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October 3, 2022

VIA OVERNIGHT MAIL

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**Re: Borough of Fair Lawn
Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn's
Water Storage Tanks
Application for Approval of Services Agreement**

Dear Messrs. and Madams:

Please be advised that this office serves as legal counsel to the Borough of Fair Lawn (the "Borough"). Please accept this application for approval of the above referenced Services Agreement by and between the Borough and Utility Services Company, Inc., in accordance with and pursuant to the New Jersey Water Supply Public-Private Contracting Act, N.J.S.A. 58:26-19 et. seq. (the "Act").

The Borough prepared and administered a *Request for Qualifications and Proposals for a Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn's Water Storage Tanks*, dated March 22, 2022 (the "RFQ/RFP").

The Borough selected Utility Services Company, Inc. ("USC") as the Successful Respondent to the RFQ/RFP, and pursuant to the Act the Borough and USC negotiated a draft Services Agreement, a copy of which is attached hereto as **Exhibit A**. Attached hereto as **Exhibit B** is a chart detailing the sections of the Services Agreement and/or information addressing the review criteria enumerated in the Act at N.J.S.A. 58:26-25(c).

Negotiations concerning the Services Agreement were substantially completed during the first week of July 2022. On August 16, 2022, the Borough held a public hearing concerning Services Agreement, at which the City provided a presentation to the public outlining the purpose and contents of the Services Agreement as required by N.J.S.A. 58:26-24. Attached hereto as **Exhibit C** is a copy of the public notice concerning the public hearing that was published in the *The Record* on July 10, 2022. A copy of the verbatim transcript from the public hearing along with the presentation provided at the public hearing are attached hereto as **Exhibit D**. The presentation was also posted on the Borough's website and the public was permitted to submit written comments to the Borough concerning Services Agreement up to August 23, 2022. No comments were received by the Borough.

Pursuant to the Act, the Borough requests approval of the Services Agreement by the Local Finance Board ("LFB") at its December 14, 2022 meeting and by the Board of Public Utilities ("BPU") at its December 7, 2022 meeting.

Attached hereto as **Exhibit E**, please find the Borough's Resolution authorizing this submission to the LFB, and a copy of the Borough's Ordinance approving the Services Agreement, introduced on first reading on September 20, 2022. The Borough would like to achieve the following schedule with respect to the review and approval of Services Agreement:

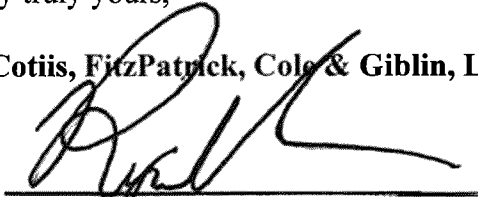
Review, Approval and Execution Schedules		
	Task	Date
1	Submit Application to Agencies	10/3/22
2	Obtain Agency Approval	12/14/22 (LFB) and 12/7/22 (BPU)
3	Second Reading of Ordinance	12/22
4	Execution of Amendment	12/22

Thank you for your attention to this matter. Should you have any questions, or should you require any additional information, please do not hesitate to contact me directly.

Very truly yours,

DeCotiis, FitzPatrick, Cole & Giblin, LLP

By:



Ryan J. Scerbo, Esq.

RJS/ks
Attachment
(Copy and CD)

cc: James Van Kruiningen, Borough Manager
Judy Verrone, Esq. DFCG
Gregory Storms, USC/Veolia
Shane Albritton, USC/Veolia
Members of the Local Finance Board & PCA&E Section – Division of Law

Exhibit A

**SERVICES AGREEMENT FOR THE
MAINTENANCE AND REPAIR OF THE
BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS**

By and Between

BOROUGH OF FAIR LAWN

and

UTILITY SERVICE CO., INC.

Dated: _____, 2022

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**SERVICES AGREEMENT FOR THE
MAINTENANCE AND REPAIR OF THE
THE BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS**

THIS AGREEMENT, made this ____ day of _____, 2022 by and between the **BOROUGH OF FAIR LAWN**, a Municipal Corporation of the State of New Jersey (“Borough”), with offices located at 8-01 Fair Lawn Avenue, Fair Lawn, New Jersey, 07410 and Utility Service Co., Inc., a Georgia corporation whose offices are located at 1230 Peachtree Street NE, Suite 1100, Atlanta, Georgia 30309 (“Provider”). The Borough and the Provider are collectively referred to herein as the “Parties” and individually as a “Party”.

W I T N E S S E T H :

WHEREAS, the Borough currently owns and operates multiple water storage tanks within the limits of the Borough of Fair Lawn, New Jersey; and

WHEREAS, the location of the Borough’s water storage tanks are described inn **Schedule 1** attached hereto; and

WHEREAS, the Borough issued a *Request for Qualifications and Proposals for a Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn’s Water Storage Tanks*, dated March 22, 2022 (the “RFQ/RFP”); and

WHEREAS, the Provider was selected as the “Successful Respondent” to the RFQ/RFP for Maintenance and Repair of the Borough of Fair Lawn’s Water Supply Storage Tanks for 20 Years; and

WHEREAS, the Provider is engaged in the business of managing and repairing water supply storage tanks; and

WHEREAS, it is the mutual desire of the Parties to enter into an agreement to provide for the maintenance and repair of the Borough’s Water Storage Tanks; and

WHEREAS, the Borough Council has determined that the public health, safety, and welfare of the residents of the Borough can best be protected by entering into an agreement to provide for the maintenance, and repair of the Borough's Water Storage Tanks;

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the Parties hereto, intending to be legally bound hereby, agree as follows:

ARTICLE I. DEFINITIONS.

Section 1.1 Definitions. The following definitions shall apply to and are used in this Agreement:

“Agreement” - means this “Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn’s Water Storage Tanks,” and all Schedules attached hereto and made a part hereof, executed by and between the Borough and the Provider, as the same may be amended from time to time.

“Annual Service Fee” - means the sum of the Fixed Service Fee, Pass-through Charge, and any variable fee components that will be paid by the Borough to the Provider in accordance with **Schedule 2** attached hereto.

“Applicable Law” – means any federal, State, or local statute, judicial decision, local charter provision, regulation, ordinance, rule, mandate, order, decree, permit, code, or license requirement or other governmental requirement or restriction, or any interpretation or administration of any of the foregoing by any governmental authority, which applies to the services or obligations of either Party under this Agreement.

“Board” - means the Board of Public Utilities of the State of New Jersey or any successor agency.

“Borough” - means the Borough of Fair Lawn.

“Capital Improvements” – means any material acquisition, construction, or replacement made to the Water Storage Tanks, including the installation of new equipment or technology as approved by the Borough.

“Change Order” – means a written document signed by the Borough and the Provider after the Contract Date requesting a change in the Services. A Change Order may be memorialized

by the Borough through the issuance of a purchase order to the Provider and acceptance of same by the Provider.

“Borough Fault” - means any breach of this Agreement by the fault, failure, negligence, or willful misconduct of the Borough.

“Commencement Date” - means the date that the Provider shall begin the commencement of the Services which shall not be later than December 1, 2022.

“Contract Date” - means the date of execution of this Agreement.

“Contract Year” - means each one-year period beginning on the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the Commencement Date (which shall be the first Contract Year) and for each succeeding period beginning on the anniversary of the Commencement Date and ending on the day immediately prior to the next succeeding anniversary of the Commencement Date.

“Day” - means a calendar day of twenty-four hours measured from midnight to the next midnight.

“DEP” or “Department” - means the New Jersey Department of Environmental Protection or any successor agency.

“Division” - means the Local Finance Board of the Division of Local Government Services of the New Jersey Department of Community Affairs.

“Environmental Condition” - means soil or groundwater or surface water contamination (a) migrating from any portion of the Water Storage Tanks as the result of a release of a Hazardous Substance originating at, in, or from the Water Storage Tanks to the extent not caused by the negligence or willful misconduct of Provider (including Provider's subcontractors, employees and

agents), or which is inherent in operating the Water Storage Tanks; or (b) migrating to the Water Storage Tanks as a result of any source condition existing on other property to the extent not caused by the negligence or willful misconduct of the Provider (including Provider's subcontractors, employees and agents).

"EPA" - means the United States Environmental Protection Agency or any successor agency.

"Fixed Service Fee" - means the fixed compensation due to the Provider for the Services rendered pursuant to this Agreement, as permitted by the guidelines of IRS Rev. Proc. 97- 13.

"Governmental Authority" means any federal, State, or local legislative, executive, judicial, quasi-judicial or other public authority, agency, department, bureau, division, unit, court, tribunal or other public body, person or entity having jurisdiction over a Party to this Agreement, or the Water Storage Tanks.

"Hazardous Substance" - means any: (a) substance, product, waste or other material of any nature whatsoever which is, or at any time before or after the Contract Date becomes, listed, regulated or addressed pursuant to (i) to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq. ("CERCLA"); (ii) the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq.; (iii) the Resources Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. ("RCRA"); (iv) the Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.; (v) the Clean Water Act, 33 U.S.C. Section 1251 et seq.; (vi) applicable New Jersey Environmental Laws and/or (vii) any other federal, state, regional or local statute, law, ordinance, resolution, code, rule, regulation, order or decree regulating, relating to or imposing liability, responsibility or standards of conduct concerning any hazardous, toxic, or dangerous

substance, product, waste or other material, as now or any time hereafter in effect; (b) substance, product, waste or other material of any nature whatsoever which may give rise to liability under any of the foregoing or under any statutory or common law theory based on negligence, trespass, intentional tort, nuisance or strict liability or under any reported decisions of a state or federal court; (c) petroleum or crude oil excluding de minimis amounts and excluding petroleum and petroleum-based products contained within regularly operated motor vehicles or other equipment; or (d) asbestos; (2) but not chlorine, lubricants or any substances inherent in operating, managing, maintaining or repairing the Water Storage Tanks.

“Maintenance and Repair” - means all scheduled and unscheduled maintenance and repair activities required to ensure the efficient and effective operation of the Water Storage Tanks, including, but not limited to, all normal maintenance of the Water Storage Tanks, routine or repetitive activities required to maximize the service life of the Water Storage Tanks and the components thereof, non-routine or unscheduled preventative or corrective maintenance and repair activities required for the operational continuity, safety and performance of the Water Storage Tanks as well as the tasks described in **Schedule 1**.

“Minimum Financial Criteria” - means the financial requirements that shall be applicable to the Provider during the Term of this Agreement as set forth in **Schedule 9** attached hereto.

“Minimum Technical Criteria” - means the technical requirements that shall be applicable to the Provider during the Term of this Agreement as set forth in **Schedule 10** attached hereto.

“Provider” - means Utility Service Co., Inc., or its permitted successors or assigns.

“Provider Fault” - means any breach of this Agreement by the fault, failure, negligence or willful misconduct of the Provider.

“Pass-through Charge” - means the increase in the Annual Service Fee paid to the Provider to reimburse the Provider for additional costs of the Provider incurred during a Contract Year resulting from the occurrence of (a) Unforeseen Events; (b) increase in cost to provide Services due to an expanded scope of services and/or an expanded service area that is not otherwise agreed-to and memorialized in a Change Order based upon a rate agreed upon by and between the Parties; or (c) the enactment, adoption, issuance, promulgation, modification, amendment, repeal, or change of the Applicable Laws which increases the cost of the Services for the care and maintenance of the Water Storage Tanks during the Term of this Agreement; or (d) other items as identified in the Agreement that entitle Provider to an adjustment to the Annual Service Fee.

“Pass-through Credit” – means the reduction in the Annual Service Fee paid to the Provider to give the Borough the benefit, on a dollar for dollar basis, of the reduction in costs (excluding profit) incurred during a Contract Year resulting from the occurrence of (a) Unforeseen Events; adjustments owed to the Borough for work not completed by the Provider.

“Permits” - means permits, approvals and/or licenses issued by the EPA, the Department or any other federal, State or local regulatory agency or private party that is necessary for the proper operation of the Water Storage Tanks.

“Preexisting Environmental Condition” - means the condition of the real property (including, without limitation, soil, subsurface soils, subsurface gases, surface and groundwater) and any and all structures and improvements located at, on, in, under, above, or in the vicinity of any portion of the Water Storage Tanks on or before the Commencement Date, including, without limitation, the presence at, on, in, under, above or in the vicinity of the Water Storage Tanks of any Hazardous Substances.

“Proposal” - means the Proposal submitted by the Provider in response to the RFQ/RFP and accepted by the Borough.

“Rev. Proc. 97-13” - means IRS Revenue Procedure 97-13, as supplemented, amended, revised or superseded, and any supplement, amendment or revision thereof to the extent applicable to this Agreement.

“RFQ/RFP” - means the *Request for Qualifications and Proposals for a Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn’s Water Storage Tanks*, dated March 22, 2022, issued by the Borough.

“Services” - means all of the duties, obligations, and services as defined herein to be provided by the Provider for the Water Storage Tanks, including Maintenance and Repair services, all as further defined in **Schedule 1** attached hereto.

“State” - means the State of New Jersey

“Term” - means the period of time in which this Agreement is in full force and effect.

“Unforeseen Event” - means (a) any acts, events or conditions or any combination thereof (other than a labor strike by the Provider, its employees, affiliates, subcontractors, and/or suppliers) that are (i) reasonably unforeseeable as of the Contract Date, (ii) outside of the reasonable control of the Party relying thereon not performing an obligation or complying with any condition required of such Party under the Agreement; (iii) by itself or in combination with other acts, events, conditions or circumstances adversely affects, interferes with or delays the Party’s ability to perform its obligations under this Agreement, expands the scope of the Party’s obligations under this Agreement, or increases the Party’s cost of performing its obligations under this Agreement; including, without limitation the following:

- A. Force Majeure events that are outside the reasonable control of the Party relying thereon, such as acts of God, acts of terrorism, insurrections, riots, epidemics, pandemics, landslides, lightning, earthquakes, fires, floods, and explosions, civil disturbances, acts of the public enemy, and war;
- B. Change in Law, defined as the enactment, adoption, amendment, promulgation, issuance, modification, repeal, or change of any Applicable Law that (excluding laws adopted at the time of execution of this Agreement but which have provisions that take effect after the Commencement Date) which, establishes requirements affecting the financing or provision of the Services that are materially more burdensome than the most stringent requirements in effect as of the Contract Date;
- C. Judicial/Administrative Determinations, defined as the final order, judgment, action and/or determination of any federal, state or local court of competent jurisdiction, administrative agency or governmental body (other than the Borough if issued pursuant to the provisions of this Agreement expressly authorizing the same);
- D. Permit Terminations, defined as the suspension, termination, interruption, denial or failure of renewal or issuance of any Permit (to the extent not caused by the negligence or willful misconduct of the Provider) that is necessary to maintain or repair the Water Storage Tanks collectively or individually.
- E. Failure of Essential Services, defined as the failure of any appropriate federal, State, municipal, county or other public agency or private utility having operating jurisdiction in the area in which the facility is located, to provide and maintain utilities, services, water lines and power transmission lines to the Water Storage Tanks collectively or individually, except if such failure is caused by the negligence or willful misconduct of the Provider.

- F. Condemnation, defined as the condemnation, taking, seizure, involuntary conversion or requisition of title to or use of the Water Storage Tanks collectively or individually, or any material portion or part thereof by the action of any federal, State or local government or governmental agency.
- G. Labor Strikes, provided however, that those strikes directed at the Provider, its parents or other related entities or any subcontractor(s), employee(s), affiliate(s) and/or supplier(s), shall not be an event beyond Provider's control.
- H. Miscellaneous Other Unforeseen or Uncontrollable Circumstances, as Set Forth Below,
- a. any material change that takes place between the Contract Date and the Commencement Date that materially impacts the Provider's performance of the Services;
 - b. delays or denials of any licenses and approvals that that are required to be maintained by the Provider in order to perform the Services;
 - c. the existence of a concealed or latent environmental condition at the Water Storage Tanks collectively individually or adjoining sites;
 - d. contamination of the Water Storage Tanks collectively or individually from Hazardous Substances contained in groundwater, soil or air migrating from sources outside of the Water Storage Tanks;
 - e. the result of any act, error or omission of any other contractor engaged by the Borough to perform services at or for the Water Storage Tanks during the Term;
 - f. the failure of any governmental body or private utility having operational jurisdiction in the area in which the Water Storage Tanks are located to provide and maintain utilities, or telephone and telecommunication services;

- g. any change in title or placement of any encumbrance on the Water Storage Tanks;
- h. the receipt of raw water in the Water Storage Tanks other than Acceptable Raw Water;
- i. the failure of the Borough to proceed with a Capital Improvement that the Provider determines is necessary to provide the Services in this Agreement;
- j. any Capital Improvement that interferes with the Provider's obligations and responsibilities under this Agreement;
- k. the action or inaction of any third party; and
- l. without prejudice to the generality hereof, any other circumstance, cause or occurrence of any kind whatsoever beyond the reasonable control of a Party.

“Water Act” - means the “New Jersey Water Supply Public/Private Contracting Act,” N.J.S.A. 58:26-19 et seq.

“Water Storage Tanks” – means collectively all of the individual components and elements which compromise the Water Storage Tanks all owned by the Borough and fully described in **Schedule1**.

“Water Supply System” – means, collectively, all of the individual components and elements which comprise the Borough's potable water supply system.

Section 1.2. Interpretation. Whenever the context may require, any pronoun that is used in this Agreement shall include the corresponding masculine, feminine and neuter forms, and the singular shall include the plural and vice versa. Unless otherwise noted, the words “include,” “includes” and “including” when used in this Agreement shall be deemed to be followed by the phrase “without limitation.” The words “agree,” “agreements,” “approval,” and “consent” when

used in this Agreement shall be deemed to be followed by the phrase “which shall not be unreasonably withheld or unduly delayed,” except or unless the context may otherwise specify.

ARTICLE II MANAGEMENT SERVICES.

Section 2.1. Maintenance and Repair of the Water Storage Tanks. On and after the Commencement Date, the Borough and the Provider, in combination with each other in the manner herein described, shall perform Services set forth in **Schedule 1** on the terms and conditions set forth in this Agreement and Schedules attached hereto.

Section 2.2. Irrevocable Performance Letter of Credit or Renewable Performance Bond and Labor and Materials Bond. In order to provide security to the Borough for the performance by the Provider of its obligations under the Agreement, the Provider must provide an annually renewable performance bond in an amount equal to 100% (**Schedule 11**) of the value of the Fixed Service Fee payable to the Provider in each Contract Year as set forth in **Schedule 2**. In addition, the Provider shall be required to provide an annually renewable labor and materials bond in an amount equal to one year's estimated cost of all subcontractor services and materials (**Schedule 12**).

ARTICLE III. TERM

Section 3.1. Term. The Term of this Agreement shall commence on the Commencement Date and, unless earlier terminated in accordance with the terms hereof, shall expire on 2042.

ARTICLE IV. CONDITIONS PRECEDENT

Section 4.1. General. The issuance of a notice to proceed and the establishment of the Commencement Date shall be subject to the satisfaction or waiver of the conditions precedent set forth in this Article IV hereof.

Section 4.2. Conditions Precedent to the Borough's Obligations. The Borough shall be under no obligation to perform any obligations under the terms of this Agreement (other than those obligations arising or relating to actions required to be taken by or on behalf of the Borough pursuant to Article IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the Borough (in writing)):

- (a) The Board, the Division and the Department shall have approved this Agreement via formal resolution, if applicable.
- (b) The Provider shall have been validly organized and created and shall be validly existing under the laws of the jurisdiction in which each was incorporated and is authorized to transact business in the State, as evidenced by delivery of (1) certified copies of the Certificate of Incorporation and the Certificate of Good Standing and certification of the State that each is authorized to do business in the State; and (2) such other documentation as the Borough may reasonably require to evidence satisfaction of the requirements set forth in this subparagraph.

- (c) The Provider shall have delivered to the Borough a certificate of an authorized officer of the Provider, dated the Commencement Date, to the effect that each of the representations of the Provider that are set forth in this Agreement are true and correct as if made on such date.
- (d) The Provider, its employees and/or its subcontractors, as applicable, shall have obtained all applicable Permits, licenses and authorizations that are necessary for the Services.
- (e) The Provider shall have submitted to the Borough all certificates of insurance and, at the Borough's option, copies of all applicable endorsements to insurance policies, as are required by the terms of this Agreement.
- (f) The Provider shall have delivered to the Borough a certificate of an authorized officer of the Provider, dated the Commencement Date, to the effect that no (reasonably foreseeable) material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, state or local governmental authority or agency, or in any federal, state or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the Provider that would prevent the Provider from completing the execution, delivery or performance of this Agreement.
- (g) No receiver, liquidator, custodian or trustee of the Provider or of a major part of Provider's property shall have been appointed subsequent to the Contract Date, and no petition to reorganize the Provider pursuant to the United States Bankruptcy Code or any similar statute that is applicable to the Provider shall have been filed;

and no adjudication of bankruptcy or a filing for voluntary bankruptcy under the provisions of the United States Bankruptcy Code or any other similar statute which is applicable to the Provider shall have been filed.

- (h) No indictment has been returned against any officer of the Provider with respect to any business transaction, whether or not related to the transactions contemplated by the terms and conditions of this Agreement.
- (i) The Minimum Financial Criteria set forth in **Schedule 11** have been, and continue to be, satisfied as of the Contract Date. The entity for which the Minimum Financial Criteria will be measured will be the Provider.
- (j) No change shall have occurred subsequent to the Contract Date and on or prior to the Commencement Date in any applicable federal, State or local law, or any applicable federal, State or local statute, regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make the execution or delivery by either Party of this Agreement or the compliance by the Borough with the terms and conditions hereof or the consummation by the Borough of the transactions contemplated hereby, a violation of such law, statute, or regulation.

Section 4.3. Conditions Precedent to Provider Obligations. The Provider shall be under no obligation to perform any obligations under the terms of this Agreement (other than obligations arising or relating to actions required to be taken by or on behalf of the Provider pursuant to Article

IV prior to issuance of the Notice to Proceed) unless the following conditions have been satisfied (or waived by the Provider (in writing)):

- (a) The Board, the Division and the Department shall have reviewed and approved this Agreement via formal resolution, if applicable.
- (b) The Borough shall have, via approval of the Board, the Division and the Department, allocated the funds necessary for the payment of the Annual Service Fee and for all Services to be performed by the Provider hereunder for the first year of the Term, with anticipated budgeting for the balance of the Term.
- (c) The Borough shall have, via approval of the Board, the Division and the Department, allocated the funds necessary for the payment of any necessary Capital Improvements required to allow the Provider to perform the Services for the first year of the Term, with anticipated budgeting for the balance of the Term.
- (d) The Borough shall have delivered to the Provider a certificate of an authorized officer of the Borough, dated the Commencement Date, to the effect that each of the representations of the Borough that are set forth in Section 5.1 hereof are true and correct as if made on such date.
- (e) No material action, suit, proceeding or official investigation shall have been threatened, publicly announced or commenced by any federal, State or local governmental authority or agency, or in any federal, State or local court, that seeks to enjoin, assess civil or criminal penalties against, assess civil damage against or obtain any judgment, order or consent decree with respect to the Borough or to any of the agreements that are referred to in this Section as a result of the Borough's

negotiation, execution, delivery or performance of any such agreement or its participation or intended participation in any transaction contemplated thereby.

- (f) No change shall have occurred subsequent to the Contract Date in any applicable federal, State or local law, or any applicable federal, State or local statute or regulation thereunder or written interpretation thereof by any applicable regulatory authority, that would make (i) the execution or delivery by either Party to this Agreement , (ii) the compliance by the Provider with the terms and conditions hereof or (iii) the consummation by the Provider of the transactions contemplated hereby, a violation of such law, statute or regulation.
- (g) Except as previously disclosed, no change shall have occurred subsequent to the Contract Date and prior to Commencement Date, in the financial condition of the Borough that would materially and adversely affect for a substantial period of time the ability of the Borough to meet its financial obligations under the Agreement.

Section 4.4. Satisfaction of Conditions Precedent.

(a) The Parties hereto shall exercise good faith and due diligence in satisfying the conditions precedent required by this Article IV, and shall promptly proceed to perform or cause to be performed those conditions precedent, or portions thereof, that are within each Party's control.

(b) If the Commencement Date has not occurred on or prior to one hundred twenty days (120) after the Contract Date, the period in which the conditions precedent can be satisfied or waived may be extended by joint agreement of the Borough and Provider,

for a period of time to be agreed upon by the Borough and Provider, on the same terms and conditions set forth in this Agreement, except to the extent expressly provided below.

(c) In the event that the Commencement Date shall not have occurred on or before the one hundred twentieth (120th) day after the Contract Date or prior to the last day of any extension period elected pursuant to Section 4.4(b), then either Party, by notice in writing to the other Party, may terminate this Agreement. If the reason for such termination is the fault of neither Party to the Agreement, then each Party shall bear its respective expenses attributable to the Agreement. If termination is the result of the fault of the Borough for failure to meet conditions precedent within its reasonable control and through the exercise of reasonable due diligence, then the Provider shall be entitled to the payments set forth in Section 9.3(d) as damages.

(d) The Provider and the Borough shall each provide an executed acknowledgment to the other of the date that the respective conditions precedent to its obligations under this Agreement have been met or waived, and such acknowledgment shall be given within thirty (30) days of the date on which the last such condition is met or waived. Subject to an Unforeseen Event, neither Party will be permitted to terminate this Agreement for failure to satisfy any condition precedent that is entirely and reasonably within such Party's control or which failure is determined to be Borough Fault or Provider Fault, as the case may be.

Section 4.5. Timing of Certain Obligations.

Pursuant to the Water Act, this Agreement must be submitted to the Division, Department and the Board for review and approval. The Borough shall be responsible for obtaining such review and approval, and the Provider shall cooperate with the Borough in providing any assistance and

information that is required in order to obtain such review and approval. In the event that the Division or Department conditionally approve this Agreement or any portion thereof and premise final approval on the acceptance of certain proposed terms and conditions by the Parties, to the extent that such terms and conditions are immaterial terms and conditions in that such terms and conditions do not (i) materially and adversely affect the rates to be charged by the Borough; or (ii) materially and adversely impact the cost to operate and maintain the Water Storage Tanks (or any portion thereof), or the obligations of the Borough or the Provider to operate and maintain the Water Storage Tanks (or any portion thereof) the Parties shall accept such terms and conditions and shall work cooperatively in an attempt to modify this Agreement to include such terms and conditions. If the proposed terms and conditions imposed by the Division or Department are material terms and conditions in that such terms and conditions (i) materially affect the rates to be charged by the Borough; (ii) materially impact the cost to operate and maintain the Water Storage Tanks (or any portion thereof), the Parties shall cooperate in good faith to negotiate acceptable terms and conditions to this Agreement that will satisfy the concerns of the Division or Department, as the case may be. If the Parties are unable to come to a meeting of minds as it relates to determination of modified terms and conditions that meet the parameters of the conditions imposed by the Division or Department, then this Agreement will be terminated by the Parties without penalty or prejudice, and the Provider shall be compensated for all Services performed up to the date of termination, if any.

ARTICLE V. REPRESENTATIONS AND WARRANTIES

Section 5.1. **Borough Representations and Warranties.** The Borough hereby represents and warrants to the Provider as follows:

- (a) The Borough is a municipal corporation duly created and existing pursuant to the laws of the State. The Borough has the requisite power and authority to enter into this Agreement.
- (b) As of the Commencement Date, the Borough will have obtained all requisite approvals for the budgeting of the payment for the Annual Service Fee for the first year of the Term, with an allocation and established line-item for the collective Annual Service Fees to be paid to the Provider for the remainder of the Term.
- (c) As of the Commencement Date, the Borough will have obtained all requisite approvals for the budgeting of any necessary payment of Capital Improvements for the first year of the Term, with an allocation and established line-item for the funding of Capital Improvements for the remainder of the Term.
- (d) The Borough has the legal capacity and authority to assess the rates for the supply of water services to customers of the Water Supply System that are required to be established by the Borough pursuant to Section 8.5 (Establishment and Collection of Rates, Fees and Charges) hereof. The Borough has and will maintain for the Term of this Agreement the legal capacity and authority to impose liens for the nonpayment of such rates and fees. Other than the existing indebtedness and any indebtedness for Capital Improvements if such are undertaken and paid for by the Borough, there are no liens, notes, bonds, mortgages, encumbrances, or other

entitlement to the revenues of the Water Supply System (other than connection fees, if any, which shall be retained by the Borough), that have priority over the Provider's entitlement to the revenues of the Water Supply System pursuant to this Agreement.

- (e) Other than that disclosed to the Provider in writing referring to this Section, the Borough is not aware of any claims, suits, actions, or judgments which, if successful, would create an encumbrance upon the revenues of the Water Storage Tanks specifically or the Water Supply System generally which would have a priority over the Provider's entitlement to be paid from the revenues of the Water Supply System pursuant to this Agreement, or which otherwise would have a material adverse effect on the ability of either the Provider or the Borough to perform its obligations hereunder. In the instance of such claims, suits, actions, or judgments, the Provider shall be entitled to relief pursuant to the provisions of an Unforeseen Event, and will be entitled to terminate this Agreement and be compensated for all Services performed up to the date of Termination.
- (f) The Borough has enacted, or will have enacted by the Commencement Date, all municipal laws, ordinances, or regulations necessary for the performance of this Agreement. The Borough shall establish rates and fees for water services in accordance with Section 8.5 hereof, which such rates and fees shall be sufficient to ensure compensation to the Provider for the Services to be performed under this Agreement.

Section 5.2. Provider Representations and Warranties. The Provider represents and warrants to the Borough as follows:

- (a) The Provider is an entity duly organized and validly existing and in good standing in the State of Georgia and is qualified and authorized to do business in the State.
- (b) The Provider has full power and authority to enter into this Agreement and to perform its duties and obligations hereunder. This Agreement has been duly authorized, executed and delivered by the Provider and the authorization, execution, delivery and performance of this Agreement by the Provider will not violate any law, judgment, order, ruling or regulation applicable to the Provider and does not constitute a breach of or default under any agreement or instrument by which the Provider is bound.
- (c) The Provider has or holds, or will have or hold as of the Commencement Date, and will continue to have or hold throughout the Term of this Agreement, all approvals, licenses, Permits, and certifications necessary to maintain and repair the Water Storage Tanks in accordance with the terms and provisions of this Agreement, and competent and experienced personnel on its staff who have direct experience in maintaining and repairing water storage tanks similar in nature and character to the Water Storage Tanks.
- (d) No material litigation is pending or threatened (or reasonably foreseeable) against the Provider that would impair its ability to perform its duties and obligations under this Agreement. In the instance of such material pending or threatened (or reasonably foreseeable) litigation against the Provider that could impair the

Provider's ability to perform its duties and obligations under this Agreement, the Borough shall be entitled to relief pursuant to the provisions of an Unforeseen Event, and will be entitled to terminate this Agreement.

- (e) At all times during the term of this Agreement after the Commencement Date, the Provider shall keep the Water Storage Tanks and all components thereof free from any and all liens and encumbrances arising out of or in connection with its provision of the Services or any acts, omissions or debts of the Provider, any of its affiliates or subsidiaries, or any of its subcontractors.
- (f) At all times during the term of this Agreement, the Provider shall meet and maintain the Minimum Financial Criteria, as set forth in **Schedule 11**, and will maintain on and after the Commencement Date, the annually renewable performance bond.

**ARTICLE VI.
MAINTENANCE AND REPAIR OF THE WATER STORAGE TANKS**

Section 6.1. General. (a) On and after the Commencement Date and throughout the Term of this Agreement, the Provider shall at all times on behalf of the Borough and shall perform the Services in a professional, efficient and economical manner and in accordance with the terms and provisions set forth in this Agreement and in accordance with the Schedules attached hereto. In addition, the Provider shall perform the Services in compliance with all federal, State and local laws, regulations, Permits and requirements.

(b) The total cost of all Services outlined in this Agreement and in the Schedules shall be included in the Annual Service Fee, to be paid to the Provider in accordance with **Schedule 2**.

(c) The Provider shall include recommendations for Capital Improvements to the Water Storage Tanks in accordance with its responsibilities under Section 7.1 of this Agreement. If a disagreement arises over the Provider's explanation of limitations or proposed recommendations for Capital Improvements, the matter shall be subject to the dispute resolution procedure set forth under Section 10.24 of this Agreement. In such instance, and if the failure to proceed with the Capital Improvement adversely affects the Provider's performance, the Provider may be entitled to relief pursuant to an Unforeseen Event until such dispute has been resolved.

Section 6.2. Maintenance and Repair. (a) The Provider shall perform all of the Services; shall keep the Water Storage Tanks in good working order, condition and repair, and shall maintain the Water Storage Tanks in accordance with this Agreement and the scope of Services as set forth in **Schedule 1**. The Provider shall provide or make provisions for all labor, materials, supplies, equipment, spare parts, consumables and services which are necessary for the Services.

(b) The Provider shall be responsible for paying for Maintenance and Repair costs relating to each and every incident of Maintenance and Repair for the amounts provided to it by the Borough as the set forth in **Schedule 1** of this Agreement.

(c) **Reserved.**

(d) The Parties acknowledge that for each Contract Year the Borough intends to allocate funds to a Borough controlled Maintenance and Repair fund to provide a source of reimbursement to the Provider for Maintenance and Repair costs (the "Annual Borough Reserve Fund") for Maintenance and Repair activities in excess of the

Services which the Parties agree the Provider should undertake for a specified cost all as set forth in a written change order executed by the Parties. The Provider and the Borough shall work together to develop the Annual Borough Reserve Fund for each upcoming Contract Year at least three (3) months prior to the end of the preceding Borough's fiscal year. The Provider, as part of its monthly reporting obligations under Section 6.18, shall include an accounting of all Maintenance and Repair expenditures that occurred in addition to the Services set forth in **Schedule 1** during the applicable time period and a cumulative total for the Contract Year to date.

Section 6.3. Maintenance and Repair of Water Storage Tanks and Maintenance Plan.

(a) The Provider shall develop, implement and maintain a comprehensive maintenance program for the Water Storage Tanks.

(b) Services shall be performed by the Provider in accordance with **Schedule 1**, the terms and provisions of this Agreement, routine maintenance schedule, manufacturers' recommendations, federal, State and local requirements, and industry standards. The Provider shall maintain documentation of all Services performed.

Section 6.4 Reserved.

Section 6.5. Reserved.

Section 6.6. Reserved.

Section 6.7 Reserved.

Section 6.8. Buildings and Grounds Services. During the performance of any Maintenance and Repair service, the Provider shall maintain the then current condition of the Water Storage Tanks; however, on-going maintenance and grounds services are not the obligation of the Provider when a Maintenance and Repair service are not being performed by the Provider.

Section 6.9. Reserved.

Section 6.10. Planning. The Provider shall be responsible for supporting the Borough's short and long-term planning for the Water Storage Tanks, and for development and implementation of all planning documents as required by federal, State and local regulations and requirements.

Section 6.11. Reserved.

Section 6.12. Permits. The Provider shall maintain continuous compliance with all federal, State and local Permits held by the Borough related to the Services, and obtain any Permits (federal, State or local) required to perform the Services over the term of this Agreement.

Section 6.13. Solid Waste Management. The Provider shall perform collection and delivery of all solid waste created from the performance of the Services from the Water Storage Tanks properties to properly licensed disposal facilities. **The Provider is responsible for the cost of solid waste disposal that is generated during its performance of its Services; however, if Borough shall be listed as the generator of such waste on the bill of lading and documents submitted for the disposal of such waste, including any Hazardous Waste.**

Section 6.14. Water Storage Tanks.

(a) The Provider shall perform the Services to the Water Storage Tanks in accordance with **Schedule 1** of this Agreement and shall perform Additional Maintenance and Repair services as mutually agreed to in writing by the Borough and the Provider for a specified price all as set forth in a written change order executed by the Parties.

Section 6.15. Reserved.

Section 6.16. Reserved.

Section 6.17. Reserved.

Section 6.18. Maintenance and Repair Costs. The Provider shall provide, at its sole cost and expense, all labor, materials, machinery, vehicles, fuel for vehicles, storage areas, equipment, office equipment (i.e., copiers, computers, etc.), supplies, materials, spare parts, expendables, consumables, and any other items required for the Provider to perform the Services and any Maintenance and Repair services, in accordance with the terms and provisions of this Agreement and the Schedules attached hereto and any written change order executed by the Parties.

Section 6.19. Review. The Borough shall have the right to, and intends to, exercise its right to actively participate in the review of the Services performed by the Provider and any subcontractor throughout the Term of this Agreement. The Borough may, at its sole expense, retain one or more representatives to undertake an audit of Provider's performance under this Agreement at any time after the second anniversary of the Commencement Date. Results of said audit will be provided to the Provider and the Parties agree to meet and discuss the audit results to determine what, if any, steps each Party must take to address any instances of non-compliance with the terms and conditions of this Agreement, if any. Such audit shall be performed with as much advanced notice as the Borough and its authorized agents/representatives are able to reasonably provide, and shall be performed as to not disrupt future Services.

Section 6.19.1. Reserved.

Section 6.19.2. Reserved.

Section 6.19.3. Reserved.

Section 6.19.4. Condition Assessment of Water Storage Tanks. A complete Water Storage Tanks condition assessment to determine the condition of the Water Storage Tanks shall

be conducted within sixty (60) days of the Commencement Date and periodically thereafter, but in no case less than once every five (5) years, throughout the Term of this Agreement.

Section 6.20. Reserved.

Section 6.21. Reserved.

Section 6.22. Reserved.

Section 6.23. Reserved.

Section 6.24. Reserved.

Section 6.25. Licenses. The Provider shall acquire and hold, or cause its personnel to acquire and hold, all required State, federal and local approvals, licenses, Permits, and certifications necessary to maintain and repair the Water Storage Tanks in accordance with the terms and provisions of this Agreement.

Section 6.26. Compliance with Laws and Regulations and Permits.

The Provider shall utilize NSF approved coatings in the interior of the Water Storage Tanks and comply with the regulations of the Occupational Safety and Health Act (“OSHA”), and any other applicable local, state and federal laws, codes, ordinances and regulations as they pertain to the Services as set forth in this Agreement. The Provider shall pay all regulatory fines and penalties assessed against the Borough and/or the Provider for non-compliance resulting from the actions, or lack of action, of the Provider in properly performing the Services required under this Agreement. Notwithstanding the above, Provider shall be responsible for only those fines and penalties that are in proportion to its degree of fault, failure and negligence, and only to the extent thereof. Should the Borough, their agents, representatives or affiliates, a third-party (other than the Provider’s subcontractors), or some other element outside of Provider’s control contribute to the condition that resulted in the fine or assessment or which caused it to arise, Provider shall not be

solely responsible therefor. The preceding sentence shall survive the expiration or termination of this Agreement.

(a) The Provider shall comply with all applicable State, federal and local laws, regulations and ordinances including, without limitation, all environmental laws and regulations as they apply to the Services required for the Water Storage Tanks in accordance with this Agreement and will comply with all Permits issued for or with respect to the Water Storage Tanks as set forth in the Agreement. All additional and renewed Permits shall be in the name of the Borough, as the permittee.

(b) Notwithstanding the provisions of this section, above, to the contrary, the Provider shall not be responsible for any fines or penalties that do not fall under the Services set forth in this Agreement.

(c) All Services shall be made by the Provider at its cost and expense, subject to the other terms and conditions of the Agreement, in accordance with existing Borough ordinances for work in the Borough.

Section 6.27. Safety and Security.

(a) The Provider shall provide for and maintain security and safety for all Water Storage Tanks while performing the Services. Notwithstanding the foregoing, the safety and security of the Water Storage Tanks shall be the obligation of the Borough at all times during the Term of this Agreement, but the Provider shall take appropriate measures to provide for the security and safety of the Water Storage Tanks during the performance of the Services.

Section 6.28. Reserved.

ARTICLE VII. CAPITAL IMPROVEMENTS

Section 7.1. Capital Improvements. The Borough reserves the right to assign Capital Improvements associated with the Water Tanks to the Provider during the Term, which assigned Capital Improvements will be financed by the Borough and performed by the Provider and its subcontractors pursuant to a written change order executed by the Parties. Any such change order is subject to both Parties mutually agreeing to the price for the work as well as the terms and conditions for the performance of the work, including, but not limited to, any warranty provided on the work.

Section 7.3. Emergencies or Improvements Required by Law. In the event that a Capital Improvement is required (i) in order to continue to provide water service to the residents of the Borough, (ii) to be made to the Water Storage Tanks in order to comply with applicable federal, State or local law, or (iii) if the failure to make a Capital Improvement will jeopardize the health and safety of the residents of the Borough or the public welfare, or materially and adversely affect the ability of the Provider to perform its obligations under this Agreement, the Borough shall be obligated to implement such Capital Improvement as soon as practicable under the circumstances. The Provider shall be required to provide the Borough with a detailed report documenting the applicable federal, State or local law that necessitates any such Capital Improvement. The Provider's report shall detail the evaluation of all feasible alternatives that could be implemented to eliminate the need for, or reduce the cost of, such Capital Improvement; however, the Provider's implementation of any such feasible alternative thereof, if selected by the Borough, shall be subject to a Change Order if the costs of the Provider's performance are increased or decreased.

ARTICLE VIII. FINANCIAL TERMS.

Section 8.1. Reserved

Section 8.2. Reserved

Section 8.3. Reserved

Section 8.4. Annual Service Fee. The Borough, in accordance with **Schedule 2**, shall pay the Provider the Annual Service Fees set forth in **Schedule 2** of this Agreement for each Contract Year. The Annual Service Fee shall be paid by the Borough to the Provider in four equal quarterly payments, paid on April 1, July 1, October 1, and December 31 for each Contract Year, except that for Contract Year 1 the Borough shall pay the Provider the first quarterly payment on the Commencement Date.

Section 8.5. Establishment and Collection of Rates, Fees and Charges.

(a) The Borough retains responsibility for setting all rates and charges, and in all instances shall ensure that the established rates are adequate to compensate the Provider for the costs of the Services performed by it hereunder and payment of the Annual Service Fee. The Borough shall continue to review and implement where feasible rate policies that will help to improve customer metering, billing and collections.

(b) Effective on the Commencement Date, and as of each anniversary thereafter throughout the Term of this Agreement, the Borough agrees, to the extent permitted by law, to increase its rates for the supply of water service to customers of the Water Supply System, if necessary, to at least the rates required to cover the Annual Service Fee to be paid to the Provider for Services provided.

Section 8.6. Expenses.

Subject to Sections 6.2 and 6.9, the Provider shall pay all expenses required for the Services as set forth in in **Schedule 1** of this Agreement.

Section 8.7. Reserved.

Section 8.8. Reserved.

ARTICLE IX. DEFAULT AND TERMINATION.

Section 9.1 General Provisions.

This Agreement may be terminated prior to its stated expiration date by the Borough or the Provider on the terms and conditions set forth in this Article IX. The rights of the Borough and the Provider to terminate this Agreement shall be strictly construed in accordance with the provisions of this Article IX.

Section 9.2 Termination for Cause by the Borough.

(a) Upon the happening of any of the following events of default by the Provider, the Borough shall have the right to terminate this Agreement and/or to pursue a cause of action for actual damages, all as more fully described herein:

1. The persistent and repeated failure by the Provider to provide the Services in accordance with the terms and provisions of this Agreement;
2. The failure of the Provider to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
3. If any representation and/or warranty that is not capable of cure is made by the Provider, and such representation and/or warranty shall prove to be false and/or misleading in any material respect, and the legality of this Agreement or the ability of the Provider to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;
4. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Provider, and which materially and adversely affects the Provider's ability to perform its duties or obligations under this Agreement; the consent by the Provider to the appointment of and/or taking possession by a

receiver, liquidator, assignee, trustee and/or custodian of the Provider, and/or any substantial part of their respective assets which materially and adversely affects the Provider's ability to perform its duties or obligations under this Agreement; the making by the Provider of any assignment for the benefit of creditors which materially and adversely affects the Provider's ability to perform its duties or obligations under this Agreement; and/or the failure by the Provider to generally pay its debts as they come due; or

5. The failure by the Provider to make any payment required to be made by the Provider pursuant to the terms of this Agreement, and such failure continues for thirty (30) days following notification of such failure.

(b) Upon the happening of any event described in clause (1), (2) or (5) of paragraph (a) of Section 9.2, the Borough shall provide written notice to the Provider setting forth in detail the alleged failure and/or deficiency of the Provider. The Provider shall have thirty (30) days after receipt of such written notice from the Borough to commence the cure and/or correct such failure and/or deficiency or to deliver to the Borough a written notice alleging that no such event described in clause (1) or (2) or (5) of subsection (a) of this Section 9.2 has occurred and setting forth in detail its reasoning as to why no such event has occurred. In the event that the Provider does not commence the cure and/or correct such failure and/or deficiency within said thirty (30) day period or deliver to the Borough the written notice described in the preceding sentence within said thirty (30) day period, the Borough shall provide the Provider with a second written notice affording the Provider an additional thirty (30) days to cure and/or correct such failure and/or deficiency. If the Provider fails to cure and/or correct the failure and/or deficiency within such second thirty (30)

day period, the Borough shall be entitled to seek specific performance before a court of competent jurisdiction.

(c) Upon the happening of any event described in clause (3) or (4) of paragraph (a) of this Section 9.2, the Borough shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Provider.

(d) If the Borough terminates this Agreement in accordance with the provisions of this Section 9.2, the Borough shall be obligated to pay to the Provider all fees due and owing up to the date of termination, including, without limitation, the portion of the Annual Service Fee due to Provider for Services previously performed as of that date, as well as outstanding Pass-through Charges owed, the portion of any Change Orders that are owed for Services previously performed by the Provider, and all other fees owing to Provider as of that date, which such amount, the Borough shall pay within thirty (30) days of the date of termination, less any amounts owed by the Provider to the Borough required to be made by the Provider pursuant to the terms of this Agreement.

(e) Notwithstanding anything in this Agreement to the contrary, the Borough shall be entitled to pursue a cause of action against the Provider for any and all actual damages suffered by the Borough as a result of any default by the Provider. The term damages as used in this Section shall include, without limitation, any and all reasonable costs to the Borough of (i) restoring the Water Storage Tanks to the condition they would have been in if the Provider had maintained and repaired them in accordance with the requirements of this Agreement, (ii) any fines and penalties imposed on the Borough as a result of the Provider's failure to perform its Services under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Provider shall not be

responsible to the Borough for any special, consequential or punitive damages arising from breach of this Agreement.

(f) The Parties agree that with respect to this Section, the Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is intended to “bankruptcy-proof” the Agreement, that this provision is critical to the Agreement, and was “bargained for” and part of the consideration for the Agreement.

To the extent a court of competent jurisdiction holds this Agreement to be an executory contract subject to assumption by the Provider as a debtor pursuant to the Bankruptcy Code, the Provider and the Borough specifically acknowledge that this Agreement falls within the provisions of 11 U.S.C. Section 365(c)(i)(a) to the extent that the trustee may not assume or assign it without the consent of the Borough in that “applicable law excuses the party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor-in-possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties.”

Alternatively, to the extent a court of competent jurisdiction holds that the Agreement is an executory contract subject to assumption and not within the exception of 11 U.S.C. Section 365(c)(i)(a), the Borough and Provider specifically agree to the following:

1. The Provider or the debtor-in-possession agrees to perform all obligations under the Agreement, including curing all defaults and making ongoing payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.

2. Since the Provider is specialized in the provision of Services and therefore is in a special legal position and has certain unique legal attributes, no other entity can provide “adequate assurance of future performance” as that term is defined under the Bankruptcy Code and therefore the Agreement cannot be assigned.

Section 9.3 Termination for Cause by the Provider.

(a) Upon the happening of any of the following events of default by the Borough, the Provider shall have the right to terminate this Agreement or pursue a cause of action, for actual damages, all as described herein:

1. The failure of the Borough to perform any of its material covenants, agreements, obligations and/or duties created by this Agreement;
2. If any representation and/or warranty that is not capable of cure is made by the Borough, and such representation and/or warranty shall prove to be false and/or misleading in any material respect, and the legality of this Agreement or the ability of the Borough to carry out its duties and obligations under this Agreement is thereby materially and adversely affected;
3. The commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against the Borough which materially and adversely affects the Borough’s ability to perform its duties or obligations under this Agreement; the consent by the Borough to the appointment of and/or taking possession by a receiver, liquidator, assignee, trustee and/or custodian of the Borough, and/or any substantial part of its assets which materially and adversely affects the Borough’s ability to perform its duties or obligations under this Agreement; the making by the Borough of any assignment for the benefit of creditors which

materially and adversely affects the Borough's ability to perform its duties or obligations under this Agreement; and/or the failure by the Borough to generally pay its debts as they come due.

4. The failure of the Borough to make timely payments to the Provider or otherwise as set forth in this Agreement or, in the event of a dispute, the Borough's failure to place disputed funds into an escrow account pursuant to Section 10.18, and such failure continues for thirty (30) days following notification of such failure.
5. The failure of the Borough to perform a Capital Improvement, subject to the provisions set forth below.
6. The failure of the Borough to pay the costs in excess of any agreed to Additional Services and such failure continues for thirty (30) days following notification of such failure.

(b) Upon the happening of any event described in paragraph (a) of Section 9.3, the Provider shall provide written notice to the Borough setting forth in detail the alleged failure and/or deficiency of the Borough. The Borough shall have thirty (30) days after receipt of such written notice from the Provider to cure and/or correct such failure and/or deficiency. In the event that the Borough does not cure and/or correct such failure and/or deficiency within said thirty (30) day period, the Provider shall have the right to terminate this Agreement; provided, however, the Provider shall not terminate this Agreement based on the Borough's alleged failure to make Capital Improvements pursuant to Section 7.1 of this Agreement until such dispute is resolved pursuant to Section 10.24 of this Agreement.

(c) Upon the happening of any event described in clause (2) or (3) of paragraph (a) of this Section 9.3, the Provider shall have the right to terminate this Agreement upon thirty (30) days prior written notice to the Borough.

(d) If the Provider terminates this Agreement in accordance with the provisions of this Section 9.3, the Borough shall be obligated to pay to the Provider all fees due and owing up to the date of termination, including, without limitation, the portion of an mobilization fees, the portion of the Annual Service Fee due and owing for Services previously performed as of that date, all outstanding Passthrough Charges owed, the balance owed on any Change Orders, and all other fees owing to Provider as of the termination date, as well as all fees incurred by Provider to demobilize operations, severance costs incurred by Provider resulting from the termination and cessation of Services, as well as all fees and costs incurred by Provider to secure machinery and equipment for use in execution of the Agreement that are not otherwise recoverable, which such amounts, the Borough shall pay within thirty (30) days of the date of termination or date of determination of the amount thereof, whichever is first, less any amounts owed by the Provider required to be made by the Provider pursuant to the terms of this Agreement.

(e) The Parties agree that with respect to this Section, the Agreement is not an executory contract subject to assumption as defined by the Bankruptcy Code. The Parties further specifically acknowledge that this provision is intended to “bankruptcy-proof” the Agreement, that this provision is critical to the Agreement and was “bargained for” and part of the consideration for the Agreement.

To the extent a court of competent jurisdiction holds this Agreement to be an executory contract subject to assumption by the Borough as a debtor pursuant to the Bankruptcy Code, the

Borough and Provider specifically acknowledge that this Agreement falls within the provisions of 11 U.S.C. Section 365(c)(i)(a) to the extent that the trustee may not assume or assign it without the consent of the Provider in that “applicable law excuses the party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor or the debtor-in-possession, whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties.”

Alternatively, to the extent a court of competent jurisdiction holds that the Agreement is an executory contract subject to assumption and not within the exception of 11 U.S.C. Section 365(c)(i)(a), the Borough and Provider specifically agree to the following:

1. The Borough or the debtor-in possession agrees to perform all obligations under the Agreement, including curing all defaults and making ongoing payments, or, in the event it chooses not to do so, will move as soon as practicable to reject the executory contract under applicable bankruptcy law.
2. Since the Borough is a public body corporate and politic of the State of New Jersey and therefore is in a special legal position and has certain unique legal attributes, no other entity can provide “adequate assurance of future performance” as that term is defined under the Bankruptcy Code and therefore the Agreement cannot be assigned.

Section 9.4 Termination for Unenforceability of Agreement. If any court, agency and/or other entity with competent jurisdiction shall finally determine that this Agreement is unenforceable and/or prohibited by law, or, if for any reason the Borough Council is legally prohibited (such prohibition shall be supported by a written legal opinion) from enacting any ordinance establishing the rates for the supply of water service and wastewater collection service

to the customers of the Water Storage Tanks that are required to be established by the Borough in accordance with the Agreement hereof, or any such ordinance so enacted shall fail to become legally effective or shall no longer be legally effective, then the Borough and the Provider shall each have the right to terminate this Agreement, upon ninety (90) days' prior written notice to the other Party, provided that the Borough shall be obligated to make payment to the Provider, as determined pursuant to Section 9.3(d).

ARTICLE X. MISCELLANEOUS.

Section 10.1. Insurance.

(a) The Provider shall not commence performance of the Services under this Agreement until it has provided evidence of insurance of the types and in such amounts as is satisfactory to the Borough and as set forth herein, and such insurance has been approved by the Borough, nor shall the Provider allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved. The Provider shall maintain such insurance in full force and effect for the duration of this Agreement.

(b) The insurance policies provided by the Provider at its sole expense and more particularly described hereafter shall specifically designate the Borough as an additional insured (except for Workers' Compensation and Professional/Errors and Omissions Liability) with respect to the maintenance and repair of the Water Storage Tanks.

(c) The Provider shall be responsible for all injuries to persons or for damages to property of third parties occurring as a result of Provider's actions during performance of the Services hereunder, attributable to the negligence of the Provider, its employees, subcontractors, or others acting on behalf of the Provider, and shall defend, indemnify and save harmless the Borough, its elected and appointed officials, officers, members, employees, consultants, attorneys and agents from liability as provided in this Agreement, but in all instances, only to the extent of and in proportion to the degree of Provider's negligence.

The Provider shall note the insurance requirements set forth below and shall ascertain the cost to it of all the required insurance policies. No separate payment will be made by the Borough for the cost of the insurance herein specified, but the Successful Respondent(s) shall include the cost of such insurance in the prices for the various items scheduled in the Proposal. In the event

the contractor is self-insured, it must provide satisfactory evidence of its ability to meet the requirements of this section and demonstrate evidence of re-insurance. The Provider shall be responsible for payment of all uninsured deductibles or retentions applicable under the required insurance Certificates, in triplicate, from the insurance carrier(s) representative, stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the Borough before Services commence. Certificates evidencing the renewal or replacement of insurance during the term of the agreement shall be furnished to the Borough on or before the date of such renewal or replacement. Such certificates shall specifically refer to the Services Agreement and article, and the following paragraphs in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Agreement.

(d) Certificates of the required insurance, listed below, shall be submitted to the Borough as evidence covering all of the types of coverages required in this contract. Copies attached hereto as **Schedule 5**. Such coverages shall be written by insurance companies possessing an A.M. Best Company rating of at least A- VII, and allowed to do business in the State of New Jersey.

(e) All insurance policies herein required of the Provider shall be written by a company duly authorized and licensed to do business in the State and be executed by an agent therein duly licensed as an agent in the State.

(f) Insurance shall include the type of insurance specified below in not less than the amounts stated and whatever other insurance may be necessary to provide complete protection to the Borough and the Provider against liability, damage and accident of every kind. Neither approval by the Borough nor a failure to disapprove insurance furnished by a Provider shall release the Provider from full responsibility for liability, damages, and accidents as set forth herein.

(g) Except as otherwise agreed to in writing by the Borough, the Provider shall purchase and maintain during the life of this Agreement the following types of insurance in an amount, for each policy, not less than the amounts stated:

1. Workers' Compensation and Employer's Liability Insurance in accordance with the statutory requirements of the State of New Jersey and all other applicable laws and regulations which may apply.

In the case of any subcontracted work, the Provider shall require the subcontractor to provide statutory Workers' Compensation Insurance for subcontractor's employees. The Provider shall purchase and maintain during the life of the Services Agreement Employer's Liability Insurance with a limit of \$1,000,000 each accident, \$1,000,000 each employee and \$1,000,000 policy limit for disease from an insurance company allowed to write such insurance in all states where the Provider will have employees located in the performance of the Services Agreement, and the Provider shall require each of its subcontractors to maintain Employer's Liability Insurance on its employees in the same manner.

2. Commercial General Liability Insurance

a. Commercial General Liability Insurance, or its equivalent, as shall protect it against claims for damages resulting from (a) bodily injury, including wrongful death, and (b) property damage, including loss of use, which may arise from operations under the Services Agreement whether such operations be conducted by the Provider or by any subcontractor or anyone directly or indirectly employed by either of them.

This insurance shall be written on an occurrence form, and shall include coverage for all of the following:

(i) General aggregate limit;

- (ii) Liability arising from premises and operations;
- (iii) Liability arising from the actions of independent contractors;
- (iv) Liability arising from products and completed operations, with such coverage to be maintained for five (5) years after termination of the Agreement; and
- (v) Contractual liability including protection for bodily injury and property damage claims arising out of liability assumed under this Agreement.
- (vi) Deletion of any collapse or underground hazard exclusions or limitations.

The minimum acceptable limits of liability to be provided by such Commercial General Liability Insurance shall be as follows:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products and Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury
\$300,000 Fire Damage Liability
\$10,000 Medical Expense

3. Business Automobile Liability Insurance

Business Automobile Liability Insurance as shall protect it against claims for damages resulting from 1) bodily injury, including wrongful death, and 2) property damage, including loss of use, which may arise from the operations of any owned, hired or nonowned automobiles used by or for the Provider in any capacity in connection with the performance of the Services Agreement. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$1,000,000 each occurrence/annual aggregate.

4. Excess umbrella liability in an amount not less than \$10,000,000.

5. Environmental (Pollution) Legal Liability insurance at limits of \$1,000,000 each pollution incident and \$2,000,000 annual aggregate, covering bodily injury, property damage and on and off site clean-up (remediation) expenses, for injuries or damages arising out of Provider's work for the Borough. If applicable, coverage should extend to the transportation of hazardous materials from the Borough facility or work site to the final disposal site. The Borough shall be named as Additional Insured, and no cross liability restrictions shall apply.

6. If professional design or engineering services are to be performed, Professional/Errors and Omissions Liability insurance at limits of \$2,000,000 each claim and \$4,000,000 annual aggregate.

If any liability insurance purchased by the Provider has been issued on a "claims made" basis, the Provider must comply with the following additional conditions:

- i. The Provider shall agree to provide certificates of insurance evidencing the above coverages for a period of five years after final payment for the Contract. Such certificates shall evidence a retroactive date no later than the beginning of the work under the Agreement, and shall cease as of the date of termination of the Agreement and cessation of Services by Provider; or
- ii. The Provider shall purchase an extended (minimum two years) reporting period endorsement for each such "claims made" policy in force as of the date of final acceptance and evidence the purchase of this extended reporting period endorsement by means of a certificate of insurance or a copy of the endorsement itself. Such certificate or copy of the endorsement shall evidence a retroactive date no later than the beginning of the work under this Contract.

If at any time the Provider fails to maintain any of the foregoing policies, or if a company issuing any such policy shall become unsatisfactory to the Borough, the Provider shall, upon notice from the Borough, promptly obtain a new policy and submit a Certificate thereof as hereinabove provided. Upon failure of the Provider to furnish, deliver and maintain such insurance as above required, and such failure continues for thirty (30) days, the Services Agreement, at the election of the Borough, may be immediately suspended, discontinued or terminated. Failure of the Successful Respondent(s) to purchase and/or maintain any required insurance shall not relieve the Successful Respondent of any liability under the Services Agreement.

The Borough and Provider hereby waive all rights against each other for damages caused by fire or other perils to the extent and degree that the damages are covered by real and personal property and equipment breakdown insurance to be provided by the Borough, or any other property insurance secured by the Borough, except such rights as they may have to the proceeds of such insurance. Property and equipment breakdown policies shall provide for this waiver of subrogation by endorsement or otherwise.

Section 10.2. Indemnification.

(a) The Provider shall indemnify and hold harmless the Borough, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses that are caused by or are directly attributed to the negligent actions, or negligent lack of actions of the Provider or any subcontractor and/or agent selected by the Provider, but only to the extent of and in proportion to the degree of the Provider's negligence.

(b) The Provider shall indemnify and hold harmless the Borough, its elected and appointed officers, and its duly authorized agents, servants, consultants and employees from any liability including, but not limited to, pollution damages, and also including liability to third parties, for personal injury, including death, property damage or any other losses which are caused by or directly attributable to the negligent use and operation of vehicles and/or equipment used by the Provider, owned or leased by the Provider or owned or leased by the Borough and used by the Provider, but only to the extent of and in proportion to the degree of the Provider's negligence.

(c) The Borough shall indemnify and hold harmless the Provider, and its employees, officers, agents and consultants from any liability (including, but not limited to liability to third parties) which is caused by or arise from Borough Fault.

Section 10.3. New Equipment. Any new equipment, other than replacement of vehicles or other vehicles purchased by the Provider, installed into and made a part of the Water Storage Tanks by the Provider during the term of this Agreement so that same shall be considered a fixture, shall be owned by the Borough and shall remain a part of the Water Storage Tanks upon termination or expiration of this Agreement. Prior to making any significant change to the Water Storage Tanks or expenditures of its own for new equipment (other than vehicles), the Provider will consult with the Borough, and the cost of same shall be paid in accordance with the terms of this Agreement.

Section 10.4. Enforcement. The failure on the part of any Party to enforce any provision of this Agreement shall not be construed as a waiver of its right to enforce such provision in the future.

Section 10.5. Assignment. This Agreement shall not be assigned by any Party without the prior written consent of the other Party, except that the Provider shall have the right to assign to an affiliated entity which shall satisfy the Minimum Technical Criteria set forth in **Schedule 12.**

Section 10.6. Affirmative Action. During the performance of this Agreement, the Provider agrees that it shall comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:271 et seq. (Affirmative Action and Equal Opportunity) as set forth in **Schedule 6** of this Agreement.

Section 10.7. Entire Agreement. This Agreement, the Schedules attached hereto and any written clarification or modification executed by the Parties contain the entire agreement between the Parties hereto relating to the Services and supersede all previous communications, representations, or agreements. This Agreement may be modified only by written amendment signed by the Parties hereto.

Section 10.8. Notices.

(a) All notices given pursuant to the terms of this Agreement shall be in writing and delivered in person or transmitted by certified mail, return receipt requested, postage prepaid.

Notices required to be given to the Provider shall be addressed as follows:

Utility Service Co., Inc.
535 General Courtney Hodges Boulevard
Post Office Box 1350
Perry, Georgia 31069
ATTN: Customer Service

With copy to:
Utility Service Co., Inc.
535 General Courtney Hodges Boulevard
Post Office Box 1350
Perry, Georgia 31069
ATTN: Legal Department

Notices required to be given to the Borough shall be addressed as follows:

Borough Administrator
Borough of Fair Lawn
8-01 Fair Lawn Avenue
Fair Lawn, NJ 07410

With a copy to:

Judy Verrone, Esq.
DeCotiis, FitzPatrick, Cole & Giblin, LLP
61 South Paramus Road
Paramus NJ 07652

Section 10.9. Application of Law. This Agreement shall be construed in accordance with, and is subject to, all applicable laws, rules and regulations of the United States of America, the State, any appropriate political subdivision(s), and any relevant regulatory or administrative agency.

Section 10.10. Relationship. The relationship of the Provider to the Borough is that of independent contractor and not one of employment. None of the employees or agents of the Provider shall be considered employees of the Borough.

Section 10.11. Reserved.

Section 10.12. Notice of Litigation. In the event the Provider or the Borough receives notice of, or undertakes the defense or the prosecution of, any actions, claims, suits, administrative or arbitration proceedings or investigations in connection with the Water Storage Tanks, the Party receiving such notice or undertaking such prosecution shall give the other Party timely notice of such proceedings and will inform the other Party in advance of all hearings regarding such proceedings.

Section 10.13. Reserved.

Section 10.14. Reserved

Section 10.15. Hazardous Wastes. If, during the course of excavation work (or other construction) necessary to make Repairs and/or improvements, or Capital Improvements to the Water Storage Tanks, hazardous waste materials or other Hazardous Substances are uncovered by the Provider, it shall not be the obligation of the Provider to remove and dispose of such hazardous substances. The Provider shall, however, take all of the necessary steps to protect the existing Water Storage Tanks from contamination, the cost of which shall be a Pass-through Charge, and to notify the appropriate agencies and determine the necessary steps to properly dispose of such hazardous waste. The parties legally responsible shall pay all costs for such removal, and Provider shall not be responsible for same.

Section 10.16. Unforeseen Events.

If an Unforeseen Event occurs, the affected Party shall be entitled to:

- (a) relief from its performance obligations under this Agreement to the extent the occurrence of the Unforeseen Event prevents the affected Party's performance of such obligations;
- (b) an extension of schedule to perform its obligations under this Agreement to the extent the occurrence of the Unforeseen Event prevents the affected Party's ability to perform such obligations in the time specified in this Agreement; and
- (c) an increase in the Annual Service Fee to be paid under this Agreement to the extent the occurrence of the Unforeseen Event impacts the Provider's costs of performance of its obligations under this Agreement.

The occurrence of an Unforeseen Event shall not, however, excuse or delay the performance of a Party's obligation to pay monies previously accrued and owing under this Agreement, or to

perform any obligation under this Agreement not affected by the occurrence of the Unforeseen Event. The Borough shall continue to pay the Annual Service Fee to the Provider during the continuance of any Unforeseen Event. The Parties shall commence negotiations for appropriate relief consistent with this section upon five (5) days' notice by either Party to the other. If the Parties are unable to reach an agreement for appropriate relief within thirty (30) days of commencing negotiations, both Parties shall have the right to implement dispute resolution pursuant to the terms of Section 10.24 hereof.

The Party that claims the occurrence of an Unforeseen Event shall notify the other Party by telephone, electronic mail or facsimile promptly after the Party affected by such Unforeseen Event first knew of the occurrence thereof, followed within fifteen (15) days by a written description of the Unforeseen Event, the cause thereof (to the extent known), the date the affected Party became aware of the Unforeseen Event, its expected duration, and an estimate of the specific relief requested by the affected Party. The affected Party shall use good faith efforts to reduce costs resulting from the occurrence of the Unforeseen Event, fulfill its performance obligations under this Agreement and otherwise mitigate the adverse effects of the Unforeseen Event. While the Unforeseen Event continues, the affected Party shall give the other Party a monthly update of the information previously submitted. The affected Party also shall provide prompt written notice to the other Party upon the cessation of the Unforeseen Event.

The Provider shall not be responsible for any damage caused to the Water Storage Tanks as a result of an Unforeseen Event, and the Borough shall be responsible for the cost of any necessary repairs, maintenance or Capital Improvements required for the normal operation of the Water Storage Tanks instruments and equipment. At the Borough's request, the Provider may assist with or perform the necessary Capital Improvements at a mutually agreeable cost to be negotiated

between the Parties, which shall be considered an additional service. The Borough shall be responsible for making Capital Improvements that are necessitated by Unforeseen Events or a change in law, regardless of cost. The Provider and the Borough shall determine what, if any, maintenance cost savings are generated from any Capital Improvement and shall adjust the Fixed Service Fee appropriately via a contract amendment. If an Unforeseen Event occurs that causes an adverse change in the operations of the Water Storage Tanks or increases in the operational costs, the Provider shall prepare a proposal to be submitted to the Borough and the Borough's consulting engineer that describes the cause of the changes, the extent of the changes, the anticipated duration of the changes, the cost impact (increase or decrease) of the changes, and the duration of time that such anticipated cost increases or decreases will be in effect. If the Borough approves the changes, such cost increases or decreases will be paid as a Pass-through Charge or Pass-through Credit, as the case may be and payable immediately, and the remainder thereof as it impacts ongoing costs shall be recovered through an increase or decrease in the Annual Service Fee in the following year (or amortized as agreed to by the Parties and included in the then current year). If the Borough does not approve the changes, the Parties will use reasonable and good faith efforts to resolve the issue pursuant to Section 2.3 hereof. In the event any such dispute is not resolved pursuant to Section 2.3, the Parties may take other actions to resolve such dispute, including filing claims in a court of competent jurisdiction. The Borough also may submit proposals to decrease the Annual Service Fee if an Unforeseen Event occurs that causes a decrease in costs.

Section 10.17. Reserved.

Section 10.18. Covenant to Continue Work. Without limiting either Party's rights under Article IX or other provisions of this Agreement, during resolution of any dispute under this Agreement, the Provider and the Borough shall each continue to perform all of their respective

obligations under this Agreement without interruption or delay. In the event any dispute arises under the Agreement relative to any payment obligations, the disputing Party shall deposit said monies in an escrow account until resolution of the issue.

Section 10.19. Reserved.

Section 10.20. Borough's Obligations.

(a) It is understood that the Borough shall pay to the Provider the Annual Service Fee through the revenues of the Water Supply System and other available revenues of the Borough, as are approved in advance for each budgetary year, and that the Borough shall take all reasonable and necessary steps to provide for and to authorize the payment of all amounts due to the Provider from the Borough under this Agreement as the same become due and payable.

(b) In consideration of the Provider entering into this Agreement and to provide funds for such purpose through financing or otherwise, the Borough agrees that the pledge set forth in this Section and all related covenants and agreements in this Agreement are for the equal benefit, protection and security of the Provider, any assignee of the rights of the Provider hereunder.

Section 10.21. Borough Approvals. When it is provided in this Agreement that any matter is subject to the approval or review of the Borough, except as to matters which are expressly stated to be in the Borough's sole discretion, the Borough shall not unreasonably withhold or delay any such approval or review. Any task that the Borough may request or require the Provider to perform or any information or other material the Borough may request or require the Provider to provide shall be reasonably requested or required.

Section 10.22. Survivorship. Notwithstanding anything in this Agreement to the contrary and not intending to limit the rights of the Parties, the Parties agree that (i) all claims for breach of this Agreement will survive termination of this Agreement and the obligations of the Project

Guarantor(s) with respect to those claims that will survive termination of this Agreement, except as otherwise provided in the Guarantor Agreement; (ii) the Borough's ability to draw upon the performance bonds as contained in Article II, Section 2.2 shall survive termination of this Agreement for so long as same remain in effect; (iii) the indemnification provisions contained in Article X, Section 10.2 shall survive termination of this Agreement for a period of three (3) years following the date of the Agreement's termination.

Section 10.23 Severability. In the event that any material provision of this Agreement, for any reason, shall be determined to be invalid, illegal, or unenforceable in any respect, the Parties hereto shall negotiate in good faith and agree to such amendments to this Agreement or to take such other actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein, and the other provisions of this Agreement, as so amended, shall remain in full force and effect.

Section 10.24. Dispute Resolution. In the event that a dispute arises among the Parties, the disputing Party shall provide the other Party with written notice of the dispute and within twenty (20) days after receipt of said notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of each Party's position and a summary of the evidence and arguments supporting its position. Each Party shall designate a high level executive or officer to work together in good faith to resolve the dispute; the name and title of said executive or officer shall also be included in the notice and response. The executives or officers shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing Party's notice and thereafter as they reasonably deem necessary to resolve the dispute. If the executives or officers have not resolved the dispute through good faith efforts within thirty (30)

days after such initial meeting, then unless otherwise agreed, before resorting to the courts, the Parties shall try in good faith to resolve the dispute by mediation administered by the American Arbitration Association (“AAA”) under its Commercial Mediation Rules. All costs attributed to mediation shall be borne equally by both Parties.

Absent mutual consent by both Parties, in the event that one of the Parties brings a dispute immediately to court without first following the afore-mentioned dispute resolution process, then the opposing Party shall be entitled to recover reasonable attorneys' fees and costs from the Party initiating the litigation if either (a) the case is remanded and the Parties are ordered to follow the dispute resolution process outlined herein or (b) the dispute is heard and judgment is awarded in favor of the opposing Party.

All payments or funds that are the subject matter of a dispute between the Parties shall be paid into an escrow account until such time as the dispute is fully resolved either through mediation or litigation. During the course of any dispute between the Parties each Party must comply with all terms and conditions of, and continue to perform all Services required under, this Agreement, except as otherwise set forth herein to the contrary.

The Parties consent to jurisdiction of any state or federal court located Bergen County in the State of New Jersey.

Section 10.25 Rev. Proc. 97-13. The Borough and Provider acknowledge and agree that this Agreement is intended to conform to the requirements of the IRS Rev. Proc. 97-13, and is to be interpreted consistently therewith. Notwithstanding any provisions in this Agreement to the contrary, the Borough and Provider agree that the Borough shall be under no obligation to pay, and shall not pay, compensation to the Provider for the provision of the Services for any annual period to the extent such payment would exceed the limitations specified for qualified management

contracts in Rev. Proc. 97-13. The Borough and the Provider agree that, for so long as tax-exempt obligations are outstanding with respect to the Water Storage Tanks, this Agreement shall not be amended or revised without an opinion of the Borough's nationally recognized bond counsel indicating that any such amendments or revisions shall not affect the tax-exempt status of any obligations outstanding with respect to the Water Storage Tanks.

Section 10.26 Conflicts and Inconsistencies Between Documents. Should there be any conflicts or inconsistencies between the RFQ/RFP documents and the Provider's Proposal, the Provider's Proposal shall prevail. Should there be any conflicts or inconsistencies between this Agreement and the Provider's Proposal, then the terms of this Agreement shall prevail.

Section 10.27 Document Retention. Pursuant to N.J.A.C. §17:44-2.2, the Successful Respondent shall maintain all documentation related to products, transactions or services under this contract for a period of five (5) years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request.

Section 10.28 Prevailing Wage. As required by N.J.S.A. 34:11-56.25 et seq., all persons working for the Successful Respondent, are to be paid the prevailing wage rates as determined by the Department of Labor of the State of New Jersey.

Section 10.29 Public Works Contractor Registration Act. Provider and its contractors and subcontractors shall hold a valid Public Works Contractor Certificate. Provider and its contractors and subcontractors must be registered pursuant to N.J.S.A. 34:1156.48 et seq. for the Term.

Section 10.30 Business Registration Certificate for Subcontractors. Prior to allowing any subcontractors to perform any work under this Agreement, the Provider shall provide the BRCs of all named subcontractors, pursuant to N.J.S.A. 52:32-44. A business organization that fails to

provide a copy of a business registration as required pursuant to section 1 of P.L.2001, c.134 (C.52:32-44 et al.) or subsection e. or f. of section 92 of P.L.1977, c.110 (C.5:12-92), or that provides false information of business registration under the requirements of either of those sections, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency or under a casino service industry enterprise contract.

Section 10.31 Mandatory EEO/AA Language. The Provider shall comply with the requirements of N.J.S.A. 10:5-31 and N.J.A.C. 17:27-1 et seq. (Affirmative Action/Equal Employment Opportunity), as set forth in **Schedule 6**.

Section 10.32 Limitation of Liability. Notwithstanding any contrary provision(s) contained in this Agreement, its Schedules, and the RFQ/RFP, the Borough and Provider agree as follows:

a. Waiver of Consequential Damages and Disclaimer: Neither Party, their affiliates, agents, or employees shall be liable to the other Party for any incidental, indirect, special, punitive, or consequential damages, including but not limited to, loss of profit, business interruptions, loss of business, loss of agreement, and/or loss of use. In addition, notwithstanding anything in the RFQ/RFP and/or this Agreement, the Provider disclaims any and all express or implied warranties of any kind or nature with respect to the Services, except for the express warranty set forth in this Agreement and its Schedules, which shall be the Owner's exclusive remedy regarding the correction, repair, and/or replacement of the Services.

b. Maximum Liability Limit: The liability limit of the Provider, its affiliates, agents, and employees under this Agreement and its Schedules, and the RFQ/RFP, whether based in contract, warranty, tort (including negligence), strict liability or otherwise, after exhaustion of all applicable insurance coverages, shall not exceed in the aggregate a sum equal to fifty percent (50%) of the total of the first ten (10) Annual Service Fees.

IN WITNESS WHEREOF, the Parties have hereunto set their hands and fixed their seals
as of the date first above written.

ATTEST:

BOROUGH OF FAIR LAWN

ATTEST:

PROVIDER

SCHEDULE 1

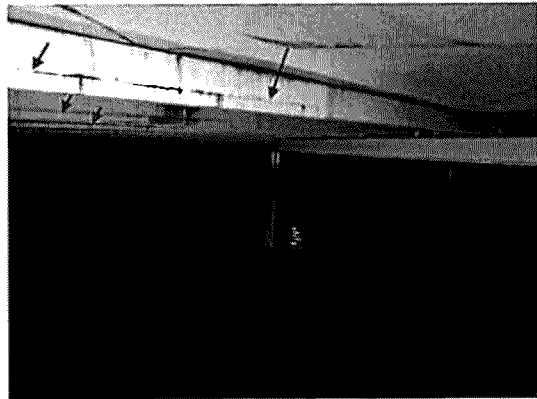
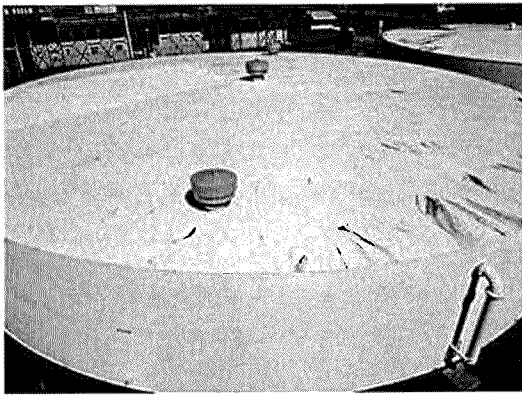
TANK DESCRIPTIONS AND SCOPE OF WORK

CADMUS 1 – 1MG GST Welded Steel Tank 9-14 CADMUS PLACE

The tank renovations, specifications, repairs, routine maintenance and inspections outlined below must be strictly adhered to. The respondent shall not be allowed to deviate from these specifications. This includes surface preparation, coating selection, coating application, tank repairs, scheduled washout and engineering inspections, and preventive maintenance.

Interior Washout or ROV and visual inspection services shall continue as shown below on an alternating annual basis with visual inspections. Future exterior renovations shall be scheduled based on the needs identified during the annual inspections. As a general rule, the exterior must be, at a minimum, overcoated approximately every 10 to 12 years and interiors inspected for coatings failure and potential touch-up. If agreed upon by Owner and Successful Respondent that Interior water chamber coatings have run to failure, a decision will be made for a plan for removal of existing interior coatings and new interior coating system applied or to perform a touchup if the existing system is still serviceable.

These renovation projects, routine maintenance, inspections, and evaluations outlined



must be completed in accordance with the specified timeframe. All maintenance program costs must be calculated with the completion deadline of these projects.

YEAR 1 (2022)

Exterior Surface Preparation and Coatings Specifications – Overcoat:

1. Presoak exterior surfaces with a solution consisting of 4 parts water 1 part bleach prior to pressure washing. Pressure wash all surfaces with minimum 4000 psi pressure washer to remove all chalk, dirt, mildew and lightly adhered coatings.
2. Spot surface preparation to all paint failed and or corroded areas to SSPC-SP2 hand tool and SSPC-SP3 power tool standards.
3. **Spot Primer:** TNEMEC 135 Chembuild modified polyamidoamine epoxy or approved equivalent applied to achieve 4-6 DFT mils for above 60 degree F, TNEMEC 1 Omnithane modified aromatic polyurethane or equivalent applied to achieve 3-5 DFT mils for below 70 degree F.
4. **Intermediate:** TNEMEC Series 27 applied to achieve 3-6 DFT mils or Series 135 epoxy applied to achieve 4-6 DFT mils (depending on temperatures, 27 is used for colder weather application) or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented aliphatic acrylic polyurethane or equivalent applied to achieve 2-3 DFT mils.

Interior Water Chamber Surface Prep and Coatings Specifications – Full Blast and Coat:

1. Abrasive blast complete interior water chamber to SSPC-SP10 near white metal cleanliness. Min 2 mil angular anchor profile required.
2. **Primer:** TNEMEC Series 94-H2O hydrozinc aromatic zinc rich urethane, or approved equivalent, applied to achieve 2.5-4.5 DFT mils
3. **Stripe coat along all interior water chamber welds, edges, connections, bolts & apparatus:** TNEMEC Series N140, or approved equivalent, applied by brush and roller only to achieve 4-6 DFT mils.
4. **Full interior finish coat:** A “100% solids” TNEMEC Epoxyline Series 22, or Series FC22 (depending on temperature conditions), or approved equivalent, applied to achieve 25-30 DFT mils.
5. After the liner has properly cured, the interior surfaces shall be disinfected per A.W.W.A. Spray Method No. 2 (200 PPM).
6. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the State.
7. Once the tests results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of properly.
8. The Tank shall be sealed and made ready for service.

Installation of a PAX Active Mixing System to the Interior (see mixer specs):

- The Company shall install a PAX PWM400 active mixing system with control center

on the selected tank. Mixer must meet or exceed all mixing specifications of the PAX PWM400.

- The mixer will be installed in the tank as an NSF approved PAX active mixing system along with its component parts.

Repairs and Updates:

1. Remove loose grouting and sealer from the foundation/base plate transition. Apply new grouting and sealer to completely seal the transition.
2. Replace overflow termination at screen with a screened/flapper combination valve.
3. Install 4ft long of OSHA compliant handrail along roof edge in two areas, one at each roof hatch.

YEAR 2 (2023)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 3 (2024)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 4 (2025)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup including interior surfaces for three-year warranty closeout.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 5 (2026)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.

5. Maintain exterior as per the full service Asset Management Program.

YEAR 6 (2027)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 7 (2028)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 8 (2029)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 9 (2030)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 10 (2031)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 11 (2032)

Exterior Overcoat Prep & Paint

1. Pressure wash complete exterior with min 4000 psi.
2. Spot prepare any paint failed/corroded or freshly welded areas to an SSPC-SP2 Hand tool and SP3 Power tool metal cleanliness standard.
3. **Spot primer:** TNEMEC Series 1 Omnithane modified aromatic polyurethane primer applied to achieve 2.5-3.5 DFT mils
4. **Spot intermediate coat:** TNEMEC Series 72 applied to achieve 2-5 DFT mils or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or approved equivalent applied to achieve 2-5 DFT mils.
6. Apply NSF approved washout, disinfect, and inspect the tank.
7. Provide overall tank emergency repair service.
8. Ensure Tank complies with all federal and state regulations.
9. Maintain exterior as per the full service Asset Management Program.

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 13 (2033)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 14 (2034)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 15 (2035)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 16 (2037)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 17 (2038)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 18 (2039)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 19 (2040)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 20 (2041)

Exterior Surface Preparation and Coatings Specifications – Overcoat:

1. Presoak exterior surfaces with a solution consisting of 4 parts water 1 part bleach prior to pressure washing. Pressure wash all surfaces with minimum 4000 psi pressure washer to remove all chalk, dirt, mildew and lightly adhered coatings.
2. Spot surface preparation to all paint failed and or corroded areas to SSPC-SP2 hand tool and SSPC-SP3 power tool standards.
3. **Spot Primer:** TNEMEC 135 Chembuild modified polyamidoamine epoxy or approved equivalent applied to achieve 4-6 DFT mils for above 60 degree F, TNEMEC 1 Omnithane modified aromatic polyurethane or equivalent applied to achieve 3-5 DFT mils for below 70 degree F.

4. **Intermediate:** TNEMEC Series 27 applied to achieve 3-6 DFT mils or Series 135 epoxy applied to achieve 4-6 DFT mils (depending on temperatures, 27 is used for colder weather application) or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented aliphatic acrylic polyurethane or equivalent applied to achieve 2-3 DFT mils.

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs on exterior surfaces
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Cadmus 1	Renovation Interior Blast & Coat Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services

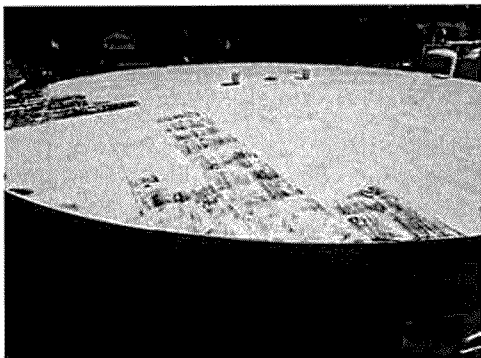
Year	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
Cadmus 1	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Exterior Overcoat, Repairs, Inspection & Emergency Services

CADMUS 2 – 1MG GST Welded Steel Tank 9-14 CADMUS PLACE

The tank renovations, specifications, repairs, routine maintenance and inspections outlined below must be strictly adhered to. The Successful Respondent shall not be allowed to deviate from these specifications. This includes surface preparation, coating selection, coating application, tank repairs, scheduled washout and engineering inspections, and preventive maintenance.

Interior Washout or ROV and visual inspection services shall continue as shown below on an alternating annual basis with visual inspections. Future exterior renovations shall be scheduled based on the needs identified during the annual inspections. As a general rule, the exterior must be, at a minimum, overcoated approximately every 10 to 12 years and interiors inspected for coatings failure and potential touch-up. If agreed upon by Owner and the Successful Respondent that interior water chamber coatings have run to failure, a decision will be made for a plan for removal of existing interior coatings and new interior coating system applied or to perform a touchup if the existing system is still serviceable.

These renovation projects, routine maintenance, inspections, and evaluations outlined must be completed in accordance with the specified timeframe. All maintenance program costs must be calculated with the completion deadline of these projects.



YEAR 1 (2022)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 2 (2023)

Exterior Surface Preparation and Coatings Specifications – Full Blast and Coat:

1. Abrasive blasting surface preparation to an SSPC-SP6 commercial cleanliness standard. Min 2 mil angular anchor profile required.
2. Containment to adhere to SSPC Guide 6 Class 2a containment standard as required.
3. **Primer:** TNEMEC 91H2O or 94H2O hydrozinc aromatic zinc rich urethane or approved equivalent applied to achieve 2.5-4.5 DFT mils (If intermediate coat is sprayed, a full stripe coat of Series 27 or Series 135 epoxy must be applied by brush and roller prior to intermediate coat application)
4. **Intermediate:** TNEMEC Series 27 applied to achieve 3-6 DFT mils or Series 135 epoxy applied to achieve 4-6 DFT mils (depending on temperatures, 27 is used for colder weather application) or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or equivalent applied to achieve 2-6 DFT mils.
6. Contractor will be fully responsible to prevent any fugitive emissions from escaping the structure and to comply with state and local requirements for dust and particulate emission controls.

Interior Water Chamber Surface Prep and Coatings Specifications – Full Blast and Coat:

1. Abrasive blast complete interior water chamber to SSPC-SP10 near white metal cleanliness. Min 2 mil angular anchor profile required.
2. **Primer:** TNEMEC Series 94-H2O hydrozinc aromatic zinc rich urethane, or approved equivalent, applied to achieve 2.5-4.5 DFT mils
3. **Stripe coat along all interior water chamber welds, edges, connections, bolts & apparatus:** TNEMEC Series N140, or approved equivalent, applied by brush and roller only to achieve 4-6 DFT mils.
4. **Full interior finish coat:** A “100% solids” TNEMEC Epoxyline Series 22, or Series FC22 (depending on temperature conditions), or approved equivalent, applied to achieve 25-30 DFT mils.
5. After the liner has properly cured, the interior surfaces shall be disinfected per A.W.W.A. Spray Method No. 2 (200 PPM).
6. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the State.
7. Once the tests results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of properly.
8. The Tank shall be sealed and made ready for service.

Installation of a PAX Active Mixing System to the Interior (see mixer specs):

- The Company shall install a PAX PWM100 active mixing system with control center on the selected tank. Mixer must meet or exceed all mixing specifications of the PAX PWM100.
- The mixer will be installed in the tank as an NSF approved PAX active mixing

system along with its component parts.

Repairs and Updates:

4. Remove loose grouting and sealer from the foundation/base plate transition. Apply new grouting and sealer to completely seal the transition.
5. Replace overflow termination at screen with a screened/flapper combination valve.
6. Replace both existing roof vents with properly sized freeze resistant vacuum pallet style vents.
7. Install 4ft long of OSHA compliant handrail along roof edge in two areas, one at each roof hatch

YEAR 3 (2024)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 4 (2025)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 5 (2026)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup including interior surfaces for three-year warranty closeout.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 6 (2027)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 7 (2028)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 8 (2029)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 9 (2030)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 10 (2031)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 11 (2032)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 12 (2033)

Exterior Overcoat Prep & Paint specs

1. Pressure wash complete exterior with min 4000 psi.
2. Spot prepare any paint failed/corroded or freshly welded areas to an SSPC-SP2 Hand tool and SP3 Power tool metal cleanliness standard.
3. **Spot primer:** TNEMEC Series 1 Omnithane modified aromatic polyurethane primer applied to achieve 2.5-3.5 DFT mils
4. **Spot intermediate coat:** TNEMEC Series 72 applied to achieve 2-5 DFT mils or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or approved equivalent applied to achieve 2-5 DFT mils.
6. Apply NSF approved washout, disinfect, and inspect the tank.
7. Provide overall tank emergency repair service.
8. Ensure Tank complies with all federal and state regulations.
9. Maintain as per the full service Asset Management Program.

YEAR 13 (2034)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 14 (2035)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 15 (2036)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 16 (2037)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.

- Maintain exterior as per the full service Asset Management Program.

YEAR 18 (2039)

Inspection Service:

- Engineering inspection and preventive maintenance.
- Any needed repairs/touchup on exterior surfaces.
- Provide emergency repair service.
- Ensure tank complies with all federal and state regulations.
- Maintain exterior as per the full service Asset Management Program.

YEAR 19 (2040)

Inspection Service including Remote Operated Vehicle Interior Inspection:

- Engineering inspection including ROV and preventive maintenance
- Any needed repairs/touchup on exterior surfaces.
- Provide emergency repair service.
- Ensure Tank complies with all federal and state regulations.
- Maintain exterior as per the full service Asset Management Program.

YEAR 20 (2041)

Inspection Service:

- Engineering inspection and preventive maintenance.
- Any needed repairs/touchup on exterior surfaces.
- Provide emergency repair service.
- Ensure tank complies with all federal and state regulations.
- Maintain exterior as per the full service Asset Management Program.

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Cadmus 2	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Renovation Interior Blast & Coat Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services

Year	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
Cadmus 2	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services

WESTMORELAND – 1.5 MG GST Welded Steel Tank 18-00 11TH STREET

The tank renovations, specifications, repairs, routine maintenance and inspections outlined below must be strictly adhered to. The respondent shall not be allowed to deviate from these specifications. This includes surface preparation, coating selection, coating application, tank repairs, scheduled washout and engineering inspections, and preventive maintenance.

Interior Washout or ROV and visual inspection services shall continue as shown below on an alternating annual basis with visual inspections. Future exterior renovations shall be scheduled based on the needs identified during the annual inspections. As a general rule, the exterior must be, at a minimum, overcoated approximately every 10 to 12 years and interiors inspected for coatings failure and potential touch-up. If agreed upon by Owner and Successful Respondent that Interior water chamber coatings have run to failure, a decision will be made for a plan for removal of existing interior coatings and new interior coating system applied or to perform a touchup if the existing system is still serviceable.

These renovation projects, routine maintenance, inspections, and evaluations outlined must be completed in accordance with the specified timeframe. All maintenance program costs must be calculated with the completion deadline of these projects.



YEAR 1 (2022)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 2 (2023)

Exterior Surface Preparation and Coatings Specifications– Full Blast and Overcoat:

1. Presoak exterior surfaces with a solution consisting of 4 parts water 1 part bleach prior to pressure washing. Pressure wash all surfaces with minimum 4000 psi pressure washer to remove all chalk, dirt, mildew and lightly adhered coatings.
2. Spot surface preparation to all paint failed and or corroded areas to SSPC-SP2 hand tool and SSPC-SP3 power tool standards.
3. **Spot Primer:** TNEMEC 135 Chembuild modified polyamidoamine epoxy or approved equivalent applied to achieve 4-6 DFT mils for above 60 degree F, TNEMEC 1 Omnithane modified aromatic polyurethane or equivalent applied to achieve 3-5 DFT mils for below 70 degree F.
4. **Intermediate:** TNEMEC Series 27 applied to achieve 3-6 DFT mils or Series 135 epoxy applied to achieve 4-6 DFT mils (depending on temperatures, 27 is used for colder weather application) or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented aliphatic acrylic polyurethane or equivalent applied to achieve 2-3 DFT mils.
6. Abrasive blasting surface preparation to an SSPC-SP6 commercial cleanliness standard. Min 2 mil angular anchor profile required.
7. Containment to adhere to SSPC Guide 6 Class 2a containment standard as required.
8. **Primer:** TNEMEC 91H2O or 94H2O hydrozinc aromatic zinc rich urethane or approved equivalent applied to achieve 2.5-4.5 DFT mils (If intermediate coat is sprayed, a full stripe coat of Series 27 or Series 135 epoxy must be applied by brush and roller prior to intermediate coat application)
9. **Intermediate:** TNEMEC Series 27 applied to achieve 3-6 DFT mils or Series 135 epoxy applied to achieve 4-6 DFT mils (depending on temperatures, 27 is used for colder weather application) or approved equivalent
10. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or equivalent applied to achieve 2-6 DFT mils.
11. Follow SSPC C3, C5 Lead Paint abatement requirements

Interior Water Chamber Surface Prep and Coatings Specifications – Full Blast and Coat:

1. Abrasive blast complete interior water chamber to SSPC-SP10 near white metal cleanliness. Min 2 mil angular anchor profile required.
2. **Primer:** TNEMEC Series 94-H2O hydrozinc aromatic zinc rich urethane, or approved equivalent, applied to achieve 2.5-4.5 DFT mils
3. **Stripe coat along all interior water chamber welds, edges, connections, bolts & apparatus:** TNEMEC Series N140, or approved equivalent, applied by brush and roller only to achieve 4-6 DFT mils.
4. **Full interior finish coat:** A “100% solids” TNEMEC Epoxyline Series 22, or Series FC22 (depending on temperature conditions), or approved equivalent, applied to achieve 25-30 DFT mils.
5. After the liner has properly cured, the interior surfaces shall be disinfected per A.W.W.A. Spray Method No. 2 (200 PPM).
6. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the State.

7. Once the tests results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of properly.
8. The Tank shall be sealed and made ready for service.

Installation of a PAX Active Mixing System to the Interior (see mixer specs):

- The Company shall install a PAX PWM400 active mixing system with control center on the selected tank. Mixer must meet or exceed all mixing specifications of the PAX PWM400.

Repairs and Updates:

8. Remove lose grouting and sealer from the foundation/base plate transition. Apply new grouting and sealer to completely seal the transition.
9. Remove four screened stub outs at top of shell wall; install seal welded lap patch plates to seal off opening.
10. Add slip in style silt stop extension on internal inlet/outlet pipe on floor.
11. Install 5ft of OSHA compliant handrail along roof edge on either side of the shell access ladder transition area.
12. Replace existing shell access ladder with OSHA compliant design. New ladder should terminate between 12-15ft above grade.
13. Install aluminum 8ft locking vandal guard door.
14. Install flexible cable safety climb system on shell access ladder.
15. Install additional shell man way, 30" bolted flange style with reinforcement pad and davit arm.
16. Install external overflow system to include; concrete splash pad, screened/flapper termination, stand offs and top penetration with collection funnel. Remove existing internal overflow piping and seal weld lap patch plate over existing floor penetration.

YEAR 3 (2024)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 4 (2025)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 5 (2026)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup including interior surfaces for three-year warranty closeout.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 6 (2027)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 7 (2028)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 8 (2029)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 9 (2030)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 10 (2031)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 11 (2032)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 12 (2033)

Exterior Overcoat Prep & Paint specs

1. Pressure wash complete exterior with min 4000 psi.
2. Spot prepare any paint failed/corroded or freshly welded areas to an SSPC-SP2 Hand tool and SP3 Power tool metal cleanliness standard.
3. **Spot primer:** TNEMEC Series 1 Omnithane modified aromatic polyurethane primer applied to achieve 2.5-3.5 DFT mils
4. **Spot intermediate coat:** TNEMEC Series 72 applied to achieve 2-5 DFT mils or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or approved equivalent applied to achieve 2-5 DFT mils.
6. Apply NSF approved washout, disinfect, and inspect the tank.
7. Provide overall tank emergency repair service.
8. Ensure Tank complies with all federal and state regulations.
9. Maintain exterior as per the full service Asset Management Program.

YEAR 13 (2034)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 14 (2035)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 15 (2036)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 16 (2037)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 18 (2039)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 19 (2040)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 20 (2041)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Westmoreland	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Renovation Interior Blast & Coat Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services

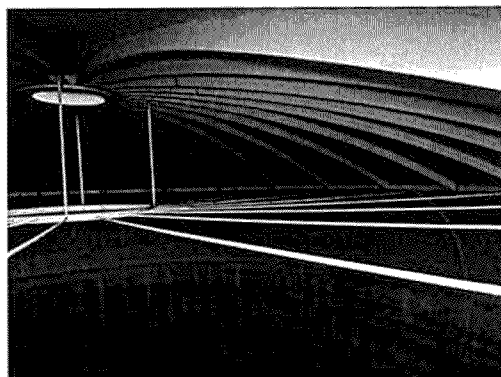
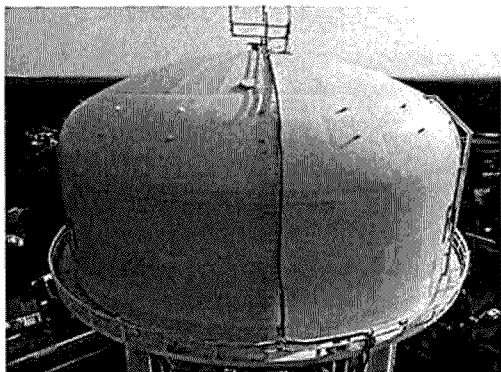
Year	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
Westmoreland	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services

GORDON PLACE TOWER – 1MG ELEVATED 31-15 GORDON PLACE

The tank renovations, specifications, repairs, routine maintenance and inspections outlined below must be strictly adhered to. The respondent shall not be allowed to deviate from these specifications. This includes surface preparation, coating selection, coating application, tank repairs, scheduled washout and engineering inspections, and preventive maintenance.

Interior Washout or ROV and visual inspection services shall continue as shown below on an alternating annual basis with visual inspections. Future exterior renovations shall be scheduled based on the needs identified during the annual inspections. As a general rule, the exterior must be, at a minimum, overcoated approximately every 10 to 12 years and interiors inspected for coatings failure and potential touch-up. If agreed upon by Owner and Successful Respondent that Interior water chamber coatings have run to failure, a decision will be made for a plan for removal of existing interior coatings and new interior coating system applied or to perform a touchup if the existing system is still serviceable.

These renovation projects, routine maintenance, inspections, and evaluations outlined must be completed in accordance with the specified timeframe. All maintenance program costs must be calculated with the completion deadline of these projects.



YEAR 1 (2022)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 2 (2023)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 3 (2024)

Interior touchups of repaired/burn through areas:

1. Power tool clean interior repaired/burn-through areas from welding to an SSPC-SP11
2. Touch up interior a using TNE MEC FC22 100% solids modified polyamine epoxy or equivalent touchup kits applied to achieve 15-25 DFT mils.

Installation of a PAX Active Mixing System to the Interior (see mixer specs):

- The Company shall install a PAX PWM400 active mixing system with control center on the selected tank. Mixer must meet or exceed all mixing specifications of the PAX PWM400.
- The mixer will be installed in the tank as an NSF approved PAX active mixing system along with its component parts.

Repair and Updates:

1. Install OSHA compliant handrail on interior floor around riser opening.
2. Replace existing FAA dual obstruction light beacon with a dual LED fixture on roof.
3. Replace existing four single FAA obstruction light beacons with single LED fixtures on balcony handrail.
4. Replace overflow termination screen with a screened/flapper combination valve.
5. Install concrete overflow splash pad
6. Replace roof/dome/shell exterior access ladder with OSHA compliant design.
7. Replace support structure exterior access ladder with OSHA compliant design.
8. Install flexible cable safety climb system on the support structure access ladder.
9. Install L shaped OSHA compliant handrail below and around the roof access hatch.
10. Add top rail extension to shell wall handrail to bring total height to 42in. to be in current OSHA compliance.
11. Add top rail extension to support structure/bowl transition platform handrail to bring total height to 42in. to be in current OSHA compliance.
12. Install 30in bolted flange style shell man way with a sliding style davit assembly.

13. Install an OSHA compliant ladder from new shell man way to water chamber floor.
14. Replace existing roof vent with properly sized freeze resistant vacuum pallet style vent.
15. Unearth 4-6in vertical face of concrete foundations to clean, coating and inspect.
16. Install seal welded coaxial mounts to move coaxial from current location on ladder side rails to at least 15" from the center line of the ladders from ground to roof.
17. Install seal welded antenna mount/stand on roof at least 15" from the centerline of the ladder to relocate all roof antenna.

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 4 (2025)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 5 (2026)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 6 (2027)

Exterior Overcoat Prep & Paint specs

3. Pressure wash complete exterior with min 4000 psi.
4. Spot prepare any paint failed/corroded or freshly welded areas to an SSPC-SP2 Hand tool and SP3 Power tool metal cleanliness standard.
5. **Spot primer:** TNEMEC Series 1 Omnithane modified aromatic polyurethane primer applied to achieve 2.5-3.5 DFT mils
6. **Spot intermediate coat:** TNEMEC Series 72 applied to achieve 2-5 DFT mils or approved equivalent

7. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or approved equivalent applied to achieve 2-5 DFT mils.
8. Touch up interior using TNEMEC FC22 100% solids modified polyamine epoxy or equivalent touchup kits applied to achieve 15-25 DFT mils.
9. Provide overall tank emergency repair service.
10. Ensure Tank complies with all federal and state regulations.
11. Maintain as per the full service Asset Management Program.

Interior Water Chamber Surface Prep and Coatings Specifications – Full Blast and Coat:

1. Abrasive blast complete interior water chamber to SSPC-SP10 near white metal cleanliness. Min 2 mil angular anchor profile required.
2. **Primer:** TNEMEC Series 94-H2O hydrozinc aromatic zinc rich urethane, or approved equivalent, applied to achieve 2.5-4.5 DFT mils
3. **Stripe coat along all interior water chamber welds, edges, connections, bolts & apparatus:** TNEMEC Series N140, or approved equivalent, applied by brush and roller only to achieve 4-6 DFT mils.
4. **Full interior finish coat:** A “100% solids” TNEMEC Epoxyline Series 22, or Series FC22 (depending on temperature conditions), or approved equivalent, applied to achieve 25-30 DFT mils.
5. After the liner has properly cured, the interior surfaces shall be disinfected per A.W.W.A. Spray Method No. 2 (200 PPM).
6. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the State.
7. Once the tests results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of properly.
8. The Tank shall be sealed and made ready for service.

YEAR 7 (2028)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 8 (2029)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 9 (2030)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup including interior surfaces for three-year warranty closeout.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain as per the full service Asset Management Program.

YEAR 10 (2031)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 11 (2032)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 12 (2033)

Inspection Service including Remote Operated Vehicle Interior Inspection:

1. Engineering inspection including ROV and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure Tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 13 (2034)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 14 (2035)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive

- maintenance
2. Any needed repairs/touchup on exterior surfaces.
 3. Provide emergency repair service.
 4. Ensure tank complies with all federal and state regulations.
 5. Maintain exterior as per the full service Asset Management Program.

YEAR 15 (2036)

Inspection Service:

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 16 (2037)

Exterior Overcoat Prep & Paint specs

1. Pressure wash complete exterior with min 4000 psi.
2. Spot prepare any paint failed/corroded or freshly welded areas to an SSPC-SP2 Hand tool and SP3 Power tool metal cleanliness standard.
3. **Spot primer:** TNEMEC Series 1 Omnithane modified aromatic polyurethane primer applied to achieve 2.5-3.5 DFT mils
4. **Spot intermediate coat:** TNEMEC Series 72 applied to achieve 2-5 DFT mils or approved equivalent
5. **Finish coat:** TNEMEC Series 72 pigmented acrylic polyurethane or approved equivalent applied to achieve 2-5 DFT mils.
6. Apply NSF approved washout, disinfect, and inspect the tank.
7. Provide overall tank emergency repair service.
8. Ensure Tank complies with all federal and state regulations.
9. Maintain exterior as per the full service Asset Management Program.

YEAR 17 (2038)

Inspection Service including Chemical Clean and Interior Washout Inspection:

1. Engineering inspection including Chemical Clean Washout and preventive maintenance
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.
5. Maintain exterior as per the full service Asset Management Program.

YEAR 18 (2039)

Inspection Service

1. Engineering inspection and preventive maintenance.
2. Any needed repairs/touchup on exterior surfaces.
3. Provide emergency repair service.
4. Ensure tank complies with all federal and state regulations.

- Maintain exterior as per the full service Asset Management Program.

YEAR 19 (2040)

Inspection Service including Remote Operated Vehicle Interior Inspection:

- Engineering inspection including ROV and preventive maintenance
- Any needed repairs/touchup on exterior surfaces.
- Provide emergency repair service.
- Ensure Tank complies with all federal and state regulations.
- Maintain exterior as per the full service Asset Management Program.

YEAR 20 (2041)

Inspection Service

- Engineering inspection and preventive maintenance.
- Any needed repairs/touchup on exterior surfaces.
- Provide emergency repair service.
- Ensure tank complies with all federal and state regulations.
- Maintain exterior as per the full service Asset Management Program.

Year	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Gordon Place	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Renovation Interior Blast & Coat Exterior Overcoat, Repairs, Inspection & Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services

Year	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041
Gordon Place	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	Renovation Exterior Overcoat, Repairs, Inspection & Emergency Services	Chemical Clean Washout, exterior Touchups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services	ROV Inspection, exterior touch-ups, Repairs and Emergency Services	Visual Inspection, exterior touch-ups, Repairs and Emergency Services

SCHEDULE 2

ANNUAL SERVICE FEES

The Annual Service Fees for each of the Contract Years are set forth hereinbelow:

Contract Year 1	-	\$1,605,288
Contract Year 2	-	\$1,605,288
Contract Year 3	-	\$1,605,288
Contract Year 4	-	\$105,877
Contract Year 5	-	\$109,625
Contract Year 6	-	\$113,506
Contract Year 7	-	\$117,524
Contract Year 8	-	\$121,684
Contract Year 9	-	\$125,991
Contract Year 10	-	\$130,452
Contract Year 11	-	\$135,070
Contract Year 12	-	\$139,852
Contract Year 13	-	\$144,803
Contract Year 14	-	\$149,928
Contract Year 15	-	\$155,236
Contract Year 16	-	\$160,731
Contract Year 17	-	\$166,421
Contract Year 18	-	\$172,312
Contract Year 19	-	\$178,412
Contract Year 20	-	\$184,727

SCHEDULE 3

STAFFING

SCHEDULE 4

RESERVED

SCHEDULE 5
INSURANCE CERTIFICATES



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
04/13/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER MARSH USA, INC. 445 SOUTH STREET MORRISTOWN, NJ 07962-1966 Attn: Morristown.CertRequest@marsh.com Fax: 212-948-0979	CONTACT NAME: _____ PHONE (A/C No. Ext): _____ FAX (A/C. No.): _____ E-MAIL ADDRESS: _____													
	<table border="1"> <thead> <tr> <th>INSURER(S) AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> </thead> <tbody> <tr> <td>INSURER A : Everest National Insurance Company</td> <td>10120</td> </tr> <tr> <td>INSURER B : Everest Premier Insurance Company</td> <td>16045</td> </tr> <tr> <td>INSURER C : N/A</td> <td>N/A</td> </tr> <tr> <td>INSURER D : ACE Property and Casualty Insurance Company</td> <td>20699</td> </tr> <tr> <td>INSURER E :</td> <td></td> </tr> <tr> <td>INSURER F :</td> <td></td> </tr> </tbody> </table>	INSURER(S) AFFORDING COVERAGE	NAIC #	INSURER A : Everest National Insurance Company	10120	INSURER B : Everest Premier Insurance Company	16045	INSURER C : N/A	N/A	INSURER D : ACE Property and Casualty Insurance Company	20699	INSURER E :		INSURER F :
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INSURER E :														
INSURER F :														

COVERAGES **CERTIFICATE NUMBER:** NYC-011306254-00 **REVISION NUMBER:** 5

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER: _____			RM5GL00017-221	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 5,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 5,000,000 GENERAL AGGREGATE \$ 5,000,000 PRODUCTS - COMP/OP AGG \$ 5,000,000
A	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			RM5CA00013-221 (AOS) RM5CA00025-221 (MA)	01/01/2022 01/01/2022	01/01/2023 01/01/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 5,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
D	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input checked="" type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 10,000			XEUG72557451001	01/01/2022	01/01/2023	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY <input type="checkbox"/> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	RM5WC00021-221 (AOS) RM5WC00022-221 (MA, WI) RM5WC00047-221 (FL, ME, NJ)	01/01/2022 01/01/2022 01/01/2022	01/01/2023 01/01/2023 01/01/2023	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 2,000,000 E.L. DISEASE - EA EMPLOYEE \$ 2,000,000 E.L. DISEASE - POLICY LIMIT \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
Borough of Fair Lawn is included as additional insured (except workers compensation) where required by written contract.

CERTIFICATE HOLDER Borough of Fair Lawn 8-01 Fair Lawn Avenue Fair Lawn, NJ 07410	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Marsh USA Inc.</i>
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NOTICE OF CANCELLATION BY US TO THIRD PARTY ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Schedule

60 days before the effective date of cancellation by us we will mail or deliver notice to:

Name: **PER SCHEDULE ON FILE WITH THE BROKER**
Address: **PER SCHEDULE ON FILE WITH THE BROKER**

The following condition is added to the policy:

Notice of Cancellation by Us to Third Party

1. If we cancel this policy for any reason other than non-payment of premium, notice of cancellation of not less than the number of days shown in the Schedule will be mailed or delivered to the third party identified in the Schedule.
2. We will mail or deliver our notice to the third party at the address shown in the Schedule.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. We will not notify the third party if cancellation is at your request.
5. We will not notify the third party in the event of non-renewal.
6. Our failure to notify the third party does not invalidate cancellation as respects you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
NOTICE OF CANCELLATION BY US TO THIRD PARTY

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE PART

Schedule

60 days before the effective date of cancellation by us we will mail or deliver notice to:

Name: PER SCHEDULE ON FILE WITH THE BROKER
Address: PER SCHEDULE ON FILE WITH THE BROKER

The following Condition is added to the policy:

Notice of Cancellation By Us To Third Party

1. If we cancel this policy for any reason other than non-payment of premium, notice of cancellation of not less than the number of days shown in the Schedule will be mailed or delivered to the third party identified in the Schedule.
2. We will mail or deliver our notice to the third party at the address shown in the Schedule.
3. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. We will not notify the third party if cancellation is at your request.
5. We will not notify the third party in the event of non-renewal.
6. We will not notify the third party if cancellation is due to non-payment of premium.
7. Our failure to notify the third party does not invalidate cancellation as respects you.

NOTICE OF CANCELLATION TO DESIGNATED PERSON OR ORGANIZATION

If we cancel this policy for any statutorily permitted reason other than nonpayment of premium, we shall endeavor to mail or deliver a written notice in accordance with state law to the person or organization shown in the Schedule below. Proof of mailing will be sufficient proof of such notice.

This endorsement shall not operate directly or indirectly to benefit any person or organization not named in the schedule below.

SCHEDULE

Designated Person or Organization:

PER SCHEDULE ON FILE WITH THE COMPANY

Designated Person or Organization Address:

Contract, Permit or Job Number:

Number of Days Notice: 30

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/01/2022 Policy No. R5WC00021221

Endorsement No.

Insured SUEZ NORTH AMERICA INC

Premium \$ INCL.

Insurance Company EVEREST PREMIER INSURANCE COMPANY

Countersigned By _____

SCHEDULE 6
AFFIRMATIVE ACTION LANGUAGE

FORM A-18

BOROUGH OF FAIR LAWN
SERVICES AGREEMENT
Exhibit A

MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE
N.J.S.A. 10:5-31 et seq.
N.J.A.C. 17:27 et seq.

GOODS, GENERAL SERVICES, AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affection-al or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up-grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA-302 (electronically provided by the Division and distributed to the public agency through the Division's website at: http://www.state.nj.us/treasury/contract_compliance).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase & Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase & Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

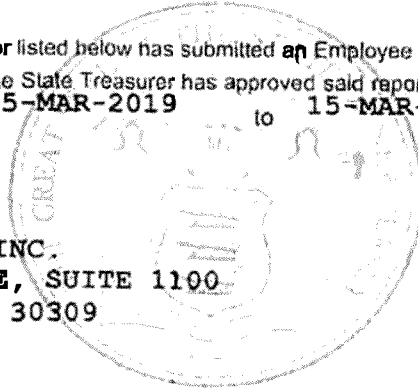
Certification 50452

CERTIFICATE OF EMPLOYEE INFORMATION REPORT

RENEWAL

This is to certify that the contractor listed below has submitted an Employee Information Report pursuant to N.J.A.C. 17:27-1.1 et. seq. and the State Treasurer has approved said report. This approval will remain in effect for the period of 15-MAR-2019 to 15-MAR-2022

UTILITY SERVICE CO., INC.
1230 PEACHTREE ST., NE, SUITE 1100
PERRY GA 30309



Elizabeth Maher Muoio

ELIZABETH MAHER MUOIO
State Treasurer

SCHEDULE 7

RESERVED

SCHEDULE 8

RESERVED

SCHEDULE 9
MINIMUM FINANCIAL CRITERIA

- (a) Provider must provide evidence of its ability to be able to provide sufficient performance security to the Borough in the form of an annually renewable Performance Bond or an Irrevocable Performance Letter of Credit in the amount of the value of a full year of the Services to be rendered under the Services Agreement.
- (b) In order to ensure that the Provider will have the financial strength, resources and capacity to perform the Services for the term of the Services Agreement, the Provider must meet and maintain, for the term of the Services Agreement, the following Minimum Financial Criteria:
1. The Provider shall have a net worth for each of the three (3) most recent reviewed financial statements of at least Ten Million (\$10,000,000) Dollars.
 2. The Provider shall have had annual pre-tax earnings for two (2) out of the three (3) most recent reviewed financial statements of at least One Million (\$1,000,000) Dollars per year.
 3. The Provider shall have unencumbered cash and/or cash equivalents (such as marketable securities) of at least Five Million (\$5,000,000) Dollars as of the date of its most recent reviewed financial statement. A portion of the "Cash Equivalent" can include an unencumbered line of credit up to Two Million Dollars

(\$2,000,000) that the Respondent can access during the term of the Services Agreement. If a Provider determines to satisfy the "Cash Equivalent" through use of the unencumbered line of credit, the Provider shall submit a letter from an authorized representative evidencing the current existence of such a line of credit and verifying the encumbered and unencumbered portions thereof and the ability of the Provider to access such line of credit during the term of the Services Agreement. If the bank's letter qualifies the Provider's ability to access the line of credit on the absence of any events of default by the Provider, the bank must agree to (and acknowledge such agreement in the letter) notify the Borough upon the occurrence of an event of default by the Provider. Notification of an event of default will entitle the Borough to seek additional security from the Provider or terminate the Services Agreement.

In order to demonstrate compliance with the Minimum Financial Criteria set forth above, the Provider must submit either (i) audited financial statements, or (ii) financial statements reviewed by an independent certified public accountant under generally accepted accounting principles, with full disclosure, and such financial statements shall be accompanied by an Accountant's Review Report. In either case, such financial statements must be submitted for each of the three most recent fiscal years.

SCHEDULE 10

MINIMUM TECHNICAL QUALIFICATIONS CRITERIA

1. Experience

- (a) Provider shall have been in the business of providing the Services for similarly sized water systems for at least five (5) years or shall demonstrate, by virtue of operating and maintaining its own facilities, equivalent experience. Identify when the company was organized, and if a corporation, where incorporated and how many years engaged in providing contract operations services equivalent experience under that name. For all facilities where continuous contract maintenance services have been provided for three (3) years or more, provide client name, contact person, address and phone number and a brief description of the projects.
- (b) Provider shall currently have under successful maintenance operation, either by virtue of ownership or service contracts, of at least two ground storage tanks serving a population of at least 25,000 persons.
- (c) Provider shall not have been terminated for cause on any public contract for maintenance services.

2. Personnel

- (a) Provider shall currently have in its employ at least three supervisory personnel experienced in providing supervision, troubleshooting, evaluations, and other technical information in support of maintenance of water facilities. The Provider shall provide a list indicating the names, education, experience and years of service with the Provider of these employees.

- (b) Provider shall currently have at least three personnel that are certified by the National Association of Corrosion Engineers (NACE) and the Society for Protective Coatings (SSPC). The Provider shall provide a table of NACE-Certified Field Personnel, which shall include the NACE Level and Certification Number of each person. The Provider shall also provide a table of SSPC-Certified Field Personnel, which shall include C-3 and C-5 Competent Lead Removal Supervisors.

- (c) Provider shall currently have in its employ sufficient technical, managerial, engineering, administrative, office, field, clerical, and accounting staff to efficiently and effectively render the Services as specified herein. Resumes of key individuals shall be supplied.

- (d) The Provider shall provide an organizational chart indicating the category of employee, numbers of employees required and level of

responsibility. The responsibilities of individuals named in (a) through (c) above shall be addressed and included in the chart.

3. Vehicles/Equipment

The Provider must own or lease, or evidence a commitment to own or lease, a sufficient number and type of vehicles and equipment as necessary to render the required Services. A list of all such equipment and vehicles shall be provided.

4. Maintenance Experience

- (a) The Provider shall supply evidence of the ability to conduct evaluations and engineering reviews and to implement improvements in maintenance practices to improve performance, efficiency and reliability.
- (b) The Provider shall demonstrate past experience with the Department and the United States Environmental Protection Agency in regard to compliance with all regulatory requirements and submissions, and in-depth knowledge of the Safe Drinking Water Acts, Clean Water Acts and State of New Jersey regulatory requirements.

- (c) The Provider shall provide evidence of experience in developing and implementing emergency contingency plans.
- (d) The Provider shall provide evidence of experience in developing maintenance manuals.
- (e) The Provider shall indicate its approach to sharing information with the Borough relative to technical, budgetary, and financial matters. Examples of reports (operation and management, budgetary, and regulatory submittals) should be included with the technical proposal.
- (f) The Provider should demonstrate prior experience with the development and implementation of cost-effective system improvements using a guaranteed performance contracting approach for potable water systems of similar size or larger as the Borough's.
- (g) Provider shall provide sufficient information regarding its demonstrated ability to provide additional support services to flexibly support unanticipated needs that may arise over the course of the engagement.

SCHEDULE 11

Annually Renewable Performance Bond

SCHEDULE 12

Annually Renewable Labor and Materials Bond

Exhibit B

Identification of Review Criteria set forth at <u>N.J.S.A. 58:26-25(c)</u>		
ITEM	Criteria	Services Agreement Provision/Information
BOARD OF PUBLIC UTILITIES		
1	N.J.S.A. 58:26-25(c)(1)	USC currently provides similar services to numerous public entities and provided an example list of nine (9) municipal clients. In addition, USC has provided similar services to the Borough in the past on annual contract basis.
2	N.J.S.A. 58:26-25(c)(2)	The fees and charges are set forth at Article VIII.
3	N.J.S.A. 58:26-25(c)(3)	USC is not a Regulated Public Utility.
4	N.J.S.A. 58:26-25(c)(4) / 58:26-23(1), (2) and (6)	(1) The Borough will retain all responsibility for establishing and collecting rates and fees from customers for water service – see Section 8.5; (2) The Borough is responsible for the financing of any capital improvement undertaken by USC – See Article VII; (6) None of the Borough’s public employees will be affected by the Services Agreement.
LOCAL FINANCE BOARD		
6	N.J.S.A. 58:26-25(d)(1)	The terms and conditions of the Services Agreement do not materially impact the Borough’s ability to punctually pay principal and interest on outstanding debt or the Borough’s ability to provide essential services.
7	N.J.S.A. 58:26-25(d)(2)	The Services Agreement does not contemplate the payment of any concession fee by USC.
8	N.J.S.A. 58:26-25(d)(3) / 58:26-23(3), (4), (5), (7) and (8)	(3) Please see Article VI; (4) Please see Section 10.16; (5) Please see Article IX; (7) The Borough has retained the right to negotiate and enter into contracts for the sale of bulk water; and (8) Please see Section 2.2.

Exhibit C

**LEGAL NOTICE
BOROUGH OF FAIR LAWN**

**NOTICE OF PUBLIC HEARING
BOROUGH OF FAIR LAWN**

Pursuant to N.J.S.A. 58:26-24 et. seq., the Borough of Fair Lawn will hold a public hearing concerning a proposed **SERVICES AGREEMENT FOR THE MAINTENANCE AND REPAIR OF THE BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS** (the "Agreement").

The public hearing will be held on August 16, 2022, at 6:00 p.m. before Mayor and Council meeting at the Borough Hall located at 8-01 Fair lawn Avenue, Fair Lawn New Jersey 07410.

A complete copy of the proposed Agreement is available in the Clerk's office for review by the public during normal business hours.

The proposed Agreement does not include a concession fee.

The Record: July 10, 2022
Fee:\$13.95 (31) 0005326792

I, Nicholas J. Magarelli, of full age, being duly sworn, deposes and says: that he is the Acting Municipal Clerk of **THE BOROUGH OF FAIR LAWN** and that a notice, of which a copy is hereto annexed, was published in the said newspaper appeared being dated as follows:

THE RECORD – Date: 07/10/2022



Nicholas J. Magarelli, RMC
Municipal Clerk

Date: 7/11/22

SEAL

Exhibit D

STATE OF NEW JERSEY
COUNTY OF BERGEN
BOROUGH OF FAIR LAWN
PUBLIC HEARING
TUESDAY, AUGUST 16, 2022
COMMENCING AT 6:13 P.M.

.....
IN THE MATTER OF: :
SERVICE AGREEMENT FOR THE MAINTENANCE : TRANSCRIPT
AND REPAIR OF THE BOROUGH OF FAIR : OF
LAWN'S WATER STORAGE TANKS : PROCEEDING
.....

APPEARANCES:

DECOTTIS, FITZPATRICK, COLE & GIBLIN, LLP
BY: RYAN SCERBO, ESQUIRE
61 South Paramus Road, Suite 250
Paramus, New Jersey 07652
201-907-5264

ALSO PRESENT:
JIM VAN KRUININGEN, BOROUGH MANAGER

HUDSON COURT REPORTING & VIDEO (732) 906-2078

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	13-34 George Street	
9		
	TREVOR FERRIGNO	11, 20
10	61 Elden Place	
11		
12	EXHIBITS	
13	NO. DESCRIPTION	ID EVID
14	(NONE)	
15		
16		
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1 MR. SCERBO: We're going to open this
2 hearing now, if that's okay.
3 My name is Ryan Scerbo with the firm of
4 DeCotiis, FitzPatrick, Cole & Giblin.
5 And we're here tonight to talk about a
6 management contract between the Borough of Fair Lawn
7 and Veolia Water operations.
8 So the agenda we're going to go through
9 tonight is a summary of the procurement process that
10 the borough has undertaken, a summary of the contract
11 details and the contract between the borough and the
12 company, a process schedule from that what we've gone
13 over and from here to the end in terms of what we
14 need to accomplish and then a questions and comment
15 period to follow. Lastly we'll go over what the
16 final steps will be in the process.
17 So for our procurement summary process,
18 the borough issued a request for proposals under the
19 New Jersey Water Supply Public-Private Contracting
20 Act on March 22, '22.
21 One proposal was received from Utility
22 Service Company, Inc. on April 26, 2022. This is a
23 subsidiary of Veolia essentially and has been
24 actually servicing the borough in various capacities
25 for a number of years prior to this point in -- I

1 don't know if we call them one-off contracts, but
2 individual contracts for various projects.
3 Legal and technical review was
4 completed on or about March 17 [sic] and the proposal
5 was deemed to be compliant both with the RFP and
6 other legal requirements.
7 A draft of the contract was quickly
8 completed by July 8th. I say "quickly," because
9 although there's a lot of time between the 17th of
10 May and July 8th, I think the two parties exchanged
11 the contract maybe on one or two occasions. It was
12 just a matter of schedules and vacations. A copy of
13 that contract is placed in the clerk's office for
14 review and is available to the public.
15 And then this is the public hearing on
16 the contract, which is statutorily required by the
17 process.
18 Summary of some of the contract
19 details.
20 There are many benefits to these kinds
21 of contracts. One of them is the term. So we
22 entitled to actually go out for up to 40 years, but
23 the borough chose to select a 20-year scale for the
24 program. It allows advanced planning for both
25 parties, both the service provider and the borough in

1 terms of long-term operational issues.
 2 So we include an annual fixed fee for
 3 the performance of specific scopes within the service
 4 of the contract and in the first three years the
 5 annual fee is about 1.6 million.
 6 The remaining 17 years of the term, the
 7 annual fee ranges between 105,000 in year four and
 8 184,000 in year 20.
 9 The contract essentially is
 10 front-loaded. A lot of expensive tasks are performed
 11 in the first few years and that's partially because
 12 the borough was able to avail itself of our money
 13 issued by the federal government.
 14 So while we have that money and we have
 15 a deadline for spending it, we are going to be using
 16 it for some of those more costly services in the
 17 front end of the contract.
 18 The contract addresses maintenance and
 19 repair of the borough's four water storage tanks,
 20 including significant maintenance and repair for the
 21 first three years of the term of contract.
 22 The contract includes a payment and
 23 performance bond, which is renewable annually by the
 24 company. This will protect the borough from,
 25 perhaps, liens or uncompleted work, but it is a

1 renewable item and the borough will receive that
 2 protection each year.
 3 The contract also includes standard
 4 insurance provisions, so like we might see with any
 5 service provider and in addition to that, there's
 6 also standard indemnification language so that they
 7 are indemnifying us for their acts while they're
 8 performing their services.
 9 The process schedule is outlined in the
 10 next slide. We are right now in a public comment
 11 period. So following this presentation, the comment
 12 period will remain open for approximately seven days.
 13 Once that's completed, we'll complete a
 14 hearing report.
 15 We'll then submit to the council an
 16 ordinance asking them to introduce the ordinance,
 17 which would approve the contract.
 18 The council can't actually approve the
 19 contract until we receive approval from three state
 20 agencies; the DEP, the Local Finance Board, and the
 21 Board of Public Utilities.
 22 So we'll take the hearing report for
 23 the council to introduce ordinance. We'll form an
 24 application to those three agencies. We'll submit
 25 that to them for their review. They have 60 days

1 technically to review it, but it generally takes a
 2 little bit longer than that, somewhere in the order
 3 of 90 days or so, maybe perhaps a little bit longer.
 4 Once all three agencies have reviewed and approved
 5 our submission, which we hope will be on or about
 6 December 1st of this year, we'll ask the council then
 7 to conduct a second reading of the ordinance. That
 8 will include the council's acceptance of certain
 9 statements by the Local Finance Board about the
 10 contract itself or asking the council, for instance,
 11 to properly monitor the contract after it's awarded
 12 because of its lengthy term.
 13 The effective date of the service
 14 contract is targeted for January 1st, but I can tell
 15 you both the borough and the service provider would
 16 like to do it earlier, if that's possible. We have a
 17 lot of work to do and we like to get it done soon.
 18 So once the application is submitted to
 19 the agencies, our office, I'll also be asking the
 20 borough manager to be making phone calls to the
 21 agencies asking them if they will move us faster on
 22 their agendas.
 23 So we can open it up for comments and
 24 questions and then I can as a closing discussion, I
 25 can go over what the next steps would be following

1 tonight's meeting and how you could submit written
 2 comment going forward if there are any.
 3 With that, I can recognize anybody who
 4 might have a question or a comment.
 5 MS. COLES: Yes.
 6 My name is Pamela Coles, C-O-L-E-S.
 7 13-34 George Street, Fair Lawn.
 8 I know this is being done through a
 9 grant.
 10 MR. SCERBO: I'm sorry, when you say
 11 "this," do you mean the contract?
 12 MS. COLES: The contract.
 13 MR. SCERBO: So no, the contract is not
 14 being done with any kind of grant, but there is our
 15 money is being used to pay the service provider
 16 through the contract.
 17 MS. COLES: Okay.
 18 MR. SCERBO: That's the gist there.
 19 So that's the -- for some of the
 20 funding of the contract is federal funding.
 21 MS. COLES: Right.
 22 I believe that we were receiving
 23 somewhere around 30 -- 30 -- 3,000, 5,000, somewhere
 24 in the 30s million dollars.
 25 That's what I understand.

1 MR. SCERBO: No, I believe it's --
 2 MR. VAN KRUIJNINGEN: 3.4.
 3 MS. COLES: What was that?
 4 MR. VAN KRUIJNINGEN: 3.4 million.
 5 MS. COLES: 3.4, okay, got you.
 6 And what is the total -- what is the
 7 total cost altogether?
 8 MR. SCERBO: So the contract is for
 9 20 years and I do not have the full amount in front
 10 of me here.
 11 As I said in the first three years, the
 12 total for those three years is 1.6 million
 13 collectively and then each year thereafter for the 17
 14 remaining years, the annual fee ranges somewhere
 15 between 105 on the low end and 184,000 on the high
 16 end for each of those remaining 17 years.
 17 The scale dramatically declines over
 18 time, becomes more of a routine services that are
 19 being provided by the contractor.
 20 It's those first three years that have
 21 a lot of more expensive items.
 22 MS. COLES: That's why you said
 23 front-loaded?
 24 MR. SCERBO: Correct, right.
 25 MS. COLES: And I got a majority of the

1 services that are being provided will take a lot and
 2 then afterwards it will be more settle, more like
 3 maintenance.
 4 MR. SCERBO: Right.
 5 The first three years, those heavy-lift
 6 tasks and then the remaining 10 years will become
 7 more of a routine maintenance service.
 8 MS. COLES: Okay.
 9 Thank you.
 10 MR. SCERBO: Sure.
 11 MS. COLES: And you said, you mentioned
 12 that you were going to explain the process of how to
 13 submit any questions that will --
 14 MR. SCERBO: Yes.
 15 I believe, correct me if I'm wrong, but
 16 it's your e-mail address and my e-mail address,
 17 that's correct.
 18 MR. VAN KRUIJNINGEN: That's correct, on
 19 the last page.
 20 MR. SCERBO: And it's on the -- it
 21 should be on the last page of the presentation,
 22 because I have another copy.
 23 MS. COLES: Ryan Scerbo?
 24 MR. SCERBO: Yes.
 25 MS. COLES: And --

1 MR. SCERBO: DeCotiis Law, yup, that's
 2 me and then the borough manager is there as well.
 3 If you submit anything, it's probably
 4 best to copy both of us, because I'll be trying to
 5 compile the questions and formulate answers.
 6 Just so you know, you probably won't
 7 get a response e-mail with an answer.
 8 The report will actually provide the
 9 response in writing for you and when that's
 10 available, I'll get that to the borough manager for
 11 posting on the borough's website.
 12 MS. COLES: Good, thank you.
 13 MR. FERRIGNO: I have a couple of
 14 questions. My name is Trevor Ferrigno.
 15 I'm a resident at 61 Elden Place in
 16 town.
 17 THE COURT REPORTER: Please spell your
 18 last name.
 19 MR. FERRIGNO: "F" as in Frank
 20 -E-R-R-I-G-N-O.
 21 THE COURT REPORTER: Thank you.
 22 MR. FERRIGNO: You're welcome.
 23 So I moved into town about three years
 24 ago. It was my understanding, actually one of the
 25 things that I did look into was the water

1 contamination issue with the supply here and I was
 2 under the impression that we have received somewhere,
 3 like \$19,000,000.00 worth of funding; was that
 4 inaccurate?
 5 MR. VAN KRUIJNINGEN: Correct.
 6 MR. FERRIGNO: Because I pulled up the
 7 article, one of the articles here.
 8 It was in 2018, I guess, so it's a
 9 little bit outdated.
 10 So that never came through, I guess.
 11 MR. VAN KRUIJNINGEN: That is entirely
 12 separate from this. That has -- do you want to cover
 13 that, Ryan? That's the money for the treatment
 14 facility for the PRP.
 15 MR. SCERBO: Oh, okay.
 16 MR. VAN KRUIJNINGEN: Do you want to
 17 explain that?
 18 MR. SCERBO: Yeah, so there is
 19 Westmoreland Well Field here in town.
 20 There are known potentially responsible
 21 parties, they're called PRPs by, you know, the EPA's
 22 terminology.
 23 They are suspected of being the cause
 24 of certain contamination at the Westmoreland Well
 25 Field. Those wells have been turned off. They're

1 not being utilized.
 2 The PRPs have been approved by the EPA
 3 to install certain treatment devices in an effort to
 4 make that water potable again so that we can utilize
 5 that water.
 6 In the meantime, the PRPs through an
 7 agreement with the borough are paying for water that
 8 we're using to supplement for the loss of that water.
 9 So we're purchasing water from another
 10 party and they're paying the bill for that. As the
 11 borough manager incurs those costs, they pay the
 12 borough a certain amount of money to cover those
 13 costs.
 14 MR. FERRIGNO: Got it, okay.
 15 All right, fair enough.
 16 Yeah, because what we're talking about
 17 today has nothing to do with the contamination
 18 remediation or anything like that.
 19 MR. SCERBO: That's right.
 20 MR. FERRIGNO: This is just maintenance
 21 of collection and delivery?
 22 MR. SCERBO: Just the water tanks
 23 themselves. You know, you can think of the borough
 24 has production wells, they also have storage tanks
 25 and then they have a distribution system that brings

1 the water to you and at those wells, there are also
 2 treatment devices.
 3 So the borough, in this case, is
 4 contracting for services to take care of maintaining
 5 the water tanks.
 6 MR. FERRIGNO: Got it.
 7 MR. SCERBO: We have four of those in
 8 town.
 9 MR. FERRIGNO: Okay. And you said
 10 there was -- how long was the public bid advertised?
 11 We only received one response to advertisement?
 12 MR. SCERBO: Yeah.
 13 I don't want to speak for -- Greg
 14 Storms is here from the winning company, I don't want
 15 to speak for the company, but I think there are fewer
 16 service providers in this area at the moment than
 17 there used to be in the past, let's say, particularly
 18 on smaller contracts like the one we're talking about
 19 today.
 20 Some of the larger scale contracts,
 21 like a large city, let's say, Jersey City or even the
 22 City of Camden, those are big operations contracts
 23 and they actually have a scope much bigger than what
 24 we're talking about tonight.
 25 So these kinds of opportunities are

1 more niche, I would say, and there are fewer
 2 competitors and one of the premier service providers
 3 is Veolia.
 4 MR. FERRIGNO: Got it.
 5 MR. SCERBO: But it was advertised
 6 pursuant to statutory process. I think the process
 7 is over 30 days. I'd have to take a look. It might
 8 be 60.
 9 MR. FERRIGNO: And on your process
 10 schedule here, it said January 2022. I just want to
 11 confirm that's 2023.
 12 MR. SCERBO: It should be '23.
 13 MR. FERRIGNO: All right. And in terms
 14 of the scope of work, you said we're just talking
 15 about the tanks, right, the storage tanks?
 16 MR. SCERBO: Correct.
 17 MR. FERRIGNO: All right. And for the
 18 -- has there been -- is there a place that I can go
 19 on and look at what the scope of the work is, the
 20 nature, the current condition of the tanks, what the
 21 plan --
 22 MR. SCERBO: So I don't know if you can
 23 see the current condition of the tanks and also, you
 24 know, drawings of the tanks and things like that will
 25 be kept out of public view by the borough for obvious

1 reasons, security reasons, but the contract itself,
 2 which includes the scope of work that will be
 3 performed by the service provider is available for
 4 public review and I don't know if it's in the
 5 manager's office or the clerk's office.
 6 MR. VAN KRUIJNINGEN: Clerk's office.
 7 MR. SCERBO: Clerk's office.
 8 MR. FERRIGNO: Okay. So it's not dig
 9 -- not electronically --
 10 MR. SCERBO: I don't think -- was it
 11 scanned to the website?
 12 I don't think so.
 13 MR. VAN KRUIJNINGEN: I don't believe
 14 it's online. Actually, I believe it might be. Hold
 15 on.
 16 MR. SCERBO: We'll double check that.
 17 MS. COLES: Sorry, I have another
 18 question.
 19 MR. SCERBO: Sure.
 20 I just want to make sure, are you done,
 21 sir, with your questions.
 22 MR. FERRIGNO: Yeah, I just had -- any
 23 relation to the Paramus Scerbos?
 24 MR. SCERBO: Oh, myself?
 25 Almost all of use are related to each

1 other, they come out of Hudson County and --
 2 MR. FERRIGNO: I grew up with a
 3 gentleman Jeff Scerbo.
 4 MR. SCERBO: Okay. I don't know him,
 5 but, yeah.
 6 MR. FERRIGNO: Fair enough.
 7 MR. SCERBO: Sorry, go ahead.
 8 MS. COLES: A little family tree there.
 9 MR. SCERBO: Yeah.
 10 MS. COLES: This is in regard to the
 11 testing.
 12 From my understanding, that we have to
 13 go to the EPA, we will have to go to the EPA for the
 14 testing and the testing, is that --
 15 MR. SCERBO: No.
 16 So the way the testing in the borough's
 17 water system works is with the DEP and we submit
 18 regular sampling to the DEP, there's a process for
 19 doing that and they tell the borough what, you know,
 20 to sample for at the water distribution location and
 21 then there's certain sampling out in the distribution
 22 system itself.
 23 So, no, there's no EPA regulation of
 24 New Jersey Water.
 25 Now, there can be an EPA regulation at,

1 for instance, the Westmoreland Well Field, as I
 2 mentioned, because that has a contaminated property
 3 that's risen to the level of federal concern.
 4 So that's a different situation than
 5 what we have with the general water system here in
 6 New Jersey.
 7 Sorry, borough manager has something to
 8 add.
 9 MS. COLES: Yeah, I hear -- I see him.
 10 I've got eyes in the back of my head.
 11 Maybe I'm getting something confused,
 12 borough manager. The last time CMA was here, there
 13 was a question -- and I want to make sure you're
 14 hearing me loud enough.
 15 THE COURT REPORTER: Yes.
 16 MS. COLES: There was a question
 17 regarding an EPA test that would involve some form of
 18 clay. Maybe I'm getting the --
 19 MR. VAN KRUININGEN: Nothing to do with
 20 this, talking about two totally separate --
 21 MS. COLES: Two different separate
 22 things.
 23 MR. VAN KRUININGEN: This is strictly
 24 -- this is strictly a maintenance contract for the
 25 maintenance and preventative maintenance of the four

1 water storage tanks of the borough.
 2 MS. COLES: Got you.
 3 MR. SCERBO: I should have added that
 4 the service provider will not be doing any sampling.
 5 MR. VAN KRUININGEN: Nothing
 6 whatsoever.
 7 MS. COLES: Okay. Yeah, so they're two
 8 separate and distinct. Okay, that's it.
 9 Thank you.
 10 MR. VAN KRUININGEN: Main page of the
 11 borough website underneath "latest news and
 12 announcements," the announcements of this public
 13 hearing is there and if you click on that, if you go
 14 to the bottom of the services agreement, the draft
 15 and services agreement, which includes the scope of
 16 work is right there and it's self explanatory, it has
 17 a couple of pictures.
 18 It also gives the 20-year layout, 119
 19 pages, happy to read it.
 20 MR. SCERBO: They have the tank --
 21 photos of each tank are in there, at least one
 22 photograph.
 23 MS. COLES: Got you.
 24 Thank you.
 25 MR. SCERBO: No problem.

1 Any other questions?
 2 MR. FERRIGNO: Yeah, just a couple
 3 more.
 4 In terms of the current condition and
 5 the expected work to be performed and any potential,
 6 you know, modifications or scope increases that may
 7 be, you know, coming down the line of any unforeseen
 8 circumstances or unforeseen conditions of the tanks
 9 where obviously, you know, those things are quite
 10 ambiguous and can range from small things to major
 11 things, which could substantially impact the cost to
 12 the borough, me as a taxpayer and what else in the
 13 town, what level of due diligence was done on the
 14 tanks prior to to make sure that the contractor knows
 15 what they're getting into and the pricing and the
 16 proposal that they delivered were in line with the
 17 work that's expected.
 18 MR. SCERBO: We provided the bidders
 19 with inspection reports of the tanks, the most recent
 20 inspection reports.
 21 In this case, the bidder who actually
 22 won is also very familiar with the infrastructure
 23 here in the borough, has performed other services for
 24 the borough in the past.
 25 And, again, I won't speak for them, but

1 I'm sure that had a lot to do with their interest in
 2 performing the work here in the borough.
 3 Contracts like these, just so you know,
 4 one of the advantages of them is that we can move on
 5 the fly in terms of changed work.
 6 So, ordinarily, under Local Public
 7 Contracts Law, if we were to award a contract to the
 8 service provider for a specific items and then
 9 they're out there and they find three more things
 10 that we must take care of, there's only so much we
 11 can do in terms of change orders and pricing before
 12 it becomes not legal for us to issue more change
 13 orders.
 14 So what we've done in this case is the
 15 contract includes within it opportunities for change
 16 orders. Those change orders will be presented to the
 17 governing body. They would never just be authorized
 18 and one of the reasons why people enter into these
 19 service contracts for this kind of term is so that
 20 they can utilize the flexibility of the contract to
 21 provide more services in the future if they arise and
 22 it also opens up the service provider to being able
 23 to say to you instead of shying away from it, hey,
 24 that tank really needs this done to it or that done
 25 to it before it's an emergency.

1 So, you know, once it's an emergency,
 2 all of our hands are tied and we're stuck with the
 3 price that we get, but in this kind of case, the
 4 service provider is there more frequently, they can
 5 point out additional work that we didn't think of or
 6 didn't know about before and then we can take the
 7 time and actually consider it, bring it to the
 8 governing body and determine whether we want to award
 9 it to them as a change order or do we want to go out
 10 to bid, which we're not obligated to give them any
 11 additional work, so...
 12 MR. FERRIGNO: All right.
 13 And I guess the final question on that
 14 would be in terms of, you know, QA, QC, make sure the
 15 work is done properly, timely and things like that,
 16 do we have staff in town that is able to who are
 17 familiar with the work to be performed to check these
 18 things regularly.
 19 MR. SCERBO: I think that's why we have
 20 the rest of the group in attendance this evening,
 21 because I think -- here with you this evening is the
 22 borough's -- the head of the borough's water staff
 23 both for operations and for distribution and
 24 production.
 25 MR. FERRIGNO: All right.

1 Thank you.
 2 MR. SCERBO: Any other questions?
 3 (No response.)
 4 MR. SCERBO: With no other questions,
 5 I'm going to bring the hearing to a close.
 6 Before I do, though, again, I remind
 7 you that you do have our e-mails if you do have other
 8 questions, if other people have questions, you can
 9 share the information with them and can submit
 10 written questions.
 11 When the final report is produced,
 12 again, we'll make it available to the borough to put
 13 on the website and then we'll proceed with agency
 14 applications and obtaining approval.
 15 The next two times you will hear the
 16 governing body talking about this item will be an
 17 introduction of an ordinance, which, again, is just
 18 an introduction and then they'll be a public hearing
 19 on the second reading of the ordinance, which will
 20 also incorporate the results of the agency's response
 21 to our application.
 22 So any other questions? Borough
 23 manager, anything you want to --
 24 MR. VAN KRUIJNINGEN: No, sir.
 25 MR. SCERBO: With that, I think we'll

1 bring the hearing to a close officially.
 2 (Whereupon, this meeting is concluded.)
 3 Time noted: 6:33 p.m.)
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CERTIFICATE

I, LAURA A. CARUCCI, C.C.R., R.P.R., a Notary Public of the State of New Jersey, Notary ID.#50094914, Certified Court Reporter of the State of New Jersey, and a Registered Professional Reporter, hereby certify that the foregoing is a verbatim record of the testimony provided under oath before any court, referee, board, commission or other body created by statute of the State of New Jersey.

I am not related to the parties involved in this action; I have no financial interest, nor am I related to an agent of or employed by anyone with a financial interest in the outcome of this action.

This transcript complies with regulation 13:43-5.9 of the New Jersey Administrative Code.

LAURA A. CARUCCI, C.C.R., R.P.R.
License #XI02050, and Notary Public
of New Jersey #50094914, Notary
Expiration Date December 3, 2023

Dated:

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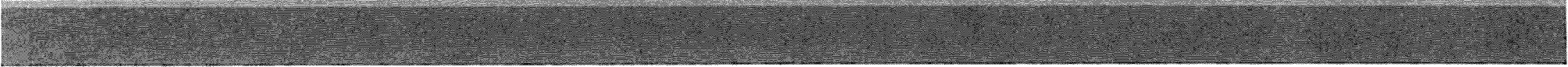


BOROUGH OF FAIR LAWN

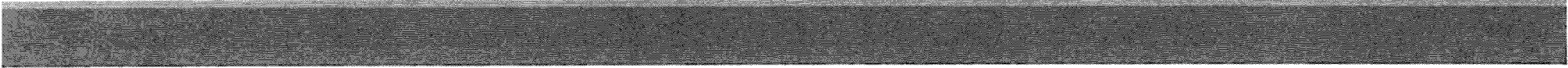
SERVICE AGREEMENT FOR THE MAINTENANCE AND
REPAIR OF THE BOROUGH OF FAIR LAWN'S WATER
STORAGE TANKS

AUGUST 16

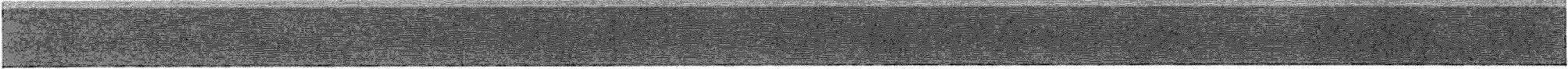
Agenda

- Procurement Summary
 - Summary of Contract Details
 - Process Schedule
 - Questions and comment
 - Next Steps
- 

Procurement Summary

- Borough issued a Request for Proposals pursuant to the New Jersey Water Supply Public – Private Contracting Act, N.J.S.A. 58:26-19 et seq. on March 22, 2022;
 - One Proposal was received from Utility Service Co., Inc. on April 26, 2022;
 - Legal and Technical review was completed on or about May 17, 2022;
 - A draft contract was completed on July 8, 2022, and placed in the Clerk’s office for public inspection; and
 - Public Hearing on contract – August 16, 2022
- 

Summary of Contract Details

- 20-year Term;
 - Includes a fixed annual fee for the performance of a specific scope of services for each contract year of the Term
 - First 3 years of the Term the Annual Fee will be \$1.6 million;
 - Remaining 17 years of the Term the Annual Fee ranges between \$105,877 in year 4 to \$184,727 in year 20;
 - Addresses the Maintenance and Repair of the Borough's four (4) water storage tanks
 - Including significant maintenance and repair work in the first three (3) years of the Term; and
 - Includes payment and performance bonds renewable annually for the Term as well as insurance and indemnification provisions to protect the Borough.
- 

Process Schedule

	TASK	DATE
1	Public Comment – Written comments can be submitted to the Borough until August 23, 2022	Now – August 23, 2022
2	Complete a Hearing Report	By
3	Council to Introduce Ordinance Approving the Service Agreement	September 6, 2022
4	Council to adopt Resolution authorizing submission of an application to the Local Finance Board (LFB)	September 6, 2022
5	Submit Application to LFB, Board of Public Utilities and NJDEP	By September 19, 2022
6	Receive State Agency Approvals	Estimated – by December 1, 2022
7	Council to Conduct Second Reading of Ordinance Approving the Service Agreement and Resolution Accepting Findings of LFB	
8	Effective Date of Service Agreement	January 1, 2022



Questions and Comments

Written Comments can be submitted to:

Ryan Scerbo:

rscerbo@decotiislaw.com

Jim Van Kruiningen:

jvankruiningen@fairlawn.org



Exhibit E

Borough of Fair Lawn



September 20, 2022

RESOLUTION NO. 293-2022

RESOLUTION OF THE COUNCIL OF THE BOROUGH OF FAIR LAWN, IN THE COUNTY OF BERGEN, STATE OF NEW JERSEY, AUTHORIZING THE PREPARATION AND APPLICATION TO THE LOCAL FINANCE BOARD SEEKING APPROVAL OF A SERVICES AGREEMENT WITH UTILITY SERVICES COMPANY, INC., PURSUANT TO AND IN ACCORDANCE WITH N.J.S.A. 58:26-19 ET. SEQ.

WHEREAS, the Borough of Fair Lawn (the "Borough") and Utility Services Company, Inc. ("USC") have negotiated the Services Agreement for the maintenance and repair of the Borough's water storage tanks ("Water Tanks") which are a part of the Borough's water supply system servicing the residents and business within the Borough; and

WHEREAS, pursuant to N.J.S.A. 58:26-19 et seq., (*New Jersey Water Supply Public-Private Contracting Act*) (referred to herein as the "Act") the Borough is required to submit the Services Agreement to the New Jersey Department of Environmental Protection, the Department of Community Affairs, Local Finance Board; and the Board of Public Utilities (collectively referred to herein as the "Agencies") for review; and

WHEREAS, the Borough desires to make application to the Local Finance Board with respect to a proposed Services Agreement with USC; and

WHEREAS, the Borough believes that Services Agreement: (a) is in the public interest; and (b) will further support and enhance the health, welfare, convenience or betterment of the inhabitants of the Borough; and (c) the amounts to be expended for said purpose or improvements are not unreasonable or exorbitant; and (d) is an efficient and feasible means of providing services for the needs of the inhabitants of the Borough and will not create an undue financial burden to be placed upon the Borough; and (e) is in the best interests of the Borough and its residents,

NOW THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Fair Lawn, County of Bergen, State of New Jersey, as follows:

1. The aforementioned recitals are incorporated herein as though fully set forth at length.
2. The Mayor, with the assistance of the Borough's retained professionals, is hereby authorized and directed to prepare and submit an application to the Local Finance Board seeking approval of Services Agreement in conformance with the Act.

3. The Local Finance Board is hereby respectfully requested to consider such application and to record its findings, recommendations and/or approvals as the same may be required by law.
4. If any part of this Resolution shall be deemed invalid, such parts shall be severed and the invalidity thereby shall not affect the remaining parts of this Resolution.
5. A copy of this resolution shall be available for public inspection at the office of the Borough Clerk.
6. This Resolution shall take effect immediately.

	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz			X			
Rottenstrich			X			
Krause	X		X			
Cutrone		X	X			
Peluso			X			

The within Resolution was duly adopted by the Borough Council at their meeting of September 20, 2022.



Nicholas J. Magarelli, RMC
Municipal Clerk

I, **Nicholas J. Magarelli**, Municipal Clerk of the Borough of Fair Lawn, do hereby certify that the within resolution is a true and exact copy, duly adopted by the Borough Council at their meeting of September 20, 2022.



Nicholas J. Magarelli, RMC
Municipal Clerk

Date: 9/21/2022



Borough of Fair Lawn



ORDINANCE NO. 2638-2022

AN ORDINANCE AUTHORIZING A SERVICES AGREEMENT FOR THE MAINTENANCE AND REPAIR OF THE BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS WITH UTILITY SERVICES COMPANY, INC.

WHEREAS, the Borough of Fair Lawn ("Borough") owns and operates multiple water storage tanks (collectively referred to herein as the "Water Tanks") which are an integral part of the Borough's water supply system servicing the residents and businesses of the Borough; and

WHEREAS, the Borough undertook a competitive procurement pursuant to N.J.S.A. 58:26-19 et seq., (*New Jersey Water Supply Public-Private Contracting Act*) (referred to herein as the "Act"), to obtain proposals from qualified firms to provide contractor operator services to the Borough for the Water Tanks; and

WHEREAS, following a rigorous evaluation process, the City selected Utility Services Company, Inc. ("USC") and negotiated a Services Agreement with USC a copy of which is attached hereto as **Exhibit A**; and

WHEREAS, the Borough made a copy of the Services Agreement available for public review for a period of two weeks prior to conducting a public hearing concerning the Services Agreement on August 16, 2022; and

WHEREAS, the Borough received minimal questions from the public at the public hearing and no written comments for a period of fourteen (14) days following the public comment period; and

WHEREAS, in accordance with the Act the Borough is required to submit the Services Agreement to the New Jersey Department of Environmental Protection, the New Jersey Board of Public Utilities and the Department of Community Affairs (the "Agencies") for review;

NOW THEREFORE BE IT ORDAINED, by the Borough Council of the Borough of Fair Lawn, that it hereby authorizes the submission of the Services Agreement to the Agencies for review and approval, and upon approval by the Agencies, directs the Mayor to execute the Services Agreement in a form substantially similar to the form attached hereto as **Exhibit A** and to take all necessary actions and execute such additional ancillary documents and agreements necessary to fully effectuate the intent and purpose of this ordinance.

Section 1. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are hereby repealed as to such inconsistency only.

Section 3. This ordinance shall take effect immediately.

Section 4. This ordinance shall be published by the Borough Clerk.

Section 5. If any provision on this ordinance is declared invalid, such invalidity shall not affect the other provisions of this ordinance. Furthermore, the other provisions of this ordinance are deemed to be severable and remain in full force and effect.

Introduced: September 20, 2022

	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz			X			
Rottenstrich		X	X			
Krause	X		X			
Cutrone			X			
Peluso			X			

Adopted:

	Motion	Second	Aye	Nay	Abstain	Absent
Reinitz						
Rottenstrich						
Krause						
Cutrone						
Peluso						

Attest:

Approved:

 Nicholas J. Magarelli, RMC
 Municipal Clerk

 Kurt Peluso
 Mayor