



CITY OF BETHLEHEM
OFFICE OF THE CITY SOLICITOR

INTEROFFICE MEMORANDUM

To: Tad J. Miller, City Clerk

From: John F. Spirk, Jr., Esq., City Solicitor

Re: Assignment and Assumption Agreement
City of Bethlehem, Bethlehem Authority and Utility Services Co., Inc.
Water Tank Maintenance Contracts

Date: December 14, 2022

Attached is a proposed Resolution and associated Assignment and Assumption Agreement for Council's consideration.

By way of background, the Bethlehem Authority currently contracts with Utility Services Co., Inc. for maintenance services for three (3) water storage tanks. The City and the Bethlehem Authority desire to have these contracts assigned to the City as the operator of the system, with the City accepting assignment of all of the Bethlehem Authority's rights, title, privileges, benefits and interest in, and assuming all of the Bethlehem Authority's obligations and duties under said contracts.

The Bethlehem Authority and Utility Services Co., Inc. have approved the Assignment and Assumption Agreement and have executed the same.

Please place this matter on City Council's agenda for review and appropriate action.

John F. Spirk, Jr.
John F. Spirk, Jr., Esq., Solicitor

Cc: J. William Reynolds, Mayor
Edward Boscola, Director of Water & Sewer Resources
Stephen Repasch, Executive Director, Bethlehem Authority

RESOLUTION NO. 2022-_____

Authorization For Assignment and Assumption Agreement

BE IT RESOLVED by the Council of the City of Bethlehem that the Mayor and the Controller and/or such other City officials as deemed appropriate by the City Solicitor, are hereby authorized to execute an Assignment and Assumption Agreement, and such other agreements and documents as are deemed by the City Solicitor to be necessary and/or related thereto, between the City of Bethlehem, the Bethlehem Authority and Utility Services Co., Inc. for the purpose of assigning the Bethlehem Authority's rights, titles, privileges, benefits and interest in, and all the duties and obligations set forth in certain Water Tank Maintenance Contracts to the City of Bethlehem, according to the terms and conditions indicated in the Assignment and Assumption Agreement, a copy of which is attached hereto and made a part hereof.

Sponsored by _____

ADOPTED by Council this _____ day of _____, 2022.

President of Council

ATTEST:

City Clerk

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment") is dated October 6, 2022 (the "Effective Date"), by, between and among **CITY OF BETHLEHEM**, a municipal corporation being a City of the Third Class, subject to the Optional Third Class City Charter Law, organized and existing under the law of the Commonwealth of Pennsylvania, with an address of 10 East Church Street, Bethlehem, Pennsylvania 18018 (the "ASSIGNEE") and **THE BETHLEHEM AUTHORITY**, a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with an address of 10 East Church Street, Bethlehem, Pennsylvania 18018 (the "ASSIGNOR") and **UTILITY SERVICES CO., INC.**, a Georgia corporation with a principal business address of 535 General Courtney Hodges Boulevard, P.O. Box 1350, Perry, GA 31069 (the "COMPANY"). Each is referred to as a "Party" and collectively the "Parties."

BACKGROUND

Assignor and Company are parties to (a) a Water Tank Maintenance Contract dated December 1, 2021 for the 5,000,000 Gallon G.S.T. – Southeast Tank; (b) a Water Tank Maintenance Contract dated November 25, 2009 for the 5,000,000 Gallon G.S.T. – South Mountain Tank; and (c) a Water Tank Maintenance Contract dated June 30, 2009 for the 5,000,000 Gallon G.S.T. – Northeast Standpipe (collectively, the "Water Tank Maintenance Contracts").

Pursuant to Article 9 of the Water Tank Maintenance Contracts, Assignor may assign all of its rights and obligations under the Water Tank Maintenance Contracts to a third-party with the prior written consent of Company.

Assignor has requested, and Company has consented to, the assignment by Assignor to Assignee of all of Assignor's right, title, privilege, benefit and interest in and to, and all duties and obligations as set forth in, the Water Tank Maintenance Contracts; and Assignee desires to accept assignment of all of Assignor's right, title, privilege, benefit and interest in and to, and desires to assume all of Assignor's obligations and duties under, the Water Tank Maintenance Contracts, all as set forth in this Assignment. This Assignment will be effective as of the Effective Date.

Capitalized terms used in this Assignment without definition shall have the meanings assigned to them in the Water Tank Maintenance Contracts.

AGREEMENT

The Parties, intending to be legally bound, agree as follows:

1. **Incorporation of Background Section.** The Background Section of this Assignment is incorporated by reference.
2. **Assignment.** Assignor absolutely and unconditionally assigns and transfers to Assignee, its successors and assigns, all of Assignor's right, title, privilege, benefit and interest in and under the Water Tank Maintenance Contracts, together with all amendments, extensions, renewals and other modifications thereto.
3. **Acceptance and Assumption.** Assignee, for itself, its successors and assigns, hereby accepts the Assignment of all of Assignor's right, title and interest in and to the Water Tank

Maintenance Contracts and agrees to assume and be otherwise fully bound by, and agrees to perform all of Assignor's duties and obligations as Owner under, the Water Tank Maintenance Contracts, as of the Effective Date as if Assignee were the original party to the Water Tank Maintenance Contracts.

4. **Consent of Company.** Company consents to the assignment and assumption of the Water Tank Maintenance Contracts by Assignor to Assignee, and as of the Effective Date, Company will perform its obligations under the Water Tank Maintenance Contracts as if Assignee were the original party to the Water Tank Maintenance Contracts.

5. **General Provisions.** The Parties agree to execute and deliver such additional papers, instruments and documents and take such other actions reasonably requested to consummate and make more effective the assignment and assumption of rights and obligations and other transactions contemplated by this Assignment. This Assignment shall be binding upon and shall inure to the benefit of and be enforceable by the Parties hereto and their respective successors and permitted assigns, but Assignee may assign any of its rights or liabilities hereunder without the prior written consent of Company. This Assignment has been duly authorized by all required corporate or governmental action of all Parties and, upon execution hereof, this Assignment shall constitute a valid and binding obligation of the Parties, enforceable in accordance with its terms. In the event that any provision or portion of any provision of this Assignment shall be held to be void or unenforceable, the remaining provisions of this Assignment, and the remaining portion of any provision held void or unenforceable in part only, shall continue in full force and effect. Any captions in this Assignment are for convenience only, and shall be of no effect in the construction of any provision or provisions of this Assignment. Neither this Assignment nor any uncertainty or ambiguity herein shall be construed or resolved against any Party, whether under any rule of construction or otherwise. This Assignment may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. One or more counterparts of this Assignment may be delivered electronically in PDF format, with the intention that such delivery shall have the same effect as delivery of an original counterpart thereof.

6. **Ratification, Confirmation.** The Parties ratify and confirm all provisions of the Water Tank Maintenance Contracts as amended by this Assignment.

[SIGNATURES TO FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have set their hands and affixed their respective seals the day and year first above written.

ATTEST:

George Yasso
City Controller

WITNESS/ATTEST:

WITNESS/ATTEST:

ASSIGNEE:
CITY OF BETHLEHEM

BY: _____
J. William Reynolds
Mayor

ASSIGNOR:
THE BETHLEHEM AUTHORITY

By: _____
Stephen Repasch
Executive Director

COMPANY:
UTILITY SERVICE CO., INC.

By: _____
Name:
Title: