

ORDINANCE 2019-02

AN ORDINANCE AUTHORIZING AND DIRECTING THE VILLAGE ADMINISTRATOR AND/OR MAYOR OF THE VILLAGE OF COMMERCIAL POINT TO ENTER INTO A WATER TANK MAINTENANCE CONTRACT WITH UTILITY SERVICE COMPANY, INC.

WHEREAS, the Village owns and maintains elevated water tanks; and

WHEREAS, the Village needs to better maintain and service the elevated water tanks; and

WHEREAS, Ohio Revised Code §9.29 permits municipal corporations to enter into professional service contracts regarding, engineering, repair, sustainability, water quality management, and maintenance of a water storage tank and appurtenant facilities owned, controlled or operated by the municipal corporation, under specific circumstances through direct negotiations; and

WHEREAS. The maintenance contract with Utility Service Company, Inc. meet all the criteria and circumstances specified in Ohio Revised Code §9.29.

NOW THEREFORE BE IT ORDAINED by the Council of the Village of Commercial Point, Ohio that:

SECTION 1: The Council of the Village of Commercial Point does hereby grant approval of the water tank maintenance contract for the 50,000 Gallon elevated tank located at 36 Carmel Court and attached collectively as Exhibit "A."

SECTION 2: The Village Mayor/Administrator hereby are directed to execute said water tank maintenance contract on behalf of the Village of Commercial Point.

SECTION 3: This Ordinance shall become effective upon the earliest date allowed by the laws of the State of Ohio.

Vote on Suspension of Readings:

Motion by: _____ 2nd _____

Roll Call:

___ Ben Townsend ___ Scott O'Neil ___ Bruce Moore
___ Aaron Grassel ___ Laura Wolfe ___ Jason Thompson

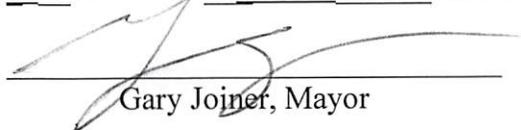
Vote on Passage of the Ordinance:

Motion by: Ben Townsend 2nd Bruce Moore

Roll Call:

Yes Ben Townsend Yes Scott O'Neil Yes Bruce Moore
Yes Aaron Grassel Yes Laura Wolfe Yes Jason Thompson

PASSED AND ADOPTED BY THE COUNCIL OF THE VILLAGE OF COMMERCIAL POINT ON THIS 4 DAY OF March 2019.

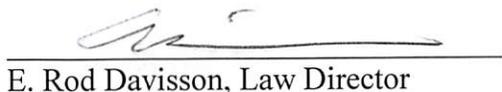


Gary Joiner, Mayor



Wendy Hastings, Fiscal Officer

Approved as to Form:



E. Rod Davisson, Law Director



Utility Service Co., Inc.

Water Tank Maintenance Contract

Owner: Village of Commercial Point
Commercial Point, OH

Tank Size/Name: 50,000 Gallon – Elevated - Tank 1

Location: 10 West Scioto Street

Date Prepared: January 22, 2019



WATER TANK MAINTENANCE CONTRACT

This Contract entered into by and between the **Village of Commercial Point, whose business address is 10 West Scioto Street, Commercial Point, OH 43116** (hereinafter referred to as "the Owner") and Utility Service Co., Inc., whose business address is 1230 Peachtree Street NE, Suite 1100, Atlanta, GA 30309 (hereinafter referred to as "the Company").

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

The Owner agrees to engage the Company to provide the professional service needed to maintain its **50,000** gallon water storage tank located at **36 Carmel Street, Commercial Point, OH 43116** (hereinafter "tank").

1. Company's Responsibilities. This Contract outlines the Company's responsibility for the care and maintenance of the above described water storage tank. Care and maintenance include the following:

- A. The Company will annually inspect and service the tank. The tank and tower will be thoroughly inspected to ensure that the structure is in a sound, watertight condition.
- B. Biennially, beginning with the first washout/inspection, the tank will be completely drained and cleaned to remove all mud, silt, and other accumulations that might be harmful to the tank or its contents. After cleaning is completed, the interior will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water. A written report will be mailed to the Owner after each inspection.
- C. The Company shall furnish engineering and inspection services needed to maintain and repair the tank and tower during the term of this Contract. The repairs include: steel parts, expansion joints, water level indicators, sway rod adjustments, and manhole covers/gaskets.
- D. The Company will clean and repaint the interior and/or exterior of the tank at such time as complete repainting is needed. The need for interior painting is to be determined by the thickness of the existing liner and its protective condition. When interior repainting is needed, procedures as outlined in A.W.W.A.-D102 specifications for cleaning and coating of potable water tanks will be followed. Only material approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting is to be determined by the appearance and protective condition of the existing paint. At the time the exterior requires repainting, the Company agrees to paint the tank with the same color paint and to select a coating system which best suits the site conditions, environment, and general location of the tank. When painting is needed, all products and procedures will be equal to, or exceed the requirements of the **State of**

Ohio, the American Water Works Association, and the Society for Protective Coatings as to surface preparation and coating materials.

E. A lock will be installed on the roof hatch of the tank.

F. The Company will provide emergency services, when needed, to perform all repairs covered under this Contract. Reasonable travel time must be allowed for the repair unit to reach the tank site.

G. The Company will furnish pressure relief valves, if requested by the Owner, so that the Owner can install the valves in its water system while the tank is being serviced.

H. The Company will furnish current certificates of insurance coverage to the Owner.

I. Chemical Clean Service.

1. During the washout/inspections, the Company will apply an NSF 60 approved chemical cleaning agent to the interior walls and floor surfaces of the Tank to treat mineral build-up and bio-film that form on the interior tank surfaces.

J. Mixing System Installation and Service.

1. The Company shall install an active mixing system in the Tank.

2. The particular unit that will be installed in the Tank is a NSF Approved PAX 100 active mixing system along with its component parts.

3. The Company will inspect and service the active mixing system when the tank is drained for washout inspections. The active mixing system will be thoroughly inspected to ensure that the active mixing system is good working condition. The Company shall furnish engineering and inspection services needed to maintain and repair the active mixing system during the term of this Contract.

4. The Owner shall be responsible for draining the tank if determined necessary by the Company due to operational problems with the mixing system. The provisions of Section 1.B shall be followed in this circumstance.

K. In the event that the Owner will not release the tank for service or is the cause of unreasonable delay in the performance of any service herein, the Company reserves the right to renegotiate the annual fees, and the Owner agrees to renegotiate the annual fees in good faith. In addition, the Owner hereby agrees that the Company can replace a washout inspection with a visual inspection, ROV inspection, or UAV inspection without requiring modification of this Contract.

2. Contract Price/Annual Fees.

The tank shall receive an exterior renovation, PAX installation and repairs prior to the end of Contract Year 1. The tank shall receive an interior renovation prior to the end of Contract Year 4. The first five (5) annual fees shall be \$58,501.00 per Contract Year. The annual fee for Contract Year 6 shall be \$28,233.00. Each anniversary thereafter, the annual fee shall be adjusted to reflect the current cost of service. The adjustment of the annual fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this Contract. A "Contract Year" shall be defined as each consecutive 12-month period following the first day of the month in which the Contract is executed by the Owner and each subsequent 12-month period thereafter during the time the Contract is in effect. For example, if a contract was signed by an Owner on April 17, 2012, Contract Year 1 for that contract would be April 1, 2012 to March 31, 2013, and Contract Year 2 for that contract would be April 1, 2013 to March 31, 2014 and so on.

3. Payment Terms.

The annual fee for Contract Year 1, plus all applicable taxes, shall be due and payable upon completion of the initial exterior renovation, PAX installation and repairs. Each subsequent annual fee, plus all applicable taxes, shall be due and payable on the first day of each Contract Year, thereafter. (Note: Due to the length of time that it takes to perform the initial renovation project, it is possible that two (2) annual fees could fall within one budget year for the Owner). Furthermore, if the Owner elects to terminate this Contract prior to remitting the first five (5) annual fees, then unpaid balance of the first five (5) annual fees shall be due and payable within thirty (30) days of the Company's receipt of the Owner's Notice to Terminate.

4. Structure of Tank. The Company is accepting this tank under program based upon its existing structure and components. *Any modifications to the tank, including antenna installations, shall be approved by Utility Service Co., Inc., prior to installation and may warrant an increase in the annual fee.*

5. Environmental, Health, Safety, or Labor Requirements.

The Owner hereby agrees that future mandated environmental, health, safety, or labor requirements as well as changes in site conditions at the tank site which cause an increase in the cost of tank maintenance will be just cause for modification of this Contract. Said modification of this Contract will reasonably reflect the increased cost of the service with a newly negotiated annual fee.

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

6. Excluded Items. This Contract does NOT include the cost for and/or liability on the part of the Company for: (1) containment of the tank at anytime during the term of the Contract; (2) disposal of any hazardous waste materials; (3) resolution of operational problems or structural damage due to cold weather; (4) repair of structural damage due to antenna installations or other attachments for which the tank was not originally designed; (5) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (6) negligent acts of Owner's employees, agents or contractors; (7) damages, whether foreseen or unforeseen, caused by the Owner's use of pressure relief valves; (8) repairs to the foundation of the tank; (9) any latent defects of the tank or its components (i.e., corrosion from the underside of the floor plates or corrosion in areas not accessible to maintain); or (10) other conditions which are beyond the Owner's and Company's control, including, but not limited to: acts of God and acts of terrorism. Acts of terrorism include, but are not limited to, any damage to the tank or tank site which results from unauthorized entry of any kind to the tank site or tank.

7. Termination. The Owner shall have the right to continue this Contract for an indefinite period of time providing payment of the annual fees is in accordance with the terms herein. This Contract is subject to termination by the Owner only if written notice of intent to terminate is received by the Company ninety (90) days prior to the first day of the upcoming Contract Year. Notice of Termination is to be delivered by registered mail to Utility Service Co., Inc., Attention: Customer Service, P O Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's management and/or Commissioners.

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

9. Indemnification. **THE COMPANY AGREES TO INDEMNIFY THE OWNER AND HOLD THE OWNER HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF ANY ACT, OMISSION, OR REPRESENTATION OF THE COMPANY OR ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES. IN TURN, THE OWNER AGREES TO INDEMNIFY THE COMPANY AND HOLD THE COMPANY HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF ANY ACT, OMISSION, OR REPRESENTATION OF THE OWNER OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES. THE INDEMNIFICATION PROVIDED IN THIS PARAGRAPH DOES NOT AFFECT THE COMPANY'S LIMITATIONS OF LIABILITY SET FORTH IN OTHER PARAGRAPHS OF THIS CONTRACT.**

10. Assignment of Receivables. The Company reserves the right to assign any outstanding receivables from this Contract to its Bank or other Lending Institutions as collateral for any loans or lines of credit.

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

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

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

This Contract is executed and effective as of the date last signed by the parties below.

OWNER:

Village of Commercial Point

By: _____

Title: _____

Print Name: _____

Date: _____

Witness: _____

Seal:

[Handwritten Signature]

Administrator

D. ROSS CREGO

03/05/2019

Wendy K. Hastings

COMPANY:

Utility Service Co., Inc.

By: _____

Title: Vice President, Tank Services LOB

Print Name: G. David Forrester

Date: January 22, 2019

Witness: _____

Lara Anderson

Seal:





February 21, 2019

Village of Commercial Point
Attn: Ross Crego
10 West Scioto Street
Commercial Point, OH 43116

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

Dear Mr. Crego,

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

CONTRACT DATE	ASSET NAME	PROJECT #	CUST #
1/25/2019	TANK 1	145280	27707

The Village of Commercial Point, OH elects to modify the Original Contract as follows:

The following sentence from Section 9, Indemnification, shall be removed from the contract:

In turn, the Owner agrees to indemnify the Company and hold the Company harmless from any and all claims, demands, actions, damages, liability, and expense in connection with loss of life, personal injury, and/or damage to property by reason of any act, omission, or representation of the Owner or its contractors, agents, or employees.

Other aspects of the Contract not addressed in this addendum remain in effect and unmodified. I appreciate this opportunity and look forward to working with you in the future.

Sincerely,

Ed Faust
Vice President, North Region

Village of Commercial Point, OH

Authorizing Signature: [Signature] Title: Administrator

The above signatories certify that they are duly authorized to sign this Addendum on behalf of the entities represented.

Printed Name: D Ross CREGO Date: 3/5/19