

MASTER SERVICES AGREEMENT Terms and Conditions

This MASTER SERVICES AGREEMENT ("Agreement") is entered into by and between the **Town of Munster** with a principal business address of 508 Fisher Street, Munster, IN 46321 ("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, GA 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 _____, 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 (100%) OF THE SUM OF ALL FEES PAID BY THE OWNER TO THE COMPANY PURSUANT TO THE TERMS OF ALL SOWs.**

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; 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.

i. **Governing Law.** This Agreement shall be governed by the law of the State of Indiana; 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

Town of Munster

By: _____

Name: _____

Title: _____

Date: _____

COMPANY

Utility Service Co., Inc.

By:  _____

Name: Jonathan Cato

Title: Chief Operating Officer

Date: January 5, 2023

Notice Address for Each Party:

Town of Munster

Attn: _____

Utility Service Co., Inc.

Attn: Customer Service Department

535 General Courtney Hodges Boulevard

Post Office Box 1350

Perry, Georgia 31069