

Item # 7F  
Date: 5/27/25

## COUNCIL ACTION FORM

### **AGENDA ITEM: Approval of Master Service Agreement and Scope of Work No. 1 & 2 for washout on the Concrete water Clearwell and Ground Storage water tank**

#### **HISTORY:**

Since 2010, the City of Nevada has maintained a Master Service Agreement with Utility Service Co., Inc. for the maintenance of water towers located on 8th Street and at the Water Plant. This agreement has ensured comprehensive care for these critical infrastructure assets, including annual inspections, engineering services, interior and exterior painting, chemical washouts, and a lifetime warranty contingent upon the contract remaining in place.

The attached Master Service Agreement and Scope of Work No. 1 & 2 propose expanding our existing maintenance relationship with Utility Service Co., Inc. to include the Concrete 250,000 Gallon Storage Tank and the Concrete 60,000 Gallon Clearwell.

Under this proposal:

- The first-year cost for services will be \$4,505.00 per tank and clearwell, which includes complete washouts.
- The second-year cost will be \$901.00 per tank and clearwell.
- For subsequent years, the annual fee will be subject to a maximum increase of 5%.
- This service will ensure these facilities are placed on the same regular maintenance cycle as the existing towers, meeting industry standards of performing tank and clearwell washouts every three years.

Maintaining these water infrastructure assets is essential for preserving public health and ensuring operational reliability. Utility Service Co., Inc. has demonstrated consistent responsiveness and quality service throughout our long-standing partnership. Pursuing separate competitive bids could potentially result in higher overall costs and delay critical maintenance activities.

#### **OPTIONS:**

1. Accept the Master Agreement and Scope of Work No. 1 & 2 from Utility Service Co., Inc. at an upfront cost of \$4,505.00 each per tank and clearwell for the first year.
2. Reject the Master Agreement and request outside bids.
3. Do nothing at this time.

#### **STAFF'S RECOMMENDED ACTION:**

Staff recommends approval of the Master Service Agreement and Scope of Work No. 1 & 2 with Utility Service Co. as presented. This action will ensure the continued, proactive maintenance of vital water system assets at a predictable cost and with a trusted vendor.

**RESOLUTION NO. 097 (2024/2025)**

**A RESOLUTION APPROVING MASTER SERVICES AGREEMENT AND SCOPE OF WORK  
NO. 1 & 2 BETWEEN UTILITY SERVICES CO., INC., AND CITY OF NEVADA, IOWA, FOR THE  
COMPREHENSIVE CARE AND MAINTENANCE OF WATER TOWERS, THE CLEARWELL,  
AND GROUND STORAGE TANK**

WHEREAS, the City of Nevada (Owner) has maintained a Master Service Agreement with Utility Service Co., Inc. (Company) for the maintenance of two water towers since 2010;

WHEREAS, the Owner is entering into a Master Service Agreement and Scope of Work No. 1 & 2 with the Company; and

WHEREAS, the Owner and the Company desire for the Company to provide goods and services as outlined in the Master Services Agreement, Scope of Work No. 1 & 2; and

WHEREAS, the Company will expand their services to the Master Services Agreement by including the 60,000 Gallon Concrete – Clearwell in Scope of Work No. 1, as outlined in Exhibit B; and

WHEREAS, the Company will expand their services to the Master Services Agreement by including the 250,000 Gallon Concrete – Ground Storage Tank in Scope of Work No. 2, as outlined in Exhibit C; and

WHEREAS, the Owner supports the comprehensive care for these critical infrastructure assets, including annual inspections, engineering services, interior and exterior painting, chemical washouts, and a lifetime warranty contingent upon the contract remaining in place

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Nevada, Iowa, that the City approves the Master Services Agreement and Scope of Work No. 1 & 2 from Utility Services Co., Inc. in Exhibit A, Exhibit B, and Exhibit C. The Mayor and City Clerk are hereby authorized to execute the agreement and execute such other documents that are necessary on the City of Nevada's behalf.

Passed and approved this 27<sup>th</sup> day of May, 2025.

