

**RESOLUTION NO. 12/13-29
CITY OF DAYTON, OREGON**

Title: *A Resolution Approving a Professional Services Agreement for Maintenance of the Breyman Reservoir*

WHEREAS, the City owns a 600,000 gallon water reservoir in the Breyman Watershed Area known as the Breyman Reservoir;

WHEREAS, the Breyman Reservoir is in need of repair and ongoing maintenance; and

WHEREAS, the City would like to enter into a Professional Services Agreement with Utility Services Co., Inc. to repair and provide ongoing maintenance of the Breyman Reservoir; and

WHEREAS, City of Dayton Resolution No. 04/05-29 Section 1.10.060 provides that the City Administrator is authorized to declare in writing certain goods and services to be available from only one source; and

WHEREAS, Utility Services Co., Inc. is the sole provider of reservoir repair and ongoing maintenance in the manner required by the City.

The City of Dayton resolves as follows:

- 1) **THAT** the City Manager is authorized to execute the Professional Services Agreement for Water Tank Maintenance, attached hereto as Exhibit A and made a part hereof, on behalf of the City, which will be bound by its terms;
- 2) **THAT** the Agreement shall become effective on the date it is executed by both parties.

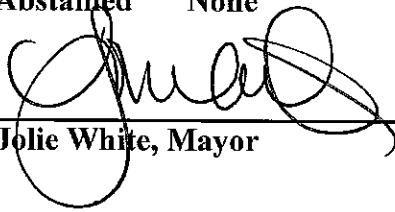
ADOPTED this 3rd day of **June, 2013**.

In Favor **Bixler, Collins, Frank, Utt, White, Wytoski**

Opposed **None**

Absent **Blackburn**

Abstained **None**

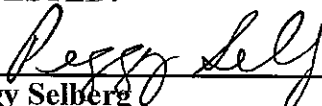


Jolie White, Mayor

6/6/13

Date of Adoption

ATTESTED:



Peggy Selberg
City Recorder
Attachment - Exhibit A

6/3/2013

Date of Enactment

**CITY OF DAYTON
PROFESSIONAL SERVICES CONTRACT**

THIS PROFESSIONAL SERVICES CONTRACT ("Contract") is made and entered into by and between the City of Dayton, a municipal corporation in the State of Oregon ("City") and Utility Service Co., Inc. ("Consultant") identified as follows:

Company	<u>Utility Service Co., Inc.</u>
Federal ID #	<u>58-1920989</u>
Mail Address	<u>P O Box 1350</u>
City, State Zip	<u>Perry, GA 31069</u>
Phone #	<u>478-987-0303</u>
Fax #	<u>478-987-2991</u>
E-Mail	<u>rarthur@utilityservice.com</u>

1. EFFECTIVE DATE AND DURATION OF CONTRACT. This Contract shall become effective on July 1, 2013 ("Effective Date"). This Contract shall bind the City when it is authorized or ratified by the City Manager or designee. This Contract shall remain in full force and effect until terminated by either party pursuant to Section 27 of this Contract.

2. PROJECT MANAGERS. City's project manager is Steve Sagmiller. Consultant's project manager is Bill Hammond. Each party shall give the other timely written notification of any change in their respective project manager.

3. FUNDS AVAILABLE AND AUTHORIZED. City has sufficient funds currently available and authorized for expenditure to finance the costs of this Contract.

4. RELATIONSHIP OF THE PARTIES.

4.1. Professional consultant. The Consultant shall provide the Services (as hereinafter defined) for the Project in accordance with the terms and conditions of this Contract. The Consultant's performance of Services shall be as a professional consultant to City to carry out the activities of the Project and to provide the technical documents and supervision to achieve City's Project objectives.

4.2. City oversight/other consultants. In administering this Contract, City may retain the services of an independent project manager, and potentially, other consultants or other contracts for additional or related work as needed to fulfill City's objectives. Consultant shall fully cooperate with such additional contractors and with any City employees concerned with such additional or related work, and shall coordinate the performance of work under this Contract,

with such additional or related work. Consultant shall not commit or permit any act which will interfere with the performance of work by any other Contractor or by any City employee.

