

Recorder's Office Cover Sheet

Recording Requested By:

Name: Rick Robillard

Department: Public Works



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SHAWNYNE GARREN, RECORDER

Type of Document: (please select one)

- Agreement
- Contract
- Grant
- Change Order
- Easement
- Other

specify: \_\_\_\_\_

**CONTRACT FOR PRODUCTS AND SERVICES BY AN INDEPENDENT CONTRACTOR**

A CONTRACT BETWEEN

**DOUGLAS COUNTY, NEVADA**

AND

***XYLEM WATER SOLUTIONS U.S.A., INC.***

FILED

NO. 2023.066

5/9/2023

DATE

DOUGLAS COUNTY CLERK  
MINDEN, NV

BY [Signature] DEPUTY

This Contract for Services by an Independent Contractor (the "Contract") is entered into by and between Douglas County, a political subdivision of the State of Nevada (the "County"), and *Xylem Water Solutions U.S.A., Inc.*, a Nevada Corporation (NV20161647387) ("Contractor"). The County and Contractor are at times collectively referred to hereinafter as the "Parties" or individually as the "Party."

**WHEREAS**, Douglas County, a political subdivision of the State of Nevada, from time to time requires the services of independent contractors; and

**WHEREAS**, it is deemed that the services of Contractor herein specified are both necessary and desirable and in the best interests of Douglas County; and

**WHEREAS**, Contractor represents that Contractor is duly qualified, equipped, staffed, ready, willing and able to perform and render the services hereinafter described.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Contractor mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Contract will become effective on the date it is approved and signed by representatives of both Parties ("Effective Date"). Unless earlier terminated as set forth in paragraph 7, the terms of this Contract shall remain in effect for the duration of the Service Period, as more particularly set forth in Paragraph 4. Time is of the essence in this Contract.

**2. INDEPENDENT CONTRACTOR STATUS.** The Parties agree that Contractor, his associates and employees shall have the status of an independent contractors and that this contract, by explicit agreement of the parties, incorporates and applies the provisions of NRS 333.700, as necessarily adapted to the parties, including that Contractor is not a Douglas County employee and that there shall be no:

- 1) Withholding of income taxes by the County;
- 2) Industrial insurance coverage provided by the County;
- 3) Participation in group insurance plans which may be available to employees of the County;

- 4) Participation or contributions by either the independent contractor or the County to the public employees' retirement system;
- 5) Accumulation of vacation leave or sick leave;
- 6) Unemployment compensation coverage provided by the County if the requirements of NRS 612.085 for independent contractors are met.

Contractor and County agree to the following rights and obligations consistent with an independent contractor relationship between the Parties:

- a. Contractor has the right to perform services for others during the term of this Agreement.
- b. Contractor has the sole right to control and direct the means, manner and method by which the services required by this Agreement will be performed.
- c. Contractor shall not be assigned a work location on County premises.
- d. Contractor, at Contractor's sole expense, will furnish all equipment and materials used to provide the services required by this Agreement.
- e. Contractor, at Contractor's sole expense, has the right to hire assistants as subcontractors, or to use Contractor's employees to provide the services required by this Agreement.
- f. Contractor or Contractor's employees or contract personnel shall perform the services required by this Agreement, and Contractor agrees to the faithful performance and delivery of described services in accordance with the time frames contained herein; County shall not hire, supervise or pay any assistants to help Contractor.
- g. Neither Contractor nor contractor's employees or contract personnel shall receive any training from County in the skills necessary to perform the services required by this Agreement.
- h. County shall not require Contractor or Contractor's employees or contract personnel to devote full time to performing the services required by this Agreement.
- i. Contractor understands that Contractor is solely responsible to pay any federal and state taxes and/or any social security or related payments applicable to money received for services provided under the terms of this contract. Contractor understands that an IRS Form 1099 will be filed by County for all payments County makes to Contractor.