\_\_\_\_\_  
Ryan Condon, Mayor

ATTEST:

\_\_\_\_\_  
Kerin Wright, City Clerk

**MASTER SERVICES AGREEMENT**  
**Terms and Conditions**

This MASTER SERVICES AGREEMENT ("Agreement") is entered into by and between **City of Nevada**, with a principal business address of 1209 6<sup>th</sup> Street, PO Box 530, Nevada, IA 50201 ("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 \_\_\_\_\_, 2025 ("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, DATA, COMPUTER MALFUNCTION, 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 ONE HUNDRED PERCENT (100%) 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, including tariffs; equipment or technical malfunctions or failures; power failures or interruptions; supply chain disruptions; 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 Iowa; provided, however, that the Company's obligation to comply with applicable laws shall be limited to laws that apply to the Company.

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SIGNATURE PAGE TO FOLLOW

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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**

City of Nevada

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COMPANY**

Utility Service Co., Inc.

By: \_\_\_\_\_ 

Name: Jonathan Cato

Title: Chief Operating Officer

Date: May 19, 2025

**Notice Address for Each Party:**

City of Nevada

Attn: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Utility Service Co., Inc.

Attn: Customer Service Department

535 General Courtney Hodges Boulevard

Post Office Box 1350

Perry, Georgia 31069



SCOPE OF WORK NO. 1  
TO THE MASTER SERVICES AGREEMENT BETWEEN  
UTILITY SERVICE CO., INC.  
AND  
CITY OF NEVADA, IA

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**CONCRETE ASSET MAINTENANCE – 60,000 GALLON CONCRETE - CLEARWELL**

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1. **Effective Date.** The effective date (hereinafter, "Effective Date") for this Scope of Work No. 1 ("SOW1") shall be the date of the last party's signature affixed to this SOW1.
2. **Term.** This SOW1 shall commence on the Effective Date and shall continue in full force and effect for one year. This SOW1 will automatically renew for successive one-year terms unless terminated as defined in Section 10 herein. For purposes of this SOW1, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the SOW1 is executed by the Owner and each successive 12-month period thereafter (hereinafter, "Contract Year" or collectively, "Contract Years").
3. **Company's Engagement and Responsibilities.** The Owner agrees to engage the Company to provide the professional services needed to maintain its **60,000** gallon concrete asset located at **1231 West Lincoln Highway, Nevada IA 50201** (hereinafter, "the Asset"). This SOW1 and the attached Appendix A outlines the professional services, including the upfront renovation (hereinafter, the "Upfront Renovation") of the Tank and subsequent maintenance activities thereafter. Upfront Renovation and maintenance activities are collectively referred to as "the Services" in this SOW1, and include the following:
  - a. The Asset shall receive an Upfront Renovation, which will include: **DIVE CLEANOUT INSPECTION prior to the end of Contract Year 1.**
  - b. Every 3 years, beginning with the first Dive Cleanout Inspection, the Asset interior will be thoroughly inspected by a Remote Operated Vehicle (ROV) with the option to conduct a Dive Cleanout Inspection at an increased cost. However, the Owner is responsible for conducting any required testing of the water. A written report will be mailed to the Owner after each inspection.
  - c. The Company will install a lock on the roof hatch of the Asset; however, the provision of such lock does not guarantee the Asset's security during the term of this SOW1. For the avoidance of doubt, security of the Asset and the site where the Asset is located (hereinafter, "Asset Site") are the responsibility of the Owner.
  - d. The Company will furnish a certificate of insurance to the Owner evidencing the Company's insurance coverage.

4. **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 this SOW1. The first **one(1)** Annual Fees shall be **\$4,505.00** per Contract Year. The Annual Fee for Contract Year two (2) shall be **\$901.00**. Each Contract Year thereafter, the Annual Fee shall be adjusted to reflect the current cost of service. The adjustment of the Annual Fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this SOW1.

5. **Payment Terms and Late Charges.**

- a. 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 this SOW1.**
- b. **Each subsequent Annual Fee, plus all applicable taxes, shall be due and payable on the first day of each Contract Year thereafter.**
- c. If the Annual Fee, plus all applicable taxes, are not paid within ninety (90) days of the date of invoice, the Company will charge the Owner a late fee on unpaid balances and may also terminate or suspend Services under this SOW1 without notice. Any 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 Asset or making the Asset 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 Asset. 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 Asset with a visual inspection, remotely operated vehicle inspection ("ROV Inspection"), or unmanned aerial vehicle inspection ("UAV Inspection") at the Company's discretion, and such replacement does not constitute a modification of this SOW1.

