

Contract Abstract

Contract Information

Contract & Solicitation Title: Water Network Optimization Distribution System and Treatment Plant Optimization Platform Updates and Maintenance

Contract Summary: Contractor agrees to provide updates and maintenance of water network optimization distribution system and treatment plant optimization platform.

Contract Number: 6525226 Solicitation Number: N/A Requisition Number: SS2023003

Replaces Expiring or Expired Contract? (Enter "No" or Contract No and Expiration Date): 6492415 Exp. 9/26/22

Type of Contract/PO: Multi-Year Contract **Requires Council Legislation:** Yes

High Risk Contract (Per Finance Department Contract Risk Management Policy): Yes

Sexual Harassment Training Required (per BL2018-1281): Yes

Estimated Start Date: 03/07/2023 Estimated Expiration Date: 03/06/2028 Contract Term: 60 Months

Estimated Contract Life Value: \$15,000,000.00 Fund:* 47335 BU:* 65490106

(*Depending on contract terms, actual expenses may hit across various departmental BUs and Funds at PO Levels)

Payment Terms: Net 30 Selection Method: Sole Source

Procurement Staff: Terri Ray BAO Staff: Jeremy Frye

Procuring Department: Water Services Department(s) Served: Water Services

Prime Contractor Information

Prime Contracting Firm: Xylem Vue, Inc. ISN#: 1005589

Address: 1 International Drive City: Rye Brook State: NY Zip: 10573

Prime Contractor is a Uncertified/Unapproved: SBE SDV MBE WBE LGBTBE (select/check if applicable)

Prime Company Contact: Andrew Swirsky Email Address: Andrew.Swirsky@xylem.com Phone #: 281-841-9822

Prime Contractor Signatory: Andrew Swirsky Email Address: Andrew.Swirsky@xylem.com

Business Participation for Entire Contract

Small Business and Service Disabled Veteran Business Program: N/A

Amount: N/A Percent, if applicable: N/A

Equal Business Opportunity (EBO) Program: Program Not Applicable

MBE Amount: N/A MBE Percent, if applicable: N/A

WBE Amount: N/A WBE Percent, if applicable: N/A

Federal Disadvantaged Business Enterprise: No

Amount: N/A Percent, if applicable: N/A

Note: Amounts and/or percentages are not exclusive.

B2GNow (Contract Compliance Monitoring): No

Summary of Offer

Offeror Name	MBE	WBE	SBE	SDV	LGBTBE	Score	Evaluated Cost	Result
	(check as applicable)					(RFP Only)		
<u>Xylem Vue, Inc.</u>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<u>N/A</u>	<u>N/A</u>	<u>Approved Sole Source Form</u>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<u>Select from the Following:</u>
<input type="text"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text"/>	<input type="text"/>	<u>Select from the Following:</u>

Terms and Conditions

1. GOODS AND SERVICES CONTRACT

1.1. Heading

This contract is initiated by and between **The Metropolitan Government of Nashville and Davidson County (METRO)** and **Xylem Vue, Inc (CONTRACTOR)** located at **1 International Drive, Rye Brook, NY 10573**, resulting from an approved sole source form signed by Metro's Purchasing Agent (included herein by reference). This Contract consists of the following documents:

- *Any properly executed contract amendment (most recent with first priority),*
- *This document, including exhibits,*
 - *Exhibit A - Pricing*
 - *Exhibit B - MISA Terms and Conditions*
 - *Exhibit C - Service Agreement*
 - *Exhibit D - Affidavits*
- *Purchase Orders (and PO Changes),*

In the event of conflicting provisions, all documents shall be construed in the order listed above.

2. THE PARTIES HEREBY AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

2.1. Duties and Responsibilities

CONTRACTOR agrees to provide updates and maintenance of Water Network Optimization distribution system and treatment plant optimization platform.

2.2. Delivery and/or Installation.

All deliveries (if provided by the performance of this Contract) are F.O.B. Destination, Prepaid by Supplier, Inside Delivery, as defined by METRO.

METRO assumes no liability for any goods delivered without a purchase order. All deliveries shall be made as defined in the solicitation or purchase order and by the date specified on the purchase order.

Installation, if required by the solicitation and/or purchase order shall be completed by the date specified on the purchase order.

3. CONTRACT TERM

3.1. Contract Term

The Contract Term will begin on the date this Contract is approved by all required parties and filed in the Metropolitan Clerk's Office. The Contract Term will end sixty (60) months from the date of filing with the Metropolitan Clerk's Office. This Contract may be extended by letter signed by Metro's Purchasing Agent for up to an additional sixty (60) months. However, in no event shall the term of this Contract exceed one hundred twenty (120) months from the date of filing with the Metropolitan Clerk's Office.

4. COMPENSATION

4.1. Contract Value

This Contract has an estimated value of \$15,000,000.00. The pricing details are included in Exhibit A and are made a part of this Contract by reference. CONTRACTOR shall be paid as work is completed and METRO is accordingly, invoiced. Pricing and compensation will be on a task specific schedule. Each task and corresponding fee will be negotiated and agreed upon by the CONTRACTOR and METRO. Compensation will be based upon the completed percentages of these task. Upon joint agreement CONTRACTOR and METRO may elect to compensate on an hourly basis for work not included in a task order item at the hourly rates listed in Exhibit A.

4.2. Other Fees

There will be no other charges or fees for the performance of this Contract. METRO will make reasonable efforts to make payments within 30 days of receipt of invoice but in any event shall make payment within 60 days. METRO will make reasonable efforts to make payments to Small Businesses within 15 days of receipt of invoice but in any event shall make payment within 60 days.

4.3. Payment Methodology

Payment in accordance with the terms and conditions of this Contract shall constitute the entire compensation due CONTRACTOR for all goods and/or services provided under this Contract.

METRO will compensate CONTRACTOR in accordance with Exhibit A of this Contract. Subject to these payment terms and conditions, CONTRACTOR shall be paid for delivered/performed products and/or services properly authorized by METRO in accordance with this Contract. Compensation shall be contingent upon the satisfactory provision of the products and/or services as determined by METRO.

4.4. Escalation/De-escalation

This Contract is eligible for annual escalation/de-escalation adjustments. Annual escalation/de-escalation is capped at 5%; if the Producer Price Index (PPI) is 5% or below, base labor rates shall be increased/decreased by the applicable PPI in full. Anything over 5% shall be shared 50/50 between METRO and CONTRACTOR. Examples: If the PPI is 7%, contractor would escalate to 6%. If the PPI is 8%, contractor would escalate to 6.5%. If the PPI is 5% or below, base labor rates shall be increased/decreased by the applicable PPI in full. The request for adjustment must be in accordance with Exhibit A and submitted by CONTRACTOR to the Purchasing Agent no less than sixty (60) days prior to the **annual anniversary** of the filing of this Contract with the METRO Clerk's Office. Any such adjustment, if approved by the Purchasing Agent, shall become effective on the anniversary of the filing of this Contract with the METRO Clerk's Office.

4.5. Electronic Payment

All payments shall be effectuated by ACH (Automated Clearing House).

4.6. Invoicing Requirements

CONTRACTOR shall submit invoices for payment in a format acceptable to METRO and shall submit invoices no more frequently than monthly for satisfactorily and accurately performed services. CONTRACTOR shall be paid as work is completed and invoices are approved by METRO. Invoices shall detail this Contract Number accompanied by any necessary supporting documentation as required by METRO. CONTRACTOR shall submit all invoices no later than ninety (90) days after the services have been delivered/performed.

Payment of an invoice by METRO shall not waive METRO's rights of revocation of acceptance due to non-conformity or the difficulty of discovery of the non-conformance. Such revocation of acceptance shall occur within a reasonable time after METRO discovers or should have discovered the non-conforming product and/or service but prior to any substantial change in condition of the products and/or services caused by METRO.

4.7. Subcontractor/Subconsultant Payments

When payment is received from METRO, CONTRACTOR shall within fourteen (14) calendar days pay all subcontractors, subconsultants, laborers, and suppliers the amounts they are due for the work covered by such payment. In the event METRO becomes informed that CONTRACTOR has not paid a subcontractor, subconsultant, laborer, or supplier as provided herein, METRO shall have the right, but not the duty, to issue future checks and payments to CONTRACTOR of amounts otherwise due hereunder naming CONTRACTOR and any such subcontractor, subconsultant, laborer, or supplier as joint payees. Such joint check procedure, if employed by METRO, shall create no rights in favor of any person or entity beyond the right of the named payees to payment of the check and shall not be deemed to commit METRO to repeat the procedure in the future. If persistent, this may be determined to be a material breach of this Contract.

5. TERMINATION

5.1. Breach

Should CONTRACTOR fail to fulfill in a timely and proper manner its obligations under this Contract or if it should violate any of the terms of this Contract, METRO shall identify the breach and CONTRACTOR shall cure the performance within thirty (30) days. If CONTRACTOR fails to satisfactorily provide cure, METRO shall have the right to immediately terminate this Contract. Such termination shall not relieve CONTRACTOR of any liability to METRO for damages sustained by virtue of any breach by CONTRACTOR.

5.2. Lack of Funding

Should funding for this Contract be discontinued, METRO shall have the right to terminate this Contract immediately upon 5 days written notice to CONTRACTOR. Upon such termination under this Section, CONTRACTOR will be entitled to payment for all work completed up to and until the effective date of termination.

5.3. Notice

METRO may terminate this Contract at any time upon (90) days written notice to CONTRACTOR. Should METRO terminate this Contract, CONTRACTOR shall immediately cease work and deliver to METRO, within (90) days, all completed or partially completed satisfactory work, and METRO and CONTRACTOR shall negotiate reasonable termination costs corresponding to the percentage of the materials completed or service rendered up through the date of termination. Supplier will not be entitled to any claim for anticipated profits on work not completed.

6. NONDISCRIMINATION

6.1. METRO's Nondiscrimination Policy

It is the policy of METRO not to discriminate on the basis of race, creed, color, national origin, age, sex, or disability in its hiring and employment practices, or in admission to, access to, or operation of its programs, services, and activities.

6.2. Nondiscrimination Requirement

No person shall be excluded from participation in, be denied benefits of, be discriminated against in the admission or access to, or be discriminated against in treatment or employment in METRO's contracted programs or activities, on the grounds of race, creed, color, national origin, age, sex, disability, or any other classification protected by federal or Tennessee State Constitutional or statutory law; nor shall they be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of contracts with METRO or in the employment practices of METRO's CONTRACTORS. **CONTRACTOR certifies and warrants that it will comply with this nondiscrimination requirement.** Accordingly, all offerors entering into contracts with METRO shall, upon request, be required to show proof of such nondiscrimination and to post in conspicuous places that are available to all employees and applicants, notices of nondiscrimination.

6.3. Equal Business Opportunity (EBO) Program Requirement

The Equal Business Opportunity (EBO) Program is not applicable to this Contract.

6.4. Covenant of Nondiscrimination

All offerors have committed to the Covenant of Nondiscrimination when registering with METRO to do business. To review this document, go to METRO's website.

6.5. Americans with Disabilities Act (ADA)

CONTRACTOR assures METRO that all services provided shall be completed in full compliance with the Americans with Disabilities Act ('ADA') 2010 ADA Standards for Accessible Design, enacted by law March 15, 2012, as has been adopted by METRO. CONTRACTOR will ensure that participants with disabilities will have communication access that is equally effective as that provided to people without disabilities. Information shall be made available in accessible formats, and auxiliary aids and services shall be provided upon the reasonable request of a qualified person with a disability.

7. INSURANCE

7.1. Proof of Insurance

During the term of this Contract, for any and all awards, CONTRACTOR shall, at its sole expense, obtain and maintain in full force and effect for the duration of this Contract, including any extension(s), the types and amounts of insurance identified below. Proof of insurance shall be required naming METRO as additional insured and identifying the Contract number on the ACORD document.

7.2. Products Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.3. Automobile Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.4. General Liability Insurance

In the amount of one million (\$1,000,000.00) dollars.

7.5. Worker's Compensation Insurance (if applicable)

CONTRACTOR shall maintain workers' compensation insurance with statutory limits required by the State of Tennessee or other applicable laws and Employer's Liability Insurance with limits of no less than one hundred thousand (\$100,000.00) dollars, as required by the laws of Tennessee.

7.6. Technological Errors and Omissions Insurance

Technological Errors and Omissions Insurance in the amount of one million (\$1,000,000.00) dollars.

7.7. Cyber Insurance

Cyber Insurance in the amount of one million (\$1,000,000.00) dollars.

7.8. Such insurance shall:

Contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of work or operations performed by or on behalf of CONTRACTOR including materials, parts, or equipment furnished in connection with such work or operations. The coverage shall contain no special limitations on the scope of its protection afforded to the above-listed insureds.

For any claims related to this Contract, CONTRACTOR's insurance coverage shall be primary insurance with respects to METRO, its officers, officials, employees, and volunteers. Any insurance or self-insurance programs covering METRO, its officials, officers, employees, and volunteers shall be in excess of CONTRACTOR's insurance and shall not contribute with it.

Automotive Liability insurance shall include vehicles owned, hired, and/or non-owned. Said insurance shall include coverage for loading and unloading hazards. Insurance shall contain or be endorsed to contain a provision that includes METRO, its officials, officers, employees, and volunteers as additional insureds with respect to liability arising out of automobiles owned, leased, hired, or borrowed by or on behalf of CONTRACTOR.

CONTRACTOR shall maintain Workers' Compensation insurance (if applicable) with statutory limits as required by the State of Tennessee or other applicable laws and Employers' Liability insurance. CONTRACTOR shall require each of its subcontractors to provide Workers' Compensation for all of the latter's employees to be engaged in such work unless such employees are covered by CONTRACTOR's Workers' Compensation insurance coverage.

7.9. Other Insurance Requirements

Prior to commencement of services, CONTRACTOR shall furnish METRO with original certificates and amendatory endorsements effecting coverage required by this section and provide that such insurance shall not be cancelled, allowed to expire, or be materially reduced in coverage except on 30 days' prior written notice to:

PROCUREMENTCOI@NASHVILLE.GOV

Provide certified copies of endorsements if requested by METRO in lieu of or in addition to certificates of insurance. CONTRACTOR will provide policies, as redacted to protect sensitive information, in the event of a claim or lawsuit.

Replace certificates, policies, and/or endorsements for any such insurance expiring prior to completion of services.

Maintain such insurance from the time services commence until services are completed. Failure to maintain or renew coverage and to provide evidence of renewal may be treated by METRO as a material breach of this Contract.

Said insurance shall be with an insurer licensed to do business in Tennessee and having A.M. Best Company ratings of no less than A-. Modification of this standard may be considered upon appeal to the METRO Director of Risk Management Services.

Require all subcontractors to maintain during the term of this Contract, Commercial General Liability insurance, Business Automobile Liability insurance, and Worker's Compensation/ Employers Liability insurance (unless subcontractor's employees are covered by CONTRACTOR's insurance) in the same manner as specified for CONTRACTOR. CONTRACTOR shall require subcontractor's to have all necessary insurance and maintain the subcontractor's certificates of insurance.

Any deductibles and/or self-insured retentions greater than \$10,000.00 must be disclosed to and approved by METRO **prior to the commencement of services.**

If CONTRACTOR has or obtains primary and excess policy(ies), there shall be no gap between the limits of the primary policy and the deductible features of the excess policies.

8. GENERAL TERMS AND CONDITONS**8.1. Taxes**

METRO shall not be responsible for any taxes that are imposed on CONTRACTOR. Furthermore, CONTRACTOR understands that it cannot claim exemption from taxes by virtue of any exemption that is provided to METRO.

8.2. Warranty

CONTRACTOR warrants that for a period of one year from date of delivery and/or installation, whichever is later, the goods provided, including software, shall be free of any defects that interfere with or prohibit the use of the goods for the purposes for which they were obtained.

During the warranty period, METRO may, at its option, request that CONTRACTOR repair or replace any defective goods, by written notice to CONTRACTOR. In that event, CONTRACTOR shall repair or replace the defective goods, as required by METRO, at CONTRACTOR's expense, within thirty (30) days of written notice. Alternatively, METRO may return the defective goods, at CONTRACTOR's expense, for a full refund. To the extent permitted by state law, the foregoing shall be CONTRACTOR's sole and exclusive remedy for such defective goods.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESSOR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SELLER'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMITED TO REPAIRING OR REPLACING THE PRODUCT AND SHALL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE BUYER HEREUNDER. TO THE EXTENT PERMITTED BY STATE LAW, IN NO EVENT IS SELLER LIABLE FOR ANY OTHER FORM OF DAMAGES, WHETHER DIRECT, INDIRECT, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY OR LOSS OF REPUTATION.

8.3. Software License

CONTRACTOR warrants and represents that it is the owner of or otherwise has the right to and does hereby grant METRO a limited license to use any software provided for the purposes for which the software was obtained or proprietary material set forth in METRO's solicitation and/or CONTRACTOR's response to the solicitation.

8.4. Confidentiality

Tennessee Code Annotated § 10-7-504(i) specifies that information which would allow a person to obtain unauthorized access to confidential information or to government property shall be maintained as confidential. "Government property" includes electronic information processing systems, telecommunication systems, or other communications systems of a governmental entity subject to this chapter. Such records include: (A) Plans, security codes, passwords, combinations, or computer programs used to protect electronic information and government property; (B) Information that would identify those areas of structural or operational vulnerability that would permit unlawful disruption to, or interference with, the services provided by a governmental entity; and (C) Information that could be used to disrupt, interfere with, or gain unauthorized access to electronic information or government property.

The foregoing listing is not intended to be comprehensive, and any information which METRO marks or otherwise designates as anything other than "Public Information" will be deemed and treated as sensitive information, which is defined as any information not specifically labeled as "Public Information". Information which qualifies as "sensitive information" may be presented in oral, written, graphic, and/or machine-readable formats. Regardless of presentation format, such information will be deemed and treated as sensitive information.

