

**AGREEMENT WITH SPX FLOW INC.  
FOR REPAIR SERVICES FOR  
DIGESTER 2 MIXER REPAIR PROJECT**

This Agreement, made and entered into this day of \_\_\_\_\_, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and SPX FLOW Inc., a corporation ("CONTRACTOR"), whose address is 13320 Ballantyne Corporate Place Charlotte, NC 28277.

**RECITALS:**

- A. CITY desires certain digester mixer repair services hereinafter described.
- B. CITY desires to engage CONTRACTOR to provide these digester mixer repair services by reason of its qualifications and experience for performing such services and CONTRACTOR has offered to provide the required services on the terms and in the manner set forth herein.

**NOW, THEREFORE, IT IS AGREED** as follows:

**SECTION 1 - SCOPE OF SERVICES**

The scope of services to be performed by CONTRACTOR under this Agreement is as described in Exhibit A to this Agreement, which is attached and incorporated by reference.

**SECTION 2 - DUTIES OF CONTRACTOR**

CONTRACTOR shall be responsible for the professional quality, technical accuracy and coordination of all work furnished by CONTRACTOR under this Agreement. CONTRACTOR shall, without additional compensation, correct or revise any errors or deficiencies in its work.

CONTRACTOR represents that it is qualified to furnish the services described under this Agreement.

CONTRACTOR shall be responsible for employing or engaging all persons necessary to perform the services of CONTRACTOR.

CONTRACTOR and his subcontractors shall comply with State's Prevailing Wage Laws.

CONTRACTOR or subcontractor shall not be qualified to bid on, be listed in a bid proposal, or engage in the performance of any contract for public work unless currently registered and qualified to perform public work pursuant to Section 1725.5 of the Labor Code. For the work performed for the City, the CONTRACTOR and his subcontractors shall pay the workers at the prevailing wage rate as determined by the California Department of Industrial Relations, for this locality. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CONTRACTOR

agrees to comply with the City's minimum wage ordinance as codified in Municipal Code Chapter 5.92, which differs from the state minimum wage and includes a Consumer Price Index escalator.

### **SECTION 3 - DUTIES OF CITY**

CITY shall provide pertinent information regarding its requirements for the project. CITY shall examine documents submitted by CONTRACTOR and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of CONTRACTOR's work.

### **SECTION 4 - TERM**

The services to be performed under this Agreement shall commence on \_\_\_\_\_ and be completed on December 31, 2025.

### **SECTION 5 - PAYMENT**

Payment shall be made by CITY only for services rendered and upon submission of a payment request upon completion and CITY approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, CITY agrees to pay CONTRACTOR a fee in an amount of \$241,779.81.

### **SECTION 6 – TERMINATION**

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY shall have the right to terminate this Agreement or suspend work on the Project for any reason, upon ten (10) days' written notice to CONTRACTOR. CONTRACTOR agrees to cease all work under this Agreement upon receipt of said written notice.

### **SECTION 7 - OWNERSHIP OF DOCUMENTS**

All documents prepared by CONTRACTOR in the performance of this Agreement are and shall be the property of CITY, whether the project for which they are made is executed or not.

### **SECTION 8 - CONFIDENTIALITY**

All reports and documents prepared by CONTRACTOR in connection with the performance of this Agreement are confidential until released by CITY to the public. CONTRACTOR shall not make any such documents or information available to any individual or organization not employed by CONTRACTOR or CITY without the written consent of CITY before any such release.

### **SECTION 9 - INTEREST OF CONTRACTOR**

CONTRACTOR covenants that it presently has no interest, and shall not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of the services under this Agreement.

## **SECTION 10 - CONTRACTOR'S STATUS**

It is expressly agreed that in the performance of the services required under this Agreement, CONTRACTOR shall at all times be considered an independent contractor as defined in Labor Code Section 3353, under control of the CITY as to the result of the work but not the means by which the result is accomplished. Nothing herein shall be construed to make CONTRACTOR an agent or employee of CITY while providing services under this Agreement.

## **SECTION 11 - INDEMNITY**

CONTRACTOR agrees to hold harmless and indemnify City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of CONTRACTOR's performance of this Agreement, except for those claims arising out of CITY's sole negligence or willful misconduct. CONTRACTOR agrees to defend City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents against any such claims. The CONTRACTOR'S duty to indemnify shall survive expiration or early termination of this Agreement.

## **SECTION 12 - INSURANCE**

Contractor shall procure and maintain for the duration of the contract the insurance specified in Exhibit B to this Agreement.

## **SECTION 13 - NONASSIGNABILITY**

Both parties hereto recognize that this Agreement is for the personal services of CONTRACTOR and cannot be transferred, assigned, or subcontracted by CONTRACTOR without the prior written consent of CITY.

## **SECTION 14 - RELIANCE UPON SKILL OF CONTRACTOR**

It is mutually understood and agreed by and between the parties hereto that CONTRACTOR is skilled in the performance of the work agreed to be done under this Agreement and that CITY relies upon the skill of CONTRACTOR to do and perform the work in the most skillful manner, and CONTRACTOR agrees to thus perform the work. The acceptance of CONTRACTOR's work by CITY does not operate as a release of CONTRACTOR from said obligation.

## **SECTION 15 - WAIVERS**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Agreement or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Agreement or of any applicable law or ordinance.

## **SECTION 16 - COSTS AND ATTORNEY FEES**

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Agreement. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Agreement.

## **SECTION 17 - NON-DISCRIMINATION**

CONTRACTOR warrants that it is an Equal Opportunity Employer and shall comply with applicable regulations governing equal employment opportunity. Neither CONTRACTOR nor any of its subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

## **SECTION 18 - MEDIATION**

Should any dispute arise out of this Agreement, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the State Mediation and Conciliation Service, or other agreed-upon service. The mediator shall be selected by a blind draw.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.



## **SECTION 19 - LITIGATION**

CONTRACTOR shall testify at CITY'S request if litigation is brought against CITY in connection with CONTRACTOR'S services under this Agreement. Unless the action is brought by CONTRACTOR, or is based upon CONTRACTOR'S wrongdoing, CITY shall compensate CONTRACTOR for preparation for testimony, testimony, and travel at CONTRACTOR'S standard hourly rates at the time of actual testimony.

## **SECTION 20 - NOTICES**

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: Thomas Ruark  
City of San Mateo  
2050 Detroit Drive  
San Mateo, Ca 94404

To CONTRACTOR: SPX Flow Inc.  
Attn: Wendy Malone  
135 Mt. Read Blvd.  
Rochester, NY 14611

## **SECTION 21 - AGREEMENT CONTAINS ALL UNDERSTANDINGS, AMENDMENT**

Exhibit C is attached and incorporated by reference

This document, including Exhibit C, represents the entire and integrated agreement between CITY and CONTRACTOR and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and CONTRACTOR.

## **SECTION 22 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of California and, in the event of litigation, venue will be in the County of San Mateo.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, this agreement has been duly executed by the parties hereinabove named, as of the day and year first above written.

CITY OF SAN MATEO

CONTRACTOR

Matthew Fabry  
Public Works Director

Date

Wendy Malone  
Its Authorized Agent  
President, Mixing Solutions

APPROVED AS TO FORM

Linh Nguyen  
Assistant City Attorney

Christopher Dunstan  
Chief Compliance Officer and  
Group General Counsel,  
Mixing Solutions

Date

**Attachments:**

Exhibit A:	Scope of Services
Exhibit B:	Insurance Requirements
Exhibit C:	SPX Flow Inc., One Page Term Deviations

## **EXHIBIT A**

### **SCOPE OF SERVICES**

In February, 2024, SPX completed inspection of the Digester 2 Mixer. The team found the bearings overheated due the possibility of grease not being added at proper intervals per the manual. This could have caused the lower bearing to spin in the lower end of housing. Under this scope, Philadelphia Mixing Solutions will repair this gearbox using the following scope of rebuild:

- Replace all bearings, shims, seals and gaskets
- Rework lower bearing bore in bearing stand
- Rework liquid seal assembly
- Replace output shaft
- Replace spool shaft
- Replace Vapor Seal Flange
- Replace Splash Shield
- Replace High Speed Coupling
- Install with new bearings, seals, shims, and gaskets not supplied by customer
- Re-assemble & PMSL standard testing
- Repaint & Prepare for shipment

Price: \$241,779.81

Price includes taxes, freight to plant from factory, and field service assistance for installation of equipment.

#### **Additional notes on offering:**

- Existing Philadelphia PED-10 mixer S/N 05ZZZ0610
- Philadelphia Field service personnel are not trained electricians nor outriggers and cannot assist in that capacity

Freight (Incoterm 2020)

EXW (Ex Works) Palmyra, Pennsylvania

Unless otherwise stated, crating is not included in freight costs.

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### SCOPE OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 12 07 or its equivalent covering CGL on an "occurrence" basis, including bodily injury, property damage, products-completed operations, personal & advertising injury, with limits of **\$5,000,000** per occurrence and **\$5,000,000** general aggregate .
2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit of **\$2,000,000** per accident for bodily injury and property damage.
3. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of **\$1,000,000** per accident for bodily injury or disease.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

**The City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents are to be covered as additional insureds** on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability for bodily injury or property damage caused, in whole or in part, by work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of ISO Forms (CG 20 1012 19 and CG 20 37, 12 19 or their equivalents).

##### ***Primary Coverage***

For any claims related to this contract, the **Contractor's insurance coverage shall be primary** insurance as respects the City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City of San Mateo and the Estero Municipal Improvement District, their elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

##### ***Notice of Cancellation***

**Coverage shall not be cancelled, except after Contractor provides thirty (30) days' prior written notice** (10 days for non-payment) has been given to the City.

##### ***Waiver of Subrogation***

To the extent not prohibited by law, Contractor hereby grants to the City of San Mateo and the Estero Municipal Improvement District a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this

provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to the City. The City may require the Contractor to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

***Verification of Coverage***

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. In the event of a claim involving the City, the City reserves the right to require copies of all applicable insurance policy provisions which may relate to the claim.

## Exhibit C



**One-Page Terms Deviations**  
**Strikeouts shown in red, as negotiated**

### Let's get to work!

Thank you for your interest in doing business with us. We will **accept your terms and conditions**, but there are a few **essential terms we need to incorporate** even though they may vary from yours. Why? This allows us to get to work quickly on fulfilling your order without the headache of lengthy contract negotiations.

**The terms below will apply to your order and take precedence** (legal speak for these terms rule!): ①¹

	<b>DELAY - WE PAY LIQUIDATED DAMAGES (LDs) ①²</b> <ul style="list-style-type: none"> <li>For delays solely due to a reason within our control, we pay LDs of 0.5% of the price of the delayed goods/services per week with a maximum of 5% of the order price.</li> <li>Termination for delay: Permitted once maximum LDs are reached.</li> <li>LDs are the only damages/costs to be paid by us for delay.</li> </ul>
	<b>DEFECTS - WE PROVIDE WARRANTY ①³</b> <ul style="list-style-type: none"> <li>Warranty period: 12 months from start-up but not more than 18 months from delivery/service.</li> <li>To the extent possible, we will always first be given the opportunity to remedy a defect on our own.</li> <li><b>Exclusions:</b> Wear &amp; tear, alterations, improper use, insufficient maintenance. All dismantling, transport, access &amp; reinstallation costs are excluded from our warranty.</li> <li>Any warranty for fitness for a particular purpose shall be <b>limited</b> to purposes, if any, expressly stated in the order.</li> </ul>
	<b>INTELLECTUAL PROPERTY (IP) - WE GIVE NECESSARY LICENSE ①⁴</b> <ul style="list-style-type: none"> <li>You will own your IP &amp; we will own ours and anything we supply and/or develop under the order will be ours but we will give you a non-exclusive license to operate and maintain the goods.</li> </ul>
	<b>DAMAGES – WE ASSUME LIABILITY ①⁵</b> <ul style="list-style-type: none"> <li>Our liability to each other for all claims however arising out of the contract (including indemnity) shall be <b>limited</b> to 100% of the order price.</li> <li>Neither of us will be liable to the other for loss of profit, loss of product, loss of use, down time costs, product recall costs, or exemplary, incidental, indirect, special or consequential loss.</li> <li>Liability will not be limited or excluded for gross negligence, willful misconduct, death or personal injury due to negligence, and charges payable by you as specified in the order.</li> <li><del>We will only indemnify you from and against claims to the extent they are directly caused by our negligence or willful misconduct.</del></li> </ul>
	<b>INSURANCE – WE TAKE OUT POLICIES ①⁶ SECTION 12 INSURANCE OF THE AGREEMENT APPLIES</b> <ul style="list-style-type: none"> <li><del>We will only take out insurance as required by law, and in addition policies with the following limits per occurrence &amp; annual aggregate: Commercial General – 2.5million-USD; Employer's Liability – 1million-USD; Automobile – 1million-USD;</del></li> <li><del>We will provide insurance certificates to you upon request, but not provide policies.</del></li> <li><del>Any requirements of additional insured status and waivers of subrogation are excluded.</del></li> </ul>

### SIGNATURES SHALL BE APPLIED ON THE AGREEMENT

<b>Good-to-go?</b> <b>Sign-here &gt;</b>	<b>Signature:</b>	<b>Date:</b>
<b>DocuSign? ①⁷</b> <b>Let us know:</b> <b>We can do this:</b>	<b>Name:</b>	<b>Company:</b> <b>(chop)</b>
	<b>Order details: ①⁸</b>	

Or: Click [here](#) to copy and paste the text into your PO. ①⁹