7. **Structure of Tank, Tank Site Conditions, and Modifications.**

- a. In providing the Services, the Company accepts the Tank based upon its existing structure and components as of the Effective Date.
- b. **Any modifications to the Tank after the Effective Date, including antenna installations, shall first be approved by the Company (prior to installation) and may warrant an increase in the Annual Fees.**
- c. 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 Company's cost in delivering the Services, 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 Asset, 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 Asset, 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).

9. **Excluded Items.** This SOW1 does NOT include the cost for and/or liability on the part of the Company for: (i) containment or lead abatement of the Asset at any time during the term of this SOW1; (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 Asset 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 Asset; (ix) any latent defects or inaccessible areas of the Asset or its components; (x) any repairs or improvements necessary for the Asset or Asset site that arise from or are caused by voids in concrete; (xi) environmental controls, including dehumidification and auxiliary heating, are not included; (xii) the maintenance, repair or replacement of any electrical components (to include any lighting); (xiii) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xiv) the maintenance, repair, or replacement of piping of any kind below ground level; and (xv) 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 Asset or Asset Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include, but are not limited to, any damage to the Asset or Asset Site which results from an unauthorized entry of any kind to the Asset or Asset Site.

10. **Termination.**

- a. **This SOW1 is an annual contract that shall automatically renew on an annual basis for successive Contract Years so long as the Owner:**
  - i. pays each Annual Fee to the Company in accordance with the terms herein, and
  - ii. does not terminate this SOW1 pursuant to the terms of this Section.
- b. 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.).
- c. In the event the Owner elects to terminate this SOW1 prior to remitting the first **one (1)** Annual Fees, then any such unpaid balance of the first **one**

(1) Annual Fees 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. **No Warranty.** THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, RELATED TO THE STRUCTURAL CONDITION OF THE ASSET AS OF THE EXECUTION OF THIS SOW1 OR AT ANY FUTURE TIME WHILE THIS SOW1 IS IN EFFECT. THE COMPANY SHALL NOT BE LIABLE, UNDER CONTRACT OR TORT, FOR DAMAGES RESULTING FROM A FAILURE IN THE STRUCTURAL INTEGRITY OF THE ASSET, AND THE COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Structural Repairs.** If the Owner determines that structural repairs to the Asset are necessary, then the Company agrees to identify one or more companies that can perform the repairs and request proposals for the repairs. The Company agrees that it will consider the proposals and discuss them with the Owner. The Company further agrees that it will consider, but it will remain in the Company's sole discretion, whether to contract with the third party(ies) to have the structural repairs performed on the Asset. In such an event, this SOW1 shall be amended to increase the Annual Fees, which must be mutually agreed to by the Owner and the Company, as well as to confirm the scope of work for the repairs and any other pertinent issues that must be addressed in the amendment.
13. **Visual Inspection Disclaimer.** This SOW1 is based upon a visual inspection of the Asset. The Owner and the Company hereby acknowledge and agree that a visual inspection is intended to assess the condition of the Asset for all patent defects. If latent defects are identified once the Asset 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. If profile of interior concrete substrate is found to be greater than CSP 5 per the International Concrete Repair Institute (ICRI), then the Company is entitled to compensation for this item. Further, at the time of renovation concrete interior will be further tested for pH, adhesion strength, moisture vapor transmission (MVT), relative humidity, etc., and if defects are found to be substantial, then the contract will either be voided (3% of UR will be owed the Company for mobilization and testing) or the Owner and the Company will negotiate a change order for the unforeseen repairs.
14. **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.

SO EXECUTED, on the date(s) affixed below.

OWNER

City of Nevada

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

COMPANY

Utility Service Co., Inc.

By: \_\_\_\_\_ 

Name: Jonathan Cato

Title: Chief Operating Officer

Date: May 19, 2025

## **Appendix A Scope of Work**

### **Asset:**

- 60KG CLEARWELL TANK is approximately 18 ft Long x 10 ft Width x 13 ft Height (Interior)
- This proposal is based on dive cleanout and inspection pricing presented for the 250KG Ground Storage Tank. Both proposals must be accepted for pricing to be valid.
- Both tanks are to be inspected and cleaned in the same mobilization. Should crews need longer than the budgeted 8 hours to clean both assets, an hourly rate will be charged based on time to complete work and year the work is being done.
- This Maintenance Program includes future ROV inspections. If dive cleanouts are requested in lieu of ROV inspections, a change order shall be issued.

