

ITEM 4.15

CITY MANAGER'S REPORT JUNE 10, 2024 CITY COUNCIL REGULAR MEETING

ITEM: APPROVE A PROFESSIONAL MAINTENANCE SERVICE AGREEMENT FOR POTABLE WATER TANKS 5A AND 6 WITH UTILITY SERVICE CO. INC.

RECOMMENDATION: Adopt Resolution Approving a Professional Maintenance Service Agreement with Utility Services Co. Inc. for Potable Water Tanks 5A and 6 and Approve Budget Amendment

SUMMARY:

Staff is requesting the City Council adopt a resolution to approve a seventeen (17) year long-term maintenance service agreement with Utility Services Co. Inc. (USCI) to maintain two steel potable water tanks. The first tank, designated as Tank 5A, is located in the River Islands Development area and a second tank, Tank 6, is located in the Central Lathrop Specific Plan area.

The proposed maintenance services are essential for ensuring the safe and efficient operation of tanks and vessels. These services include routine inspections, interior and exterior cleaning and painting and repairs.

Sufficient funds were not allocated in the FY 2024-2025 budget, therefore, staff requests a budget amendment to transfer funds from the Water Capital Replacement Fund (5600) to the Water Fund (5620) in the amount of \$138,539 for FY 2024-2025.

BACKGROUND:

Since 2008, USCI has been providing maintenance services for the steel tanks and pressure vessels at the City's four Booster Pump Stations and the Louise Avenue Water Treatment Facility (LAWTF). Under the terms of these agreements, USCI assumes full responsibility for maintenance of the steel tanks and pressure vessels including specialized services that City Operations & Maintenance staff cannot provide due to lack of training and/or equipment.

The Full Service Professional Maintenance Program includes the following features:

- Fully Integrated Asset Management Program
- Government Accounting Standards Board (GASB) 34 "Modified Approach" Compliant System
- Interactive Internet Portal
- Planning and Evaluation of Both Short Term & Long Term Maintenance
- Engineering Services Specific to Vessel Maintenance
- Interior and Exterior Cleaning and Painting
- Repairs on Interior and Exterior Maintenance of Logos, Lettering, and Artwork

APPROVE A PROFESSIONAL MAINTENANCE SERVICE AGREEMENT FOR THE POTABLE WATER TANKS 5A AND 6 WITH UTILITY SERVICE CO. INC.

- Assurance that the Vessel is Structurally Sound and in Watertight Condition
- Annual Engineering Inspections and Biennial Engineering Washout and Disinfections
- Emergency Service
- Contract is Renewable Each Year at Tank Owner’s Option
- Major Maintenance Costs are Spread Out Over Adjacent Years

Tanks 5A and 6 were constructed and placed into service approximately three years ago, and were recently inspected by USCI. Tank 6 is in good condition, but Tank 5A needs an upfront interior renovation which will occur prior to the end of Contract Year 1 with the upfront renovation cost amortized over the first five years of the contract. Therefore, the annual fee for Tank 5A during Contract Years 1 through 5 is \$82,863 per year, and then beginning in Contract Year 6 the annual fee is reduced to \$64,150. For Tank 6, the annual fee increases from \$53,946 per year to \$64,194 for Contract Years 1 through 6. Beginning in Contract Year 7 for Tank 5A, and Contract Year 2 for Tank 6, the annual contract fees are subject to adjustment to reflect the current cost of service which is limited to a maximum of 5% annually.

A summary of the annual costs and total costs under this agreement are as follows:

Facility	Annual Fee (Years 1-5)	Annual Fee (Year 6)
Tank 5A	\$82,863	\$64,150
Tank 6	\$53,946 - \$62,000	\$64,194
Grand Total	\$136,809 - \$144,683	\$128,344

The initial term of the agreement with USCI is through June 30, 2041 and it may be extended for additional ten year terms at the discretion of the City Manager.

REASON FOR RECOMMENDATION:

USCI's services are needed to keep the tanks and vessels in good working condition and meet objectives for public health and safety. Staff is requesting the City Council adopt a resolution to approve a long term professional services agreement with Utility Services Co. Inc. (USCI) for the maintenance of two steel tanks located in the River Islands (Tank 5A) and CLSP (Tank 6) development areas.

FISCAL IMPACT:

The costs for these services are to be paid from Water Fund (5620) and were not included in the current or next year’s fiscal budgets. Staff is requesting approval of a budget amendment from the Water Fund (5620) in the amount of \$138,539 for FY 2024-2025 as follows:

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APPROVE A PROFESSIONAL MAINTENANCE SERVICE AGREEMENT FOR THE
POTABLE WATER TANKS 5A AND 6 WITH UTILITY SERVICE CO. INC.

Fiscal Year 2024-2025;

Increase Appropriations
Water

5620-5050-420-16-00	\$138,539
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ATTACHMENTS:

- A. Resolution Approving a Professional Maintenance Service Agreement with Utility Services Co. Inc. for Potable Water Tanks 5A and 6 and Approve Budget Amendment
- B. Professional Maintenance Service Agreement with Utility Services Co. Inc. for Potable Water Tanks 5A and 6

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JUNE 10, 2024 CITY COUNCIL REGULAR MEETING
APPROVE A PROFESSIONAL MAINTENANCE SERVICE AGREEMENT FOR THE
POTABLE WATER TANKS 5A AND 6 WITH UTILITY SERVICE CO. INC.

APPROVALS:



Greg Gibson
Senior Civil Engineer

05/21/2024
Date



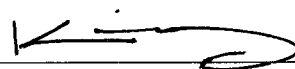
Brad Taylor
City Engineer

5/21/2024
Date




Cari James
Finance Director

5/30/2024
Date



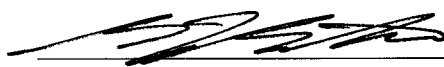
Michael King
Assistant City Manager

5.22.2024
Date



Salvador Navarrete
City Attorney

5.21.2024
Date



Stephen J. Salvatore
City Manager

5.30.24
Date

RESOLUTION NO. 24 -

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LATHROP APPROVING A PROFESSIONAL MAINTENANCE SERVICE AGREEMENT WITH UTILITY SERVICES CO. INC. FOR POTABLE WATER TANKS 5A AND 6 AND APPROVE BUDGET AMENDMENT

WHEREAS, since 2008, USCI has been providing maintenance services for the steel tanks and pressure vessels at the City’s four Booster Pump Stations and the Louise Avenue Water Treatment Facility (LAWTF) under long term maintenance agreements with the City; and

WHEREAS, under the terms of the agreement USCI assumes full responsibility for maintenance of the steel tanks and pressure vessels including specialized services that City Operations & Maintenance staff cannot provide due to lack of training and/or equipment; and

WHEREAS, staff is requesting the City Council adopt a resolution to approve a long term professional services agreement with Utility Services Co. Inc. (USCI) for the maintenance of two steel tanks located in the River Islands (Tank 5A) and CLSP (Tank 6) development areas; and

WHEREAS, USCIs services are needed to keep the tanks and vessels in good working condition and meet objectives for public health and safety; and

WHEREAS, the costs for these services are proposed to be paid from Water Fund (5620) and will require a budget amendment for Fiscal Year 2024-2025 from the Water Fund (5620); and

WHEREAS, a summary of the annual costs and total costs under this agreement are as follows:

Facility	Annual Fee (Years 1-5)	Annual Fee (Year 6)
Tank 5A	\$82,863	\$64,150
Tank 6	\$53,946 - \$62,000	\$64,194
Grand Total	\$136,809 - \$144,683	\$128,344

and;

WHEREAS, beginning in Contract Year 7 for Tank 5A, and Contract Year 2 for Tank 6, the annual contract fees are subject to adjustment to reflect the current cost of service, which is limited to a maximum of 5% annually.

NOW THEREFORE, BE IT RESOLVED, that the City Council of the City of Lathrop hereby approves a long term professional services agreement with Utility Services Co. Inc. (USCI) for the maintenance of steel tanks in the River Islands (Tank 5A) and CLSP (Tank 6) development areas to be paid from Water Fund 5620; and

BE IT FURTHER RESOLVED, that the City Council of the City of Lathrop hereby approves a budget amendment to transfer funds from the Water Fund (5620) as follows:

Fiscal Year 2024-2025;

Increase Appropriations

Water

5620-5050-420-16-00

\$138,539

The foregoing resolution was passed and adopted this 10th day of June, 2024, by the following vote of the City Council, to wit:

AYES:

NOES:

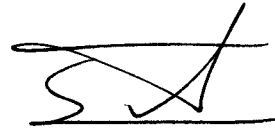
ABSENT:

ABSTAIN:

Sonny Dhaliwal, Mayor

ATTEST:

APPROVED AS TO FORM:



Teresa Vargas, City Clerk

Salvador Navarrete, City Attorney

CITY OF LATHROP

**PROFESSIONAL SERVICES AGREEMENT FOR WATER TANK
MAINTENANCE WITH UTILITY SERVICE COMPANY, INC.**

FOR THE MAINTENANCE OF WATER TANKS 5A AND 6

THIS AGREEMENT, dated for convenience this **10th day of June 2024**, is by and between **Utility Service Company, Inc.** (“CONSULTANT”) and the **City of Lathrop**, a California municipal corporation (“CITY”);

RECITALS:

WHEREAS, CONSULTANT is specially trained, experienced, and competent to perform Water Tank Maintenance Services, which are required by this agreement; and

WHEREAS, CITY selected the CONSULTANT pursuant to said qualifications; and

WHEREAS, CONSULTANT represents that they are recognized as a sole source for the Full Service Professional Maintenance Program for the professional maintenance services provided, and is thereby exempt from State competitive bidding laws; and

WHEREAS, CONSULTANT is willing to render such Water Tank Maintenance Services, as hereinafter defined, on the following terms and conditions;

NOW, THEREFORE, CONSULTANT and the CITY agree as follows:

AGREEMENT

(1) Scope of Service

CONSULTANT agrees to perform Water Tank Maintenance Services in accordance with the Water Tank Maintenance Contracts provided by CONSULTANT, attached hereto as Exhibit “A” and “B”, both dated January 12, 2024 submitted by the CONSULTANT, and incorporated herein by reference. CONSULTANT represents it is prepared to and can diligently perform these services in accordance with the customary standards of its profession and to CITY’S satisfaction. The Exhibits shall include all reimbursable costs required for the performance of the Scope of Services. Payment of additional reimbursable costs considered to be over and above those inherent in the original Scope of Services shall be approved of in advance and in writing, by the CITY.

(2) Compensation

CITY hereby agrees to pay CONSULTANT in accordance with Water Tank

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

Maintenance Contracts for Tanks 5A and 6 as detailed in Exhibits “A” and “B” and incorporated herein by reference.

CONSULTANT shall be paid any uncontested sum due and payable within thirty (30) days of receipt of billings containing all information pursuant to Paragraph 5 below. In no event shall CONSULTANT be entitled to compensation for work not included in Exhibits “A” and “B”, unless a written change order or authorization describing the extra work and payment terms has been executed by CITY’s authorized representative prior to the commencement of the work. Payment is made based on a time and materials basis.

(3) Effective Date and Term

The effective date of this Agreement is **July 1, 2024**, and it shall expire on **June 30, 2041**. The City Manager at his sole discretion may extend the agreement for additional ten (10) year terms. Either CITY or CONSULTANT may cancel this Agreement upon 90 days written notification to the other party.

(4) Independent Contractor Status

It is expressly understood and agreed by both parties that CONSULTANT, while engaged in carrying out and complying with any of the terms and conditions of this Agreement, is an independent contractor and not an employee of the CITY. As an independent contractor, CONSULTANT is responsible for controlling the means and methods to complete the scope of work described in Exhibits “A” and “B” to City’s satisfaction. CONSULTANT expressly warrants not to represent, at any time or in any manner, that CONSULTANT is an employee of the CITY.

(5) Billings

CONSULTANT’s bills shall include the total amount due on the invoice. Except as specifically authorized by the CITY, CONSULTANT shall not bill CITY for duplicate services performed by more than one person. In no event shall CONSULTANT submit any billing for an amount in excess of the maximum amount of compensation provided in section (2) for either task or for the entire Agreement, unless modified by a properly executed change order.

(6) Advice and Status Reporting

CONSULTANT shall provide the CITY with timely reports, orally or in writing, of all significant developments arising during performance of its services hereunder, and shall furnish to CITY such information as is necessary to enable CITY to monitor the performance of this Agreement. CONSULTANT shall submit to CITY such reports, diagrams, drawings and other work products developed pursuant to the Scope of Services.

(7) Auditing

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

CITY reserves the right to periodically audit all charges made by CONSULTANT to CITY for services under this Agreement. Upon request, CONSULTANT agrees to furnish CITY, or a designated representative, with necessary information and assistance needed to conduct such an audit.

(8) Assignment of Personnel

CONSULTANT acknowledges that the CITY has relied on CONSULTANT's capabilities and on the qualifications of CONSULTANT's principals and staff as identified in its proposal to CITY.

CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. If CITY asks CONSULTANT to remove a person assigned to the work called for under this Agreement, CONSULTANT agrees to do so immediately, without requiring the City to process a reason or explanation for its request.

(9) Assignment and Subcontracting

It is recognized by the parties hereto that a substantial inducement to CITY for entering into this Agreement was, and is, the professional reputation and competence of CONSULTANT. Neither this Agreement nor any interest therein may be assigned by CONSULTANT without the prior written approval of CITY'S authorized representative.

CONSULTANT shall not subcontract any portion of the performance contemplated and provided for herein, other than the subcontractors noted in the proposal, without prior written approval of the CITY'S authorized representative.

(10) Insurance

On or before beginning any of the services or work called for by any term of this Agreement, CONSULTANT, at its own cost and expense, shall carry, maintain for the duration of the Agreement, and provide proof thereof that is acceptable to the CITY the insurance specified in subsections (a) through (c) below with insurers and under forms of insurance satisfactory in all respects to the CITY. Verification of this insurance shall be submitted and made part of this Agreement prior to execution.

- (a) Workers' Compensation. CONSULTANT shall, at CONSULTANT'S sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by CONSULTANT. Said Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than one million dollars (\$1,000,000). In the alternative, CONSULTANT may rely on a self-

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

insurance program to meet these requirements provided that the program of self-insurance complies fully with the provisions of the California Labor Code. The insurer, if insurance is provided, or the CONSULTANT, if a program of self-insurance is provided, shall waive all rights of subrogation against the CITY for loss arising from work performed under this Agreement.

- (b) Commercial General and Automobile Liability Insurance. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain commercial general and automobile liability insurance for the period covered by this Agreement in an amount not less than two million dollars (\$2,000,000) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) and Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 (any auto).

Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- (i) CITY, its officers, employees, agents, and volunteers are to be covered as insured with respect to each of the following: liability arising out of activities performed by or on behalf of CONSULTANT, including the insider's general supervision of CONSULTANT; products and completed operations of CONSULTANT; premises owned, occupied or used by CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, employees, agents, or volunteers.
- (ii) The insurance shall cover on an occurrence or an accident basis, and not on a claim made basis.
- (iii) An endorsement must state that coverage is primary insurance and that no other insurance affected by the CITY will be called upon to contribute to a loss under the coverage.

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- (iv) Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
 - (v) Insurance is to be placed with California-admitted insurers with a Best's rating of no less than A: VII.
 - (vi) Notice of cancellation or non-renewal must be received by CITY at least thirty days prior to such change.
- (c) Professional Liability. CONSULTANT, at CONSULTANT'S own cost and expense, shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than Two Million Dollars (\$2,000,000) per claim made and per policy aggregate covering the licensed professionals' errors and omissions, as follows:
- (i) Notice of cancellation, material change, or non-renewal must be received by the CITY at least thirty days prior to such change shall be included in the coverage or added as an endorsement to the policy.
 - (ii) The policy must contain a cross liability or severability of interest clause.
 - (iii) The following provisions shall apply if the professional liability coverages are written on a claims made form:
 1. The retroactive date of the policy must be shown and must be before the date of the Agreement.
 2. Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the Agreement or the work, so long as commercially available at reasonable rates.
 3. If coverage is canceled or not renewed and it is not replaced with another claims made policy form with a retroactive date that precedes the date of this Agreement, CONSULTANT must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The CITY shall have the right to exercise at the CONSULTANT'S cost, any extended reporting provisions of the policy should the CONSULTANT cancel or not renew the coverage.

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4. A copy of the claim reporting requirements must be submitted to the CITY prior to the commencement of any work under this Agreement.

(d) Notice of Reduction in Coverage. In the event that any coverage required under subsections (a), (b), or (c) of this section of the Agreement is reduced, limited, or materially affected in any other manner, CONSULTANT shall provide written notice to CITY at CONSULTANT'S earliest possible opportunity and in no case later than five days after CONSULTANT is notified of the change in coverage.

(e) In addition to any other remedies CITY may have if CONSULTANT fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, CITY may, at its sole option:

- (i) Order CONSULTANT to stop work under this Agreement or withhold any payment which becomes due to CONSULTANT hereunder, or both stop work and withhold any payment, until CONSULTANT demonstrates compliance with the requirements hereof;
- (ii) Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to other remedies CITY may have and is not the exclusive remedy for CONSULTANT'S breach.

(11) Indemnification - CONSULTANT'S Responsibility

As to the CONSULTANT'S work hereunder, it is understood and agreed that (a) CONSULTANT has the professional skills necessary to perform the work, (b) CITY relies upon the professional skills of CONSULTANT to perform the work in a skillful and professional manner, and (c) CONSULTANT thus agrees to so perform.

Acceptance by CITY of the work performed under this Agreement does not operate as a release of said CONSULTANT from such professional responsibility for the work performed. It is further understood and agreed that CONSULTANT is apprised of the scope of the work to be performed under this Agreement and CONSULTANT agrees that said work can and shall be performed in a fully competent manner in accordance with the standard of care applicable to CONSULTANT'S profession.

CONSULTANT shall indemnify, defend, and hold CITY, its officers, employees, agents, and volunteers harmless from and against any and all liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused by the willful misconduct or

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negligent acts or omissions of CONSULTANT, its employees, subcontractors, or agents, or on account of the performance or character of this work, except for any such claim arising out of the negligence or willful misconduct of the CITY, its officers, employees, agents, or volunteers. It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies shall have been determined to be applicable to any of such damages or claims for damages.

(12) Licenses

If a license of any kind, which term is intended to include evidence of registration, is required of CONSULTANT, its employees, agents, or subcontractors by federal or state law, CONSULTANT warrants that such license has been obtained, is valid and in good standing, and CONSULTANT shall keep it in effect at all times during the term of this Agreement, and that any applicable bond has been posted in accordance with all applicable laws and regulations.

(13) Business Licenses

CONSULTANT shall obtain and maintain a CITY of Lathrop Business License until all Agreement services are rendered and accepted by the CITY.

(14) Termination

Either CITY or CONSULTANT may cancel this Agreement upon 90 days written notification to the other party. Upon termination, or completion of services under this Agreement, all information collected, work product and documents shall be delivered by CONSULTANT to CITY within ten (10) calendar days, providing that CONSULTANT has been paid in full for production of said work product.

(15) Funding

CONSULTANT agrees and understands that renewal of this agreement in subsequent years is contingent upon action by the City Council consistent with the appropriations limits of Article XIII (B) of the California Constitution and that the Council may determine not to fund this agreement in subsequent years. The City shall remain responsible for any payment due per the Exhibits at the time of termination.

(16) Notices

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

All contracts, appointments, approvals, authorizations, claims, demands, Change Orders, consents, designations, notices, offers, requests and statements given by either party to the other shall be in writing and shall be sufficiently given and served upon the other party if (1) personally served, (2) sent by the United States mail, postage prepaid, (3) sent by private express delivery service, or (4) in the case of a facsimile transmission, if sent to the telephone FAX number set forth below during regular business hours of the receiving party and followed with two (2) Days by delivery of a hard copy of the material sent by facsimile transmission. Personal service shall include, without limitation, service by delivery and service by facsimile transmission.

To City: City of Lathrop
City Clerk
390 Towne Centre
Lathrop, CA 95330

Copy to: City of Lathrop
Department of Public Works
390 Towne Centre
Lathrop, CA 95330
MAIN: (209) 941-7430
FAX: (209) 941-7449

To Consultant: Utility Service Company, Inc.
P.O. Box 1350
Perry, GA 31069
Phone: (478) 987-0303

(17) Miscellaneous

- (a) Consent. Whenever in this Agreement the approval or consent of a party is required, such approval or consent shall be in writing and shall be executed by a person having the express authority to grant such approval or consent.
- (b) Contract Terms Prevail. All exhibits and this Agreement are intended to be construed as a single document. Should any inconsistency occur between the specific terms of this Agreement and attached exhibits, the terms of the exhibits shall prevail.
- (c) Controlling Law. The parties agree that this Agreement shall be governed and construed by and in accordance with the Laws of the State of California.
- (d) Definitions. The definitions and terms are as defined in these specifications.
- (e) Force Majeure. Neither party shall be deemed to be in default on account of any delay or failure to perform its obligations under this Agreement, which directly results from an Act of God or an act of a superior governmental authority.

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- (f) Headings. The paragraph headings are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part of this Agreement.
- (g) Incorporation of Documents. All documents constituting the Agreement documents described in Section 1 hereof and all documents which may, from time to time, be referred to in any duly executed amendment hereto are by such reference incorporated in the Agreement and shall be deemed to be part of this Agreement.
- (h) Integration. This Agreement and any amendments hereto between the parties constitute the entire Agreement between the parties concerning the Project and Work, and there are no other prior oral or written agreements between the parties that are not incorporated in this Agreement.
- (i) Modification of Agreement. This Agreement shall not be modified or be binding upon the parties unless such modification is agreed to in writing and signed by the parties.
- (j) Ownership of Documents. All documents, photographs, reports, analyses, audits, computer media, or other material documents or data, and working papers, whether or not in final form, which have been obtained or prepared under this Agreement, and which have been paid for in full by City for services required to produce said documents, shall be deemed the property of the CITY. Upon CITY's request, CONSULTANT shall allow CITY to inspect all such documents during the CONSULTANT's regular business hours.
- (k) Provision. Any agreement, covenant, condition, clause, qualification, restriction, reservation, term or other stipulation in the Agreement shall define or otherwise control, establish or limit the performance required or permitted or to be required of or permitted by either party. All provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- (l) Severability. The invalidity in whole or part of any provision of this Agreement shall not void or affect the validity of any other provision of this agreement. If a court of competent jurisdiction finds or rules that any provision of this Agreement is void or unenforceable, the provisions of this Agreement not so affected shall remain in full force and effect.
- (m) Status of CONSULTANT. In the exercise of rights and obligations under this Agreement, CONSULTANT acts as an independent contractor and not as an agent or employee of CITY.

CONSULTANT shall not be entitled to any rights and benefits accorded or

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

accruing to the City Council members, officers or employees of CITY, and CONSULTANT expressly waives any and all claims to such right and benefits.

- (n) Successors and Assigns. The provisions of this Agreement shall inure to the benefit of, and shall apply to and bind, the successors and assigns of the parties.
- (o) Time of the Essence. Time is of the essence of this Agreement and each of its provisions. In the calculation of time hereunder, the time in which an act is to be performed shall be computed by excluding the first Day and including the last. If the time in which an act is to be performed falls on a Saturday, Sunday or any Day observed as a legal holiday by CITY, the time for performance shall be extended to the following Business Day.
- (p) Recovery of Costs. The prevailing party in any action brought to enforce the terms of this Agreement or arising out of this Agreement may recover its reasonable costs, including reasonable attorney's fees, incurred or expended in connection with such action against the non-prevailing party.

(18) Notice to Proceed

Prior to commencing work under this agreement, CONSULTANT shall receive a written "Notice to Proceed" from CITY. A Notice to Proceed shall not be issued until all necessary insurances have been received. City shall not be obligated to pay CONSULTANT for any services prior to issuance of the Notice to Proceed.

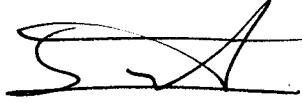
(19) Signatures

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the CONSULTANT and the CITY. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

CITY OF LATHROP – PSA WITH UTILITY SERVICE COMPANY, INC. FOR THE WATER TANK MAINTENANCE FOR TANKS 5A AND 6

Approved as to Form:

City of Lathrop
City Attorney



Salvador Navarrete

5.21.2024

Date

Recommended for Approval:

City of Lathrop
Assistant City Manager

Michael King

Date

Approved by:

City of Lathrop
390 Towne Centre Drive
Lathrop, CA 95330

Stephen J. Salvatore
City Manager

Date

Consultant:

Utility Service Company, Inc.
P.O. Box 1350
Perry, GA 31069

Fed ID # **58-1920989**
Business License # **815676**

Signature

Date

Print Name and Title

**City of Lathrop CA
Utility Service Full Service Asset Management Program
Projected Schedule of Work and Fees**

	2024 Year 1	2025 Year 2	2026 Year 3	2027 Year 4	2028 Year 5	2029 Year 6
Tank 5 1.5 KG Ground Storage	Interior Roof Renovation	Visual Inspection & Annual Maintenance	ROV Inspection & Annual Maintenance	Visual Inspection & Annual Maintenance	Washout Inspection & Annual Maintenance	Visual Inspection & Annual Maintenance
ANNUAL TOTAL	\$ 82,683	\$ 82,683	\$ 82,683	\$ 82,683	\$ 82,683	\$ 64,150

	2024 Year 1	2025 Year 2	2026 Year 3	2027 Year 4	2028 Year 5	2029 Year 6
Tank 6 1.5 KG Ground Storage	Visual Inspection & Annual Maintenance	ROV Inspection & Annual Maintenance	Visual Inspection & Annual Maintenance	Washout Inspection & Annual Maintenance	Visual Inspection & Annual Maintenance	ROV Inspection & Annual Maintenance
ANNUAL TOTAL	\$ 53,946	\$ 55,856	\$ 57,833	\$ 59,880	\$ 62,000	\$ 64,194



USG WATER
— SOLUTIONS —

Utility Service Co., Inc.

17 Year Water Tank Maintenance Contract

Owner: City of Lathrop
Lathrop, CA

Tank Size/Name: 1,500 Gallon GWT – Tank 5A

Location: 50 Stewart Road

Date Prepared: February 14, 2024

WATER TANK MAINTENANCE CONTRACT

This Water Tank Maintenance Contract (hereinafter, "the Contract") is entered into by and between the **City of Lathrop**, whose business address is **390 Town Centre Drive, Lathrop, California 95330** (hereinafter, "the Owner") and Utility Service Co., Inc., whose business address is 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069 (hereinafter, "the Company"). The Owner and the Company shall be individually referred to herein as "a Party" or collectively referred to herein as "the Parties".

Therefore, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owner and the Company, the Parties agree as follows:

1. Company's Engagement and Responsibilities. The Owner agrees to engage the Company to provide the professional services needed to maintain its **1,500,000** gallon water storage tank located at **950 Stewart Road, Lathrop, California 95330** (hereinafter, "the Tank"). This Contract outlines the Company's responsibility for the upfront renovation (hereinafter, "Upfront Renovation") of the Tank and the care and maintenance of the Tank thereafter. A price and Fee and Service Schedule is attached hereto and marked as Schedule A. The services (collectively, "the Services") that the Company will provide include the following:

- a. The Tank shall receive an Upfront Renovation which will include: **interior repair prior to the end of Contract Year 1.** For purposes of this Contract, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the Contract is executed by the Owner and each successive 12-month period thereafter (hereinafter, "Contract Year" collectively, "Contract Years").
- b. The Company will annually inspect the Tank. The Tank will be inspected to ensure that the structure is in good and tight condition. The Company will provide a written inspection report to the Owner following each inspection.
- c. Every four years following the Contract Year 1 work, after the Tank is drained by the Owner, the Company will clean the interior of the Tank and perform a condition assessment on the Tank (hereinafter "Washout Inspection"). During each Washout Inspection, the Tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the Tank. After a Washout Inspection is completed, the interior of the Tank will be thoroughly inspected and disinfected prior to returning the Tank to service; however, the Owner is responsible for draining and filling the Tank and conducting any required testing of the water before returning the Tank to service. Visual inspections and ROV inspections will be performed.
- d. The Company shall provide the engineering and inspection services needed to maintain and repair the Tank during the term of this Contract. The repairs include: the Tank's expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the Tank's other steel parts not otherwise excluded hereinafter.

e. The Company will clean and repaint the interior and/or exterior of the Tank at such time as complete repainting is needed. The need for interior painting of the Tank is to be determined by the thickness of the existing liner and its protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the Tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the Tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the Tank. When interior or exterior painting of the Tank is needed, all products and procedures as to coating systems shall be equal to or exceed the requirements of the **State of California** and the **American Water Works Association's D102 standard** in effect as of the Effective Date (defined hereinafter).

f. The Company will install a lock on the roof hatch of the Tank; however, the provision of such lock does not guarantee the Tank's security during the term of the Contract. For the avoidance of doubt, security of the Tank and the site where the Tank is located (hereinafter, "Tank Site") are the responsibility of the Owner.

g. In the event of an emergency involving the Tank, the Owner shall provide written notice of such emergency to the Company via its e-mail hereinafter at the following address: customerservice@usgwater.com. The Company shall provide emergency services for the Tank, when needed, to perform repairs covered under this Contract. Reasonable travel time must be allowed for the repair crew to reach the Tank Site.

h. When the Tank is taken out of service, the Company will furnish pressure relief valves, if requested by the Owner, so that the Owner can install the valves in its water system while the Tank is out of service. The Owner assumes all risk and liability for the installation and use of the pressure relief valves.

i. The Company will furnish the Owner with current certificates of insurance, which will summarize the Company's insurance coverage.

2. Contract Price/Annual Fee. For the performance of the Services required by Section 1.1, the Owner shall pay the Company an annual fee (hereinafter, "Annual Fee") for each Contract Year of the contract. The first five (5) Annual Fees shall be **\$82,863.00** per Contract Year. The Annual Fee for **Contract Year 6** shall be **\$62,750.00**. Each Contract Year thereafter, the Annual Fee shall be adjusted to reflect the current cost of service. The adjustment of the Annual Fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this contract.

3. Payment Terms. Each Annual Fee considered due and payable by the Company on the first day of each Contract Year; however, the parties have agreed that all invoicing under this Contract shall be monthly. If the Annual Fee, and all applicable taxes, are not paid within ninety (90) days of the date of invoice, the Company may charge the Owner a late fee on unpaid balances and may also terminate or suspend Services under this Contract without notice. The late fee will be 1.5% per month.

4. Changes or Delays to Services. For purposes of this Section 4, "Unreasonable Delay" shall mean the Owner's delay in releasing the Tank or making the Tank available to the Company for the performance of any of the Services described herein for a period of twenty-four (24) months following the Company's written request for release or access to the Tank. In the event of Unreasonable Delay, the Company reserves the right to recover its reasonable costs related to the Unreasonable Delay, and the Owner agrees to negotiate with the Company in good faith to determine the amount of its reasonable costs caused by such Unreasonable Delay. Furthermore, the Owner hereby agrees that the Company can replace a Washout Inspection of the Tank with a visual inspection, remotely operated vehicle inspection ("ROV Inspection"), or unmanned aerial vehicle inspection ("UAV Inspection") without requiring the modification of this Contract.

5. Structure of Tank and Tank Site Conditions. The Company is accepting this Tank to maintain pursuant to the requirements of this Contract based on its existing structure and components as of the Effective Date (defined hereinafter). **Any modification to the Tank, including antenna installations, shall be approved by the Company, prior to installation, and may warrant an increase in the Annual Fees.** In addition, changes in the condition of the Tank Site and/or any adjoining properties (e.g., construction of a mall next to the Tank Site which significantly increases the risk of overspray claims, etc.) following the Effective Date, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. The Owner shall be responsible for removing all antenna and equipment from the tank prior to the initial innovations.

6. Environmental, Health, Safety, or Industry Requirements. The Owner hereby agrees that the promulgation or amendment of, or modification to any environmental, health, safety, or labor laws, regulations, orders, or ordinances (e.g., EPA or OSHA regulations or standards) following the Effective Date of this Contract, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Furthermore, modifications to industry requirement(s) including, but not limited to, standard(s) or other guidance documents issued by the American Water Works Association, National Sanitary Foundation, and the Association for Material Protection and Performance, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Said equitable adjustment of Annual Fees in this Contract will reasonably reflect the increased services with newly negotiated Annual Fee(s).

Work performed under this Contract is subject to prevailing wages, and the workers who are performing work under this Contract are to be paid no less than the prevailing hourly rate of wages as set by the appropriate authority. Any future work performed by workers under this Contract will be subject to the wage determination of the appropriate authority which is in effect when the work is performed. However, the Owner and the Company hereby agree that if the prevailing wage rates for any job or trade classification increases by more than 5% per annum from the effective date of this Contract to the date in which any future work is to be performed under this Contract, then the Company reserves the right to re-negotiate the annual fee(s) with the Owner. If the Company and the Owner cannot agree on re-negotiated annual fee(s), then (1) the Company will not be obligated to perform the work and (2) the Company will not be obligated to return past annual fee(s) received by the Company.

7. Excluded Items. This Contract does NOT include the cost for and/or liability on the part of the Company for: (i) containment of the Tank at any time during the term of the Contract; (ii) disposal of

any hazardous waste materials; (iii) resolution of operational problems or structural damage due to cold weather; (iv) repair of structural damage due to antenna installations or other attachments for which the Tank was not originally designed; (v) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (vi) negligent acts of Owner's employees, agents or contractors; (vii) damages, whether foreseen or unforeseen, caused by the Owner's use of pressure relief valves; (viii) repairs to the foundation of the Tank; (ix) any latent defects or inaccessible areas of the Tank or its components (including, but not limited to, (a) corrosion from the underside of the floor plates, and (b) inaccessible areas of the Tank such as the area between the bottom of the roof plate and the top of the roof rafter); (x) the maintenance, repair or replacement of any electrical components (to include any lighting, such as aviation lights); (xi) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xii) the maintenance, repair, or replacement of piping of any kind below ground level; and (xiii) other conditions which are beyond the Owner's and Company's control, including, but not limited to: acts of God and acts of terrorism. Acts of God include, but are not limited to, any damage to the Tank or Tank Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include, but are not limited to, any damage to the Tank or Tank Site which results from an unauthorized entry of any kind to the Tank or Tank Site.

8. Force Majeure. If the Company is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason of act of God or force majeure such as: (i) fire, (ii) war, (iii) earthquake, (iv) strike, (v) lock-out, (vi) labor dispute, (vii) flood, (viii) public disaster, (ix) pandemic or epidemic, including COVID-19, (x) interruptions or delays in reasonably available means of transportation, (xi) acts of any government or its agencies or officers, or any order, regulation, or ruling thereof, (xii) equipment or technical malfunctions or failures, (xiii) power failures or interruptions, or (xiv) any other reason beyond its reasonable control, such condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such condition exists.

9. Termination. This Contract is an annual contract that shall automatically renew on an annual basis for a fifteen year term so long as: (i) the Owner pays each Annual Fee to the Company in accordance with the terms herein and does not terminate the Contract pursuant to the terms of this Section. This Contract is subject to termination by the Owner only at the end of the then-current Contract Year if written notice of intent to terminate is received by the Company at least ninety (90) days prior to the first day of the upcoming Contract Year. If the notice of intent to terminate is not received at least ninety (90) days prior to the first day of the upcoming Contract Year, this Contract shall renew for an additional Contract Year and expire at the end of the upcoming Contract Year. In such an event, the Owner agrees that it shall be responsible to pay the Annual Fee for the upcoming Contract Year. The notice of intent to terminate must be sent by certified mail, with return receipt requested, to Utility Service Co., Inc., Attention: Customer Service, Post Office Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's governing body (e.g., commission or council). Notice of intent to terminate cannot be delivered electronically or verbally (e.g., email, text, phone call, etc.). The Owner acknowledges and agrees that the Company has advanced Services to the Owner, and the Company has not received full payment for the Services previously performed. Therefore, if the Owner elects to terminate this Contract prior to remitting the first **five (5)** Annual Fees, then the unpaid balance of the first **five (5)** Annual Fees shall be due and payable within thirty (30) days of the Owner's issuance of the notice of intent to terminate at the end of the then-current Contract Year.

10. Assignment. The Owner may not assign or otherwise transfer all or any of its interest under this Contract without the prior written consent of the Company. If the Company agrees to the assignment, the Owner shall remain responsible under this Contract, until its assignee assumes in full and in writing all of the obligations of the Owner under this Contract. Any attempted assignment by Owner in violation of this provision will be void and of no effect.

11. Indemnification. THE COMPANY AGREES TO INDEMNIFY THE OWNER AND HOLD THE OWNER HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE COMPANY OR ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES. IN TURN, THE OWNER AGREES TO INDEMNIFY THE COMPANY AND HOLD THE COMPANY HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE OWNER OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES.

12. Assignment of Receivables. The Company reserves the right to assign any outstanding receivables from this Contract to its banking institution as collateral for any loans or lines of credit.

13. Miscellaneous Items. No modifications, amendments, or alterations of this Contract may be made, except in a writing signed by the Parties. No failure or delay on the part of any Party hereto in exercising any power or right hereunder shall operate as a waiver thereof. The Parties expressly warrant that the individuals who sign below are authorized to bind the

14. Visual Inspection Disclaimer. This Contract is based upon a visual inspection of the Tank. The Owner and the Company hereby acknowledge and agree that a visual inspection is intended to assess the condition of the Tank for all patent defects. If latent defects are identified once the Tank has been drained and is made available to the Company, the Owner agrees and acknowledges that the Company shall not be responsible to repair the latent defects unless the Owner and the Company renegotiate the Annual Fees. The definition of a latent defect shall be any defect of the Tank which is not easily discovered (e.g. corrosion of the floor plates, corrosion of the roof plates or rafters, corrosion in areas inaccessible to maintain, damage to the roof of the Tank which is not clearly discoverable during the visual inspection, etc.).

15. Excessive Inflation. In the event that the aggregate of the Annual Inflation Rates (defined herein below) established for the (2) consecutive calendar years during the term of this Contract exceeds 12% in total, the Owner and the Company agree to renegotiate the Annual Fees and increase the Annual Fees throughout the remaining term of the Contract to compensate the Company for the excessive inflation. For purposes of this provision, the Annual Inflation Rate for each calendar year shall be established by the *Engineering News Report – Construction Cost Index (“ENR-CCI”)*. In the event that the ENR-CCI index is discontinued, the Owner and the Company will negotiate and agree to an alternative index or methodology to address the excessive inflation. For illustrative purposes, if a Contract is executed in 2022, the first equitable adjustment could not be made until both the 2023 inflation rate and the 2024 inflation rate have been established. If the annual inflation rates for 2023 and 2024 are 5.0% and 7.1%, respectively, the Owner and the Company agree to renegotiate the current year’s Annual Fee as well as the remaining Annual Fees for the remainder of the term of the Contract to address the excessive inflation.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

17. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, understandings, and agreements relating to the subject matter hereof, whether oral or written.

This Contract is executed and effective as of the date ("the Effective Date") that the last Party signs this Contract below.

OWNER:

City of Lathrop

By: _____

Title: _____

Print Name: _____

Date: _____

Witness: _____

Seal: _____

COMPANY:

Utility Service Co., Inc.

By: _____

Title: _____

Print Name: _____

Date: _____

Witness: _____

Seal: _____

DRAFT



USG WATER
— SOLUTIONS —

Utility Services Co. Inc.

17 Year Water Tank Maintenance Contract

Owner: City of Lathrop
Lathrop, CA

Tank Size/Name: 1,000 Gallon GWT – Tank 6

Location: 1511 Stanford Crossing

Date Prepared: February 14, 2024

WATER TANK MAINTENANCE CONTRACT

This Water Tank Maintenance Contract (hereinafter, "the Contract") is entered into by and between the **City of Lathrop**, whose business address is **390 Town Centre Drive, Lathrop, California 95330** (hereinafter, "the Owner") and Utility Service Co., Inc., whose business address is 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069 (hereinafter, "the Company"). The Owner and the Company shall be individually referred to herein as "a Party" or collectively referred to herein as "the Parties".

Therefore, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owner and the Company, the Parties agree as follows:

1. Company's Engagement and Responsibility. The Owner agrees to engage the Company to provide the professional services needed to maintain its **1,600,000** gallon water storage tank located at **15117 Stanford Crossing, Lathrop, California 95330** (hereinafter, "the Tank"). This Contract outlines the Company's responsibility for the upfront renovation (hereinafter, the "Upfront Renovation") of the Tank and the care and maintenance of the Tank thereafter. A Project Scope and Service Schedule is attached hereto and marked as Schedule A. The services (collectively, "the Services") that the Company will provide include the following:

- a. The Company will annually inspect the Tank. The Tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
- b. Every four years starting with the initial Washout Inspection in Contract Year 4, after the Tank is drained by the Owner, the Company will clean the interior of the Tank and perform a condition assessment on the Tank (hereinafter "Washout Inspection"). During each Washout Inspection, the Tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the Tank. After a Washout Inspection is completed, the interior of the Tank will be thoroughly inspected and disinfected prior to returning the Tank to service; however, the Owner is responsible for draining and filling the Tank and conducting any required testing of the water before returning the Tank to service. Visual inspections and ROV inspections will rotate.
- c. The Company shall provide the engineering and inspection services needed to maintain and repair the Tank during the term of this Contract. The repairs include: the Tank's expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the Tank's other steel parts not otherwise excluded hereinafter.
- d. The Company will clean and repaint the interior and/or exterior of the Tank at such time as complete repairs are needed. The need for interior painting of the Tank is to be determined by the thickness of the existing liner and its protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the Tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the Tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the Tank. When interior or exterior painting of the Tank is needed, all products and procedures as to coating systems will be equal to or exceed the

requirements of the **State of California** and the American Water Works Association's D102 standard in effect as of the Effective Date (defined hereinafter).

e. The Company will install a lock on the roof hatch of the Tank; however, the provision of such lock does not guarantee the Tank's security during the term of the Contract. For the avoidance of doubt, security of the Tank and the site where the Tank is located (hereinafter, "Tank Site") are the responsibility of the Owner.

f. In the event of an emergency involving the Tank, the Owner shall provide written notice of such emergency to the Company via its email hotline at the following address: customerservice@usgwater.com. The Company will provide emergency services for the Tank, when needed, to perform all repairs covered under this Contract. Reasonable travel time must be allowed for the repair unit to reach the Tank.

g. When the Tank is taken out of service, the Company will furnish pressure relief valves, if requested by the Owner, so that the Owner can install the valves in its water system while the Tank is being serviced. The Owner shall assume all risk and liability for the installation and use of the pressure relief valves.

h. The Company will furnish the Owner with current certification of insurance, which will summarize the Company's insurance coverage.

2. Contract Price/Annual Fees.

In consideration of the performance of the Services required by Section 1, the Owner shall pay the Company an Annual Fee (hereinafter, "Annual Fee") for each Contract Year of the Contract. The Annual Fee for Contract Year One shall be **\$53,946.00**. Each Contract Year thereafter, the Annual Fee shall be adjusted to reflect the current cost of service. The adjustment of the Annual Fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this Contract.

3. Payment Terms.

Each Annual Fee is considered due and payable by the Company on the first day of each Contract Year. However, the parties have agreed that all invoicing under this Contract shall be monthly. If the Annual Fee, plus all applicable taxes, are not paid within ninety (90) days of the date of invoice, the Company may charge the Owner a late fee on unpaid balances and may also terminate or suspend Services under this Contract without notice. The late fee will be 1.5% per month.

4. Change of Access to Tank. For purposes of this Section 4, "Unreasonable Delay" shall mean the Owner's delay in releasing the Tank or making the Tank available to the Company for the performance of any of the Services described herein for a period of twenty-four (24) months following the Company's written request for release or access to the Tank.

In the event of Unreasonable Delay, the Company reserves the right to recover its reasonable costs related to the Unreasonable Delay, and the Owner agrees to negotiate with the Company in good faith to determine the amount of its reasonable costs caused by such Unreasonable Delay. Furthermore, the Owner hereby agrees that the Company can replace a Washout Inspection of the Tank with a visual inspection, remotely operated vehicle inspection ("ROV Inspection"), or unmanned aerial vehicle inspection ("UAV Inspection") without requiring the modification of this Contract.

5. Structure of Tank and Tank Site Conditions.

The Company is accepting this Tank to maintain pursuant to the requirements of this Contract based upon its existing structure and components as of the Effective Date (defined hereinafter). **Any modifications to the Tank, including antenna installations, shall be approved by the Company, prior to installation and may warrant an increase in the Annual Fees.** In addition, changes in the condition of the Tank Site and/or any adjoining properties (e.g., construction of a mall next to the Tank Site which significantly increases the risk of overspray claims, etc.) following the Effective Date, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. The Owner shall be responsible for removing all antenna and equipment from the tank prior to the initial renovations.

6. Environmental, Health, Safety, Labor, or Industry Requirements. The Owner hereby agrees that the promulgation of, enactment of, or modification to any environmental, health, safety, or labor laws, regulations, orders, or ordinances (e.g., EPA or OSHA regulations or standards) following the Effective Date of this Contract, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Furthermore, modifications to industry requirement(s) including, but not limited to, standard(s) or other guidance documents issued by the American Water Works Association, National Sanitary Foundation, and the Association for Materials Protection and Performance, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Said equitable adjustment of the Annual Fees in this Contract will reasonably reflect the increased cost of the Services with newly negotiated Annual Fees.

The work performed under this Contract is subject to prevailing wages, and the workers who are performing work under this Contract are to be paid no less than the prevailing hourly rate of wages as set by the appropriate authority. Any future work performed by workers under this Contract will be subject to the wage determination of the appropriate authority which is in effect when the work is performed. However, the Owner and the Company hereby agree that if the prevailing wage rates for any job or trade classification increases by more than 5% per annum from the effective date of this Contract to the date in which any future work is to be performed under this Contract, the Company reserves the right to re-negotiate the annual fee(s) with the Owner. If the Company and the Owner cannot agree on re-negotiated annual fee(s), then: (1) the Company will not be obligated to perform the work and (2) the Company will not be obligated to return past annual fee(s) received by the Company.

7. Excluded Items. This Contract does NOT include the cost for and/or liability on the part of the Company for: (i) contentment of the Tank at any time during the term of the Contract; (ii) disposal of any hazardous waste materials, (iii) resolution of operational problems or structural damage due to cold weather; (iv) repair of structural damage due to any installation or other attachments for which the Tank was not originally designed; (v) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (vi) negligent acts of Owner's employees, agents or contractors; (vii) damages, whether foreseen or unforeseen, caused by the Owner's underground relief valves; (viii) repairs to the foundation of the Tank; (ix) any latent defects or inaccessible areas of the Tank or its components including, but not limited to, (a) corrosion from the underside of the floor plates and (b) inaccessible areas of the Tank such as the area between the bottom of the room and the top of the roof rafters; (x) the maintenance, repair or replacement of any electrical components, include any lighting, such as aviation lights; (xi) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xii) the maintenance, repair, or replacement of piping of any kind below ground level; and (xiii) other conditions which are beyond the Owner's and Company's control, including, but not limited to: acts of God and acts of terrorism. Acts of God include, but are not limited to, any damage to the Tank or Tank Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include, but are not limited to, any damage to the Tank or Tank Site which results from an unauthorized entry of any kind to the Tank or Tank Site.

8. Force Majeure. If the Company is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason of act of God or force majeure such as: (i) fire, (ii) war, (iii) earthquake, (iv) strike, (v) lock-out, (vi) labor dispute, (vii) flood, (viii) public disaster, (ix) pandemic or epidemic event (including COVID-19), (x) interruptions or delays in reasonably available means of transportation, (xi) acts of any government or its agencies or officers, or any order, regulation, or ruling thereof, (xii) equipment or technical malfunctions or failures, (xiii) power failures or interruptions, or (xiv) any other reason beyond its reasonable control, such

condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such condition exists.

9. Termination. This Contract is an annual contract that shall automatically renew on an annual basis for a seventeen year term so long as: (i) the Owner pays each Annual Fee to the Company in accordance with the terms herein and (ii) does not terminate the Contract pursuant to the terms of this Section. This Contract is subject to termination by the Owner only at the end of the then-current Contract Year if written notice of intent to terminate is received by the Company at least ninety (90) days prior to the first day of the upcoming Contract Year. If the notice of intent to terminate is not received at least ninety (90) days prior to the first day of the upcoming Contract Year, this Contract shall renew for an additional Contract Year and expire at the end of the upcoming Contract Year. In such an event, the Owner agrees that it shall be responsible to pay the Annual Fee for the upcoming Contract Year. The notice of intent to terminate must be sent by certified mail, with return receipt requested, to Utility Service Co., Inc., Attention: Customer Service, Post Office Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's governing body (e.g., commission or council). Notice of intent to terminate cannot be delivered electronically or verbally (e.g., email, text, phone call, etc.). The Owner acknowledges and agrees that the Company has advanced Services to the Owner, and the Company has not received full payment for the Services previously performed.

10. Assignment. The Owner may not assign or otherwise transfer all or any of its interest under this Contract without the prior written consent of the Company. If the Company agrees to the assignment, the Owner shall remain responsible under this Contract, until its assignee assumes in full and in writing all of the obligations of the Owner under this Contract. Any attempted assignment by Owner in violation of this provision will be void and have no effect.

11. Indemnification. THE COMPANY AGREES TO INDEMNIFY THE OWNER AND HOLD THE OWNER HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE COMPANY OR ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES. IN TURN, THE OWNER AGREES TO INDEMNIFY THE COMPANY AND HOLD THE COMPANY HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE OWNER OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES.

12. Assignment of Receivables. The Company reserves the right to assign any outstanding receivables from this Contract to its banking institution as collateral for any loans or lines of credit.

13. Miscellaneous Items. No modifications, amendments, or alterations of this Contract may be made, except in a writing signed by the Parties. No failure or delay on the part of any Party hereto in exercising any power or right hereunder shall operate as a waiver thereof. The Parties expressly warrant that the individuals who sign below are authorized to bind them.

14. Visual Inspection Disclaimer. This Contract is based upon a visual inspection of the Tank. The Owner and the Company hereby acknowledge and agree that a visual inspection is intended to assess the condition of the Tank for all patent defects. If latent defects are identified once the Tank has been drained and is made available to the Company, the Owner agrees and acknowledges that the Company shall not be responsible to repair the latent defects unless the Owner and the Company re-

negotiate the Annual Fees. The definition of a "latent defect" shall be any defect of the Tank which is not easily discovered (e.g., corrosion of the floor plates, corrosion of the roof plates or rafters, corrosion in areas inaccessible to maintain, damage to the roof of the Tank which is not clearly discoverable during the visual inspection, etc.).

15. Excessive Inflation. In the event that the aggregate of the Annual Inflation Rates (defined herein below) established for two (2) consecutive calendar years during the term of this Contract exceeds 12% in total, the Owner and the Company agree to renegotiate the Annual Fees and increase the Annual Fees throughout the remaining term of the Contract to compensate the Company for the excessive inflation. For purposes of this provision, the Annual Inflation Rate for each calendar year shall be established by the *Engineering News Report – Construction Cost Index* ("ENR-CCI"). In the event that the ENR-CCI index is discontinued, the Owner and the Company will negotiate and agree to an alternative index or methodology to address the excessive inflation. For illustrative purposes, if a Contract is executed in 2022, the first equitable adjustment could not be made until both the 2023 inflation rate and the 2024 inflation rate have been established. If the annual inflation rates for 2023 and 2024 are 5.0% and 7.1%, respectively, the Owner and the Company agree to renegotiate the current year's Annual Fee as well as the remaining Annual Fees for the remainder of the term of the Contract to address the excessive inflation.

16. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

17. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, whether oral or written.

SIGNATURE LINE TO FOLLOW

This Contract is executed and effective as of the date ("the Effective Date") that the last Party signs this Contract below.

OWNER:

City of Lathrop

By: _____

Title: _____

Print Name: _____

Date: _____

Witness: _____

Seal:

COMPANY:

Utility Service Co., Inc.

By: _____

Title: _____

Print Name: _____

Date: _____

Witness: _____

Seal:

DRAFT

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