4.3. Written consent for sub-contracts, assignment; successors-in-interest. Consultant shall not make any sub-contract with any other party for furnishing any of the Project's Services or assign or transfer any interest in this Contract, without obtaining the express prior written consent of City. In any case, this Contract shall be binding upon and shall inure to the benefit of the parties hereto, and their respective successors and assigns, if any. Should sub-contracts be allowed, the Consultant shall provide a list of all Sub-contractors which the Consultant intends to utilize on the Project. This list shall include such information on the qualifications of the Sub-contractors as may be requested by City. City reserves the right to review the Sub-contractors proposed, and the Consultant shall not retain a Sub-contractors to which City has a reasonable objection.

5. SCOPE OF WORK. The Consultant shall provide to the City all services related to completion of the project (the "Project") as more particularly described in Consultant's proposal ("Proposal"), attached to this Contract as Exhibit 1 and incorporated herein by reference. In the event of inconsistencies between this Contract and Exhibit 1, the provisions of this Contract shall control. Generally, the services to be performed by the Consultant on the Project consist of the following and as more specifically described in Exhibit 1 (the "Services"):

Water Tank Maintenance

Consultant is required to obtain all necessary licenses (state and local) necessary to operate its business in the City and to perform the Services.

6. PAYMENT. City agrees to pay Consultant in accordance with Sections 2 and 3 of Exhibit 1 for satisfactory completion of the Project.

6.1 Consultant shall submit quarterly billings for work performed. The billings shall describe all materials supplied and work performed with particularity and shall itemize and explain all expenses for which reimbursement is claimed. Unless the amount and rate of reimbursement are specified in an attached exhibit to this Contract, the City will not reimburse Consultant for any expenses under this Contract.

6.2 City shall pay Consultant for the amount billed each quarter within 30 (thirty) days after receiving Consultant's billing in a format acceptable to the City. City shall not pay any amount in excess of the compensation amounts set forth above nor shall City pay Consultant any fees or costs which City reasonably disputes. If such a dispute arises, Consultant will continue to perform its duties under this Contract.

7. CONTRACT PERFORMANCE. Consultant shall at all times perform the Services diligently, without delay and punctually fulfill all requirements herein, consistent with the schedule for the performance of Consultant's services set forth in Exhibit 1. Time is of the essence in the performance of this Contract.

8. CHANGES. This Contract, including all exhibits attached hereto, shall not be waived,

altered, modified, supplemented, extended or amended, in any manner whatsoever, except by written instrument, executed by both parties. Such waiver, alteration, modification, supplement, extension or amendment, if made, shall be effective only in the specific instance and for the specific purpose given. The parties acknowledge and agree that, to the extent permitted by law, this Contract may be amended to specifically provide for additional Consultant services that are within or directly related to the Project. Failure of Consultant to secure authorization for extra work shall constitute a waiver of all right to adjustment in the contract price or contract time due to such unauthorized extra work and Consultant thereafter shall be entitled to no compensation whatsoever for the performance of such work.

9. EXECUTION AND COUNTERPARTS. This Contract, and any amendments to this Contract, may be executed in counterparts (each of which shall be an original and all of which shall constitute one and the same instrument) or in multiple originals. A faxed form of this Contract or any amendment thereto, executed by one or more of the parties, will constitute a counterpart hereof, as long as the counterpart bearing the party's original signature is transmitted to the other party and received by that party forthwith.

10. DUTY TO INFORM. Consultant shall give prompt written notice to City's Project Manager if, at any time during the performance of this Contract, Consultant becomes aware of actual or potential problems, faults or defects in the project, any nonconformity with the Contract, or with any federal, state, or local law, rule or regulation, or has any objection to any decision or order made by City. Any delay or failure on the part of City to provide a written response to Consultant shall constitute neither agreement with nor acquiescence in Consultant's statement or claim and shall not constitute a waiver of any of City's rights.

11. NOTICE. Except as otherwise expressly provided in this Contract, any communications between the parties or notices to be given hereunder shall be given in writing by personal delivery, facsimile or mailing, postage prepaid, to Consultant or City at the address or number set forth on this Contract, or to such other addresses or numbers as either party may hereafter indicate pursuant to this Section. Any communication or notice so addressed and mailed shall be deemed to be given 5 (five) calendar days after the date of mailing. Any communication or notice delivered by facsimile shall be deemed to be given when the transmitting machine generates a transmission receipt. To be effective against City, such facsimile transmission must be confirmed by telephone notice to the City's Project Manager identified in this Contract, and shall not be deemed to be given until such confirmation is completed. Any communication or notice by personal delivery shall be deemed to be given when actually delivered.

12. CONFLICT OF INTEREST. Except with City's prior written consent, Consultant shall not engage in any activity, or accept any employment, interest or contribution that would, or would reasonably appear, to compromise Consultant's professional judgment with respect to this Project, including, without limitation, concurrent employment on any project in direct competition with the Project.

13. NO THIRD-PARTY BENEFICIARIES. City and Consultant are the only parties to this Contract and are the only parties entitled to enforce its terms. Nothing in this Contract gives, is intended to give, or shall be construed to give or provide, any benefit or right, whether directly or indirectly or otherwise, to third persons unless such third persons are individually identified by name herein and expressly described as intended beneficiaries of the terms of this Contract.

14. PROJECT INFORMATION & CONFIDENTIALITY. Consultant agrees to share all Project information, to fully cooperate with all corporations, firms, contractors, governmental entities, and persons involved in or associated with the Project. No reports, information or data given to or prepared or assembled by Consultant under the Contract shall be made available or used for anything other than the work set forth under the Contract by Consultant to any individual or organization (except City) without the prior written approval of City which approval is in the City's sole and absolute discretion.

15. RECORDKEEPING. Consultant and Sub-contractors shall maintain all fiscal records relating to this Contract in accordance with generally accepted accounting principles. In addition, Consultant and Sub-contractors shall maintain any other records pertinent to this Contract in such a manner as to clearly document the Consultant's and Sub-contractors' performance hereunder. All such fiscal records, books, documents, papers, plans, and writings shall be retained by Consultant and Sub-contractors and kept accessible for a minimum of 6 (six) years after the Contract's expiration, except as required longer by law, following final payment and termination of this Contract, or until the conclusion of any audit, controversy or litigation arising out of or related to this Contract, whichever date is later. If for any reason, any part of this Contract, any Project-related consultant contract or any Project-related construction contract(s) is involved in litigation, Consultant shall retain all pertinent records for not less than 6 (six) years or until all litigation is resolved, whichever is longer. Consultant shall provide City with full access to these records in preparation for and during litigation.

16. ACCESS TO RECORDS. Consultant agrees that City and its authorized representatives shall have access to all books, documents, papers and records of the Consultant which are directly related to the Contract for the purpose of making any audit, examination, copies, excerpts and transcripts.

17. INDEPENDENT CONTRACTOR STATUS. Consultant shall be free from City's direction and control over the means and manner of providing Project labor or service, subject only to the specifications of the desired results. Consultant is responsible for obtaining all assumed business registrations or professional occupation licenses required by state or local law. Consultant shall furnish the tools or equipment necessary for the contracted labor or services. Consultant agrees and certifies that:

17.1 Consultant is engaged as an independent contractor and will be responsible for any federal or state taxes applicable to any payments made under this Contract.

17.2 Consultant is not eligible for any federal social security, unemployment insurance, pension, state retirement system or workers' compensation benefits from compensation or payments paid to Consultant under this Contract.

17.3 Consultant has filed federal and state income tax returns in the name of the business as part of the personal income tax return, for the previous year, for labor or services performed as an independent contractor in the previous year.

17.4 Consultant is not an employee of Metro, any special district, or local government, including City, the federal government or the State of Oregon.

