

**CONTRACT BETWEEN THE BOROUGH OF BEACH  
HAVEN AND UTILITY SERVICE GROUP WATER  
SOLUTIONS, LLC**

This CONTRACT (the "Contract") dated as of the \_\_\_\_\_ day of September, 2024 (the "Execution Date") and effective as of the [Insert Date] (the "Effective Date"), is between the BOROUGH OF BEACH HAVEN, Ocean County, New Jersey ("Borough"), a municipal corporation organized and existing under the laws of the State of New Jersey and UTILITY SERVICE GROUP WATER SOLUTIONS, LLC, ("Company"), a corporation organized under the laws of the State of New Jersey, a public utility regulated by the New Jersey Board of Public Utilities (Borough and Company may each be referred to as a "Party" and together as the "Parties").

WHEREAS, Borough owns the water system which provides potable water service to residents and commercial and industrial establishments in the Borough ("Borough Water System," as further defined herein); and

WHEREAS, the Borough Water System provides water storage, transmission and distribution services to the Borough's residents and customers; and

WHEREAS, the proper provision of such water storage, transmission and distribution services is necessary for the public health, safety and welfare of the Borough's residents and customers and the financial well-being of the Borough; and

WHEREAS, the Borough Water System includes one elevated water storage vessels identified as the 200,000-gallon elevated water storage vessel located on Engleside Avenue in the Borough (the "Engleside Tank"); and

WHEREAS the Borough Water System includes one concrete reservoir storage vessel, identified as the 500,000-gallon concrete reservoir located on Engleside Avenue in the Borough (the "Engleside Reservoir;" and together with the Engleside Tank, collectively hereinafter, "Storage Tank System"); and

WHEREAS the Storage Tank System is critical to maintaining the quality, quantity and security of the water provided within the Borough Water System; and

WHEREAS the Borough Water System distributes water from five (3) wells owned and operated by the Borough and the Storage Tank System. The wells divert groundwater from the Kirkwood aquifer which is approximately 700 feet below sea level; and

WHEREAS, the Borough has determined to enter into an agreement to provide for the maintenance of that portion of the Borough Water System consisting of the Storage Tank System; and

WHEREAS, the Borough has determined that the officers and employees of the Company include staff that are able to properly maintain the Storage Tank System in accordance with Federal, State and local laws and regulations; and

WHEREAS, Borough solicited proposals for a public-private partnership pursuant to N.J.S.A. 58:26-19 et seq; and

WHEREAS, Company provided the sole response to the solicitation, but is nonetheless qualified to provide the service to the Borough; and

WHEREAS, the Borough 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 of the Storage Tank System;

NOW, THEREFORE, in consideration of the foregoing premises and mutual promises set forth herein, the Borough and the Company agree as follows:

## ARTICLE I - DEFINITIONS

**Section 1.1. Definitions.** Capitalized terms used in this Contract are defined below.

"Asset Management Plan" means the asset management plan for the Storage Tank System as required by the WQAA.

"Authorized Representative of the Company" means [Insert Name].

"Borough Contracts" mean all contracts executed by the Borough related to the Storage Tank System, including the lease agreements in connection with cell towers located on the Storage Tank System and the arrangement between the Borough and the Ocean County in connection with the public safety radio system located on the Storage Tank System.

"Borough Event of Default" shall have the meaning assigned to such term in Section 3.3.

"Capital Improvements and Major Repairs" shall mean those capital improvement items, other than the Scheduled Capital Improvements, and all renewals, repairs, replacements, additions, improvements, materials or equipment related to the Storage Tank System, that: (i) have a five year or greater useful life; (ii) cost in excess of FIVE THOUSAND DOLLARS (\$5,000); (iii) are approved by the Borough as provided herein; and (iv) can be capitalized in accordance with the principles set forth in the Local Bond Law, N.J.S.A. 40A:2-I et seq. and are otherwise consistent with the policies of the Local Finance Board within the Division of Local Government Services in the New Jersey Department of Community Affairs. Any uncertainty regarding improvement and/or repairs shall be resolved by the Authorized Representatives.

"Borough Water System" means the infrastructure owned and/or used by the Borough, including but not limited to transmission, distribution and storage facilities; the Storage Tank System, all properties, assets (tangible and intangible) and franchises of the Borough and all improvements, additions and extension thereto, purchased, constructed or otherwise acquired by the Borough which relate to the purposes of providing potable water service to residents and commercial and industrial establishments in the Borough.

"Company Event of Default" shall have the meaning assigned to such term in Section 3.2 hereof.

"Contract" means this agreement as same may be amended from time to time.

"Contract Year" means each twelve (12) month period after the Effective Date.

"Debt Service" means the amount of money required, on an annual basis, to pay the principal and interest obligations of the Borough related to all debt issued to finance costs related to the Storage Tank System.

"Existing Borough Employees" means the eight (8) persons employed by the Borough in connection with the operation and management of the Storage Tank System as of the Effective Date.

"Force Majeure" means those events set forth in Section 4.5 of this Contract.

"Limitation of Company Liability" means the liability limitation set forth in Section 3.6.

"LPCL" mean the Local Public Contracts Law, N.J.S.A. 40A: 11-1 et seq.

"Maintenance Items and Minor System Repairs" means those items set forth in Article IV and Exhibit B hereof or otherwise identified in the Contract.

"Minor System Repairs" mean those repairs that (i) occur routinely in the operation of the Storage Tank System; and (ii) can not be capitalized in accordance with the principles set forth in the Local Bond Law, N.J.S.A. 40A:2-1 et seq. and are otherwise consistent with the policies of the Local Finance Board within the Division of Local Government Services in the New Jersey Department of Community Affairs. Material costs for individual Minor System Repairs exceeding \$500 and Minor System Repairs exceeding an aggregate of \$2,500 per year will be reimbursed by the Borough to the Company following the Borough's receipt and acceptance of satisfactory documentation of said material expenses. Any uncertainty regarding repairs shall be resolved by the Authorized Representatives.

"OSHA" means the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.

"Ordinances" means the municipal ordinances and/or resolutions governing the maintenance of the Storage Tank System.

"Permits" means permits, approvals and/or licenses issued by a federal, state or local regulatory agency or private party that is necessary for the proper maintenance of the Storage Tank System.

"PEOSHA" means the Public Employees Occupational Safety and Health Act, N.J.S.A. 34:6A-25.

"RCRA" means the Resource Conservation and Recovery Act, 42 U.S.C. 690 1 et seq.

"Scheduled Capital Improvements" shall have the meaning assigned to such term in Section 4. 1 and as identified in Exhibit C hereto.

"SWDA" means the Safe Drinking Water Act, 42 U.S.C. 300f et seq.

"Services" mean all the duties, obligations and services as described herein to be provided by the Company that are related to the maintenance of the Storage Tank System, including, but not limited to, the development, installation and provision of the Scheduled Capital Improvements.

"State" means the State of New Jersey.

"Storage Tank System" shall have the meaning assigned to such term in the recitals.

"Term" shall have the meaning assigned to such term in Section 3. 1.

"WQAA" means the Water Quality Accountability Act, N.J.S.A 58:31- 1 et seq.

**Section 1.2. Interpretation and Construction.** In this Contract, unless the context otherwise requires:

A. All references to Articles, Sections or Exhibits shall, unless otherwise indicated, refer to the Articles, Sections or Exhibits in this Contract.

B. Words importing a particular gender mean and include correlative words of every other gender and words importing the singular number mean and include the plural number and vice-a-versa.

C. Words importing persons mean and include firms, associations, partnerships (including limited partnerships), trusts, corporations, limited liability companies and other legal entities, including public or governmental bodies, as well as natural person

D. All notices to be given hereunder and responses thereto shall be given, unless a certain number of days is specified, within reasonable time.

E. Unless otherwise indicated, any "fees and expenses" shall be required to be customary and reasonable.

## ARTICLE II - CONTRACT

**Section 2.1. Relationship Between the Borough and the Company.** On and after the Effective Date, the Company shall maintain the Storage Tank System on the terms and conditions set forth in this Contract and in the "Borough of Beach Haven Request for Proposals: Full-Service Water Storage Tank Asset Management and Maintenance Plan," ("RFP") published on April 17, 2024, annexed hereto as Appendix A and incorporated herein by reference, and to which Company submitted a proposal dated May 20, 2024. Company's obligations to perform are contained in, but not limited to, the Detailed Scope of Work, described in the RFP, and incorporated herein by reference. This Contract shall not establish any relationship other than as set forth herein.

## ARTICLE III - TERM

**Section 3.1. Term.** The term of this Contract will commence on the Effective Date and, unless earlier terminated in accordance herewith, will continue for twenty (20) years therefrom (the "Term").

**Section 3.2. Termination of Contract by the Borough for Cause.**

A. Upon the happening of any of the following events of default (each a "Company Event of Default"), and subject to the provisions set forth in Section 6.3 regarding the resolution of disputes by arbitration, the Borough shall have the right to terminate this Contract and/or to pursue a cause of action for actual damages, as appropriate:

1. The failure by the Company to provide the Services in accordance with the terms and provisions of this Contract, the Ordinances and/or applicable law;

2. The failure of the Company to perform or observe any of its covenants, agreements, obligations and/or duties created by this Contract;

3. If any representation, warranty and/or covenant made by the Company is false and/or misleading in any material respect and the legality of this Contract or the ability of the Company to perform the Services is thereby adversely affected;

4. Commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding against or by the Company, its parent corporation, and/or any of their subsidiaries and/or related companies which materially and adversely affects the Company's ability to perform the Services;

5. The consent by the Company, its parent corporation, and/or any of its subsidiaries and/or related companies to the appointment of a receiver, liquidator, assignee, trustee or custodian, or the making by any such parties of an assignment for the benefit of creditors which materially and adversely affects the Company's ability to perform the Services; and

6. The failure on the part of the Company, its parent corporation, and/or any of their subsidiaries and/or related companies to generally pay their debts as they come due which materially and adversely affects the Company's ability to perform the Services.

B. Upon the happening of any Company Event of Default, the Borough shall provide written notice to the Company setting forth in detail the alleged Company Event of Default. The Company shall have thirty (30) days after the receipt of such written notice from the Borough to cure and/or correct such Company Event of Default or to deliver to the Borough a written notice alleging that no such Company Event of Default has occurred and setting forth in detail its reasoning as to why no such Company Event of Default has occurred. If the Company does not cure or correct such Company Event of Default within the thirty (30) day period indicated, or does not deliver to the Borough the written notice described above within such thirty (30) day period, the Borough may immediately terminate this Contract. Notwithstanding the above, if there is a Company Event of Default as described in Section 3.2(A)(4) or (5), the Borough shall have the right to immediately terminate the Contract upon written notice to the Company and to seek any remedies or damages available at law or in equity. If the Borough terminates this Contract in accordance with the above provisions, the Borough shall be obligated to pay to the Company the proportionate share of the Annual Fee, or any other amounts, due for the Services provided by the Company to the date of termination of the Contract net of any amounts owed to the Borough due to such Company Event of Default.

**Section 3.3. Termination of Contract by the Company for Cause.**

A. Upon the happening of any of the following events of default (each a "Borough Event of Default"), and subject to the provisions set forth in Section 6.3 hereof regarding the resolution of disputes by arbitration, the Company shall have the right to terminate this Contract:

1. The failure by the Borough to pay the Annual Fee or make any other payment required to be made by the Borough pursuant to the terms hereof;

2. If any representation, warranty and/or covenant made by the Borough is false and/or misleading in any material respect and the legality of this Contract or the ability of the Borough to carry out its duties or obligations hereunder is thereby adversely affected;

3. Commencement of any bankruptcy, insolvency, liquidation and/or similar proceeding by or against the Borough which materially and adversely affects the Borough's ability perform its duties or obligations hereunder;

4. The consent by the Borough to the appointment of a receiver, liquidator, assignee, trustee or custodian, or the making by the Borough of an assignment for the benefit of creditors which materially and adversely affects the Borough's ability to perform its duties or obligations hereunder; and

5. The failure on the part of the Borough to generally pay its debts as they come due which materially and adversely affects the Borough's ability to perform its duties or obligations hereunder.

B. Upon the happening of any Borough Event of Default described above, the Company shall provide written notice to the Borough setting forth in detail the alleged Borough Event of Default. The Borough shall have thirty (30) days after the receipt of such written notice from the Company to cure and/or correct such Borough Event of Default or to deliver to the Company a written notice alleging that no such Borough Event of Default has occurred and setting forth in detail its reasoning as to why no such Borough Event of Default has occurred. If the Borough does not cure or correct such Borough Event of Default within the thirty (30) day period indicated, or does not deliver to the Company the written notice described above within such thirty (30) day period, the Company may immediately terminate this Contract. Notwithstanding the above, if there is a Borough Event of Default as described in Section 3.3(A)(3) or (4), the Company shall have the right to immediately terminate the Contract upon written notice to the Borough. If the Company terminates this Contract in accordance with the above provisions, the Borough shall be obligated to pay to the Company the proportionate share of the Annual Fee, or any other amounts, due for the Services provided by the Company to the date of termination of the Contract. Such payments shall constitute total satisfaction of any right, claim, cause of action or entitlement that the Company has or may have against the Borough as a result of any Borough Event of Default.

**Section 3.4 Termination of the Contract Due to Unenforceability.** If any court, agency or other entity with competent jurisdiction shall determine that this Contract is unenforceable and/or prohibited by law, then the Contract shall be terminated. If this Contract is terminated in accordance with this Section 3.4, the Borough shall be obligated to pay to the Company the

proportionate share of the Annual Fee, or other amounts, due for the Services provided by the Company to the date of termination of the Contract.

**Section 3.5 Transition.** Company shall cooperate in good faith with Borough, its agents, contractors, and subcontractors and shall provide for the orderly transition of Services from Borough and/or its contractors to Company.

**Section 3.6 Termination by Borough.** The Borough may cancel this Agreement without cause and for any reason upon completion of the capital improvements, i.e., after year 5. Company shall be entitled to payment up to the date of termination.

#### **ARTICLE IV - MAINTENANCE OF AND CAPITAL IMPROVEMENTS TO THE STORAGE TANK SYSTEM**

**Section 4.1. Annual Fee.**

A. Annual Fee.

1. The Annual Fee paid to Company by Borough for each year shall be as set forth in Appendix B (the "Annual Fee"), as submitted in the "Pricing Proposal" dated May 20, 2024, submitted by Company.

2. The Annual Fee is intended to cover all costs for all Services provided for in this Contract (including Maintenance Items and Minor System Repairs, unless otherwise provided herein, and other costs specifically identified herein) other than for Scheduled Capital Improvements or Capital Improvements and Major Repairs or for costs otherwise specifically identified herein as being the responsibility of the Borough.

B. Scheduled Capital Improvements.

1. In accordance with the schedule set forth in Exhibit C hereto, the Company shall undertake and complete the Scheduled Capital Improvements identified in Exhibit C hereto (the "Scheduled Capital Improvements"). The Scheduled Capital Improvements shall be funded by the Borough.

2. The cost of the Scheduled Capital Improvements paid to the Company by the Borough shall be as set forth in Appendix B in accordance with the payment procedure in Section 4.4(A)(5).

**Section 4.2. Borough Responsibilities.** The Borough shall:

A. Own the fixed assets of the Storage Tank System.

B. Control all finances including billing for and collection of rents, budgeting, capital improvement financing and payment of any fees and charges in connection with the Storage Tank System.

C. Promptly procure and continually maintain in full force and effect and in accordance with their respective terms those Permits that it is responsible for under the terms of this Contract.

D. Adopt all resolutions and enact all ordinances necessary to carry out the provisions of this Contract and enforce all such resolutions and/or ordinances.

E. Provide access to the Storage Tank System for the Company, its agents and employees at all times.

F. Designate the Authorized Representative of the Borough to act as contract administrator and liaison with the Company in connection with the performance of Services by the Company.

G. Refrain from enacting any ordinances and/or adopting any resolution that would impair the ability of the Borough or the Company from complying with this Contract.

H. Promptly pay all Debt Service, when due on any bonds or notes or other obligations by or on behalf of the Borough issued with respect to the Storage Tank System.

I. Establish any and all annual budgets, rents, rates, Borough fees and other charges to be collected from the customers of the Borough Water System, which rents, rates, Borough fees and charges shall be at least sufficient to pay all amounts due to the Company, other vendors and necessary for Debt Service hereunder.

J. Acquire and maintain all access, rights of way and easements necessary for the Company to maintain the Storage Tank System.

K. The Borough shall comply with SWDA, RCRA, CERCLA (as owner), OSHA, PEOSHA, WQAA, LPCL, and any and all other applicable local, State and Federal laws, codes, ordinances and regulations as they pertain to the Storage Tank System. The Borough shall pay all regulatory fines and penalties, without limitations, assessed against the Company and/or the Borough for the Borough's non-compliance therewith.

**Section 4.3. Company Responsibilities.**

A. The Company shall maintain and repair the Storage Tank System during the term of this Contract on behalf of the Borough in compliance with all Federal, State and Local laws, regulations and permits consistent with this Contract.

B. During the term of this Contract, the Company shall keep the Storage Tank System in good repair and working order, consistent with industry standards and shall maintain and repair the Storage Tank System in an efficient and economical manner all in accordance with this Contract.

C. The Company shall develop and implement an approach for future rehabilitation of the Storage Tank System and ensure coordination of Storage Tank System operations with the Borough.

D. The Company is responsible for all costs of materials, equipment and supplies in maintenance of the Storage Tank System.



E. The materials for Minor System Repairs shall be purchased by the Company and the costs thereof in excess of \$500 per individual repair and Minor System Repairs exceeding an aggregate of \$2,500 per year, with an appropriate accounting, shall be reimbursed by the Borough as a Borough cost responsibility.

F. The Company shall provide annual reporting to the Borough, the form of which shall be determined by the Authorized Representatives, for Services performed for the Storage Tank System.

G. The Company is responsible for all labor and equipment costs for the Maintenance Items and Minor System Repairs.

H. All purchases that utilize Borough funds must comply with the provisions of the LPCL, the Borough's purchasing regulations, the Business Registration Certificate (BRC) requirements, and the IRS requirement for an executed W-9 all for submission to the Borough's Purchasing Agent.

I. Materials, Labor, Vehicles. The Company shall provide, at its cost and expense, all labor, materials, machinery, vehicles, equipment, fuel, power, chemicals, supplies, spare parts, expendables, consumables, and all else necessary therefor or incidental thereto which is necessary for the, maintenance or repair of the Storage Tank System in accordance with applicable laws, regulations and ordinances and the Contract.

J. Hazardous Substances. The Company is responsible for testing the current materials in place on the tanks for hazardous content. If, while providing the Services and/or during the course work necessary to make the Scheduled Capital Improvements or repairs and/or improvements to the Storage Tank System, hazardous or toxic waste or materials (as defined in applicable Federal and/or State laws and regulations) are discovered by the Company, it shall NOT be the obligation of the Company to remove and dispose of such hazardous substance. The Company shall immediately notify the Borough upon becoming aware of the presence of such hazardous or toxic waste or materials, and shall immediately notify such other governmental agencies as may be required by laws and shall take such further actions to assist the Borough in protecting the Health, Safety and Welfare of the Public. The Borough shall indemnify the Company for any and all costs or expenses it may incur in connection with this Section. If a hazardous substance impairs the maintenance of the Storage Tank System, the Borough shall remediate the hazardous substance so as to permit the Company to maintain the Storage Tank System pursuant to the Contract. The Borough shall pay for all costs for the removal of the hazardous substance and any clean-up activities associated with such disposal, discharge, spill or leak. The Borough shall have the right to pursue the parties legally responsible for the disposal, discharge, spill or leak for the costs of the removal of the offending materials and any clean-up activities.

K. Response Requirements for Emergencies. The Company shall respond to Storage Tank System emergencies as soon as reasonably possible, but in any event the Company shall begin planning and staging to mobilize to respond to an emergency at least twelve (12) hours after

the Company's receipt of written notice, which may be sent via email or text message, of an emergency from the Borough.

L. Maintenance Program. The Company shall maintain a comprehensive maintenance program for the Storage Tank System. The maintenance management program shall:

1. Seek to ensure efficiency, long-term reliability and conservation of capital investment in accordance with industry standards, if any;
2. Be otherwise in accordance with industry standards; local, State and Federal codes; manufacturer's equipment recommendations;
3. Be documented; and
4. Provide all warranties on new equipment purchased after the Effective Date of the Contract to the Authorized Representative of the Borough.
5. Any modifications or major maintenance affecting the appearance of the facilities in the Storage Tank System which are visible to the public shall be performed only after receipt of the prior written approval of the Authorized Representative of the Borough.

M. Reporting Requirements.

1. The Company shall provide comprehensive annual reports in a format reasonably satisfactory to the Borough for maintenance plans and activities including conditions of the Storage Tank Systems, and safety reports regarding accidents, injuries, and damages to Borough property and other relevant information.
2. The Company shall maintain up-to-date financial records as they apply to the Services rendered under the terms of this Contract. All records shall be kept in a manner that shall enable the Borough to comply with State municipal accounting procedures.
3. The Company shall provide the Borough with its periodic financial reports as they apply to the Services rendered under the terms of this Contract. At a minimum, such reports shall include the following:
  - a. Monthly reports on or before the twenty-fifth (25th) Day of each month with respect to the prior month and on or before twenty-fifth (25th) Day after the end of each Contract Year a cumulative report as of the end of each prior Contract
  - b. The Company shall deliver a year-end report to the Borough consisting of a compilation of the monthly and quarterly reports set forth above
  - c. The Company shall provide such other reports as may be reasonably requested from time to time by the Borough.

N. Staffing

1. Existing Borough Employees will continue their employment with the Borough.

2. The Company shall provide a staff of qualified and experienced employees who have direct experience in maintaining systems similar in nature and character to the Storage Tank System and shall provide such additional third-party support as may be needed to perform its duties and obligations hereunder. Said third parties shall be equally qualified for the particular services to be performed and shall not have any direct claim against the Borough whatsoever. The Company shall at all times maintain the necessary number of employees, staff and/or third-party contractors to maintain the Storage Tank System in accordance with this Contract and to adequately maintain the Storage Tank System in good repair and working order.

O. Licenses. The Company, its employees and/or its contractors shall acquire and hold, all required Federal, State and local approvals, licenses and certifications necessary maintain the Storage Tank System required to be obtained by the Company in accordance with this Contract.

P. Compliance with Laws, Regulations and Permits.

1. After the Effective Date, the Company shall comply with all applicable local, State and Federal laws, codes, ordinances and regulations as they pertain to the Services. The Company shall pay all regulatory fines and penalties, without limitation, assessed against the Borough, and/or the Company for the Company's non-compliance therewith.

2. The Company shall, where applicable, comply with, satisfy, and pay all costs or fees (but not remediation) associated with, all regulatory requirements pertaining to the Services.

3. All repairs and/or improvements to the Storage Tank System made by the Company shall be in accordance with existing Borough ordinances.

4. The Company shall comply with the provisions of all Borough Contracts. The Borough reserves the right to enter into future agreements in connection with the Storage Tank System provided those agreements

Q. Safety and Security. The Company shall provide, be responsible for and maintain security and safety for the Storage Tank Systems while providing the Services as is reasonably appropriate. The Company shall be responsible for initiating, maintaining and supervising all safety precautions in connection with its performance of the Services and shall take all reasonable precautions for safety of, and shall provide protection to prevent damage, injury or loss to the property and all materials; employees; subcontractor employees, agents, servants and invitees; and the premises where work is performed and all occupants or other persons at the premises. Security of all access points to the Storage Tank System, including fences, when reasonably required, shall be maintained in neat order and structural integrity. Gates, access points and doors, when reasonably required, shall be kept locked, structures shall be protected from unauthorized entry and security alarms, when reasonably required, shall be maintained. The Company shall conduct all maintenance of any facilities in compliance with applicable health and safety regulations, including, but not limited to: OSHA, general industry regulations, including requirements for confined space entry, respiratory protection and hazard communication. Notwithstanding the foregoing, the Borough and the Company agree that the intent of this Section 4.3(Q) is to ensure

that the Company secures its project sites while it is performing the Services on the Storage Tank System. This Section 4.3(Q) is not intended to shift responsibility to the Company for the overall security of the Storage Tank System during the Term of this Contract.

R. Notwithstanding Section 4.3(K), the Company shall immediately notify the Borough of any activity, problem or circumstances in connection with the Storage Tank System that it becomes aware of that threatens the health, safety and welfare of the users of the Storage Tank System or the residents of the Borough.

S. The Company shall maintain the Storage Tank System in accordance with all applicable laws and regulations.

T. The Company shall dispose of all sludge, scum, grit, screenings, trash and refuse generated by or resulting from the maintenance of the Storage Tank System in accordance with applicable regulations pertaining thereto.

U. The Company shall cooperate with and assist police, emergency management and fire personnel in times of fire or other emergencies. Notwithstanding the foregoing, the Company is not responsible or liable for the operation of the Storage Tank System or the Borough Water System, and events that are impacted by low water pressure (e.g., firefighting activity, etc.) or other operational issues shall be addressed by the Borough. However, the Company is willing to cooperate and assist the Borough in such emergencies to the best of its abilities.

V. Maintenance Items and Minor System Repairs of the Storage Tank System shall include, but not be limited to: those items identified in Exhibit B, routine painting and repairs of structures, both interior and exterior; inspection services and maintain and update the Asset Management Plan for the Storage Tank System.

W. Water Quality Standards. The Company shall comply with all Federal, State and local regulations concerning safe drinking water standards in the provision of Services during the term of this Contract.

L. The Company shall prepare, maintain and update, with input from the Borough, an Asset Management Plan for the Storage Tank System as required by the WQAA. Company shall pay all regulatory fines and penalties, without limitations, assessed against the Company and/or the Borough for the Company's non-compliance therewith.

X. Access to and Maintenance of Records. The Company shall ensure the maintenance of all records of information relevant to the maintenance of Storage Tank System during the term of the Contract. The Company shall cause to be maintained a computerized recordkeeping system for all maintenance functions performed, which shall be backed up offsite at a secure facility. The Company shall maintain all documentation related to products, transactions or services under this contract for a period of five years from the date of final payment. Such records shall be made available to the New Jersey Office of the State Comptroller upon request. The Borough shall maintain ownership of all records and data maintained in connection with the Storage Tank System which shall be provided by the Company to the Borough, in a format agreed to by the Borough, upon request of the Borough.

Y. Operations Review by Borough. 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 Company and any subcontractor throughout the term of this Contract.

**Section 4.4 Capital Improvements to the Storage Tank System.**

A. Scheduled Capital Improvements to the Storage Tank Systems.

1. Scheduled Capital Improvements shall be funded by the Borough and include the development, installation and/or provision, as applicable, by the Company in accordance with this Contract, of those Capital Improvements identified in Exhibit C.

2. The Borough may finance the Scheduled Capital Improvements pursuant to the provisions of the Local Bond Law, N.J.S.A. 40A:2-1 et seq., or otherwise by issuing its bonds or notes. The Company shall assist the Borough in making necessary applications, meeting with appropriate agencies or other parties and otherwise assisting the Borough as is necessary to secure said financing.

3. The Borough shall have the right to review and approve the design and development of, plans for and construction of, as applicable, the Scheduled Capital Improvements. The Borough may engage a separate qualified engineer for purposes of fulfilling this need at the Borough's cost.

4. Design and Performance Standards. All Scheduled Capital Improvements shall adhere to generally accepted water industry standards and practices.

5. Payment Request for Scheduled Capital Improvements; Submission of Progress Reports; Procedures - As payments are required for the Scheduled Capital Improvements under this Contract, the Company shall prepare and assemble and submit to the Borough's Finance Office, in a form as detained by the Borough Manager: (i) a request for payment from the Company accompanied by the original invoice from the Company, or the subcontractor as applicable, detailing the project and costs therefor and (ii) evidence of completion of the improvement or repair.

6. All Scheduled Capital Improvements shall adhere to the project schedule set forth in Exhibit C.

B. Design and Performance Standards. All Scheduled Capital Improvements and Capital Improvements and Major Repairs to the Storage Tank System shall adhere to generally accepted water industry standards and practices.

C. Payment Request for Capital Improvements and Major Repairs; Submission of Progress Reports; Procedures. As payments are required for the Capital Improvements and Major Repairs under this Contract, the Company shall prepare and assemble and submit to the Borough's Finance Office, in a form as detained by the Borough Manager: (i) a request for payment from the Company accompanied by the original invoice from the Company, or the sub-contractor as applicable, detailing the project and costs therefor and (ii) evidence of completion of the improvement or repair.

- D. Engineering and Related Services to be Supplied by the Company.
  - 1. Complete the Scheduled Capital Improvements; and
  - 2. Complete Minor System Repairs to the Storage Tank System.

**Section 4.5. Force Majeure.** Any one or more of the duties and obligations of the Borough and/or the Company shall be suspended so long as, and only to the extent that, performance thereof is prevented or impeded by an Act of God, civil disturbance, act of terrorism, governmental action, severe and unusual weather, plague, epidemic, pandemic, quarantine restrictions, or any other act or event that has had, or may reasonably be expected to have, a material adverse effect upon either party in its ability to perform its obligations under this Contract, if such acts or events are beyond the control of that party. Any cost relief resulting from a Force Majeure event shall be determined by the Parties hereto.

#### **ARTICLE V - REPRESENTATIONS AND WARRANTIES**

**Section 5.1. Representations of the Borough.** The Borough makes the following representations and warranties to and for the benefit of the Company:

A. The Borough is a municipal corporation organized, existing and in good standing under the laws of the State of New Jersey, with full legal right, power and authority to enter into and perform its obligations under this Contract.

B. The Borough has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Borough and constitutes a legal, valid and binding obligation of the Borough, enforceable against the Borough in accordance with its terms.

C. Neither the execution and delivery by the Borough of this Contract, nor the performance by the Borough of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Borough of the terms and conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Borough, (ii) conflicts with, violates or results in a breach of any term or condition of, or constitutes a default under any judgment or decree, or any agreement or instrument to which the Borough is a party or by which the Borough or any of its properties or assets is bound, (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or assets of the Borough, or (iv) will result in the acceleration of any obligation by which the Borough is bound or to which the Borough is a party.

D. The Borough is in compliance with all applicable laws, rules and regulations concerning the management, operation or maintenance of the Storage Tank System.

E. All requisite approvals, authorizations, orders, consents of, registrations or filings with, all governmental authorities necessary as of the date hereof for the maintenance of the Storage Tank System have been obtained or made by or on behalf of the Borough and are in full force and effect.

F. To the Borough's knowledge, there are and have been no violations of environmental laws or environmental permits relating to the Storage Tank System.

**Section 5.2. Representations of the Company.** The Company hereby makes the following representations and warranties to and for the benefit of the Borough:

A. The Company is a corporation duly organized and existing under the laws of the State of New Jersey and has full legal right, power and authority to enter into and perform its obligations under this Contract.

B. The Company has duly authorized the execution and delivery of this Contract and this Contract has been duly executed and delivered by the Company and constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms.

C. Neither the execution and delivery by the Company of this Contract, nor the performance by the Company of its obligations in connection with the transactions contemplated hereby, or the fulfillment by the Company of the terms and conditions hereof (i) conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Company, (ii) conflicts with, violates or results in a breach of any term or condition of, or constitutes a default under, any judgment or decree, or any agreement or instrument to which the Company is a party or by which the Company or any of its properties or assets is bound, (iii) will result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the revenues, properties or assets of the Company, or (iv) will result in the acceleration of any obligation by which the Company is bound or to which the Company is a party.

D. The Company has sufficient experience and expertise to provide the Services in accordance with this Contract.

E. The Company is not in breach of any applicable law that could have a material adverse effect on the ability of the Company to comply with its obligations under this Contract. Neither the Company nor, to its knowledge, any Affiliate of the Company is listed on any of the following lists maintained by the Office of Foreign Assets Control of the United States Department of the Treasury, the Bureau of Industry and Security of the United States Department of Commerce or their successors: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List or the Debarred List, list of persons engaging in investment activities in Iran, or on any other publicly available list of persons with which the State may not do business under applicable law.

F. The Company shall use products manufactured in the United States of America wherever available for repairs and improvements to the Storage Tank System.

## ARTICLE VI - MISCELLANEOUS

**Section 6.1. Notices.** All notices, demands, requests and other communications hereunder shall be deemed sufficient and properly given if in writing and delivered by email and in person to the following addresses ( or such other or additional addresses provided by notice to the other party)

or by email and sent by certified or registered mail, postage prepaid with return receipt requested at such addresses; provided if such notices, demands, requests or other communications are sent by mail, they shall be deemed as given on the third day following such mailing which is not a Saturday, Sunday or day on which United States mail is not delivered:

If to Borough:                         INSERT BOROUGH INFO

with a copy to:                         INSERT ATTORNEY INFO

If to the Company:                     INSERT COMPANY INFO

with a copy to:                         INSERT ATTORNEY INFO

**Section 6.2. Reserved.**

**Section 6.3. Dispute Resolution.** The sole and exclusive venue for resolution of any disputes arising out of this Contract shall be the Superior Court of New Jersey, located in Ocean County. The Parties agree to submit any dispute to mediation prior to instituting legal action. Such mediation shall be conducted by a retired Judge of the Superior Court.

**Section 6.4. Terms Incorporated.** The Terms and Conditions contained in Request for Qualifications and Proposals to which Company replied are incorporated herein by reference as it set forth at length herein.

**Section 6.5. No Waiver.** The failure of a Party to insist on strict performance of any or all of the terms of this Contract, or to exercise any right or remedy under this Contract, shall not constitute a waiver or relinquishment of any nature regarding such right or remedy or any other right or remedy. No waiver of any breach or default hereunder shall be considered valid unless in writing and signed by the Party giving such waiver, and no such waiver shall be deemed a waiver of any subsequent breach or default of the same or similar nature.

**Section 6.6. Severability.** In case one or more of the covenants, terms or provisions contained in this Contract shall be held invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, terms and provisions contained herein shall be in no way affected, prejudiced or disturbed and the remaining covenants, terms and provisions shall remain in full force and effect.

**Section 6.7. No Third-Party Beneficiaries.** No employees of the Borough or any other third party shall be deemed a third-party beneficiary of this Contract.

**Section 6.8. Assignment.** This Contract shall be binding upon the Parties' respective successors and permitted assigns. Neither of the Parties may assign this Contract or any rights or obligations



hereunder without the prior written consent of the other Party (which consent shall not be unreasonably withheld), and any such attempted assignment shall be void, except that the Company may assign this Contract, or any of its rights or obligations hereunder, to a subsidiary or affiliate of the Company, so long as such assignment does not relieve the Company of its obligations to the Borough as set forth herein, and the Company shall give prompt notice to the Borough of any such assignment and that assignee should assume all of the Company obligations under the Contract.

**Section 6.9. Indemnification.** (A) The Borough shall indemnify, defend and hold harmless the Company, its employees, officers and directors, from and against all liabilities, actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), in connection with or arising out of the Storage Tank System, except to the extent caused by negligence on the part of the Company (B) The Company shall indemnify, defend and hold harmless the Borough, its officers, elected officials and employees, from and against all liabilities, actions, damages, fines, penalties, claims, demands, judgments, losses, costs, expenses, suits and actions (including reasonable attorney's fees), or threat thereof, to the extent caused by negligence on the part of the Company in connection with the Company's maintenance of the Storage Tank System during the Term of this Contract. Any indemnification by the Company shall be limited to the liability limitations of the Limitation of Company Liability.

**Section 6.10. Complete Contract.** This Contract sets forth the entire understanding of the Parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the Parties relating to the subject matter hereof and may not be modified except in a writing executed by both Parties.

**Section 6.11. Titles and Headings.** Titles and headings to sections or paragraphs herein are inserted merely for convenience of reference and are not intended to be a part of or to affect the meaning or interpretation of this Contract.

**Section 6.12. Counterparts.** This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 6.13. Governing Law.** This Contract and all amendments hereof shall be governed by and construed in accordance with the internal laws of the State of New Jersey applicable to contracts made and to be performed therein, excluding its conflict of laws or choice of law principles. It is the intent of the Parties that the substantive law of the State of New Jersey shall apply to this Contract.

**Section 6.14 Insurance.** The Company shall not commence the performance of the Services under this Contract until it has provided insurance of the types and in such amounts as set forth herein and such other insurance as shall be requested by the Borough provided such insurance is commercially available and such insurance has been approved by the Borough (which approval shall not be unreasonably withheld) nor shall the Company allow any subcontractor to work on its subcontract until all similar insurance required of the subcontractor has been so obtained and approved or the Company has determined that the Company's insurance is sufficient to cover the

actions of the subcontractor. The Company shall maintain such insurance in full force and effect for the Term of this Contract and thereafter for a period of two (2) years. The cancellation of any insurance policy provided by the Company hereunder shall not invalidate the requirement of the Company to fully insure the liability, damages and accidents of the Borough as provided herein. The provisions of this Section 6. 1 4 are intended to survive termination of this Contract.

The insurance policies provided by the Company at its expense and more particularly described hereafter shall specifically designate the Borough as additional insured to the extent of the negligent acts, errors or omissions of the Company and shall further contain such provisions and shall insure the Borough and Borough officials, officers, employees, consultants and agents, pursuant to the terms and requirements set forth herein and to the fullest extent allowed by the law.

Within the Limitation of Company Liability set forth herein, the Company shall be solely responsible for all injuries to persons or property ( other than to the extent such costs are paid by worker's compensation insurance) occurring on account of the performance of the Services hereunder, regardless of who is performing the Services.

Certificates from the insurance carrier stating the limits of liability and the expiration date for each policy and type of coverage shall be filed with the Borough before the execution of the Contract. The certificates shall contain the following express obligation:

"This is to certify that the policies of insurance described herein have been issued to the insured for whom this certificate is executed and are in force at this time. In the event of cancellation or non-renewal in a policy affecting the certificate holder, thirty (30) days prior written notice shall be given the certificate holder except in the event of a cancellation for failure to pay the insurance premium wherein ten (10) days prior written notice shall be given to the certificate holder"

Such certificates shall specifically refer to this Contract and article, and paragraph 6.14 (a), (b), (c), (d) or (e) as applicable, in accordance with which the insurance is being furnished, and state that such insurance is as required by such paragraphs of this Contract.

All insurance coverage shall be with acceptable insurance companies only which possess an A.M. Best Company rating of at least A+. All insurance policies herein required of the Company 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 said State.

Insurance shall include the type of insurance specified below in not less than the amounts stated. Neither approval by the Borough nor a failure to disapprove insurance furnished by the Company, shall release the Company from full responsibility for liability, damages and accidents as set forth herein.

The Company shall take out and maintain during the Term of this Contract the following types of insurance in an amount, for each policy, not less than the amounts stated:

- a) Commercial General Liability Insurance
  - i. The Company shall maintain during the Term of this Contract such commercial general liability insurance as shall protect it against claims for damages resulting

from bodily injury, including wrongful death and property damages, which may arise from the performance of the Services hereunder regardless of by whom performed. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$1,000,000 each occurrence/\$2,000,000 aggregate.

Products liability and completed operations - \$2,000,000 aggregate.

Personal injury liability - \$2,000,000 aggregate.

ii. The commercial general liability insurance required by the preceding subparagraph shall include the following extensions of coverage:

(a) The coverage shall be provided under a commercial general liability form of policy or similar thereto.

(b) XCU Coverage - If the Contract requires any work procedures involving blasting, excavating, tunneling or other underground work, the liability coverage shall include standard blasting or explosion coverage, standard collapse coverage and standard underground coverage, commonly referred to as XCU property damage liability coverage with limits of \$1,000,000 CSL.

(c) Contractual liability coverage shall be included.

(d) Protective liability coverage shall be included to protect the Company against claims arising out of operations performed by others, including but not limited to contractors and their subcontractors.

b) Worker's Compensation and Employer's Liability Insurance in accordance with the requirements of the laws of the State and all other applicable laws and regulations. If any class of employees engaged in hazardous work cannot be protected by workmen's compensation and liability insurance, the Company shall provide adequate insurance for each class of employees.

The Company shall take out and maintain during the Term of this Agreement the applicable statutory Worker's Compensation Insurance with an insurance company authorized to write such insurance covering all of its employees, and in the case of any work sublet, the Company shall require the subcontractor similarly to provide statutory Worker's Compensation Insurance for the latter's employees. The Company shall take out and maintain during the Term of this Contract, Employer's Liability Insurance with a minimum limit of \$1,000,000 with an insurance company authorized to write such insurance and the Company shall require each of its subcontractors similarly to maintain Employer's Liability Insurance on its employees.

c) Automobile Liability and Property Damage Insurance

The Company shall take out and maintain during the Term of the Contract such Automobile Liability Insurance as shall protect it against claims for damages resulting from bodily injury, including wrongful death and property damage, which may arise from the operations of any owned, hired or non-owned automobiles used by or for it in any capacity, or by the Borough in connection with the performance of the Services hereunder. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury Limits and Property Damage - \$5,000,000 each occurrence/annual aggregate by the Company (or \$1,000,000 each occurrence/annual aggregate by each subcontractor).

- d) Excess Liability Insurance - \$5,000,000.
- e) Professional Liability Insurance in the case of any consulting engineering firm hired by the Company or any engineers, architects or other professionals to the extent the coverage is not provided by the comprehensive general liability insurance, in an amount not less than \$2,000,000.

To the extent the Company does not require subcontractors to maintain the same insurance coverage as required of the Company herein, the Company shall be responsible for the actions and liability of the subcontractors regardless of the insurance coverage obtained by the subcontractors.

If the Company receives insurance proceeds to cover any liabilities under this Contract, the Company shall have no claim against the Borough for such amounts provided that the Borough did not cause the events that result in the claim against the applicable insurance company.

If at any time the Company fails to maintain any of the foregoing policies, the Company shall, upon notice to that effect from such party, promptly obtain a new policy, submit the same to the Borough for its approval and submit a certificate of insurance as described above. Failure of the Company to take out and/or maintain any required insurance shall not relieve the Company of any liability under the Contract.

The Borough shall maintain insurance on the Storage Tank System during the Term of this Contract substantially similar in kind, scope and amount as that maintained by the Company as of the Effective Date. If any damage occurs to the Storage Tank System in connection with or as a result of the Services provided by the Company during the Term of this Agreement that is an insured risk under the policies described in this Section 6.14, the Company agrees that its policies provide coverage on a primary and non-contributory basis and should be used as the first basis of recovery. The Company, however, may request the Borough to file a claim under its insurance policy or policies for any amounts not covered under the policies maintained by the Company, and if insurance proceeds are paid to the Borough for such amounts, the Borough shall reimburse the Company but solely from such proceeds for the actual, documented cost it incurs to repair

the damage to the Storage Tank System in an amount not to exceed such insurance proceeds.

**Section 6.15. Limitation of Liability.**

A. No Consequential or Indirect Damages. Except as expressly provided below, in no event shall either Party be liable under this Contract for consequential, indirect, incidental, special, exemplary, punitive or enhanced damages arising out of, relating to, or in connection with any breach of this Contract, regardless of (A) whether such damages were foreseeable, (B) whether or not the Party was advised of the possibility of such damages and (C) the legal or equitable theory (contract, tort or otherwise) upon which the claim is based.

B. Exceptions. The limitations set forth above shall not apply to damages or liabilities arising from any: (i) grossly negligent acts or omissions of a Party; or (ii) willful or intentional misconduct of a Party.

IN WITNESS WHEREOF, the parties have caused this Contract to be duly executed by their duly authorized representatives, as of the day and year first above written.

WITNESS:

BOROUGH OF BEACH HAVEN

\_\_\_\_\_

\_\_\_\_\_

WITNESS:

[COMPANY NAME]

\_\_\_\_\_

\_\_\_\_\_





## MEMO

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FROM: Sherry Mason, Borough Manager

SUBJECT: FULL-SERVICE WATER STORAGE TANK ASSET MANAGEMENT  
AND MAINTENANCE PLAN  
– May 30, 2024 Public Hearing

DATE: June 14, 2024

No issues were raised at the public hearing held on May 30, 2024 at 4pm.

