

## **CONTRACT FOR SERVICES**

This Contract is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the Town of Highland Beach, a Florida municipal corporation, hereinafter referred to as the TOWN, and Aquifer Maintenance & Performance Systems, Inc. ("AMPS") [ ] an individual, [ ] a partnership, [ ] a corporation authorized to do business in the State of Florida, hereinafter referred to as the CONTRACTOR, whose Federal I.D. or Social Security number is \_\_\_\_\_.

In consideration of the mutual promises contained herein, the TOWN and the CONTRACTOR agree as follows:

### ***ARTICLE 1-SERVICES***

The Contractor is to perform the Work under the general direction of the Town as defined in the Town's March 15, 2022 Agenda Memorandum and its four(4) exhibits that include Highland Beach Quotation, City of Palm Bay Invitation to Bid #45-0-2017/SB, City of Palm Bay Service Agreement, AMPS lowest price statement and Highland Beach Well Evaluation thereto being attached hereto as Exhibit "A" incorporated by reference herein and made a part thereof as fully as if herein set forth.

Unless otherwise specified herein, the Contractor is to furnish all materials, tools, equipment, manpower, and consumables to complete the Work.

By signing this Agreement, the Contractor represents that it has thoroughly inspected the work site (as described in the Documents) and the weather, soil and water conditions that may affect it, and has thoroughly reviewed the documents incorporated into this Agreement by reference and that it accepts the work and the conditions under which the work is to be performed.

### ***ARTICLE 2-TERM/COMMENCEMENT DATE***

This agreement shall become effective unless earlier terminated in accordance with Article 4. The Town shall have the option to renew this Agreement for up to one (1) two (2) year period upon the same terms and conditions contained herein.

### ***ARTICLE 3-COMPENSATION TO CONTRACTOR***

- A. Generally - The TOWN agrees to compensate the CONTRACTOR in accordance with the Proposal submitted by the CONTRACTOR. CONTRACTOR'S Proposal is incorporated herein by reference. The total and cumulative amount of this contract shall not exceed the

amount of funds budgeted for these services nor shall said fees exceed the amounts as set forth in the Proposal.

- B. Payments - Invoices received from the CONTRACTOR pursuant to this Contract will be reviewed and approved by the TOWN'S representative, indicating that services have been rendered in conformity with the Contract and then will be sent to the Finance Department for payment. CONTRACTOR will invoice the TOWN after each service has been rendered. Invoices will normally be paid within thirty (30) days following the TOWN representative's approval.

#### ***ARTICLE 4-TERMINATION***

This Contract may be cancelled by the CONTRACTOR upon **ninety (90) days** prior written notice to the TOWN'S representative in the event of substantial failure by the TOWN to perform in accordance with the terms of this Contract through no fault of the CONTRACTOR. It may also be terminated, in whole or in part, by the TOWN, with or without cause, upon thirty (30) days written notice to the CONTRACTOR. Unless the CONTRACTOR is in breach of this Contract, the CONTRACTOR shall be paid for services rendered to the TOWN'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the TOWN the CONTRACTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other materials related to the terminated work to the TOWN.
- D. Continue and complete all parts of the work that have not been terminated.

#### ***ARTICLE 5-PERSONNEL***

The CONTRACTOR represents that it has, or will secure at its own expense, all necessary personnel required to perform the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the TOWN.

All of the services required hereunder shall be performed by the CONTRACTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services.

The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

All of the CONTRACTOR'S personnel (and all Subcontractors) while on Town premises, will comply with all Town requirements governing conduct, safety, and security.

#### **ARTICLE 6-INSURANCE**

- A. Prior to execution of this Contract by the TOWN the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Article and that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the TOWN'S representative. Compliance with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract.
- B. The CONTRACTOR shall maintain, during the life of this Contract, Commercial General Liability, including Professional Liability Errors and Omissions insurance in the amount of \$1,000,000.00 in aggregate to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.
- C. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000.00 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.
- D. The parties to this Contract shall carry Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes. In the event that a party does not carry Workers' Compensation Insurance and chooses not to obtain same, then such party shall, in accordance with Section 440.05, Florida Statutes, apply for and obtain an exemption authorized by the Department of Insurance and shall provide a copy of such exemption to the TOWN.
- E. All insurance, other than Worker's Compensation, to be maintained by the CONTRACTOR shall specifically include the TOWN OF HIGHLAND BEACH as an "**Additional Insured**".

#### **ARTICLE 7-INDEMNIFICATION**

- A. To the fullest extent permitted by applicable laws and regulations, the CONTRACTOR shall indemnify and save harmless and defend the TOWN, its officials, agents, servants, and employees from and against any and all claims, liability, losses, and/or causes of action arising out of or in any way related to the services furnished by the CONTRACTOR pursuant to this Contract, including, but not limited to, those caused by or arising out of any act, omission, negligence or default of the CONTRACTOR and/or its subcontractors, agents, servants or employees.
- B. The CONTRACTOR shall not be required to indemnify the TOWN, its officials, agents, servants and employees when the occurrence results solely from the wrongful acts or omissions of the TOWN, its officials, agents, servants and employees. The terms of this Section shall survive completion of all services, obligations and duties provided for in this Contract as well as the termination of this Agreement for any reason.
- C. Nothing contained in this Contract shall create a contractual relationship with or a cause of action in favor of a third party against either the TOWN or the CONTRACTOR, nor shall this Contract be construed a waiver of sovereign immunity beyond the waiver provided in § 768.28, Florida Statutes.

***ARTICLE 8-SUCCESSORS AND ASSIGNS***

The TOWN and the CONTRACTOR each binds itself and its partners, successors, executors, administrators, and assigns to the other party of this Contract and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Contract. Except as above, neither the TOWN nor the CONTRACTOR shall assign, sublet, convey or transfer its interest in this Contract without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the TOWN which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the TOWN and the CONTRACTOR.

***ARTICLE 9-REMEDIES***

No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

***ARTICLE 10-EXCUSABLE DELAYS***

The CONTRACTOR shall not be considered in default by reason of any failure in performance if such failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Such causes include, but are not limited

to: acts of God; natural or public health emergencies; labor disputes; freight embargoes; and abnormally severe and unusual weather conditions.

Upon the CONTRACTOR'S request, the TOWN shall consider the facts and extent of any failure to perform the work and, if the CONTRACTOR'S failure to perform was without it or its subcontractor's fault or negligence the Contract Schedule and/or any other affected provision of this Contract shall be revised accordingly; subject to the TOWN'S rights to change, terminate, or stop any or all of the work at any time.

***ARTICLE 11-INDEPENDENT CONTRACTOR RELATIONSHIP***

The CONTRACTOR is, and shall be, in the performance of all work, services and/or activities under this Contract, an Independent Contractor, and not an employee, agent, or servant of the TOWN. All persons engaged in any of the work, services and/or activities performed pursuant to this Contract shall at all times, and in all places, be subject to the CONTRACTOR'S sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONTRACTOR'S relationship and the relationship of its employees, agents, or servants to the TOWN shall be that of an Independent Contractor and not as employees or agents of the TOWN.

The CONTRACTOR does not have the power or authority to bind the TOWN in any promise, agreement or representation other than as specifically provided for in this agreement.

***ARTICLE 12-NONDISCRIMINATION***

The CONTRACTOR warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, or sexual orientation.

***ARTICLE 13- ENFORCEMENT COSTS***

If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Contract, the successful or prevailing party or parties shall be entitled to recover reasonable attorney's fees, court costs and all expenses (including taxes) even if not taxable as court awarded costs (including, without limitation, all such fees, costs and expenses incident to appeals), incurred in that action or proceeding, in addition to any other relief to which such party or parties may be entitled.

***ARTICLE 14- AUTHORITY TO CONDUCT BUSINESS***

The CONTRACTOR hereby represents and warrants that it has and will continue to maintain all licenses and approvals required to conduct its business, and that it will at all times conduct its

business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the TOWN'S representative upon request.

**ARTICLE 15- SEVERABILITY**

If any term or provision of this Contract, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, to 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 extent permitted by law.

**ARTICLE 16-PUBLIC ENTITY CRIMES**

As provided in F.S. 287.132-133 by entering into this Contract or performing any work in furtherance hereof, CONTRACTOR certifies that it, its affiliates, suppliers, subcontractors and any other contractors who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty-six (36) months immediately preceding the date hereof. This notice is required by Section 287.133(3)(a), Florida Statutes.

**ARTICLE 17- MODIFICATIONS OF WORK**

The TOWN reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the CONTRACTOR of the TOWN'S notification of a contemplated change, the CONTRACTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the TOWN of any estimated change in the completion date, and (3) advise the TOWN if the contemplated change shall effect the CONTRACTOR'S ability to meet the completion dates or schedules of this Contract.

If the TOWN so instructs in writing, the CONTRACTOR shall suspend work on that portion of the Scope of Work affected by the contemplated change, pending the TOWN'S decision to proceed with the change.

If the TOWN elects to make the change, the TOWN shall initiate a Contract Amendment and the CONTRACTOR shall not commence work on any such change until such written amendment is signed by the CONTRACTOR and approved and executed by the Town of Highland Beach.

**ARTICLE 18- NOTICE**

All notices required in this Contract shall be sent by certified mail, return receipt requested, and if sent to the TOWN shall be mailed to:

Town of Highland Beach

3614 S. Ocean Blvd.  
Highland Beach, Florida 33487  
Attention: Pat Roman, Public Works Director

and if sent to the CONTRACTOR shall be mailed to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**ARTICLE 19- ENTIRETY OF CONTRACTUAL AGREEMENT**

The TOWN and the CONTRACTOR agree that this Contract sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Contract may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 17- Modifications of Work.

**ARTICLE 20- WARRANTY/GUARANTY**

CONTRACTOR warrants that its Services under this Contract will be free of defects in materials and workmanship for a period of one year following completion of those Services or as otherwise provided by manufacturer.

**ARTICLE 21 – PROTECTION OF WORK AND PROPERTY**

The CONTRACTOR shall continuously maintain adequate protection of all work from damage, and shall protect the TOWN’S property from injury or loss arising in connection with the Contract. Except for any such damage, injury, or loss, except that which may be directly due to errors caused by the TOWN or employees of the TOWN, the CONTRACTOR shall provide any necessary materials to maintain such protection.

Until acceptance of the work by the TOWN, the TOWN’S property shall be under the charge and care of the CONTRACTOR and the CONTRACTOR shall take every necessary precaution against injury or damage to the work by the action of elements or from any other cause whatsoever, and the CONTRACTOR shall repair, restore and make good, without additional work occasioned by any of the above causes before its completion and acceptance.

**ARTICLE 22 - WAIVER**

Failure of the TOWN to enforce or exercise any right(s) under this Contract shall not be deemed a waiver of TOWN’S right to enforce or exercise said right(s) at any time thereafter.

**ARTICLE 23 - PREPARATION**

This Contract shall not be construed more strongly against either party regardless of who was more responsible for its preparation.

**ARTICLE 24 - MATERIALITY**

All provisions of the Contract shall be deemed material. In the event CONTRACTOR fails to comply with any of the provisions contained in this Contract or exhibits, amendments and addenda attached hereto, said failure shall be deemed a material breach of this Contract and TOWN may at its option and without notice terminate this Contract.

**ARTICLE 25 - CONTRACT DOCUMENTS AND CONTROLLING PROVISIONS**

This Contract incorporates the terms of the Request for Proposals issued by the TOWN and the Proposal Response submitted by CONTRACTOR, and CONTRACTOR agrees to be bound by all the terms and conditions set forth in the aforementioned documents. To the extent that a conflict exists between this Contract and the remaining documents, the terms, conditions, covenants, and/or provisions of this Contract shall prevail. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

**ARTICLE 26 - DEFAULT**

Notwithstanding anything contained in this Contract to the contrary, the parties agree that the occurrence of any of the following shall be deemed a material event of default and shall be grounds for termination:

- A. The filing of a lien by any subcontractor or third tier subcontractor including, but not limited to material men, suppliers, or laborers, upon any property, right of way, easement or other interest in land or right to use within the territorial boundaries of the TOWN which lien is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR;
- B. *The filing of any judgment lien against the assets of CONTRACTOR related to the performance of this Contract which is not satisfied, discharged or contested in a court of law within thirty (30) days from the date of notice to the CONTRACTOR; or*
- C. The filing of a petition by or against CONTRACTOR for relief under the Bankruptcy Code, or for its reorganization or for the appointment of a receiver or trustee of CONTRACTOR or CONTRACTOR'S property; or an assignment by CONTRACTOR for the benefit of creditors; or the taking possession of the property of CONTRACTOR by any governmental officer or agency pursuant to statutory authority for the dissolution



or liquidation of CONTRACTOR; or if a temporary or permanent receiver or trustee shall be appointed for CONTRACTOR or for CONTRACTOR'S property and such temporary or permanent receiver or Trustee shall not be discharged within thirty (30) days from the date of appointment.

CONTRACTOR shall provide written notice to the TOWN of the occurrence of any event of default within ten (10) days of CONTRACTOR's receipt of notice of any such default.

**ARTICLE 27 - AUDITS**

If applicable, the Contractor shall maintain books, records and documents directly pertinent to performance under this Agreement in accordance with generally accepted accounting principles. The Commission, the State of Florida, United States Department of Energy or their authorized representatives shall have access to such records for audit purposes during the term of this Agreement and for five (5) years following Agreement completion.

**ARTICLE 28 - LEGAL EFFECT**

This Contract shall not become binding and effective until approved by the TOWN Commission of the TOWN of Highland Beach or its designated representative.

**ARTICLE 29 - REPRESENTATIONS/BINDING AUTHORITY**

CONTRACTOR represents that the person executing this Agreement has the power, authority and legal right to execute and deliver this Contract and perform all of its obligations under this Contract.

**ARTICLE 31 – 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 in furtherance thereof, may demand and obtain records and testimony from the CONTRACTOR and its subcontractors. CONTRACTOR understands and agrees that in addition to all other remedies and consequences provided by law, the failure of contractor or its subcontractors to fully cooperate with the Inspector General when requested may be deemed by the TOWN to be a material breach of the Contract Documents justifying termination.

IN WITNESS WHEREOF, the TOWN and CONTRACTOR hereto have made and executed this Contract as of the day and year first above written.

TOWN OF HIGHLAND BEACH

CONTRACTOR:

BY: \_\_\_\_\_  
MAYOR

BY: \_\_\_\_\_  
Name:  
Title:

ATTEST:

WITNESSED BY:

BY: \_\_\_\_\_  
TOWN CLERK

\_\_\_\_\_  
Print Name:

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

BY: \_\_\_\_\_  
TOWN ATTORNEY

**CONFLICT OF INTEREST STATEMENT**

This Proposal/Agreement (whichever is applicable) is subject to the conflict of interest provisions of the policies and Code of Ordinances of the TOWN OF HIGHLAND BEACH, the Palm Beach County Code of Ethics, and the Florida Statutes. During the term of this Agreement and any renewals or extensions thereof, the VENDOR shall disclose to THE TOWN OF HIGHLAND BEACH any possible conflicts of interests. The VENDOR’s duty to disclose is of a continuing nature and any conflict of interest shall be immediately brought to the attention of THE TOWN OF HIGHLAND BEACH.

CHECK ALL THAT APPLY.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Proposal/Agreement due to any other clients, contracts, or property interests.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Proposal/Agreement as set forth in the policies and Code of Ordinances of the Town of Highland Beach, as amended from time to time.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Proposal/Agreement as set forth in the Palm Beach County Code of Ethics, as amended from time to time.

To the best of our knowledge, the undersigned business has no potential conflict of interest for this Proposal/Agreement as set forth in Chapter 112, Part III, Florida Statutes, as amended from time to time.

If any of the above statements were checked, the undersigned business, by attachment to this form, submits information which may be a potential conflict of interest due to any of the above listed reasons or otherwise.

THE UNDERSIGNED UNDERSTANDS AND AGREES THAT THE FAILURE TO CHECK THE APPROPRIATE BLOCKS ABOVE OR TO ATTACH THE DOCUMENTATION OF ANY POSSIBLE CONFLICTS OF INTEREST MAY RESULT IN DISQUALIFICATION OF YOUR PROPOSAL OR IN THE IMMEDIATE CANCELLATION OF YOUR AGREEMENT, WHICHEVER IS APPLICABLE.

— \_\_\_\_\_  
COMPANY NAME

\_\_\_\_\_ \_\_\_\_\_  
AUTHORIZED SIGNATURE

\_\_\_\_\_ \_\_\_\_\_  
NAME (PRINT OR TYPE)

\_\_\_\_\_ \_\_\_\_\_  
TITLE

**Exhibit "A"**

Town's March 15, 2022 Agenda Memorandum and its four(4) exhibits that include Highland Beach Quotation, City of Palm Bay Invitation to Bid #45-0-2017/SB, City of Palm Bay Service Agreement, AMPS lowest price statement and Highland Beach Well Evaluation