18. PAYMENT OF LABORERS; PAYMENT OF TAXES.

18.1 Consultant shall:

18.1.1 Make payment promptly, as due, to all persons supplying to the Consultant labor and material for the performance of the work provided for in the Contract (ORS 279B.220(1));

18.1.2 Pay all contributions or amounts due to the Industrial Accident Fund incurred in the performance of this Contract, and shall ensure that all Sub-contractors pay amounts due from their performance (ORS 279B.220(2));

18.1.3 Not permit any lien or claim to be filed or prosecuted against the City on account of any labor or material furnished (ORS 279B.220(3)); and

18.1.4 Be responsible for all federal, state and local taxes applicable to any compensation or payments paid to the Consultant under this Contract and pay to the Department of Revenue all sums withheld from employees under ORS 316.167. Unless the Consultant is subject to backup withholding, the City will not withhold from such compensation or payments any amount(s) to cover the Consultant's federal or state tax obligation (ORS 279B.220(4)).

18.2 The Consultant shall promptly as due, make payment to any person, co-partnership, association or corporation furnishing medical, surgical and hospital care services or other needed care and attention, incident to sickness or injury, to the employees of the Consultant, of all sums that the Consultant agrees to pay for the services and all moneys and sums that the Consultant collected or deducted from the wages of employees under any law, contract or agreement for the purpose of providing or paying for the service (ORS 279B.230(1)).

18.3 Consultant, its subcontractors and all employers, if any, providing services, labor or materials under the Contract are subject to Oregon Workers' Compensation Law, which requires all subject employers working under this Contract are either employers that will comply with ORS 656.017 or are employers that are exempt under ORS 656.126. Consultant shall ensure that each of its subcontractors, if any, complies with these requirements (ORS 279B.230(2)).

19. COMPLIANCE WITH APPLICABLE LAW. Consultant shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to Services under the Contract.

19.1 Without limiting the generality of the foregoing, Consultant expressly agrees to comply with the following laws, regulations and executive orders to the extent they are applicable to the Contract and incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated:

19.1.1 Titles VI and VII of the Civil Rights Act of 1964, as amended;

19.1.2 Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;

19.1.3 the Americans with Disabilities Act of 1990, as amended;

19.1.4 Executive Order 11246, as amended;

19.1.5 the Health Insurance Portability and Accountability Act of 1996;

19.1.6 the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;

19.1.7 the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended;

19.1.8 ORS Chapter 659, as amended;

19.1.9 all regulations and administrative rules established pursuant to the foregoing laws; and

19.1.10 all other applicable requirements of federal, state and municipal civil rights and rehabilitation statutes, rules and regulations.

19.2 City's performance under the Contract is conditioned upon Consultant's compliance with the provisions of ORS 279B.220, 279B.225, 279B.230, and 279B.235 which are incorporated by reference herein.

19.3 Any person employed on work under this Contract shall be paid at least time and a half for all overtime worked in excess of 40 (forty) hours in any one week, except for individuals under personal services contracts who are excluded under ORS 653.010 to 653.261 or under 29 U.S.C. sections 201 to 209 from receiving overtime (ORS 279B.235(3)).

20. REPRESENTATIONS AND WARRANTIES.

20.1 Consultant represents and warrants to City that:

20.1.1 Consultant has complied and will continue to comply with all Oregon laws relating to the performance of Consultant's obligations under this Contract;

20.1.2 Consultant shall be qualified, professionally competent and duly licensed to perform the Services at all times during the term of this Contract;

20.1.3 Consultant has the skill and knowledge possessed by well-informed members of its industry, trade or profession and will apply that skill and knowledge with care and diligence to perform the Project under this Contract in a professional manner and in accordance with standards prevalent in Consultant's industry, trade or profession;

20.1.4 Consultant has the power and authority to enter into and perform this

Contract;

20.1.5 When executed and delivered, this Contract shall be a valid and binding obligation of Consultant enforceable in accordance with its terms;

20.1.6 The persons executing this Contract on behalf of the Consultant have the actual authority to bind the Consultant to the terms and conditions of this Contract;

20.1.7 Consultant prepared its Proposal, Exhibit 1 to this Contract, independently from all other proposers, and without collusion, fraud or other dishonesty; and

20.1.8 The provisions of this Contract do not conflict with, or result in a default under, any agreement or other instrument binding upon the Consultant and do not result in a violation of any law, regulation, court decree or order applicable to the Consultant

20.2 Upon City's request, Consultant shall provide City with evidence reasonably satisfactory to City confirming the foregoing covenants and warranties. The warranties set forth in this paragraph are in addition to, and not in lieu of, any other provided warranties.

21. INSURANCE. Consultant shall obtain prior to beginning any work under this Contract and shall maintain in full force and effect for the term of this Contract or any other time periods required herein, at Consultant's expense, an occurrence form comprehensive general liability and automobile insurance policies for bodily injury, including death, and broad form property damage, including loss of property and coverage for owned, hired or non-owned vehicles, as applicable, for the protection of Consultant and the City, its elected and appointed officials, and officers, as additional insureds. The policies shall be primary policies and any other insurance carried by City shall be excess. The policies shall be issued by a company authorized to do business in the State of Oregon and providing single limit general liability coverage of \$1,000,000 and separate automobile coverage of \$1,000,000. The certificates shall provide that City will receive 60 (sixty) days' written notice of cancellation or material modification of the insurance contract to the City Project Manager. Consultant shall provide certificates of insurance and additional insured endorsements to City evidencing the date, amount, and type of insurance prior to commencement of any work under this Contract. If requested, complete copies of insurance policies shall be provided to City. Consultant shall be financially responsible for all pertinent deductibles, self-insured retentions and/or self-insurance.

21.1 WORKERS' COMPENSATION COVERAGE. Consultant certifies that Consultant has qualified for State of Oregon Workers' Compensation coverage for all Consultant's employees who are subject to Oregon's Workers' Compensation statute, either as a carrier insured employer as provided by ORS 656.407 or as a self-insured employer. Consultant shall provide to City within 10 (ten) days after Contract Effective Date, a certificate of insurance evidencing coverage of all subject workers under Oregon's Workers' Compensation statutes insured by an insurance company satisfactory to City, if any. The certificate and policy shall indicate that the policy shall not be terminated by the insurance carrier without 60 (sixty) days' advance written notice to City. A copy of the certificate of self-insurance issued by the State shall be provided to City if the Consultant is self-insured.

22. INDEMNIFICATION. Consultant shall indemnify, defend, save and hold harmless City, its elected and appointed officials, and officers, against all liability, claims, suits or actions of whatsoever nature, loss or expenses, including attorney fees, based upon or arising out of the acts or omissions of the Consultant or its Sub-contractors, agents, or employees under this Contract except that arising out of the sole negligence of the City. In addition, Consultant expressly agrees to indemnify, defend, save and hold harmless the City, its elected and appointed officials, officers, against all liability, claims, suits, actions, loss or expenses, including attorney fees, arising out of or related to any claims that the Project, Services, or any other tangible or intangible items delivered to City by Consultant that may be the subject of protection under any state of federal intellectual property law or doctrine, or the City's use thereof, infringes any patent, copyright, trade secret, trademark, trade dress, mask work, utility design or other proprietary right of any third party.

23. BREACH OF CONTRACT. Consultant shall remedy any breach of this Contract within the shortest reasonable time after Consultant first has actual notice of the breach or City notifies Consultant of the breach, whichever is earlier. If Consultant fails to remedy a breach in accordance with this Section, City may terminate that part of the Contract affected by the breach upon written notice to Consultant, may obtain substitute services in reasonable manner, and may recover from Consultant the amount by which the price for those substitute services exceeds the price for the same services under this Contract.

23.1. If the City determines that the breach is material and Consultant fails to remedy the breach in accordance with this Section, City may declare Consultant in default and pursue any remedy available for a default.

