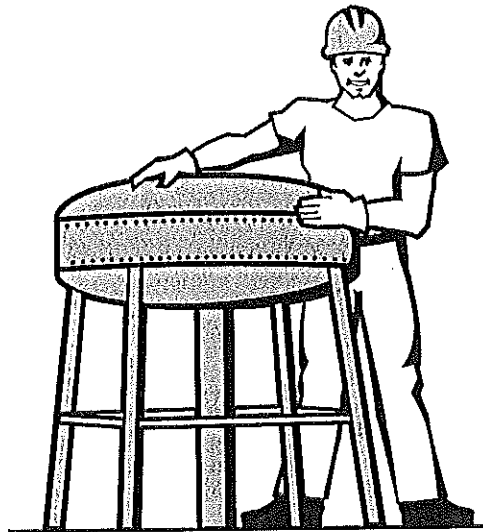


# Utility Service co., inc.

## Water Tank Maintenance Contract



**Owner:** Hamilton Township Municipal Utilities Authority  
Mays Landing, New Jersey

**Tank Size/Name:** 1,000,000 Hydropillar – Eastern Tank

**Location:** Dr. Dennis Forman Drive

**Date Prepared:** August 23, 2010

**WATER TANK MAINTENANCE CONTRACT**  
**Eastern Tower**

Whereas, Hamilton Township Municipal Utilities Authority is desirous of entering into a water asset management program with Utility Service Co., Inc. for the purpose of maintaining, restoring and repairing the water tank commonly referred to as the Eastern Tower; and

Whereas, Hamilton Township Municipal Utilities Authority will continue to control the charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the Hamilton Township Municipal Utilities Authority for the water supply services to be provided; and

Whereas, Hamilton Township Municipal Utilities Authority will continue to control all aspects of financing and constructing planned capital additions or upgrades to existing water supply facilities; and

Whereas, Hamilton Township Municipal Utilities Authority will continue to control the operation of the water supply facilities; and

Whereas, in light of Hamilton Township Municipal Utilities Authority's continued control over the operations of the water supply facilities any circumstances or occurrences that may arise will be able to be handled and/or addressed by the Hamilton Township Municipal Utilities Authority; and

Whereas, there are no Hamilton Township Municipal Utilities Authority employees whose positions or employment will be affected by the terms of this contract; and

Whereas, bulk sale of water supply is not applicable to the Hamilton Township Municipal Utilities Authority and has no bearing on the present contract; and

Whereas, no performance bond is required of Utility Service Co., Inc.; and

Whereas, the Eastern Tower shall be maintained, restored and repaired as set forth in the terms of this contract.

Now, therefore be it resolved as follows:

This Contract entered into by and between Hamilton Township Municipal Utilities Authority, whose business address is 6024 Ken Scull Avenue, Mays Landing, New Jersey (hereinafter referred to as "the Owner") and Utility Service Co., Inc., whose business address is Post Office Box 1350, 535 Courtney Hodges Boulevard, Perry, Georgia 31069 (hereinafter referred to as "the Company").

Therefore, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Owner and the Company, the parties agree as follows:

The Owner agrees to engage the Company to provide the professional service needed to restore, repair and maintain the Eastern Tower (hereinafter "tank") which is a 1,000,000 Gallon Hydro-Pillar Tank located at Dr. Dennis Forman Drive, Mays Landing, New Jersey, 08330 and commonly known on the Township tax maps as Block 1027, Lot 1.03.

**1. Term of the Contract.** This Contract shall remain in full force and effect for a period of ten (10) years commencing on the date indicated herein below (hereinafter "Initial Term"). This Contract will terminate on \_\_\_\_\_. Owner has the option to renew this contract for six (6) additional five (5) year terms (hereinafter "Renewal Term(s)"). The Owner shall give the Company at least sixty (60) days advanced written notice of its intent to renew this Contract before the expiration of the Initial Term or any Renewal Term(s). If written notice is not received at least sixty (60) days before the expiration of the Initial Term or any of the Renewal Terms, this Contract shall expire at the end of the then current term.

**2. Company's Responsibilities.** This Contract outlines the Company's responsibility for the care and maintenance of the above described water storage tank. Care and maintenance include the following, together with any responsibilities as set forth in the Request for Proposal (including the Scope of Work and Pricing Proposal incorporated therewith) attached as Exhibit A:

A. The Company will annually inspect and service the tank set forth above. The tank and tower will be thoroughly inspected to ensure that the structures are in a sound, watertight condition.