### **Dive Cleanout & Inspection:**

- A date shall be coordinated by both parties for the Owner to provide access to the Asset.
- The interior floor, walls and ceiling of the Asset will be inspected using a Diver. Baffle walls may restrict access to entire tank interior limiting the amount of floor area that may be accessed and cleaned.
- Perform Dive cleanout of the horizontal surfaces only of the Asset with allowance for up to 3" depth of soft sediment on the Asset floor. Tank must be full at time of service and cleaning (within 2 feet of the hatch). Failure to have the tank filled may result in a delay charge while the crew waits for proper water level for service.
- Access into the reservoirs must be sufficient for safe diver entry and exit. A minimum hatch size of 24" in diameter, no hatch obstructions, and unobstructed road access to the tank is required.
- It will be the responsibility of the Owner to notify antenna operator and/or owners prior to crews' arrival for proper lockout for all antennas, RF devices and EME sources that may interfere with team safety and access to water reservoirs.
- Material(s) that cannot be removed by normal vacuum procudes or material(s) in excess of three inches (3") will be removed for an additional charge with an estimated price given on site.
- Material(s) such as sand, gravel, and concrete are considered debris and will be removed by hand at an additional charge.
- All discharged materials, including water, are the responsibility of the Owner.
- Off-site disposal is not included in this proposal.
- Wash-water and sediment will be disposed of through on-site drainage within a 150' distance from the Asset. Drainage will not be screened or sediment removed using a sediment trap or other sedimentation controls. Owner shall be responsible for dechlorination of the discharge water, if required.
- Excludes any hard scale (calcium, lime etc. deposits) built-up within the Asset.
- The Asset will be inspected to assess the sanitary, safety, structural, security, and coatings conditions, if present.
- The Diver and equipment will be disinfected in accordance with AWWA C652 prior to entry and after Asset inspection is completed.

**ROV Inspection:**

- A comprehensive written report with color digital photographs will be submitted detailing the condition of the Asset. A representative of Utility Service Co Inc will schedule a date with the Owner to present the report and findings.
- A date shall be coordinated by both parties for the Owner to provide access to the Asset.
- The interior floor, walls and ceiling of the Asset will be inspected using Robotic Operated Vehicle (ROV) equipment. No cleaning of the Asset is included in this inspection. Baffle walls may restrict access to entire tank interior limiting the amount of information that may be collected.
- The maximum cord length of the ROV equipment is 150' long. Depending on access points, not all areas of the Asset may be recorded.
- The Asset will be inspected to assess the sanitary, safety, structural, security, and coatings conditions, if present.
- The ROV equipment will be disinfected in accordance with AWWA C652 prior to entry and after Asset inspection is completed.
- A comprehensive written report with color digital photographs will be submitted detailing the condition of the Asset. A representative of USG Water Solutions will schedule a date with the Owner to present the report and findings.
- ROV Inspection assumes services will be provided in one (1) working day at site. If additional time is required, a price of \$2,650 per crew day will be added to the contract by authorized change order.

**Notes / Exclusions:**

- Owner shall provide that no moisture or water is entering the Asset during renovation operations.
- Water and power must be available within 150' of Asset.
- Bonds are not included.
- Local Wage Rates are included.

SCOPE OF WORK NO. 2  
TO THE MASTER SERVICES AGREEMENT BETWEEN  
UTILITY SERVICE CO., INC.  
AND  
CITY OF NEVADA, IA

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**CONCRETE ASSET MAINTENANCE – 250,000 GALLON CONCRETE – GROUND STORAGE TANK**

