



**Action Requested/Required:**

- Vote/Action Requested
  - Discussion or Presentation Only
  - Public Hearing
- Report Date: \_\_\_\_\_  
Hearing Date: \_\_\_\_\_  
Voting Date: \_\_\_\_\_

**Department:** Community Development      **Presenter(s) & Title:** Bethany Watson  
City Engineer

**Agenda Item Title:**

Discussion and Possible Action on Third Amendment to Professional Services Contract with Utility Service Company Inc.

**Summary:**

The City has had a contract with Utility Service Company, Inc. for water tank maintenance and renovations since 2013. Due to significant delays in the services as originally contracted, an amendment to the contract in relation to Compensation has been received from Utility Service Company.  
Great Sky Tank - The cost for the upfront renovation under the Original Contract was \$57,853 per year for a three (3) year period. This interior and exterior renovation was to occur in 2015, however there has been a significant delay to perform this work and costs have significantly increased due to inflation. The revised cost for the upfront renovation is \$51,297 spread over a five (5) year period. Following the five yr period, the annual maintenance fee will be \$21,231 with increases as defined in the Original Contract.  
Big Oak Tank - Due to continued delays in the interior and exterior renovation, fees will be modified to increase from \$68,977 to \$73,912 for yr 1-4 and from \$35,772 to \$38,620 for yr 5.

**Budget Implications:**

Budgeted?  Yes  No  N/A  
Total Cost of Project:  Check if Estimated   
Fund Source: General Fund  Water & Sewer  Sales Tax  Other:

**Staff Recommendations:**

Staff recommends approval of Third Amendment to Professional Services Contract with Utility Service Company Inc.

**Reviews:**

Has this been reviewed by Management and Legal Counsel, if required?  Yes  No

**Attachments:**

Third Amendment to PSA  
Letter from USC  
Original Contract and Amendments

**THIRD AMENDMENT**  
**to**  
**PROFESSIONAL SERVICES AGREEMENT**

THIS THIRD AMMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is executed as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Canton, Georgia, hereinafter referred to as the Owner, and UTILITY SERVICE COMPANY, INC., a corporation licensed to do business in the State of Georgia hereinafter referred to as the Consultant.

**W I T N E S S E T H:**

**WHEREAS**, the City of Canton and the Contractor entered into an Agreement on March 6. 2013. and more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

**WHEREAS**, the parties desire to amend the Professional Services Agreement amend Compensation for Task Order No. 5 Great Sky Ground Storage Tank and Task Order No. 7 Big Oak (East Canton) Elevated Storage Tank and .

NOW, THEREFORE, the parties hereby agree as follows:

1. **EXHIBIT D COMPENSATION** is hereby amended to change **Task Order No. 5** as follows:

Task Order/Tank	Contract Year						
	2024	2025	2026	2027	2028	2029	2030
5 – Great Sky Ground Storage Tank	\$51,297	\$51,297	\$51,297	\$51,297	\$51,297	\$21,231	\$21,231

The annual maintenance fee will be increased as defined in the Original Contract.

2. **EXHIBIT D COMPENSATION** is hereby amended to change **Task Order No. 7** as follows:

Task Order/Tank	Contract Year							
	2022	2023	2024	2025	2026	2027	2028	2029
7 – Big Oak (East Canton) Elevated Storage Tank	\$2,000	\$2,000	\$2,000	\$73,912	\$73,912	\$73,912	\$73,912	\$38,620

The annual maintenance fee will be increased as defined in the Original Contract.

The following invoices will be reversed, and new invoices will be generated for the revised 2022 and 2023 fee amounts. All subsequent billing shall remain quarterly on the current schedule.

Tank Name	Invoice Date	Invoice Details	Invoice Amount	Invoice Number
BIG OAK TANK	1-Mar-22	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	554909
BIG OAK TANK	1-Jun-22	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	560425
BIG OAK TANK	1-Sep-22	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	566371
BIG OAK TANK	1-Dec-22	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	572112
BIG OAK TANK	1-Mar-23	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	577568
BIG OAK TANK	1-Jun-23	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	583081
BIG OAK TANK	1-Sep-23	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	588910
BIG OAK TANK	1-Dec-23	1,000,000 ELEVATED BIG OAK TANK-QUARTERLY	\$17,249.25	594672

- Other than amended herein, the Agreement shall remain and full force and effect. This Amendment shall bind and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same instrument. This Amendment shall be governed and construed in accordance with the laws of the State of Georgia.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK  
SIGNATURES COMMENCE ON FOLLOWING PAGE

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement under seal as of the day and year first above-written.

**Owner:**  
City of Canton

**Consultant:**  
Utility Service Co., Inc.

Bill Grant  
By (Typed Name)

By (Typed Name)

Mayor  
Title

Title

Signature

Signature

[SEAL]

[SEAL]

Attest:

Attest:

Annie Fortner  
City Clerk

Witness

Witness

Address for Giving Notice:  
City of Canton  
110 Academy Street  
Canton, Georgia 30114

Address for Giving Notice:

Approved as to form

Robert M. Dyer,  
City of Canton  
Attorney

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)



January 2, 2024

Nathan Ingram  
 City of Canton  
 110 Academy Street  
 Canton, GA 30114

RE: Addendum to Water Tank Maintenance Contract with Utility Service Co., Inc.

Dear Mr. Ingram:

This letter agreement shall serve as an addendum to the Water Tank Maintenance Contract (“Original Contract”) described as follows:

Original Contract Date	Tank Name	Gallons	Type	Tank Project#	Customer #
19-DEC-2019	BIG OAK TANK	1,000,000	ELEVATED	150057	4963

The following changes shall be made to the Original Contract:

**TERMS:** Due to continued delays in the interior and exterior renovation, fees will be modified as follows, with the understanding that the interior and exterior renovation work on the Big Oak Tank will be completed in 2025. If the renovation work is unable to be completed in 2025, the parties agree to renegotiate fees, to account for additional costs based on the condition of the tank due to the delay, as well as inflation.

2022	2023	2024	2025	2026	2027	2028	2029
\$2,000.00	\$2,000.00	\$2,000.00	\$73,912.00	\$73,912.00	\$73,912.00	\$73,912.00	\$38,620.00

Upon signature of this addendum, the following invoices will be reversed, and new invoices will be generated for the revised 2022 and 2023 fee amounts. All subsequent billing shall remain quarterly on the current schedule.

Tank Name	Invoice Date	Invoice Details	Invoice Amount	Invoice Number
BIG OAK TANK	1-Mar-22	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	554909
BIG OAK TANK	1-Jun-22	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	560425
BIG OAK TANK	1-Sep-22	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	566371
BIG OAK TANK	1-Dec-22	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	572112
BIG OAK TANK	1-Mar-23	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	577568
BIG OAK TANK	1-Jun-23	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	583081
BIG OAK TANK	1-Sep-23	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	588910
BIG OAK TANK	1-Dec-23	1,000,000 ELEVATED BIG OAK TANK-Quarterly	\$17,249.25	594672

Any and all other aspects of the Original Contract not addressed in this addendum shall remain unmodified and in full force and effect.

I appreciate this opportunity and look forward to working with you in the future.

Sincerely,

Jonathan Cato  
Chief Operating Officer

**City of Canton, GA**

**Authorizing Signature:** \_\_\_\_\_ **Title:** \_\_\_\_\_

The above signatory certifies that he or she is duly authorized to sign this Addendum on behalf of the entity(ies) represented.

**Printed Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_



January 2, 2024

Nathan Ingram  
City of Canton  
110 Academy Street  
Canton, GA 30114

RE: Addendum to Water Tank Maintenance Contract with Utility Service Co., Inc.

Dear Mr. Ingram:

This letter agreement shall serve as an addendum to the Water Tank Maintenance Contract (“Original Contract”) described as follows:

Original Contract Date	Tank Name	Gallons	Type	Tank Project#	Customer #
06-MAR-2013	GREAT SKY TANK	750,000	GROUND STORAGE	128682	4963

The following changes shall be made to the Original Contract:

**TERMS:** Your cost for the upfront renovation under the Original Contract was \$57,853.00 per year for a three (3) year period. This interior and exterior renovation was to occur in 2015, however there has been a significant delay in our ability to perform this work and during this time our costs have significantly increased due to inflation. The revised cost for the upfront renovation for the Great Sky Tank is \$51,297.00 spread over a five (5) year period. The renovation will be performed during your upcoming Contract Year of March 1, 2024 through February 28, 2025, so this five-year spread will begin on March 1, 2024. Following this five-year period, the annual maintenance fee will be \$21,231.00, with increases as defined in the Original Contract. Billing shall remain quarterly. If the renovation is delayed beyond the upcoming Contract Year as defined herein, the parties agree to renegotiate fees to account for additional costs based on the condition of the tank due to the delay, as well as inflation.

Any and all other aspects of the Original Contract not addressed in this addendum shall remain unmodified and in full force and effect.

I appreciate this opportunity and look forward to working with you in the future.

Sincerely,

Jonathan Cato  
Chief Operating Officer

**City of Canton, GA**

**Authorizing Signature:** \_\_\_\_\_ **Title:** \_\_\_\_\_

The above signatory certifies that he or she is duly authorized to sign this Addendum on behalf of the entity(ies) represented.

**Printed Name:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**AGREEMENT FOR PROFESSIONAL SERVICES**

**between**

**City of Canton**

**and**

**Utility Service Co., Inc.**

**for**

**Water Tank Rehabilitation and Maintenance**

**THIS AGREEMENT**, made and entered into on this the 06 day of March, 2013, by and between **City of Canton** hereinafter referred to as "**Owner**" and **Utility Service Co., Inc.**, a corporation licensed to do business in the State of Georgia, hereinafter referred to as "**Contractor**."

**WITNESSETH:**

WHEREAS, **Owner** desires to engage a qualified and experienced **Contractor** to furnish professional services for the City of Canton's Water Tank Management and Maintenance Program hereinafter referred to as the "Project"; and

WHEREAS, **Contractor** has represented to **Owner** that it is qualified and experienced to perform the services described herein, and has available the personnel and facilities necessary to accomplish the work within the required time;

NOW, THEREFORE, **Owner** and **Contractor** agree as follows:

**I. DESCRIPTION OF PROJECT:** **Owner** and **Contractor** agree that the Project is as described in **Exhibit A**, entitled "**Description of Project**." **Owner** and **Contractor** recognize that, during the course of performing the work, the Project as described in **Exhibit A** may need to be reduced, expanded, or otherwise modified.

**II. SCOPE OF SERVICES:** **Contractor** agrees to perform those services described hereafter. Unless modified in writing by both parties, duties of **Contractor** shall not be construed to exceed those services specifically set forth herein.

- A. Scoped Services - **Contractor** agrees to perform those tasks described in **Exhibit B**, entitled "**Scope of Work**."
- B. Scope Changes - **Owner** may, at any time during the contract period, make changes within the general scope of the contract and its technical provisions. If any such change causes any increase or decrease in **Contractor's** cost of performing any part of the contract, an equitable adjustment shall be made in the contract price, or in the time of performance, or in both, and a written amendment of such adjustment shall be made and signed by both parties. Any claim by **Contractor** for an equitable adjustment shall be made in writing and delivered to **Owner**



prior to proceeding with the additional services. No additional services shall be performed until written authorization is received from **Owner**. Nothing in this clause shall excuse **Contractor** from proceeding with performance of this contract in accordance with the original terms and conditions and any approved changes.

**III. SCOPE OF OWNER SUPPORT:** **Owner** agrees to provide the following:

- A. All criteria and full information as to **Owner's** requirements for the Project.
- B. Available information and data pertinent to the Project.
- C. Assistance with the operation of any facilities associated with the tanks, including valve location & operation
- D. Responsible for draining and filling the tanks and conducting any required testing of the water during wash out procedures

**Owner** shall appoint an **Owner's** representative with respect to work to be performed under this Agreement. Said **Owner's** representative shall have complete authority to transmit instructions, receive information, and interpret and define **Owner's** policies. **Contractor** shall be entitled to rely on representations made by said **Owner's** representative unless otherwise directed in writing by **Owner**.

**IV. AUTHORIZATION AND PROGRESS:** The Project schedule is listed in **Exhibit C**, entitled "**Project Schedule**." In signing this Agreement, **Owner** grants **Contractor** specific authorization to proceed with work described in Exhibit A. Interim milestones dates shall be mutually agreed upon by **Owner** and **Contractor** upon initiation of the work.

**V. COMPENSATION:** Compensation for services provided under Article II, "Scope of Services," and described in **Exhibit B** shall be in accordance with the terms set forth in **Exhibit D**, entitled "**Compensation**."

**VI. RESPONSIBILITY OF CONTRACTOR:** **Contractor** is employed to render a professional service only, and any payments made to **Contractor** are compensation solely for such services rendered and recommendations made in carrying out the work. **Contractor** shall follow the standard of care applicable to the practice of the profession to make findings, provide opinions, make factual presentations, and provide professional advice and recommendations. No review of **Contractor's** professional work product by any of **Owner's** employees or agents shall relieve **Contractor** of any responsibility with respect to such professional work product.

**VII. INDEMNIFICATION:**

- A. To the fullest extent permitted by Laws and Regulations, **Contractor** shall indemnify and hold harmless **Owner**, and the officers, directors, partners,

employees, agents of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the services described herein (the "Work"), provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of **Contractor**, any Subcontractor, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .

- B. In any and all claims against Owner or any of their respective Contractors, agents, officers, directors, partners, or employees by any employee (or the survivor or personal representative of such employee) of **Contractor**, any Subcontractor, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph A of this Article VII shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for **Contractor** or any such Subcontractor, or other individual or entity directly or indirectly employed by any of them under workers' compensation acts, disability benefit acts, or other employee benefit acts.

**VIII. INSURANCE:** Prior to the start of contracted work, **Contractor** shall procure and maintain in force for the duration of the work, Commercial General Liability Insurance, Commercial Automobile Liability Insurance, Workers' Compensation Insurance, Professional Liability Insurance and Excess/Umbrella Liability Insurance. **Owner** shall be named as additional insured in each of the policies except Workers' Compensation and Professional Liability. All policies must be placed with a carrier rated not less than A-VIII by A. M. Best. Provide 60 days written cancellation notice, return receipt requested.

**A. Minimum Limits of Insurance**

1. **Commercial General Liability** with combined Bodily Injury and Property Damage limit of not less than \$1,000,000 per occurrence and \$2,000,000 Aggregate. The aggregate must be applicable on a per project basis. Broad form Blanket Contractual Liability assured under this contract. Completed Operation/Project Liability, Broad Form Property Damage, Personal and Advertising Injury Liability, Independent Contractors, owner named as Additional Insured on a primary and non-contributory basis, this insurance to be primary and non-contributory with any other collectable insurance coverage to be provided on an occurrence basis. Carrier waives right of subrogation against certificate holder.

2. **Commercial Automobile Liability** insurance covering the use of all owned, non-owned and hired vehicles with a combined Bodily Injury and Property Damage limit of \$1,000,000. Carrier waives right of subrogation against certificate holder.
  3. **Workers' Compensation and Employer's Liability insurance** with limit of \$500,000/\$500,000/\$500,000 or minimum required by Labor Code, State of Georgia, whichever is greater. Carrier waives right of subrogation against certificate holder.
  4. **Contractor** shall also maintain professional liability insurance in an amount of \$1,000,000 per claim and in the aggregate, payable to **Contractor** to cover damages resulting from errors or omissions of **Contractor**. Such coverage shall be maintained for a minimum of three years after completion of the services provided hereunder, and **Contractor** shall provide **Owner** with additional certificates of insurance to evidence such coverage throughout said three year period. Policy shall have a continuity or retroactive data on or prior to the date of this Agreement.].
  5. **Excess/Umbrella Liability** insurance limit of not less than \$1,000,000 general aggregate, \$1,000,000 occurrence. Such policy must be in excess of policy limits of the primary coverage for general liability, automobile liability and employer's liability.
- B. **Insurance Certificates** – An insurance certificate must be furnished by **Contractor** to **Owner**. Endorsements showing additional insured where applicable, and waiver of subrogation must be provided.

**IX. SUBCONTRACTS:** **Contractor** shall be entitled to subcontract any portion of the work to be performed under this Agreement. **Contractor** shall be responsible for the work products and actions of all subcontractors. All subcontractors are subject to approval by **Owner**.

**X. SUSPENSION OF WORK:** **Owner** may suspend, in writing, all or a portion of the work under this Agreement. **Contractor** may request that the work be suspended by notifying **Owner**, in writing, of circumstances that are interfering with the normal progress of work. **Contractor** may suspend work on Project in the event **Owner** does not pay invoices when due. The time for completion of the work shall be extended by the number of days work is suspended. If the period of suspension exceeds 90 days, the terms of this Agreement are subject to re-negotiation, and both parties are granted the option to terminate work on the suspended portion of Project in accordance with Article XI.

**XI. TERMINATION OF WORK:** **Owner** may terminate all or a portion of the work covered by this agreement for its convenience at any time upon 15 days prior written notice. **Owner** or **Contractor** may terminate work if the other party fails to perform in accordance with the provisions of this Agreement by providing 15 days prior written notice to the other by certified mail with receipt for delivery returned to the sender. In the event of termination, **Contractor** shall perform such additional work as is necessary for the orderly filing of documents and closing of Project and all finished or unfinished documents, maps, studies, work papers and reports prepared by **Contractor** under this Agreement shall be the sole property

of **Owner**. The time spent on such additional work shall not exceed 5 percent of the time expended on Project prior to the effective date of termination. **Contractor** shall be compensated for work performed prior to the effective date of termination, plus work required for filing and closing as described in this Article.

## **XII. CONFLICT OF INTEREST:**

- A. **Contractor** certifies that to the best of its knowledge no circumstances exist which will cause a conflict of interest in performing the services required by this Agreement, that no employee of **Owner**, nor any member thereof, nor any public agency or official affected by this Agreement, has any pecuniary interest in the business of **Contractor** or its subcontractors and that no person associated with **Contractor** or its subcontractors has any interest that would conflict in any manner or degree with the performance of this Agreement.
- B. Should **Contractor** become aware of any circumstances which may cause a conflict of interest during the term of this Agreement, **Contractor** shall immediately notify **Owner**. If **Owner** determines that a conflict of interest exists, **Owner** may require that **Contractor** take action to remedy the conflict of interest or terminate the Agreement without liability. **Owner** shall have the right to recover any fees paid for services rendered by **Contractor** which were performed while a conflict of interest existed if **Contractor** had knowledge of the conflict of interest and did not notify **Owner** within one week of becoming aware of the existence of the conflict of interest.
- C. **Contractor** warrants that **Contractor** and **Contractor's** subcontractor(s) have not employed or retained any company or person other than a bona fide employee, working solely for **Contractor** or its subcontractor(s) to solicit or secure this Agreement and that **Contractor** and **Contractor's** subcontractor(s) have not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for **Contractor** or its subcontractor(s) any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award of this Agreement. For any breach or violation of this provision, **Owner** shall have the right to terminate the Agreement without liability and, at its discretion, to deduct from the price, or otherwise recover, the full amount of such fee, commission, percentage, gift, payment, or consideration.

**XIII. OWNERSHIP OF DOCUMENTS:** Original documents, whether paper or electronic media, such as reports, plans, drawings, specifications, designs and survey notes developed in connection with the services performed hereunder belong to and remain the property of **Owner**. **Contractor** may retain reproducible copies of such documents. **Owner** hereby releases **Contractor** from all damages, claims, and losses arising out of any use of such

original documents by **Owner** other than for information and reference in connection with the use, operating and occupancy of the Project by **Owner** and others. **Owner** further agrees that **Owner** will not hereafter disseminate any of such original documents or copies thereof for use by other parties in connection with consulting services relating to any facilities not owned either by **Owner** or a wholesale customer of **Owner**. Nothing stated herein shall prevent **Contractor** from using its copies of such documents in connection with rendering professional services provided that in so doing no confidential information of **Owner** is disclosed to such other client or any other party.

**Contractor** agrees that any electronic documents provided to the **Contractor** by the **Owner** for the **Contractor's** use on the Project belong to and remain the property of the **Owner**. The **Contractor** will not disseminate any such documents to third parties without the **Owner's** written approval and will not make use of any such documents in connection with rendering professional services relative to the construction of other facilities for other clients. The **Owner** takes no responsibility for the accuracy of such documents and no guarantee of their fitness for any use by the **Contractor** is implied.

**XIV. CONTRACTOR TO COOPERATE WITH OTHER CONTRACTORS:** If **Owner** undertakes or awards other contracts for additional related work, **Contractor** shall fully cooperate with such other Contractors or other independent contractors of **Owner** and the **Owner's** employees, and carefully fit its own work to such additional work as may be directed by **Owner**. **Contractor** shall not commit or permit any act which will interfere with the performance of work by any other **Contractor** or independent contractor of **Owner** or any employee of **Owner**.

**XV. EQUAL EMPLOYMENT OPPORTUNITY:** During the performance of this Agreement, **Contractor** agrees as follows: (1) **Contractor** will not discriminate against any employee or applicant for employment because of race, creed, color, sex or national origin; (2) **Contractor** will, in all solicitations or advertisements for employees placed by qualified applicants, receive consideration for employment without regard to race, creed, color, sex or national origin; (3) **Contractor** will cause the foregoing provisions to be inserted in all subcontracts for any work covered by the Agreement so that such provision will be binding upon each subcontractor, provided that the foregoing provision shall not apply to contracts or subcontracts for standard commercial supplies of raw materials.

**XVI. AUDITS AND INSPECTORS:**

**Contractor** shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the Project and used in support of its proposal and shall make such material available at all reasonable times during the period of the Agreement, and for one year from the date of final payment under the Agreement, for inspection by **Owner** or any reviewing agencies.

**XVII. INDEPENDENT CONTRACTOR:** Contractor shall perform the services under this Agreement as an independent contractor and nothing contained herein shall be construed to be inconsistent with this relationship or status. Nothing in this Agreement shall be interpreted or construed to constitute Contractor or any of its agents or employees to be the agent, employee, or representative of Owner.

**XVIII. ASSIGNMENT:** This Agreement is binding on the heirs, successors, and permitted assigns of the parties hereto. This Agreement may not be assigned by Owner or Contractor without prior written consent of the other.

**XIX. INTEGRATION:** This Agreement represents the entire understanding of Owner and Contractor as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered herein. This Agreement may not be modified or altered except in writing signed by both parties.

**XX. JURISDICTION:** This Agreement shall be administered and interpreted under the laws of the State of Georgia. Jurisdiction of litigation arising from this Agreement shall be in that state. If any part of this Agreement is found to conflict with applicable laws, such part shall be inoperative, null, and void insofar as it conflicts with said laws, but the remainder of this Agreement shall be in full force and effect.

**XXI. NOTICES:** All notices shall be in writing and delivered in person or transmitted by certified mail, postage prepaid. Notices shall be addressed as follows:

**Owner**

City of Canton  
151 Elizabeth Street  
Canton, GA 30114

**Contractor**

Utility Service Co. Inc.  
535 Courtney Hodges Blvd.  
Perry, GA 31069

**XXII. CAPTIONS:** All captions, headings and paragraph numbers are solely for the purpose of facilitating references to this Agreement and shall not supplement, limit or otherwise vary the text of this Agreement in any respect.

**XXIII. REFERENCES:** All references in this Agreement to Articles shall be deemed to refer to the appropriate Article of this Agreement. Use of pronouns or adjective of one gender shall include the other gender, use of the singular shall include the plural, and use of the plural shall include the singular, all as the context of this Agreement requires. Unless otherwise specified in this Agreement, the terms "herein," "hereof," "hereunder," and other terms of similar import, shall be deemed to refer to this Agreement as a whole, and not to any particular Article hereof.

**XXIV. LEGAL PROCEEDINGS:** In the event of legal proceedings in connection with this Agreement, the party prevailing therein shall be entitled to recover the costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees.

**XXV. INTERPRETATION:** Both Parties have participated fully in the negotiation and preparation hereof; and, accordingly, this Agreement shall not be more strictly construed against any one of the Parties.

**XXVI. EXHIBITS:** The exhibits referred to in and attached to this Agreement are incorporated herein in full by reference.

**XXVII. TIME OF ESSENCE:** Time is of the essence of this Agreement.

**XXVIII. MEDIATION AND ARBITRATION:**

- A. **Mediation** – Should any dispute develop as to the construction of this Agreement, the work to be performed by **Contractor** hereunder, or any other matter relating to this Agreement, the parties hereto agree to submit said dispute to nonbonding mediation pursuant to the Commercial Mediation Rules of the American Arbitration Association prior to the commencement of any litigation. Either party hereto may at any time give written notice to the other party hereto by certified mail with receipt for delivery returned to the sender stating the alleged dispute (hereinafter referred to as the "Dispute Notice"), and, thereafter, if no mutually satisfactory written resolution of said dispute is signed by both parties hereto within fourteen (14) days, said dispute shall be thereupon submitted for mediation by a mediator selected by the Harry De Jur Commercial Mediation Center of the American Arbitration Association.. Either party hereto may request the selection of the mediator and schedule the mediation session. Both parties hereto shall equally share the cost of said mediator. The mediation session shall occur at **Owner's** administration building unless another site is agreed to by both parties hereto at a mutually convenient date within sixty (60) days of the selection of said mediator. Both parties hereto shall attend said mediation session. The mediator shall be authorized to end the mediation whenever, in the judgment of the mediator, further efforts of mediation would not contribute to a resolution of the dispute between the parties. If the dispute is not resolved by mediation within ninety (90) days of the giving of the dispute Notice, either party hereto shall be free thereafter to pursue litigation for a resolution of the dispute.

- B. **Binding Arbitration Availability** – All parties to this Agreement acknowledge that, in the event of a dispute arising after execution of this Agreement, there is a voluntary "Binding Arbitration Procedure" available to the parties to this Agreement in accordance with the Official Code of Georgia Annotated (O.C.G.A.) Sec. 9-9-1 et seq., provided all parties to this Agreement concur in writing, within seven (7) days after the dispute first arises, to abide by same.
1. Should the parties agree to submit to Binding arbitration, then **Owner** and **Contractor** shall select one arbitrator. If no agreement is reached within fourteen (14) days after the dispute first arises regarding the arbitrator, there shall be three arbitrators, one named in writing by **Owner** and a second by **Contractor**, each within twenty-one (21) days after the dispute first arises, and a third chosen by the two who are appointed. If there is one arbitrator, his or her decision shall be binding; if there are three arbitrators, the decision of any two of them shall be binding. No one shall act as an arbitrator who is in any way financially interested in the work or in the business affairs of either **Owner** or **Contractor**.
  2. Should either **Owner** or the **Contractor** refuse or neglect to appoint an arbitrator or to furnish the arbitrators with any necessary papers or information, they are empowered by both parties to proceed ex parte. The decision of the arbitrators shall be a condition precedent to any right of legal action that either party may have against the other.
  3. The arbitrators, if they so deem, are authorized to award to the party whose contention is upheld any sums as they deem proper for the time, expense, and trouble incident to the damages for delay. The arbitrator shall fix their own compensation, unless otherwise agreed upon, and shall assess the costs and charges of the arbitration on either or both parties.
  4. Time is of the essence in any arbitration proceedings connected herewith. In no event, however, shall any said proceedings extend beyond ninety (90) days after the dispute first arises, unless both parties agree in writing to a specified final extension.



IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement under seal as of the day and year first above-written.

**UTILITY SERVICES CO., INC.**

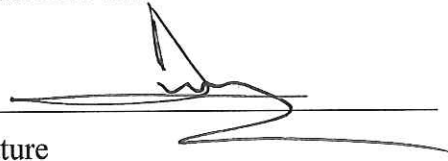
**CITY OF CANTON**

CONTRACTOR

OWNER

By:

By:

  
\_\_\_\_\_

  
\_\_\_\_\_

Signature

Signature

Dominique Demessence

Gene Hobgood

Typed Name

Typed Name

Title: CEO


Title: Mayor

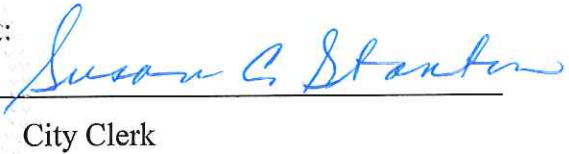
Date: 2/22/2013

Date: 03.06.13

Attest:

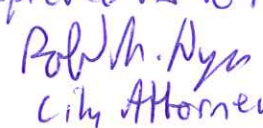
Attest:

By:   
Secretary

By:   
City Clerk

AFFIX SEAL

AFFIX SEAL

Approved as to Form:  
  
City Attorney

Approved by Canton City Council  
on Feb. 21, 2013

## **LIST OF EXHIBITS**

Exhibit A Description of Project

Exhibit B Scope of Work

Exhibit C Project Schedule

Exhibit D Compensation

## EXHIBIT A

### DESCRIPTION OF PROJECT

Utility Service Co., Inc. (Contractor) is responsible for the care and maintenance of the City Canton's (Owner) Water Tanks described in Exhibit B. Care and maintenance shall include the following:

- A. The Contractor will inspect and service the tanks listed in this scope of work annually. The tanks and towers will be thoroughly inspected to ensure that each structure is in a sound, watertight condition.
- B. Biennially, beginning with the first washout/inspection, the tank will be completely drained and cleaned to remove all mud, silt, and other accumulations that may be harmful to the tank or its contents. After cleaning is completed, the interior will be thoroughly inspected and disinfected prior to returning the tank to service. A written report will be submitted to the Owner after each inspection.
- C. The Contractor shall furnish engineering and inspection services needed to maintain and repair the tanks and towers during the term of this Contract. Repairs include, but are not limited to: steel parts, expansion joints, water level indicators, sway rod adjustments, and manhole covers/gaskets.
- D. The Contractor will clean and repaint the interior and/or exterior of the tanks at such time as complete repainting is required. The need for interior painting is determined by the thickness of the existing liner and its protective condition. Interior repainting will be in accordance with the procedures outlined in AWWA-D102, *Specifications for Cleaning and Coating of Potable Water Tanks*. Only material approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting is determined by the appearance and protective condition of the existing paint. At the time the exterior requires repainting, the Contractor will paint the tank with the same color paint and to select a coating system which best suits the site conditions, environment, and general location of the tank. In addition, the Contractor will re-paint any logos or artwork that exists on the tanks. All products and procedures will meet or exceed the requirements of the American Water Works Association and the Society for Protective Coatings as to surface preparation and coating materials.
- E. The Contractor will provide emergency services, when needed, to perform all repairs covered under this Contract. Reasonable travel time will be allowed for the repair crew to reach the tank site.
- F. The Contractor 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.
- G. The Contractor is accepting these tanks under a program based upon their existing structure and components. Any modification to the tanks which causes the cost of maintenance by Contractor to increase will result in a corresponding increase in the annual fee. The Owner will advise Contractor of any proposed modifications prior to installation and the Contractor will, within a reasonable period of time, advise the Owner of any increase in annual fee occasioned by such installation.
- H. The Owner hereby agrees that future mandated environmental, health, safety, or labor

requirements as well as changes in site conditions at the tank site which cause an increase in the cost of tank maintenance will be just cause for modification of this Contract. Said modification of this Contract will reasonably reflect the increased cost of the service with a newly negotiated annual fee.

- I. This Contract does NOT include the cost for and/or liability on the part of the Contractor for: (1) containment (the use of curtains, drapes, and powered dust collection equipment to prevent the escape of dust from abrasive blast cleaning and the migration of spent abrasive to adjacent property) of the tank at any time during the term of the Contract, except for the initial renovations on the Ridge Pine Elevated and Industrial Tanks; (2) disposal of any hazardous waste materials, except for the initial exterior renovations on the Ridge Pine Elevated and Industrial Tanks; (3) resolution of operational problems or structural damage due to cold weather; (4) repair of structural damage due to antenna installations or other attachments for which the tank was not originally designed, except for the antenna retrofit of the Ridge Pine Elevated Tank; (5) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (6) negligent acts of Owner's employees, agents or contractors; (7) damages, whether foreseen or unforeseen, caused by the Owner's use of pressure relief valves; (8) repairs to the foundation of the tank; or (9) 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 terrorism include, but are not limited to, any damage to the tank or tank site which results from unauthorized entry of any kind to the tank site or tank;(10) payment of prevailing wages at any time throughout the duration of this contract.

## **EXHIBIT B**

### **SCOPE OF WORK**

Exhibit A presents the care and maintenance that applies to each tank described in the task orders below. Specific recommendations and improvements for each tank are based on the inspections performed by the Contractor. Utility Service will be issued a separate notice-to-proceed for each Task Order by the Owner. Should work begin on a task order without authorization, the Owner is not responsible for any cost incurred on that task order.

#### **Task Order No. 1**

##### **Ridge Pine Ground Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in fair condition and the interior of the tank was in poor condition. Lead was detected in the exterior coating and chromium was detected in the interior coating.

Specific recommendations to the tank include:

- 1-1. Complete exterior renovation
- 1-2. Complete interior renovation
- 1-3. Install bolted man-way to sidewall
- 1-4. Remove float system and seal holes
- 1-5. Clean & caulk foundation
- 1-6. Install new 24" roof vent
- 1-7. Install new roof hatch
- 1-8. Install cable safety climbs to access ladders
- 1-9. Bring overflow to grade and install splash pad and flapper valve
- 1-10. Install new interior ladder
- 1-11. Inspect/repair/replace roof support structure

#### **Task Order No. 2**

##### **Ridge Pine Elevated Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in poor condition and the interior of the tank was not inspected. A washout inspection is recommended in order to repair the supports on the dome ladder. The dome ladder is supported by a finial ball and is not considered safe. Access should be denied until the above is completed. Lead was detected in the exterior coating.

Specific recommendations to the tank include:

- 2-1. Complete exterior renovation
- 2-2. Complete interior renovation
- 2-3. A complete antenna retrofit
- 2-4. Replace 8 leg nuts that have corroded

- 2-5. Install bolted riser man-way
- 2-6. Remove finial ball and install new 24" vent
- 2-7. Secure dome ladder to roof of tank
- 2-8. Install dome ladder safety climbs

### **Task Order No. 3**

#### **Amos Road Ground Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in good condition and the interior of the tank was in fair condition. Chromium was detected in the interior coating.

Specific recommendations to the tank include:

- 3-1. Pressure wash the exterior
- 3-2. Complete interior renovation
- 3-3. Clean & caulk foundation
- 3-4. Remove float system and seal holes
- 3-5. Install roof ladder
- 3-6. Install cable safety climbs on exterior ladder

### **Task Order No. 4**

#### **Industrial Park Ground Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in poor condition and the interior of the tank was in good condition. Lead and Chromium were detected on the exterior coating and interior coating.

Specific recommendations to the tank include:

- 4-1. Complete exterior renovation
- 4-2. Clean & caulk foundation
- 4-3. Install cable safety climbs on exterior ladder
- 4-4. Repair the ladder gate

### **Task Order No. 5**

#### **Great Sky Ground Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in good condition and the interior of the tank was in good condition. Chromium was detected on the interior coating.

Specific recommendations to the tank include:

- 5-1. Exterior renovation in 2015
- 5-2. Interior renovation in 2015
- 5-3. Clean & caulk foundation
- 5-4. Close flange on roof of tank

- 5-5. Place plugs in rigging holes

### **Task Order No. 6**

#### **Brian Center Elevated Storage Tank**

The tank was inspected on April 10, 2012 and the following comments were noted in the inspection report: The exterior of the tank was in good condition and the interior of the tank was in poor condition. Lead and Chromium were detected on the exterior coating.

Specific recommendations to the tank include:

- 6-1. Complete exterior renovation
- 6-2. Complete interior renovation
- 6-3. Secure dome ladder to roof of tank
- 6-4. Install safety climb to access ladders
- 6-5. Install new 24" vent to tank
- 6-6. Remove float system & seal holes
- 6-7. Install riser grate to interior

It should be noted that the recommended improvements to the Brian Center Tank may not be required if minor modifications to the distribution system are made by the Owner.

## **EXHIBIT C**

### **PROJECT SCHEDULE**

The schedule for tank rehabilitation and maintenance will be determined by the Owner, based on needs, ability to properly operate the system during rehabilitation, and available funding. The Task Orders have prioritized based on the condition of the tank, but does not guarantee the repairs will be performed in the order listed.



## EXHIBIT D

### COMPENSATION

Compensation for each task order is summarized in the table below. The annual costs are shown assuming that the rehabilitation and maintenance occurs on all tanks simultaneously. However, the Owner will issue a separate Notice-to-Proceed for each Task Order and the actual start date for each tank will vary.

Task Order/Tank	Contract Year					
	1	2	3	4	5	6
1 - Ridge Pine GST	\$41,167	\$41,167	\$41,167	\$41,167	\$41,167	\$10,997
2 - Ridge Pine Elevated	\$78,384	\$78,384	\$78,384	\$78,384	\$78,384	\$10,694
3 - Amos Rd. GST	\$50,623	\$50,623	\$50,623	\$50,623	\$50,623	\$20,401
4 - Industrial Park GST	\$48,364	\$48,364	\$48,364	\$48,364	\$48,364	\$12,010
5 - Great Sky GST	\$3,616	\$3,616	\$57,853	\$57,853	\$57,853	\$15,847

**Payment Terms:** The annual fee for Contract Year 1 for each Task Order shall be due and payable upon completion of the interior renovation or exterior renovation, whichever occurs first. However, beginning in Contract Year 2 of a Task Order, the Owner can select the frequency of the payment: monthly, quarterly, semiannually, or annually. If the Owner does not select a preferred billing frequency, the Owner will be billed quarterly. Following Contract Year 6, and each third anniversary thereafter, the annual fee shall be adjusted to reflect the current cost of service. The adjustment of the annual fee shall be limited to the annual increase of Consumer Price Index (CPI), with a maximum increase of 5%. A "Contract Year" shall be defined as each consecutive 12-month period following the first day of the month in which the Task Order is issued by the Owner and each subsequent 12-month period thereafter during the time the Contract is in effect. For example, if a Task Order was issued by Owner on April 17, 2007, Contract Year 1 for that contract would be April 1, 2007 to March 31, 2008, and Contract Year 2 for that contract would be April 1, 2008 to March 31, 2009 and so on. Furthermore, the Owner understands that the costs for the renovations of each tank are spread over a number of years and annual fees, and pursuant to Section XI of the Agreement for Professional Services, the Company shall be compensated for all work performed prior to termination, which may include the unpaid balance of additional annual fees covering renovation work.

**FIRST AMENDMENT**  
to  
**PROFESSIONAL SERVICES AGREEMENT**

THIS FIRST AMMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is executed as of the 19 day of December, 2019, by and between the City of Canton, Georgia, hereinafter referred to as the Owner, and UTILIY SERVICE COMPANY, INC., a corporation licensed to do business in the State of Georgia hereinafter referred to as the Consultant.

**W I T N E S S E T H:**

**WHEREAS**, the City of Canton and the Contractor entered into an Agreement on March 6, 2013, and more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

**WHEREAS**, the parties desire to amend the Professional Services Agreement to clarify the terms of the Agreement and add the Big Oak (East Canton) Elevated Storage Tank.

NOW, THEREFORE, the parties hereby agree as follows:

1. **EXHIBIT B SCOPE OF WORK** is hereby amended to add **Task Order No. 7** as follows:

**“Task Order No. 7**

**Big Oak (East Canton) Elevated Storage Tank**

The tank was inspected on April 23, 2019 and the following comments were noted in the inspection report:

The exterior of the tank was in good condition for its age. Mildew was noted along the legs, bowl, catwalk and sidewalks along with chalking on all areas of substrate. There were no signs of corrosion found during the inspection.

The interior of the tank was in fair condition for its age. Delamination of the finish coat was found in the roof area along with areas of flash rust. Corrosion was found along the weld seams. Random areas of flash rust were found along the mid-wall area along with heavy sediment.

Specific recommendations to the tank include:

- 7-1. Pressure wash the exterior
- 7-2. Schedule interior renovation after tank can be taken out of service
- 7-3. Schedule exterior renovation after tank can be taken out of service
- 7-4. Install 24” pallet style vent
- 7-5. Replace current manway with 30” bolted manway

It should be noted that the recommended improvements to the Big Oak Tank (years 9 – 13) cannot be made until a new elevated tank and booster pump station are constructed on the site of the existing Industrial Park Ground Storage Tank. Until such time, the only work performed will be exterior pressure washing (year 7) and visual inspection (years 8 and beyond).

2. **EXHIBIT C PROJECT SCHEDULE** is hereby amended to state:

The schedule for tank rehabilitation and maintenance will be determined by the Owner, based on the needs, ability to operate the system during rehabilitation, and available funding. The Task Orders have been prioritized based on the condition of the tank, but do not guarantee the repairs will be performed in the order listed. The Owner shall submit a list of Task Orders to be performed during the upcoming Contract Year to the Company at least thirty (30) days prior to the anniversary date of March 1

3. **EXHIBIT D COMPENSATION** is hereby amended to add the Big Oak Elevated Tank as follows:

Task Order/Tank	Contract Year						
	7	8	9	10	11	12	13
7 – Big Oak Elev Tank	\$21,086	\$2,000	\$68,997	\$68,997	\$68,997	\$68,997	\$35,772

4. Other than amended herein, the Agreement shall remain and full force and effect. This Amendment shall bind and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all if which together shall constitute one and the same instrument. This Amendment shall be governed and construed in accordance with the laws of the State of Georgia.

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SIGNATURES COMMENCE ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement under seal as of the day and year first above-written.

**Owner:**

City of Canton

Gene Hobgood

By (Typed Name)

Mayor

Title



Signature

[SEAL]

Attest:



Annie Fortner Lou Stewart  
City Clerk, Interim



Witness

Address for Giving Notice:

City of Canton

110 Academy Street

Canton, Georgia 30114

**Consultant:**

Utility Service Co., Inc.

G. David Forrester

By (Typed Name)

Vice President, Tank Services LOB

Title



Signature

[SEAL]

Attest:



J. Shane Albritton  
Secretary



Witness

Address for Giving Notice:

Utility Service Co., Inc.

P.O. Box 1350

Perry, GA 31069

Approved as to form



Robert M. Dyer,  
City of Canton  
Attorney

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)

## SECOND AMENDMENT

to

## PROFESSIONAL SERVICES AGREEMENT

THIS SECOND AMMENDMENT TO THE PROFESSIONAL SERVICES AGREEMENT is executed as of the 15 day of December, 2022, by and between the City of Canton, Georgia, hereinafter referred to as the Owner, and UTILIY SERVICE COMPANY, INC., (aka VEOLIA) a corporation licensed to do business in the State of Georgia hereinafter referred to as the Consultant.

### WITNESSETH:

**WHEREAS**, the City of Canton and the Contractor entered into an Agreement on March 6, 2013, and more particularly described on Exhibit A attached hereto and by this reference made a part hereof.

**WHEREAS**, the parties desire to amend the Professional Services Agreement.

NOW, THEREFORE, the parties hereby agree as follows:

1. **EXHIBIT B SCOPE OF WORK** is hereby amended to add **Task Order No. 8** as follows:

#### **Task Order No. 8**

#### **Water Tank Demolition**

1. This work is for three (3) tanks located on East Main St. & North Crisler St. and the one (1) tank on Brown Industrial Parkway.
2. The tanks will be removed by use of a crane. No "dropping" of steel will be permitted.
3. The tanks will be removed to top of the foundation piers only. Removal of the foundation or water main capping is not included in the work.
4. Upon completion of dismantling, all scrap steel will become property of Utility Service Company for proper disposal per E.P.A. Guidelines.
5. Owner shall furnish fire protection, street blockage, etc. to provide a safe, confined working area.
6. Owner is to have all electrical lines to the tank disconnected.
7. Owner is to have the power company shut off power on that section of the street adjacent to the tank for approximately six (6) hours or covered with insulators.
8. Sod replacement is not included in the work.
9. The site is to be left in a reasonably clean condition with all steel removed.
10. A certificate of insurance with acceptable limits will be provided prior to start of job.

11. Owner is responsible for marking all underground obstructions.
12. Work will be completed on normal weekday schedule. Weekend work is not included in this proposal.
13. Utility Services Co. (aka Veolia) will be allowed to trim trees/branches, as necessary for equipment to access the site and stage for work around tanks.
14. The tank dismantle will begin the first 40 days of 2023 unless schedule allows for earlier dismantle.

2. **EXHIBIT D COMPENSATION** is hereby amended to add the tank demolition as follows:

<b>Task Order/Tank</b>	<b>Cost</b>
8 – East Main St Tanks Demolition	\$47,895.00
8 – Brown Industrial Parkway Tank Demolition	\$37,895.00 *

*\* The cost is contingent upon one mobilization and in conjunction with removal of East Main Street Tanks.*

3. Other than amended herein, the Agreement shall remain and full force and effect. This Amendment shall bind and inure to the benefit of the parties hereto, their respective legal representatives, successors and assigns. This Amendment may be executed in two or more counterparts, each of which shall be deemed to be an original and all if which together shall constitute one and the same instrument. This Amendment shall be governed and construed in accordance with the laws of the State of Georgia.

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SIGNATURES COMMENCE ON FOLLOWING PAGE

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement under seal as of the day and year first above-written.

**Owner:**

City of Canton

Bill Grant

By (Typed Name)

Mayor

Title

*Bill Grant*

Signature

[SEAL]

Attest:

*Annie Fortner*  
Annie Fortner  
City Clerk

*Jim Boy*  
Witness

Address for Giving Notice:  
City of Canton  
110 Academy Street  
Canton, Georgia 30114

Approved as to form

*Robert M. Dyer*  
Robert M. Dyer,  
City of Canton  
Attorney

**Consultant:**

Utility Service Co., Inc.

Edward Faust

By (Typed Name)

Senior Vice President

Title

*Edward Faust*

Signature

[SEAL]

Attest:

*J. Shane Albritton*  
J. Shane Albritton  
Corporate Secretary

*Lara Townsend*  
Witness

Address for Giving Notice:  
Utility Service Co., Inc.  
535 Gen. Courtney Hodges Blvd.  
P O Box 1350  
Perry, GA 31069

(Attach evidence of authority to sign and resolution or other documents authorizing execution of Agreement)



Proposal from  
**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069  
Toll-free: 855-526-4413 | Fax: 478-987-2991  
veolianorthamerica.com

Date: 10-18-2022

Submitted by: Lee Smallwood

Local Phone: 864-415-2388

SFID:

MP / CS Asset:

Entity Proposal Submitted To ("Customer"): City of Canton, Ga			Phone Number: 770-704-1513	Fax Number:
Street Address: 110 Academy Street			Description of Work to be Performed: <b>Steel Tank Demolition and Removal</b>	
City: Canton	State: GA	Zip Code: 30114	Asset Name: Coker Tanks 1, 2, and 3	
Accounts Payable Contact Name: David Hatabian	Email: david.hatabian@cantonga.gov		Job Site Address: North Crisler Drive, Canton, GA	
Job Contact (Inspection Reports): David Hatabian	Email: david.hatabian@cantonga.gov		County / Parish: Cherokee	Asset Size: N/A
				Asset Style: Steel GST

Utility Service Co., Inc. agrees to provide all labor, equipment, and materials needed to complete the following:

Please see attached Exhibit(s), which are incorporated herein by reference:

1. Exhibit A – Scope of Work
2. Exhibit B – Terms and Conditions

Please sign and date this proposal and fax one copy to our office.

-----Forty-Seven Thousand Eight Hundred Ninety-Five -----00 /100 Dollars \$ 47,895.00

Payment to be made as follows: **Payment Due in Full Upon Completion of Work – plus all applicable taxes**

**Remittance Address: Utility Service Co., Inc., P O Box 207362, Dallas, TX 75320-7362**

This Proposal, together with its Exhibit A – Scope of Work and Exhibit B - Terms and Conditions, and any additional exhibits that Utility Service Co., Inc. and the Customer agree to incorporate and attach to this Proposal (collectively, this "Proposal") constitutes the entire and exclusive agreement between Utility Service Co., Inc. (which for purposes herein shall collectively include its affiliate companies) and Customer (collectively, the "Parties"). This Proposal may be withdrawn by Utility Service Co., Inc. at any time prior to acceptance. Customer assents to the terms and conditions in Exhibit B and agrees that the terms and conditions in Exhibit B shall govern with respect to this Proposal and the services provided by Utility Service Co., Inc. No additional or conflicting terms or conditions included in any purchase order, hyperlink, acknowledgement or invoice of Customer not expressly incorporated into this Proposal shall be binding on the Parties or this Proposal.

Note: This proposal shall expire automatically  
Ninety (90) days following the date of this Proposal.

Authorized  
USCI Signature

**Acceptance of Proposal** The prices, scope of work, and terms and conditions of this Proposal are satisfactory and are hereby accepted. Payment will be made by Customer to Utility Service Co., Inc. as set forth herein.

Is Customer Exempt from Sales Tax?  No  Yes If Exempt, please provide Sales Tax Exemption Certificate.

Fiscal Year Beginning Month \_\_\_\_\_ Customer Signature \_\_\_\_\_

Date of Acceptance \_\_\_\_\_ Printed Name \_\_\_\_\_

FOR INTERNAL USE ONLY

SFID:

CN:

SO:

MP / CS PN:





Proposal from  
**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069  
Toll-free: 855-526-4413 | Fax: 478-987-2991  
veolianoorthamerica.com

## **Exhibit A – Scope of Work**

### **Steel Tank Demolition and Removal**

1. The tank will be removed by use of a crane. No “dropping” of steel will be permitted.
2. The tank will be removed to top of the foundation piers only. No removal of foundation or water main - capping is included in this proposal.
3. Upon completion of dismantling, all scrap steel will become property of Utility Service Company for proper disposal per E.P.A. Guidelines.
4. Owner shall furnish fire protection, street blockage, etc. to provide a safe, confined working area.
5. Owner is to have all electrical lines to the tank disconnected.
6. Owner is to have the power company shut off power on that section of the street adjacent to the tank for approximately six (6) hours or covered with insulators.
7. No soil damage or sod replacement is included in this proposal.
8. The site is to be left in a reasonably clean condition with all steel removed.
9. A certificate of insurance with acceptable limits will be provided prior to start of job.
10. Owner is responsible for marking all underground obstructions.
11. Work will be completed on normal weekday schedule. No weekend work is included in this proposal.
12. Veolia will be allowed to trim trees/branches, as necessary for equipment to access the site and stage for work around tanks.
13. The tank dismantle will begin the first 40 days of 2023 unless schedule allows for earlier dismantle.
14. This proposal is for all three tanks located at the Coker Tank Sites.



Proposal from

**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069

Toll-free: 855-526-4413 | Fax: 478-987-2991

veolianoorthamerica.com

**Exhibit A – Scope of Work Continued**

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Proposal from  
**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069  
Toll-free: 855-526-4413 | Fax: 478-987-2991  
veolianorthamerica.com

## Exhibit B – Terms and Conditions

### A. GENERAL TERMS AND CONDITIONS

The Terms and Conditions (the "Terms") of this Proposal govern the sale of services (the "Services") by Utility Service Co., Inc. (which for purposes herein shall include its affiliates) to the Customer. All other terms, or variations to these Terms are excluded unless agreed explicitly in writing by a numbered amendment to this Proposal executed by Utility Service Co., Inc. and the Customer. Execution of the Proposal by the Customer, whether in writing, on the Internet, by electronic signature, or by e-mail transmission of a signed Proposal shall mean acceptance that these Terms are deemed incorporated into the Proposal and shall form the contract between the Customer and Utility Service Co., Inc. These Terms shall supersede all prior terms, understandings or Proposals between the Customer and Utility Service Co., Inc. If any part of the Terms should be found to be invalid or unenforceable by a court or other competent authority, then the remainder of the Terms shall not be affected. Any notice to be given with respect to these Terms by either of the Parties shall be in writing. Notices to the Customer shall be sent to the Customer's address on the Proposal, and any notices to Utility Service Co., Inc., including notice of warranty claims by the Customer, shall be sent to: Utility Service Co., Inc., ATTN: Customer Service Department, 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069.

This Proposal has been issued based on the information provided by the Customer and on information currently available to Utility Service Co., Inc. at the time of Proposal issuance. Any changes or discrepancies in site conditions, concealed conditions where the Services will be performed, changes in environmental, health, and safety regulations or conditions, changes in Customer's financial standing, Customer's requirements, or any other relevant change or discrepancy in the factual basis upon which this Proposal was created may lead to changes in the offering, including but not limited to, changes in pricing, warranties, quoted scope of work, and/or terms and conditions. Unless stated otherwise in the Proposal, performance and/or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

### B. PRICES, PAYMENT TERMS, COMMITMENT OF CUSTOMER, CREDIT REPORTING AND TAXES

Prices, which are expressed in US Dollars, are only valid for the period stated in the Proposal. If not stated, the validity period is ninety (90) days. Unless otherwise stated in the Proposal, the full price shall be due and payable upon completion of the Services, which may or may not include the installation of Equipment. All of Utility Service Co., Inc.'s invoices are due and payable upon receipt. If any payment is not made by the Customer within sixty (60) calendar days following the date of the invoice, Utility Service Co., Inc. reserves the right to charge a late payment charge of one and one-half percent (1.5%) per month of the outstanding past due balance. Any failure by Customer to make timely payment of any obligation under this Proposal shall be deemed a breach. Customer agrees to reimburse Utility Service Co., Inc. for all charges, costs, expenses and attorney's fees incurred to enforce or collect the amounts due under this Proposal. In the event Customer has a valid dispute with any invoice or amount due, such dispute must be communicated in writing to Utility Service Co., Inc. within thirty (30) days of the invoice date, describing the amount, issue and the reason for any dispute. Any amounts not disputed within this time frame will be deemed to be valid. Utility Service Co., Inc. and Customer agree to work expeditiously to resolve any dispute. Customer agrees to notify Utility Service Co., Inc. within thirty (30) days of any change in Customer's name, address, or phone number. By executing this Proposal, Customer authorizes Utility Service Co., Inc. to periodically request your credit reports and bank and trade references. Upon your request, we will inform you of the name and address of the reporting agency from which we received such a report, if any. The price listed in the Proposal excludes all taxes unless specifically stated otherwise in the Proposal. The Customer is responsible for payment of all applicable taxes, however designated or incurred in connection with the transactions under this Proposal, and agrees to reimburse Utility Service Co., Inc. for any taxes paid on Customer's behalf.

### C. DELIVERY OF SERVICES AND INSTALLATION OF EQUIPMENT

The provision of Services as contemplated herein might require the installation of certain equipment (the "Equipment") on the Customer's real property or on the improvements to the Customer's real property (e.g., water storage tank, etc.). All times and dates for the delivery of Services and/or installation of Equipment are approximate, but Utility Service Co., Inc. shall use its reasonable efforts to respect them. The Parties shall each make commercially reasonable efforts to schedule the Services after the date this Proposal is executed by the Customer. Utility Service Co., Inc. shall not be liable for any loss or damage resulting from late delivery of the Services or installation of Equipment.

### D. ACCESS TO CUSTOMER'S FACILITY OR REAL PROPERTY

Customer hereby agrees to provide Utility Service Co., Inc. with reasonable access to its facility or real property to perform the Services. "Reasonable access" shall include passable roads for ingress and egress as well as sufficient usable ground space for Utility Service Co., Inc.'s equipment and materials needed to perform the Services. Unless otherwise provided in this Proposal, the price of this Proposal does not include the cost to lease additional real property so that Utility Service Co., Inc. will have sufficient usable ground space to stage its equipment and materials needed to perform the Services. Any such cost would be in addition to the price of the Proposal, and if needed, the Customer agrees to negotiate an amendment to this Proposal to modify the pricing in good faith.

### E. RISK OF LOSS

Risk of loss or damage to the Equipment, if applicable to this Proposal, shall pass to the Customer upon delivery of the Equipment to the named place of destination.

### F. TITLE TO EQUIPMENT

If the sale of Equipment is included in this Proposal, the title in the Equipment shall remain with Utility Service Co., Inc. until the price of the Proposal is paid in full. The Customer assents that Utility Service Co., Inc. may enter upon the Customer's real property and/or facility to repossess the Equipment if payment(s) are not received in full by their due date(s).

### G. SCOPE OF WARRANTY

Subject to the limitations contained herein, Utility Service Co., Inc. represents that for a period of one (1) year from the earlier of: (i) the completion of the Services (to include the installation of the Equipment, if applicable to this Proposal) or (ii) the Customer's return to use of the asset that is the subject matter of this Proposal ("Warranty Period"), the Services and Equipment, if applicable, will be free from defects in materials and workmanship and will substantially conform to the specifications set forth in Exhibit A ("Warranty"). WITH THE EXCEPTION OF THE REPRESENTATION IN THE FOREGOING SENTENCE, UTILITY SERVICE CO., INC. MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

### H. NOTIFICATION OF WARRANTY CLAIM

All claims filed under the Warranty provided in Section G shall be made in writing by the Customer within thirty (30) calendar days of identifying a defect. Customer shall provide the written notice of the claim to Utility Service Co., Inc. pursuant to Section A above, and the Customer shall provide the following information in the written notice: (i) a description of the defect giving rise to the claim; (ii) photographs showing the defect; and (iii) if the claim is related to Equipment, the serial number(s) of the Equipment which is (are) the subject of the claim.

### I. EXCLUSIONS FROM WARRANTY

Occurrence of any of the following, as reasonably determined by Utility Service Co., Inc., will void the Warranty: (i) unauthorized alteration of any component(s) of the Services or the Equipment, if applicable, originally supplied by Utility Service Co., Inc., or (ii) intentional or negligent damage to Utility Service Co., Inc.'s work product or the Equipment, if applicable to this Proposal, caused by any other person or entity, including but not limited to, the Customer and its officers, employees, agents, contractors, and assigns.

### J. VERIFICATION OF WARRANTY CLAIM

Utility Service Co., Inc. shall contact Customer following its receipt of notice of a claim under the Warranty. Utility Service Co., Inc. reserves the right to request additional information from the Customer or to conduct an on-site inspection of its work or the Equipment, if applicable to this Proposal, before accepting a claim. The Parties agree to cooperate and work in good faith to provide any additional information needed or to schedule an on-site visit by Utility Service Co., Inc.'s personnel to visibly inspect the work and the Equipment, if applicable. Furthermore, Utility Service Co., Inc. reserves the right to have a third party participate in the inspection of the work to verify whether the work or Equipment, if applicable, is defective under the terms of the Warranty.



Proposal from  
**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069  
Toll-free: 855-526-4413 | Fax: 478-987-2991  
veolianorthamerica.com

## Exhibit B – Terms and Conditions (Continued)

### K. SATISFACTION OF WARRANTY CLAIM

If Utility Service Co., Inc. verifies, in good faith, that a claim under the Warranty is valid and not subject to an exclusion pursuant to Section I above, Utility Service Co., Inc. agrees to repair or replace, without expense to the Customer, any workmanship, materials, and/or Equipment, if applicable, furnished hereunder that may prove defective within the Warranty Period. The Warranty provided in this Proposal shall be the sole and exclusive remedy of the Customer.

### L. INDEMNIFICATION

Utility Service Co., Inc. shall indemnify and hold harmless Customer from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Utility Service Co., Inc. or its officers, agents, employees, and/or assigns while engaged in activities under this Proposal. Customer shall likewise indemnify and hold harmless Utility Service Co., Inc. from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by negligence of the Customer or its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by joint or concurrent negligence of Utility Service Co., Inc. and Customer, the loss shall be borne by each Party in proportion to its negligence. For the purpose of this Section L, (i) "Third party" shall not include Customer or any subsequent owner of the property where the Services were performed or Equipment was installed, if applicable, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

### M. FORCE MAJEURE

Utility Service Co., Inc. shall not be liable to the Customer for non-performance or delay in performance of any of its obligations under this Proposal due to: (i) acts of God (which include, but are not limited to, tropical storms, hurricanes, tornadoes, and earthquakes), (ii) failure of the Internet or another network, (iii) war, (iv) riot, (v) civil commotion, (vi) embargo, (vii) labor disputes, (viii) labor strikes, (ix) fire, (x) flood, (xi) theft, (xii) epidemic, (xiii) pandemic (including COVID-19), (xiv) delay in delivery of services, materials, or equipment by subcontractors, suppliers, or manufacturers, (xv) shortage of labor or materials, or (xvi) any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of Utility Service Co., Inc.

### N. LIMITATION OF LIABILITY

Neither the Customer nor Utility Service Co., Inc. shall be liable to the other for any economic (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), special, indirect, incidental, exemplary, punitive or consequential losses or damages or loss of goodwill in any way whether such liability is based on tort, contract, negligence, strict liability, product liability or otherwise arising from or relating to this Proposal or resulting from the use or the inability to use the Services or Equipment, if applicable to this Proposal, or the performance or non-performance of the Services or Equipment, if applicable. It is the responsibility of the Customer to insure itself in this regard if it so desires. The liability limit of Utility Service Co., Inc. and its affiliate companies under this Proposal, whether based in contract, warranty, tort (including negligence), strict liability, product liability or otherwise shall not exceed the price that the Customer agrees to pay Utility Service Co., Inc. in this Proposal.

### O. GOVERNING LAW AND DISPUTE RESOLUTION

This Proposal and these Terms shall be construed in accordance with the laws of the state of Georgia without regard to the conflict of law principle. In the event of a dispute concerning this Proposal, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location and attempt to resolve the dispute in good faith. Should the dispute not be resolved within sixty (60) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the location where the Services were performed or are scheduled to be performed, and the rules of arbitration will be the Commercial Arbitration Rules of American Arbitration Association, which are incorporated herein by reference into this Section O.



Proposal from  
**UTILITY SERVICE CO., INC.**

535 Gen. Courtney Hodges Blvd · P O Box 1350 · Perry, GA 31069  
Toll-free: 855-526-4413 | Fax: 478-987-2991  
veolianorthamerica.com

Date:

Submitted by:

Local Phone:

SFID:

MP / CS Asset:

Entity Proposal Submitted To ("Customer"):			Phone Number:	Fax Number:	
Street Address:			Description of Work to be Performed:		
City:	State:	Zip Code:	Asset Name:		
Accounts Payable Contact Name:	Email:		Job Site Address:		
Job Contact (Inspection Reports):	Email:		County / Parish:	Asset Size:	Asset Style:

Utility Service Co., Inc. agrees to provide all labor, equipment, and materials needed to complete the following:

Please see attached Exhibit(s), which are incorporated herein by reference:

1. Exhibit A – Scope of Work
2. Exhibit B – Terms and Conditions

Please sign and date this proposal and fax one copy to our office.

----00 /100 Dollars \$ .00

Payment to be made as follows: **Payment Due in Full Upon Completion of Work – plus all applicable taxes**

**Remittance Address: Utility Service Co., Inc., P O Box 207362, Dallas, TX 75320-7362**

This Proposal, together with its Exhibit A – Scope of Work and Exhibit B - Terms and Conditions, and any additional exhibits that Utility Service Co., Inc. and the Customer agree to incorporate and attach to this Proposal (collectively, this "Proposal") constitutes the entire and exclusive agreement between Utility Service Co., Inc. (which for purposes herein shall collectively include its affiliate companies) and Customer (collectively, the "Parties"). This Proposal may be withdrawn by Utility Service Co., Inc. at any time prior to acceptance. Customer assents to the terms and conditions in Exhibit B and agrees that the terms and conditions in Exhibit B shall govern with respect to this Proposal and the services provided by Utility Service Co., Inc. No additional or conflicting terms or conditions included in any purchase order, hyperlink, acknowledgement or invoice of Customer not expressly incorporated into this Proposal shall be binding on the Parties or this Proposal.

Note: This proposal shall expire automatically  
Ninety (90) days following the date of this Proposal.

Authorized  
USCI Signature

**Acceptance of Proposal** The prices, scope of work, and terms and conditions of this Proposal are satisfactory and are hereby accepted. Payment will be made by Customer to Utility Service Co., Inc. as set forth herein.

Is Customer Exempt from Sales Tax?  No  Yes If Exempt, please provide Sales Tax Exemption Certificate.

Fiscal Year Beginning Month \_\_\_\_\_ Customer Signature \_\_\_\_\_

Date of Acceptance \_\_\_\_\_ Printed Name \_\_\_\_\_

FOR INTERNAL USE ONLY

SFID:

CN:

SO:

MP / CS PN:



Proposal from

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**Exhibit A – Scope of Work**



Proposal from

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**Exhibit A – Scope of Work Continued**

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## Exhibit B – Terms and Conditions

### A. GENERAL TERMS AND CONDITIONS

The Terms and Conditions (the "Terms") of this Proposal govern the sale of services (the "Services") by Utility Service Co., Inc. (which for purposes herein shall include its affiliates) to the Customer. All other terms, or variations to these Terms are excluded unless agreed explicitly in writing by a numbered amendment to this Proposal executed by Utility Service Co., Inc. and the Customer. Execution of the Proposal by the Customer, whether in writing, on the Internet, by electronic signature, or by e-mail transmission of a signed Proposal shall mean acceptance that these Terms are deemed incorporated into the Proposal and shall form the contract between the Customer and Utility Service Co., Inc. These Terms shall supersede all prior terms, understandings or Proposals between the Customer and Utility Service Co., Inc. If any part of the Terms should be found to be invalid or unenforceable by a court or other competent authority, then the remainder of the Terms shall not be affected. Any notice to be given with respect to these Terms by either of the Parties shall be in writing. Notices to the Customer shall be sent to the Customer's address on the Proposal, and any notices to Utility Service Co., Inc., including notice of warranty claims by the Customer, shall be sent to: Utility Service Co., Inc., ATTN: Customer Service Department, 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069.

This Proposal has been issued based on the information provided by the Customer and on information currently available to Utility Service Co., Inc. at the time of Proposal issuance. Any changes or discrepancies in site conditions, concealed conditions where the Services will be performed, changes in environmental, health, and safety regulations or conditions, changes in Customer's financial standing, Customer's requirements, or any other relevant change or discrepancy in the factual basis upon which this Proposal was created may lead to changes in the offering, including but not limited to, changes in pricing, warranties, quoted scope of work, and/or terms and conditions. Unless stated otherwise in the Proposal, performance and/or payment bonds are not included in the price. These bonds can be purchased on request but will be at an additional cost.

### B. PRICES, PAYMENT TERMS, COMMITMENT OF CUSTOMER, CREDIT REPORTING AND TAXES

Prices, which are expressed in US Dollars, are only valid for the period stated in the Proposal. If not stated, the validity period is ninety (90) days. Unless otherwise stated in the Proposal, the full price shall be due and payable upon completion of the Services, which may or may not include the installation of Equipment. All of Utility Service Co., Inc.'s invoices are due and payable upon receipt. If any payment is not made by the Customer within sixty (60) calendar days following the date of the invoice, Utility Service Co., Inc. reserves the right to charge a late payment charge of one and one-half percent (1.5%) per month of the outstanding past due balance. Any failure by Customer to make timely payment of any obligation under this Proposal shall be deemed a breach. Customer agrees to reimburse Utility Service Co., Inc. for all charges, costs, expenses and attorney's fees incurred to enforce or collect the amounts due under this Proposal. In the event Customer has a valid dispute with any invoice or amount due, such dispute must be communicated in writing to Utility Service Co., Inc. within thirty (30) days of the invoice date, describing the amount, issue and the reason for any dispute. Any amounts not disputed within this time frame will be deemed to be valid. Utility Service Co., Inc. and Customer agree to work expeditiously to resolve any dispute. Customer agrees to notify Utility Service Co., Inc. within thirty (30) days of any change in Customer's name, address, or phone number. By executing this Proposal, Customer authorizes Utility Service Co., Inc. to periodically request your credit reports and bank and trade references. Upon your request, we will inform you of the name and address of the reporting agency from which we received such a report, if any. The price listed in the Proposal excludes all taxes unless specifically stated otherwise in the Proposal. The Customer is responsible for payment of all applicable taxes, however designated or incurred in connection with the transactions under this Proposal, and agrees to reimburse Utility Service Co., Inc. for any taxes paid on Customer's behalf.

### C. DELIVERY OF SERVICES AND INSTALLATION OF EQUIPMENT

The provision of Services as contemplated herein might require the installation of certain equipment (the "Equipment") on the Customer's real property or on the improvements to the Customer's real property (e.g., water storage tank, etc.). All times and dates for the delivery of Services and/or installation of Equipment are approximate, but Utility Service Co., Inc. shall use its reasonable efforts to respect them. The Parties shall each make commercially reasonable efforts to schedule the Services after the date this Proposal is executed by the Customer. Utility Service Co., Inc. shall not be liable for any loss or damage resulting from late delivery of the Services or installation of Equipment.

### D. ACCESS TO CUSTOMER'S FACILITY OR REAL PROPERTY

Customer hereby agrees to provide Utility Service Co., Inc. with reasonable access to its facility or real property to perform the Services. "Reasonable access" shall include passable roads for ingress and egress as well as sufficient usable ground space for Utility Service Co., Inc.'s equipment and materials needed to perform the Services. Unless otherwise provided in this Proposal, the price of this Proposal does not include the cost to lease additional real property so that Utility Service Co., Inc. will have sufficient usable ground space to stage its equipment and materials needed to perform the Services. Any such cost would be in addition to the price of the Proposal, and if needed, the Customer agrees to negotiate an amendment to this Proposal to modify the pricing in good faith.

### E. RISK OF LOSS

Risk of loss or damage to the Equipment, if applicable to this Proposal, shall pass to the Customer upon delivery of the Equipment to the named place of destination.

### F. TITLE TO EQUIPMENT

If the sale of Equipment is included in this Proposal, the title in the Equipment shall remain with Utility Service Co., Inc. until the price of the Proposal is paid in full. The Customer assents that Utility Service Co., Inc. may enter upon the Customer's real property and/or facility to repossess the Equipment if payment(s) are not received in full by their due date(s).

### G. SCOPE OF WARRANTY

Subject to the limitations contained herein, Utility Service Co., Inc. represents that for a period of one (1) year from the earlier of: (i) the completion of the Services (to include the installation of the Equipment, if applicable to this Proposal) or (ii) the Customer's return to use of the asset that is the subject matter of this Proposal ("Warranty Period"), the Services and Equipment, if applicable, will be free from defects in materials and workmanship and will substantially conform to the specifications set forth in Exhibit A ("Warranty"). WITH THE EXCEPTION OF THE REPRESENTATION IN THE FOREGOING SENTENCE, UTILITY SERVICE CO., INC. MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES OF ANY KIND WITH RESPECT TO THE SUBJECT MATTER HEREOF AND ALL OTHER WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

### H. NOTIFICATION OF WARRANTY CLAIM

All claims filed under the Warranty provided in Section G shall be made in writing by the Customer within thirty (30) calendar days of identifying a defect. Customer shall provide the written notice of the claim to Utility Service Co., Inc. pursuant to Section A above, and the Customer shall provide the following information in the written notice: (i) a description of the defect giving rise to the claim; (ii) photographs showing the defect; and (iii) if the claim is related to Equipment, the serial number(s) of the Equipment which is (are) the subject of the claim.

### I. EXCLUSIONS FROM WARRANTY

Occurrence of any of the following, as reasonably determined by Utility Service Co., Inc., will void the Warranty: (i) unauthorized alteration of any component(s) of the Services or the Equipment, if applicable, originally supplied by Utility Service Co., Inc., or (ii) intentional or negligent damage to Utility Service Co., Inc.'s work product or the Equipment, if applicable to this Proposal, caused by any other person or entity, including but not limited to, the Customer and its officers, employees, agents, contractors, and assigns.

### J. VERIFICATION OF WARRANTY CLAIM

Utility Service Co., Inc. shall contact Customer following its receipt of notice of a claim under the Warranty. Utility Service Co., Inc. reserves the right to request additional information from the Customer or to conduct an on-site inspection of its work or the Equipment, if applicable to this Proposal, before accepting a claim. The Parties agree to cooperate and work in good faith to provide any additional information needed or to schedule an on-site visit by Utility Service Co., Inc.'s personnel to visibly inspect the work and the Equipment, if applicable. Furthermore, Utility Service Co., Inc. reserves the right to have a third party participate in the inspection of the work to verify whether the work or Equipment, if applicable, is defective under the terms of the Warranty.





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## **Exhibit B – Terms and Conditions (Continued)**

### **K. SATISFACTION OF WARRANTY CLAIM**

If Utility Service Co., Inc. verifies, in good faith, that a claim under the Warranty is valid and not subject to an exclusion pursuant to Section I above, Utility Service Co., Inc. agrees to repair or replace, without expense to the Customer, any workmanship, materials, and/or Equipment, if applicable, furnished hereunder that may prove defective within the Warranty Period. The Warranty provided in this Proposal shall be the sole and exclusive remedy of the Customer.

### **L. INDEMNIFICATION**

Utility Service Co., Inc. shall indemnify and hold harmless Customer from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by the negligence of Utility Service Co., Inc. or its officers, agents, employees, and/or assigns while engaged in activities under this Proposal. Customer shall likewise indemnify and hold harmless Utility Service Co., Inc. from all claims for physical damage to third party property or injury to persons, including death, to the extent caused by negligence of the Customer or its officers, agents, employees, and/or assigns. In the event such damage or injury is caused by joint or concurrent negligence of Utility Service Co., Inc. and Customer, the loss shall be borne by each Party in proportion to its negligence. For the purpose of this Section L, (i) "Third party" shall not include Customer or any subsequent owner of the property where the Services were performed or Equipment was installed, if applicable, their subsidiaries, parents, affiliates, agents, successors or assigns including any operation or maintenance contractor, or their insurer; and (ii) no portion of the Equipment is "third party property".

### **M. FORCE MAJEURE**

Utility Service Co., Inc. shall not be liable to the Customer for non-performance or delay in performance of any of its obligations under this Proposal due to: (i) acts of God (which include, but are not limited to, tropical storms, hurricanes, tornadoes, and earthquakes), (ii) failure of the Internet or another network, (iii) war, (iv) riot, (v) civil commotion, (vi) embargo, (vii) labor disputes, (viii) labor strikes, (ix) fire, (x) flood, (xi) theft, (xii) epidemic, (xiii) pandemic (including COVID-19), (xiv) delay in delivery of services, materials, or equipment by subcontractors, suppliers, or manufacturers, (xv) shortage of labor or materials, or (xvi) any other unforeseen event (whether or not similar in nature to those specified) outside the reasonable control of Utility Service Co., Inc.

### **N. LIMITATION OF LIABILITY**

Neither the Customer nor Utility Service Co., Inc. shall be liable to the other for any economic (including, without limitation, loss of revenues, profits, contracts, business or anticipated savings), special, indirect, incidental, exemplary, punitive or consequential losses or damages or loss of goodwill in any way whether such liability is based on tort, contract, negligence, strict liability, product liability or otherwise arising from or relating to this Proposal or resulting from the use or the inability to use the Services or Equipment, if applicable to this Proposal, or the performance or non-performance of the Services or Equipment, if applicable. It is the responsibility of the Customer to insure itself in this regard if it so desires. The liability limit of Utility Service Co., Inc. and its affiliate companies under this Proposal, whether based in contract, warranty, tort (including negligence), strict liability, product liability or otherwise shall not exceed the price that the Customer agrees to pay Utility Service Co., Inc. in this Proposal.

### **O. GOVERNING LAW AND DISPUTE RESOLUTION**

This Proposal and these Terms shall be construed in accordance with the laws of the state of Georgia without regard to the conflict of law principle. In the event of a dispute concerning this Proposal, the complaining Party shall notify the other Party in writing thereof. Management level representatives of both Parties shall meet at an agreed location and attempt to resolve the dispute in good faith. Should the dispute not be resolved within sixty (60) days after such notice, the complaining Party shall seek remedies exclusively through arbitration. The seat of arbitration shall be the federal district court closest to the location where the Services were performed or are scheduled to be performed, and the rules of arbitration will be the Commercial Arbitration Rules of American Arbitration Association, which are incorporated herein by reference into this Section O.