B. Biennially, beginning with the first washout/inspection, the tank will be completely drained and cleaned to remove all mud, silt, and other accumulations that might be harmful to the tank or its contents. After cleaning is completed, the interior will be thoroughly inspected and disinfected prior to returning the tank to service; however, the Owner is responsible for draining and filling the tank and conducting any required testing of the water. A written report will be mailed to the Owner after each inspection within thirty (30) days of the date of the inspection.

C. The Company shall furnish engineering, repair, restoration, inspection and maintenance services needed for the tank during the term of this Contract. The repairs shall include: steel parts, expansion joints, water level indicators, sway rod adjustments, manhole covers/gaskets, ladders, safety cages, and access ways.

D. The Company will clean and repaint the interior and/or exterior of the tank at such time as complete repainting is needed and in accordance with the response for proposal submitted by the Company attached hereto as Exhibit "A" to this Contract. The need for interior painting is to be determined by the thickness of the existing liner and its protective condition. When interior repainting is needed, procedures as outlined in A.W.W.A.-D102 specifications for cleaning and coating of potable water tank will be followed. Only material approved for use in potable water tank will be used on any interior surface area. The need for exterior

painting is to be determined by the appearance and protective condition of the existing paint. At the time the exterior requires repainting, the Company agrees to paint the tank with the same color paint and to select a coating system which best suits the site conditions, environment, and general location of the tank. When painting is needed, all products and procedures will be equal to, or exceed the requirements of New Jersey Department of Environmental Protection, the American Water Works Association, and the Society for Protective Coatings as to surface preparation and coating materials.

E. A lock will be installed on the roof hatch of the tank.

F. The Company will provide emergency services, when needed, to perform all repairs covered under this Contract. Reasonable travel time of up to twenty-four hours must be allowed for the repair unit to reach the tank site.

G. The Company will furnish pressure relief valves, if requested by the Owner, so that the Owner can install the valves in its water system while the tank is being serviced.

H. The Company shall furnish current certificates of insurance to the Owner as required pursuant to and set forth in the Request for Proposals.

I. Maintain anti-climb devices.

J. Ensure compliance with all Federal and State regulations.

K. Oakcrest High School's block lettering and Falcon logo will be retraced/painted during the first exterior painting at no additional charge. In the event Oakcrest High School elects to modify the existing block lettering and/or Falcon logo, Oakcrest High School will be required to negotiate with and pay to the Company the additional fees/charges associated with the modified design.

L. At the Owner's option, the Owner's logo may be added to one side of the tank at an additional cost of \$5,500.00.

**3. Contract Price/Annual Fees.** The tank shall be maintained, restored and repaired in accordance with the response for proposal submitted by the Company attached as Exhibit "A" to this Contract. The tank shall receive an interior renovation, exterior renovation, and repairs prior to the end of Contract Year 1. The first six (6) annual fees (i.e. Contract Years 1-6) shall be \$147,412.00 per Contract Year; the next three (3) annual fees (i.e. Contract Years 7-9) shall be \$61,635.00 per Contract Year; the annual fee for the tenth year (i.e. Contract Year 10) shall be \$68,415.00. The Company shall be responsible for all corporate taxes and for all taxes and deductions payable on behalf of Company's employees. All other taxes, if any, are the responsibility of the Owner and are in addition to the stated costs and fees in this Contract. The Company shall also be responsible for insuring that all subcontractors hired by the Company pay appropriate and prevailing wages for their employees and/or subcontractors. A "Contract Year" shall be defined as each consecutive 12-month period following the first day of the month in which the Contract is executed by the Owner and each subsequent 12-month period thereafter during the time the Contract is in effect. For example, if a contract was signed by an Owner on April 17, 2007, Contract Year 1 for that contract would be April 1, 2007 to March 31, 2008, and Contract Year 2 for that contract would be April 1, 2008 to March 31, 2009 and so on. **All future renovations, inspections, repairs, emergency services are covered by the Company at no additional costs.**

**4. Payment Terms. Contract Year 1:** The annual fee for Contract Year 1, plus all applicable taxes (if any), shall be due and payable upon completion of the interior renovation or exterior renovation, whichever occurs first. **All subsequent Contract Years:** Each subsequent annual fee, plus all applicable taxes (if any), shall be due and payable on the first day of each Contract Year; however, beginning in Contract Year 2, the annual fee can be paid semiannually. (Note: Due to the length of time that it takes to perform the initial renovation project, it is possible that two (2) annual fees could fall within one budget year for the Owner). Furthermore, if the Owner elects to terminate this Contract prior to remitting the ten (10) annual fees, then the balance for work completed shall be due and payable within sixty (60) days of the Company's receipt of the Owner's Notice to Terminate.

