

Resolution 2023-17

A RESOLUTION AUTHORIZING VILLAGE ADMINISTRATOR TO ENTER INTO AN AGREEMENT WITH UTILITY SERVICE CO., INC. FOR THE RENOVATION, MAINTENANCE, AND REPAIR OF THE VILLAGE'S 500,000 GALLON ELEVATED WATER STORAGE TANK KNOWN AS "THE AIRPORT TANK"

WHEREAS, the Village of Swanton has received a proposal from Utility Service Co., Inc. for the renovation, maintenance, and repair of its 500,000 gallon elevated water storage tank known as "the Airport Tank".

WHEREAS, the Village of Swanton desires to enter into an agreement with Utility Service Co., Inc. in the form of agreement attached hereto as "Exhibit A".

NOW THEREFORE BE IT RESOLVED, by the Council of the Village of Swanton, Fulton County, Ohio, three-fourths of the members elected thereto concurring and as follows:

Section One. That Council hereby approves and authorizes the Village Administrator to enter into the attached Mater Services Agreement that is attached hereto as "Exhibit A", which is hereby incorporated herein by reference.

Section Two. It is found and determined that all formal actions of Council concerning or relating to the passage of this resolution were adopted in an open meeting of the Council, and that all deliberations of this Council and any of its committees, that resulted in such formal actions, were in meetings open to the public in compliance with all legal requirements of the Village of Swanton and the State of Ohio.

Section Three. That this Resolution provide membership on an authorized commission of the Village; wherefore this resolution shall be in full force and effective immediately upon passage.

Vote on Passage

Moved: Kania Second: Westhoven YEAS: 5 NAYS: 0

Date of Passage: May 8, 2023


Neil Toeppe, Mayor

Attest:

I, Holden Benfield, Fiscal Officer of the Village of Swanton, do hereby certify that this is a true and accurate copy of Resolution 2023-17, passed on May 8, 2023



Holden Benfield, Fiscal Officer

SCOPE OF WORK NO. 1
TO THE MASTER SERVICES AGREEMENT BETWEEN
UTILITY SERVICE CO., INC.
AND
VILLAGE OF SWANTON, OH

CONTRACT FOR SERVICES – 500,000 GALLON ELEVATED – AIRPORT TANK

1. **Effective Date.** The Effective Date for this Scope of Work No. 1 (“SOW1”) shall be May 8, 2023.
2. **Term.** The Owner agrees to engage the Company to provide the professional service needed to maintain its **500,000** gallon water storage tank located at **204 Airport Highway, Swanton, Ohio 43558** (hereinafter “tank”). This SOW1 shall commence on the Effective Date and shall continue in full force and effect for one year (“Contract Year 1”). This SOW1 will automatically renew for successive one-year terms (“Contract Years”) for nine (9) additional years, unless terminated as set forth in Section 9 of the Master Services Agreement.
3. **Company’s Responsibilities.** This SOW1 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. 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. A lock will be installed on the roof hatch of the tank.
 - D. 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.
 - E. The Company will furnish current certificates of insurance coverage to the Owner.
 - F. 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.

4. **Contract Price/Annual Fees.** This is a 10 year term contract. The tank shall receive an exterior renovation and repairs prior to the end of Contract Year 1. The tank shall receive an interior renovation prior to the end of Contract Year 5. The tank shall receive visual inspections in Contract Years 2, 3, 4, 6, 7, 8, and 9. The tank shall receive washout inspections in Contract Years 1 and 10. The first five (5) annual fees shall be \$143,452.00 per Contract Year. The annual fee for Contract Year 6 shall be \$1,027.00. The annual fee for Contract Year 7 shall be \$1,063.00. The annual fee for Contract Year 8 shall be \$1,101.00. The annual fee for Contract Year 9 shall be \$1,140.00. The annual fee for Contract Year 10 shall be \$4,250.00. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this SOW1.
5. **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 SOW1. 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 SOW1 without notice. The late fee will be 1.5% per month.
6. **Changes or Delays to Services.** For purposes of this Section 6, "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 SOW1.
7. **Structure of Tank and Tank Site Conditions.** The Company is accepting this Tank to maintain pursuant to the requirements of this SOW1 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 SOW1.
8. **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 SOW1, 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 SOW1. 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 SOW1. Said equitable adjustment of the Annual Fees in this SOW1 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.

9. **Excluded Items.** This SOW1 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 SOW1, except for the initial renovation; (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.

10. **Termination.** This SOW1 is an annual contract that shall automatically renew on an annual basis for a ten (10) year term 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 SOW1 pursuant to the terms of this Section. This SOW1 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 SOW1 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 SOW1 prior to remitting the first **five (5)** Annual Fees, then the balance for work completed as defined in the attached Cancellation Fee Schedule 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.

11. **Visual Inspection Disclaimer.** This SOW1 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.).
12. **Excessive Inflation.** In the event that the aggregate of the Annual Inflation Rates (defined hereinbelow) established for two (2) consecutive calendar years during the term of this SOW1 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 this SOW1 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 SOW 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 SOW to address the excessive inflation.
13. **Ohio Revised Code § 9.29.**
 - a. The Owner is not required to make total payments in a single year that exceed the excess of (a) the Owner's water utility charges over (b) the operating expenses of the water system payable from such charges and the principal, interest, and other debt charges, including reserves and coverage requirements, for outstanding debt due in that year.
 - b. The work performed under this Agreement shall be performed under the supervision of a professional engineer licensed under Chapter 4733 of the Revised Code,

who certifies that the work will be performed in compliance with all applicable codes and engineering standards.

c. If, on the date of commencement of the Agreement, the water tank or appurtenant facilities require engineering, repair, sustainability, water quality management, or service in order to bring the tank or facilities into compliance with federal, state, or local requirements, the Company must provide the engineering, repair, sustainability, water quality management, or service. The cost of the work necessary to ensure such compliance shall be itemized separately and may be charged to the Owner in payments spread over a period of not less than three years from the date of commencement of the Agreement or SOW. The charges shall be paid after provision is made to pay operating expenses and the principal, interest, and other debt service charges, including reserves and coverage requirements for outstanding debt due in that year.

The SOW1 is executed and effective as of the date last signed by the parties below.

OWNER

Village of Swanton

By: Shannon Shalters
Name: Shannon Shalters
Title: Administrator
Date: May 8, 2023

COMPANY

Utility Service Co., Inc.

By: [Signature]
Name: Jonathan Cato
Title: Chief Operating Officer
Date: April 12, 2023

Renovation Specifications

Year 1

Exterior

1. All exterior surfaces shall be abrasive blast cleaned to a "Commercial" finish, removing all existing paint, rust, dirt, mill scale, and foreign matter by the recommended methods outlined in the Society for Protective Coatings Specification, SSPC-SP No.6.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A containment system shall be utilized to meet the emission control requirements of a Class 3A System, as specified in SSPC-Guide 6 (CON), Guide for Containing Debris Generated During Paint Removal Operations, dated December 1, 1997.
4. One (1) full primer coat of Tnemec Series 94 H2O zinc or equivalent zinc coating shall be applied to 100% of exterior surfaces at the manufacturer's recommended thickness.
5. One (1) full intermediate coat of Tnemec Series N69 epoxy or equivalent coating shall be applied to 100% of exterior surfaces at the manufacturer's recommended thickness.
6. One (1) full finish coat of Tnemec Series 72 urethane or equivalent coating shall be applied to 100% of exterior surfaces at the manufacturer's recommended thickness.
7. Install new logo.

Repairs

1. Install overflow flapper and screen assembly
2. Remove cage from access ladder
3. Install ladder gate on access ladder
4. Install manway
5. Install new roof vent
6. Install access ladder cable safety climb

Year 5

Interior Wet

1. The complete interior (100%) shall be abrasive blast cleaned to SSPC-SP No. 10 "Near White" finish.
2. After abrasive cleaning, all surfaces shall be cleaned of any dust residue or foreign debris.
3. A high build epoxy liner manufactured by the Tnemec Company shall be applied as follows:
 - a. Primer Coat: One [1] complete coat of Tnemec Series 21 epoxy or equivalent shall be applied at the manufacturer's recommended thickness.
 - b. Finish Coat: One [1] complete finish coat of Tnemec Series 21 epoxy or equivalent shall be applied at the manufacturer's recommended thickness.
 - c. Contrasting Color: Each coat of epoxy paint shall be of contrasting color.
 - d. Stripe Coat: One additional coat of epoxy shall be applied by brush and roller to all weld seams.
4. After the liner has properly cured, the interior surfaces shall be disinfected per A.W.W.A. Spray Method No. 2 (200 PPM).

5. The spent abrasive media shall be tested per TCLP-(8) Heavy Metals as mandated by the State.
6. Once the tests results confirm the non-hazardous status of the wastes, the spent abrasive shall be disposed of properly.
7. The Tank shall be sealed and made ready for service.

CANCELLATION FEE SCHEDULE

Cancellation Fee Schedule	1	2	3
Airport Tank	\$ 411,361	\$ 268,803	\$ 126,277
Annual Total	\$ 411,361	\$ 268,803	\$ 126,277

MASTER SERVICES AGREEMENT
Terms and Conditions

This MASTER SERVICES AGREEMENT ("Agreement") is entered into by and between **Village of Swanton** with a principal business address of **219 Chestnut Street, Swanton, Ohio 43558** ("Owner"), and **Utility Service Co., Inc.**, a Georgia corporation with a principal business address of 535 General Courtney Hodges Boulevard, Post Office Box 1350, Perry, Georgia 31069 ("Company").

WHEREAS, the Owner and the Company (individually, "Party"; collectively, "Parties") desire for the Company to provide goods and services to the Owner under the terms set forth herein;

NOW THEREFORE, in consideration of the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Scope. The Company agrees to provide the Owner with certain goods and services ("Services") set forth on each properly executed Scope of Work ("SOW") to be attached hereto and incorporated herein by reference. Each SOW shall be subject to the general terms and conditions (the "Terms and Conditions") set forth in this Agreement. Each time Owner engages Company to perform Services, a new SOW shall be prepared specifying the scope of Services specific to that engagement. Unless otherwise indicated in any given SOW, Company shall be responsible for furnishing all labor, materials and tools to perform the Services. Each new SOW represents a separate contract between Company and Owner that incorporates the Terms and Conditions and is governed by this Agreement. All changes to any SOW may only be made by a written amendment to such SOW and signed by an authorized representative of each Party. Owner may terminate a SOW in accordance with the terms of each SOW. In the event there is a conflict between any term of an SOW and this Agreement, the term(s) of the SOW shall control.

2. Term. The effective date of this Agreement shall be May 8th, 2023 ("Effective Date"). The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect for one year ("Term"). This Agreement will automatically renew for successive one-year terms ("Renewal Terms") unless terminated as set forth in Section 9 of this Agreement. The term of a SOW shall begin on the commencement date provided in that SOW and continue in effect for the agreed term provided in that SOW.

3. Fees. For all Services performed, Owner shall pay Company in accordance with the terms of each SOW. The fees paid in accordance with each SOW shall constitute the full and complete compensation to Company for the Services performed pursuant to the SOW. Unless otherwise expressly set forth in any given SOW, Company shall be responsible for expenses it incurs in connection with its provision of the Services.

4. Independent Contractor. The Company is, and shall at all times remain, an independent contractor. The Company and each of the Company's employees and principals shall not be deemed for any purpose to be the Owner's employees, and they shall not be entitled to any claims, rights, benefits and privileges to which an employee of the Owner or any of its respective affiliates may be entitled under any retirement, pension, insurance, medical or other plans which may now be in effect or which may hereafter be adopted. The Owner is not responsible to any governing body or to the Company for paying or withholding payroll taxes and

other employee expenses related to payments made to the Company. Notwithstanding anything to the contrary, this Agreement does not, and shall not be deemed to, constitute a partnership or joint venture between the Parties and neither Party nor any of their respective directors, officers, officials, or employees shall, by virtue of the performance of their obligations under this Agreement, be deemed to be an agent or employee of the other. No Party has the authority to bind the other Party except to the extent approved in writing by the Party to be bound.

5. Insurance. Company shall maintain statutory minimum Worker's Compensation as required by the laws of any jurisdiction in which Services are performed, and commercial general liability insurance covering Company's liabilities hereunder and for injury to persons or damage to property with limits of not less than \$2,000,000 per occurrence. Upon Owner's request, Company shall furnish Owner with a certificate of insurance evidencing this coverage.

6. Representations. Company represents and warrants that Company has the full power and authority to enter into and perform under this Agreement; that the execution, delivery and performance of this Agreement has been duly authorized and constitutes a valid and binding agreement of Company; and that the execution, delivery and performance of this Agreement will not result in the breach of, or constitute a default under, or violate any provision of, any agreement or other instrument to which Company is a party to a non-competition agreement or bound by any competitive restrictive covenant concerning or relating to, in any manner, the performance by Company of services similar to the Services to be performed hereunder.

7. Indemnification.

a. Indemnification by Company. The Company shall indemnify the Owner and its officers and employees from and against any claims, actions, and suits resulting from and to the extent of the Company's negligence while performing hereunder. The Company's indemnification obligations hereunder shall be subject to Owner's prompt written notification to the Company adequately describing any third-party claim(s) resulting from the Company's performance hereunder.

b. Indemnification by Owner. The Owner shall indemnify the Company and its officers, directors and employees from and against any claims, actions, and suits resulting from and to the extent of the Owner's negligence. The Owner's indemnification obligations hereunder shall be subject to the Company's prompt written notification to the Owner adequately describing any damages resulting from the Owner's negligence.

8. Assignment of Receivables. The Company reserves the right to assign any outstanding receivables from this Contract to its financial institutions as collateral for any loans or lines of credit.

9. Termination.

a. Right to Terminate. Once all SOWs that have been issued under this Agreement have expired or have been terminated, pursuant to the termination provision(s) in each SOW, either Party may terminate this Agreement by giving ten (10) days' advanced written notice to the other Party.

b. Termination Provisions in SOWs. The termination of each individual SOW shall be governed by the applicable termination provision in each SOW.

10. Intellectual Property. The Owner acknowledges and agrees that (a) all intellectual property rights in the Company's performance, methods and all related know-how are owned by the Company, its licensors, or suppliers; and (b) this Agreement shall not be construed as a license for the Owner to use, deliver, or exploit the intellectual property used by the Company in its performance, except as expressly set forth in this Agreement. To the extent that any new intellectual property or know-how is developed as a result of the Company's performance, the new intellectual property rights will all be owned by the Company, its licensors, or suppliers, and the Owner agrees that it will not make a claim to any such new intellectual property rights.

11. Limitation of Liability.

a. **IN NO EVENT WILL THE COMPANY OR ITS RESPECTIVE AFFILIATES, SUBSIDIARIES, OFFICERS, DIRECTORS, OFFICIALS, EMPLOYEES, SUPPLIERS OR AGENTS BE LIABLE FOR ANY LOSS OF REVENUE, PROFITS, OR DATA, OR FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY (CONTRACT, TORT, NEGLIGENCE, OR OTHERWISE) WHICH ARISES OUT OF THE COMPANY'S OR ITS SUPPLIERS' PERFORMANCE OR NON-PERFORMANCE UNDER THIS AGREEMENT. THE TOTAL LIABILITY OF THE COMPANY, ITS AFFILIATES, SUBCONTRACTORS, EMPLOYEES, SUPPLIERS AND AGENTS ARISING OUT OF PERFORMANCE OR NON-PERFORMANCE OF OBLIGATIONS UNDER THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE SALE, DELIVERY, STORAGE, INSTALLATION, REPAIR, MODIFICATION OR USE OF THE EQUIPMENT, THE RENDITION OF OTHER SERVICES IN CONNECTION THEREWITH, SHALL NOT EXCEED, IN THE AGGREGATE, AN AMOUNT EQUAL TO TWENTY-FIVE PERCENT (25%) OF THE SUM OF ALL FEES PAID BY THE OWNER TO THE COMPANY PURSUANT TO THE TERMS OF ALL SOWs.**

b. **NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, ANY LIABILITY ON THE PART OF THE COMPANY FOR MATTERS RELATED TO OR ARISING FROM CYBER SECURITY (A) SHALL BE LIMITED TO CLAIMS RELATING TO THE HARDWARE AND SOFTWARE WITHIN THE DIRECT CONTROL OF THE COMPANY THAT IS THE DIRECT AND PROXIMATE CAUSE OF ANY LOSSES OR DAMAGE, AND (B) SHALL BE LIMITED TO ONLY THOSE CLAIMS OR PORTIONS OF CLAIMS THAT ARE COVERED BY INSURANCE REQUIRED TO BE MAINTAINED PURSUANT TO THE TERMS OF THIS AGREEMENT OR ANY SOW.**

12. Rules of Construction. In construing this Agreement, the following principles shall be followed: (i) no meaning may be inferred from any presumption that one Party had a greater or lesser hand in drafting this Agreement; (ii) examples do not limit, expressly or by implication, the matter they illustrate; (iii) the plural shall be deemed to include the singular and vice versa, as applicable; and (iv) the headings are for convenience only and do not affect the meaning or construction of any such provision. Furthermore, the Parties specifically acknowledge and agree that they have in fact read this Agreement and are fully informed and have full notice and knowledge of the terms, conditions and effects of this Agreement. Each Party further agrees that it will not contest the validity or enforceability of any provision of this Agreement on the basis that it had no notice or knowledge of such provision or that such provision is not conspicuous.

