

**FIRST AMENDMENT TO CONTRACT AGREEMENT
Between City of Othello and Utility Service Co., Inc.**

THIS AGREEMENT amends that Contract for water storage asset management services (including water tank inspection, maintenance, and repair) (hereinafter referred to as the "Contract") executed by the City of Othello ("City") and Utility Service Co., Inc., ("Contractor") on or about July 29, 2014. The City and Contractor are collectively referred to herein as the "Parties".

RECITALS

WHEREAS, the City put out for bid a contract for water tank inspection, maintenance, and repair;

WHEREAS, the City and Contractor entered into an agreement for water tank inspection, maintenance, and repair on or about July 29, 2014, for a three (3) year term;

WHEREAS, the Washington State Legislature passed HB 1989 which was enacted into law on July 24, 2015, codified as Revised Code of Washington 35.21.945, giving municipalities greater flexibility in contracting for inspection, maintenance and repair of water storage assets;

WHEREAS, the City can obtain more efficiencies and save public funds by committing to a perpetual contract term for water tank inspection, maintenance, and repair;

WHEREAS, the City published notice of its requirements to procure asset management service of its water storage assets, which notice concisely stated the scope and nature of the water storage asset management service and encouraged firms to submit proposals to meet those requirements; and

WHEREAS, the Contractor responded to the aforementioned notice, and negotiated a fair and reasonable water storage asset management service contract with the City;

The Parties agree to the following amendments to the Contract:

AMENDMENTS

1. The scope of work attached to the original contract shall be replaced with the attached Projected Schedule of Work and Fees.
2. Section I entitled "DESCRIPTION OF WORK" shall be amended as follows:
 - a. "Over the course of a three-year contract to do the following work" is amended to read "Over the course of this Agreement".

- b. The seventh paragraph, beginning with "Contractor's Responsibilities" and items A through F is struck and replaced with the following:

"Contractor's Responsibilities. This contract outlines the Contractor's responsibilities for inspection, care and maintenance of the above described water tanks. This is in conjunction with the attached Projected Scope of Work. Care and maintenance include the following:

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



- G. The Contractor will furnish pressure relief valves, if requested by the City, so that the City can install the valves in its water system while the tank is being serviced.
- H. The Contractor will furnish current certificates of insurance coverage to the City.
- I. Structure of Tank. The Contractor is accepting this tank under the program based upon its existing structure and components. *Any modifications to the tank, including antenna installations, shall be approved by the Contractor prior to installation and may warrant an increase in the annual fee.*

3. Section II entitled "TIME OF COMPLETION" shall be amended as follows:

- a. The last sentence shall be struck and replaced with the following:

"Upon the effective date of this Agreement, the Contractor shall complete the work described in Section I in accordance with the projected scope of work attached, and any changes to the projected scope of work shall be negotiated by the parties.

4. Section III entitled "COMPENSATION" shall be amended as follows:

- a. The first paragraph before items A. through D., shall be struck and replaced with the following:

"Some of the initial tank renovations required hereunder were completed in 2015 before the First Amendment to Contract Agreement. The first annual fee shall be **\$245,000.00**. The annual fee for Year 2 shall be **\$237,578.00**. The annual fee for Contract Years 3 through 6, shall be **\$237,508.00**. The annual fee for Contract Year 7 shall be **\$115,568.00**. In Contract Year 8, 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. The City paid \$245,000.00 in January 2016, so the annual fee for Contract Year 1 has been paid in full. Each subsequent annual fee, plus all applicable taxes, shall be invoiced and payable in November of each Contract year, starting with Contract Year 2 in November 2016. All applicable taxes are the responsibility of the City and are in addition to the stated costs and fees in this Contract. A "Contract Year" shall be defined as February 1 to January 31, and each subsequent 12-month period thereafter during the time the Contract is in effect. Contract Year 1 for this contract is February 1, 2015 to January 31, 2016, and Contract Year 2 for this contract is February 1, 2016, to January 31, 2017, and so on. Furthermore, if the City elects to terminate this Contract prior to remitting the first six



(6) annual fees, then the unpaid balance for work completed prior to the date of termination shall be due and payable within thirty (30) days of the termination.

- 5. Section V entitled "TERMINATION" shall be amended as follows:
 - a. The first sentence of the first paragraph under heading V.2. shall be amended by inserting "without cause" between "City" and "only".

- 6. Section XIV entitled "MISCELLANEOUS PROVISIONS" shall be amended as follows:
 - a. Subparagraph I.9 shall be amended to refer to "Paragraph I, subsection I" instead of "Paragraph I, subsection F."

 - b. Subparagraph I.11. shall be struck.

All other provisions of the Contract shall remain in full force and effect.

IN WITNESS, the parties below execute this Agreement, which shall become effective on the last date entered below.

CONTRACTOR:

By:  _____
(Signature)

Print Name: Dominique Demessence

Title: Chief Executive Officer

DATE: March 7, 2016

CITY OF OTHELLO:

By:  _____
(Signature)

Print Name: Shawn R. Logan

Title: Mayor

DATE: 3/16/16