



CITY OF WEST PALM BEACH

CITY'S ORIGINAL

AMENDMENT NO. 2
[Term Extension]

Agreement / Contract Name: Annual Contract for Wellfield Maintenance Services

Agreement / Contract Date: February 8, 2015

Contract No. 11180 . 002

THIS AMENDMENT No. 2 ("Amendment") is entered into by and between the CITY OF WEST PALM BEACH ("City") and Aquifer Maintenance and Performance Systems, Inc. ("Contractor/Consultant/Provider/Supplier" referred to as "Contractor" for convenience).

WHEREAS, the parties desire to extend the Agreement / Contract, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- Term.** The term of the Agreement/Contract is hereby extended for an additional 1 (one) (Final) year period expiring February 7, 2017. Extension terms, conditions and rates shall be the same as the original Agreement / Contract.
- Effect of Amendment.** Except to the extent the Agreement / Contract expiration date is modified by this Amendment, the terms and provisions of the Agreement / Contract, as may be previously amended, shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Agreement / Contract, as may be previously amended and the terms of this Amendment, the terms of this Amendment shall govern and prevail.

Contractor:
Aquifer Maintenance and Performance Systems, Inc.

CITY OF WEST PALM BEACH

By: [Signature]
 Print Name: President
 Title: James Murray

By: [Signature] (for)
 Geraldine Muoio, Mayor
 Attest: [Signature]
 City Clerk

Dated: 12/9/2015

CITY ATTORNEY'S OFFICE
 Approved as to form and legal sufficiency
 By: [Signature]

MEMO



WEST PALM BEACH

City Attorney

To: Jeri Muoio, Mayor

From: Suzanne H. Payson, Assistant City Attorney *DAP*

Date: December 8, 2015

Matter No: 11180.002

Dept. 971 Public Utilities

Re: **Aquifer Maintenance & Performance Svs (AMPS); Amd #2;
Second/Final Renewal; MP**

RECEIVED
 DEC 09 2015
 City of West Palm Beach
 Mayor's Office

Transmitted herewith for your signature are original documents which have been reviewed and approved for legal sufficiency. Kindly forward the documents, along with this memo, to the City Clerk's Office.

To: Office of the City Clerk

The Mayor is authorized to execute the document in accordance with:

- Procurement Code.
- Commission Approval. Resolution No.
- City Charter

RECEIVED

DEC 09 2015

**CITY OF WEST PALM BEACH
OFFICE OF THE CITY CLERK**

Please take the actions indicated below with respect to these documents:

- Attest to the execution of the Agreement by the Mayor.
- Insert the date of execution beneath the Mayor's signature (if not already dated).

Estimated Record Retention Review:

- March 2022
(5 years from estimated completion and final payment; service and general contracts)
- _____
(10 years from estimated completion and final payment for construction & CCNA contracts).

Please retain one original as a public record and forward the other original to:

Robin Hewitt, Engineering Services

bm



CITY OF WEST PALM BEACH

CITY'S ORIGINAL

AMENDMENT NO. 1
[Term Extension]

Agreement / Contract Name: Annual Contract for Wellfield Maintenance Services

Agreement / Contract Date: February 8, 2012

Contract No. 11180, DD)

THIS AMENDMENT No. 1 ("Amendment") is entered into by and between the CITY OF WEST PALM BEACH ("City") and Aquifer Maintenance and Performance Systems, Inc. ("Contractor/Consultant/Provider/Supplier" referred to as "Contractor" for convenience).

WHEREAS, the parties desire to extend the Agreement / Contract, and in consideration of good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Contractor hereby agree as follows:

- 1. Term.** The term of the Agreement/Contract is hereby extended for an additional 1 year period expiring February 8, 2016. Extension terms, conditions and rates shall be the same as the original Agreement / Contract.
- 2. Effect of Amendment.** Except to the extent the Agreement / Contract expiration date is modified by this Amendment, the terms and provisions of the Agreement / Contract, as may be previously amended, shall remain unmodified and in full force and effect. In the event of a conflict between the terms of the Agreement / Contract, as may be previously amended and the terms of this Amendment, the terms of this Amendment shall govern and prevail.

Contractor:
Aquifer Maintenance and Performance Systems, Inc.

By: James Murray
 Print Name: JAMES MURRAY
 Title: President

CITY OF WEST PALM BEACH

By: Geraldine Muoio
 Geraldine Muoio, Mayor
 Attest: Hazeline L. Cannon
 City Clerk

Dated: 12/11, 2014

CITY ATTORNEY'S OFFICE
 Approved as to form and legal sufficiency
 By: [Signature]

MEMO

RECEIVED
DEC 12 2014
City of West Palm Beach
Mayor's Office



OFFICE OF THE CITY ATTORNEY

To: **Jeri Muolo, Mayor**
From: **Suzanne H. Payson, Assistant City Attorney**
Date: **December 10, 2014**
Matter No: **12-11180.001**
Dept. **971 Public Utilities**
Re: **Aquifer Maintenance & Performance Svs (AMPS);
Well Rehab; Amd #1**

RECEIVED

DEC 12 2014

CITY OF WEST PALM BEACH
OFFICE OF THE CITY CLERK

Transmitted herewith for your signature are original documents which have been reviewed and approved for legal sufficiency. Kindly forward the documents, along with this memo, to the City Clerk's Office.

To: **Office of the City Clerk**

The Mayor is authorized to execute the document in accordance with:

- Procurement Code.
- Commission Approval. Resolution No.
- City Charter

Please take the actions indicated below with respect to these documents:

- Attest to the execution of the Agreement by the Mayor.
- Insert the date of execution beneath the Mayor's signature (if not already dated).

Estimated Record Retention Review:

- April 2021
(5 years from estimated completion and final payment; service and general contracts)
- _____
(10 years from estimated completion and final payment for construction & CCNA contracts).

Please retain one original as a public record and forward the other original to:

Robin Hewitt, Engineering Services

bm

MEMO



OFFICE OF THE CITY ATTORNEY

To: Jeri Muoio, Mayor

From: Suzanne H. Payson, Assistant City Attorney

Date: February 7, 2012

Matter No: 11-11180

Dept. 971 Public Utilities

Re: **Aquifer Maintenance & Performance Svs (AMPS); Well Rehabilitation**

RECEIVED

FEB 07 2012

City of West Palm Beach
Mayor's Office

Transmitted herewith are original documents which have been reviewed and approved for legal sufficiency. Kindly forward the documents, along with this memo, to the City Clerk's Office.

To: **Office of the City Clerk**

The Mayor is authorized to execute the document in accordance with:

Procurement Code.
 Commission Approval. Resolution No.
 City Charter

The document termination date is*: February 2015

* Note: If this is a work authorization, the termination date of the master agreement may differ.

Please take the actions indicated below with respect to these documents:

Attest to the execution of the Agreement by the Mayor.
 Insert the date of execution beneath the Mayor's signature (if not already dated).

Please retain one original as a public record and forward the other original to:

Ramona Wamsley, Engineering

wh

ANNUAL CONTRACT FOR WELLFIELD MAINTENANCE SERVICES

THIS CONTRACT is made and entered into by and between the **CITY OF WEST PALM BEACH**, a municipal corporation of the State of Florida, whose address is Post Office Box 3366, West Palm Beach, Florida 33402 (the "City") and **AQUIFER MAINTENANCE AND PERFORMANCE SYSTEMS, INC.**, a Florida corporation, whose principal address is 7146 Haverhill Road, West Palm Beach, FL 33407 ("Contractor").

WITNESSETH:

WHEREAS, Contractor has entered into a contract with the City of Palm Bay, Florida, Well Rehabilitation Services Agreement, RFP No. 39-0-2007, dated July 13, 2007 (the "Palm Bay Contract"); and

WHEREAS, the Palm Bay Contract provides for the pricing of wellfield maintenance, repairs and rehabilitation in accordance with specific unit prices (the "Palm Bay Unit Prices") and specifications (the "Specifications"); and

WHEREAS, the City of West Palm Beach Procurement Code authorizes the use of other Florida governmental entities' contracts as an acceptable method of procurement of competitively bid prices; and

WHEREAS, the City wishes to engage Contractor for wellfield maintenance, rehabilitation and repairs in accordance with the Palm Bay Unit Prices and Specifications; and

WHEREAS, Contractor has agreed to perform the services as described below for the City, in accordance with the terms and conditions defined below, and in accordance with the Palm Bay Unit Prices and Specifications.

NOW, THEREFORE, in consideration of the foregoing promises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and Contractor hereby covenant and agree as follows:

1. Scope of Services; Additional Services:

1.1 Contractor hereby agrees to furnish all materials, equipment, tools, labor, supervision, licensing, permits, transportation and incidentals necessary to perform wellfield rehabilitation, repair services and annual maintenance services, including monthly monitoring and chemical treatment of the City's Wells, No. 1 through 10, located at 4325 North Haverhill Road, West Palm Beach (the "Services") on as needed basis, as may be requested by the City from time to time, subject to and in accordance with the terms, conditions and provisions of this Contract and the Palm Bay Specifications attached as Exhibit "A". Contractor shall also provide all the labor, materials, equipment, supplies and incidentals necessary to perform SFWMD approved methodology for permit compliance flow measurements of the Control #2 Pump Station ("Additional Services"). Flow measurements are to be completed for Pump #1- 1725 rpm, Electric Pump and Pump #2- Diesel Pump. The Diesel Pump (variable speed) will require flow measurements for each RPM operating range, as listed: 1500 rpm, 1400 rpm, 1300 rpm, 1200 rpm, 1100 rpm and 1000 rpm. Contractor shall complete and provide SFWMD approved measurement / calibration reports for City's submittal to meet permit compliance requirements.

Contractor shall submit calibration reports, detailing its finding and recommendations for each assignment authorized under this Contract by the City. The Services and Additional Services shall be collectively referred to as the "Services". Unless otherwise specified, Contractor agrees to furnish all equipment and labor necessary for the performance of the Services in a good, firm, substantial and workmanlike manner, in accordance with any applicable plans, drawings, and technical specifications. Contractor shall, if required, furnish satisfactory evidence as to the kind and quality of materials.

1.2 All materials, workmanship and Services performed shall be in compliance with City, County of Palm Beach, State of Florida and Federal regulations, codes and standards and all applicable specifications. Contractor shall notify City personnel of work progress and, as required, shall make arrangements for owner inspection of work performed.

1.3 Contractor shall provide a 24-hour/seven (7) days per week telephone answering service to accept and record emergency service call requests from the City. Emergency service call requests such as, but not limited to, situations which present an unsafe or destructive condition, shall require work to be commenced within two (2) hours from the time an emergency call is placed and Contractor shall be available and service performed 24 hours a day/seven (7) days per week. Non-emergency or standard project work shall be commenced within 24 hours from the time work is requested.

1.4 It is hereby made a part of this Contract that before, during and after a public emergency, disaster, hurricane, flood or Act of God that the City, shall receive services on a "first priority" basis.

1.5 The standard of care for all Services performed or furnished by Contractor under this Contract will be the care and skill ordinarily used by members of Contractor's profession practicing under similar circumstances or at the same time and in the same locality.

1.6 No minimum amount of service or compensation is guaranteed under this Contract.

2. **Term of Contract.** This Contract shall have a term of three (3) years, commencing as of the date executed by the City, unless earlier terminated. The City shall have the exclusive right to renew this Contract for two additional twelve (12) month periods. Such option to renew will only be exercised upon a written Contract amendment, with all terms and conditions remaining adhered to with no deviation, and executed by both parties. Any renewals shall be subject to the appropriation of funds by the City.

3. **Purchase Orders.** The City shall request work hereunder by issuance of Purchase Orders which shall specify the assignment. Contractor shall provide the Services requested under each Purchase Order, as indicated. All items on a purchase order must meet the specifications herein. Items delivered not as specified will be returned to the Contractor at no expense to the City.

4. **Compensation for Services.**

4.1 As compensation for Services rendered by the Contractor to the City, the City shall pay the Contractor (i) in accordance with the Palm Bay Unit Prices set forth in Exhibit B ("Palm Bay Unit Prices") for the Services, and (ii) the sum not-to-exceed Three Thousand and 00/100 Dollars (\$3,000.00) for the completion of the Additional Services. No additional charges or fees will be paid by the City for labor, transportation, overhead or other charges, except

materials. The Palm Bay Unit Prices shall remain in effect for the term of the Contract, including renewals. Any renewals shall be subject to the appropriation of funds by the City.

4.2 Crews and equipment shall be available on an "as needed basis" with no guarantee by the City of the amount of use. Labor time shall commence upon site arrival and terminate upon departure, and total by 1/4 hour increments. Labor cost shall be computed by multiplying the applicable hourly rate by labor time. Contractor shall be responsible for all travel to and from job site.

4.3 The City reserves the right to purchase and provide any and all material it deems beneficial for a specified project. All material not provided by the City shall be listed separately on invoice(s) and state a concise description and cost of material or part.

4.4 Contractor shall invoice the City for fees and expenses on a monthly basis. Invoices shall be submitted to the West Palm Beach Finance Department, Attn: Accounts Payable, P.O. Box 3366, West Palm Beach, FL 33402-3366 and shall include a statement of the Services rendered, the location of the service, the time duration of the services, and the unit rate classification for each date services are provided in the period covered by the invoice.

4.5 Payment will be made within 45 days of receipt of a proper invoice in accordance with the Local Government Prompt Payment Act, Section 217.70, et al., Florida Statutes, which also establishes a process and remedies for non-compliance.

5. **Delivery.** Time is of the essence and Contractor shall adhere to the delivery time specified by the City. Should Contractor repeatedly fail to deliver on or before the specified time, the City reserves the right to cancel the Contract.

6. **Permits and Licenses.** Contractor shall obtain all permits and licenses required by law or ordinance and maintain the same in full force and effect. All permits and licenses shall be obtained at Contractor's expense. Any changes of the licenses or permits shall be reported to the City within ten (10) working days of the change.

7. **Character of Workmen.** All workers provided by Contractor for Services under this Agreement shall be the best available for the kind of services performed. Any person employed by Contractor whom the Procurement Official or designee may deem temporarily or permanently incompetent or unfit to perform the Services shall under written instruction of the Procurement Official be removed from the job and shall not again be employed under this Contract.

8. **Protection against Damage.** Contractor shall, at all times, guard against damage or loss to the property of the City, Contractor's own property and/or that of other contractors, and shall be held responsible for replacing or repairing any such loss or damage. The City may withhold payment or make such deductions as deemed necessary to ensure reimbursement or replacement for loss or damage to property through negligence of the Contractor or its agents. Contractor shall be responsible to safeguard all their property such as tools and equipment while on site. The City will not be held responsible for any loss of Contractor due to theft or vandalism. Contractor shall provide due care at all times to cordon off and/or post signs to maintain a safe work area in order to avoid creating a hazardous condition for pedestrians, property and vehicles. Contractor shall ensure the work site is kept free of hazards and that debris, rubbish and scrap material are removed from the site on a regular basis to provide a neat and orderly appearance at the end of each workday and upon project completion. The responsibility for all damage to person or

property arising out of or on account of work done under this Contract shall rest upon Contractor, and it shall save the City harmless from all claims made on account of such damages.

9. **Supervision of Services.** Contractor shall supervise the work using the Contractor's best skill and attention, and shall be responsible for all means, methods, techniques, procedures and coordination of work. Contractor shall have an English-speaking supervisor or representative on site at all times, who shall be knowledgeable of all plans, specifications and contract requirements.

10. **Suspension of the Services.** The City shall have the authority to suspend the Services under this Contract on account of: (a) Contractor persistently fails to perform the Services in accordance with the Contract documents (including, but not limited to, failure to supply skilled workers or an adequate number of workers, or suitable materials or equipment or failure to adhere to response time); (b) Contractor disregards laws or regulations of any public body having jurisdiction; (c) Contractor disregards the authority of the City representative; (d) emergency situations; and (e) any other condition which, in the judgment of the City representative requires suspension of the Services.

11. **Termination.**

11.1 The City shall have the right to terminate this Contract, in whole or in part, with or without cause, and for its convenience, upon five (5) days written notice to Contractor. In the event of termination, the City shall compensate Contractor for all authorized work satisfactorily performed through the termination date under the payment terms contained in this Agreement.

11.2 Contractor shall immediately deliver all documents, written information, electronic data and other materials concerning City projects in its possession to the City and shall cooperate in transition of its duties to appropriate parties at the direction of the City.

11.3 Upon termination, this Contract shall have no further force or effect and the parties shall be relieved of all further liability hereunder, except that the provisions of this Section and the provisions regarding the right to audit, property rights, insurance, indemnification, governing law and litigation shall survive termination of this Contract and remain in full force and effect.

12. **City's Right to Correct or Complete Services.** If Contractor should neglect to prosecute the Services properly or fail to perform any provisions of this Contract, the City may, without prejudice to any other remedy City may have, make good these deficiencies and may deduct the cost thereof from the payment then or thereafter due Contractor.

13. **Insurance.**

13.1 Contractor shall purchase from and maintain, in a company or companies lawfully authorized to do business in Florida, such insurance as will protect the City from claims set forth below which may arise out of or result from performance under this Agreement by Contractor, or by a subcontractor of Contractor, or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable.

13.2 Coverage shall be maintained without interruption from the effective date of this Agreement until date of final payment and termination of any coverage required to be maintained after final payment. Any liability coverage on claims made basis shall remain effective for five

(5) years after final payment. If any of the required insurance coverages are required to remain in force after final payment, an additional certificate evidencing continuation of such coverage shall be submitted along with the application for final payment.

13.3 The City shall be provided a minimum of thirty (30) days prior written notice of any adverse material change, including any reduction, non-renewal or cancellation of Contractor's required insurance coverage, or any increase in the Consultant's self-insurance retention.

13.4 Evidence of insurance, being a current ACORD certificate of insurance or its equivalent, executed by the insurer, or its agent or broker, evidencing that a policy of insurance and any required endorsements have been issued by the agent/broker shall be delivered to City prior to execution of this Agreement. The Certificate of Insurance shall be dated and show the name of the insured, the specific Project or Agreement by name and contract number, the name of the insurer, the number of the policy, its effective date, and its termination date.

13.5 All required insurance (except Worker's Compensation) shall include an Additional Insured endorsement identifying the City as an Additional Insured. No costs shall be paid by the City for an additional insured endorsement.

13.6 Contractor shall maintain following liability coverage, in the limits specified:

Comprehensive General Liability: Not less than \$1,000,000.00 Combined Single Limit per each occurrence and \$2,000,000 aggregate, with bodily injury limits. May not be subject to a self-insured retention or deductible exceeding \$25,000.

Automobile Liability: Not less than \$1,000,000.00 for injuries per person in any one accident or occurrence and \$1,000,000.00 in the aggregate for injuries per occurrence or accident, with \$100,000.00 for property damage in any one accident or occurrence, or \$300,000.00 Combined Single Limit, covering each motor vehicle. May not be subject to a self-insured retention or deductible exceeding \$10,000.

Worker's Compensation: Worker's Compensation and Employer's Liability Insurance with limits of Employer's Liability Insurance not less than \$500,000 "each accident," \$500,000 "disease policy limit," and \$500,000 "disease each employee."

14. **Indemnity.** Contractor agrees to indemnify, defend, save and hold harmless the City, its officers, agents and employees, from any claim, demand, suit, loss, cost or expense for any damages that may be asserted, claimed or recovered against or from City, its officials, agents, or employees by reason of any damage to property or personal injury, including death, and which damage, injury or death arises out of or is incidental to or in any way connected with Consultant's performance of the Services or caused by or arising out of (a) any act, omission, default or negligence of Contractor in the provision of the Services under this Agreement; (b) property damage or personal injury, which damage, injury or death arises out of or is incidental to or in any way connected with Contractor's execution of Services under this Agreement; or (c) the violation of federal, state, county or municipal laws, ordinances or regulations by Contractor. This indemnification includes, but is not limited to, the performance of this Agreement by Contractor or any act or omission of Contractor, its agents, servants, contractors, patrons, guests or invitees and includes any costs, attorneys' fees, expenses and liabilities incurred in the defense

of any such claims or the investigation thereof. Contractor agrees to pay all claims and losses and shall defend all suits, in the name of the City, its employees, and officers, including but not limited to appellate proceedings, and shall pay all costs, judgments and attorneys' fees which may issue thereon. City reserves the right to select its own legal counsel to conduct any defense in any such proceeding and all costs and fees associated therewith shall be the responsibility of Contractor under this indemnification provision. To the extent considered necessary by the City, any sums due Contractor under this Agreement may be retained by City until all of City's claims for indemnification have been resolved, and any amount withheld shall not be subject to the payment of interest by City. This indemnification agreement is separate and apart from, and in no way limited by, any insurance provided pursuant to this Agreement or otherwise. This paragraph shall not be construed to require Contractor to indemnify the City for its own negligence, or intentional acts of the City, its agents or employees. Nothing in this Agreement shall be deemed to be a waiver of the City's sovereign immunity under Section 768.28, Florida Statutes. This clause shall survive the expiration or termination of this Agreement.

15. **Warranty.** Contractor shall furnish the manufacturer's warranty for all equipment and parts furnished. Should any defect in materials or workmanship (excepting normal wear and tear) appear during the stated warranty period, Contractor shall repair and replace same at no cost to the City upon written notice from the Procurement Official. Replaced parts shall remain the sole property of the City, except as authorized by City personnel.

16. **Right to Audit.** Contractor shall maintain within Palm Beach County adequate records of the Services provided during the Contract term and for three (3) years following the termination of the Contract. The City, from time to time, during Contractor's business hours and with at least 24 hours prior notice to Contractor, shall have the right to audit Contractor's books and records, at the City's expense, with regard to the accounts and services provided to or on behalf of the City hereunder to ensure that all aspects of the Contract are being met. Failure by Contractor to permit such audit shall be grounds for termination of this Contract by the City.

17. **Force Majeure.** Any deadline provided for in this Agreement may be extended, as provided in this paragraph, if the deadline is not met because of one of the following conditions occurring with respect to that particular project or parcel: fire, strike, explosion, power blackout, earthquake, volcanic action, flood, war, civil disturbances, terrorist acts, hurricanes and acts of God, provided the non-performing party and its subcontractors are without fault in causing such default or delay, and such default or delay could not have been prevented by reasonable precautions and cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. When one of the foregoing conditions interferes with contract performance, then the party affected may be excused from performance on a day-for-day basis to the extent such party's obligations relate to the performance so interfered with; provided that no such extension shall be made unless notice thereof is presented by Contractor to City in writing within ten (10) business days after the start of the occurrence of such delay, and Contractor shall use best efforts to perform its obligations during such period of delay, and notify City of its abatement or cessation; and further provided, the party so affected shall use reasonable efforts to remedy or remove such causes of non-performance. The party so affected shall not be entitled to any additional compensation by reason of any day-for-day extension hereunder.

18. **Availability of Funds.** This Contract is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the City. In the event funds to finance this Contract become unavailable, the City may terminate this Contract upon no less than twenty-four (24) hours notice, written and

delivered to Contractor. The City shall be the sole and final authority as to the availability of funds.

19. **Property Rights.** All work product, including but not limited to reports, plans, drawings, tracings, sketches, photographs, videos, illustrations, presentations, PowerPoint, specifications, maps, computer files, electronic data, and other documents (electronic or paper) prepared or created in the course of the performance of the Services or obtained in the performance of this Agreement, as well as all data collected, together with summaries and charts derived therefrom, will be considered works made for hire and shall be the exclusive property of the City upon their creation without restriction or limitation on their use and will be made available, upon request, to the City at any time during the performance of such Services. Upon delivery to the City of said work product, the City will become the custodian thereof in accordance with Chapter 119, Florida Statutes. Contractor will not copyright any material or work product developed under this Agreement. Any reuse of Contractor's prepared documents by the City, except for the specific purpose intended hereunder, will be at City's sole risk and without liability or legal exposure to Contractor or its sub-contractors.

20. **Representations, Warranties and Covenants.**

20.1 Contractor hereby represents and warrants to the City that it has full power and authority to enter into and fully perform its obligations under this Contract without the need for any further corporate or governmental consents or approvals, and that the persons executing this Contract are authorized to execute and deliver it.

20.2 **Duly Licensed.** Contractor represents that it is duly licensed to perform the Services under this Contract and that it will continue to maintain all licenses and approvals required to conduct its business.

20.3 **No Contingency.** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Contract and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach or violation of this provision by Contractor, the City shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the Fee, or otherwise recover, the full amount of such fee, commission, percentage, gift, or consideration.

21. **Ethics; Conflicts of Interest**

21.1 Contractor represents that it has not given or accepted a kickback in relation to this Contract and has not solicited this Contract by payment or acceptance of a gratuity or offer of employment.

21.2 Contractor represents that it has not solicited this contract by payment of a gift or gratuity or offer of employment to any official, employee of the City or any City agency or selection committee.

21.3 Contractor represents that it does not employ, directly or indirectly, the mayor, members of the city commission or any official, department director, head of any City agency, or member of any board, committee or agency of the City.

21.4 Contractor represents that it does not employ, directly or indirectly, any official of the City. Contractor represents that it does not employ, directly or indirectly, any employee or member of any board, committee or agency of the City who, alone or together with his household members, own at least five percent (5%) of the total assets and/or common stock of Contractor.

21.5 Contractor represents that it has not knowingly given, directly or indirectly, any gift with a value greater than \$100 in the aggregate in any calendar year to the mayor, members of the city commission, any department director or head of any city agency, any employee of the city or any city agency, or any member of a board that provides regulation, oversight, management or policy-setting recommendations regarding Contractor or its business.

21.6 Contractor represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with its performance under this Contract. Contractor further represents that no person having any interest shall be employed or engaged by it for said Services.

21.7 Contractor, its officers, personnel, subsidiaries and subcontractors shall not have or hold any continuing or frequently recurring employment, contractual relationship, business association or other circumstance which may influence or appear to influence Contractor's exercise of judgment or quality of the Services being provided under this Contract. Contractor, its officers, personnel, subsidiaries and subcontractors shall not perform consulting work for any third party that would in any way be in conflict with the Services to be provided to the City under this Contract.

21.8 Contractor, its officers, personnel, subsidiaries and subcontractors shall not, during the term of this Contract, serve as an expert witness against City in any legal or administrative proceeding unless compelled by court process. Further, Contractor agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of City or in connection with any pending or threatened legal or administrative proceeding. The limitations of this section shall not preclude such persons from representing themselves in any action or in any administrative or legal proceeding.

21.9 Contractor shall promptly notify the City in writing by certified mail of all potential conflicts of interest or any event described in this Section. Said notification shall identify the prospective business interest or circumstance and the nature of work that Contractor intends to undertake and shall request the opinion of the City as to whether such association, interest or circumstance would, in the opinion of the City, constitute a conflict of interest if entered into by Contractor. The City agrees to notify Contractor by certified mail of its opinion within thirty (30) calendar days of receipt of the said notification and request for opinion. If, in the opinion of the City, the prospective business association, interest or circumstance would not constitute a conflict of interest by Contractor, the City shall so state in its opinion and Contractor may, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the City by Consultant under this Contract.

21.10 In the event Contractor is permitted to utilize subcontractors to perform any services required by this Contract, Contractor agrees to prohibit such subcontractors, by written contract, from having any conflicts as within the meaning of this section.

22. **Independent Contractor.** Contractor acknowledges and agrees that it is an independent contractor of the City and is not an employee of the City. Contractor more specifically acknowledges that it: will not be eligible to participate in any employee benefit maintained by the City; will not be covered by the City's workers' compensation insurance; and will be solely and exclusively responsible for payment of all federal and state income, social security, unemployment and disability taxes due in respect of all compensation and/or other consideration paid by the City to Contractor hereunder. Contractor acknowledges that it shall have no authority to bind City to any contractual or other obligation whatsoever. Contractor shall be entitled to seek and accept other engagements and/or employment during the term of this Contract so long as such other employment or engagements do not interfere with the performance of Contractor's duties under this Contract. Contractor shall be responsible to the City for all work or services performed by Contractor or any person or firm engaged as a sub-consultant or subcontractor to perform work in fulfillment of this Contract.

23. **Sub-Contracting.** The Contractor may subcontract Services provided: (1) the City provides prior written authorization to subcontract; (2) any subcontractors will be independent Small Business subcontractors approved by the City; and (3) the approved subcontractors and/or the Contractor obtain Worker's Compensation Insurance insuring any such subcontractors, employees or agents, which insurance is acceptable to the City. Contractor shall be solely responsible for the engagement and management of any subcontractors used to perform any portion of the Services.

24. **Miscellaneous Provisions.**

24.1 **Headings.** The headings contained in this Contract are provided for convenience only and shall not be considered in construing, interpreting or enforcing this Contract.

24.2 **Integration.** This Contract constitutes the entire agreement between Contractor and the City and supersedes all prior verbal and written agreements, understandings, negotiations and discussions between the parties hereto. No verbal agreement or conversation with any officer, agent or employee of the City either before or after execution of this Contract shall affect or modify any of the terms or obligations contained in any of the documents comprising said Contract.

24.3 **Severability.** In the event that any term or provision of this Contract shall to any extent be held invalid or unenforceable, it is agreed that the remainder of this Contract, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Contract shall be deemed valid and enforceable to the maximum extent permitted by law.

24.4 **Assignment.** This Contract requires the personal skills and experience of Contractor and may not be assigned by Contractor. This Contract shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

24.5 **Specific Waiver.** Any waiver by either party of any one or more of the covenants, conditions, or provisions of this Contract, shall not be construed to be a waiver of any subsequent or other breach of the same or any covenant, condition or provision of this Contract.

24.6 **Public Entity Crimes Act.** Contractor represents that the execution of this Contract will not violate the Public Entity Crimes Act (Section 287.133, Florida Statutes), and certifies that Consultant and its sub-consultants under this Agreement have not been placed on the

convicted vendor list maintained by the State of Florida Department of Management Services within 36 months from the date of submitting a proposal for this Agreement or entering into this Contract. Violation of this section may result in termination of this Contract and recovery of all monies paid hereto, and may result in debarment from City's competitive procurement activities.

24.7 Compliance with Laws. In the conduct of the Services under this Contract, Contractor shall comply in all material respects with all applicable federal and state laws and regulations and all applicable county and City ordinances and regulations.

24.8 Taxes. Contractor understands that in performing the Services for the City, Contractor is not exempt from paying sales tax to Contractor's suppliers for materials required for Contractor to perform under this Contract. Contractor shall not be authorized to use the City's tax exemption number for purchasing supplies or materials.

24.9 Small Business Requirements. Consultant shall comply with the City's Small Business Ordinance set forth in Chapter 66 of the Code of Ordinances of the City of West Palm Beach, which is incorporated herein by this reference. Consultant shall comply with the small business commitment contained in Consultant's Proposal, or as approved by the Small Business Division. Consultant shall maintain all relevant records and information necessary to document compliance with the Small Business Ordinance and shall allow the City to inspect and audit such records.

24.10 No Solicitation. Contractor has not employed or retained any person employed by the City to solicit or secure this Contract and it has not offered to pay, paid, or agreed to pay any person employed by the City any fee, commission percentage, brokerage fee, or gift of any kind contingent upon or resulting from the award of this Contract.

24.11 Non-Discrimination. In performing under this Contract, Contractor shall not discriminate against any person because of race, color, religion, sex, gender identity or expression, genetic information, national origin, age, disability, familial status, marital status or sexual orientation.

24.12 Unauthorized Aliens/Patriot's Act. The knowing employment by Contractor or its sub-consultants of any alien not authorized to work by the immigration laws or the Attorney General of the United States is prohibited and shall be a default of this Contract which results in unilateral termination. In the event that Contractor is notified or becomes aware of such default, Contractor shall take steps as are necessary to terminate said employment with 24 hours of notification or actual knowledge that an alien is being employed. Contractor's failure to take such steps as are necessary to terminate the employment of any said alien within 24 hours of notification or actual knowledge that an alien is being employed shall be grounds for immediate termination of this Contract and unilateral termination. Contractor shall take all commercially reasonable precautions to ensure that it and its sub-consultants do not employ persons who are not authorized to work by the immigration laws or the Attorney General of the United States. Contractor further represents that it is not in violation of any laws relating to terrorism or money laundering, including the Executive Order No. 13224 on Terrorist Financing and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56., the "Patriot Act").

24.13 Availability of Funds. This Contract is expressly conditioned upon the availability of funds lawfully appropriated and available for the purposes set out herein as determined in the sole discretion of the City. If funding for this Contract is in multiple fiscal

years, funds must be appropriated each year prior to costs being incurred. Nothing in this paragraph shall prevent the making of contracts with a term of more than one year, but any contract so made shall be executory only for the value of the services to be rendered or paid for in succeeding fiscal years. In the event funds to finance this Contract become unavailable, the City may terminate this Contract upon no less than twenty-four (24) hours notice to Contractor. The City shall be the sole and final authority as to the availability of funds.

24.14 Right to Audit. Contractor shall maintain adequate records for the Services performed under this Contract for five (5) years following completion of the Services, or conclusion of any litigation regarding this Contract. The City shall have the right to audit Contractor's books and records, at the City's expense, upon prior notice, with regard to the Services provided to the City under this Contract. Failure by Contractor to permit such audit shall be grounds for termination of this Contract by the City. In addition to the foregoing, Contractor consents to the City requesting from the insurance carriers confirmation of all fees paid to Contractor arising out or related to the City's insurance coverages during the term of this Contract.

24.15 Public Records Law. Contractor shall allow public access to all documents, papers, letters or other material subject to the provisions of Chapter 119, Florida Statutes, and made or received by Contractor in conjunction with the Contract. Failure by Contractor to grant such public access shall be grounds for immediate unilateral cancellation of this Contract by the City.

24.16 Notices. All written notices, demands and other communications required or provided for under this Contract shall be sent by certified mail, return receipt requested, postage prepaid, in the case of mailing, or by overnight or same day courier, or by electronic transmission producing a written record, or hand delivered to Consultant at the address on the first page of this Contract, or to the City, at the address on the first page of this Contract, attention: City Administrator, with a copy to the City Attorney, or to such other address or person as shall be designated by a party in a written notice given in the manner required hereby.

24.17 Modification. There may be no modification of this Contract, except in a writing executed with the same formalities as this document.

24.18 Governing Law; Venue; Litigation. This Contract shall be construed and interpreted, and the rights of the parties hereto determined, in accordance with Florida law without regard to conflicts of law provisions. The City and Contractor submit to the jurisdiction of Florida courts and federal courts located in Florida. The parties agree that proper venue for any suit concerning this Contract shall be Palm Beach County, Florida, or the Federal Southern District of Florida. Contractor agrees to waive all defenses to any suit filed in Florida based upon improper venue or *forum nonconveniens*. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

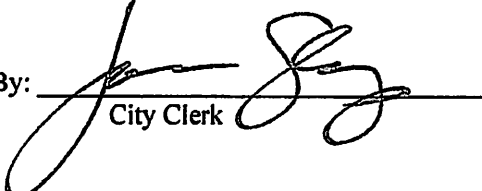
24.19 Inspector General. Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract, and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractor or lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by the City to be a material breach of this Contract justifying its termination.

24.20 **Entire Agreement; Amendment.** This Contract, including the Exhibits which are incorporated into this Contract in their entirety, embody the entire agreement and understanding of the parties with respect to the subject matter of this Contract and supersede all prior and contemporaneous agreements and understandings, oral or written, relating to said subject matter. This Contract may only be modified by written amendment executed by the City and Contractor.

IN WITNESS WHEREOF, the undersigned parties have executed this Contract, in duplicate copies, each of which shall constitute an original, as of the day and year of the City's execution.

CITY OF WEST PALM BEACH

ATTEST:

By: 
City Clerk

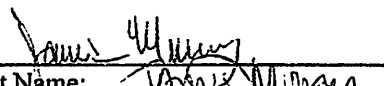
By: 
Geraldine Muoio, Mayor

Dated: 2/8, 2012

CITY ATTORNEY'S OFFICE
Approved as to form and legality
By: _____

CONTRACTOR:

**AQUIFER MAINTENANCE AND
PERFORMANCE SYSTEMS, INC.**

By: 
Print Name: James Milroy
Title: President



SECTION II

AGENCY OVERVIEW

The City of Palm Bay, incorporated January 16, 1960, is a political subdivision of the State of Florida. The legislative branch of the City is composed of five elected Council Members, one of which is or. The City Manager is responsible for the execution of Council's established and adopted policy. The City, with an estimated population of more than 106,600 residents, is the largest incorporated area in Brevard County.

(Please visit our official web site, www.palmbayflorida.org)

On December 16, 1992 the City of Palm Bay purchased the General Development Utility System for \$31,900,000. For years the utility growth characteristics were controlled by the private utility with little respect to the City's Comprehensive Plan. A local government's control over the utility expansion services plays a major role in effective long-range land use planning, and brings the City into concurrence with State requirements for providing water and sanitary sewer service throughout the City. Therefore, the purchase of this facility has proven to be one of the City's greatest assets. With the City's acquisition in place, the utility embarked on an aggressive infrastructure improvement plan. Our goals are:

- To provide water and sewer utility infrastructure throughout the City consistent with the City Comprehensive plan.
- To correct negative environmental impact and provide utility service, groundwater and environmental protection that will promote public health, safety, and welfare of the citizens of Palm Bay and surrounding areas.
- To improve fire protection throughout the City.
- To provide wastewater reuse to green space areas.
- To provide a safe potable water product throughout the City and to outside City customers.
- To collect, treat, and dispose of wastewater in a manner consistent with mandated Federal, State and Local regulations
- To provide all of these services on a continual basis in a reasonable cost effective manner.
- We will continually strive to ensure that all of our customers are satisfied with the level of service they are provided. We will remain committed to expanding the service area throughout the City while protecting our environment and natural resources.

SCOPE OF WORK

It is the intent of the City of Palm Bay to award a contract to one (1) supplier who can provide all services, as requested herein, for production well rehabilitation, annually, on an as-needed basis.

Rehabilitation work may include:

1. Mobilize and demobilize well and cleanup.
2. Wellhead and pump removal, cleaning and reinstallation of existing or new.
3. Specific capacity test, with existing pump, before and after rehabilitation.
4. Well acidification – E.P.A. Well field protection approved chemicals. Contractor must submit a list of all chemicals and the process's to be used, in addition to MSDS sheets. All chemicals used shall be in accordance with all Federal, State and local guidelines and used per EPA directions. Disposal of containers shall not be permitted on site and must be disposed of in accordance with EPA guidelines.
5. Well development and redevelopment
6. Disinfection of well after rehabilitation. Contractor shall provide procedures for acid and chemical treatment to the well for approval, prior to the work being performed.
7. Pump/Motor Retrieval.

8. A copy of any well rehabilitation down hole video taping (both pre and post well rehabilitation) shall be provided to owner after each well rehabilitation.
9. An estimate of entire well rehab/project shall be submitted before an issuance of a purchase order.

Chlorine Maintenance will be performed on an individual basis as determined by the monthly trend data available at the time, or as determined by the water plant chief operator. The chlorine is to be injected under pressure down into the well.

Flow Meter maintenance and calibration shall be performed by the contractor as determined by the utility. If it is determined that meter calibration is off, meter maintenance will be performed as needed. Contractor shall send meter to the manufacturer for calibration prior to reinstall.

Deep Well Pumps at the Wastewater Plant shall be pulled, inspected and basket strainers cleaned on a semi-annual basis or as deemed necessary by the utility Maintenance Supervisor.

Equipment for R/O, well, and pump maintenance / emergencies shall be available within 24 hours of notification of any problem as determined by Utility Maintenance Supervisor.

Invoices - the Contractor will submit a copy of the original invoice for any material purchases. This will include but not be limited to pumps, motors, valves, piping, and any ancillary material needed to accomplish the task.

Maintenance - the Contractor will assist with any well / pump / motor maintenance within the Utility facilities as determined by the Maintenance Supervisor. This will include pulling pumps such as Voc, Clear well, R/O, and High service pumps. The contractor will also assist in pulling motors as needed, and assist in troubleshooting various problems with the system.

Work Completion Time - all well rehabilitation/maintenance work shall be completed within 30 days of the start of the rehabilitation purchase order issuance unless an emergency situation arises as determined by Water Plant Chief Operator or Maintenance Supervisor. All required work should be performed or discontinued at the determination of the Water plant Chief Operator or Maintenance Supervisor

Reports - A quarterly report will be generated for each well specifying and graphing GPM, draw downs, static and annual report will also be required to show entire well performance for each calendar year.

Warning Signs - the Contractor is responsible for all necessary warning signs to be posted at work site. Contractor will also be responsible for the proper storage of all materials and restoration of site prior to leaving project. Maintenance supervisor will need to sign off that the restoration has been completed to the satisfaction of the owner.

Samples - the Utilities Water Treatment Plant laboratory will run all bacterial samples.

Scheduling - the Contractor must communicate with Supervisor at the Water Treatment Plant Maintenance before project(s) begin to determine work schedule of each well. The contractor will also check in and out with the Maintenance Supervisor on a daily basis and provide a status report for the current projects

Chemicals - the proposer shall include, with their proposal submittal, a list of all chemicals that may be used during the various cleaning processes.

Water Storage Tank Residual Cleaning - the Contractor shall provide these services with:

- a. No end user disruptions.
- b. No loss of finished water above the minimal amount during cleaning.

- c. No actions by the Contractor to reduce the free chlorine residual below 0.5 mg/l in the tank throughout the entire inspection. Samples must be taken from the tank before entering the tank and upon leaving the tank to assure the minimum chlorine residual level of 0.5 mg/l is maintained.
- d. No loss of fire suppression capability.
- e. No tank lining damage.

GENERAL INFORMATION

The Successful Proposer will appoint one of their employees as the key contact for approval by the City's Project Manager.

It is the City's belief that the service required is adequately described herein. Therefore, any negotiated contract, which may result from this RFP, may include the entire effort required of the proposer to provide the service described. Specifically, no additional fees will be allowed for any additional services performed for any reasons whatsoever except those directly attributable to the City's errors or omissions.

The Contractor will be required to contact the Water Treatment Plant for scheduling and site visits prior to starting work.

QUALIFICATIONS - REFERENCES

Proposers shall provide a minimum of three (3) references for which they are providing this type of service in the State of Florida or have provided within the last two years.

The City may, at its sole discretion, require a complete list of customers from proposer(s) being considered for award.

Proposer must be properly licensed in the City, County, and State where their parent company resides.

"EXHIBIT" "B"

**CONTRACT 39-0-2007 - Well Rehabilitation Services
AMPS, Inc.
Effective 7/13/08 – 7/12/09**

Item #	ITEM DESCRIPTION	UOM	PRICE
1	Well Drill	Per foot	\$ 30.00
2	Well Service Rig	Per hour	\$ 198.00
3	Pump Service Rig	Per hour	\$ 65.00
4	Cement work or demolition	Per hour	\$ 80.00
5	On Site Welding Unit	Per hour	\$ 110.00
6	Machine Shop Welding	Per hour	\$ 45.00
7	Pump/Well technician	Per hour	\$ 85.00
8	Chemical Treatment	Per hour	\$ 75.00
9	Well abandonment	Per hour	\$ 100.00
10	Specific Capacity test, Before and after rehabilitation	Per hour	\$ 75.00
11	Well Development and Redevelopment	Per hour	\$ 135.00
12	Chemical disinfection of well after rehabilitation	Per hour	\$ 250.00
13	Pump Motor Retrieval	Per hour	\$ 125.00
14	Miscellaneous work as needed, normal business hours	Per hour	\$ 125.00
15	Miscellaneous work as needed, non normal business	Per hour	\$ 187.50
16	Flow Meter Maintenance and Calibration	Per hour	\$ 80.00
17	Deep well Pump Maintenance	Per hour	\$ 110.00
18	Well/Pump /Motor maintenance	Per hour	\$ 90.00
19	Raw water disposal	Per hour	\$ 15.00
20	Airlift well	Per hour	\$ 135.00
21	Pump test	Per hour	\$ 140.00
22	Quarterly well monitoring reports	Per report	\$1500.00
23	Water Storage Tank Residual Cleaning	Per tank	\$5000.00
24	Down hole video surveys	Per video	\$ 650.00
25	360 Degree Video	Per video	\$ 450.00
26	Mobilize, demobilize & cleanup	Per well	\$ 600.00
27	Wellhead/pump removal, cleaning and reinstall	Per well	\$1900.00
28	Well Acidification/EPA	Per well	\$1800.00
29	Chlorine Maintenance of Wells	Per well	\$ 250.00
TOTAL COST [Add line 1 – 29]			\$14,905.50
30	Percent of Markup for Parts supplied & installed		15.5%