23.2. Pending a decision to terminate all or part of this Contract, City unilaterally may order Consultant to suspend all or part of the services under this Contract. If City terminates all or part of the Contract pursuant to this Section, Consultant shall be entitled to compensation only for services rendered prior to the date of termination, but not for any services rendered after City ordered suspension of those services. If City suspends certain services under this Contract and later orders Consultant to resume those services, Consultant shall be entitled to reasonable damages actually incurred, if any, as a result of the suspension.

23.3 To recover amounts due under this Section, City may withhold from any amounts owed by City to Consultant, including but not limited to amounts owed under this or any other contract between Consultant and City.

24. FORCE MAJEURE. Neither City nor Consultant shall be held responsible for delay or default caused by fire, riot, acts of nature, or war where such cause was beyond, respectively, City's or Consultant's reasonable control. Consultant shall, however, make all reasonable efforts to remove or eliminate such a cause of delay or default and shall, upon the cessation of the cause, diligently pursue performance of its obligations under this Contract.

25. WAIVER. The failure of City to enforce any provision of this Contract shall not constitute a waiver by City of that or any other provision.

26. DEFAULT. City, by written notice of default (including breach of contract) to Consultant, may terminate the whole or any part of the Contract:

26.1 If Consultant fails to provide Services called for this Contract within the time or manner specified herein, or any extensions thereof; or

26.2 If Consultant fails to perform any of the other provisions of this Contract, or so fails to pursue the work as to endanger performance of this Contract in accordance with its terms, and after receipt of written notice from City, fails to correct such failures within ten (10) days or such longer period as City may authorize in writing.

27. TERMINATION.

27.1 This Contract may be terminated at any time by written mutual consent of both parties.

27.2 Consultant may terminate this Contract upon 30 (thirty) days' written notice to City if City fails to pay Consultant pursuant to the terms of this Contract and City fails to cure within 30 (thirty) days after receipt of Consultant's notice or such longer period of cure as Consultant may specify in such notice.

27.3 City, in its sole discretion, may terminate this Contract upon 30 (thirty) days' written notice to Consultant, in whole or in part, at any time by specifying the termination date of the Contract.

27.4 In the event of termination under this Section, Consultant's sole remedy shall be a claim for the sum designated for accomplishing the Services multiplied by the percentage of Services completed and accepted by City plus Consultant's reasonable Contract close-out costs, less previous amounts paid and any claim or claims which the City has against Consultant. If previous amounts paid to Consultant exceed the amount due to Consultant under this Section, Consultant shall pay any excess to City upon demand. Within 30 (thirty) days after termination, Consultant shall submit an itemized invoice for all un-reimbursed Services completed before termination and all Contract close-out costs actually incurred by Consultant. City shall not be obligated to pay for any such costs invoiced to and received by City later than 30 (thirty) days after termination.

27.5 Upon receiving a notice of termination, Consultant shall immediately cease all activities under this Contract, unless expressly directed otherwise by City in the notice of termination. Further, upon termination, As directed by City, Consultant shall deliver to City all Contract documents, information, works-in-progress and other property that are or would be deliverable had the Contract been completed. Upon City's request, Consultant shall surrender to anyone City designates, all documents, research or objects or other tangible things needed to complete the Project or Services. By Consultant's signature on this Contract, Consultant allows City to use said Work Product and other property for its intended use. The rights and remedies of City provided in this Section related to defaults by the Consultant shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

28. GOVERNING LAW; JURISDICTION. This Contract shall be governed and construed in accordance with the laws of the State of Oregon without regard to principles of conflicts of law.

29. MEDIATION; TRIAL WITHOUT A JURY. Should any Contract related dispute arise between the Parties it is agreed that such dispute will be submitted to a mediator prior to any litigation and the Parties hereby expressly agree that no claim or dispute arising under the terms of this Contract shall be resolved other than first through mediation and only in the event said mediation efforts fail, then through litigation. Any litigation arising under or as a result of this Contract shall be tried to the court, without a jury.