CONTRACTOR, and its Agents, for METRO, may have access to sensitive information. CONTRACTOR, and its Agents, are required to maintain such information in a manner appropriate to its level of sensitivity. All sensitive information must be secured at all times including, but not limited to, the secured destruction of any written or electronic information no longer needed. The unauthorized access, modification, deletion, or disclosure of any METRO information may compromise the integrity and security of METRO, violate individual rights of privacy, and/or constitute a criminal act.

Upon the request of METRO, CONTRACTOR shall return all information in whatever form in a format chosen by METRO. In the event of any disclosure or threatened disclosure of METRO information, METRO is further authorized and entitled to immediately seek and obtain injunctive or other similar relief against CONTRACTOR, including but not limited to emergency and ex parte relief where available.

8.5. Information Ownership

All METRO information is and shall be the sole property of METRO. CONTRACTOR hereby waives any and all statutory and common law liens it may now or hereafter have with respect to METRO information. Nothing in this Contract or any other agreement between METRO and CONTRACTOR shall operate as an obstacle to such METRO's right to retrieve any and all METRO information from CONTRACTOR or its agents or to retrieve such information or place such information with a third party for provision of services to METRO, including without limitation, any outstanding payments, overdue payments and/or disputes, pending legal action, or arbitration. Upon METRO's request, CONTRACTOR shall supply METRO with an inventory of METRO information that CONTRACTOR stores and/or backs up.

Any information provided to the CONTRACTOR, including information provided by METRO customers or citizens, is only to be used to fulfill the contracted services. Any additional information that is inferred or determined based on primary information that is provided to the CONTRACTOR, i.e. "second-order data", is only to be used to fulfill the contracted services. This information is not to be used for marketing or commercial purposes and the CONTRACTOR asserts no rights to this information outside of fulfilling the contracted services. Storage of this information is not allowed outside United States' jurisdiction.

8.6. Information Security Breach Notification

In addition to the notification requirements in any Business Associate Agreement with METRO, when applicable, CONTRACTOR shall notify METRO of any data breach within 24 hours of CONTRACTOR's knowledge or reasonable belief (whichever is earlier) that such breach has occurred (Breach Notice) by contacting the METRO ITS Help Desk. The Breach Notice should describe the nature of the breach, the scope of the information compromised, the date the breach occurred, and the identities of the individuals affected or potentially affected by the breach as well as specific information about the data compromised so that METRO can properly notify those individuals whose information was compromised. CONTRACTOR shall periodically update the information contained in the Breach Notice to METRO and reasonably cooperate with METRO in connection with METRO's efforts to mitigate the damage or harm of such breach.

8.7. Virus Representation and Warranty

CONTRACTOR represents and warrants that Products and/or Services, or any media upon which the Products and/or Services are stored, do not have, nor shall CONTRACTOR or its Agents otherwise introduce into METRO's systems, network, or infrastructure, any type of software routines or element which is designed to or capable of unauthorized access to or intrusion upon, disabling, deactivating, deleting, or otherwise damaging or interfering with any system, equipment, software, data, or the METRO network. In the event of a breach of this representation and warranty, CONTRACTOR shall compensate METRO for any and all harm, injury, damages, costs, and expenses incurred by METRO resulting from the breach.

For CONTRACTOR managed systems, CONTRACTOR shall install and maintain ICSA Labs certified or AV-Test approved Antivirus Software and, to the extent possible, use real time protection features. CONTRACTOR shall maintain the Anti-virus Software in accordance with the Antivirus Software provider's recommended practices. In addition, CONTRACTOR shall ensure that:

- Anti-virus Software checks for new Anti-virus signatures no less than once per day, and;
- Anti-virus signatures are current and no less recent than two versions/releases behind the most current version/release of the Anti-virus signatures for the Anti-virus Software.

8.8. Copyright, Trademark, Service Mark, or Patent Infringement

CONTRACTOR shall, at its own expense, be entitled to and shall have the duty to defend any suit that may be brought against METRO to the extent that it is based on a claim that the products or services furnished infringe a Copyright, Trademark, Service Mark, or Patent. CONTRACTOR shall further indemnify and hold harmless METRO against any award of damages and costs made against METRO by a final judgment of a court of last resort in any such suit. METRO shall provide CONTRACTOR immediate notice in writing of the existence of such claim and full right and opportunity to conduct the defense thereof, together with all available information and reasonable cooperation, assistance and authority to enable CONTRACTOR to do so. No costs or expenses shall be incurred for the account of CONTRACTOR without its written consent. METRO reserves the right to participate in the defense of any such action. CONTRACTOR shall have the right to enter into negotiations for and the right to effect settlement or compromise of any such action, but no such settlement or compromise shall be binding upon METRO unless approved by the METRO Department of Law Settlement Committee and, where required, the METRO Council.

If the products or services furnished under this Contract are likely to, or do become, the subject of such a claim of infringement, then without diminishing CONTRACTOR's obligation to satisfy the final award, CONTRACTOR may at its option and expense:

- Procure for METRO the right to continue using the products or services
- Replace or modify the alleged infringing products or services with other equally suitable products or services that are satisfactory to METRO, so that they become non-infringing
- Remove the products or discontinue the services and cancel any future charges pertaining thereto Provided; however, that CONTRACTOR will not exercise the Remove option above until CONTRACTOR and METRO have determined that the Procure and/or Replace options are impractical. CONTRACTOR shall have no liability to METRO; however, if any such infringement or claim thereof is based upon or arises out of:
 - The use of the products or services in combination with apparatus or devices not supplied or else approved by CONTRACTOR;
 - The use of the products or services in a manner for which the products or services were neither designated nor contemplated; or,
 - The claimed infringement in which METRO has any direct or indirect interest by license or otherwise, separate from that granted herein.

8.9. Maintenance of Records

CONTRACTOR shall maintain documentation for all charges against METRO. The books, records, and documents of CONTRACTOR, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of final payment and will be subject to audit, at any reasonable time and upon reasonable notice by METRO or its duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles. In the event of litigation, working papers and other documents shall be produced in accordance with applicable laws and/or rules of discovery. Breach of the provisions of this paragraph is a material breach of this Contract.

All documents and supporting materials related in any manner whatsoever to this Contract or any designated portion thereof, which are in the possession of CONTRACTOR or any subcontractor or subconsultant shall be made available to METRO for inspection and copying upon written request from METRO. Said documents shall also be made available for inspection and/or copying by any state, federal or other regulatory authority, upon request from METRO. Said records include, but are not limited to, all drawings, plans, specifications, submittals, correspondence, minutes, memoranda, tape recordings, videos, or other writings or things which document the procurement and/or performance of this Contract. Said records expressly include those documents reflecting the cost, including all subcontractors' records and payroll records of CONTRACTOR and subcontractors.

8.10. Monitoring

CONTRACTOR's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by METRO, the Department of Finance, the Division of Internal Audit, or their duly appointed representatives.

METRO shall have the option of reviewing and performing a security assessment of the information security management practices of CONTRACTOR. METRO shall have the right, at its expense, during normal business hours and with reasonable advance notice, to evaluate, test, and review at CONTRACTOR's premises the Products and/or Services to ensure compliance with the terms and conditions of this Contract. METRO shall have the right to conduct such audits by use of its own employees and internal audit staff, or by use of outside consultants and auditors.

8.11. METRO Property

Any METRO property, including but not limited to books, records, and equipment that is in CONTRACTOR's possession shall be maintained by CONTRACTOR in good condition and repair, and shall be returned to METRO by CONTRACTOR upon termination of this Contract. All goods, documents, records, and other work product and property produced during the performance of this Contract are deemed to be METRO property. METRO property includes, but is not limited to, all documents which make up this Contract; all other documents furnished by METRO; all goods, records, reports, information, data, specifications, computer programs, technical reports, operating manuals and similar work or other documents, conceptual drawings, design documents, closeout documents, and other submittals by CONTRACTOR of any of its subcontractors; and, all other original works of authorship, whether created by METRO, CONTRACTOR or any of its subcontractors embodied in any tangible medium of expression, including, without limitation, pictorial, graphic, sculptural works, two (2) dimensional works, and three (3) dimensional works. Any of Contractor's or its subcontractors' works of authorship comprised within the Work Product (whether created alone or in concert with Metro or a third party) shall be deemed to be "works made for hire" and made in the course of services rendered and, whether pursuant to the provisions of Section 101 of the U.S. Copyright Act or other Applicable Law, such Work Product shall belong exclusively to Metro. Contractor and its subcontractors grant Metro a non-exclusive, perpetual, worldwide, fully paid up, royalty-free license, with rights to sublicense through multiple levels of sublicenses, to reproduce, make, have made, create derivative works of, distribute, publicly perform and publicly display by all means, now known or later developed, such rights.

Except as to Contracts involving sensitive information, CONTRACTOR may keep one (1) copy of the aforementioned documents upon completion of this Contract; provided, however, that in no event shall CONTRACTOR use, or permit to be used, any portion of the documents on other projects without METRO's prior written authorization. CONTRACTOR shall maintain sensitive information securely and if required by METRO, provide secured destruction of said information. Distribution and/or reproduction of METRO sensitive information outside of the intended and approved use are strictly prohibited unless permission in writing is first received from the METRO Chief Information Security Officer. The storage of METRO sensitive information to third-party hosted network storage areas, such as Microsoft Skydrive, Google Docs, Dropbox, or other cloud storage mechanisms, shall not be allowed without first receiving permission in writing from the METRO Chief Information Security Officer.

8.12. Modification of Contract

This Contract may be modified only by written amendment executed by all parties and their signatories hereto. All change orders, where required, shall be executed in conformance with section 4.24.020 of the Metropolitan Code of Laws.

8.13. Partnership/Joint Venture

This Contract shall not in any way be construed or intended to create a partnership or joint venture between the Parties or to create the relationship of principal and agent between or among any of the Parties. None of the Parties hereto shall hold itself out in a manner contrary to the terms of this paragraph. No Party shall become liable for any representation, act, or omission of any other Party contrary to the terms of this Contract.

8.14. Waiver

No waiver of any provision of this Contract shall affect the right of any Party to enforce such provision or to exercise any right or remedy available to it.

8.15. Employment

CONTRACTOR shall not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age, sex, or which is in violation of applicable laws concerning the employment of individuals with disabilities.

CONTRACTOR shall not knowingly employ, permit, dispatch, subcontract, or instruct any person who is an undocumented and/or unlawful worker to perform work in whole or part under the terms of this Contract.

Violation of either of these contract provisions may result in suspension or debarment if not resolved in a timely manner, not to exceed ninety (90) days, to the satisfaction of METRO.

8.16. Compliance with Laws

CONTRACTOR agrees to comply with all applicable federal, state and local laws and regulations.

8.17. Iran Divestment Act

In accordance with the Iran Divestment Act, Tennessee Code Annotated § 12-12-101 et seq., CONTRACTOR certifies that to the best of its knowledge and belief, neither CONTRACTOR nor any of its subcontractors are on the list created pursuant to Tennessee Code Annotated § 12-12-106. Misrepresentation may result in civil and criminal sanctions, including contract termination, debarment, or suspension from being a contractor or subcontractor under METRO contracts.

8.18. Israel Anti-Boycott Act

In accordance with Tennessee Code Annotated Title 12, Chapter 4, Part 1 CONTRACTOR certifies that CONTRACTOR is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of Israel.

8.19. Taxes and Licensure

CONTRACTOR shall have all applicable licenses and be current on its payment of all applicable gross receipt taxes and personal property taxes.

8.20. Ethical Standards

It shall be a breach of the Ethics in Public Contracting standards in the Metropolitan Code of Laws for any person to offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy or other particular matter, pertaining to any program requirement of a contract or subcontract or to any solicitation or proposal therefore. It shall be a breach of the Ethics in Public Contracting standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or a person associated therewith, as an inducement for the award of a subcontract or order. Breach of the provisions of this paragraph is, in addition to a breach of this contract, a breach of ethical and legal standards which may result in civil or criminal sanction and/or debarment or suspension from being a contractor or subcontractor under METRO contracts.

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Pursuant to Metropolitan Code of Laws, Section 4.48.020, entities and persons doing business with, or proposing to do business with, the Metropolitan Government of Nashville & Davidson County must adhere to the ethical standards prescribed in Section 4.48 of the Code. By signing this contract, you agree that you have read the standards in Section 4.48 and understand that you are obligated to follow them. Violation of any of those standards is a breach of contract and a breach of legal standards that may result in sanctions, including those set out in Section 4.48

8.21. Indemnification and Hold Harmless

CONTRACTOR shall, defend (at CONTRACTOR'S expense) indemnify and hold harmless METRO, its officers, agents, and employees from:

- A. Any third-party claims, damages, costs, and attorney fees for injuries or damages arising, in part or in whole, from the negligent acts or omissions of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, in connection with the performance of the contract.
- B. Any third-party claims, damages, penalties, costs, and attorney fees arising from any failure of CONTRACTOR, its officers, employees, and/or agents, including its sub or independent contractors, to observe applicable laws, including, but not limited to, labor laws and minimum wage laws.
- C. In any and all third-party claims against METRO, its officers, agents, or employees, by any employee of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any subcontractor under workers' compensation acts, disability acts, or other employee benefit acts.
- D. METRO will not indemnify, defend, or hold harmless in any fashion CONTRACTOR from any claims arising from any failure, regardless of any language in any attachment or other document that CONTRACTOR may provide.
- E. CONTRACTOR shall pay METRO any expenses incurred as a result of CONTRACTOR's failure to fulfill any obligation in a professional and timely manner under this Contract.

8.22. Attorney Fees

CONTRACTOR agrees that in the event either party takes legal action to enforce any provision of this Contract or to obtain a remedy for any breach of this Contract, and in the event METRO prevails in such action, CONTRACTOR shall pay all expenses of such action incurred at any and all stages of the litigation, including costs, and reasonable attorney fees for METRO.

8.23. Assignment--Consent Required

The provisions of this Contract shall inure to the benefit of and shall be binding upon the respective successors and assignees of the parties hereto. Except for the rights of money due to CONTRACTOR under this Contract, neither this Contract nor any of the rights and obligations of CONTRACTOR hereunder shall be assigned or transferred in whole or in part without the prior written consent of METRO. Any such assignment or transfer shall not release CONTRACTOR from its obligations hereunder.

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NOTICE OF ASSIGNMENT OF ANY RIGHTS TO MONEY DUE TO CONTRACTOR UNDER THIS CONTRACT MUST BE SENT TO THE ATTENTION OF:

PRG@NASHVILLE.GOV (Preferred Method)
OR
METRO'S PURCHASING AGENT
PROCUREMENT DIVISION
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300

Funds Assignment Requests should contain complete contact information (contact person, organization name, address, telephone number, and email) for METRO to use to request any follow up information needed to complete or investigate the requested funds assignment. To the extent permitted by law, METRO has the discretion to approve or deny a Funds Assignment Request.

8.24. Entire Contract

This Contract sets forth the entire agreement between the parties with respect to the subject matter hereof and shall govern the respective duties and obligations of the parties.

8.25. Force Majeure

No party shall have any liability to the other hereunder by reason of any delay or failure to perform any obligation or covenant if the delay or failure to perform is occasioned by *force majeure*, meaning any act of God, storm, fire, casualty, unanticipated work stoppage, strike, lockout, pandemic or government response thereto, labor dispute, civil disturbance, riot, war, national emergency, act of Government, act of public enemy, or other cause of similar or dissimilar nature beyond its control.

8.26. Governing Law

The validity, construction, and effect of this Contract and any and all extensions and/or modifications thereof shall be governed by the laws of the State of Tennessee. Tennessee law shall govern regardless of any language in any attachment or other document that CONTRACTOR may provide.

8.27. Venue

Any action between the Parties arising from this Contract shall be maintained in the courts of Davidson County, Tennessee.

8.28. Severability

Should any provision of this Contract be declared to be invalid by any court of competent jurisdiction, such provision shall be severed and shall not affect the validity of the remaining provisions of this Contract.

8.29 - Mutual Waiver and Limitation of Liability

METRO and CONTRACTOR (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 **two times** the Contract Purchase Agreement price ("Cap"). **This Cap does not apply to claims by METRO**

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for: (a) costs, losses, or damages asserted by third parties for destruction of tangible property, (b) bodily injury, sickness, or death of any persons, (c) Contractor's indemnification obligations under Section 8.21; or (d) gross negligence or willful misconduct. IN NO EVENT SHALL THIS LIMITATION OF LIABILITY APPLY TO INTENTIONAL TORTS, CRIMINAL ACTS OR FRAUDULENT CONDUCT.

8.30 - Remedies

The rights and remedies of the parties herein are cumulative and in addition to any and all rights and remedies provided by law, equity or otherwise; however, to the extent the Contract Purchase Agreement provides a remedy for a given default, it is the sole and exclusive remedy available in lieu of any/all other remedies available at law, in equity, or otherwise.

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Contract Number: 6525226

Notices and Designation of Agent for Service of Process

All notices to METRO shall be mailed or hand delivered to:

**PURCHASING AGENT
PROCUREMENT DIVISION
DEPARTMENT OF FINANCE
PO BOX 196300
NASHVILLE, TN 37219-6300**

Notices to CONTRACTOR shall be mailed or hand delivered to:

CONTRACTOR: Xylem Vue, Inc.

Attention: Andrew Swirsky

Address: 1 International Drive Rye Brook NY 10573

Telephone: 281-841-9822

Fax: N/A

E-mail: Andrew.Swirsky@xylem.com

CONTRACTOR designates the following as the CONTRACTOR's agent for service of process and will

waive any objection to service of process if process is served upon this agent:

Designated Agent: CT Corporation System

Attention: Xylem Vue, Inc

Address: 300 Montvue Road Knoxville TN 37919-5546

Email: N/A

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Notices & Designations
Department & Project Manager

Contract Number	6525226
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The primary DEPARTMENT/AGENCY responsible for the administration of this contract is:

DEPARTMENT	Water Services
Attention	Stephanie Belcher
Address	1600 2nd Avenue North, Nashville, TN 37208
Telephone	615-862-4513
Email	stephanie.belcher@nashville.gov

The primary DEPARTMENT/AGENCY responsible for the administration of this contract designates the following individual as the PROJECT MANAGER responsible for the duties outlined in APPENDIX – Z CONTRACT ADMINISTRATION:

Project Manager	Justin Bowling
Title	Engineer 3
Address	1400 Pumping Station Rd., Nashville, TN 37210
Telephone	615-862-7243
Email	justin.bowling@nashville.gov

Appendix Z – Contract Administration

Upon filing with the Metropolitan Clerk, the PROJECT MANAGER designated by the primary DEPARTMENT/AGENCY is responsible for contract administration. Duties related to contract administration include, but are not necessarily limited to, the following:

Vendor Performance Management Plan

For contracts in excess of \$50,000.00, the project manager will develop a vendor performance management plan. This plan is managed by the primary department/agency and will be retained by the department/agency for their records. At contract close out, copies of all vendor performance management documents will be sent to PRG@nashville.gov.

For best practices related to vendor performance management, project managers will consult chapter eight of the PROCUREMENT MANUAL found on the division of purchases internal resources page: <https://metronashville.sharepoint.com/sites/IMFinanceProcurement>.

Amendment

For all contracts, the project manager will notify PRG@nashville.gov if changes to the term, value, scope, conditions, or any other material aspect of the contract are required. The email notification will include a complete CONTRACT AMENDMENT REQUEST FORM found on the division of purchases internal resources page: <https://metronashville.sharepoint.com/sites/IMFinanceProcurement>.

Escalation

For contracts that include an escalation/de-escalation clause, the project manager will notify PRG@nashville.gov when any request for escalation/de-escalation is received. The email notification will include any documentation required by the contract to support the request.

Contract Close Out – Purchasing

For all contracts, the project manager will notify PRG@nashville.gov when the work is complete and has been accepted by the department/agency. The email notification will include the contract number, contract title, date of completion, warranty start date and warranty end date (if applicable), and copies of all vendor performance management documents (if applicable).

Contract Close Out – BAO

For contracts with compliance monitored by the Business Assistance Office (BAO), the project manager will notify the designated contract compliance officer via email when the contract is complete and final payment has been issued. The email notification will include the contract number, contract title, and the date final payment was issued.

Best Practices

Project managers are strongly encouraged to consult chapter eight of the PROCUREMENT MANUAL for best practices related to contract administration. The manual is found on the division of purchases internal resources page:

<https://metronashville.sharepoint.com/sites/IMFinanceProcurement>

Contract Number 6525226

Effective Date

This contract shall not be binding upon the parties until it has been fully electronically approved by the CONTRACTOR, the authorized representatives of the Metropolitan Government, and filed in the office of the Metropolitan Clerk.

THE METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY

APPROVED AS TO PROJECT SCOPE:

Scott Potter ADm
Dept. / Agency / Comm. Head or Board Chair. Dept. Fin.

APPROVED AS TO COMPLIANCE WITH PROCUREMENT CODE:

Michelle R. Hernandez Lane MLC
Purchasing Agent Purchasing

APPROVED AS TO AVAILABILITY OF FUNDS:

Kelly Flannery/TJE R
Director of Finance BA

APPROVED AS TO FORM AND LEGALITY:

Tara Ladd BL
Metropolitan Attorney Insurance

FILED BY THE METROPOLITAN CLERK:

Metropolitan Clerk Date

CONTRACTOR:

Xylem Vue, Inc.
Company Name

Andrew Swirsky
Signature of Company's Contracting Officer

Andrew Swirsky
Officer's Name

Vice President
Officer's Title

Exhibit A - Pricing

Table No. 1 – Pricing Structure Schedule of Values

Title	Price
Item 1 AMI Integration, Demand Prediction/Forecasting	\$ 215,000.00
Item 2 Operations Overview Dashboard	\$ 115,000.00
Item 3 Model Infrastructure Characterization - Field Survey Data Collection and Updates	\$ 300,000.00
Item 4 Flexible Charting Dashboards	\$ 125,000.00
Item 5 Water Balance Dashboard	\$ 125,000.00
Item 6 UI/UX Usability and Functionality Enhancements	\$ 300,000.00
Item 7 Pump Facility Operations	\$ 300,000.00
Item 8 Model-Based Alerting for Model Prediction Errors	\$ 225,000.00
Item 9 Integrate with VT SCADA for facility operations	\$ 180,000.00
Item 10 LIMS Integration	\$ 180,000.00
Item 11 Pump Station SCADA Overlay - Preliminary Report	\$ 35,000.00
Item 12 Source Tracing Feature Requirements - Future Phase Planning Report	\$ 20,000.00
Item 13 Geographical Information System Integration for Hydraulic Model Creation/Updating - Preliminary Report	\$ 20,000.00
Item 14 Valve Station SCADA Overlay - Preliminary Report	\$ 35,000.00
Item 15 CMMS - Asset Management Integration (Hansen / Cityworks) - Preliminary Report	\$ 50,000.00
Item 16 What-if Operational Analyses - Preliminary Report	\$ 30,000.00
Item 17 Model-Based Alerting for Modeled vs. Measured DMA Demand - Preliminary Report	\$ 20,000.00
Item 18 Pressure Optimization - Preliminary Report	\$ 30,000.00
Item 19 AMI Demand Dashboard - Future Phase Planning Report	\$ 25,000.00
Item 20 Chlorine Predictive Modeling and LIMS Integration - Preliminary Report	\$ 25,000.00
Item 21 Pressure Sensing and Telemetry - Preliminary Report	\$ 25,000.00
Total	\$ 2,380,000.00

- Table 1 items are not subject to escalation.
- Additional items and tasks can be added by letter of acceptance.

Exhibit A - Pricing

**Table No. 2 – Labor rates for work not included in task order items
2022 Xylem Vue, Inc. Standard Rates**

Labor Classification	Hourly Rate	Travel Hourly Rate
Data Integration Analyst	\$ 163.50	\$183.50
Data Scientist	\$ 220.50	\$240.50
Engineering Director	\$ 325.00	\$345.00
Engineering Manager	\$ 279.00	\$299.00
Field Operator	\$ 107.00	\$127.00
Field Services Manager	\$ 202.00	\$222.00
Firmware Engineer	\$ 327.50	\$347.50
Hydroinformatics Engineer I	\$ 123.00	\$143.00
Hydroinformatics Engineer II	\$ 203.00	\$223.00
Hydroinformatics Engineer III	\$ 233.00	\$253.00
Program Manager	\$ 255.50	\$275.50
Program Manager Lead	\$ 274.50	\$294.50
Project Manager	\$ 175.50	\$195.50
Scrum Master	\$ 214.00	\$234.00
Software Engineer	\$ 239.00	\$259.00
Sr. Project Manager	\$ 210.00	\$230.00
Sr. Software Engineer	\$ 258.00	\$278.00

Table No. 2 Notes:

- Travel and direct costs are included in the Travel Hourly Rates
- If other services are required for future work items, they can be added by letter of acceptance.
- Table 2 subject to annual rate escalation/de-escalation per section 4.4 of contract terms.

SECTION A-1

General Terms and Conditions

- 1 Safeguards.** In addition to the controls specified in the exhibits to this Agreement, Contractor agrees to implement administrative, physical, and technical safeguards to protect the availability, confidentiality and integrity of Metropolitan Government of Nashville and Davison County (Metro Government) Information, information technology assets and services. All such safeguards shall be in accordance with industry-wide best security practices and commensurate with the importance of the information being protected, but in no event less protective than those safeguards that Contractor uses to protect its own information or information of similar importance, or is required by applicable federal or state law.
- 2 Inventory.** Contractor agrees to maintain at all times during the Term of this Agreement a Product and Service Inventory. Contractor shall upon request of Metro Government, which shall be no more frequently than semi-annually, provide the current Product and Service Inventory to Metro Government within thirty (30) days of the request.
- 3 Connection of Systems or Devices to the Metro Government Network.** Contractor shall not place any systems or devices on the Metro Government Network without the prior written permission of the Director of ITS, designee, or the designated Metro Government contact for this Agreement.
- 4 Access Removal.** If granted access to Metro Government Network or systems, Contractor and its Agents shall only access those systems, applications or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass security controls. Notwithstanding anything to the contrary in the Purchasing Agreement or other agreement between Metro Government and Contractor, Metro Government at its sole discretion, may refuse granting access right to Metro Government Network or Sensitive Information to any Agent of Contractor, and may at any time remove access rights (whether physical premise access or system access) from Contractor or any Agents, without prior notice or liability to Contractor, if Metro Government reasonably suspects a security violation by Contractor or such Agent or otherwise deems such action appropriate to protect Metro Government Infrastructure, Metro Government Network or Metro Government Information.
- 5 Subcontracting/Outsourcing.**
 - 5.1 Prior Approval.** Without Metro Government's prior written consent, Contractor may not subcontract with a third party to perform any of its obligations to Metro Government which involves access to Metro Government Information or connection to Metro Government Network. Nor shall Contractor outsource any Contractor infrastructure (physical or virtual) which Stores Sensitive Information without such consent. To obtain Metro Government's consent, Contractor shall contact the Metro Government ITS department. In addition, Metro Government may withdraw any prior consent if Metro Government reasonably suspect a violation by the subcontractor or outsource provider of this Agreement, or otherwise deems such withdraw necessary or appropriate to protect Metro Government Network, Metro Government Infrastructure or Metro Government Information.
 - 5.2 Subcontractor Confidentiality.** Contractor Agents are bound by the same confidentiality obligations set forth in this Agreement. Contractor or its Agent may not transfer, provide access to or otherwise make available Metro Government Information to any individual or entity outside of the United States (even within its own organization) without the prior written consent of Metro Government. To obtain such consent, Contractor shall send Metro Government a notice detailing the type of information to be disclosed, the purpose of the disclosure, the recipient's identification and location, and other information required by Metro Government.
 - 5.3 Contractor Responsibility.** Prior to subcontracting or outsourcing any Contractor's obligations to Metro Government, Contractor shall enter into a binding agreement with its subcontractor or outsource service provider ("Third Party Agreement") which (a) prohibits such third party to further subcontract any of its obligations, (b) contains provisions no less protective to Metro Government Network, Metro Government Infrastructure and/or Metro Government Information than those in this Agreement, and (c) expressly provides Metro Government the right to audit such subcontractor or outsource service provider to the same extent that Metro Government may audit Contractor under this Agreement. Contractor warrants that the Third Party Agreement will be enforceable by Metro Government in the U.S. against the subcontractor or outsource provider (e.g., as an intended third party beneficiary under the Third Party Agreement).

Without limiting any other rights of Metro Government in this Agreement, Contractor remains fully responsible and liable for the acts or omissions of its Agents. In the event of an unauthorized disclosure or use of Sensitive Information by its Agent, Contractor shall, at its own expense, provide assistance and cooperate fully with Metro Government to mitigate the damages to Metro Government and prevent further use or disclosure.

SECTION A-2

Definitions

Capitalized terms used in the Agreement shall have the meanings set forth in this Exhibit A-2 or in the [Metropolitan Government Information Security Glossary](#), which can be found on the Metropolitan Government of Nashville website . Terms not defined in this Exhibit A-2 or otherwise in the Agreement shall have standard industry meanings.

1. "Affiliates" as applied to any particular entity, means those entities, businesses, and facilities that are controlled by, controlling, or under common control with a stated entity, as well as (with respect to Metro Government) any entity to which Metro Government and/or any of the foregoing provides information processing services.
2. "Agent" means any subcontractor, independent contractor, officer, director, employee, consultant or other representative of Contractor, whether under oral or written agreement, whether an individual or entity.
3. "Agreement" means this Information Security Agreement, including all applicable exhibits, addendums, and attachments.
4. "Information Breach" means any actual or suspected unauthorized disclosure or use of, or access to, Metro Government Information, or actual or suspected loss of Metro Government Information.
5. "Effective Date" means the date first set forth on page 1 of the Agreement.
6. "Metro Government Information" means an instance of an information type belonging to Metro Government. Any communication or representation of knowledge, such as facts, information, or opinions in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual, owned by or entrusted to Metro Government.
7. "Metro Government Infrastructure" means any information technology system, virtual or physical, which is owned, controlled, leased, or rented by Metro Government, either residing on or outside of the Metro Government Network. Metro Government Infrastructure includes infrastructure obtained from an IAAS provider or systems that are provided and located on the Metro Government Network as part of a Service.
8. "Metro Government Network" means any Wide Area Network (WAN) or Local Area Network (LAN) owned, operated, managed or controlled by Metro Government.
9. "Term" means the period during which this Agreement is in effect.

SECTION AST

Agent Security and Training

- 1 Background Check.** Contractor shall perform a background check which includes a criminal record check on all Agents, who may have access to Metro Government Information. Contractor shall not allow any Agents to access Metro Government Information or perform Services under a Purchasing Agreement if Contractor knows or reasonably should know that such Agent has been convicted of any felony or has been terminated from employment by any employer or contractor for theft, identity theft, misappropriation of property, or any other similar illegal acts.
- 2 Information Security Officer.** If Agents will access or handle Metro Government Information, Contractor shall designate an Information Security Officer, who will be responsible for Contractor information security and compliance with the terms of this Agreement as it relates to Metro Government Information.
- 3 Agent Access Control.** Contractor shall implement and maintain procedures to ensure that any Agent who accesses Metro Government Information has appropriate clearance, authorization, and supervision. These procedures must include:
 - 3.1** Documented authorization and approval for access to applications or information stores which contain Metro Government Information; e.g., email from a supervisor approving individual access (note: approver should not also have technical rights to grant access to Sensitive Information); documented role-based access model; and any equivalent process which retains documentation of access approval.
 - 3.2** Periodic (no less than annually) reviews of Agent user access rights in all applications or information stores which contain Sensitive Information. These reviews must ensure that access for all users is up-to-date, appropriate and approved.
 - 3.3** Termination procedures which ensure that Agent's user accounts are promptly deactivated from applications or information stores which contain Sensitive Information when users are terminated or transferred. These procedures must ensure that accounts are deactivated or deleted no more than 14 business days after voluntary termination, and 24 hours after for cause terminations.
 - 3.4** Procedures which ensure that Agent's user accounts in applications or information stores which contain Sensitive Information are disabled after a defined period of inactivity, no greater than every 180 days.
 - 3.5** Procedures which ensure that all Agents use unique authentication credentials which are associated with the Agent's identity (for tracking and auditing purposes) when accessing systems which contain Sensitive Information.
 - 3.6** Contractor will maintain record of all Agents who have been granted access to Metro Government Sensitive Information. Contractor agrees to maintain such records for the length of the agreement plus 3 years after end of agreement. Upon request, Contractor will supply Metro Government with the names and login IDs of all Agents who had or have access to Metro Government Information.
- 4 Agent Training.**
 - 4.1** Contractor shall ensure that any Agent who access applications or information stores which contain Metro Government Information are adequately trained on the appropriate use and protection of the information or information and the security of the application. Completion of this training must be documented and must occur before Agent may access any Sensitive Information. This training must include, at a minimum:
 - 4.1.1** Appropriate identification and handling of Metro Government Information

- 4.1.1.1 Awareness of confidentiality requirements contained in this Agreement;
 - 4.1.1.2 Procedures for encrypting Metro Government Information before emailing or transmitting over an Open Network, if the information classification of the information requires these controls;
 - 4.1.1.3 Procedures for information storage on media or mobile devices (and encrypting when necessary).
 - 4.1.2** Education about the procedures for recognizing and reporting potential Information Security Incidents;
 - 4.1.3** Education about password maintenance and security (including instructions not to share passwords);
 - 4.1.4** Education about identifying security events (e.g., phishing, social engineering, suspicious login attempts and failures);
 - 4.1.5** Education about workstation and portable device protection; and
 - 4.1.6** Awareness of sanctions for failing to comply with Contractor security policies and procedures regarding Sensitive Information.
 - 4.1.7** Periodic reminders to Agents about the training topics set forth in this section.
- 4.2** Contractor shall ensure that any Agent who accesses applications or information stores which contain Metro Government Information are adequately trained on the appropriate use and protection of this information. Completion of this training must be documented and must occur before Agent may access any Metro Government Information. This training must include, at a minimum:
- 4.2.1** Instructions on how to identify Metro Government Information.
 - 4.2.2** Instructions not to discuss or disclose any Sensitive Information to others, including friends or family.
 - 4.2.3** Instructions not to take media or documents containing Sensitive Information home unless specifically authorized by Metro Government to do so.
 - 4.2.4** Instructions not to publish, disclose, or send Metro Government Information using personal email, or to any Internet sites, or through Internet blogs such as Facebook or Twitter.
 - 4.2.5** Instructions not to store Metro Government Information on any personal media such as cell phones, thumb drives, laptops, personal digital assistants (PDAs), unless specifically authorized by Metro Government to do so as part of the Agent's job.
 - 4.2.6** Instructions on how to properly dispose of Metro Government Information, or media containing Metro Government Information, according to the terms in Exhibit DMH as well as applicable law or regulations.
- 5 Agent Sanctions.** Contractor agrees to develop and enforce a documented sanctions policy for Agents who inappropriately and/or in violation of Contractor's policies and this Agreement, access, use or maintain applications or information stores which contain Sensitive Information. These sanctions must be applied consistently and commensurate to the severity of the violation, regardless of level within management, and including termination from employment or of contract with Contractor.

SECTION AV

Protection Against Malicious Software

- 1 Microsoft Systems on Metro Government Networks.** For Products which will be installed on Microsoft Windows Systems residing on Metro Government Network, Contractor warrants that the Product will operate in conjunction with Metropolitan Government Antivirus Software, and will use real time protection features.

- 2 Non-Microsoft Systems on Metro Government Networks.** For Products installed on non-Microsoft Windows Systems residing on Metro Government Network, Contractor shall allow Metro Government to install Antivirus Software on such Products where technically possible. Upon Metro Government's request, Contractor shall provide the requisite information to implement such Antivirus Software in a manner which will not materially impact the functionality or speed of the Product.

SECTION BU

Information Backup, Contingency Planning and Risk Management

1 General.

- 1.1** Contractor agrees to backup Metro Government Information which Contractor maintains or Stores. Backup and restoration procedures and related infrastructure, including frequency of backup, offsite storage, media lifespan and media reliability, must be commensurate with the criticality and availability requirement of the Metro Government Information being backed up.
- 1.2** Upon Metro Government's request, Contractor shall supply Metro Government with an inventory of Metro Government Information that Contractor Stores and/or backed up.
- 1.3** Contractor shall periodically, no less often than annually, provide validation of media backup such as hosted cloud services.
- 1.4** Upon Metro Government's request, Contractor shall supply copies of Metro Government Information in a format requested by Metro Government.
- 1.5** Contractor shall backup business critical information at a frequency determined by Metro Government business owner.

2 Storage of Backup Media. If required for offsite services, Contractor shall store archival and backup media in a secured offsite location. Upon request, Contractor will promptly notify Metro Government of the physical address of the offsite location. The backups of the information should be stored in a manner commiserate with the security around the information. The backup tapes should be encrypted if the sensitivity of the information requires that level of security. In the case of cloud storage, then verification of acceptable solutions such as AWS GovCloud will be provided.

3 Disaster Recovery Plan. Contractor will maintain a Disaster Recovery Plan for all applications or information stores which contain business critical information. This plan will outline the procedures necessary to restore business critical information on the application or systems in a timely fashion in the case of an emergency or disaster.

4 Emergency Mode Operation Plan. Contractor shall maintain an emergency mode operating plan which ensures that systems or applications using or accessing business critical information are operational during an emergency or natural disaster, or are made operational after a disaster in a prompt manner, commensurate with the criticality of the information on the system.

5 Testing and Revision Procedure. Contractor agrees to test, at least annually, Contractor Disaster Recovery Plan and emergency mode operations plan and maintain a documented procedure for such testing. Contractor shall document the results and findings from such testing and revise the plan accordingly.

6 Risk Management Requirements. Contractor shall implement internal risk management practices to ensure the confidentiality, integrity and availability of Metro Government Information. These practices will be no less secure than the ones used by Contractor to protect Contractor's own Sensitive Information or information of comparable sensitivity.

SECTION CSP

Cloud Service Providers

1 Certifications and Compliance.

- 1.1. Contractor will, on at least an annual basis, hire a third party auditing firm to perform a Statement on Standards for Attestation Engagements (SSAE) No. 16 audit, or equivalent audit, on internal and external Contractor procedures and systems that access or contain Metro Data.
- 1.2. Contractor shall adhere to SOC 1/SSAE 16 audit compliance criteria and data security procedures (or any successor report of a similar nature that is generally accepted in the industry and utilized by Contractor) applicable to Contractor. Upon Metro's request, Contractor will provide Metro with a copy of the audit results set forth in Contractor's SOC 1/SSAE 16 audit report.
- 1.3. Metro shall have the right to terminate this Agreement (together with any related agreements, including licenses and/or Statement(s) of Work) and receive a full refund for all monies prepaid thereunder in the event that the Contractor fails to produce an acceptable SSAE-16/ SOC-1 Type II report.
- 1.4. The Contractor will provide when responsible an environment is compliant with the control standards of FISMA (Federal Information Security Management Act) 44 U.S.C. § 3541, et seq.), NIST standards in FIPS 140-2, FIPS 180, FIPS 198-1, FIPS 199, FIPS 200, FIPS 201 and NIST Special Publications 800-53, 800-59, and 800-60. In addition, the Contractor must provide Metro with any documentation it requires for its reporting requirements within 10 days of a request.
- 1.5. Contractor agrees to comply with all applicable privacy laws.

2 Data Security. Metro data, including but not limited to data hosted, stored, or held by the Contractor in the Product(s) or in the platform operated by Contractor, or on any device owned or in the custody of Contractor, its employees, agents or Contractors, will be encrypted. Contractor will not transmit any unencrypted Metro Data over the internet or a wireless network, and will not store any Metro Data on any mobile computing device, such as a laptop computer, USB drive or portable data device, except where there is a business necessity and then only if the mobile computing device is protected by industry-standard encryption software approved by Metro.

3 Use of Subcontractors. The Contractor shall retain operational configuration and control of data repository systems used to process and store Metro data to include any or remote work. In the event that the Contractor has subcontract the operational configuration and control of any Metro data, Contractor is responsible for ensuring that any third parties that provide services to the Contractor meets security requirements that the Contractor has agreed upon in this contract.

4 Location of Data. The Contractor shall maintain all data within the United States, which means the 50 States, the District of Columbia, and outlying areas. The Contractor shall provide Metro with a list of the physical locations that may contain Metro data within 20 days with updates on a quarterly basis.

5 Personnel Access. The Contractor will require all employees who will have access to Metro data, the architecture that supports Metro data, or any physical or logical devices/code to pass an appropriate background investigation.

6 Asset Availability.

- 6.1. The Contractor must inform Metro of any interruption in the availability of the cloud service as required by the agreed upon service level agreement. Whenever there is an interruption in service, the Contractor must inform Metro of the estimated time that the system or data will be unavailable. The Contractor must provide regular updates to Metro on the status of returning the service to an operating state according to any agreed upon SLAs and system availability requirements.
- 6.2. The Contractor shall be responsible for maintaining and ensuring continued compatibility and interoperability with Metro's systems, infrastructure, and processes for the term of the contract. In the event of an unavoidable compatibility and interoperability issue, the Contractor shall be responsible for providing timely notification to Metro and shall be responsible for working with Metro to identify appropriate remedies and if applicable, work with Metro to facilitate a smooth and seamless transition to an alternative solution and/or provider.

7 Misuse of Metro Data and Metadata.

- 7.1. The Contractor shall not access, use, or disclose Metro data unless specifically authorized by the terms of this contract or a task order issued hereunder. If authorized by the terms of this contract or a task order issued hereunder, any access to, or use or disclosure of, Metro data shall only be for purposes specified in this contract or task order. Contractor shall ensure

that each of its employees and representatives, and any others (e.g., subcontractor employees) performing duties hereunder, shall, prior to obtaining access to any Metro data, sign a contract or task order specific nondisclosure agreement.

- 7.2. The Contractor shall use Metro-related data only to manage the operational environment that supports Metro data and for no other purpose unless otherwise permitted with the prior written approval of the Contracting Officer. A breach of the obligations or restrictions may subject the Contractor to criminal, civil, administrative, and contractual actions in law and equity for penalties, damages, and any other appropriate remedies by any party adversely affected by the breach.

8 Data Breach and Incident Reporting.

- 8.1. The Contractor will submit reports of cyber incidents through approved reporting mechanisms. The Contractor's existing notification mechanisms that are already in place to communicate between the Contractor and its customers may be used, as long as those mechanisms demonstrate a level of assurance, equivalent to the listed encrypted mechanisms, for the confidentiality and integrity of the information.
- 8.2. The Contractor will use a template format when reporting initial incidents by secure fax, telephonically, or by other electronic means. Initial reports may be incomplete. Reporting should balance the necessity of timely reporting (reports with critical information) versus complete reports (those with all blocks completed). Timely reporting is vital, and complete information should follow as details emerge.
- 8.3. In addition to the above, if the incident concerns a breach of PII or a potential breach of PII, the Contractor will report to the contracting officer's designee within 24 hours of the discovery of any data breach. The Contractor shall provide Metro with all information and cooperation necessary to enable compliance by the Contractor and/or Metro with data breach reporting and mitigation actions required by applicable law, regulation, policy, and this contract.

- 9 **Facility Inspections.** The Contractor agrees to have an independent third party or other industry recognized firm, which has been approved by Metro, conduct a security audit based on Metro's criteria as needed, but no more than once a year. The audit results and Contractor's plan for addressing or resolving of the audit results shall be shared with Metro within 20 days of the Contractor's receipt of the audit results.

10 Law Enforcement.

- 10.1. The Contractor shall record all physical access to the cloud storage facilities and all logical access to Metro data. This may include the entrant's name, role, purpose, account identification, entry and exit time.
- 10.2. If Metro data is co-located with the non-Metro data, the Contractor shall isolate Metro data into an environment where it may be reviewed, scanned, or forensically evaluated in a secure space with access limited to authorized Metro personnel identified by the Metro personnel, and without the Contractor's involvement.

- 11 **Maintenance.** As long as Metro is current in its Subscription to the Services provided under this Agreement and has more than 12 months remaining under the term of such subscription, the Contractor shall be responsible for all patching and vulnerability management (PVM) of software and other systems' components supporting services provided under this agreement to prevent proactively the exploitation of IT vulnerabilities that may exist within the Contractor's operating environment. Such patching and vulnerability management shall meet the requirements and recommendations of NIST SP 800-40, with special emphasis on assuring that the vendor's PVM systems and programs apply standardized configurations with automated continuous monitoring of the same to assess and mitigate risks associated with known and unknown IT vulnerabilities in the Contractor's operating environment. Furthermore, the Contractor shall apply standardized and automated acceptable versioning control systems that use a centralized model to capture, store, and authorize all software development control functions on a shared device that is accessible to all developers authorized to revise software supporting the services provided under this agreement. Such versioning control systems shall be configured and maintained to assure all software products deployed in the Contractor's operating environment and serving Metro are compatible with existing systems and architecture of Metro.

- 12 **Notification.** The Contractor shall notify Metro within 60 minutes of any warrants, seizures, or subpoenas it receives that could result in the loss or unauthorized disclosure of any Metro data. The Contractor shall cooperate with Metro to take all measures to protect Metro data from any loss or unauthorized disclosure that might reasonably result from the execution of any such warrant, seizure, subpoena, or similar legal process.

- 13 **Supply Chain.** The Contractor is responsible for exercising due diligence to use genuine hardware and software products that are free of malware.
- 14 **Service Level Agreements.** The Contractor shall work with Metro to develop a service level agreement, including defining roles, responsibilities, terms, and clear measures for performance by Contractor.

SECTION DEV

Development

- 1 **Source Code License/Source Code Escrow.** No source code is required to be provided to Metro Government for software services.
- 2 **Mobile Applications Security.** CONTRACTOR shall have the ability/expertise to develop secure mobile applications. Specifically, an awareness of secure mobile application development standards, such as OWASP's Mobile Security project. Development should be able to meet at a minimum OWASP's MASVS-L1 security standard or a similar set of baseline security standards as agreed upon by Metro Government.

SECTION DMH

Device and Storage Media Handling

1 Portable Media Controls. Contractor (including its Agents) shall only store Metro Government Information on portable device or media when expressly authorized by Metro Government to do so. When Contractor stores Metro Government Sensitive Information on or on portable device or media, Contractor shall employ the following safeguards:

- 1.1 Access to the device or media shall require a password or authentication;
- 1.2 The device or media shall be encrypted using Strong Encryption;
- 1.3 The workstation or portable device or media containing Metro Government Information must be clearly identified or labeled in such a way that it can be distinguished from other media or device which is not used to store Sensitive Information.
- 1.4 The device or media must be accounted for by a system or process which tracks the movements of all devices or media which contain Metro Government Information.

2 Media Disposal.

- 2.1 Contractor shall only dispose of media containing Metro Government Information when authorized by Metro Government.
- 2.2 Contractor shall dispose of any media which stores Metro Government Information in accordance with media sanitization guidelines for media destruction as described in NIST document NIST SP800-88: Guidelines for Media Sanitization. The Guidelines are currently available at <http://csrc.nist.gov/publications/PubsSPs.html>
- 2.3 Upon Metro Government request, Contractor shall promptly provide written certification that media has been properly destroyed in accordance with this Agreement.
- 2.4 Contractor may not transport or ship media containing Metro Government Information unless the media is Encrypted using Strong Encryption, or the information on the media has been sanitized through complete information overwrite (at least three passes); or media destruction through shredding, pulverizing, or drilling holes (e.g. breaking the hard drive platters).

3 Media Re-Use.

- 3.1 Contractor shall not donate, sell, or reallocate any media which stores Metro Government Information to any third party, unless explicitly authorized by Metro Government.
- 3.2 Contractor shall sanitize media which stores Metro Government Information before reuse by Contractor within the Contractor facility.

SECTION ENC

Encryption and Transmission of Information

- 1** Contractor shall Encrypt Metro Government Sensitive Information whenever transmitted over the Internet or any untrusted network using Strong Encryption. Encryption of Sensitive Information within the Metro Government Network, or within Contractor's physically secured, private information center network, is optional but recommended.
- 2** Contractor shall Encrypt Metro Government Authentication Credentials while at rest or during transmission using Strong Encryption.
- 3** Contractor shall Encrypt, using Strong Encryption, all Sensitive Information that is stored in a location which is accessible from Open Networks.
- 4** If information files are to be exchanged with Contractor, Contractor shall support exchanging files in at least one of the Strongly Encrypted file formats, e.g., Encrypted ZIP File or PGP/GPG Encrypted File.
- 5** All other forms of Encryption and secure hashing must be approved by Metro Government.

SECTION IR

Incident Response

1 Incident Reporting. Contractor shall report any Information Security Incident of which it becomes aware, or failure of any technical or procedural controls, which has or had a potential to affect Metro Government Network, Metro Government Infrastructure or Metro Government Information to Metro Government and according to the following timeline and procedure:

1.1 Contractor shall promptly report to Metro Government any successful Information Security Incident (with or without actual harm to system or information) within 24 hours of becoming aware of the incident. At a minimum, such report shall contain: (a) date and time when the Information Security Incident occurred; (b) the date and time when such incident was discovered by Contractor; (c) identification of the systems, programs, networks and/or Metro Government Information affected by such incident; (d) preliminary impact analysis; (e) description and the scope of the incident; and (f) any mitigation steps taken by Contractor. However, if Contractor is experiencing or has experienced a Information Breach or a successful Information Security Incident to systems that host or Store Sensitive Information or an Information Security Incident that is causing or has caused material disruption to the functionality or operation of Contractor systems or damage to Contractor hardware, software or information, including a successful attack by Malicious Software, Contractor shall report such security breach or incident to Metro Government both to the ITS Help Desk at (615) 862-HELP and to the Metro Government department within 24 hours from Contractor's reasonable awareness of such security breach or incident.

1.2 Contractor shall document any attempted but unsuccessful Information Security Incident of which it becomes aware and report to Metro Government upon its request. The frequency, content, and format of such report will be mutually agreed upon by the parties.

2 Incident Response.

2.1 Contractor shall have a documented procedure for promptly responding to an Information Security Incidents and Information Breach that complies with applicable law and shall follow such procedure in case of an incident. Contractor shall have clear roles defined and communicated within its organization for effective internal incidence response.

2.2 Contractor shall designate a contact person for Metro Government to contact in the event of an Information Security Incident. This contact person should possess the requisite authority and knowledge to: (i) act as a liaison to communicate between Contractor and Metro Government regarding the incident (including providing information requested by Metro Government); (ii) perform the reporting obligations of Contractor under this exhibit; and (iii) develop a mitigation strategy to remedy or mitigate any damage to Metro Government Network, Metro Government Infrastructure, Metro Government Information or the Product or Service provided to Metro Government that may result from the Information Security Incident.

SECTION LOG

Audit Logs

- 1 Audit Log Information.** Software sign in is managed by the Metro Government Microsoft Azure Single Sign on platform and so all audit logs are managed by Metro Government or Microsoft.
- 2 Audit Log Integrity.** Contractor shall implement and maintain controls to protect the confidentiality, availability and integrity of Audit Logs.
- 3 User Access Audit.** Upon Metro Government's request, Contractor shall provide Audit Logs of Metro Government's users of the Product or Service to Metro Government.
- 4 Audit Log Feed.** Upon request, Contractor shall implement a regular, but in no event less than daily, automated Audit Log feed via a secured, persistent connection to Metro Government Network so that Metro Government may monitor or archive Audit Log information relating to Metro Government's users on Metro Government systems.
- 5 Audit Log Availability.**
 - 5.1** Contractor shall ensure that Audit Logs for the Product or Service for the past 90 days are readily accessible online.
 - 5.2** If for technical reasons or due to an Information Security Incident, the online Audit Logs are not accessible by Metro Government or no longer trustworthy for any reason, Contractor shall provide to Metro Government trusted Audit Log information for the past 90 days within 2 business days from Metro Government's request.
 - 5.3** Contractor shall provide or otherwise make available to Metro Government Audit Log information which are 91 days or older within 14 days from Metro Government's request.
 - 5.4** Contractor shall make all archived Audit Logs available to Metro Government no later than thirty (30) days from Metro Government's request and retrievable by Metro Government for at least one (1) year from such request.
 - 5.5** Contractor shall agree to make all Audit Logs available in an agreed upon format.

SECTION NET

Network Security

1 Network Equipment Installation.

- 1.1** Contractor shall not install new networking equipment on Metro Government Network without prior written permission by the Metro Government ITS department. Contractor shall not make functional changes to existing network equipment without prior written consent of such from Metro Government ITS department.
- 1.2** Contractor shall provide the Metro Government ITS department contact with documentation and a diagram of any new networking equipment installations or existing networking equipment changes within 14 days of the new installation or change.
- 1.3** Contractor shall not implement a wireless network on any Metro Government site without the prior written approval of the Metro Government ITS contact , even if the wireless network does not connect to the Metro Government Network. Metro Government may limit or dictate standards for all wireless networking used within Metro Government facility or site.

2 Network Bridging. Contractor shall ensure that no system implemented or managed by Contractor on the Metro Government Network will bridge or route network traffic.

3 Change Management. Contractor shall maintain records of Contractor installations of, or changes to, any system on the Metro Government Network. The record should include date and time of change or installation (start and end), who made the change, nature of change and any impact that the change had or may have to the Metro Government Network, Metro Government system or Metro Government Information.

4 System / Information Access.

- 4.1** Contractor and its Agents shall only access system, application or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass Metro Government security controls.
- 4.2** Contractor shall only use Metro Government approved methods to configure Metro Government systems or application or grant access to systems.
- 4.3** Contractor shall use the Principle of Least Privilege when granting access to Metro Government Information, network or systems.

SECTION PAT

Patch Creation and Certification

- 1 Security Patch Required.** Unless otherwise expressly agreed by Metro Government and Contractor, for Products that are no longer under performance warranty, Contractor shall provide no less than standard maintenance and support service for the Products, which service includes providing Security Patches for the Products, for as long as Metro Government is under contract to receive such support from Contractor for such period of time.
- 2 Timeframe for Release.** For Vulnerabilities contained within the Product that are discovered by Contractor itself or through Responsible Disclosure, Contractor shall promptly create and release a Security Patch. Contractor must release a Security Patch: (i) within 90 days for Critical Vulnerabilities, (ii) within 180 days for high Vulnerabilities, and (iii) within a commercially reasonable time period for all other Vulnerabilities after Contractor becomes aware of the Vulnerabilities. For Vulnerabilities contained within the Product that have become publicly known to exist and are exploitable, Contractor will release a Security Patch in a faster timeframe based on the risk created by the Vulnerability, which timeframe should be no longer than thirty (30) days. For the avoidance of doubt, Contractor is not responsible for creation of Security Patches for Vulnerabilities in the Product that is caused solely by the Off- the-Shelf Software installed by Metro Government.
- 3 Timeframe for Compatibility Certification.** Contractor shall promptly Certify General Compatibility of a Security Patch for third party software which the Product is dependent upon when such patch is released. For a Security Patch for Microsoft Windows Operating Systems, Contractor shall Certify General Compatibility of a Critical Security Patch within ten (10) days, and shall Certify General Compatibility of an Important Security Patch within thirty (30) days, from the release of the patch. For Security Patches for Off-the-Shelf Software (OTS), Contractor shall Certify General Compatibility of a Critical Security Patch within five (5) days and Certify General Compatibility of an Important Security Patch within thirty (30) days from its release. For Security Patch for all other third party software or system, Contractor shall Certify General Compatibility of a Critical Security Patch within five (5) days and an Important Security Patch within thirty (30) days from its release. . Contractor shall publish whether the Security Patches are generally compatible with each related Product.
- 4 Notice of Un-patchable Vulnerability.** If Contractor cannot create a Security Patch for a Vulnerability, or Certify General Compatibility of a Security Patch for OTS software, within the timeframe specified herein, Contractor shall notify Metro Government of the un-patchable Vulnerability in writing. Such notice shall include sufficient technical information for Metro Government to evaluate the need for and the extent of immediate action to be taken to minimize the potential effect of the Vulnerability until a Security Patch or any other proposed fix or mitigation is received.
- 5 Vulnerability Report.** Contractor shall maintain a Vulnerability Report for all Products and Services and shall make such report available to Metro Government upon request, provided that Metro Government shall use no less than reasonable care to protect such report from unauthorized disclosure. The Vulnerability Report should (a) identify and track all known Vulnerabilities in the Products or Services on a continuing and regular basis, (b) document all Vulnerabilities that are addressed in any change made to the Product or Service, including without limitation Security Patches, upgrades, service packs, updates, new versions, and new releases of the Product or Service, (c) reference the specific Vulnerability and the corresponding change made to the Product or Service to remedy the risk, (d) specify the critical level of the Vulnerability and the applicable Security Patch, and (e) other technical information sufficient for Metro Government to evaluate the need for and the extent of its own precautionary or protective action. Contractor shall not hide or provide un-documented Security Patches in any type of change to their Product or Service.
- 6 SCCM Compatibility for Windows Based Products.** Contractor Patches for Products that operate on the Microsoft Windows Operating System must be deployable with Microsoft's System Center Configuration Manager.

SECTION PES

Physical and Environmental Security

Excluding software deployed on premise at Metro Government or via cloud services approved for government use, Contractor shall implement security measures at any Contractor facilities where Sensitive Information is stored. Such security measures must include, at a minimum:

- 1 Contingency Operations.** A documented Disaster Recovery Plan for accessing the facility and the Sensitive Information, and restoring Sensitive Information if needed, in the case of an emergency or crisis.
- 2 Environmental Safeguards.** Reasonable environmental safeguards to protect systems storing Sensitive Information from smoke, heat, water, fire, humidity, or power surge damage.
- 3 Access Control.** Appropriate controls which ensure that only authorized personnel are allowed physical access to the facility. Examples of appropriate controls include, but are not limited to: signage; personnel badges and controlled badge access; visitor sign in, escort, and sign out; security guards; and video surveillance for information centers which store Sensitive Information.
- 4 Maintenance Records.** Contractor shall conduct regular maintenance on systems which contain Sensitive Information and to facility's physical and environmental controls (e.g., temperature, physical access). Contractor shall maintain documentation of any repairs or maintenance performed on the systems or facility and shall provide Metro Government a copy of such records upon its reasonable request.
- 5 Physical Safeguards.** Contractor shall use best efforts to prevent theft or damage to Contractor systems or storage media containing Sensitive Information. Such efforts shall include, but are not limited to:
 - 5.1** Protecting systems or devices that contain un-encrypted Sensitive Information with physical barriers such as locked cabinet, floor to ceiling room, or secured cage.
 - 5.2** Not storing Un-encrypted Sensitive Information in "multi-party" shared physical environments with other entities.
 - 5.3** Not transporting or shipping un-encrypted media which stores Sensitive Information unless the information is sanitized through full media overwrite (at least one complete pass), or media destruction through shredding, pulverizing, or drive-punching (e.g., breaking the hard drive platters).
 - 5.4** In the event Products generate, store, transmit or process Sensitive Information and the Product does not support encryption, Contractor shall be solely responsible for the provision of physical security measures for the applicable Products (e.g., cable locks on laptops).

SECTION REM

Remote Access to Metro Government Network/System

1 B2B VPN or Private Circuit Requirements.

- 1.1 For Contractor's Business to Business ("B2B") or private circuit network connections which terminate on the outside of the Metro Government Network, Contractor must protect such connections by an International Computer Security Association Labs certified firewall.
- 1.2 Government may deny any traffic type due to risk and require Contractor to use a more secured protocol. Microsoft protocols such as those used in Window File Shares are considered risky and will not be allowed.
- 1.3 B2B Virtual Private Network ("VPN") connections to the Metro Government Network will only terminate on Metro Government managed network infrastructure.
- 1.4 Contractor shall authenticate the VPN to the Metro Government Network using at least a sixteen (16) character pre-shared key that is unique to the Metro Government.
- 1.5 Contractor shall secure the VPN connection using Strong Encryption.
- 1.6 Contractor shall connect to the Metro Government Network using a device capable of Site-to-Site IPSec support.
- 1.7 Contractor shall connect to the Metro Government Network using a device capable of performing policy-based Network Address Translation (NAT).
- 1.8 Contractor shall connect to the Metro Government Network through the Metro Government VPN concentrator.
- 1.9 Contractor shall not implement any form of private circuit access to the Metro Government network without prior written approval from the Metro Government ITS Department.
- 1.10 Metro Government reserves the right to install filtering or firewall devices between Contractor system and the Metro Government Network.

2 System / Information Access. Contractor and its Agents shall only access system, application or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass Metro Government security controls.

3 Remote Access Account Usage.

- 3.1 Upon request, Contractor shall provide Metro Government with a list of active Agent user accounts and access levels and other information sufficient for Metro Government to deactivate or disable system access if it deems appropriate.
- 3.2 Contractor may not share Metro Government-issued ID's, or any user accounts which grant access to Metro Government Network or Metro Government systems.

3.3 Contractor Agent shall use unique accounts assigned to the Agent to perform work. Service accounts (or accounts that are configured and used by systems to gain access to information or other systems) may not be used by Contractor Agents to access any system.

4 Metro Government Network Access Requirements.

4.1 Contractor shall only use Contractor systems which are compatible with Metro Government Remote Access technology to access Metro Government Network. If Contractor does not have a system that is compatible, it is Contractor's responsibility to obtain a compatible system.

4.2 Contractor shall implement security controls to protect Metro Government Network from risk when its systems or Agents connect to the Metro Government Network. Such controls include, but are not limited to:

4.2.1 Installing and maintaining ICSA Labs certified Anti-virus Software on Contractor system and, to the extent possible, use real time protection features. Contractor shall maintain the Anti-virus Software in accordance with the Anti-virus Software Contractor's recommended practices.

4.2.2 Contractor may not access the Metro Government Network with systems that may allow bridging of the Metro Government Network to a non-Metro Government network.

4.2.3 Contractor shall only access the Metro Government Network with systems that have the most current Security Patches installed.

5 Use of Remote Support Tools on Metro Government Network.

5.1 Contractor shall connect to the Metro Government Network using only Metro Government provided or approved Remote Access Software.

5.2 Contractor shall not install or implement any form of permanent Remote Access (e.g., GotoMyPC) on the Metro Government Network or Metro Government systems.

6 Remote Control Software

6.1 Contractor may not install any form of Remote Control Software on systems that are maintained or administered by Metro Government without Metro Government's consent. Contractor is only allowed to install Remote Control Software on Contractor Managed Systems.

6.2 Remote Control Software must secure all network traffic using Strong Encryption.

6.3 Contractor shall ensure that Remote Control Software contained within the Product supports the logging of session establishment, termination, and failed login attempts. Each log entry must include the following information about the logged event: date and time of event; type of event; event description; user associated with event; and network identifiers (IP address, MAC Address, etc.) or logical identifiers (System name, port, etc.). For Contractor Maintained Systems, Contractor shall ensure that such systems are configured to do the above.

6.4 Remote Control Software shall not provide escalation of user account privileges.

6.5 Contractor shall only access the Metro Government Network via Metro Government approved remote access methods. Contractor shall not supply Products, nor make configuration changes that introduce non-approved forms of Remote Access into the Metro Government Network.

SECTION SOFT

Software / System Capability

1 Supported Product.

- 1.1 Unless otherwise expressly agreed by Metro Government in writing, Contractor shall provide Metro Government only supported versions of the Product, which will not become "end of life" for at least 24 months. When the Product or Service requires third party components, Contractor must provide a Product that is compatible with currently supported third party components. Unless otherwise expressly agreed by Metro Government, Contractor represents that all third party components in its Product are currently supported, are not considered "end of life" by the third party provider of such components, and will not become "end of life" in less than 24 months from the date of acquisition by Metro Government. Metro will provide Contractor with at least 90 days written advance notice of any changes to third-party software. Contractor reserves the right to invoice additional costs to Metro which are associated with such changes to third-party software.
- 1.2 If Open Source Software is incorporated into the Product, Contractor shall only use widely supported and active Open Source Software in the Product, and shall disclose such software to Metro Government prior to its acquisition of the Product.
- 1.3 Information transfers within applications and involving services should be done using web services, APIs, etc. as opposed to flat file information transport.

2 Software Capabilities Requirements.

- 2.1 Contractor shall disclose to Metro Government all default accounts included in their Product or provide a means for Metro Government to determine all accounts included in the Product.
- 2.2 Contractor shall not include fixed account passwords in the Product that cannot be changed by Metro Government. Contractor shall allow for any account to be renamed or disabled by Metro Government.
- 2.3 Contractor's Product shall support a configurable Session Timeout for all users or administrative access to the Product.
- 2.4 Contractor shall ensure that the Product shall transmit and store Authentication Credentials using Strong Encryption.
- 2.5 Contractor Products shall mask or hide the password entered during Interactive User Login.
- 2.6 Contractor shall ensure that Products provided can be configured to require a Strong Password for user authentication.
- 2.7 Contractor's Product shall allow user accounts to be disabled after a configurable amount of failed login attempts over a configurable amount of time.
- 2.8 Contractor's Product shall have the capability to require users to change an initial or temporary password on first login.
- 2.9 Contractor's Product shall have the capability to report to Metro Government, on request, all user accounts and their respective access rights within three (3) business days or less of the request.
- 2.10 Contractor's Product shall have the capability to function within Metro Governments Information Technology Environment. Specifications of this environment are available upon request.

- 3 **Backdoor Software.** Contractor shall not provide Products with Backdoor Software, including, without limitation, undocumented or secret access functions (e.g., accounts, authorization levels, over-rides or any backdoor). Contractor shall supply all information needed for the Metro Government to manage all access (local or remote) capabilities within the Product including denying of Remote Access entirely from any party including Contractor. Contractor shall not include any feature within the Product that would allow anyone to circumvent configured authorization remotely.

SECTION VMGT

Contractor Managed System Requirements

1 Vulnerability and Patch Management.

- 1.1** For all Contractor Managed Systems that store Metro Government Information, Contractor will promptly address Vulnerabilities through Security Patches. Unless otherwise requested by Metro Government, Security Patches shall be applied within fourteen (14) days from its release for Critical Security Patches, thirty (30) days for Important Security Patches, and in a commercially reasonable time frame for all other applicable Security Patches. Contractor may provide an effective technical mitigation in place of a Security Patch (if no Security Patch is available or if the Security Patch is incompatible) which doesn't materially impact Metro Government's use of the system nor require additional third party products.
- 1.2** If the application of Security Patches or other technical mitigations could impact the operation of Contractor Managed System, Contractor agrees to install patches only during Metro Government approved scheduled maintenance hours, or another time period agreed by Metro Government.
- 1.3** Contractor Managed Systems on the Metro Government Network or Metro Government Infrastructure, the Metro Government retains the right to delay patching for whatever reason it deems necessary.
- 1.4** Metro Government will monitor compliance and check for Vulnerabilities on all Products on the Metro Government Network or Metro Government Infrastructure. Contractor shall provide Metro Government administrative credentials upon request for the purpose of monitoring compliance of a given Product. Metro Government will not knowingly change configurations of the Contractor Managed Systems without prior approval from Contractor.
- 1.5** Government may monitor compliance of Contractor Managed Systems. Contractor agrees to allow Metro Government to check for Vulnerabilities during agreed upon times using mutually agreed upon audit methods.
- 1.6** Contractor shall use all reasonable methods to mitigate or remedy a known Vulnerability in the Contractor Managed System according to the level of criticality and shall cooperate fully with Metro Government in its effort to mitigate or remedy the same. Upon Metro Government's request, Contractor shall implement any reasonable measure recommended by Metro Government in connection with Contractor's mitigation effort.

2 System Hardening.

- 2.1** Contractor Managed Systems, Contractor shall ensure that either: (i) file shares are configured with access rights which prevent unauthorized access or (ii) Contractor shall remove or disable file shares that cannot be configured with access controls set forth in (i) hereof. Access rights to file shares that remain under (i) must use the Principle of Least Privilege for granting access.
- 2.2** In the event that Contractor is providing Products or systems that are to be directly accessible from the Internet, Contractor shall disable or allow disabling by Metro Government of all active or executed software components of the Product or system that are not required for proper functionality of the Product or system.
- 2.3** Contractor shall ensure that Contractor Managed Systems are synchronized with reliable time sources and have the proper time zone set or no time offset (e.g., GMT or UTC). In the case of systems residing on the Metro Government Network, Contractor shall ensure that all such systems are synchronized with an Metro Government corporate timeserver in their respective Regional Information Centers (RDC).
- 2.4** For Contractor Managed Systems, Contractor shall remove or disable any default or guest user accounts. Default accounts that cannot be removed or disabled must have their default password changed to a Strong Password that is unique to the respective site and Metro Government.
- 2.5** For Contractor Managed Systems, Contractor shall ensure that the system is configured to disable user accounts after a certain number of failed login attempts have occurred in a period of time less than thirty (30) minutes of the last login attempt or that system monitoring and notification is configured to alert system administrators to successive failed login attempts for the same user account.

3 Authentication.

- 3.1 Contractor shall assign a unique user ID to any Agent or end user who accesses Sensitive Information on Contractor Managed Systems. This unique ID shall be configured so that it enables tracking of each user's activity within the system.
- 3.2 Contractor agrees to require authentication for access to Sensitive Information on Contractor Managed System.
- 3.3 Contractor agrees to configure the system to support Strong Authentication for accessing Sensitive Information from any Open Network (e.g., Internet, open wireless). For avoidance of doubt, Metro Government Network is considered a trusted network.
- 3.4 Contractor shall configure the system to expire passwords at least every one-hundred and eighty (180) days and require a password change on the next successful login. For system that cannot support Strong Passwords, Contractor shall configure the system to expire passwords every ninety (90) days.
- 3.5 Unless otherwise agreed by Metro Government, Contractor shall ensure that Contractor Managed Systems will require Strong Password for user authentication.

4 Automatic Log off. Contractor shall configure systems which store Sensitive Information to automatically logoff user sessions at the most after 20 minutes of inactivity.

5 User Accountability. Contractor shall report to Metro Government, on request, all user accounts and their respective access rights within the system within five (5) business days or less of the request.

6 Information Segregation, Information Protection and Authorization. Contractor shall implement processes and/or controls to prevent the accidental disclosure of Metro Government Sensitive Information to other Contractor Metro Governments, including an Affiliates of Metro Government.

7 Account Termination. Contractor shall disable user accounts of Agents or Metro Government end users for the system within five (5) business days of becoming aware of the termination of such individual. In the cases of cause for termination, Contractor will disable such user accounts as soon as administratively possible.

8 System / Information Access.

- 8.1 Contractor and its Agents shall only access system, application or information which they are expressly authorized by Metro Government to access, even if the technical controls in the system or application do not prevent Contractor or its Agent from accessing those information or functions outside of Metro Government's authorization. Contractor shall impose reasonable sanctions against any Agent who attempts to bypass Metro Government security controls.
- 8.2 Contractor agrees to use the Principle of Least Privilege when granting access to Contractor Managed Systems or Metro Government Information.

9 System Maintenance.

- 9.1 Contractor shall maintain system(s) that generate, store, transmit or process Metro Government Sensitive Information according to manufacturer recommendations. Contractor shall ensure that only those personnel certified to repair such systems are allowed to provide maintenance services.
- 9.2 Contractor shall keep records of all preventative and corrective maintenance on systems that generate, store, transmit or process Metro Government Sensitive Information. Such records shall include the specific maintenance performed, date of maintenance, systems that the maintenance was performed on including identifiers (e.g., DNS name, IP address) and results of the maintenance. Upon request by Metro Government, Contractor shall supply such record within thirty (30) days.

XYLEM VUE, INC. - SERVICE AGREEMENT

This Service Agreement (this “**Agreement**”) is entered into as of _____ (“**Effective Date**”), by and between Xylem Vue Inc., having a place of business at 1 International Drive Rye Brook, New York 10573 “**Xylem**”), and _____, an _____ municipal corporation, having a place of business at _____ (“**Client**” and/or “**City**”).

IN CONSIDERATION OF the promises and mutual covenants and agreements in this Agreement, the parties agree as follows:

- **Services; Statements of Work.** Xylem or one of Xylem’s Affiliates (individually or collectively the “Vendor”) will provide the Goods and Services (“Deliverables”) as specified in one or more Statements of Work (each, a “Statement of Work” or “SOW”) executed by Vendor and Client. “Affiliate” means any other entity controlling, controlled by, or under common control with Client or Xylem, as applicable, where “control” of an entity means the ownership, directly or indirectly, of 50% or more of either the shares or other equity in such entity or the voting rights in such entity. “Services” means all Deliverables that are not Goods. “Goods” means all the tangible components of the Deliverables specified in the SOW. Vendor and Client will execute an individual Statement of Work for each project agreed to by the parties, and each SOW will be substantially in the form set out in Exhibit A (Form of SOW) to this Agreement. Each Statement of Work forms part of this Agreement shall reference this Agreement and is subject to the terms and conditions of this Agreement. Each SOW shall contain: a description of the Services to be performed by Vendor thereunder; any applicable fees, billing, milestone, and/or invoice information; the acceptance process and acceptance criteria for the Services (and any interim milestones or deliverables); and any additional information required for the successful completion of the Services. Vendor, when directed by Client or at the frequency specified in the SOW, shall provide written reports with respect to the Services rendered under each SOW. Any Services performed prior to the full execution of this Agreement or any Statement of Work will be governed by the terms of this Agreement. The terms and conditions of this Agreement control over any conflicting terms in any Statement of Work, except to the extent the Statement of Work contains language that expressly and explicitly states that it supersedes a particular provision or provisions of this Agreement. Nothing in this Agreement obligates, or is intended to obligate, Vendor or any Client to any Statements of Work.
- **Acceptance.** When Vendor notifies Client that it has completed a Service or Deliverable, Client may, in its sole discretion, elect to test or evaluate the related Services and Deliverables to determine whether they comply in all material respects with the requirements of this Agreement and the SOW (the “Acceptance Criteria”). Client will have 14 days after receipt of the Service or Deliverable to complete its review and testing. Upon completion of Client’s review and testing, Client shall notify Vendor whether it has accepted such Services and/or Deliverables (“Accept”), or whether it has identified material discrepancies with the Acceptance Criteria (“Reject”). If Client does not Reject a Deliverable within 14 days after receipt, the Deliverable will be deemed accepted. If Client Rejects a Service and/or Deliverable, Client shall provide a written description of its reason(s) for rejection. On receipt of that description, Vendor review the Rejection and will use commercially reasonable efforts to correct any material non-conformity with the Acceptance Criteria and provide the Client with a revised Service or Deliverable within thirty (30) days. The testing and evaluation process will then resume as set forth above. If the Services and/or Deliverables, as revised, still do not comply with the Acceptance Criteria, Client may either (a) require Vendor to repeat the correction and modification process as set forth above at no additional cost or charge to Client, (b) reject the Services and Deliverables in whole or in part, or (c) terminate the relevant SOW(s). This Section state the sole remedy of Client for a Deliverable failing to meet the Acceptance Criteria.

- **Compensation and Payment.** As consideration for providing the Deliverables in accordance with a Statement of Work, Client shall pay Vendor invoiced amounts as specified in the applicable SOW (“Fees”). Unless otherwise provided in the applicable SOW, Vendor will invoice Client based on the percentage of the Deliverables complete. Client shall pay invoiced Fees in full within 30 days after receipt of invoice, except for any amounts disputed by Client in good faith. In the event of a payment dispute, Client shall deliver a written statement to Vendor no later than fourteen (14) days prior to the date payment is due on the disputed invoice listing all disputed items and providing a reasonably detailed description of each disputed item. Amounts not so disputed are deemed accepted and must be paid, notwithstanding disputes on other items, within the period set forth in this Section 3. The parties shall seek to resolve all such disputes expeditiously and in good faith. Vendor shall continue performing its obligations under this Agreement notwithstanding any such dispute. Each invoice must reference the applicable SOW Exhibit (in the event Vendor is performing services under multiple Exhibits) and include a detailed and itemized description of Goods and Services and, if applicable, reimbursable expenses incurred by Vendor thereunder. Because Vendor is an independent contractor and not an employee of Client, Client is not obligated or liable in any manner to pay or withhold federal or state income taxes or other payroll taxes or to provide any insurance coverage for Vendor. All prices are and shall be inclusive of all taxes. No sales, use, value added, or other taxes may be charged by Vendor to Client in a manner that would result in a total charge in excess of the stated Fees in the SOW.

- **Title, Delivery, Risk of Loss.** Unless otherwise specified by Vendor, delivery and transfer of risk of loss for shipments to Client will be made Ex Works, Vendor’s plant or Distribution Center (Incoterms 2020). Title will pass when risk of loss transfers.

- **Warranty.**

- .1. **Services.** Vendor represents and warrants that Vendor will perform all Services in a timely, professional and workmanlike manner in material compliance with this Agreement and all applicable laws and legal requirements and with a level of care, skill, practice and judgment consistent with generally recognized industry standards and practices for similar services, using personnel with the requisite skill, experience and qualifications. At Client’s option, Vendor shall replace, repair (or cure the defect), or provide a refund for any product or Service that materially breaches the foregoing warranty. Such repair, replacement, or refund will be Client’s sole and exclusive remedy for breach of the above warranty.
- .2. **Goods.** Vendor warrants that the goods sold to Client hereunder will (i) materially conform to the specifications set forth in the applicable SOW Exhibit, and (ii) free from defects in material and workmanship for a period of one (1) year from the date of installation or eighteen (18) months from the date of shipment (which date of shipment will not be greater than thirty (30) days after receipt of notice that the goods are ready to ship), whichever occurs first, unless a longer period is provided by law or is specified in the product documentation (the “Warranty”). Except as otherwise provided by law, Vendor will, at its option and at no cost to Client, either repair or replace any goods which fails to conform with the Warranty; provided, however, that under either option, Vendor will not be obligated to remove the defective goods or install the replaced or repaired goods and Client will be responsible for all other costs, including service costs, shipping fees and expenses. The Warranty is conditioned on Client giving written notice to Vendor of any defects in material or workmanship of warranted goods within thirty (30) days, or shorter period as dictated by the issue, of the date when any defects are first manifest. Vendor will have no warranty obligations to Client with respect to any goods or parts of the goods that: (a) have been repaired by third parties other than Vendor or without Vendor’s written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident, or physical damage; (c) have been used in a manner contrary to Vendor’s instructions for installation, operation and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack;

(e) have been damaged due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have been damaged due to a defective power supply or improper electrical protection; (g) have been damaged resulting from the use of accessory equipment not sold by Vendor or not approved by Vendor in connection with goods supplied by Vendor hereunder; or (h) not sold by Vendor or its authorized supplier. In any case of goods not manufactured by Vendor, there is no warranty from Vendor; however, Vendor will extend to Client any warranty received from Vendor's supplier of such goods.

- .3. Warranties.** The foregoing Warranties are exclusive and in lieu of any and all other express or implied warranties, guarantees, conditions or terms of whatever nature relating to the goods provided hereunder, including without limitation any implied warranties of merchantability and fitness for a particular purpose, which are hereby expressly disclaimed and excluded. Except as otherwise provided by law, Client's exclusive remedy and vendor's aggregate liability for breach of any of the foregoing warranties are limited to repairing or replacing the goods and will in all cases be limited to the amount paid by the client hereunder.

● **Confidentiality.** Client and Vendor agrees for themselves, their employees, and their agents to keep in strictest confidence all information either identified by the other as secret or confidential, or which, from the circumstances, in good faith ought to be treated as secret or confidential. Confidential information includes, by way of example and without limitation, information relating to Vendor's products, processes, price lists, technical information, or other business information which Vendor may identify in its performance of this Agreement (collectively, "Confidential Information"). The parties will not publish, communicate, divulge, or disclose to unauthorized persons any such Confidential Information without prior written consent of the other party. Notwithstanding the foregoing, Confidential Information does not include information disclosed pursuant to law or pursuant to the Tennessee Public Records Act, of which Client is bound. All right, title, and interest in and to all Confidential Information disclosed hereunder remain the property of the disclosing party. Either party is entitled to seek specific performance, an order restraining and enjoining any further disclosure or breach, and any other relief it deems appropriate. The confidentiality obligations set forth in this Section shall survive the termination of this Agreement.

● **Intellectual Property.**

- .1. Proprietary Rights.** Client will not acquire any proprietary rights in Vendor's equipment, systems, software, technology, inventions (whether or not patentable), patents, patent applications, documentation, specifications, designs, data, databases, methods, processes or know-how ("Vendor's Proprietary Technology"). Any modifications or improvements to Vendor's Proprietary Technology made during the performance of the Services will be the sole and exclusive property of Vendor. Client agrees not to reverse engineer any of Vendor's equipment, systems or software.
- .2. Client Data.** Client is the exclusive owner of Client Data and is responsible for all information provided by or on behalf of Client to Vendor for the purposes of Vendor providing the Services. Client grants Vendor a royalty-free, non-exclusive, irrevocable right to access, store, and use Client to (1) provide the Services; (2) analyze and improve the Services; (3) analyze, improve, or develop any equipment or software; or (4) for any other internal use. "Client Data" means data collected by Client through the use of the Services.

● **Indemnification.**

- .1. Client.** Vendor hereby agrees to defend, indemnify, and hold harmless Client and its officers, directors, shareholders, customers, employees, successors, and assigns from and against any and all liabilities, losses, damages, and expenses (including legal expenses) of any kind or character arising from third-party claims or allegations asserted against any of the indemnified

parties and legal proceedings instituted in respect of (a) willful misconduct or grossly negligent acts or omissions on the part of Vendor or its employees; (b) Vendor's breach of any representation, warranty, or obligation hereunder; or (c) violation of any third party's intellectual property rights arising in connection with this Agreement; except Vendor shall have no obligation to indemnify as described above to the extent Client has an obligation to indemnify Vendor for any such claim pursuant to Section .2 above.

- .2. Vendor.** To the extent permitted by law, Client hereby agrees to defend, indemnify, and hold harmless Vendor and its officers, directors, shareholders, customers, employees, successors, and assigns from and against any and all liabilities, losses, damages, and expenses (including legal expenses) of any kind or character arising from third-party claims or allegations asserted against any of the indemnified parties and legal proceedings instituted in respect of (a) willful misconduct or grossly negligent acts or omissions on the part of Client or its employees; (b) Client's breach of any representation, warranty, or obligation hereunder; or (c) violation of any third party's intellectual property rights arising in connection with this Vendor's use of Client's material as permitted by, and in accordance with, this Agreement; except Client shall have no obligation to indemnify as described above to the extent Vendor has an obligation to indemnify Client for any such claim pursuant to Section □ above.
- .3. Each Party.** Each party's obligations as an indemnitor shall be conditioned on the indemnitee promptly notifying the indemnitor of any claim, and reasonably cooperating in the handling thereof, provided that each indemnitee shall have the right to participate in the defense of any claim at its own cost and expense.

- **Term and Termination.**

- .1. Term.** This Agreement shall commence on the Effective Date and shall remain in effect until terminated as provided herein.
- .2. Termination by Client.** Client may terminate this Agreement and any and all then-effective Statements of Work for any reason and at any time, by providing Vendor with 30 days' prior notice. In addition, Client may terminate the Statements of Work to which it is a party for any reason and at any time, by providing Vendor with 30 days' prior written notice. On receipt of a notice of termination, Vendor shall, to the extent commercially practicable, promptly terminate any of its obligations to receive undelivered or unfulfilled goods and services from third parties relating to the applicable Services.
- .3. Termination by Vendor.** Vendor may terminate this Agreement on written notice for any reason and at any time only so long as no SOW is then in effect or no Services are otherwise being performed hereunder.
- .4. Termination for Cause.** Client and Vendor each have the right to immediately terminate this Agreement in the event that the other party breaches any term or condition hereof and such breach is not cured within 30 days following written notice thereof from the complaining party. Client and Vendor each have the right to immediately terminate this Agreement in the event that the other Party becomes insolvent, has voluntary or involuntary bankruptcy proceedings filed by or against it, or makes an assignment for the benefit of creditors.
- .5. Effect of Termination.** In the event of the termination or expiration of this Agreement, Vendor shall return to Client, within fourteen (14) business days after termination or expiration, all Deliverables (finished or otherwise), equipment, instruments, documents, materials, and tangible property of Client. All Confidential Information shall be returned to Client or destroyed as directed by Client. Vendor is entitled to that portion of the Fees attributable to Services actually performed and Deliverables actually delivered, as well as its actual, documented, reasonable expenses

incurred, prior to the effective date of termination in accordance with the applicable SOW Exhibit that could not be cancelled or terminated as required above. Vendor shall refund to Client, within 30 days after the effective date of termination, all pre-paid or advanced amounts provided to Vendor relating to Services not yet performed as of the date of termination.

- **General Relationship.** In all matters relating to this Agreement, Vendor is acting as an independent contractor and nothing in this Agreement operates or should be construed as making Client and Vendor partners, joint ventures, principals, joint employers, agents, or employees of or with the other. No officer, director, employee, agent, Affiliate, contractor, or subcontractor retained by Vendor to perform Services hereunder is or should be deemed to be an officer, director, employee, agent, Affiliate, contractor, or subcontractor of Client for any purpose. Neither Vendor nor Vendor's employees, if any, are employees of Client under the meaning or application of any federal or state unemployment or insurance laws or workman's compensation laws, or otherwise. Vendor is solely responsible for, and assumes all liabilities or obligations imposed by, any one or more of such laws with respect to Vendor's employees, if any, in the performance of this Agreement. Vendor does not have any authority to assume or create any obligation, express or implied, on behalf of Client and Vendor has no authority to represent itself as an agent or employee of Client.

- **Client's Obligations.** Client shall: (a) cooperate with Vendor in all matters relating to the Services and provide such access to Client's premises, and such office accommodation and other facilities as may reasonably be requested by Vendor, for the purposes of performing the Services; (b) deliver to Vendor all relevant environmental, health and safety information before conducting the Services and at all relevant times thereafter, including mitigating hazards to the maximum extent practicable and/or warning of any such hazards along with requirements for appropriate personal protective equipment, as required to establish and maintain safe working conditions; (c) respond promptly to any Vendor request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Vendor to perform Services in accordance with the requirements of this Agreement; (d) provide such client materials or information as Vendor may request to carry out the Services in a timely manner and ensure that such client materials or information are complete and accurate in all material respects; and (e) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

- **Client's Acts or Omissions.** If Vendor's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Client or its agents, subcontractors, consultants or employees, Vendor shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Client, in each case, to the extent arising directly or indirectly from such prevention or delay ("Client's Delay").

- **Client's Warranty.** Client warrants the accuracy of any and all information relating to the details of its operating conditions, including temperatures, pressures, and where applicable, the nature of all hazardous materials. Vendor can justifiably rely upon the accuracy of Client's information in its performance. Should Client's information prove inaccurate, Client agrees to reimburse Vendor for any losses, liabilities, damages and expenses that Vendor may have incurred as a result of any inaccurate information provided by Client to Vendor.

- **Governing Provisions.** The Agreement between Vendor and Client consist of the following:

- The Contract initiated between the Metropolitan Government of Nashville and Davidson County and Xylem Vue, Inc. and the following documents (most recent with most priority):

- .1. Exhibit A – Pricing
- .2. Exhibit B – MISA Terms and conditions
- .3. Exhibit C – This service agreement
- .4. Exhibit D – Affidavits

Safety and Security Regulations.

- .5. Chemicals & Equipment.** Prior to commencing Services, Vendor shall provide Client's designated project manager with a list of any personnel who will need access to Client's facilities and any equipment, chemicals, or similar materials Vendor intends to bring into Client's facilities. Vendor's personnel shall comply with Client's and all applicable government safety, security, and other rules and regulations now in effect or which hereinafter may be applicable and with all oral or written instructions from authorized Client personnel while in Client's facilities. Vendor shall make every reasonable effort to avoid or minimize any disruption to Client's operations or alteration to its facilities.
- .6. Health & Safety.** Vendor is solely responsible for initiating, maintaining, and supervising all health and safety precautions and programs in conjunction with the Services. Vendor shall take all reasonable precautions in the area where Services are performed to protect health and safety of persons (including employees of Vendor and Client) and to protect the property of Vendor, Client, and others against damage, contamination, loss, or theft. Vendor shall comply with all laws and regulations now in effect or which hereinafter may be applicable relating to health, safety, and environment, including all applicable health and safety laws in each of the jurisdictions in which Services are to be provided, and with all health, safety, and environmental rules, regulations, and procedures at Client's facilities. Compliance with such requirements shall represent the minimum standard required of Vendor and shall be provided at no additional cost to Client. Vendor is responsible for examining all requirements and determining whether additional or more stringent health, safety, and security provisions are required for the Services to be performed hereunder. Nothing contained in this Section shall affect Vendor's status as an independent contractor. Vendor shall ensure that the provisions of this Section are made binding on all subcontractors.

- **Fair Labor Certification & Equal Opportunity.** In performing its obligations under this Agreement and each Order, Vendor hereby certifies that it shall: (a) not use child labor (as defined by local law), (b) not use forced or compulsory labor, (c) not physically abuse labor, and (d) respect employees' rights to choose whether to be represented by third parties and to bargain collectively in accordance with local law. In addition, Vendor hereby certifies that it shall comply with all applicable laws and regulations relating to wages and benefits, working hours and overtime, and health, safety, and environmental matters. If requested by Client, Vendor shall demonstrate its compliance with all requirements in this Section to the reasonable satisfaction of Client.

Where applicable, federal contractors and sub-contractors in the United States shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their age, race, color, religion, creed, sex, marital status, sexual orientation, gender identity, genetic information, citizenship status, or national origin. Moreover, these regulations require that covered prime contractors and sub-contractors take affirmative action to employ and advance in employment individuals without regard to age, race, color, religion, creed, sex, marital status, sexual orientation, gender identity, genetic information, citizenship status, national origin, protected veteran status, or disability. Where applicable, the parties agree to abide by the requirements of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under U.S. federal labor laws.

- **Disputes; Applicable Law.** The Agreement and all SOWs shall be governed by the laws of the state of Tennessee without regard to its conflict of laws provisions.

- **Performance Dates.** Vendor shall use reasonable efforts to meet any performance dates specified in the Statement of Work, and any such dates shall be estimates only.
- **Notices.** Any notice required to be given hereunder shall be deemed to have been sufficiently given either when served by registered or certified mail return receipt requested to:

VENDOR:

Xylem Inc.
Attn: Legal Department
1 International Drive, Rye Brook, NY 10583

CLIENT: To the address provided in the introductory paragraph to this Agreement unless Vendor provides a different address in writing.

- **Limitation of Liability.** TO THE EXTENT PERMITTED BY STATE LAW, (I) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT; AND (II) NEITHER PARTY'S LIABILITY TO THE OTHER PARTY FOR ANY DAMAGES OF ANY KIND SHALL EXCEED THE FEES PAID OR PAYABLE BY CLIENT IN THE 12-MONTH PERIOD PRIOR TO THE DATE THE CIRCUMSTANCE GIVING RISE TO THE CLAIM FIRST AROSE.
- **Remedies; Continued Performance.** No right or remedy under this Agreement conferred on, or reserved to, either party is intended to be exclusive of any other right or remedy, and every right and remedy is cumulative and in addition to any other right or remedy under this Agreement, at law, or in equity. Vendor will continue performing its obligations while a dispute is being resolved except to the extent the issue in dispute precludes performance (disputes regarding amounts owed will not be deemed to preclude performance). If there is a breach of this obligation, Client will be entitled to seek and obtain injunctive relief, without posting bond or proving damages.
- **Entire Agreement; Amendments.** This Agreement may only be modified or amended in a writing signed by both parties. A party's failure to enforce any of the provisions of this Agreement at any time should not be construed to be a waiver of those provisions, or in any way affect the validity of this Agreement.
- **Counterparts.** This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be an original, but all such counterparts shall constitute one and the same instrument. The exchange of executed copies of this Agreement by facsimile, portable document format (PDF) transmission, or other reasonable form of electronic transmission shall constitute effective execution and delivery of this Agreement.
- **IT Systems Integration Services.** Except as may otherwise be provided herein, integration of the Software and any third-party software into Customer's new or existing internal IT systems is not included in this Agreement. Any integration work shall be subject to a separate agreement which describes the scope and pricing for such work.
- **Field Maintenance.** The parties shall have their respective obligations for the deployment and maintenance of the Monitoring Locations as set forth in additional statements of work.
- **SaaS.** The terms and conditions applicable to any Software as a Service ("SaaS"), which typically consists of a managed service in which Vendor will be responsible for the day-to-day monitoring, maintenance, management, and supporting of certain software applications, are provided in Appendix 1.

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- **Force Majeure.** Both Vendor and Client may cancel or suspend the Agreement and neither will have liability to the other for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to circumstances beyond either Party's reasonable control, including but not limited to acts of God, fire, flood or other natural disasters, war and civil disturbance, riot, acts of governments, terrorism, disease, epidemic, pandemic or related government order, currency restrictions, labor shortages or disputes, unavailability of materials, fuel, power, energy or transportation facilities, failures of suppliers or subcontractors to effect deliveries, in which case the time for performance will be extended in an amount equal to the excused period, provided that either Party will have, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notified the other Party of such delay, of the reason therefore and of the probable duration and consequence thereof. Both Parties will work to eliminate the cause of the delay, interruption or cessation and to resume performance of its obligations hereunder with the least possible delay.

Appendix 1: General Terms and Conditions for Software-as-a-Service

This exhibit contains the terms and conditions applicable to the Software as a Service (“**SaaS**”) that Vendor shall provide to Client if (i) Client opts for such services at the prices set forth in the set forth in any Agreement for such Services between Xylem and Client, and (ii) Client is current in its payments set forth in any Agreement for such Services between Xylem and Client.

Definitions

1. SaaS is a managed service in which Vendor will be responsible for the day-to-day monitoring, maintenance, management, and supporting of certain software applications. These software applications consist of the following (each, an “**Application**”):
 - a. **Software to be utilized is: Water Network Optimization, Polaris, Blu-X, and other Software as needed.**

Description of Specific Services:

2. **Service and System Control.** Vendor will retain sole control over the information technology infrastructure that is required to operate the Application(s), including all hardware and software and will use commercially reasonable efforts to provide Client with access to the Application(s) on a 24 x 7 x 365 basis. Client’s hardware and software, as well as the monitoring, maintenance, management, and support of such hardware and software, is the responsibility of Client, including correctly configuring and maintaining (i) the desktop environment used by Client to access the Application(s); and (ii) Client’s network router and firewall, if applicable, to allow data to flow between the Client’s systems and the Application(s) in a secure manner via the Internet.
3. **Usage.** Client will retain sole control and responsibility for access to and use of the Applications, including its use of results obtained from use of the Applications and conclusions, decisions, or actions based on such use. Client agrees to use the Applications solely for its own internal business purposes. Client shall promptly pay all SaaS fees. Client will not (i) carelessly, knowingly, intentionally or maliciously threaten, disrupt, harm, abuse or interfere with the Application(s) or any of their functionality, performance, security or integrity, nor attempt to do so; (ii) impersonate any person or entity, including, but not limited to Vendor or a Vendor employee or another user; or (iii) forge, falsify, disguise or otherwise manipulate any identification information associated with Client’s access to or use of the Application(s).
4. **Access.** Upon receiving access to the portal (the “**Client Portal**”) from Vendor, Client will create username and passwords for each of Client’s authorized users and complete the registration process (“**Authorized Users**”) for Authorized Users to access the Application(s). Client is responsible for maintaining the security and confidentiality of each user ID and password pair associated with Client’s account, and Vendor will not be liable for any loss, damage or liability arising from Client’s account or any user ID and password pairs associated with Client. Client is fully responsible for all acts and omissions that occur through the use of Client’s account and any user ID and password pairs. Client agrees (i) not to allow anyone other than the Authorized Users to have any access to, or use of Client’s account or any user ID and password pairs at any time; (ii) to notify Service Provider immediately of any actual or suspected unauthorized use of Client’s account or any of such user ID and password pairs, or any other breach or suspected breach of security, restricted use or confidentiality; and (iii) to take the Vendor-recommended steps to log out from and otherwise exit the Application(s) at the end of each session. Client agrees that Vendor shall be entitled to rely, without inquiry, on the validity of the user accessing the Application(s) application through Client’s account, account ID, usernames or passwords.
5. **Reliability of Data.** Model configurations, projections and the analysis generated by the SaaS is provided “as is”, without any warranty as to accuracy or validity, is intended for planning and decision support purposes only, and is subject to uncertainties that cannot be fully identified or qualified. Forecasts and actual results may materially vary due to events and circumstances that are not reasonably foreseeable, inaccurate or incomplete data provided and used to formulate the projections, or operation and system conditions that are beyond the scope or capability of SaaS. Vendor is not responsible for the realization of

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forecasted conclusions or projections, or identification of matters that might affect actual system operation or conditions as a result of your use of the SaaS.

6. **Term.** The SaaS term starts on the date that Vendor makes SaaS available to Client for use, and ends upon the earlier the expiration or termination of the Agreement as set forth in the Agreement.

7. **System Uptime Rate.**

i. Vendor will also endeavor to maintain an average System Uptime Rate of 95%.

ii. **Calculations**

$$\text{Uptime Rate} = \frac{100 \text{ (TMO – Total Non-Scheduled Downtime minutes in the month)}}{\text{TMO}}$$

“**Targeted Minutes of Operation**” or “**TMO**” means total minutes in the applicable month minus the Scheduled Downtime.

“**Scheduled Downtime**” means such time the Application(s) is not available as a result of a scheduled outage due to planned maintenance. Vendor will endeavor to provide the Client with 3 days advance notice of any Scheduled Downtime.

“**Non-Scheduled Downtime**” means the number of minutes during the month where the Application is unavailable due to reasons other than Scheduled Downtime or the Exceptions (see below).

iii. **Exceptions.** “Exceptions” mean the following events:

- Force Majeure;
- Emergency Work (see below); and
- Lack of Internet Availability (see below).

Emergency Work. In the event that Force Majeure, emergencies, dangerous conditions or other exceptional circumstances arise or continue during TMO, Vendor is entitled to take any actions that Vendor determines is necessary or advisable to prevent, remedy, mitigate, or otherwise address actual or potential harm, interruption, loss, threat, security or like concern to any of the Application(s) (“**Emergency Work**”). Such Emergency Work may include, but is not limited to: analysis, testing, repair, maintenance, re-setting and other servicing of the hardware, cabling, networks, software and other devices, materials and systems through which access to and/or use of the Application(s) by the Client is made available. Vendor shall endeavor to provide advance notice of such Emergency Work to Client when practicable and possible.

Lack of Internet Availability. Vendor is not responsible for any deterioration of performance attributable to latencies in the Internet or point-to-point network connection operated by a third party. Client expressly agrees that Vendor does not control the flow of data to or from Vendor’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 Client’s connections to, the Internet or point-to-point data connection (or portions thereof). Although Vendor will use commercially reasonable efforts to take actions Vendor may deem appropriate to mitigate the effects of any such events, Vendor cannot guarantee that such events will not occur. Accordingly, Vendor disclaims any and all liability resulting from or relating to such events.

8. **Security.** Vendor will employ security measures in accordance industry standards and applicable law.

Affidavits

Compliance with Laws: After first being duly sworn according to law, the undersigned (Affiant) states that he/she and the contracting organization is presently in compliance with, and will continue to maintain compliance with, all applicable federal, state, and local laws.

Taxes and Licensure: Affiant states that Contractor has all applicable licenses, including business licenses. Affiant also states that Contractor is current on its payment of all applicable gross receipt taxes and personal property taxes. M.C.L. 4.20.065

Nondiscrimination: Affiant affirms that by its employment policy, standards and practices, it does not subscribe to any personnel policy which permits or allows for the promotion, demotion, employment, dismissal or laying off of any individual due to race, creed, color, national origin, age or sex, and are not in violation of, and will not violate, any applicable laws concerning the employment of individuals with disabilities. M.C.L. 4.28.020

Employment Requirement: Affiant affirms that Contactor's employment practices are in compliance with applicable United States immigrations laws. M.C.L. 4.40.060.

Covenant of Nondiscrimination: Affiant affirms that in consideration of the privilege to submit offers in response to this solicitation, we hereby consent, covenant, and agree as follows:
To adopt the policies of the Metropolitan Government relating to equal opportunity in contracting on projects and contracts funded, in whole or in part, with funds of the Metropolitan Government;
- To attempt certain good faith efforts to solicit Minority-owned and Woman-owned business participation on projects and contracts in addition to regular and customary solicitation efforts;
- Not to otherwise engage in discriminatory conduct;
- To provide a discrimination-free working environment;
- That this Covenant of Nondiscrimination shall be continuing in nature and shall remain in full force and effect without interruption;
- That the Covenant of Nondiscrimination shall be incorporated by reference into any contract or portion thereof which the Supplier may hereafter obtain; and
- That the failure of the Supplier to satisfactorily discharge any of the promises of nondiscrimination as made and set forth herein shall constitute a material breach of contract. M.C.L. 4.46.070

Contingent Fees: It is a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a Metro contract upon an agreement or understanding for a contingent commission, percentage, or brokerage fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business. After first being duly sworn according to law, the undersigned Affiant states that the Contractor has not retained anyone in violation of the foregoing. M.C.L. 4.48.080

Iran Divestment Act Affidavit: By submission of this offer and in response to the solicitation, Contractor(s) and each person signing on behalf of Contractor(s) affirm, under penalty of perjury, that to the best of their knowledge and belief, neither the Contractor(s), nor proposed subcontractors, subconsultants, partners and any joint venturers, are on the list created pursuant to the Tennessee Code Annotated § 12-12-106 (Iran Divestment Act). Referenced website:

<https://www.tn.gov/content/dam/tn/generalservices/documents/cpo/library/2022/>

List_of_persons_pursuant_to_Tenn._Code_Ann._12-12-106_Iran_Divestment_Act_updated_with%20NY05.04.22.pdf

Sexual Harassment: Affiant affirms that should it be awarded a contract with the Metropolitan Government for a period of more than twelve (12) months and/or valued at over five hundred thousand (\$500,000) dollars, affiant shall be required to provide sexual harassment awareness and prevention training to its employees if those employees:

1. Have direct interactions with employees of the Metropolitan Government through email, phone, or in-person contact on a regular basis;
2. Have contact with the public such that the public may believe the contractor is an employee of the Metropolitan Government, including but not limited to a contractor with a phone number or email address associated with Metropolitan government or contractors with uniforms or vehicles bearing insignia of the Metropolitan Government; or
3. Work on property owned by the metropolitan government.

Such training shall be provided no later than (90) days of the effective date of the contract or (90) days of the employee's start date of employment with affiant if said employment occurs after the effective date of the contract. M.C.L. 2.230.020.

Affiant affirms that Contractor is not currently, and will not for the duration of the awarded Contract, engage in a boycott of Israel for any awarded contract that meets the following criteria:

- Has total potential value of two hundred fifty thousand (\$250,000) or more;
- Affiant has ten (10) or more employees.

Affiant affirms that offeror is and will remain in compliance with the provisions of Chapter 4.12 of the Metro Procurement Code and the contents of its offer as submitted. Affiant further affirms that offeror understands that failure to remain in such compliance shall constitute a material breach of its agreement with the Metropolitan Government.

And Further Affiant Sayeth Not:

Organization Name: Xylem Vue, Inc.

Organization Officer Signature: 

Name of Organization Officer: Andrew Swirsky

Title: Vice President



CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)
03/15/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Aon Risk Services Northeast, Inc. New York NY Office One Liberty Plaza 165 Broadway, Suite 3201 New York NY 10006 USA	CONTACT NAME: PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105	
	E-MAIL ADDRESS:	
INSURED Xylem Vue Inc. 1 International Drive Rye Brook NY 10573 USA	INSURER(S) AFFORDING COVERAGE	
	INSURER A: Underwriters at Lloyds	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		
		NAIC # 32727

Holder Identifier :

COVERAGES **CERTIFICATE NUMBER:** 570098315154 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION						EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N	N/A				<input type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH E.L. EACH ACCIDENT E.L. DISEASE-EA EMPLOYEE E.L. DISEASE-POLICY LIMIT
A	E&O - Miscellaneous Professional-Primary			FSCE02200583 Claims-Made SIR applies per policy terms & conditions	06/01/2022	06/01/2023	Each Loss \$2,500,000 Retention \$2,500,000

570098315154

Certificate No :

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Technology Error and Omissions is included in the above referenced policy. Professional Liability Limit Shown is in the Aggregate and Per Claim. RE: Contract No. 6525226.

CERTIFICATE HOLDER

CANCELLATION

Purchasing Agent Metropolitan Government of Nashville and Davidson County Metro Courthouse Nashville TN 37201 USA	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE





ADDITIONAL REMARKS SCHEDULE

AGENCY Aon Risk Services Northeast, Inc.		NAMED INSURED Xylem Vue Inc.	
POLICY NUMBER See Certificate Number: 570098315154		EFFECTIVE DATE:	
CARRIER See Certificate Number: 570098315154	NAIC CODE		

ADDITIONAL REMARKS

THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,
FORM NUMBER: ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER	
INSURER	
INSURER	
INSURER	

ADDITIONAL POLICIES If a policy below does not include limit information, refer to the corresponding policy on the ACORD certificate form for policy limits.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	OTHER							
	<input checked="" type="checkbox"/> Including Cyber							



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
02/22/2023

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Marsh USA, Inc. 1166 Avenue of the Americas New York, NY 10036 CN108453421-STND-GAW-22-23	CONTACT NAME: Lauren Giangrande	FAX (A/C, No):
	PHONE (A/C, No, Ext): (212) 345-6000	E-MAIL ADDRESS: Lauren.Giangrande@marsh.com
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A: AIU Insurance Co.	19399	
INSURER B: National Union Fire Ins. Co.	19445	
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:**

NYC-011561236-02

REVISION NUMBER: 4

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE			ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	X	COMMERCIAL GENERAL LIABILITY				GL 9584127	10/31/2022	10/31/2023	EACH OCCURRENCE	\$ 1,000,000
		CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 1,000,000
									MED EXP (Any one person)	\$ 10,000
									PERSONAL & ADV INJURY	\$ 1,000,000
		GEN'L AGGREGATE LIMIT APPLIES PER:							GENERAL AGGREGATE	\$ 2,000,000
	X	POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC							PRODUCTS - COMP/OP AGG	\$ 2,000,000
		OTHER:							SIR: \$1,000,000	\$
B	X	AUTOMOBILE LIABILITY				CA 7281067 (AOS)	10/31/2022	10/31/2023	COMBINED SINGLE LIMIT (Ea accident)	\$ 3,000,000
B	X	ANY AUTO				CA 7281069 (VA)	10/31/2022	10/31/2023	BODILY INJURY (Per person)	\$
A		OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/>				CA 7281068 (MA)	10/31/2022	10/31/2023	BODILY INJURY (Per accident)	\$
		HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY <input type="checkbox"/>							PROPERTY DAMAGE (Per accident)	\$
										\$
		UMBRELLA LIAB							EACH OCCURRENCE	\$
		EXCESS LIAB							AGGREGATE	\$
		DED								\$
		RETENTION \$								
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC 35901966 (AOS)	10/31/2022	10/31/2023	X PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>	
A		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input checked="" type="checkbox"/>			WC 35901967 (WI)	10/31/2022	10/31/2023	E.L. EACH ACCIDENT	\$ 2,000,000
A		If yes, describe under DESCRIPTION OF OPERATIONS below			N/A	WC 35901965 (CA)	10/31/2022	10/31/2023	E.L. DISEASE - EA EMPLOYEE	\$ 2,000,000
									E.L. DISEASE - POLICY LIMIT	\$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: Contract 6525226.

Metropolitan Government of Nashville and Davidson County, its officials, officers, employees, and volunteers are included as additional insured (except Workers Compensation) as required by written contract.

CERTIFICATE HOLDER
 Purchasing Agent, Metropolitan
 Government of Nashville and Davidson County,
 Metro Courthouse,
 730 President Ronald Reagan Way, Ste. 101
 Nashville, TN 37210
CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Marsh USA Inc.

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ENDORSEMENT

This endorsement, effective 12:01 A.M. 10/31/2022 forms a part of

policy No. CA 7281067 issued to Xylem Inc.

By NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - WHERE REQUIRED UNDER CONTRACT OR AGREEMENT

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM

SCHEDULE

ADDITIONAL INSURED:

Any person or organization for whom you are contractually bound to provide Additional Insured status. But only to the extent of such person's or organization's liability arising out of use of a covered "auto".

I SECTION II - LIABILITY COVERAGE, A. Coverage, 1. - Who Is Insured, is amended to add:

- d. Any person or organization, shown in the schedule above, to whom you become obligated to include as an additional insured under this policy, as a result of any contract or agreement you enter into which requires you to furnish insurance to that person or organization of the type provided by this policy, but only with respect to liability arising out of use of a covered "auto". However, the insurance provided will not exceed the lesser of:
 - (1) The coverage and/or limits of this policy, or
 - (2) The coverage and/or limits required by said contract or agreement.



**Authorized Representative or
Countersignature (in States Where
Applicable)**

POLICY NUMBER:
GL 9584127

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
All owners, lessees or contractors with whom you agreed, or are required, by contract or agreement, to provide Additional Insured status	As required by written contract.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than

that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III - Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2 Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

POLICY NUMBER:
GL 9584127

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization whom you become obligated to include as an additional insured as a result of any contract or agreement you have entered into.	Per the contract or Agreement.
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that

which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

METROPOLITAN GOVERNMENT OF NASHVILLE AND DAVIDSON COUNTY
DEPARTMENT OF FINANCE – PROCUREMENT
SOLE SOURCE JUSTIFICATION FORM



Entered in DocuSign July 12, 2022

SS #: ss2023003

Date Received: July 7, 2022

Send an email to PRG@nashville.gov and attach completed sole source form and supporting documentation.

Proposed supplier MUST be Registered in iProcurement

Date: 06/29/2022 Requesting Department/Agency/Commission: Water Services

Requesting Official: Stephanie Belcher Telephone #: 615-862-4513 This is for a multi-year contract.

Product/Service Description: Continued upgrade and maintenance of the Water Network Optimization (WNO) distribution system and treatment plant optimization platform for Metro Water Services.

Total Purchase (Enter the value for the entire contract life) Price: \$15,000,000

BU Number: 65490106 Fund #: 47335 Object Account: 502233 Any Other Accounting Info: _____

Proposed Supplier: Xylem Vue

Proposed Supplier Contact: Andrew Swirsky

Supplier Address: 1 International Drive

City: Rye Brook

ST: NY

Zip: 10573

Supplier Telephone #: 281-841-9822

Supplier Email: Andrew.Swirsky@xylem.com

Metro Code: 4.12.060 Sole Source Procurement.

A contract may be awarded for a supply, service or construction item without competition when, under regulations promulgated by the standards board, the purchasing agent determines in writing that there is only one source for the required supply, service or construction item. The standards board may, by regulation, establish specific categories of supplies, services, or construction items as sole source items. (Ord. 92-210 § 1 (3-205), 1992)

R4.12.060.02 Conditions for Use of Sole Source Procurement.

Other, see explanation below

If Other, Explain Request: Xylem Vue created the WNO distribution system and treatment plant optimization platform for MWS. The platform is proprietary and it would require significant Capital investment and time to switch to another provider/developer as no other vendor could use the existing platform.

Signatures will be gotten by Procurement in DocuSign

Department Requester's Initials: SB

Requesting Department Director's Signature of Approval: Amanda Denton-Mayer

Date: 7/12/2022 | 6:21 AM PDT

SS2023003

SS #: _____

July 7, 2022

Date Received: _____

To be completed by the Procurement Division

Vetting & Research Needed; Date Requested by Purchasing Agent _____

Multi year. 5 yr initial. Authorize PA to exec renewals up 10 yrs

Sole Source is Approved for: _____

Sole Source is Denied (See determination summary for denial reason)

PURCHASING AGENT: Michelle A. Hernandez Lane **Date:** 7/15/2022 | 7:54 AM



Date: April 26, 2022
Subject: Xylem WNO Proprietary Technology

To Whom It May Concern,

The purpose of this letter is to confirm Xylem Decision Intelligence Solutions is the sole distributor of Water Network Optimization (WNO) distribution system and drinking water treatment plant optimization platform in the United States. The WNO platform is unique in the marketplace in its ability to empower our clients to Sense, Predict, and Act, in real time, across their urban water distribution networks and treatment facilities.

The key user applications for the WNO platform include: 1) real-time visualization of SCADA data and digital twin predictions of pressure, flow, tank level, and water age within web-based user interfaces designed for operators and engineers; 2) real-time optimization of water distribution system pump and valve operations, leveraging the predictive power of the digital twin along with large-scale optimization algorithms designed to work for large and complex networks. To the best of our knowledge, Xylem is not aware of any other company in the United States or elsewhere offering the following platform:

- Real-time digital twin predictions integrating:
 - Real-time data from sensor networks to ensure that the digital twin tracks actual operational decisions.
 - Advanced decision science algorithms that forecast near-term water demand and leverage the digital twin to identify pump and valve operations that achieve energy reduction and pressure management goals.
 - A configurable open architecture approach, integrating any modeling software on the market and able to adapt easily to changes/additions to operational data streams or network infrastructure conditions.
- Web-based, operator-focused real-time decision support systems powered by the above "stack" of technologies.

The WNO platform is the culmination of 13+ years of experience and technology development. Our glass box/open architecture approach and real time decision support system framework allow us to leverage the substantial prior investments of our clients in their GIS, SCADA, and Hydraulic & Hydrological (H/H) models (among other IT assets), by bringing them together and unlocking their combined power to provide immense value to our clients. This technology is proprietary and forms an integral part of our Intellectual Property portfolio.

If you require any further information, please feel free to contact me at 281-841-9822 or by email at Andrew.swirsky@xylem.com.

Regards,

A handwritten signature in blue ink that reads "Andrew Swirsky".

Andrew Swirsky, PE*, PMP
Client Solutions Manager
Xylem Decision Intelligence Solutions
*TX, CA, NC, FL

Certificate Of Completion

Envelope Id: 51DA6BB6D85547D1B2DCE940D54C5A4A	Status: Sent
Subject: Metro Contract 6525226 with Xylem Vue, Inc. (Water Services)	
Source Envelope:	
Document Pages: 67	Signatures: 11
Certificate Pages: 17	Initials: 4
AutoNav: Enabled	Envelope Originator:
Envelope Stamping: Enabled	Procurement Resource Group
Time Zone: (UTC-06:00) Central Time (US & Canada)	730 2nd Ave. South 1st Floor
	Nashville, TN 37219
	prg@nashville.gov
	IP Address: 170.190.198.185


Record Tracking

Status: Original	Holder: Procurement Resource Group	Location: DocuSign
3/16/2023 11:23:33 AM	prg@nashville.gov	
Security Appliance Status: Connected	Pool: StateLocal	
Storage Appliance Status: Connected	Pool: Metropolitan Government of Nashville and Davidson County	Location: DocuSign


Signer Events

Signer Events	Signature	Timestamp
Gary Clay		Sent: 3/16/2023 11:31:58 AM
Gary.Clay@nashville.gov		Viewed: 3/16/2023 12:05:19 PM
Asst. Purchasing Agent		Signed: 3/16/2023 12:05:53 PM
Security Level: Email, Account Authentication (None)	Signature Adoption: Uploaded Signature Image	
	Using IP Address: 170.190.198.190	


Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Amanda Deaton-Moyer		Sent: 3/16/2023 12:06:01 PM
Amanda.Deaton-Moyer@nashville.gov		Viewed: 3/16/2023 12:22:52 PM
Security Level: Email, Account Authentication (None)		Signed: 3/16/2023 12:24:11 PM
	Signature Adoption: Pre-selected Style	
	Using IP Address: 174.238.48.94	
	Signed using mobile	

Electronic Record and Signature Disclosure:
Accepted: 3/16/2023 12:22:52 PM
ID: 3c50fb4a-0379-4ce1-baad-57cfd630e3a3

Rose Wood		Sent: 3/16/2023 12:24:15 PM
Rose.Wood@nashville.gov		Viewed: 3/17/2023 7:32:49 AM
Finance Admin		Signed: 3/17/2023 7:33:25 AM
Metro Finance Dept. OMB		
Security Level: Email, Account Authentication (None)	Signature Adoption: Pre-selected Style	
	Using IP Address: 170.190.198.185	

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Andrew Swirsky		Sent: 3/17/2023 7:33:30 AM
Andrew.Swirsky@xylem.com		Viewed: 3/17/2023 8:29:14 AM
Vice President		Signed: 3/17/2023 8:31:09 AM
Xylem Vue, Inc.		
Security Level: Email, Account Authentication (None)	Signature Adoption: Uploaded Signature Image	
	Using IP Address: 199.253.110.1	

Electronic Record and Signature Disclosure:

Signer Events**Signature****Timestamp**

Accepted: 3/17/2023 8:29:14 AM
ID: b7afc925-ed47-43d4-91c0-3d1f8f4d6367

Michelle A. Hernandez Lane
michelle.lane@nashville.gov
Chief Procurement Officer/Purchasing Agent
Metro
Security Level: Email, Account Authentication
(None)

Michelle A. Hernandez Lane

Signature Adoption: Pre-selected Style
Using IP Address: 172.58.147.34
Signed using mobile

Sent: 3/17/2023 8:31:14 AM
Viewed: 3/17/2023 8:31:33 AM
Signed: 3/17/2023 8:32:44 AM

Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Scott Potter
scott.potter@nashville.gov
Director
Security Level: Email, Account Authentication
(None)

Scott Potter

Signature Adoption: Pre-selected Style
Using IP Address: 170.190.198.192

Sent: 3/17/2023 8:32:49 AM
Viewed: 3/17/2023 8:43:59 AM
Signed: 3/17/2023 8:44:10 AM

Electronic Record and Signature Disclosure:
Accepted: 3/17/2023 8:43:59 AM
ID: 2ec0b69a-1855-448d-bf0a-262d40a5e870

Kelly Flannery/TJE
Tom.Eddlemon@nashville.gov
Director of Finance
Security Level: Email, Account Authentication
(None)

Kelly Flannery/TJE

Signature Adoption: Pre-selected Style
Using IP Address: 170.190.198.185

Sent: 3/17/2023 8:44:14 AM
Viewed: 3/17/2023 10:06:05 AM
Signed: 3/17/2023 10:09:12 AM

Electronic Record and Signature Disclosure:
Accepted: 3/17/2023 10:06:05 AM
ID: b0572e3f-f80f-4bfe-85e7-4bc5d174e693

Kelly Flannery
kelly.flannery@nashville.gov
Security Level: Email, Account Authentication
(None)

Kelly Flannery

Signature Adoption: Pre-selected Style
Using IP Address: 170.190.198.185

Sent: 3/17/2023 10:09:17 AM
Viewed: 3/17/2023 10:09:44 AM
Signed: 3/17/2023 10:10:20 AM

Electronic Record and Signature Disclosure:
Accepted: 3/17/2023 10:09:44 AM
ID: 6fd775a7-7350-47ad-a55f-dab42e685ed8

Balogun Cobb
balogun.cobb@nashville.gov
Security Level: Email, Account Authentication
(None)

BC

Signature Adoption: Pre-selected Style
Using IP Address: 170.190.198.185

Sent: 3/17/2023 10:10:26 AM
Viewed: 3/17/2023 10:15:24 AM
Signed: 3/17/2023 10:15:32 AM

Electronic Record and Signature Disclosure:
Accepted: 3/17/2023 10:15:24 AM
ID: 017ee285-6024-4790-b6ab-e734be2a711f

Signer Events	Signature	Timestamp
<p>Tara Ladd tara.ladd@nashville.gov Assistant Metropolitan Attorney Security Level: Email, Account Authentication (None)</p>	<p><i>Tara Ladd</i></p> <p>Signature Adoption: Pre-selected Style Using IP Address: 170.190.198.144</p>	<p>Sent: 3/17/2023 10:15:37 AM Viewed: 3/20/2023 1:02:45 PM Signed: 3/20/2023 1:02:55 PM</p>

Electronic Record and Signature Disclosure:

Accepted: 3/20/2023 1:02:45 PM
 ID: f94dbe51-cb5e-4f1f-87fd-ae58dec3683

<p>Procurement Resource Group prg@nashville.gov Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None)</p>	Sent: 3/20/2023 1:03:03 PM
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Electronic Record and Signature Disclosure:

Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp

<p>Terri L. Ray Terri.Ray@nashville.gov Finance Manager Metropolitan Government of Nashville and Davidson County Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 3/16/2023 11:31:57 AM</p>
<p>Electronic Record and Signature Disclosure: Not Offered via DocuSign</p>		

<p>Sally Palmer sally.palmer@nashville.gov Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 3/20/2023 1:03:00 PM Viewed: 3/20/2023 1:20:58 PM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 3/20/2023 11:05:32 AM ID: 3c7694d4-6228-4d0d-b1a4-7601d2b0c12a</p>		

<p>Tara Ladd tara.ladd@nashville.gov Assistant Metropolitan Attorney Security Level: Email, Account Authentication (None)</p>	<div style="border: 2px solid blue; padding: 5px; font-weight: bold; color: blue; font-size: 1.2em;">COPIED</div>	<p>Sent: 3/20/2023 1:03:02 PM Viewed: 3/20/2023 1:03:29 PM</p>
<p>Electronic Record and Signature Disclosure: Accepted: 3/20/2023 1:02:45 PM ID: f94dbe51-cb5e-4f1f-87fd-ae58dec3683</p>		

Carbon Copy Events	Status	Timestamp
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Jeremy Frye
jeremy.frye@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Accepted: 12/21/2022 1:49:31 PM
ID: eb85c8ac-4b46-4425-9a89-e68b7e476ccd

Justin Bowling
justin.bowling@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Amber Gardner
Amber.Gardner@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Accepted: 12/26/2022 6:53:53 PM
ID: f39b7bb9-bb2b-47dd-b058-d2ecba0c41d3

Austin Kyle
publicrecords@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Accepted: 3/20/2023 1:14:48 PM
ID: 7dbd2dd1-9180-4452-9129-3c58895c02b1

Terri Ray
terri.ray@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Not Offered via DocuSign

Stephanie Belcher
Stephanie.belcher@nashville.gov
Security Level: Email, Account Authentication
(None)
Electronic Record and Signature Disclosure:
Accepted: 3/13/2023 2:49:08 PM
ID: c9ed497a-7682-4902-9196-9af372f7bcff

Witness Events	Signature	Timestamp
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Notary Events	Signature	Timestamp
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Envelope Summary Events	Status	Timestamps
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Envelope Sent	Hashed/Encrypted	3/16/2023 11:31:57 AM
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Payment Events	Status	Timestamps
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Electronic Record and Signature Disclosure
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