**3. INDUSTRIAL INSURANCE.** Contractor further agrees that, prior to the commencement of any work and as a precondition to any obligation of the County to make any payment under the Contract, Contractor will provide the County with a work certificate and/or a certificate issued by a qualified insurer in accordance with NRS 616B.627. Contractor also agrees that, prior to commencing any work under the Contract, Contractor will complete and provide evidence to the County that Contractor has made the following written request to Contractor's insurer:

*Xylem Water Solutions U.S.A., Inc. has entered into a contract with Douglas County to perform services through approximately July 1, 2027.*

*and requests that an authorized insurer provide to Douglas County: (1) A certificate of coverage issued pursuant to NRS 616B.627 and (2) Notice of any lapse in coverage or nonpayment of coverage that the Contractor is required to maintain.*

*The certificate and notice should be mailed to:*

*Douglas County  
Douglas County Public Works  
ATTN: Nicholas Charles  
Post Office Box 218  
Minden, Nevada 89423*

Contractor agrees to maintain all required workers' compensation coverage throughout the entire term of the Contract. If Contractor does not maintain the required coverage throughout the entire term of the Contract, Contractor agrees that the County may, at any time the coverage is not maintained by Contractor, order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County. For each six-month period this Contract is in effect, Contractor agrees, prior to the expiration of the six-month period, to provide another written request to the insurer for the provision of a certificate and notice of lapse in, or nonpayment of, insurance coverage. If Contractor does not make the request or does not provide the certificate before the expiration of the six-month period, Contractor agrees that the County may order the Contractor to stop work, suspend the Contract, or terminate the Contract at the sole discretion of the County.

Contractor may, in lieu of furnishing a certificate of an insurer, provide an affidavit indicating that Contractor is a sole proprietor and that:

- A. In accordance with the provisions of NRS 616B.659, has not elected to be included within the terms, conditions and provisions of chapters 616A to 616D, inclusive, of NRS; and
- B. Is otherwise in compliance with those terms, conditions and provisions

**4. SERVICES TO BE PERFORMED.** The Parties agree that the Contractor will perform services related to: annual preventative maintenance, including a 20 point inspection, on 28 Flygt branded pumps and mixers. The materials and services are more particularly described in Exhibit A (February 15, 2023 letter from Xylem Service Solutions) and Exhibit B (list of Flygt pumps and mixers).

**5. PAYMENT FOR SERVICES.** Contractor agrees to provide the services set forth in Paragraph 4 for a total cost not to exceed sixty-one thousand two hundred fifty Dollars (\$61,250.00) (the "Contract Price"). Contract work will be completed annually with an annual cost not to exceed twelve thousand two hundred fifty Dollars (\$12,250.00) for each year of the contract. Unless Contractor has received a written exemption from the County, Contractor shall submit monthly requests for payment for services performed under this Contract. Requests for payment shall be submitted no later than fifteen (15) days after the end of a month and must include a detailed summary of the expenditures reported in a form that supports the approved budget. Specifically, Contractor agrees to provide with each request for payment a schedule of

actual expenditures for the period, cumulative total expenditures for the entire contract, and a comparison of cumulative total expenditures to the maximum expected fee for the services and tasks set forth in Paragraph 4.

**6. WARRANTY.** Contractor agrees and hereby provides, warrants and represents each of the following with respect to any services provided under this Contract: the services, installations, or work performed under this Contract shall be free of defects in material and workmanship for a period of 365 days following the completion of such work. This term shall not be construed as a limitation on any other remedies that might be available to the County. The services will be provided in a professional and workman like manner and in conformity with the professional standards for comparable services in the industry, and shall comply with the applicable specifications or other requirements set forth in this Agreement.

**7. TERMINATION OF CONTRACT.** Either Party may terminate the Contract for cause if the other Party fails to correct any breach of the terms of the Contract within 30 days after receiving notice of such breach and having been given a reasonable opportunity to cure the breach. Provided, however, that except as otherwise set forth in this Contract, early termination will not relieve a Party of any obligation that became due prior to the date of termination.

**8. LICENSING.** Contractor agrees to maintain any required licenses to perform any services for County. The failure to maintain any required license will result in immediate termination of this Contract.

**9. GENERAL LIABILITY INSURANCE.** Douglas County's liability coverage will not extend to the Contractor and Contractor is required to acquire and maintain general liability insurance in the minimum amount of \$1,000,000 during the term of this Contract at Contractor's sole expense. Proof of insurance must be sent to the Douglas County Manager. Such proof of insurance must be provided at least annually throughout the term of this Contract and Douglas County must be notified at least 30 days in advance of any cancellation or nonrenewal of such insurance.

**10. MUTUAL WAIVER AND LIMITATION OF LIABILITY.** Contractor and County (inclusive of their respective officers, directors, members, partners, subcontractors, and employees) shall not be liable to each other for loss of profit or revenue, loss of use or business opportunity, loss of contract, cost of obtaining alternative performance, or for any indirect, consequential, special, incidental and punitive damages. The aggregate liability of each party, whether under contract law, in tort (including negligence), or otherwise, is limited to the total amount actually paid by County to Contractor in the twelve (12) months prior to the event giving rise to a claim ("Cap"). This Cap does not apply to: (a) costs, losses, or damages asserted by third parties for destruction of tangible property, (b) bodily injury, sickness, or death of any persons; or (c) gross negligence or willful misconduct.

**11. NONAPPROPRIATION.** All payments required pursuant to the Contract are contingent upon the availability of County funds. In accordance with NRS 354.626 and any other applicable provision of law, the financial obligations between the Parties will not exceed those monies appropriated and approved by the County for the Contract for the then current fiscal year under the Local Government Budget Act. The Contract will terminate and the

County's obligations will be extinguished if the County fails to appropriate the necessary funding.

Nothing in the Contract will be construed to provide Contractor with a right of payment from any entity other than the County. Any funds budgeted by the County pursuant to the terms of the Contract that are not paid to Contractor will automatically revert to the County's discretionary control upon the completion, termination, or cancellation of the Contract. The County will not have any obligation to re-award or to provide, in any manner, the unexpended funds to Contractor. Contractor will have no claim of any sort to the unexpended funds.

**12. CONSTRUCTION OF CONTRACT.** The Contract will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Contract. The Contract Documents consist of this document, Exhibit A, and Exhibit B. The Parties agree to be bound by the terms, conditions and specifications set forth in all Contract Documents, except as specifically modified or amended. The terms of the Contract Documents shall, to the extent reasonably practical, be read as complimentary to one another. In the event of an irreconcilable conflict between the terms of the Contract Documents, the terms of this document shall prevail, thereafter the terms of Exhibit A, and Exhibit B.

**13. DISPUTE RESOLUTION.** In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Contract before an independent mediator mutually agreed to by the parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party at the discretion of the court.

**14. COMPLIANCE WITH APPLICABLE LAWS.** Contractor promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Contract, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws.

**15. ASSIGNMENT.** Contractor will neither assign, transfer nor delegate any rights, obligations or duties under the Contract without the prior written consent of the County.

**16. COUNTY INSPECTION.** The books, records, documents and accounting procedures and practices of Contractor related to the Contract will be subject to inspection, examination and audit by the County, including, but not limited to, the contracting agency, the County Manager, the District Attorney, and, if applicable, the Comptroller General of the United States, or any authorized representative of those entities.



**17. DISPOSITION OF CONTRACT MATERIALS.** Any books, reports, studies, photographs, negatives or other documents, data, drawings or other materials prepared by or supplied to Contractor in the performance of its obligations under the Contract (the "Materials") will be the exclusive property of the County and all such materials will be remitted and delivered, at Contractor's expense, to the County by Contractor upon the completion, termination or cancellation of the contract. Alternatively, if the County provides its written approval to Contractor, the Materials must be retained by Contractor for a minimum of six years after Contractor's receipt of the final payment from County and all other pending matters are closed. If, at any time during the retention period, the County, in writing, requests any or all of the Materials, then Contractor will promptly remit and deliver the materials, at Contractor's expense, to the County. Unless the County has requested the remittance and delivery by Contractor of the Materials, Contractor will not use, willingly allow or cause to have such Materials used for any purpose other than the performance of Contractor's obligations under the terms of the Contract without the prior written consent of the County.

**18. PUBLIC RECORDS LAW.** Contractor expressly understands and agrees that all documents submitted, filed, or deposited with the County by Contractor, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Contractor expressly and indefinitely waives all of its rights to bring, including but not limited to, by way complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

**19. INDEMNIFICATION.** Contractor agrees to indemnify, defend, and save and hold the County, its agents and employees harmless from any and all claims, causes of action or liability arising from or related to Contractor's negligent performance pursuant to the terms of the Contract by Contractor or Contractor's agents or employees.

**20. MODIFICATION OF CONTRACT.** The Contract and the attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**21. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this agreement. Each signatory individually warrants that he or she is authorized to sign on behalf of the party for whom he or she is signing.

**22. STANDARD OF CARE.** Contractor will perform all services in a manner consistent with that level of care and skill ordinarily exercised by other members of Contractor's profession currently practicing in the same locality under similar conditions.

**23. WAIVER OF LIEN.** Contractor understands and agrees that the services it will render to the County are not intended for the improvement of real property or to otherwise grant any rights to Contractor pursuant to NRS chapter 108.

**24. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Contractor or County.

**25. FORCE MAJEURE.** Neither Party shall be deemed to be in violation of this Agreement if it is prevented from performing any of its obligations hereunder due to protests, strikes, legal impossibility, failure of public transportation, civil or military authority, act of public enemy, accidents, fires, explosions, emergencies or acts of God, including, without limitation, earthquakes, floods, winds, or storms. In such an event, the intervening cause must not be through the fault of the Party asserting such an excuse, and the excused Party is obligated to promptly perform in accordance with the terms of this Agreement after the intervening cause ceases.

**26. WAIVER.** The County's failure to insist upon Contractor's performance of any obligation hereunder shall not constitute a waiver of the County's right to enforce that obligation and the County may require compliance with that obligation or any other obligation at any time.

**27. NOTICES.** All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Attn: Public Works Director  
1120 Airport Rd. Bldg F-2  
Post Office Box 218  
Minden, Nevada 89423

**To Contractor:** Xylem Water Solutions U.S.A., Inc.  
790 Chadbourne Rd. Suite A  
Fairfield, CA 94534

**28. CONFLICT OF INTEREST.** By signing the Contract, Contractor agrees that any information obtained from Douglas County, in whatever form, will not be divulged to other competing interests without the permission of the County Manager. In the event of a breach of this provision, Douglas County may immediately withdraw, without penalty or any payment, from the Contract. Contractor must notify Douglas County of any other contracts or projects Contractor is working on that may impact Douglas County.

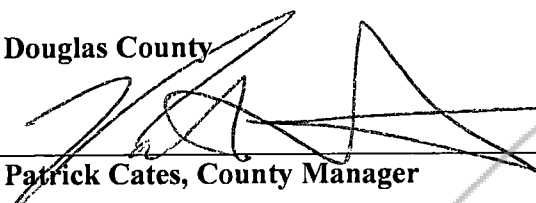


IN WITNESS WHEREOF, the Parties hereto have caused the Contract to be signed and intend to be legally bound thereby.

**Xylem Water Solutions U.S.A., Inc.**

By: Paul Forsthoefel 4/24/2023  
Paul Forsthoefel, Regional Sales Manager (Date)

**Douglas County**

By:  5/2/23  
Patrick Cates, County Manager (Date)



Xylem Water Solutions USA, Inc.  
790 Chadbourne Rd suite A  
Fairfield, CA 94534

February 15, 2023  
Douglas County  
1120 Airport Rd Bldg F2  
PO Box 218, Minden, NV 89423

Greetings Nicholas,

Thank you for choosing Xylem as your trusted service partner. We are pleased to offer you a quotation for a Preventative Maintenance Agreement (PMA). A Xylem PMA consists of a 20-point mechanical and electrical inspection completed by a factory certified service technician. A detailed inspection report will be provided for all equipment covered in this agreement. The standard agreement term is three years, but other options are available as shown below.

**Equipment Covered**

Qty 28, Various model Flygt pumps and mixers (all model numbers/serial numbers are to be furnished by Douglas County and will be noted in this contract), Location: Minden, NV  
S/Ns: As stated above, serial numbers to be furnished by customer and noted in this contract.

**Agreement Level** (check the box below that applies)

- Bronze (1 PM service visit per year) - Part No 1400000690015 TAX, 1400000690015A NO TAX
- Silver (2 PM service visits per year) - Part No 1400000690016 TAX, 1400000690016A NO TAX
- Gold (1 PM service visit per year – New pumps only) - Part No 1400000690017 TAX, 1400000690017A NO TAX

**Agreement Term**

- One-year Agreement (one visit)
- Three-year Agreement \*
- Five-year Agreement \*

\* For multi-year agreements, purchase order(s) can be provided for each year prior to service visit or one purchase order can be provided for entire term that will be referenced and invoiced after each visit.

**Pricing**

The fee per service visit for the equipment listed above is \$12,250.00. This amount will be billed after the service is performed and a detailed invoice will be provided to you. If additional expenses are occurred for time or resources on site, Xylem will contact you for approval prior to invoicing.

**Exclusions**

Additional repairs or services are not included in the above price. If our technician determines that additional repairs or services are required, they will notify you and it will be quoted separately.

Best Regards,

Adrian Gutierrez  
Sales Representative  
Xylem Water Solutions USA, Inc.  
oneidentiti@gmail.com

## PREVENTATIVE MAINTENANCE SERVICE - 20 POINT INSPECTION CHECKLIST

1. Visually inspect pumping station condition including valves and piping
2. Visually Inspect lifting equipment
3. Extract pump from wet well and inspect guiderails
4. Visually inspect discharge connection
5. Inspect pump electric cable
6. Visually inspect control panel components\*
7. Check voltage supply between all phases of the electrical control panel\*
8. Complete insulation test of the motor stator
9. Check function of control panel monitoring system
10. Check pump oil for water contamination, drain and replace oil if needed, replace plug o-rings
11. Check coolant for contamination
12. Check for fluid in inspection chamber and junction box
13. Visually inspect the impeller condition
14. Inspect wear ring, measure and record gap, change if necessary
15. Dry-run pump, confirm rotation and check for noise and vibration
16. Inspect level control component operation and remove accumulated debris if possible
17. Re-install pump and ensure seated correctly
18. Run the pump through its operation cycle if liquid level permits
19. Check running amperage on all phases of the pump motor\*
20. Record findings on inspection report and share findings with customer

\*Items 6, 7 and 19 vary due to location and/or local ordinance(s)

Upon Agreement, please provide information below.

### Additional Information

The owner's responsibility will be to have the following at the job site upon Service Technician's arrival, please fill out the boxes that apply below prior to the visit:

A. Water supply for washing equipment

Yes     No

B. 120V electric supply

Yes     No

C. Employee to assist in inspection and to learn proper maintenance techniques and/or provide support

Yes     No

D. Electrician (if control panel is not supplied by Flygt)

Yes     No

E. Supply lifting equipment if pump is located inside a building

Yes     No

### **Terms and Conditions**

This order is subject to the Standard Terms and Conditions of Sale – Xylem Americas effective on the date the order is accepted which terms are available at <https://www.xylem.com/en-US/support/xylem-americas-standard-terms-and-conditions/> and incorporated herein by reference and made a part of the agreement between the parties.

**Taxes:** Taxes are not included in this quotation unless specifically stated otherwise.

**Validity:** This quote is valid for ninety (90) days.

**Payment Terms:** Payment terms are 100% Net 30 days following the invoice date

Exhibit B – Flygt Pumps and Mixers Inventory for Preventative Maintenance

Location	Location Name	Number of Pumps or Mixers	Flygt Pump/Mixer Model
1	Wild Goose Lift Station	2	3075
2	Clubhouse Lift Station	2	3301
3	North Fork Trails LS	2	3085
4	Clearwater Lift Station	2	3127
5	North County (Topsy) Lift Station	2	3153
6	Clear Creek LS 1	2	3171
7	Clear Creek LS 4	2	3171
8	Center Drive (Valley Knolls) Lift Station	2	Unknown
9	Minden Tahoe Airport Lift Station	2	3127
10	North Valley WWTP Lift Station	2	3153
11	North Valley WWTP SBR Sludge Wasting Pumps	2	3085
12	North Valley WWTP SBR Mixers	2	4650
13	North Valley WWTP Pre-Equalization Mixer	1	4640
14	North Valley WWTP Digester Mixers	3	4620
<b>Total</b>		<b>28</b>	

Douglas County

State of California

CERTIFIED COPY

I certify that the document to which this certificate is attached is a full and correct copy of the original record on file in the Clerk-Treasurer's Office on this

3rd day of May, 2023

By Jacqueline M. Wang Deputy