

**RECORDING  
NOT REQUIRED**

**RETURN TO:**

**CITY CLERK  
116 E. MARKET STREET  
TROY, IL 62294**

**CITY OF TROY  
RESOLUTION 2024-19**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A  
WATER TANK MAINTENANCE CONTRACT FOR SERVICES WITH  
UTILITY SERVICE CO., INC.**

**(DAIRY QUEEN TANK AT 810 EDWARDSVILLE ROAD)**

**RESOLUTION NO. 2024 – 19**

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE A WATER TANK MAINTENANCE CONTRACT FOR SERVICES WITH UTILITY SERVICE CO., INC. (DAIRY QUEEN TANK AT 810 EDWARDSVILLE ROAD)**

**WHEREAS**, the City Council for the City of Troy, Illinois, believes that it is in the best interest of the City and its citizens to enter into a Water Tank Maintenance Contract for Services with Utility Service Co., to ensure the proper maintenance of the Dairy Queen Water Tank at 810 Edwardsville Road; and

**WHEREAS**, the City and Utility Service Co. have negotiated the terms and conditions of the Contract attached hereto and incorporated herein as Exhibit A, and the City believes that such terms and conditions are in the best interest of the health, safety and general welfare of its citizens.

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF TROY, ILLINOIS, AS FOLLOWS:**

1. The recitals set forth above are hereby incorporated herein as if fully set forth.
2. The Mayor of the City of Troy, Illinois, is hereby authorized to execute and enter into the attached Water Tank Maintenance Contract for Services, and is further authorized to take all actions and sign all documents necessary to fulfill the intent of this Resolution.
3. This Resolution shall be in effect following its passage, approval and publication as provided by law.


**PASSED** by the City Council of the City of Troy, Madison County, Illinois, approved by the Mayor, and deposited in the office of the City Clerk this 1st day of July, 2024.

Aldermen :

Dawson	<u>AYE</u>	Italiano	<u>AYE</u>	Total:	
Flint	<u>AYE</u>	Knoll	<u>AYE</u>	<u>8</u>	Ayes
Hellrung	<u>AYE</u>	Manley	<u>AYE</u>	<u>0</u>	Nays
Henderson	<u>AYE</u>	Turner	<u>AYE</u>		



APPROVED:

  
\_\_\_\_\_  
David Nonn, Mayor  
City of Troy, Illinois

ATTEST:

  
\_\_\_\_\_  
Kimberly Thomas, City Clerk



**USG WATER**  
— SOLUTIONS —

## **Utility Service Co., Inc.**

### **10 Year Water Tank Maintenance Contract for Services**

**Owner:** City of Troy  
Troy, IL

**Tank Size/Name:** 500,000 Gallon Elevated – Dairy Queen Tank

**Location:** 810 Edwardsville Road

**Date Prepared:** June 17, 2024

## **WATER TANK MAINTENANCE CONTRACT FOR SERVICE**

This Water Tank Maintenance Contract for Services (hereinafter, "the Contract") is entered into by and between the **City of Troy, whose business address is 116 East Market Street, Troy, Illinois 62294** (hereinafter, "the Owner") and Utility Service Co., Inc., whose business address is 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069 (hereinafter, "the Company"). The Owner and the Company shall be individually referred to herein as "a Party" or collectively referred to herein as "the Parties".

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:

**1. Company's Engagement and Responsibilities.** The Owner agrees to engage the Company to provide the professional services needed to service its **500,000** gallon water storage tank located at **810 Edwardsville Road, Troy, Illinois 62294** (hereinafter, "the Tank"). This Contract outlines the Company's responsibility for the upfront renovation (hereinafter, the "Upfront Renovation") of the Tank and the care and maintenance of the Tank thereafter. The services (collectively, "the Services") that the Company will provide include the following:

- a. The Tank shall receive an Upfront Renovation, which will include: **exterior pressure wash, washout inspection and repairs prior to the end of Contract Year 1; interior renovation prior to the end of Contract Year 4; exterior renovation prior to the end of Contract Year 6; visual inspections in Contract Years 3 and 8; washout inspections in Contract Years 6 and 10; exterior pressure wash in Contract Year 10.** For purposes of this Contract, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the Contract is executed by the Owner and each successive 12-month period thereafter (hereinafter, "Contract Year" or collectively, "Contract Years").
- b. The Tank will be inspected to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to the Owner following each inspection.
- c. During the washout inspections, after the Tank is drained by the Owner, the Company will clean the interior of the Tank and perform a condition assessment on the Tank (hereinafter "Washout Inspection"). During each Washout Inspection, the Tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the Tank. After a Washout Inspection is completed, the interior of the Tank 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 before returning the Tank to service.
- d. The Company will install a lock on the roof hatch of the Tank; however, the provision of such lock does not guarantee the Tank's security during the term of the Contract. For the avoidance of doubt, security of the Tank and the site where the Tank is located (hereinafter, "Tank Site") are the responsibility of the Owner.

- e. When the Tank is taken out of service, 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. The Owner assumes all risk and liability for the installation and use of the pressure relief valves.
- i. The Company will furnish the Owner with current certificates of insurance, which will summarize the Company's insurance coverage.

**2. Contract Price/Annual Fees.** For the performance of the Services required by Section 1, the Owner shall pay the Company an Annual Fee (hereinafter, "Annual Fee") for each Contract Year of the Contract. The Annual Fee for Contract **Year 1** shall be **\$42,137.00**. The Annual Fee for Contract **Year 3** shall be **\$1,237.00**. The Annual Fees for Contract **Years 4, 5, 6, and 7** shall be **\$95,314.00** per Contract Year. The Annual Fee for Contract **Year 8** shall be **\$1,472.00**. The Annual Fee for Contract **Year 10** shall be **\$24,114.00**. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this Contract.

**3. Payment Terms.** The Annual Fee for Contract **Year 1**, plus all applicable taxes, shall be due and payable **within ninety (90) days of the Owner's execution of the Contract**. **Each subsequent Annual Fee, plus all applicable taxes, shall be due and payable on the first day of each Contract Year thereafter.** If the Annual Fee, plus all applicable taxes, are not paid within ninety (90) days of the date of invoice, the Company may charge the Owner a late fee on unpaid balances and may also terminate or suspend Services under this Contract without notice. The late fee will be 1.5% per month.

**4. Changes or Delays to Services.** For purposes of this Section 4, "**Unreasonable Delay**" shall mean the Owner's delay in releasing the Tank or making the Tank available to the Company for the performance of any of the Services described herein for a period of **twenty-four (24) months following the Company's written request for release or access to the Tank**. In the event of Unreasonable Delay, the Company reserves the right to recover its reasonable costs related to the Unreasonable Delay, and the Owner agrees to negotiate with the Company in good faith to determine the amount of its reasonable costs caused by such Unreasonable Delay. Furthermore, the Owner hereby agrees that the Company can replace a Washout Inspection of the Tank with a visual inspection, remotely operated vehicle inspection ("ROV Inspection"), or unmanned aerial vehicle inspection ("UAV Inspection") without requiring the modification of this Contract.

**5. Structure of Tank and Tank Site Conditions.** The Company is accepting this Tank to maintain pursuant to the requirements of this Contract based upon its existing structure and components as of the Effective Date (defined hereinafter). **Any modifications to the Tank, including antenna installations, shall be approved by the Company, prior to installation and may warrant an increase in the Annual Fees.** In addition, changes in the condition of the Tank Site and/or any adjoining properties (e.g., construction of a mall next to the Tank Site which significantly increases the risk of overspray claims, etc.) following the Effective Date, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract.

**6. Environmental, Health, Safety, Labor, or Industry Requirements.** The Owner hereby agrees that the promulgation of, enactment of, or modification to any environmental, health, safety, or labor laws, regulations, orders, or ordinances (e.g., EPA or OSHA regulations or standards) following the Effective Date of this Contract, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Furthermore, modifications to industry requirement(s) including, but not limited to, standard(s) or other guidance documents issued by the American Water Works Association, National Sanitary Foundation, and the Association for Materials Protection and Performance, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in this Contract. Said equitable adjustment of the Annual Fees in this Contract will reasonably reflect the increased cost of the Services with newly negotiated Annual Fee(s).

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.

**7. Excluded Items.** This Contract does NOT include the cost for and/or liability on the part of the Company for: (i) containment of the Tank at any time during the term of the Contract; (ii) disposal of any hazardous waste materials; (iii) resolution of operational problems or structural damage due to cold weather; (iv) repair of structural damage due to antenna installations or other attachments for which the Tank was not originally designed; (v) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (vi) negligent acts of Owner's employees, agents or contractors; (vii) damages, whether foreseen or unforeseen, caused by the Owner's use of pressure relief valves; (viii) repairs to the foundation of the Tank; (ix) any latent defects or inaccessible areas of the Tank or its components (including, but not limited to, (a) corrosion from the underside of the floor plates, and (b) inaccessible areas of the Tank such as the area between the bottom of the roof plate and the top of the roof rafter); (x) the maintenance, repair or replacement of any electrical components (to include any lighting, such as aviation lights); (xi) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xii) the maintenance, repair, or replacement of piping of any kind below ground level; and (xiii) 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 God include, but are not limited to, any damage to the Tank or Tank Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include, but are not limited to, any damage to the Tank or Tank Site which results from an unauthorized entry of any kind to the Tank or Tank Site.

**8. Force Majeure.** If the Company is prevented from performing any of its duties or obligations hereunder (other than duties or obligations with respect to payment) in a timely manner by reason of act of God or force majeure such as: (i) fire, (ii) war, (iii) earthquake, (iv) strike, (v) lock-out, (vi) labor dispute, (vii) flood, (viii) public disaster, (ix) pandemic or epidemic event (including COVID-19), (x) interruptions or delays in reasonably available means of transportation, (xi) acts of any government or its agencies or officers, or any order, regulation, or ruling thereof, (xii) equipment or technical malfunctions or failures, (xiii) power failures or interruptions, or (xiv) any other reason beyond

its reasonable control, such condition shall be deemed to be a valid excuse for delay of performance or for nonperformance of any such duty or obligation for the period during which such condition exists.

**9. Termination.** This Contract is an annual contract that shall automatically renew on an annual basis for 10 successive Contract Years so long as: (i) the Owner pays each Annual Fee to the Company in accordance with the terms herein and (ii) does not terminate the Contract pursuant to the terms of this Section. This Contract is subject to termination by the Owner only at the end of the then-current Contract Year if written notice of intent to terminate is received by the Company at least ninety (90) days prior to the first day of the upcoming Contract Year. If the notice of intent to terminate is not received at least ninety (90) days prior to the first day of the upcoming Contract Year, this Contract shall renew for an additional Contract Year and expire at the end of the upcoming Contract Year. In such an event, the Owner agrees that it shall be responsible to pay the Annual Fee for the upcoming Contract Year. The notice of intent to terminate must be sent by certified mail, with return receipt requested, to Utility Service Co., Inc., Attention: Customer Service, Post Office Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's governing body (e.g., commission or council). Notice of intent to terminate cannot be delivered electronically or verbally (e.g., email, text, phone call, etc.). The Owner acknowledges and agrees that the Company has advanced Services to the Owner, and the Company has not received full payment for the Services previously performed. Therefore, if the Owner elects to terminate this Contract prior to remitting the first ten (10) Annual Fees, then the balance for work completed shall be due and payable within thirty (30) days of the Owner's issuance of the notice of intent to terminate at the end of the then-current Contract Year. **See attached Cancellation Fee Schedule.**

**10. 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. Similarly, the Company may not assign or otherwise transfer all or any of its interest under this Contract without the prior written consent of the Owner. 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.