29.1 The Parties shall exercise good faith efforts to select a mediator who shall be compensated equally by the Parties. Mediation will be conducted in Portland, Oregon, unless the Parties agree in writing otherwise. Parties agree to exercise good faith efforts to resolve all Contract related disputes through the mediation process. If a party requests mediation and the other party fails to respond within ten (10) days, or if the Parties fail to agree on a mediator within ten (10) days, a mediator shall be appointed by the presiding judge of the Clackamas County Circuit Court upon the request of either party. The Parties shall retain all rights with respect to any dispute not covered by this Section.

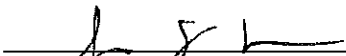
30. SEVERABILITY. Parties agree that if any term or provision of this Contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Contract did not contain the particular term or provision held to be invalid.

31. MERGER CLAUSE; CONTRACTOR CERTIFICATION. THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES ON THE SUBJECT MATTER ADDRESSED HEREIN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, REGARDING THIS CONTRACT EXCEPT AS CONTAINED, INCORPORATED OR REFERENCED HEREIN. CONSULTANT, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT THE SUPPLIED CONTRACTOR DATA IS TRUE AND ACCURATE AND CONSULTANT HAS READ THIS CONTRACT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS AND CONDITIONS.

[signature page follows]

Signed this 20 th day of June, 2013.

FOR THE CONSULTANT:



Signature

Shane Albritton
Name (Printed)

Utility Service Co., Inc.
Company

58-1920989
Federal ID #

Corporate Secretary
Title

P O Box 1350
Mailing Address

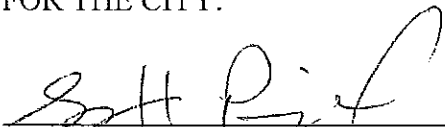
Perry, GA 31069
City, State, Zip

478-987-0303
Phone Number

478-987-2991
Fax Number

salbritton@utilityservice.com
E-mail

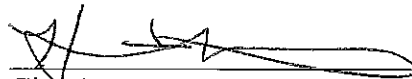
FOR THE CITY:



City Manager

City of Dayton
416 Ferry Street
PO Box 339
Dayton, OR 97114

APPROVED AS TO FORM:



City Attorney



Utility Service Co., Inc.

Water Tank Maintenance Contract

Owner: City of Dayton
Dayton, Oregon

Tank Size/Name: 600,000 Gallon GST – Breyman Tank

Location: 4739 NE Breyman Orchards Road

Date Prepared: May 28, 2013



WATER TANK MAINTENANCE CONTRACT

This Contract entered into by and between the **City of Dayton, whose business address is 416 Ferry Street, Dayton, Oregon 97114** (hereinafter referred to as "the Owner") and **Utility Service Co., Inc., whose business address is 1230 Peachtree Street, NE, Suite 1100, 11th Floor - Promenade II Building, 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 **600,000** gallon water storage tank located at **4739 NE Breyman Orchards Road, Dayton, OR 97114** (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. Biennially, the exterior surface of the tank will be cleaned by pressure washing methods. 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 **Oregon Department of Human Resources**, 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.

2. Contract Price/Annual Fees. The tank shall receive an **exterior and interior renovation and repairs** prior to the end of **Contract Year 1**. The first five (5) annual fees shall be **\$61,704.00** per Contract Year. The annual fee for **Contract Year 6** and each subsequent annual fee shall be **\$25,407.00** per Contract Year; however, in **Contract Year 9** and each third 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% per annum. 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 **exterior or interior renovation, whichever occurs first**. Each subsequent annual fee, plus all applicable taxes, shall be due and payable on the first day of each **Contract Year**; however, beginning in **Contract Year 2**, the annual fee can be paid either **monthly, quarterly, semiannually, or annually**. Owner shall circle the preferred billing frequency. If the Owner does not choose a preferred billing frequency, the Owner will be billed quarterly. (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 the 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 any time 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); (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.

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, damage to the roof of the tank which is not clearly visible during the visual inspection, etc.).

This Contract signed this _____ day of _____.

OWNER:

COMPANY:

City of Dayton

Utility Service Co., Inc.

By: _____

By: _____

Title: _____

Title: _____

Print Name: _____

Print Name: _____

Witness: _____

Witness: _____

Seal:

Seal: