

SPOTSYLVANIA COUNTY
CONTRACT AGREEMENT
FOR GOODS AND SERVICES
Contract #19-11-TV

THIS AGREEMENT ("Agreement") is made this _____ day of _____, 2019 by and between the BOARD OF SUPERVISORS OF SPOTSYLVANIA COUNTY, a political subdivision of the Commonwealth of Virginia, ("COUNTY"); and, ZENON ENVIRONMENTAL CORPORATION, a Michigan Corporation ("CONTRACTOR") a wholly-owned subsidiary of SUEZ WTS USA, INC., ("SUEZ") a Pennsylvania Corporation, both, in good standing and duly licensed to do business in the Commonwealth of Virginia.

WITNESS:

WHEREAS, the COUNTY desires to obtain membrane filtration systems equipment for the Spotsylvania County Thornburg Wastewater Treatment Plant; and

WHEREAS, CONTRACTOR desires to provide membrane filtration systems equipment for the Spotsylvania County Thornburg Wastewater Treatment Plant.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises stated in this Agreement, the COUNTY and CONTRACTOR agree as follows:

ARTICLE 1

CONTRACT DOCUMENTS:

1.1. The documents listed in Section 1.2 of this Article shall constitute the Contract Documents ("Contract Documents"). These Contract Documents shall represent the entire agreement and understanding between the parties. Any oral or written understanding not incorporated in these Contract Documents is not binding on either party. These Contract Documents shall be amended only by written instrument signed by both parties. The Contract Documents are presented in descending order of priority with the first document listed being of the highest priority and governing over subsequently listed documents, in case of ambiguity. In the case of conflict between the Contract Documents, or provisions therein, the most exacting performance standard shall be undertaken.

1.2. The Contract Documents consist of:

1. Spotsylvania County Contract Agreement for Goods and Services, Contract #19-11-TV between COUNTY and CONTRACTOR; and
2. County of Spotsylvania, Virginia Invitation for Bid (IFB) #19-11-TV Thornburg WWTP Membrane Filtration Systems Equipment, dated November 6, 2018; including Attachments A, B, C (as provided and modified by Attachment C included in SUEZ's proposal #237441), D, and E; and
3. Addendums to County of Spotsylvania, Virginia Invitation for Bid (IFB) #19-11-TV, Thornburg WWTP Membrane Filtration Systems Equipment listed as follows: Addendum #2 to Spotsylvania County IFB #19-11-TV for Thornburg WWTP Membrane Filtration Systems Equipment, dated November 26, 2018; Addendum #1 to Spotsylvania County IFB #19-11-TV for Thornburg WWTP Membrane Filtration Systems Equipment, dated November 16, 2018; and
4. Letter from Graham Best of SUEZ to Toni Vaughan, Senior Procurement Officer, dated January 4, 2019 providing clarification on Electrical & Control Components of SUEZ Proposal No. 237441; and
5. REVISED – Attachment C Bid Form IFB #19-11-TV Thornburg WWTP Membrane Filtration Systems Equipment submitted by Zenon Environmental Corporation signed and dated on December 3, 2018, to include SUEZ Proposal for the Thornburg WWTP Membrane Filtration Systems – MBR & Membrane Thickener County of Spotsylvania, Virginia, SUEZ Proposal No. 237441 to include appendices A, B, and D.

1.3. It is the intent of the Contract Documents to describe a functionally complete and whole understanding to be constructed in strict accordance with the Contract Documents. Any labor, services, documentation, materials, or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result shall be provided by the CONTRACTOR without increase in the contract price or contract timelines whether or not specifically called for.

ARTICLE 2

THE WORK AND AGREEMENT TERM LIMITS:

2.1. CONTRACTOR shall provide all management, materials, services, necessary tools, equipment, fuel, insurance, personnel and supervision to furnish and deliver membrane filtration systems equipment for the COUNTY as set forth in the contract documents.

2.2. A brief summary of the work includes furnishing and delivering the Membrane Filtration System (MFS) with installation support, operation services and training during the installation and startup periods.

ARTICLE 3

DATES OF COMMENCEMENT, SUBSTANTIAL AND FINAL COMPLETION:

3.1. The date of commencement shall be fixed in the Notice to Proceed issued by the COUNTY.

3.2. Time is of the essence.

3.3. The finalized shop drawings and layout/coordination drawings for the MFS equipment shall be furnished to the COUNTY within 30 calendar days from the date of the Notice to Proceed. The MFS equipment to be furnished and delivered under this contract shall be furnished and delivered to the COUNTY within a Delivery Window of 112 to 336 calendar days from the date of the Notice to Proceed, with delivery dates(s) as dictated by the COUNTY. The equipment shall be available for delivery any time within the Delivery Window.

3.4. Force Majeure. Neither party shall be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder (except for the payment of money) on account of strikes, industry-wide material shortages, riots, insurrection, fires, flood, storm, explosions, earthquakes, pandemic flu, acts of God, war, governmental action or labor conditions. In the case of an industry-wide material shortage, the CONTRACTOR shall provide to the COUNTY within 24 hours of CONTRACTOR's determination that there exists an industry-wide material shortage, the following: 1) a written description of the specific material alleged to be in short supply; 2) a written list of all manufacturers, wholesalers, contractors and/or retailers from which CONTRACTOR has attempted to obtain, and/or contracted to obtain, said material; 3) a written description detailing all actions taken by CONTRACTOR to obtain said materials; 4) a

written statement, signed by an authorized representative of CONTRACTOR, that CONTRACTOR has used due diligence to secure said materials in the most expeditious manner; and, 5) a written time frame in which CONTRACTOR anticipates that it will obtain said materials. The County, or its authorized representative, must concur that there is an industry-wide shortage of the specific material so identified by CONTRACTOR.

ARTICLE 4

CONTRACT PRICE AND TERMS OF PAYMENT:

4.1. The COUNTY shall pay for services out of appropriated funds and the COUNTY's performance under these Contract Documents is expressly subject to appropriation of funds by the Board of Supervisors.

4.2. The COUNTY agrees to pay fees not to exceed One Million Three Hundred Twenty Thousand Three Hundred Dollars and Zero Cents (\$1,320,300.00) to provide the Thornburg WWTP membrane filtration systems equipment and related services. The COUNTY agrees to pay fees at the rates contained in this provision of the Agreement, in accordance with any requirements and limitations specified, and as follows:

Description	Estimated Quantity	Total Price
Membrane Filtration Systems Equipment, including Equipment Engineering, Shop Drawings, freight and storage	Lump Sum	\$1,268,500.00
Installation Support, Operation Services and Training during installation and startup periods	Lump Sum	\$51,800.00

4.3. Payments shall occur as follows:

1. No deposit nor advance sums shall be paid;
2. Payments are due net thirty (30) days after receipt by COUNTY of an accurate and properly submitted monthly invoice or as outlined in Special Condition SC-6 to the COUNTY for materials and services as described in Article 2. If a corrected invoice is requested, then the thirty (30) days begins to run upon receipt of corrected invoice;

3. All payments will be delivered through the US Postal Service. No request for special handling of checks will be honored.

4.4. Change Orders - The contract sum may be increased or decreased by additions to and/or reductions in the work only as affected by prior written change orders or amendment signed by both parties in advance unless otherwise directed by COUNTY. CONTRACTOR agrees not to initiate any additional work not called for in the Contract Documents for which CONTRACTOR intends to see additional compensation without first notifying COUNTY in writing and obtaining COUNTY'S prior approval by a properly executed change order or contract amendment.

4.5. Pursuant to Section 2.2-4354 of the Code of Virginia (1950, as amended), the CONTRACTOR covenants and agrees to:

1. Within seven (7) days after receipt of any amounts paid to the CONTRACTOR under this Agreement, (i) pay any subcontractor for its proportionate share of the total payment received from the COUNTY attributable to the work under the Contract Documents performed by such subcontractor, or (ii) notify the COUNTY and the subcontractor, in writing, of its intention to withhold all or part of the subcontractor's payment and the reason therefore;
 2. Provide its federal employer identification number or social security number, as applicable, before any payment is made to the CONTRACTOR under the Agreement;
 3. Pay interest, which shall accrue at the rate of one percent per month unless otherwise provided under the terms of the Contract Documents, on all amounts owed by the CONTRACTOR to any subcontractor that remain unpaid after seven (7) days following receipt by the CONTRACTOR of payment from the COUNTY for work performed by the subcontractor under this Agreement, except for amounts withheld as allowed in Section 4.4., subdivision 1 above; and
 4. Include in its contracts with any and all subcontractors the requirements of 1, 2, and 3 above.
- 4.5. The parties hereby agree that any finance charge lawfully assessable against the

COUNTY for failure to pay any payment(s) pursuant to the terms of this Agreement shall not exceed 2% per annum, and shall only accrue from the latest date such payment was due under the applicable provisions of this Agreement.

ARTICLE 5

RIGHTS AND RESPONSIBILITIES OF CONTRACTOR:

5.1. CONTRACTOR shall indemnify, defend and hold harmless the COUNTY and its employees, agents, and/or representatives from any and all claims, suits and actions for injury or damage sustained by any person or property to the extent caused by any act or omission of CONTRACTOR and/or its subcontractors or employees, or anyone else for whom CONTRACTOR is or may be responsible, while engaged in activities under this Agreement. This section shall not apply to any subsequent owners of the Equipment, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer. This section shall survive the termination of this Agreement.

5.2. CONTRACTOR agrees to obtain a business license from the Spotsylvania County Commissioner of Revenue if required by the Code of Virginia (1950, as amended) and/or Spotsylvania County Code and to present such license for inspection by the COUNTY if requested. CONTRACTOR also agrees to maintain as current all required business licenses and permits required by the Commonwealth of Virginia and to present such licenses and permits as may be requested or required by the COUNTY.

5.3. CONTRACTOR shall maintain the following insurance coverage, listing COUNTY as additional insured, during the course of this Agreement, and provide the COUNTY with certificates of insurance for said coverage upon execution of this Agreement:

1. General Liability – in an amount of \$1,000,000 for any occurrence involving bodily injury, and \$1,000,000 for any occurrence involving property damage;
2. Automobile Liability Policy – in an amount of \$500,000 combined single limit bodily injury and property damage. This coverage shall include liability for use of hired and non-owned vehicles; and
3. Workers' Compensation – in compliance with all states in which CONTRACTOR does business, including Coverage B Employer's liability in

the following amounts:

- i. Bodily Injury by accident \$100,000 for each accident;
- ii. Bodily Injury by disease, \$500,000 policy limit; and
- iii. Bodily Injury by disease, \$100,000 for each employee.

CONTRACTOR agrees to extend its existing General Liability and Automobile Liability insurance coverage to COUNTY, as an additional insured, with respect to work performed by or on behalf of CONTRACTOR while engaged in activities under this Agreement, to the extent of CONTRACTOR's indemnity obligations under Article 5.1

5.4. During the performance of this Agreement, CONTRACTOR agrees that:

1. It will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the CONTRACTOR;
2. It will post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; and
3. It will state in all solicitations or advertisements for employees placed by or on behalf of the contractor that such contractor is an equal opportunity employer.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient to meet this requirement, and CONTRACTOR agrees it will include the provisions of the foregoing paragraph in every subcontract or purchase order of over \$10,000.00, so that the provisions will be binding upon each subcontractor or vendor.

5.5. During the performance of this Agreement, the CONTRACTOR agrees to:

1. Provide a drug-free workplace for the CONTRACTOR's employees and comply with the Federal Drug Free Workplace Act;
2. Post in conspicuous places, available to employees and applicants for

employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the CONTRACTOR's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

3. State in all solicitations or advertisements for employees placed by or on behalf of the CONTRACTOR that the CONTRACTOR maintains a drug-free workplace;
4. Include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means any site at which the performance of work is done in connection with this contract awarded to the CONTRACTOR, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

5.6. CONTRACTOR acknowledges that the Spotsylvania County Procurement Policy is applicable to this Agreement.

5.7. Except as noted in the Contract Documents, neither this Agreement, nor any part hereof, may be assigned or subcontracted by CONTRACTOR or COUNTY to any other party without the express written permission of the other Party.

5.8. The CONTRACTOR providing goods or services to the COUNTY under these Contract Documents represents and warrants to the COUNTY that it is:

1. Conforming to the provisions of the Civil Rights Act of 1964, as amended, the Virginia Fair Employment Contracting Act of 1975, as amended, and the Virginia Human Rights Act, as amended, where applicable;
2. Not employing illegal alien workers or otherwise violating the provisions of the Immigration Reform and Control Act of 1986 and Virginia Code §2.2-4311.1;
3. Complying with federal, state and local laws and regulations applicable to

- the performance of the services procured;
4. In full compliance with the Virginia Conflict of Interest Act; and
 5. Authorized to transact business in the Commonwealth of Virginia.

Pursuant to Section 2.2-4311.2 of the Code of Virginia.

5.9. In the event of a termination under Section 6.1 of this Agreement, CONTRACTOR acknowledges and agrees that it shall not be entitled to any compensation in excess of the value of the work performed. Under no circumstances shall CONTRACTOR, or any subcontractor, be entitled to anticipatory or unearned profits, unabsorbed overhead, opportunity costs or consequential or other damages as a result of a termination under this section. Payment to CONTRACTOR of any and all sums already earned by CONTRACTOR under the terms of Article 4 constitutes CONTRACTOR's exclusive remedy for a termination hereunder.

5.10. CONTRACTOR agrees that it shall keep confidential all photographs, digital imagery, reports, information, or data given to CONTRACTOR by the COUNTY as well as any photographs, digital imagery, reports, studies, analysis, data tables, or calculations prepared by the CONTRACTOR under these Contract Documents. No release of any such data by the CONTRACTOR shall be made to any individual or organization without the prior written approval of the COUNTY, which approval the COUNTY shall be under no obligation to grant.

5.11. The CONTRACTOR shall not employ any employee who is a registered sex offender and shall enforce the same restriction upon all subcontractors and agents of CONTRACTOR. Prior to starting work and quarterly during performance of the work, the CONTRACTOR shall check the Virginia State Police Sex Offender Registry to verify sex offender status of all employees and agents of CONTRACTOR and sub-contractors who are employed by the CONTRACTOR or sub-Contractor. The CONTRACTOR shall furnish the COUNTY with evidence verifying compliance with the services. Notwithstanding any other provision of this Agreement, materially false statements by the CONTRACTOR about the sex offender status of its employees or agents shall be grounds for immediate termination of this Agreement.

ARTICLE 6

RIGHTS AND RESPONSIBILITIES OF COUNTY:

6.1. The COUNTY may cancel this Agreement and project for any reason upon ten (10)

days' written notice in compliance with the notice procedure set forth in Article 7, Section 7.1 to the parties named therein. Anything contained in the Agreement to the contrary notwithstanding, a termination under this section shall not waive any right or claim to damages which COUNTY may have with respect to work performed or failed to be performed when it should have been by the CONTRACTOR. In either case, the COUNTY may pursue any cause of action which it may have by law or under this Agreement on account of such damages claimed by the COUNTY.

6.2. In case of default by the CONTRACTOR for failure to deliver or perform in accordance with the Contract specifications or terms and conditions, the COUNTY may procure the articles or services from other sources and hold the defaulting CONTRACTOR responsible for any resulting additional purchase and administrative costs including, but not limited to, fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs. If the completion of the contract work results in increased costs to the COUNTY, a letter will be sent to the defaulted CONTRACTOR requiring payment for additional costs ("Repayment"). When Repayment is requested, the CONTRACTOR will be removed from future bidding until the Repayment has occurred, and the COUNTY reserves the right to debar CONTRACTOR from doing further business with the COUNTY. Failure of a CONTRACTOR's source to deliver is not considered to be an unavoidable cause upon which the CONTRACTOR may rely as to a delay in the work to be done under the terms of the Contract Documents, and the burden of proof rests with the CONTRACTOR to prove that any default was not related to CONTRACTOR's, or any subcontractor's or vendor's, acts or failure to act.

6.3. Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, in all invitations to bid, requests for proposals, contracts, and purchase orders, the COUNTY does not discriminate against faith-based organizations.

"Faith-based Organization" means a religious organization that is or applies to be a CONTRACTOR to provide goods or services for programs funded by the block grant provided pursuant to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193.

If CONTRACTOR is a faith-based organization, then CONTRACTOR shall give to each individual who applies for or receives goods, services, or disbursements provided pursuant to this

Agreement the following notice:

NOTICE

Pursuant to Section 2.2-4343.1 of the Code of Virginia of 1950, as an applicant for or recipient of goods, services, or disbursements provided pursuant to a contract between the COUNTY and a faith-based organization, you are hereby notified as follows:

Neither the COUNTY'S selection of a charitable or faith-based provider of services nor the expenditure of funds under this contract is an endorsement of the provider's charitable or religious character, practices, or expression. No provider of services may discriminate against you on the basis of religion, a religious belief, or your refusal to actively participate in a religious practice. If you object to a particular provider because of its religious character, you may request assignment to a different provider. If you believe that your rights have been violated, please discuss the complaint with your provider or notify the County Administrator.

ARTICLE 7

MISCELLANEOUS:

7.1. The following persons shall be contact persons for the parties, and notice given them, by certified return receipt requested mail to the addresses shown, shall constitute valid notice under the requirements of this Agreement:

1. For COUNTY:
Mark B. Taylor
County Administrator
P.O. Box 99
Spotsylvania, VA 22553

With a copy to:

Spotsylvania County Attorney
9105 Courthouse Road
P.O. Box 308
Spotsylvania, VA 22553

2. For CONTRACTOR:

Andrea Forster, Proposal Team Manager
Zenon Environmental Corporation
3239 Dundas Street West
Oakville, Ontario L6M4B2

The parties may amend such addresses by written notice to the opposite party at the given address.

7.2. The parties agree that the Contract Documents are governed by and shall be interpreted in accordance with the laws of the Commonwealth of Virginia, and that proper venue, in the event of litigation concerning this matter, shall be in the state or federal courts having jurisdiction in or over Spotsylvania County, Virginia. The parties agree that any litigation involving these Contract Documents shall be brought only in such court.

7.3. In the event that any provision of this Agreement is unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect and shall not be affected thereby.

7.4. The CONTRACTOR certifies that:

1. The bid or offer (1) was made without prior participation, understanding, agreement, or connection with any corporation, firm or person submitting a bid/offer for the same materials, supplies, equipment, or services with respect to the allocation of the business afforded by or resulting from the acceptance of the bid or proposal, (2) was in all respects fair and without collusion or fraud, and (3) was or was intended to be competitive and free from any collusion with any person, firm or corporation;
2. The CONTRACTOR did not offer or receive any kickback from any other bidder or contractor, supplier, manufacturer, or subcontractor in connection with the bid/offer on this solicitation. A kickback is defined as an inducement for the award of a contract, subcontracts or order, in the form of any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged. Further, no person shall demand or receive any

payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract;

3. The CONTRACTOR is not a party to nor has it participated in nor is it obligated or otherwise bound by agreement, arrangement or other understanding with any person, firm or corporation relating to the exchange of information concerning bids, prices, terms or conditions upon which the contract resulting from the acceptance of its bid proposal is to be performed;
4. The CONTRACTOR understands that collusive bidding is a violation of the Virginia Governmental Frauds Act and federal law, and can result in fines, prison sentences, and civil damage awards and agrees to abide by all conditions of these provisions; and
5. The CONTRACTOR or subcontractor has not and will not confer on any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

7.5. CONTRACTOR warrants to COUNTY that:

1. The work performed pursuant to these Contract Documents shall conform to all professional principles generally accepted as standards of the industry in the Commonwealth;
2. The CONTRACTOR's work performed shall be free of defects;
3. Any new materials and equipment furnished under these Contract Documents shall be of good quality and in working condition; and
4. The CONTRACTOR's work performed shall meet all of the requirements set forth in these Contract Documents.

7.6. Any reports, studies, photographs, negatives, drawings, or other documents prepared by CONTRACTOR in the performance of its obligations under these Contract Documents shall be remitted to the COUNTY by the CONTRACTOR upon completion, termination or cancellation

of this Agreement. CONTRACTOR shall not use, willingly allow or cause to have such materials used for any purpose other than performance of CONTRACTOR's obligations under this Agreement without the prior written consent of the COUNTY.

7.7. Any failure of the COUNTY to demand rigid adherence to one or more of the terms and provisions as set forth in this Agreement, on one or more occasions, shall not be construed as a waiver nor deprive the COUNTY of the right to insist upon strict compliance with the terms of this Agreement. Any waiver of a term of this Agreement, in whole or in part, must be in writing and signed by the party granting the waiver to be effective.

7.8. The bankruptcy, takeover, merger, outright purchase of a majority of the voting capital stock by another organization, or other change in ownership or status of CONTRACTOR, or any assignment for the benefit of creditors shall fully obligate the newly formed organization, corporation or legal entity to fulfill all terms and conditions of this Agreement, and to perform or supply items in accordance with the specifications or descriptions contained herein. Should such newly formed organization, corporation or legal entity fail to fulfill all the terms and conditions of this Agreement or fail to perform or supply items in accordance with the specifications or descriptions contained herein to the satisfaction of the COUNTY, the COUNTY shall have the right unilaterally to terminate this Agreement and/or to pursue any remedy for damages and otherwise which is available at law and in equity. The COUNTY reserves the right to enforce any subcontract directly against the subcontractor, CONTRACTOR or any newly formed organization, corporation or legal entity. Failure of any sub-contractor to perform shall not relieve CONTRACTOR of its obligation to fulfill the terms and conditions of this Agreement as set forth herein.

7.9. CONTRACTOR and COUNTY agree that the provisions of the Contract Documents are binding upon the parties, their employees, agents, heirs, successors and assigns.

7.10. Contractual claims and disputes shall be conducted and resolved pursuant to Section 4-7 of the current Spotsylvania County Procurement Policy.

7.11. Article and Paragraph headings are inserted for convenience only and are not a part of this Agreement.

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WITNESS the following signatures and seals in agreement with the above terms for
Contract #19-11-TV, Thornburg WWTP Membrane Filtration Systems Equipment:

SPOTSYLVANIA COUNTY, VIRGINIA

By: _____

MARK B. TAYLOR Dated
COUNTY ADMINISTRATOR

ZENON ENVIRONMENTAL CORPORATION

By: 

ANDREA FORSTER Dated Feb. 7th, 2019.
PROPOSAL TEAM MANAGER

Approved as to form:

 2/7/19
Asst. COUNTY ATTORNEY Dated