



STATE OF NEW JERSEY
Board of Public Utilities
44 South Clinton Avenue, 1st Floor
Post Office Box 350
Trenton, New Jersey 08625-0350
www.nj.gov/bpu/

WATER

INTENT TO ENTER INTO A CONTRACT FOR)	ORDER APPROVING A PUBLIC-
THE REHABILITATION AND ONGOING)	PRIVATE CONTRACT
MAINTENANCE OF THE BOROUGH OF)	
BUTLER'S WATER STORAGE TANKS WITH)	
UTILITY SERVICE GROUP WATER SOLUTIONS)	DOCKET NO. WO25090526
VIA A PUBLIC-PRIVATE CONTRACT)	

Parties of Record:

Robert H. Oostdyk, Jr., Esq., Murphy McKeon, LLC on behalf of the Borough of Butler
Diana Riner, Esq., on behalf of Utility Service Group
Brian Lipman, Esq., Director, New Jersey Division of Rate Counsel

BY THE BOARD:

On September 4, 2025, the Borough of Butler ("Borough" or "Butler") filed a petition with the New Jersey Board of Public Utilities ("Board"), pursuant to N.J.S.A. 58:26-19 et seq., seeking authorization to enter into a contract ("Contract" or "Agreement") with Utility Service Group Water Solutions ("Company" or "USG") for water storage tank maintenance ("Petition"). By this Order, the Board considers the requests in the Petition.

BACKGROUND

Butler owns and operates a municipal water utility within Morris County. As the owner and operator of a water supply, transmission, and distribution system, pursuant to the County and Municipal Water Supply Act, N.J.S.A. 40A:31-1 et seq., Butler has jurisdiction to determine the terms and conditions under which it supplies water to customers within its municipal limits.

The New Jersey Water Supply Public-Private Contracting Act ("Water Act") authorizes public entities to enter into contracts with private firms for the provision of water supply services following Board review and approval.¹ The Water Act confines Board review of such contracts to certain criteria including the financial and technical capacity of the private firm, the reasonableness of the contract terms, the degree to which franchise customers are protected from the contract's risks, and whether the contract contains the provisions required by N.J.S.A. 58:26-23(e)(1), (2), and (6).²

On May 18, 2025, the Borough solicited proposals from qualified vendors for a public-private agreement for water storage tank maintenance in accordance with the New Jersey's Water Supply Public-Private Contracting Act, N.J.S.A. 58:26-19, et. seq. The Borough received one (1) proposal from USG. Following proper notice to the public in newspapers of general circulation in the Borough's service territory pursuant to N.J.S.A. 58:26-24, Butler held a public hearing regarding the proposed Contract on July 15, 2025. No comments were made at the public hearing.

On August 28, 2025, Butler filed an application with the Local Finance Board ("LFB") within the New Jersey Department of Community Affairs and the Board for approval of the Contract pursuant to N.J.S.A. 58:26-24(f).³

On August 28, 2025, Butler provided the New Jersey Department of Environmental Protection ("DEP") with a report pertaining to its July 15, 2025 public hearing on the proposed Contract. Pursuant to N.J.S.A. 58:26-25(a), DEP must complete its review and submit any comments to the Board and DCA within sixty (60) days of receipt. As of the date of this Order, the Board has received no comments from the DEP.

The LFB approved the Contract at its October 8, 2025 agenda meeting.

On October 9, 2025, the Borough consented to an extension of the Board's sixty (60)-day review period to January 3, 2026, as permitted by N.J.S.A. 58:26-25(a).

On October 28, 2025, the Borough filed an amended petition with the Board ("Amended Petition"). By the Amended Petition, Butler identified that it chose USG because the Company was deemed to have the necessary qualifications and expertise for the performance of the services.

By letter dated October 30, 2025, the New Jersey Division of Rate Counsel stated that it had no objection to Board approval of the Contract.

TERMS OF CONTRACT

The Contract is a twenty (20)-year agreement, set to commence when the Contract is executed by Butler, under which USG would manage two Borough-owned water storage tanks located on Bubbling Brook Road: a 1,000,000-gallon ("1 MG") standpipe and a 1,500,000-gallon ("1.5 MG") standpipe. As detailed below in this order, in actuality, the Contract is comprised of two separate contract documents: one contract governs the 1 MG standpipe ("1 MG Contract") and a second

¹ N.J.S.A 58:26-19 et seq.

² N.J.S.A. 58:26-25(c).

³ The application was amended on September 4, 2025 to correct a typographical error.

contract governs the 1.5 MG standpipe ("1.5 MG Contract"). The salient terms of the 1 MG Contract and 1.5 MG Contract are as follows:⁴

A. 1,000,000 Gallon Standpipe – 1 MG Standpipe Tank

1. Company's Engagement and Responsibilities. Butler agrees to engage the Company to provide the professional services needed to maintain its 1,000,000-gallon water storage tank located at Bubbling Brook Road, Kinnelon, New Jersey 07405 ("Tank"). The professional services entail the upfront renovation ("Upfront Renovation") of the Tank and subsequent maintenance activities thereafter. Upfront Renovation and maintenance activities are collectively referred to as "the Services" in the 1 MG Contract, and include the following:
 - a. The Tank shall receive an Upfront Renovation, which will include: exterior renovation, interior renovation, repairs, and mixing system installation prior to the end of Contract Year 1. For purposes of the 1 MG Contract, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the 1 MG Contract is executed by the Butler and each successive 12-month period thereafter ("Contract Year" or collectively, "Contract Years").
 - b. Annually, the Company will inspect the Tank to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to Butler following each inspection.
 - c. Biennially, after the Tank is drained by the Borough, the Company will clean the interior of the Tank and perform a condition assessment on the Tank ("Washout Inspection"). During each Washout Inspection, the Tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the Tank. After a Washout Inspection is completed, the interior of the Tank will be thoroughly inspected and disinfected prior to returning the Tank to service; however, Butler is responsible for draining and filling the Tank and conducting any required testing of the water before returning the Tank to service. Rotate the washout inspections with Remotely Operated Vehicle inspections.
 - d. Chemical Clean Service.
 1. During the washout/inspections, the Company will apply an National Sanitation Foundation ("NSF") 60 approved chemical cleaning agent to the interior walls and floor surfaces of the Tank to treat mineral build-up and bio-film that form on the interior tank surfaces.
 - e. The Company shall provide the engineering and inspection services needed to maintain and repair the Tank during the term of the 1 MG Contract. The repairs include: the Tank's expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the Tank's other steel parts not otherwise excluded.

⁴ Although summarized in this Order, the detailed terms of the Contract control, subject to the findings and conclusion of the Order. Paragraphs are numbered to coincide with the Contract.

- f. The Company 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 of the Tank is to be determined by the thickness of the existing liner and its protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the Tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the Tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the Tank. When interior or exterior painting of the Tank is needed, all products and procedures as to coating systems will be equal to or exceed the requirements of the New Jersey and the American Water Works Association's D102 standard in effect as of the effective date of the 1 MG Contract.
- g. The Company will install a lock on the roof hatch of the Tank; however, the provision of such lock does not guarantee the Tank's security during the term of the 1 MG Contract. For the avoidance of doubt, security of the Tank and the site where the Tank is located ("Tank Site") are the responsibility of the Borough.
- h. In the event of an emergency involving the Tank, the Borough shall provide written notice of such emergency to the Company via its email hotline at the following address: customerservice@usgwater.com. The Company will provide emergency services for the Tank, when needed, to perform all repairs covered under the 1 MG Contract. Reasonable travel time must be allowed for the repair unit to reach the Tank Site.
- i. When the Tank is taken out of service, the Company will furnish pressure relief valves, if requested by Butler, so that the Borough can install the valves in its water system while the Tank is being serviced. The Borough assumes all risk and liability for the installation and use of the pressure relief valves.
- j. The Company will furnish the Borough with current certificates of insurance, which will summarize the Company's insurance coverage.
- k. Mixing System Installation and Service
 - 1. The Company shall install an active mixing system in the Tank.
 - 2. The particular unit that will be installed in the Tank is a NSF Approved PAX 400/405 active mixing system along with its component parts.
 - 3. The Company will inspect and service the active mixing system each year. The active mixing system will be thoroughly inspected to ensure that the active mixing system is good working condition. The Company shall furnish engineering and inspection services needed to maintain and repair the active mixing system during the term of the 1 MG Contract.

4. The Borough shall be responsible for draining the Tank if determined necessary by the Company due to operational problems with the mixing system. The provisions of Section 1.B of the 1 MG Contract shall be followed in this circumstance.
2. 1 MG Contract Price/Annual Fees. For the performance of the Services required by Section 1, Butler shall pay the Company an Annual Fee ("Annual Fee") for each Contract Year of the 1 MG Contract. The first three (3) Annual Fees shall be \$266,710.00 per Contract Year. The Annual Fee for Contract Year 4 shall be 48,991.00. 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 Butler and are in addition to the stated costs and fees in the 1 MG Contract.
3. 1 MG Contract 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 Butler's execution of the 1 MG Contract.
 - 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 Borough a late fee on unpaid balances and may also terminate or suspend Services under the 1 MG Contract without notice. Any late fee will be 1.5% per month.
4. Changes or Delays to Services. For purposes of this Section 4, "Unreasonable Delay" shall mean the Borough's delay in releasing the Tank or making the Tank available to the Company for the performance of any of the Services described in the 1 MG Contract for a period of twenty-four (24) months following the Company's written request for release or access to the Tank. In the event of Unreasonable Delay, the Company reserves the right to recover its reasonable costs related to the Unreasonable Delay, and Butler agrees to negotiate with the Company in good faith to determine the amount of its reasonable costs caused by such Unreasonable Delay. Furthermore, the Borough agrees that the Company can replace a Washout Inspection of the Tank with a visual inspection, ROV Inspection, or unmanned aerial vehicle inspection ("UAV Inspection") at the Company's discretion, and such replacement does not constitute a modification of the 1 MG Contract.
5. 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 caused an increase in the Company's cost in delivering the Services,

6. Environmental, Health, Safety, Labor, or Industry Requirements. Butler 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 the 1 MG Contract, which cause an increase in the cost of the maintenance of the Tank, will be just cause for an equitable adjustment of the Annual Fees in the 1 MG Contract. 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 Tank, will be just cause for an equitable adjustment of the Annual Fees in the 1 MG Contract. Said equitable adjustment of the Annual Fees in the 1 MG Contract will reasonably reflect the increased cost of the Services with newly negotiated Annual Fee(s).

The work performed under the 1 MG Contract is subject to prevailing wages, and the workers who are performing work under the 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 the 1 MG Contract will be subject to the wage determination of the appropriate authority which is in effect when the work is performed. However, the Borough and the Company agree that if the prevailing wage rates for any job or trade classification increases by more than 5% per annum from the effective date of the 1 MG Contract to the date in which any future work is to be performed under the 1 MG Contract, then the Company reserves the right to re-negotiate the annual fee(s) with Butler. If the Company and Butler cannot agree on re-negotiated annual fee(s), then: (1) the Company will not be obligated to perform the work and (2) the Company will not be obligated to return past annual fee(s) received by the Company.

7. Excluded Items. The 1 MG Contract does NOT include the cost for and/or liability on the part of the Company for: (i) containment of the Tank at any time during the term of the 1 MG Contract; (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 Tank 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 Butler's employees, agents or contractors; (vii) damages, whether foreseen or unforeseen, caused by the Butler's use of pressure relief valves; (viii) repairs to the foundation of the Tank; (ix) any latent defects or inaccessible areas of the Tank or its components (including, but not limited to, (a) corrosion from the underside of the floor plates, and (b) inaccessible areas of the Tank such as the area between the bottom of the roof plate and the top of the roof rafter); (x) the maintenance, repair or replacement of any electrical components (to include any lighting, such as aviation lights); (xi) the maintenance, repair or replacement of fill lines, insulation, and/or frost jackets; (xii) the maintenance, repair, or replacement of piping of any kind below ground level; and (xiii) other conditions which are beyond the Borough 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 Tank or Tank Site which is caused by seismic activity, hurricanes, and/or tornadoes. Acts of terrorism include,

but are not limited to, any damage to the Tank or Tank Site which results from an unauthorized entry of any kind to the Tank or Tank Site.

8. Force Majeure. If the Company is prevented from performing any of its duties or obligations in the 1 MG Contract (other than duties or obligations with respect to payment) in a timely manner by reason of act of God or force majeure such as: (i) fire, (ii) war, (iii) earthquake, (iv) strike, (v) lock-out, (vi) labor dispute, (vii) flood, (viii) public disaster, (ix) pandemic or epidemic event (including COVID-19), (x) interruptions or delays in reasonably available means of transportation, (xi) acts of any government or its agencies or officers, or any order, regulation, or ruling thereof, to include tariffs, (xii) equipment or technical malfunctions or failures, (xiii) power failures or interruptions, (xiv) supply chain disruptions, or (xv) 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 exists.
9. 1 MG Contract Termination.
 - a. The 1 MG Contract is an annual contract that shall automatically renew on an annual basis for successive contract years so long as the Borough:
 1. pays each Annual Fee to the Company in accordance with the terms, and
 2. does not terminate the Contract pursuant to the terms of this Section.
 - b. The 1 MG Contract is subject to termination by the Borough 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, the 1 MG Contract shall renew for an additional Contract Year and expire at the end of the upcoming Contract Year. In such an event, Butler 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 Borough'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 Butler elects to terminate the 1 MG Contract prior to remitting the first three (3) Annual Fees, then any such unpaid balance of the first three (3) Annual Fees shall be due and payable within thirty (30) days of the Borough's issuance of the notice of intent to terminate at the end of the then-current Contract Year.
10. 1 MG Contract Assignment. The Borough may not assign or otherwise transfer all or any of its interest under the 1 MG Contract without the prior written consent of the Company. If the Company agrees to the assignment, the Borough shall remain responsible under the 1 MG Contract, until its assignee assumes in full and in writing all of the obligations of the Borough under the 1 MG Contract. Any attempted

assignment by Borough in violation of this provision of the 1 MG Contract will be void and of no effect.

B. 1,500,000 Gallon Standpipe – 1.5 MG Standpipe Tank

1. Company's Engagement and Responsibilities. The Borough agrees to engage the Company to provide the professional services needed to maintain its 1,500,000 gallon water storage tank located at Bubbling Brook Road, Kinnelon, New Jersey 07405. The professional services entail the upfront renovation ("Upfront Renovation") of the Tank and subsequent maintenance activities thereafter. Upfront Renovation and maintenance activities are collectively referred to as "the Services" in the 1.5 MG Contract, and include the following:
 - a. The Tank shall receive an Upfront Renovation, which will include: exterior renovation, interior renovation, repairs, and mixing system installation prior to the end of Contract Year 2. For purposes of the 1.5 MG Contract, "Contract Year" shall mean the 12-month period which commences on the first day of the month when the 1.5 MG Contract is executed by the Borough and each successive 12-month period thereafter ("Contract Year" or collectively, "Contract Years").
 - b. Annually, the Company will inspect the Tank to ensure that the structure is in a sound, watertight condition. The Company will provide a written inspection report to Butler following each inspection.
 - c. Biennially, after the Tank is drained by Butler, the Company will clean the interior of the Tank and perform a condition assessment on the Tank ("Washout Inspection"). During each Washout Inspection, the Tank will be cleaned to remove all mud, silt, and other accumulations from the interior of the Tank. After a Washout Inspection is completed, the interior of the Tank will be thoroughly inspected and disinfected prior to returning the Tank to service; however, the Borough is responsible for draining and filling the Tank and conducting any required testing of the water before returning the Tank to service. Rotate the washout inspections with ROV inspections.
 - d. Chemical Clean Service.
 1. During the washout/inspections, the Company will apply an NSF 60 approved chemical cleaning agent to the interior walls and floor surfaces of the Tank to treat mineral build-up and bio-film that form on the interior tank surfaces.
 - e. The Company shall provide the engineering and inspection services needed to maintain and repair the Tank during the term of the 1.5 MG Contract. The repairs include: the Tank's expansion joints, water level indicators, sway rod adjustments, vent screens, manhole covers/gaskets, and the Tank's other steel parts not otherwise excluded.
 - f. The Company 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 of the Tank is to be determined by the thickness of the existing liner and its

protective condition. Only materials approved for use in potable water tanks will be used on any interior surface area. The need for exterior painting of the Tank is to be determined by the appearance and protective condition of the existing paint. At the time that the exterior requires repainting, the Company agrees to paint the Tank with a coating that is the same color as the existing coating and to select a coating system which best suits the site conditions, environment, and general location of the Tank. When interior or exterior painting of the Tank is needed, all products and procedures as to coating systems will be equal to or exceed the requirements of the New Jersey and the American Water Works Association's D102 standard in effect as of the effective date, defined in the signature block.

- g. The Company will install a lock on the roof hatch of the Tank; however, the provision of such lock does not guarantee the Tank's security during the term of the 1.5 MG Contract. For the avoidance of doubt, security of the Tank and the site where the Tank is located ("Tank Site") are the responsibility of the Borough.
- h. In the event of an emergency involving the Tank, the Borough shall provide written notice of such emergency to the Company via its email hotline at the following address: customerservice@usgwater.com. The Company will provide emergency services for the Tank, when needed, to perform all repairs covered under the 1.5 MG Contract. Reasonable travel time must be allowed for the repair unit to reach the Tank Site.
- i. When the Tank is taken out of service, the Company will furnish pressure relief valves, if requested by the Borough, so that the Borough can install the valves in its water system while the Tank is being serviced. The Borough assumes all risk and liability for the installation and use of the pressure relief valves.
- j. The Company will furnish the Borough with current certificates of insurance, which will summarize the Company's insurance coverage.
- k. Mixing System Installation and Service.
 - 1. The Company shall install an active mixing system in the Tank.
 - 2. The particular unit that will be installed in the Tank is a NSF Approved PAX 400/405 active mixing system along with its component parts.
 - 3. The Company will inspect and service the active mixing system each year. The active mixing system will be thoroughly inspected to ensure that the active mixing system is good working condition. The Company shall furnish engineering and inspection services needed to maintain and repair the active mixing system during the term of the 1.5 MG Contract.
 - 4. Butler shall be responsible for draining the Tank if determined necessary by the Company due to operational problems with the mixing system. The provisions of Section 1.B of the 1.5 MG Contract shall be followed in this circumstance.

2. 1.5 MG Contract Price/Annual Fees. For the performance of the Services required by Section 1 of the 1.5 MG Contract, Butler shall pay the Company an Annual Fee ("Annual Fee") for each Contract Year of the 1.5 MG Contract. The Annual Fee for Contract Year 1 shall be \$10,000.00. The Annual Fees for Contract Years 2, 3 and 4 shall be \$484,065.00 per Contract Year. The Annual Fee for Contract Year 5 shall be 63,717.00. 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 Borough and are in addition to the stated costs and fees in the 1.5 MG Contract.
3. 1.5 MG 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 Borough's execution of the 1.5 MG Contract.
 - 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 Borough a late fee on unpaid balances and may also terminate or suspend Services under the 1.5 MG Contract without notice. Any late fee will be 1.5% per month.

Paragraphs 4-17 of the 1.5 MG Contract are the same as paragraphs 4-17 in the 1 MG Contract except for subparagraph 9(c). In the 1.5 MG Contract, in the event the Borough elects to terminate the 1.5 MG Contract prior to remitting the first four (4) Annual Fees, then any such unpaid balance of the first four (4) Annual Fees shall be due and payable within thirty (30) days of the Borough's issuance of the notice of intent to terminate at the end of the then-current Contract Year.

DISCUSSION AND FINDINGS

The Water Act authorizes public entities to enter into contracts with private firms for the provision of water supply services ("Public-Private Contracts"). N.J.S.A. 58:26-20. Such Public-Private Contracts may include services related to financing, designing, construction, improvement, operation, maintenance, administration or any combination thereof, of a water supply facility (i.e., water system). Ibid. Public-Private Contracts for water supply services must be submitted to the Board for review and approval, however, N.J.S.A. 58:26-25(c) confines the scope of the Board's review to the following criteria:

1. The private firm entering into the contract has the financial capacity and technical and administrative expertise to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest.
2. The terms of the contract are not unreasonable. In determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations

undertaken by the private firm and all benefits obtained by the public entity. In making this determination, the Board shall not use the traditional rate base/rate of return methodology.

3. The franchised customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the Board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water.
4. The contract contains the provisions required by paragraphs (1), (2), and (6) of subsection e. of section 5 of L. 1995, c. 101 (C. 58:26-23).

The Water Act further states that once the Board approves a proposed contract, the jurisdiction of the Board terminates until or unless the contract is amended to change the formula or other basis of determining charges. N.J.S.A. 58:26-25(c).

Courts have held that the New Jersey Legislature has not conferred any jurisdiction on the Board to regulate water utilities operated by municipalities, as distinct from those privately owned, except in certain circumstances where such municipalities undertake to service residents in other municipalities. See Petition of South Lakewood Water Co., 61 N.J. 230 (1972). Pursuant to N.J.S.A. 40A:31-23(d)(1), the Board does not have regulatory oversight with respect to the setting of rates if the municipality services 1,000 customers or less outside its jurisdictional boundaries. In addition, it has been held that the sovereign powers of a municipality should not be subordinated to Board jurisdiction "by inference" or that Board jurisdiction should be "lightly implied." Jersey City Incinerator Authority v. Dept. of Pub. Util., 146 N.J. Super. 243, 255-56 (App. Div. 1976). Rather, a grant of such power "must be firmly anchored in some clear legislative delegation of jurisdiction." Id. at 256. Furthermore, the Board's own enabling statute expressly limits the Board's jurisdiction over contracts of the type under review here to the parameters of the Public-Private Contracting Act. N.J.S.A. 48:2-13 states:

Except as provided in [N.J.S.A. 58:26-25] the Board shall have no regulatory authority over the parties to a contract negotiated between a public entity and a private firm pursuant to [N.J.S.A. 58:26-19] in connection with the performance of their respective obligations thereunder. Nothing contained in this title shall extend the powers of the Board to include any supervision and regulation of, or jurisdiction and control over, any public-private contract for the provision of water supply services established pursuant to [N.J.S.A. 58:28-19].

In accordance with this legal mandate, the Board has limited the scope of its review to the four (4) criteria set forth above and, for reasons discussed below, concludes that the Contract meets the applicable criteria. Because the Legislature has carefully circumscribed our authority over the rates to be charged to end-use customers and other issues, the Board does not make any determination with respect to issues related to the ultimate rates to be charged by the Petitioner to its customers for services.

After review of the record, the Board **FINDS** that the statutory requirements listed above have been met. Specifically, the Board **FINDS** as follows:

1. USG has the financial capacity, technical and administrative experience, to ensure continuity of service over the term of the Contract pursuant to N.J.S.A. 58:26-25(c)(1). USG is a national provider focused on water-tank asset management and rehabilitation with decades of experience and a long operating history in steel/concrete tank inspection, coatings, structural repair, and long-term maintenance programs for municipal systems.
2. The terms of the Contract are reasonable given the services to be performed by USG pursuant to N.J.S.A. 58:26-25(c)(2). Given the circumstances of this matter, the terms set forth in the Contract are appropriate.
3. N.J.S.A. 58:26-25(c)(3) is intended to protect franchise customers outside of Butler. In this instance, Butler's franchise customers are protected from the risks of the Contract and customers outside the municipal boundaries are not subsidizing the Contract.
4. The Contract contains provisions addressing the following:

N.J.S.A. 58:26-23(e)(1): The charges, rates, fees, or formulas used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided;

N.J.S.A. 58:26(e)(2): The allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities are incorporated; and

N.J.S.A. 58:26-23(e)(6): Current employees of the public entity whose positions of employment will be affected by the terms of the Contract are adequately addressed.

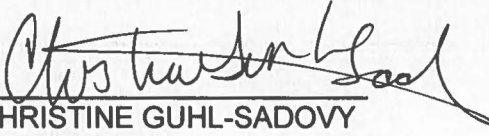
Therefore, based upon the above, the Board **HEREBY APPROVES** the Contract between the Borough and USG subject to the following:


Any extension of the contract beyond the twenty (20)-year term or, pursuant to N.J.S.A. 58:26-25(c)(4), any amendment of the Contract to change the formula or other basis of determining charges contained therein shall be subject to Board review and approval.

This Order shall be effective on November 28, 2025.

DATED: November 21, 2025

BOARD OF PUBLIC UTILITIES
BY:


CHRISTINE GUHL-SADOVY
PRESIDENT


DR. ZENON CHRISTODOULOU
COMMISSIONER


MICHAEL BANGE
COMMISSIONER

ATTEST:


SHERRI L. LEWIS
BOARD SECRETARY

I HEREBY CERTIFY that the within
document is a true copy of the original
in the files of the Board of Public Utilities.

INTENT TO ENTER INTO A CONTRACT FOR THE REHABILITATION AND ONGOING MAINTENANCE OF THE
BOROUGH OF BUTLER'S WATER STORAGE TANKS WITH UTILITY SERVICE GROUP WATER SOLUTIONS VIA
A PUBLIC-PRIVATE CONTRACT

BPU DOCKET NO. WO25090526

SERVICE LIST

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