

01 62 01 MAINTENANCE AGREEMENT

THIS MAINTENANCE AGREEMENT (this "Agreement") is entered into by and between SMITH PUMP CO, INC. (the "Service Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), by and through its duly authorized City Manager or designee ("City Manager".)

City and Service Contractor agree as follows:

ARTICLE 1 – SERVICES

- 1.01 Service Contractor will provide maintenance for pumps and motors installed in the City's River Pump Station and Booster Pump Station in accordance with this agreement and the Equipment Service Agreement shown in "Exhibit A - Section 01 62 02 Equipment Service Requirements."
- 1.02 Service Contractor will perform the services as an independent contractor and will furnish Contract services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of Service Contractor be considered an employee of the City.
 - A. Any cost associated with the required inspection of the pumping units shall be part of this maintenance agreement. Cost for inspection shall include removal and tear-down of equipment, repairs, materials and labor, re-installation, startup, inspections and reports.

ARTICLE 2 – CONTRACT ADMINISTRATOR

- 2.01 The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non performance and authorizations for payment.
- 2.02 All of Service Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the City of Corpus Water Operations.

ARTICLE 3 – CONTRACT TIMES

- 3.01 This Agreement is for three years, commencing on the date of installation of Mary Rhodes Pipeline Phase 2 Pre-purchase Pumps and Motors.
- 3.02 The term includes an option to extend for up to two additional twelve-month periods subject to the approval of the Service Contractor and the City Manager or designee ("City Manager").
- 3.03 The Contract Administrator may direct the Service Contractor to continue to provide services under this Agreement, at its then-current fee under the term of this Agreement, on a month-to-month basis, not to exceed six (6) months until a new contract is awarded by Council. This Agreement automatically expires on the effective date of a new contract.

ARTICLE 4 – CONTRACT PRICE AND PAYMENT PROCEDURES

- 4.01 The City agrees to pay the Service Contractor the mutually agreed upon fees as follows:
 - \$284,471.00 for the River Pump Station
 - \$352,246.00 for the Booster Pump Station

4.02 Submit Applications for Payment no more frequently than monthly. Submit applications accompanied by such supporting documentation as is required to the Contract Administrator.

ARTICLE 5 – INSURANCE

5.01 Service Contractor shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Service Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.

5.02 Service Contractor shall furnish to the Risk Manager or designee two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. The City must be named as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / aggregate
Commercial General Liability including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors 7. Underground Hazard (if applicable)	\$1,000,000 Per Occurrence \$2,000,000 Aggregate
Business Automobile Liability 1. Owned 2. Hired & Non-owned	\$1,000,000 Combined Single Limit
Workers' Compensation	Which complies with the Texas Workers' Compensation Act and Paragraph II of this Exhibit.
Employer's Liability	\$500,000 / \$500,000 / \$500,000
Motor Truck Cargo Coverage	Full Replacement Cost Without Consideration for Depreciation.
Inland Marine Floater	To Provide Full Coverage for Total Replacement of Equipment While in Proposer's Care, Custody and Control

5.03 In the event of accidents of any kind, Service Contractor must furnish the Risk Manager with copies of all reports of such accidents within 10 days of any accident.

5.04 Service Contractor must obtain workers' compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers' compensation obligations incurred will be promptly met. If workers' compensation coverage is not written in accordance with Texas law, "All Other States" endorsement must be indicated on the certificate of insurance.

- 5.05 Service Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Service Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- 5.06 The City shall be entitled, upon request and without expense, to receive copies of the policies, declarations page and all endorsements thereto as they apply to the limits required by the City. Service Contractor shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Service Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
(361) 826-4555 - Fax #

- 5.07 Service Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:
- A. Name the City and its officers, officials, employees, volunteers, and elected representatives as Additional Insured/Loss Payee by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy;
 - B. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - C. Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - D. Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- 5.08 Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Service Contractor shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Service Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- 5.09 In addition to any other remedies the City may have upon Service Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Service Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Service Contractor hereunder until Service Contractor demonstrates compliance with the requirements hereof.
- 5.10 Nothing herein contained shall be construed as limiting in any way the extent to which Service Contractor may be held responsible for payments of damages to persons or property resulting

from Service Contractor's or its sub-Service Contractor's performance of the work covered under this agreement.

- 5.11 It is agreed that Service Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.
- 5.12 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

ARTICLE 6 – INDEMNIFICATION

- 6.01 SERVICE CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THE CONTRACT OR THE PERFORMANCE OF THE CONTRACT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. SERVICE CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF SERVICE CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THE CONTRACT.

ARTICLE 7 – TERMINATION

- 7.01 The City Manager may terminate this Agreement for Service Contractor's failure to perform the services specified this Agreement. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give Service Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Service Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.
- 7.02 Alternatively, City may terminate this Agreement, with or without cause, upon twenty (20) days' advance written notice to Service Contractor. However, City may terminate this Agreement on 24-hours' advance written notice to Service Contractor for failure to pay or provide proof of payment of taxes as set out in Section 14 of this Agreement.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

- 8.01 Assignment

- A. No assignment of this Agreement or any right or interest therein by Service Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by Service Contractor is of the essence of this Agreement and the City's right to withhold consent to such assignment is within the sole discretion of the City.

8.02 Fiscal Year

- A. All parties recognize that the continuation of any contract after the close of any fiscal year of the City, which fiscal year ends on July 31 annually, is subject to appropriations and budget approval providing for such contract item as an expenditure in that budget. The City does not represent that the budget item for this agreement will be actually adopted, since that determination is within the sole discretion of the City Council at the time of adoption of each budget.

8.03 Waiver

- A. No waiver of any breach of any term or condition of this Agreement or Service Contractor's proposal, submitted in response to Request for Proposal No. BI-0198-13 waives any subsequent breach of the same.

8.04 Compliance with Laws

- A. This Agreement is subject to all applicable federal, state and local laws, rules and regulations. All duties of the parties will be performed in the City of Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of the State of Texas and the venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

8.05 Subcontractors

- A. Service Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, Service Contractor must obtain prior written approval from the Contract Administrator. In using subcontractors, Service Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of Service Contractor. All requirements set forth as part of this Agreement are applicable to all subcontractors and their employees to the same extent as if the Service Contractor and its employees had performed the services.

8.06 Amendments

- A. This Agreement may be amended only by written agreement signed by duly authorized representatives of the parties hereto.

8.07 Taxes

- A. Service Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other related taxes according to Circular E Employer's Tax Guide, publication 15, as it may be amended. Service Contractor must provide proof of payment of these taxes within thirty (30) days after City Manager's written request

therefore. Failure to pay or provide proof of payment is grounds for the City Manager to terminate this Agreement after providing 24 hours' advance written notice to Service Contractor.

8.08 Drug Policy

A. Service Contractor must adopt a Drug Free Workplace and drug testing policy.

8.09 Violence Policy

A. Service Contractor must adopt a Violence in the Workplace policy.

8.10 Notice

A. Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered or on the third day after deposit in the U.S. Mail, if sent certified mail. Notice shall be sent as follows:

City:
City of Corpus Christi
Attention: Water Department
P. O. Box 9277
Corpus Christi, Texas 78469 9277

Service Contractor:	SMITH PUMP CO., INC		
Service Contractor			
Contact Person:	L GRANGER SMITH		
Address:	301 MB INDUSTRIAL		
City, State, Zip:	WOODWAY	TX	76712

8.11 Severability

A. Each provision of the Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

The Effective Date of the Contract is Date to be inserted at the Time of Contract Execution.

Buyer: _____ (typed or printed)	Seller: <u>SMITH PUMP CO. INC.</u> (typed or printed)
By: _____ (Individual's signature)	By:  (Individual's signature)
Name: _____ (typed or printed)	Name: <u>L GRANGER SMITH</u> (typed or printed)
Title: _____ (typed or printed)	Title: <u>PRESIDENT</u> (typed or printed)
Attest: _____ (Individual's signature)	Attest: <u>Leigh S. Clark</u> (Individual's signature)

Address for giving notice:

_____	<u>301MB INDUSTRIAL</u>
_____	<u>WOODWAY, TX 76712</u>
_____	_____

Designated representative:	Designated representative:
Name: _____	Name: <u>L GRANGER SMITH</u>
Title: _____	Title: <u>PRESIDENT</u>
Address: _____	Address: <u>301MB INDUSTRIAL</u>
_____	<u>WOODWAY TX 76712</u>
_____	_____
Phone: _____	Phone: <u>254.776.0377</u>
Facsimile: _____	Facsimile: <u>254.776.0029</u>
E-mail: _____	E-mail: <u>grangers@smith-pump.com</u>

(If Seller is a corporation or a partnership, attach evidence of authority to sign.)

END OF SECTION

Exhibit A

Section 01 62 02 Equipment Service Schedule

Item No.	Equipment Service Description	Frequency	Special Instructions	Note
1	Vertical Turbine Pumps			
a.	Check packing lubrication piping	Quarterly		
b.	Check and Adjust Packing glands	Quarterly		
c.	Replace packing glands	Special	As needed	
d.	Check Coupling alignment	Annually		
e.	Check hold down bolts on pumps and motors for proper torque	Quarterly		
f.	Clean Drains	Special	As needed	
g.	Exercise pumps	Special		1
h.	Measure vibration	Annually		
i.	Pull and Inspect Pumps	Special	Within 6 months of maintenance agreement end date	
j.	Pump Performance Testing	Special	Within 6 months of maintenance agreement end date	1
k.	Check Impeller Clearance	Quarterly		
m.	Check shaft seal	Quarterly		
n.	Check for noise or vibrations	Quarterly		
o.	Excessive Temperatures Verify RTD Readings	Quarterly		
p.	Ensure no fluid or lubricant leaks	Quarterly		
q.	Check oil lubricant level	Quarterly		
r.	Check auxiliary supplies if fitted	Quarterly		
s.	Check for bearing lubricant change due to pump operation record	Semi-annually		
t.	Inspection of bowl assembly	Special	Every 3 to 5 years	
2	Pump Motors			
a.	Check Oil levels	Quarterly		
b.	Change oil	Semi-annually	Depends on run time	
c.	Clean air passages (intake and exhaust)	Quarterly		
d.	Verify all covers are in place and secure	Quarterly		
e.	Check for proper lubrication	Quarterly		
f.	Check bearing temperature rise	Quarterly		
g.	Check phase, voltage, frequency, and power consumption	Quarterly		
h.	Check for worn spots on interconnecting wiring	Quarterly		
i.	Check electrical connections	Quarterly		
j.	Inspect and clean rotor ends, windings, and fan blades	2.5 years after installation		
k.	Check resistance of windings	Semi-annually		
l.	Check cable insulation resistance	Semi-annually		
m.	Verify motor space heaters work	Semi-annually		
n.	Check bearing cooling lines and coils	Quarterly		
o.	Rotate Pump Shaft by Hand	Quarterly		
p.	Inspection of motor	Annually		
q.	Check for abrasive or electrically conducting dusts	Semi-annually	Due to unusual service	
r.	Check for proper ventilation against dirt accumulation or fungus growth	Semi-annually	Due to unusual service	
s.	Measure vibrations	Annually		
Notes				
1	Pumps should be exercised every month if not in operation. Run each pump for four hours and check the pump and motor as indicated.			
1	All testing and measurements shall be done in accordance with the technical specifications 44 42 56.02, 3.03			
2				