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1. **Effective Date.** The effective date (hereinafter, "Effective Date") for this Scope of Work No. 2 ("SOW2") shall be the date of the last party's signature affixed to this SOW2.
2. **Term.** This SOW2 shall commence on the Effective Date and shall continue in full force and effect for one year. This SOW2 will automatically renew for successive one-year terms unless terminated as defined in Section 10 herein. For purposes of this SOW2, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the SOW2 is executed by the Owner and each successive 12-month period thereafter (hereinafter, "Contract Year" or collectively, "Contract Years").
3. **Company's Engagement and Responsibilities.** The Owner agrees to engage the Company to provide the professional services needed to maintain its **250,000** gallon concrete asset located at **1231 West Lincoln Highway, Nevada IA 50201** (hereinafter, "the Asset"). This SOW2 and the attached Appendix A outlines the professional services, including the upfront renovation (hereinafter, the "Upfront Renovation") of the Tank and subsequent maintenance activities thereafter. Upfront Renovation and maintenance activities are collectively referred to as "the Services" in this SOW2, and include the following:
  - a. The Asset shall receive an Upfront Renovation, which will include: **DIVE CLEANOUT INSPECTION prior to the end of Contract Year 1.**
  - b. Every 3 years, beginning with the first Dive Cleanout Inspection, the Asset interior will be thoroughly inspected by a Remote Operated Vehicle (ROV) with the option to conduct a Dive Cleanout Inspection at an increased cost. However, the Owner is responsible for conducting any required testing of the water. A written report will be mailed to the Owner after each inspection.
  - c. The Company will install a lock on the roof hatch of the Asset; however, the provision of such lock does not guarantee the Asset's security during the term of this SOW2. For the avoidance of doubt, security of the Asset and the site where the Asset is located (hereinafter, "Asset Site") are the responsibility of the Owner.
  - d. The Company will furnish a certificate of insurance to the Owner evidencing the Company's insurance coverage.



4. **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 this SOW2. The first **one(1)** Annual Fees shall be **\$4,505.00** per Contract Year. The Annual Fee for Contract Year two (2) shall be **\$901.00**. Each Contract Year thereafter, the Annual Fee shall be adjusted to reflect the current cost of service. The adjustment of the Annual Fee shall be limited to a maximum of 5% annually. All applicable taxes are the responsibility of the Owner and are in addition to the stated costs and fees in this SOW2.
5. **Payment Terms and Late Charges.**
- 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 this SOW2.**
  - 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 will charge the Owner a late fee on unpaid balances and may also terminate or suspend Services under this SOW2 without notice. Any 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 Asset or making the Asset 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 Asset.** 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 Asset with a visual inspection, remotely operated vehicle inspection ("ROV Inspection"), or unmanned aerial vehicle inspection ("UAV Inspection") at the Company's discretion, and such replacement does not constitute a modification of this SOW2.
7. **Structure of Tank, Tank Site Conditions, and Modifications.**
- In providing the Services, the Company accepts the Tank based upon its existing structure and components as of the Effective Date.
  - Any modifications to the Tank after the Effective Date, including antenna installations, shall first be approved by the Company (prior to installation) and may warrant an increase in the Annual Fees.**
  - 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 Company's cost in delivering the Services, will be just cause for an equitable adjustment of the Annual Fees in this SOW2.
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 SOW2, which cause an increase in the cost of the maintenance of the Asset, will be just cause for an equitable adjustment of the Annual Fees in this SOW2. 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 Asset, will be just cause for an equitable adjustment of the Annual Fees in this SOW2. Said equitable adjustment of the Annual Fees in this SOW2 will reasonably reflect the increased cost of the Services with newly negotiated Annual Fee(s).

9. **Excluded Items.** This SOW2 does NOT include the cost for and/or liability on the part of the Company for: (i) containment or lead abatement of the Asset at any time during the term of this SOW2; (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 Asset 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 Asset; (ix) any latent defects or inaccessible areas of the Asset or its components; (x) any repairs or improvements necessary for the Asset or Asset site that arise from or are caused by voids in concrete; (xi) environmental controls, including dehumidification and auxiliary heating, are not included; (xii) the maintenance, repair or replacement of any electrical components (to include any lighting); (xiii) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xiv) the maintenance, repair, or replacement of piping of any kind below ground level; and (xv) 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 Asset or Asset Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include, but are not limited to, any damage to the Asset or Asset Site which results from an unauthorized entry of any kind to the Asset or Asset Site.

