract, including Attachment 1, shall constitute the entire understanding between COUNTY and CONTRACTOR and shall supersede all prior understandings and agreements relating to the subject matter hereof and may be amended only by written mutual agreement of the parties.

IN TESTIMONY WHEREOF, the parties have expressed their agreement to these terms by causing this Service Contract to be executed by their duly authorized officer or agent.

COUNTY OF DURHAM

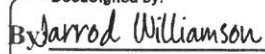
DocuSigned by:
By: 
Jay Gibson, General Manager

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

DocuSigned by:

Susan Teyai, Durham County Chief Financial Officer

XYLEM DEWATERING SOLUTIONS, INC. dba GODWIN PUMPS OF AMERICA

DocuSigned by:
By: 
Jarrod Williamson, Southeast Region Sales Manager

"ATTACHMENTS" to follow

ATTACHMENT 1 SCOPE OF SERVICES

This Scope of Services is an integral part of this contract between the **COUNTY OF DURHAM** (hereinafter referred to as "County"), and **XYLEM DEWATERING SOLUTIONS, INC. dba GODWIN PUMPS OF AMERICA**, (hereinafter referred to as "Contractor"), which contract is dated **March 20, 2018**.

CONTRACTOR hereby agrees to provide services and/or materials to the County pursuant to the provisions set forth below.

- I. **Background/Purpose:** The purpose and intent of this request is to establish a contract with Xylem for the provision of pumps and associated piping equipment when needed. This shall include pump provision for spills, pump station failure, by-pass jobs, and other emergency occasions. The County will pay the Contractor by the hour, by the day or by the week for pumps and piping of various sizes, as required per job.
- II. **References:** The following documents are incorporated herein by reference to them:
 - Xylem's Quote/Rate Sheet – Project Code #B4120541, dated February 16, 2018

For engineering, architectural and surveying contracts, and contracts not bid through Purchasing, please reference MWBE subcontractor utilization below, if any:

Contractor is expected to expend a minimum of N/A% of the \$N/A total dollar amount of this contract with minority business enterprise(s), and subcontracted to the following firms listed below.

Name & Telephone Number	Minority Category*	Work Description	Dollar Value
<i>NOT APPLICABLE TO THIS CONTRACT</i>			

*Minority categories: Black/African American (B), Hispanic (H), Asian American (A), American Indian (I), Female (F)

- III. **Work/Requirements:** Services shall be provided at the Triangle Wastewater Treatment Plant (TWWTP), pump stations transporting flow to the TWWTP, or pipelines transmitting flow to the TWWTP on an as needed basis or during emergency situations such as spills or pump station failures.
- IV. **Schedules/Timelines:** The Contractor shall provide service to the County on an on-call/as needed basis. This includes after hours and weekends.
- V. **Transmittal/Delivery/Accessibility:** Contractor will be escorted by County staff at all times while on County property and at off-site locations. Our primary contact at Xylem is Phil Morris, Phone: (919) 661-6061, Cell: (919) 868-0392, E-mail: phil.morris@xylem.com. Stephen Phillips, Utility Supervisor, Desk: (919) 560-9048, Cell: (919) 697-0356, E-mail: sphillips@dconc.gov, will be the primary Durham County contact with Greg Johnson, Superintendent, Desk: (919) 560-9038, Cell: (919) 730-1780, E-mail: gwjohnson@dconc.gov, as the secondary contact.
- VI. **Payment:** Invoices and/or additional submittals shall be forwarded to County Primary Contact for review. Upon payment authorization, invoices will be paid net 30. Invoices and forms submitted **MUST** reference Durham County Funds Reservation Number assigned to this contract. Authorization of payments will be forwarded to the Finance Department dependent on receipt of all forms. The County may withhold payment if required reports or submittals are not received. For this work the contractor will be paid per submitted invoices, based on quoted rates, up to an annual total not to exceed of \$15,000.00, in accordance with Durham County Policies and Terms of Agreement following work completion. Invoices should be mailed to Durham County Utilities Division, ATTN: Accounts Payable, 5926 Highway 55 East, Durham, NC 27713.