**5. Structure of Tank.** The Company is accepting the tank under program based upon their existing structure and components, and in contemplation that any existing cellular antenna configuration is to be removed and replaced as modified with a cost for same to be borne by the cellular telephone company provider. The Company will coordinate this activity in cooperation with the Owner and cellular telephone service provider. *Any other modifications to the tank, including additional antenna installations, shall be approved by Utility Service Co., Inc., prior to installation and may warrant an increase in the annual fee.*

**6. Environmental, Health, Safety, or Labor Requirements.** The Owner hereby agrees that future mandated environmental, health, safety, or labor requirements as well as changes in site conditions at the tank sites which cause an increase in the cost of tank maintenance will be just cause for modification of this Contract. Said modification of this Contract will reasonably reflect the increased cost of the service with a newly negotiated annual fee.

The work performed under this Contract is subject to prevailing wages, and the workers who are performing work under this Contract are to be paid no less than the prevailing hourly rate of wages as set by the appropriate authority. Any future work performed by workers under this Contract will be subject to the wage determination of the appropriate authority that is in effect when the work is performed.

**7. Excluded Items:** This Contract does NOT include the cost for and/or liability on the part of the Company for: (1) containment of the tank at anytime during the term of the Contract, except for the initial renovation; (2) disposal of any hazardous waste materials; (3) resolution of operational problems or structural damage due to cold weather; (4) repair of structural damage due to antenna installations or other attachments for which the tank was not originally designed; (5) resolution of operational problems or repair of structural damage or site damage caused by physical conditions below the surface of the ground; (6) negligent acts of Owner's employees, agents or contractors; (7) damages, whether foreseen or unforeseen, caused by the Owner's use of pressure relief valves; (8) repairs to the foundation of the tank; or (9) other conditions which are beyond the Owner's and Company's control, including, but not limited to: acts of God and acts of terrorism. Acts of terrorism are criminal acts causing or designed to cause serious public inconvenience and alarm (commonly referred to as terrorism) resulting in damage to the tank or the public, and such acts are excluded from the terms of this Contract. The

Company shall negotiate with the Owner for such services as the Owner may request from the Company to restore or repair the tank from such actions.

**9. Termination.** This Contract will expire at the end of the ten (10) year term as set forth in Paragraph 1 unless the Owner elects to extend the Contract as set forth in Paragraph 1 of this Contract. The Owner shall have the right to terminate this Contract prior to the Contract end date. The Owner must provide written notice of termination to the Company at least sixty (60) days prior to the termination date. Notice of Termination is to be delivered by registered mail to Utility Service Co., Inc., Attn: Customer Service, P.O. Box 1350, Perry, Georgia 31069, and signed by three (3) authorized voting officials of the Owner's management and/or Board. The Owner shall be responsible to pay for work completed prior to the date of the termination notice.

**10. Default.** If there should occur any default on the part of the Company in the performance of any conditions contained herein the Owner shall notify the Company of the default and shall have the right to terminate this Contract as well as pursue any other remedies as may be permitted by law.

**11. Assignment.** Neither party may assign this Contract without the prior written consent of the other party. The assigning party shall remain responsible under this Contract until its assignee assumes in full and in writing all of the obligations of the assigning party under this Contract.

**12. Indemnification.** THE COMPANY AGREES TO INDEMNIFY THE OWNER AND DEFEND THE OWNER, ITS DIRECTORS AND OFFICERS, FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF ANY ACT, OMISSION, OR REPRESENTATION OF THE COMPANY OR ITS SUBCONTRACTORS, AGENTS, OR EMPLOYEES. IN TURN, THE OWNER AGREES TO INDEMNIFY THE COMPANY AND HOLD THE COMPANY HARMLESS FROM ANY AND ALL CLAIMS, DEMANDS, ACTIONS, DAMAGES, LIABILITY, AND EXPENSE IN CONNECTION WITH LOSS OF LIFE, PERSONAL INJURY, AND/OR DAMAGE TO PROPERTY BY REASON OF ANY ACT, OMISSION, OR REPRESENTATION OF THE OWNER OR ITS CONTRACTORS, AGENTS, OR EMPLOYEES. THE INDEMNIFICATION PROVIDED IN THIS PARAGRAPH DOES NOT AFFECT THE COMPANY'S LIMITATIONS OF LIABILITY SET FORTH IN OTHER PARAGRAPHS OF THIS CONTRACT.

**13. Assignment of Receivables.** The Company reserves the right to assign any outstanding receivables from this Contract to its Bank or other Lending Institutions as collateral for any loans or lines of credit.

**14. Miscellaneous Items.** No modifications, amendments, or alterations of this Contract may be made except in writing signed by all the parties to this Contract. No failure or delay on the part of any party hereto in exercising any power or right hereunder

shall operate as a waiver thereof. The parties expressly warrant that the individuals who sign below are authorized to bind them.

**15. Entire Agreement.** This Agreement together with the Response for Proposal attached as Exhibit "A" (including the Scope of Work and Pricing Proposal incorporated therewith) constitute the entire agreement of the parties and supersedes all prior communications, understandings and agreements relating to the subject matter hereof, or whether oral or written. If Exhibit "A" conflicts with the terms of this Contract, the terms of this Contract shall govern.

**16. Insurance.** At its own expense, the Company shall procure and maintain the following insurance policies:

- A. Commercial General Liability Insurance: During the life of this contract, the Company shall procure and maintain Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$2,000,000.00 per occurrence and/or aggregate combined single limit, personal injury, bodily injury and property damage. Coverage shall include the following: (a) Contractual Liability; (b) Products and Completed Operations; (c) Independent Contractors Coverage; and (d) Per contract aggregate.
- B. Major Vehicle Liability Insurance: During the life of this contract, the Company shall procure and maintain Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability not less than \$2,000,000.00 per accident combined single limit bodily injury and property damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.
- C. Workers Compensation: During the life of this contract, the contractor shall procure and maintain Workers Compensation Insurance, including Employers' Liability Coverage in accordance with the statutes of the State of New Jersey.
- D. Additional Insured: The following shall be named as additional insureds: The HTMUA, including all appointed board members and officers, and Fralinger Engineering PA. This coverage shall be primary to the additional insureds, and shall not be contributing with any other insurance or similar protection available to the additional insureds, whether other available insurance be primary, contributing or excess.
- E. Builder's Risk Insurance: Until the project is completed and is accepted by the Owner, the Company is required to maintain Builder's Risk Insurance adequate to fully cover the insurable portion of the project for the benefit of the Owner.
- F. Pollution Liability: This insurance shall cover Pollution Liability in amounts of at least \$10,000,000.
- G. Contractor's Professional Liability: This insurance shall cover the Company's Professional Liability in amounts of at least \$2,000,000.
- H. Umbrella Liability: Umbrella or Excess Liability policy in amounts of at least \$10,000,000 shall be provided.
- I. The policies shall be provided from insurance companies rated "A" or better. Insurance carriers shall be licensed and admitted to do business in New Jersey.
- J. Certificates of insurance shall state that thirty (30) days written notice will be given to the HTMUA prior to the policy being canceled or non-renewed.

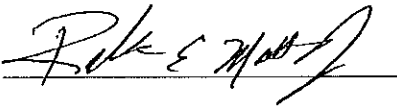
The certificates shall show the type, amount, class of operations covered, effective dates, and the dates of expiration of policies.

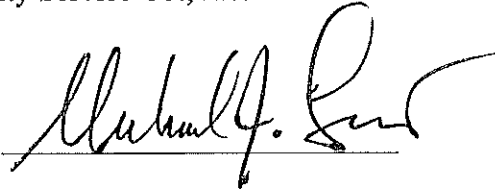
**17. Applicable Law.** This Agreement shall be construed in accordance with the laws of the State of New Jersey. In any action or proceeding brought hereunder or in respect hereof, the parties consent to the judicial jurisdiction of the Superior Court of New Jersey.

This Contract signed this 26<sup>th</sup> day of AUGUST, 2010.

**OWNER:**  
Hamilton Township  
Municipal Utilities Authority

**COMPANY:**  
Utility Service Co., Inc.

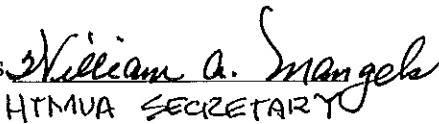
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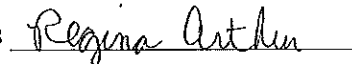
By: 

Title: CHAIRMAN HTMUA

Title: Senior Vice President

Print Name: ROBERT E. MATTLE JR Print Name: Michael J. Lewis

Witness   
HTMUA SECRETARY

Witness 

Seal:

Seal: