

AGREEMENT FOR MAINTENANCE SERVICES (ELEVATED WATER TANKS MAINTENANCE)

THIS AGREEMENT is made _____, 2022, between the **City of Lake Worth Beach**, Florida, a municipal corporation ("CITY"), with its office located at 7 North Dixie Highway, Lake Worth Beach, Florida 33460, and **Utility Service Co., Inc.**, a corporation authorized to do business in the State of Florida ("CONTRACTOR") with its office located at 1230 Peachtree Street NE, Ste 1100, Atlanta, GA 30309.

RECITALS

WHEREAS, the CITY is a municipal corporation organized and existing pursuant to the Charter and the Constitution of the State of Florida; and

WHEREAS, the CITY issued Request for Proposals #22-202 for the annual inspection, painting, and maintenance services on elevated potable water storage tanks in accordance with Florida Administrative Code Chapter 62-550 ("RFP"); and

WHEREAS, CONTRACTOR submitted a proposal to provide elevated water tanks maintenance services as described and set out in the RFP; and

WHEREAS, the CITY desires to accept the CONTRACTOR's proposal (with the CONTRACTOR's proposed rates attached hereto as **Exhibit "A"**) in order for CONTRACTOR to render the services to the CITY as provided herein; and

WHEREAS, the CONTRACTOR further warrants that it is experienced and capable of performing the tasks hereunder in a professional and competent manner; and

WHEREAS, the CITY finds awarding the RFP to the CONTRACTOR as described herein serves a valid public purpose.

NOW THEREFORE, the CITY hereby engages the services of the CONTRACTOR, and in consideration of the mutual promises herein contained, the sufficiency of which is hereby acknowledged by both parties, the parties agree as follows:

1. TERM

1.1 The term of this Agreement for Maintenance Services ("Agreement") shall be for ten (10) years, and dependent on the annual appropriation of funds by the CITY's City Commission. Notwithstanding the foregoing, this Agreement may be earlier terminated as set forth in this Agreement.

2. SCOPE OF WORK

2.1 The Scope of Work includes furnishing the required labor, supervision, transportation, tools, equipment, materials and supplies necessary for completing the inspection, painting and specialized services on two (2) 300,000-gallon elevated potable water storage tanks as more specifically set forth in the RFP's Scope of Work, which is attached hereto as **Exhibit "B"**. Work shall commence upon the issuance of a Purchase Order by the City.

2.2 The CONTRACTOR represents to the CITY that the materials and services provided under this Agreement shall be in accordance with accepted and established trade practices and procedures recognized in the CONTRACTOR's trade in general and that the CONTRACTOR's work shall conform to the highest standards and in accordance with this Agreement.

2.3 The CONTRACTOR represents that it is licensed to do business in the State of Florida and holds and will maintain all applicable licenses required for the work to be completed under this Agreement. The CONTRACTOR further warrants its capability and experience to perform the work provided for herein in a professional and competent manner.

2.4 The Scope of Work shall be completed in accordance with the terms and conditions set forth in the RFP and this Agreement.

3. INDEPENDENT CONTRACTOR; USE OF AGENTS OR ASSISTANTS

3.1 The CONTRACTOR is and shall be, in the performance of the Scope of Work under this Agreement, an independent contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the Scope of Work performed pursuant to this Agreement shall at all times, and in all places, be subject to the CONTRACTOR's sole direction, supervision, and control. The CONTRACTOR shall exercise control over the means and manner in which it and its employees perform the Scope of Work.

3.2 To the extent reasonably necessary to enable the CONTRACTOR to perform the Scope of Work hereunder, the CONTRACTOR shall be authorized to engage the services of any agents or assistants which it may deem proper, and may further employ, engage, or retain the services of such other persons or corporations to aid or assist in the proper performance of its duties. All costs of the services of, or expenses incurred by, such agents or assistants shall be paid by the CONTRACTOR.

4. SERVICES

4.1 The CONTRACTOR shall provide all services as more specifically set forth in a CITY issued Purchase Order, the RFP, and this Agreement.

5. FEE AND ORDERING MECHANISM

5.1 For goods and services to be rendered under this Agreement, the CONTRACTOR shall be entitled to a fee for the goods and services provided and accepted by the CITY at the rates set forth in CONTRACTOR's proposed rates which are attached as **Exhibit "A"**. The rates set forth in Exhibit "A" shall remain fixed for the duration of this Agreement. If due to applicable price escalations and/or reductions which impact the CONTRACTOR's rates in Exhibit "A", the CITY and CONTRACTOR may execute a written amendment to this Agreement. The City Manager may approve changes in the CONTRACTOR's rates based on the recommendation of the City's Director of Water Utilities.

5.2 Should the CITY require additional services, not included in this Agreement, rates and payment for such work will be set forth in a separate amendment, as authorized in accordance with the CITY's procurement code and policy prior to any such additional services being provided by the CONTRACTOR.

5.3 The CITY's ordering mechanism for the Scope of Work (including each order of specific services) under this Agreement will be by a CITY issued Purchase Order(s); however, the terms and conditions stated in a CITY issued Purchase Order(s) shall not apply. CONTRACTOR shall not provide services under this Agreement without a CITY issued Purchase Order specifically for the stated services requested. The City's Fiscal Year ends on September 30th of each calendar year. The CITY cannot authorize the purchase of goods or services beyond September 30th of each calendar year, prior to the annual budget being approved by the CITY's City Commission. Additionally, the CITY must have budgeted appropriate funds for the goods and services in any subsequent Fiscal Year. If the budget is approved for said goods and services, the CITY will issue a new Purchase Order(s) each Fiscal Year for required and approved goods and services.

6. MAXIMUM COSTS

6.1 The CONTRACTOR expressly acknowledges and agrees that the total cost to complete the Scope of Work of Work in accordance with Exhibit "B" shall not exceed the amounts set forth in Exhibit "A", and no additional costs shall be authorized without prior written approval from the CITY.

7. INVOICE

7.1 The CONTRACTOR shall submit an itemized invoice to the CITY for approval prior to receiving compensation. The CONTRACTOR shall be paid within thirty (30) days of receipt of an approved invoice for the provided goods and services.

7.2 If the CITY disputes any invoice or part of an invoice, CITY shall notify the CONTRACTOR within a reasonable time after receipt of the invoice. CITY reserves the right to off-set, reduce or withhold any payment to the CONTRACTOR until the dispute is resolved.

8. AUDIT BY CITY

8.1 The CONTRACTOR shall permit the CITY, or any authorized representatives of the CITY, at all reasonable times, access to and the right to examine all records, books, papers or documents related to the CONTRACTOR's performance under this Agreement including, but not limited to, expenses for sub-contractors, agents or assistants, direct and indirect charges for work performed and detailed documentation for all such work performed or to be performed under this Agreement.

9. COPIES OF DATA/DOCUMENTS

9.1 Copies or original documents prepared by the CONTRACTOR in relation to work associated with this Agreement shall be provided to the CITY. Data collected, stored, and/or provided shall be in a form acceptable to the CITY and agreed upon by the CITY.

10. OWNERSHIP

10.1 Each and every report, draft, work product, map, record, and other document reproduced, prepared, or caused to be prepared by the CONTRACTOR pursuant to or in connection with this Agreement shall be the exclusive property of the CITY.

11. WRITTEN AUTHORIZATION REQUIRED

11.1 The CONTRACTOR shall not make changes in the Scope of Work or perform any additional services or provide any additional material under this Agreement without first obtaining written authorization from the CITY for such additional services or materials. Additional services or materials provided without written authorization shall be done at the CONTRACTOR's sole risk and without payment from the CITY.

12. DEFAULTS, TERMINATION OF AGREEMENT

12.1 If the CONTRACTOR fails to timely perform the Scope of Work or has failed in any other respect to satisfactorily perform in accordance with this Agreement; or, is in material breach of a term or condition of this Agreement, the City Manager or designee may give written notice to the CONTRACTOR specifying defaults to be remedied. Such notice shall set forth the basis for any dissatisfaction and suggest corrective measures. If the CONTRACTOR does not remedy defaults within the allotted time or commence good faith steps to remedy the default to the reasonable satisfaction of the City Manager or designee, the CITY may take such action to remedy the default and all expenses related thereto shall be borne by the CONTRACTOR including, without limitation, utilization of another contractor to provide for such work; and/or, the CITY may withhold any money due or which may become due to the CONTRACTOR for such expense and/or work related to the claimed default. Alternatively, or in addition to the foregoing, if after three (3) days the CONTRACTOR has not remedied defaults or commenced good faith steps to remedy defaults to the satisfaction of the City Manager or designee, the CITY may elect to terminate this Agreement. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

12.2 Notwithstanding paragraph 12.1, the CITY reserves the right and may elect to terminate this Agreement at any time, with or without cause. At such time, the CONTRACTOR would be compensated only for that work which has been satisfactorily completed to the date of termination. No compensation shall be paid for de-mobilization, take-down, disengagement wind-down, lost profits or other costs incurred due to termination of this Agreement under this paragraph.

13. INSURANCE

13.1. Prior to commencing the Scope of Work, the CONTRACTOR shall provide certificates evidencing insurance coverage as required hereunder. All insurance policies shall be issued by companies authorized to do business under the laws of the State of Florida. The Certificates shall clearly indicate that the CONTRACTOR has obtained insurance of the type, amount, and classification as required for strict compliance with this Section and that no material change or cancellation of the insurance shall be effective without thirty (30) days' prior written notice to the CITY. Failure to comply with the foregoing requirements shall not relieve the CONTRACTOR of its liability and obligations under this Contract. All insurance, other than Workers' Compensation, required hereunder shall specifically include the "City of Lake Worth Beach" as an "Additional Insured", on a primary, non-contributing basis and the CONTRACTOR shall provide additional insured endorsements section of Certificates of Insurance.

13.2. The CONTRACTOR shall maintain, during the life of this Contract, commercial general liability, including contractual liability insurance in the amount of \$1,000,000 per occurrence (\$2,000,000 aggregate) to protect the CONTRACTOR from claims for damages for bodily and personal injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Contract, whether such operations be by the CONTRACTOR or by anyone directly employed by or contracting with the CONTRACTOR.

13.3. The CONTRACTOR shall maintain, during the life of this Contract, comprehensive automobile liability insurance in the minimum amount of \$1,000,000 combined single limit for bodily injury and property damages liability to protect the CONTRACTOR from claims for damages for bodily and personal injury, including death, as well as from claims for property damage, which may arise from the ownership, use, or maintenance of owned and non-owned automobiles, including rented automobiles whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

13.4. The CONTRACTOR shall maintain, during the life of this Contract, Workers' Compensation Insurance and Employer's Liability Insurance for all employees as required by Florida Statutes.

14. WAIVER OF BREACH

14.1 The waiver by either party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that same or any other provision.

15. INDEMNITY

15.1 The CONTRACTOR shall indemnify, defend and hold harmless, to the maximum extent permitted by law, the CITY and its officers, agents, employees and representatives, from and against any and all liability, suit, actions, proceedings, judgments, claims, losses, liens, damages, injuries (whether in contract or in tort, including personal injury, accidental death, patent infringement or property damage, and regardless, of whether the allegations are false, fraudulent or groundless), costs and expenses (including attorney's fees, litigation, arbitration, mediation, appeal expenses) to the extent arising out of or alleged to have arisen out of the acts, omissions or neglect of the CONTRACTOR or any of its agents, employees, subcontractors or by anyone the CONTRACTOR directly or indirectly employed.

15.2 The CONTRACTOR's obligation to indemnify, defend and hold harmless shall remain in effect and shall be binding upon the CONTRACTOR whether such injury or damage shall accrue, or may be discovered, before or after termination of this Agreement.

15.3 Compliance with any insurance requirements required elsewhere in this Agreement shall not relieve CONTRACTOR of its liability and obligation to defend, hold harmless and indemnify the CITY as set forth in this section.

15.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the CITY or CONTRACTOR. Further, nothing contained in this Agreement shall be construed or interpreted as consent by the CITY to be sued, nor as a waiver of sovereign immunity beyond the waiver provided in section 768.28, Florida Statutes, as amended from time to time.

15.5 The CONTRACTOR's failure to comply with this section's provisions shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

16. ENTIRE AGREEMENT AND ORDER OF PRECEDENCE

16.1 This Agreement consists of the terms and conditions provided herein; **Exhibit "A"** (the CONTRACTOR's rates); **Exhibit "B" Scope of Work**; any CITY issued Purchase Orders; and, the RFP (including all specifications, exhibits and addenda attached thereto and referenced therein). To the extent that there exists a conflict between this Agreement and the remaining documents, the terms, conditions, covenants, and/or provisions of this Agreement shall prevail

with any CITY issued Purchase Order(s) and the RFP next taking precedence. Wherever possible, the provisions of such documents shall be construed in such a manner as to avoid conflicts between provisions of the various documents.

16.2 This Agreement supersedes any and all other Agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other Agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

17. ASSIGNMENT

17.1 Nothing under this Agreement shall be construed to give any rights or benefits to any party other than the CITY and the CONTRACTOR. All duties and responsibilities under this Agreement shall be for the sole and exclusive benefit of the CITY and the CONTRACTOR and not for the benefit or any other party. The CONTRACTOR shall not assign any right or interest in this Agreement, and shall not delegate any duty owned, without the CITY's prior written consent. Any attempted assignment or delegation shall be void and totally ineffective for all purposes, and shall constitute a material breach upon which the CITY may immediately terminate or suspend this Agreement.

17.2 In the event the CITY consents to an assignment or delegation, the assignee, delegate, or its legal representative shall agree in writing to personally assume, perform, and be bound by this Agreement's covenants, conditions, obligations and provisions.

18. SUCCESSORS AND ASSIGNS

18.1 Subject to the provision regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors, and assigns of the respective parties.

19. WAIVER OF TRIAL BY JURY

19.1 TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT.

20. GOVERNING LAW AND REMEDIES

20.1 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties hereunder, shall be governed by the laws of the State of Florida and venue shall be in Palm Beach County, Florida.

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

21. TIME IS OF THE ESSENCE

21.1 Time is of the essence in all respects under this Agreement.

22. NOTICES

22.1 All notices hereunder must be in writing and, unless otherwise provided herein, shall be deemed validly given on the date when personally delivered to the address indicated below; or on the third (3rd) business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. postal mailbox or at any U.S. Post Office; or when sent via nationally recognized overnight courier to the address indicated below. Should the CITY or the CONTRACTOR have a change of address, the other party shall immediately be notified in writing of such change, provided, however, that each address for notice must include a street address and not merely a post office box. All notices, demands or requests from the CONTRACTOR to the CITY shall be given to the CITY address as follows:

City Manager
City of Lake Worth Beach
7 North Dixie Highway
Lake Worth Beach, Florida 33460

All notices, demands or requests from the CITY to the CONTRACTOR shall be given to the CONTRACTOR addresses as follows:

Utility Service Co., Inc.
1230 Peachtree Street NE, Ste 1100
Atlanta, GA 30309

Utility Service Co., Inc.
535 Gen. Courtney Hodges Blvd
P O Box 1350
Perry, GA 31069

23. SEVERABILITY

23.1 Should any part, term or provision of this Agreement or any document required herein to be executed be declared invalid, void or unenforceable, all remaining parts, terms and provisions hereof shall remain in full force and effect and shall in no way be invalidated, impaired or affected thereby.

24. DELAYS AND FORCES OF NATURE

24.1 The CONTRACTOR shall not be considered in default by reason of a delay in timely performance if such delay and failure arises out of causes reasonably beyond the control of the CONTRACTOR or its subcontractors and without their fault or negligence. Upon the CONTRACTOR's request, the CITY shall consider the facts and extent of any such delay and failure to timely perform the work for reason beyond the control of the CONTRACTOR and, if the CONTRACTOR'S delay and failure to timely perform was without it or its subcontractors' fault or negligence, as determined by the CITY in its sole discretion, the time of completion shall be extended for any reasonable time that the CITY, in its sole discretion, may decide; subject to the CITY'S rights to change, terminate, or stop any or all of the work at any time. If the CONTRACTOR is delayed at any time in the progress of the work by any act or neglect of the CITY or its employees, or by any other contractor employed by the CITY, or by changes ordered by the CITY or in an unusual delay in transportation, unavoidable casualties, or any causes beyond the CONTRACTOR'S control, or by delay authorized by the CITY pending negotiation or by any cause which the CITY, in its sole discretion, shall decide justifies the delay, then the time of completion shall be extended for any reasonable time the CITY, in its sole discretion, may decide. No extension of time shall be made for any delay occurring more than five (5) days before a claim therefore is made in writing to the CITY. In the case of continuing cause of delay, only one (1) claim is necessary. The CONTRACTOR's sole remedy for a delay in completion of the

work for any reason will be an extension of time to complete the work and CONTRACTOR specifically waives any right to seek any monetary damages or losses for a delay in completion of the work, including, but not limited to, waiving any right to seek monetary amounts for lost profits, additional overhead, salaries, lost productivity, efficiency losses, or any other alleged monetary losses which may be allegedly suffered by CONTRACTOR due to a delay in completion of the work.

25. COUNTERPARTS

25.1 This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one and the same document. This Agreement may be executed electronically.

26. LIMITATIONS OF LIABILITY

26.1 Under no circumstances shall either party be liable to the other for any consequential, incidental, special, punitive, or any other form of indirect or non-compensatory damages.

27. PUBLIC ENTITY CRIMES

27.1 CONTRACTOR acknowledges and agrees that a person or affiliate who has been placed on the convicted vendor list following a conviction for a public entity crime may not submit a bid, proposal, or reply on a contract to provide any goods or services to a public entity; may not submit a bid, proposal, or reply on a contract with a public entity for the construction or repair of a public building or public work; may not submit bids, proposals, or replies on leases of real property to a public entity; may not be awarded or perform work as a contractor, supplier or sub-contractor under a contract with any public entity; and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for CATEGORY TWO for a period of 36 months following the date of being placed on the convicted vendor list. CONTRACTOR will advise the CITY immediately if it becomes aware of any violation of this statute.

28. PREPARATION

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

29. PALM BEACH COUNTY INSPECTOR GENERAL

29.1 In accordance with Palm Beach County ordinance number 2011-009, the CONTRACTOR acknowledges that this Agreement may be subject to investigation and/or audit by the Palm Beach County Inspector General. The CONTRACTOR has reviewed Palm Beach County ordinance number 2011-009 and is aware of its rights and/or obligations under such ordinance.

30. ENFORCEMENT COSTS

30.1 All parties shall be responsible for their own attorneys' fees, court costs and expenses if any legal action or other proceeding is brought for any dispute, disagreement, or issue of construction or interpretation arising hereunder whether relating to the Contract's execution, validity, the obligations provided therein, or performance of this Contract, or because of an alleged breach, default or misrepresentation in connection with any provisions of this Contract.

31. PUBLIC RECORDS

31.1 CONTRACTOR shall comply with Florida's Public Records Laws, Chapter 119, Florida Statutes, and, if it is acting on behalf of the CITY as provided under section 119.011(2), the CONTRACTOR specifically agrees to:

- (a) Keep and maintain public records required by the CITY to perform the services under this Agreement.
- (b) Upon request from the CITY's custodian of public records, provide the CITY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Chapter 119, Florida Statutes, or as otherwise provided by law.
- (c) Ensure that said public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement, if the CONTRACTOR does not transfer the records to the CITY.
- (d) Upon the completion of the Agreement, transfer, at no cost, to the CITY all public records in possession of the CONTRACTOR or keep and maintain public records required by the CITY to perform the services. If the CONTRACTOR transfers all public records to the CITY upon completion of the Agreement, the CONTRACTOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the CONTRACTOR keeps and maintains public records upon completion of the Agreement, the CONTRACTOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the CITY, upon request from the CITY's custodian of public records, in a format that is compatible with the information technology systems of the City.

IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (561) 586-1660, CITYCLERK@LAKEWORTHBEACHFL.GOV, OR BY MAIL AT CITY OF LAKE WORTH BEACH, ATTN: City Clerk, 7 NORTH DIXIE HIGHWAY, LAKE WORTH BEACH, FLORIDA 33460.

32. COPYRIGHTS AND/OR PATENT RIGHTS

32.1 CONTRACTOR warrants that there has been no violation of copyrights and/or patent rights in the manufacturing, producing or selling of the goods, shipped or ordered, as a result of this Agreement and the CONTRACTOR agrees to hold the City harmless from any and all liability, loss, or expense occasioned by any such violation.

33. COMPLIANCE WITH OCCUPATIONAL SAFETY AND HEALTH

33.1 CONTRACTOR certifies that all material, equipment, etc., contained in this proposal meets all OSHA requirements. CONTRACTOR further certifies that, if the material, equipment, etc., delivered is subsequently found to be deficient in any OSHA requirements in effect on date of delivery, all costs necessary to bring the material, equipment, etc. into compliance with the aforementioned requirements shall be borne by the CONTRACTOR.

34. FEDERAL AND STATE TAX

34.1 The CITY is exempt from Federal Tax and State Tax for Tangible Personal Property. The Procurement Official will sign an exemption certificate submitted by the successful Proposer. Vendors or contractors doing business with the CITY shall not be exempted from paying sales tax to their suppliers for materials to fulfill contractual obligations with the CITY, nor shall any Vendor/Contractor be authorized to use the CITY's tax Exemption Number in securing such materials.

35. PROTECTION OF PROPERTY

35.1 The CONTRACTOR shall at all times guard against damage or loss to the property of the CITY or of other vendors or contractors and shall be held responsible for replacing or repairing any such loss or damage. The CITY may withhold payment or make such deductions as deemed necessary to insure reimbursement or replacement for loss or damage to property through negligence of the successful CONTRACTOR or its agents. The CONTRACTOR shall be responsible to safeguard all of their property such as tools and equipment while on site. The CITY will not be held responsible for any loss of CONTRACTOR property due to theft or vandalism.

36. DAMAGE TO PERSONS OR PROPERTY

36.1 The responsibility for all damage to person or property arising out of or on account of work done under this Contract shall rest upon the CONTRACTOR, and he/she shall save the CITY and political unit thereof harmless from all claims made on account of such damages.

37. SAFETY: ACCIDENT PREVENTION.

37.1 In the performance of this Agreement, the CONTRACTOR shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation including without limitation Chapter 23 CFR 635. The CONTRACTOR shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the CITY, may determine to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

37.2 It is a condition of this Agreement, and shall be made a condition of each subcontract, which the CONTRACTOR enters into pursuant to this Agreement (if authorized), that the CONTRACTOR and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

37.3 Pursuant to 29 CFR 1926.3, it is a condition of this Agreement that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance

to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

38. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT (Applicable to all federally funded contracts and any subcontracts of \$100,000 or more).

38.1 By execution of this Agreement, CONTRACTOR, if applicable, will be deemed to have stipulated as follows:

- (a) Any CITY facility or property that is or will be utilized in the performance of this Agreement, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.
- (b) CONTRACTOR agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.
- (c) CONTRACTOR shall promptly notify the CITY of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a CITY facility or property that is or will be utilized for the Agreement is under consideration to be listed on the EPA List of Violating Facilities.

39. SCRUTINIZED COMPANIES

39.1 CONTRACTOR certifies that it and its subcontractors are not on the Scrutinized Companies that Boycott Israel List and are not engaged in the boycott of Israel. Pursuant to section 287.135, Florida Statutes, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors, are placed on the Scrutinized Companies that Boycott Israel List or is engaged in the boycott of Israel during the term of this Agreement.

39.2 If this Agreement is for one million dollars or more, the CONTRACTOR certifies that it and its subcontractors are also not on the Scrutinized Companies with Activities in Sudan List, Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or engaged in business operations in Cuba or Syria as identified in Section 287.135, Florida Statutes. Pursuant to Section 287.135, the CITY may immediately terminate this Agreement at its sole option if the CONTRACTOR, or any of its subcontractors are found to have submitted a false certification; or if the CONTRACTOR or any of its subcontractors are placed on the Scrutinized Companies with Activities in Sudan List, or Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or are or have been engaged with business operations in Cuba or Syria during the term of this Agreement.

39.3 The CONTRACTOR agrees to observe the above requirements for applicable subcontracts entered into for the performance of work under this Agreement.

39.4 The CONTRACTOR agrees that the certifications in this section shall be effective and relied upon by the CITY for the term of this Agreement, including any and all renewals.

39.5 The CONTRACTOR agrees that if it or any of its subcontractors' status changes in regards to any certification herein, the CONTRACTOR shall immediately notify the CITY of the same.

39.6 As provided in Subsection 287.135(8), Florida Statutes, if federal law ceases to authorize the above-stated contracting prohibitions then they shall become inoperative.

40. E-VERIFY

Pursuant to Section 448.095(2), Florida Statutes, beginning on January 1, 2021, the CONTRACTOR shall:

40.1. Register with and use the E-Verify system to verify the work authorization status of all newly hired employees and require all subcontractors (providing services or receiving funding under this Agreement) to register with and use the E-Verify system to verify the work authorization status of all the subcontractors' newly hired employees;

40.2. Secure an affidavit from all subcontractors (providing services or receiving funding under this Agreement) stating that the subcontractor does not employ, contract with, or subcontract with an "unauthorized alien" as defined in Section 448.095(1)(k), Florida Statutes;

40.3. Maintain copy of the Master Subcontract Agreement(s) and provide the same to the CITY upon request;

40.4. Comply fully, and ensure all of its subcontractors comply fully, with Section 448.095, Florida Statutes;

40.5. Be aware that a violation of section 448.09, Florida Statutes (Unauthorized Aliens; Employment Prohibited), shall be grounds for termination of this Agreement; and,

40.6. Be aware that if the CITY terminates this Agreement under Section 448.095(2)(c), Florida Statutes, the CONTRACTOR may not be awarded a contract for at least one (1) year after the date on which the Agreement is terminated and will be liable for any additional costs incurred by the CITY as a result of the termination of the Agreement.

41. SURVIVABILITY

41.1 Any provision of this Agreement which is of a continuing nature or imposes an obligation which extends beyond the term of this Agreement shall survive its expiration or earlier termination.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement for Maintenance Services (Elevated Water Tanks Maintenance) on the day and year first above written.

CITY OF LAKE WORTH BEACH, FLORIDA

By: _____
Betty Resch, Mayor

ATTEST:

By: _____
Melissa Ann Coyne, City Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

APPROVED FOR FINANCIAL SUFFICIENCY:

By: _____
Glen J. Torcivia, City Attorney

By: _____
Bruce T. Miller, Financial Services Director

CONTRACTOR:

Utility Service, Co., Inc.

[Corporate Seal]



By: _____

Print Name: Jonathan Cato

Title: Chief Operating Officer

STATE OF Georgia)
COUNTY OF Houston)

THE FOREGOING instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization on this 10th day of November 2022, by Jonathan Cato, as the Chief Operating Officer [title] of Utility Service Co., Inc., a corporation authorized to do business in the State of Florida, who is personally known to me or who has produced _____ as identification, and who did take an oath that he or she is duly authorized to execute the foregoing instrument and bind the CONTRACTOR to the same.

Notary Seal



Lara A. Townsend
Notary Public Signature

Exhibit A

CONTRACTOR'S RATES PROPOSAL

City of Lake Worth Beach Tank Maintenance Breakdown			
Year	Year	Description of Services	Pricing (with spread)
2023	1	Local Tank - Exterior Painting and renovation to white (excludes final logo/design), washout; Inspection both tanks	261,214
		Paint RO WTP exterior building and exhaust piping	included
		NEW* - Paint City logo on Local tank	19,492
2024	2	North Tank - Full Containment exterior painting and renovation to white	242,849
		NEW* - Paint City logo on North tank	19,492
2025	3	Washout & Interior renovation at Local Tank, Inspections at both	242,849
2026	4	Washout & Interior renovation at North Tank, Inspections at both	17,503
2027	5	Washout at Local Tank, Inspections at both	17,503
2028	6	Washout at North Tank, Inspections at both	17,503
2029	7	Washout at Local Tank, Inspections at both	17,503
2030	8	Washout at North Tank, Inspections at both	17,503
2031	9	Washout at Local Tank, Inspections at both	17,503
2032	10	Washout at North Tank, Inspections at both	17,503
TOTAL			908,417

Exhibit B

Scope of Work

The City owns and maintains two (2) 300,000-gallon elevated potable water storage tanks. One, the Local Elevated Tank, is located at the Water Treatment Plant site at 301 College Street, Lake Worth Beach, FL 33460 while the other, the North Elevated Tank, is located at 900 22nd Avenue North, Lake Worth Beach, FL 33460. The supports of the water tank, ladder, tower system and all above ground components are included as part of this and referred to throughout as the "tank". Available record drawings were provided in RFP. Included in this scope of work is furnishing the required labor, supervision, transportation, tools, equipment, materials and supplies necessary for completing the inspection, painting and specialized services in accordance with the specifications set forth in the accepted proposal.

Contractor shall maintain the Safety Program stating company policy on all safety procedures. Procedures are to include workers protection, confined space and general safety procedures.

The Contractor shall maintain a Florida Registered Professional Engineer on staff as a full-time employee or a sub-contractor available for the duration of the Contract.

Inspection

The Contractor will annually inspect and service the tanks in accordance with the attached schedule of work. Any schedule or service changes will be made in writing and approved by both parties. The tanks will be inspected to ensure the whole structure is in a sound, water tight condition. As mentioned, this whole structure includes all components of the elevated water tower system; tank, access hatches, support structure, ladders, etc. All inspection written reports must be completed, signed and forwarded to the City Water Plant Manager within three months of completion of work. All visual, inspection, maintenance and engineering reports shall contain, at a minimum, the summary of work performed, work scheduled to be completed, type and general condition of the coatings, safety and security issues, and structural findings (foundation, ladders, roof if applicable, vents, piping).

Washouts & Interior Inspection

The tanks will be completely drained and cleaned for the washout to remove all mud, silt and other accumulations that might be harmful to the tank or its contents. The bowl and lower sidewalls shall be thoroughly cleaned using a pressure washer. The cleaning will utilize high pressure equipment with chlorine bleach. After cleaning is completed, the interior will be thoroughly inspected and disinfected prior to being placed back into service. The City will conduct any bacteriological samples required. The interior inspection will be followed up with a signed and sealed inspection report from a PE licensed in the State of Florida. Only material approved for use in potable water tanks will be allowed to be used on any interior surface area. Contractor will supply all necessary equipment, parts and labor to perform the washout and internal inspections.

Painting

When painting is required, per the attached schedule below, all products and procedures shall be equal to or exceed the requirements of the Florida Department of Environmental Protection Agency (FDEP), American Water Works Association (AWWA), and the Association for Materials Protection and Performance (AMPP) as to surface preparation, coating materials and disinfection.

The Contractor will clean and repaint the exterior of the tank according to the schedule of work below for Exterior and Interior. When exterior painting is scheduled, the Contractor agrees to utilize a coating system which best suits the conditions, environment and general location of the tank. All coatings shall be produced and supplied by a reputable manufacturer with a minimum of fifteen years' experience. The first-year exterior painting of the Local Water Tank shall include exterior pressure wash and exterior overcoat of the existing coating system including application of the new City logo, per photo rendering at the end of this exhibit. This asset will not require an exterior containment and blast as this was completed during the last exterior renovation. The second-year exterior painting of the North Tank will include an exterior renovation including full containment and sandblasting. Tenting may be required for sandblasting and proximity to Interstate 95 and surrounding residences. All material, labor, equipment and waste is the responsibility of the Contractor and such waste shall be disposed of properly and legally. The painting design will be provided by the City and all colors to be used shall be submitted to the City for approval first.

Exterior

As part of the exterior renovation of the North tank, the tank will receive an abrasive blast cleaning to "Commercial Blast SSPC- SP 6" finish, removing all visible oil, grease, dust, dirt, mill, scale, rust, coatings, oxides, corrosion products and any other foreign matter on the surface by the recommended methods outlined in the Society for Protective Coatings (SSPC) Specification SSPC-SP #6 or latest written specification. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris. If excessive corrosion or rust is found, owner is to be notified and recommendations given for different repairs. A containment system shall be utilized as specified in SSPC-Guide 6 latest written version. An onsite dust collector shall be utilized during all abrasive blasting operations and shall have a minimum of 20,000 CFM. All areas tool cleaned shall be spot primed with a rust inhibitive metal primer and all rusted areas shall be tool cleaned per SSPC-SP#22, # 3 cleaning methods. One (1) full primer coat of Tnemec Series 90-97 zinc coating or equal shall be applied to 100% of the exterior surfaces. One (1) full intermediate coat of Tnemec Series 66 epoxy coating shall be applied to 100% of the exterior surfaces. Paint the tank the specified design by owner, which shall be provided at a later date. One (1) full finish coat of Tnemec Series 1075 urethane coating shall be applied to 100% of the exterior surfaces. All screens (top vent, ladder access) will be checked and replaced as necessary.

Interior

Damage caused to interior surfaces during draping operations shall be repaired utilizing hand/power tool cleaning and the application of 100% solids epoxy. Ensure the tank complies with all Federal, State and Local regulations. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No 10 "near white" finish. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris. A high build epoxy liner manufactured by Tnemec Epoxy or equal shall be applied:

- a. Primer Coat: One (1) complete coat of Tnemec Series N140 Epoxy or equal shall be applied to achieve a dry film thickness of 3 to 5 mils.
- b. Finish Coat: One (1) complete finish coat of Tnemec Series N140 Epoxy or equal shall be applied to achieve a dry film thickness of 4 to 6 mils
- c. Contrasting Coat: Each coat of epoxy shall be of a contrasting color
- d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams

After the liner has properly cured, the interior surfaces shall be disinfected per latest AWWA Spray Method for disinfection. The tank shall be sealed and ready for service after the disinfection spray process is completed. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the state. Once the test results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of legally and properly. Any permit required by the State shall be obtained by the Contractor. During the project, a N.A.C.E. certified inspector will monitor the work to ensure first rate workmanship. A report of the renovation must be supplied to the City and shall be completed and signed by a PE registered in the State of Florida.

RO Water Treatment Plant Building

The first year scope will also include surface preparation and painting of the existing blue accent portions of the exterior of the reverse osmosis water treatment plant building that are faded. The building is approximately 65-ft wide by 215-long by 26'-8"-ft tall, with seventeen (17) sections to be painted, each an area approximately 10-ft by 11-ft. Also included in the first year scope is the external muffler exhaust stack piping from the generator in the RO building. It is to be sandblasted and coated with Tnemec-Zinc or equal. The piping is steel that is exhibiting signs of rust.

Miscellaneous

Any modifications to the tank requested by the third party, including antenna installations and review of any plans for antenna placement or modification shall be reviewed by the Contractor acting as the City's professional expert. Cost of the review process will be paid by the requesting third party to the Contractor directly.

Tank Maintenance Contractor shall be responsible for repairing any acts of vandalism to the tanks. The City shall provide Tank Maintenance Contractor notice of any acts of vandalism and request response plan and schedule for repair within one week or mutually agreed upon timeframe. Tank Maintenance Contractor shall be responsible for repairs up to \$1,000 value per year. Anything above \$1,000 per year, the City shall pay a mutually agreed upon price. Only one tank may go out of service at a time.

The Contractor will be expected to provide emergency services as needed and to handle any problems with the tank. The Contractor will also be expected to maintain and replace, as needed, the clearance lights on the top of the Local Tank.

Schedule:

Year 1 (FY2023) – Local Tank - Exterior painting and renovation, Inspection both tanks, Paint RO WTP exterior building, paint City logo on Local tank

Year 2 (FY2024)– North Tank – Full containment exterior painting and renovation, Inspection both tanks, paint City logo on North tank

Year 3 (FY2025) – Washout and Interior renovation at Local Tank, Inspection both tanks

Year 4 (FY2026) – Washout and Interior renovation at North tank, Inspection both tanks

Year 5 (FY2027)– Washout at Local tank, Inspection both tanks

Year 6 (FY2028) -Washout at north tank, Inspection both tanks

Year 7 (FY2029) – Washout at local tank, Inspection both tanks

Year 8 (FY2030) – Washout at north tank, Inspection both tanks

Year 9 (FY2031) – Washout at local tank, Inspection both tanks

Year 10 (FY2032) – Washout at north tank, Inspection both tanks