13. Miscellaneous.

a. **Notices.** All notices hereunder shall be in writing and shall be sent by certified mail, return receipt requested, or by overnight courier service, to the address set forth below each Party's signature, or to such other addresses as may be stipulated in writing by the Parties pursuant hereto. Unless otherwise provided, notice shall be effective on the date it is officially recorded as delivered by return receipt or equivalent.

b. **Entire Agreement; Amendment.** This Agreement supersedes all prior agreements, arrangements, and undertakings between the Parties and constitutes the entire agreement between the Parties relating to the subject matter thereof. This Agreement may not be amended except by written instrument executed by both Parties. The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision of this Agreement.

c. **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other Party. Any attempt to assign this Agreement without the prior written consent of the other Party shall be null and void. A Change in Control of a Party shall not be deemed an assignment of this Agreement. For purposes of this Agreement, "Change in Control" shall mean an event deemed to occur if a person or entity, that is either affiliated or unaffiliated with the Company, acquires more than fifty percent control over the Party's voting securities.

d. **Force Majeure.** If either Party 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 or act of God or force majeure such as fire; war; earthquake; strike; lock-out; labor dispute; flood; public disaster; pandemic or epidemic event (to include but not limited to COVID-19); interruptions or delays in reasonably available means of transportation; acts of any government or its agencies or officers, or any order, regulation, or ruling thereof; equipment or technical malfunctions or failures; power failures or interruptions; or 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(s) exist.

e. **Survival of Certain Provisions.** The provisions of Sections 10 and 11 of this Agreement shall survive the termination or expiration of this Agreement and continue to bind the Parties and their legal representatives, successors and permitted assigns.

f. **No Waiver.** The waiver of any breach or failure of a term or condition of this Agreement by any Party shall not be construed as a waiver of any subsequent breach or failure of the same term or condition, or a waiver of any other breach or failure of a term or condition of this Agreement.

g. **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.

h. **Dispute Resolution.** In the event a dispute arises among the Parties, the disputing Party shall provide the other Party with written notice of the dispute, and within twenty (20) days after receipt of said notice, the receiving Party shall submit to the other a written response. The notice and response shall include a statement of each Party's position and a

summary of the evidence and arguments supporting its position. Each Party shall designate a high level manager with authority to resolve the dispute to work in good faith with the other Party's designated manager to resolve the dispute; the name and title of said employee shall also be included in the notice and response. The managers shall meet at a mutually acceptable time and place within thirty (30) days of the date of the disputing party's notice and thereafter as they deem reasonably necessary to resolve the dispute. If the managers, having acted in good faith, have not resolved the dispute within ninety (90) days of receipt of the initial written notice, then the Parties shall attempt to resolve the dispute in good faith by non-binding mediation administered by the American Arbitration Association ("AAA") under its Commercial Mediation Rules. If either Party is unsatisfied with the results of mediation and cannot resolve the dispute and/or claim at mediation, it shall be submitted to binding arbitration. Any such dispute and/or claim will be resolved by binding arbitration in accordance with the Rules for Commercial Arbitration of the American Arbitration Association before a panel of three (3) arbitrators, one appointed by each Party, and the third appointed by the Agreement of the first two arbitrators. The decision or award of a majority of the arbitrators shall be final and binding upon the Parties. Any arbitral award may be entered as a judgment or order in any court of competent jurisdiction. Each Party's costs and expenses attributed to the negotiation, mediation, and/or arbitration shall be borne by such Party.

i. Governing Law. This Agreement shall be governed by the law of the State of Georgia; provided, however, that the Company's obligation to comply with applicable laws shall be limited to laws that apply to the Company.

WHEREFORE, for the purpose of being bound, the Parties execute this Agreement by their duly authorized representatives as of the date(s) set forth below.

OWNER

Village of Swanton

By: Shannon Shulters
Name: Shannon Shulters
Title: Administrator
Date: May 8, 2023

COMPANY

Utility Service Co., Inc.

By: [Signature]
Name: Jonathan Cato
Title: Chief Operating Officer
Date: April 12, 2023

Notice Address for Each Party:

Village of Swanton
Attn: Shannon Shulters
219 Chestnut Street
Swanton OH 43558

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