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**PART VI**

**CONTRACT AGREEMENT**

THIS AGREEMENT, made on the 27<sup>th</sup> day of February, 2014, by and between **Lexington-Fayette Urban County Government**, acting herein called "OWNER" and Hydromax USA, LLC, doing business as \*(an individual) (a partnership) (a corporation) located in the City of Chandler, County of Warrick, and State of Indiana, hereinafter called "CONTRACTOR."

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of One Hundred Seven Thousand Four Hundred Seventy Five Dollars and Zero Cents (\$ 107,475 ) quoted in the proposal by the CONTRACTOR, dated January 30, 2014, hereby agree to commence and complete the construction described as follows:

**1. SCOPE OF WORK**

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, oversight, labor, insurance, and other accessories and services necessary to complete the project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and the Special Conditions of the Contract, the Specifications and Contract Documents therefore as prepared by DIVISION OF WATER QUALITY for the **CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES** project.

**2. TIME OF COMPLETION**

For the duration of the contract, the time period authorized by the OWNER for the proper execution of the Work by the Contract, in full, is hereby fixed as **THREE HUNDRED SIXTY-FIVE (365)** calendar days, ending on or before December 31 (as long as the contract is in force). The time shall begin ten (10) days after the CONTRACTOR is given the Notice to Proceed with the Work.

**3. ISSUANCE OF WORK ORDERS**

Notice to begin Work will be given in whole or for part of the Work as determined by the OWNER pending the availability of funds.

**4. THE CONTRACT SUM**

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, as quoted in the proposal, subject to any additions and deductions, as provided therein.

## **5. PROGRESS PAYMENTS**

The OWNER shall make payments on account of the Contract, as provided in accordance with the General Conditions, as estimated by the Engineer, less the aggregate of previous payments.

## **6. ACCEPTANCE AND FINAL PAYMENT**

Final payment shall be due within ninety (90) days after completion of the Work, provided the Work be then fully completed and the Contract fully accepted.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the Work has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

## **7. THE CONTRACT DOCUMENTS**

The Advertisement for Bids, Information for Bidders, the General Conditions, Contract Agreement, Special Conditions, Technical Specifications, any and all Addenda, and Proposal, and Plan Drawings form the Contract, and they are fully a part of the Contract as if hereto attached or herein repeated.

## **8. EXTRA WORK**

The OWNER, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be executed and paid for in accordance with the General Conditions, which is a part of this Contract.

## **9. CONSENT DECREE REQUIREMENTS**

**9.1** OWNER, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 ("CONSENT DECREE"), that requires OWNER to complete numerous projects related to its sanitary sewer system and stormwater management program within specific periods of time.

**9.2** TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR is aware that the OWNER is subject to penalties for

non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the Contractor's obligations or responsibilities under this Contract, or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the Consent Decree.

**9.3** The provisions of this Section and the various rates of compensation for Contractor's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion.

**9.4** If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER, and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the PROJECT schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the Agreement. Section 9.6 of this Agreement (Disputes) shall apply in the event the parties cannot agree upon an extension of time.

In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon by the parties. Section 9.6 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

**9.5** If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE as provided in Section 9.2, above. Section 9.6 of this Agreement (Disputes), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

## **9.6 DISPUTES**

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and

the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Environmental Quality and Public Works, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.

**10. THE FOLLOWING IS AN ENUMERATION OF THE SPECIFICATIONS AND DRAWINGS (CONTRACT DOCUMENTS):**

**SPECIFICATIONS**

<b>SECTION NO.</b>	<b>TITLE</b>	<b>PAGES</b>
I	Advertisement for Bids	AB-1 thru AB-6
II	Information for Bidders	IB-1 thru IB-9
III	Form of Proposal	P-1 thru P-46
IV	General Conditions	GC-1 thru GC-48
V	Special Conditions	SC-1 thru SC-5
VI	Contract Agreement	CA-1 thru CA-6
VII	LFUCG Technical Specifications	TS-1 thru TS-23
IX	Addenda	AD-__ thru AD-__

IN WITNESSETH WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government.  
Lexington, Kentucky

(Owner)

ATTEST:

Martella M Allen, Deputy  
Clerk of the Urban County Council

BY: [Signature]  
MAYOR

[Signature]  
(Witness)

Mayor  
(Title)

(Seal)

HYDROMAX USA, LLC  
(Contractor)

\_\_\_\_\_  
(Secretary)\*

BY: [Signature]

\_\_\_\_\_  
(Witness)

PRESIDENT  
(Title)

11420 Watterson Court, Suite 1100 Louisville, KY 40279  
(Address and Zip Code)

IMPORTANT: \*Strike out any non-applicable terms.

Secretary of the Owner should attest. If the CONTRACTOR is corporation, Secretary should attest. Give proper title of each person-executing Contract.

END OF SECTION