10. **Termination.**

- a. **This SOW2 is an annual contract that shall automatically renew on an annual basis for successive Contract Years so long as the Owner:**
  - i. pays each Annual Fee to the Company in accordance with the terms herein, and
  - ii. does not terminate this SOW2 pursuant to the terms of this Section.
- b. This SOW2 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 SOW2 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.).
- c. In the event the Owner elects to terminate this SOW2 prior to remitting the first **one (1)** Annual Fees, then any such unpaid balance of the first **one**

(1) Annual Fees 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. **No Warranty.** THE COMPANY MAKES NO WARRANTIES, EXPRESS OR IMPLIED, RELATED TO THE STRUCTURAL CONDITION OF THE ASSET AS OF THE EXECUTION OF THIS SOW2 OR AT ANY FUTURE TIME WHILE THIS SOW2 IS IN EFFECT. THE COMPANY SHALL NOT BE LIABLE, UNDER CONTRACT OR TORT, FOR DAMAGES RESULTING FROM A FAILURE IN THE STRUCTURAL INTEGRITY OF THE ASSET, AND THE COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
12. **Structural Repairs.** If the Owner determines that structural repairs to the Asset are necessary, then the Company agrees to identify one or more companies that can perform the repairs and request proposals for the repairs. The Company agrees that it will consider the proposals and discuss them with the Owner. The Company further agrees that it will consider, but it will remain in the Company's sole discretion, whether to contract with the third party(ies) to have the structural repairs performed on the Asset. In such an event, this SOW2 shall be amended to increase the Annual Fees, which must be mutually agreed to by the Owner and the Company, as well as to confirm the scope of work for the repairs and any other pertinent issues that must be addressed in the amendment.
13. **Visual Inspection Disclaimer.** This SOW2 is based upon a visual inspection of the Asset. The Owner and the Company hereby acknowledge and agree that a visual inspection is intended to assess the condition of the Asset for all patent defects. If latent defects are identified once the Asset 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. If profile of interior concrete substrate is found to be greater than CSP 5 per the International Concrete Repair Institute (ICRI), then the Company is entitled to compensation for this item. Further, at the time of renovation concrete interior will be further tested for pH, adhesion strength, moisture vapor transmission (MVT), relative humidity, etc., and if defects are found to be substantial, then the contract will either be voided (3% of UR will be owed the Company for mobilization and testing) or the Owner and the Company will negotiate a change order for the unforeseen repairs.
14. **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 SOW2 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 SOW2 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.

SO EXECUTED, on the date(s) affixed below.

OWNER

City of Nevada

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

COMPANY

Utility Service Co., Inc.

By:  \_\_\_\_\_

Name: Jonathan Cato

Title: Chief Operating Officer

Date: May 19, 2025

## **Appendix A Scope of Work**

### **Asset:**

- 250KG CLEARWELL TANK is approximately 60 ft Dia x 13 ft Height (Interior)
- This proposal is based on dive cleanout and inspection pricing presented for the 60KG Ground Storage Tank. Both proposals must be accepted for pricing to be valid.
- Both tanks are to be inspected and cleaned in the same mobilization. Should crews need longer than the budgeted 8 hours to clean both assets, an hourly rate will be charged based on time to complete work and year the work is being done.
- This Maintenance Program includes future ROV inspections. If dive cleanouts are requested in lieu of ROV inspections, a change order shall be issued.

### **Dive Cleanout & Inspection:**

- A date shall be coordinated by both parties for the Owner to provide access to the Asset.
- The interior floor, walls and ceiling of the Asset will be inspected using a Diver. Baffle walls may restrict access to entire tank interior limiting the amount of floor area that may be accessed and cleaned.
- Perform Dive cleanout of the horizontal surfaces only of the Asset with allowance for up to 3" depth of soft sediment on the Asset floor. Tank must be full at time of service and cleaning (within 2 feet of the hatch). Failure to have the tank filled may result in a delay charge while the crew waits for proper water level for service.
- Access into the reservoirs must be sufficient for safe diver entry and exit. A minimum hatch size of 24" in diameter, no hatch obstructions, and unobstructed road access to the tank is required.
- It will be the responsibility of the Owner to notify antenna operator and/or owners prior to crews' arrival for proper lockout for all antennas, RF devices and EME sources that may interfere with team safety and access to water reservoirs.
- Material(s) that cannot be removed by normal vacuum procudes or material(s) in excess of three inches (3") will be removed for an additional charge with an estimated price given on site.
- Material(s) such as sand, gravel, and concrete are considered debris and will be removed by hand at an additional charge.
- All discharged materials, including water, are the responsibility of the Owner.
- Off-site disposal is not included in this proposal.
- Wash-water and sediment will be disposed of through on-site drainage within a 150' distance from the Asset. Drainage will not be screened or sediment removed using a sediment trap or other sedimentation controls. Owner shall be responsible for dechlorination of the discharge water, if required.
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**ROV Inspection:**

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