**11. Indemnification.** THE COMPANY AGREES TO INDEMNIFY THE OWNER AND HOLD THE OWNER HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE COMPANY OR ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES. IN TURN, THE OWNER AGREES TO INDEMNIFY THE COMPANY AND HOLD THE COMPANY HARMLESS FROM CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF AND TO THE EXTENT OF ANY NEGLIGENT ACT OF THE OWNER OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES.

**12. Assignment of Receivables.** The Company reserves the right to assign any outstanding receivables from this Contract to its banking institution as collateral for any loans or lines of credit.

**13. Miscellaneous Items.** No modifications, amendments, or alterations of this Contract may be made, except in a writing signed by the Parties. 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.

**14. 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 and is made available to the Company, the Owner agrees and acknowledges that the Company shall not be responsible to repair the latent defects unless the Owner and the Company re-negotiate 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 of the roof plates or rafters, corrosion in areas inaccessible to maintain, damage to the roof of the Tank which is not clearly discoverable during the visual inspection, etc.).

**15. Excessive Inflation.** In the event that the aggregate of the Annual Inflation Rates (defined herein below) established for two (2) consecutive calendar years during the term of this Contract exceeds 12% in total, the Owner and the Company agree to renegotiate the Annual Fees and increase the Annual Fees throughout the remaining term of the Contract to compensate the Company for the excessive inflation. For purposes of this provision, the Annual Inflation Rate for each calendar year shall be established by the *Engineering News Report – Construction Cost Index ("ENR-CCI")*. In the event that the ENR-CCI index is discontinued, the Owner and the Company will negotiate and agree to an alternative index or methodology to address the excessive inflation. For illustrative purposes, if a Contract is executed in 2022, the first equitable adjustment could not be made until both the 2023 inflation rate and the 2024 inflation rate have been established. If the annual inflation rates for 2023 and 2024 are 5.0% and 7.1%, respectively, the Owner and the Company agree to renegotiate the current year's Annual Fee as well as the remaining Annual Fees for the remainder of the term of the Contract to address the excessive inflation.

**16. Governing Law/Dispute Resolution.** This Contract is governed by the law of the State of Illinois. In the event of any dispute arising out of the application, interpretation or performance of this Contract, the affected parties agree to meet and discuss the dispute and a potential resolution at least fifteen (15) days prior to instituting any legal action, unless either party may suffer immediate and irreparable harm from the non-performance, acts or omissions of the other party in which case the aggrieved party may seek equitable relief immediately. In the event the parties are unable to resolve the dispute within the fifteen (15) day period, either party may file any appropriate action only and exclusively in the Circuit Court of Madison County, Illinois.

**17. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same Agreement. The Parties may utilize electronic means (including facsimile and e-mail) to execute and transmit the Agreement and all such electronically executed and/or transmitted copies of the Agreement shall be deemed as valid as originals.

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

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SIGNATURE PAGE TO FOLLOW

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This Contract is executed and effective as of the date ("the Effective Date") that the last Party signs this Contract below.

OWNER:

City of Troy

By: *David Nonn*

Title: MAYOR

Print Name: DAVID NONN

Date: JULY 1, 2024

Witness: *Timothy Thomas*

Seal:



COMPANY:

Utility Service Co., Inc.

By: *[Signature]*

Title: Chief Operating Officer

Print Name: Jonathan Cato

Date: June 17, 2024

Witness: *Lara A. Townsend*

Seal:



**CANCELLATION FEE SCHEDULE**

Cancellation Fee Schedule	Year 1	Year 2	Year 3	Year 4	Year 5
Dairy Queen Tank - 500KG Elev	\$ -	\$ -	\$ -	\$ 84,639	\$ -

Cancellation Fee Schedule	Year 6	Year 7	Year 8	Year 9	Year 10
Dairy Queen Tank - 500KG Elev	\$ 95,314	\$ -	\$ -	\$ -	\$ -