

ATTACHMENT C

Regulatory Compliance and Criminal History Warranty; Acknowledgement of Fiduciary Duty Owed by CONTRACTOR to City

- (a) **Compliance Histories, Warranty, Fiduciary Duty, Discretionary Termination.** The successful bidder [proponent] must demonstrate to the City's satisfaction that bidder [proponent] has clean environmental, criminal, and other compliance histories with state, federal, and local agencies or authorities. **By submission of a bid or proposal in response to this solicitation, bidder [proponent] Warrants to the City that he / she / it (in the case of a corporation or other legal entity), including advisors, executive and supervisory employees, agents and representatives, are in good stead with all regulatory authorities that may have interests in or jurisdiction over the work activity or service bid [proposed] by the CONTRACTOR.** Regulatory interest or jurisdiction may go directly to the Contract activity in question, to potential consequences of the activity, or indirectly to any regulated matter which may reflect upon the CONTRACTOR's competency and integrity. The City relies upon CONTRACTOR's Warranty and shall treat the CONTRACTOR as having a special fiduciary duty to the City in this respect due to potential for environmental, third party, and other regulatory liabilities which may attend this Contract, including but not limited to regulatory criminal responsibility. CONTRACTOR acknowledges such fiduciary duty to the City, promising a high standard of performance and best efforts to protect the public interest against consequences of environmental mishap. CONTRACTOR warrants that no matters pertaining to violations, notices of violation, or notices of regulatory concern are now pending against CONTRACTOR or those persons (employees / affiliates) of concern mentioned above; and that no civil or criminal litigation, and no manner of enforcement activity, however preliminary, is *pending* against CONTRACTOR or those persons, regardless of category or class of violation or potential violation. *If any such matters are pending, CONTRACTOR must reveal and explain those matters in writing at the time his / her / its bid [proposal] is tendered to the City.* If any such matters have been resolved, *during the last five (5) years,* CONTRACTOR must similarly reveal and explain same to the City with the bid [proposal] submission. The City retains the right to determine, according to its discretion, whether or not a pending, unresolved, or resolved enforcement issue or criminal matter concerning CONTRACTOR, its operations, or employees / agents / representatives may impact the responsible status of CONTRACTOR, i.e., render the CONTRACTOR unqualified, or detract from CONTRACTOR's competency standing. In reliance on CONTRACTOR's Warranty, the City reserves to itself the right to terminate the Contract, without further obligation upon the City and without further recourse or remedy for the CONTRACTOR except that the City shall duly pay CONTRACTOR for work or services performed to date of termination, should the City determine, following award of the Contract that CONTRACTOR failed to reveal and explain to the City's satisfaction any such matters having regulatory or criminal import or implications.

- (b) **Criminal Histories. Pending and Resolved; Termination. CONTRACTOR must disclose and explain in writing any pending criminal matters associated with his / her / its business operation. This disclosure goes to CONTRACTOR's person, and to all persons working for CONTRACTOR in a supervisory, advisory, executive, agency, or in any representative capacity or manner associated with CONTRACTOR's business enterprise, which person(s) have any criminal enforcement action pending against him or her, regardless of class or category of alleged violation which may be pending, however preliminary, including investigation. And concerning resolved criminal matters, CONTRACTOR must make similar written disclosures and explanations for the same category of persons, which disclosures and explanations concern any criminal enforcement action that may have been resolved against such persons during the last five (5) years. Failure to make such disclosures and explanations, with the submission of the bidder's [proponent's] response to the City's solicitation, shall be grounds for the City's termination of the Contract, should such information come to the City's attention after award of the contract; in which case, CONTRACTOR shall be without recourse and remedy, except for the City's payment to CONTRACTOR for services or work performed up to date of termination.**
- (c) **Voidable Contract: CONTRACTOR's failure to abide by disclosure and explanation requirements, in (a) and (b), above, shall render the Contract voidable at the City's discretion, with no compensation due CONTRACTOR, if concealed or undisclosed violations, or undisclosed or concealed investigations leading to formal criminal charges, are of such portent, in the City's judgment, as to place the City in a position of regulatory or third party liability exposure, or shall pose or result in a threat to the public health, safety, or welfare. Any sums paid CONTRACTOR, in the event of a voided contract, shall be recoverable by the City, in addition to and cumulative of any other legal or equitable remedies the City may have. CONTRACTOR understands the City shall enjoy the termination and voidable contract remedies set forth in paragraph (b) and this paragraph (c) due to the fiduciary duty owing from CONTRACTOR to City and due to the City's reliance on the CONTRACTOR's Warranty of Regulatory Compliance and clean Criminal History.**

RFP ATTACHMENT D

PRICING SCHEDULE

State any and all fees you would charge to provide all services listed in this RFP if awarded a contract pursuant to this RFP.

- 1. Monthly contract rate per residential unit to be charged for the type of Solid Waste Services for the City of Gautier and breakdown of rate: (All spaces must be completed with a price).**

Solid Waste Services for City of Gautier	Price for Solid Waste Services per Month (Manual Collection)	Price for Solid Waste Services per Month (Automated Collection)
Option A. Manual Garbage Collection		
Option B. Conversion to Automated Garbage Collection		
Garbage Disposal		
Brush, bulky items and white goods collection, i.e., storm damage clean-ups and brush mixed with rubbish disposal.		
Community or City-wide clean-up events and disposal		
Total Monthly Residential Rate (Does not include Customer Billings which are performed and absorbed by the CITY, except for costs for out-of-cycle services which are billed directly by the CONTRACTOR.)		

- 2. ENHANCED PROPOSAL OPTIONS SUBMITTED AT PROPONENT'S DISCRETION (Provide attachment if necessary.)**

RFP ATTACHMENT E

INSURANCE REQUIRMENTS

Prior to the commencement of any work under an Agreement awarded pursuant to this RFP, the selected Respondent shall furnish an original completed Certificate(s) of Insurance to the Purchasing Department , 3330 Hwy 90 MS 39553, Attn: Cindy Steen, which shall be clearly labeled Municipal Solid Waste Collection, Disposal Services for the City of Gautier 2012 in the Description of Operations block of the Certificate. The original Certificate(s) shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits and termination provisions shown thereon, containing all required information referenced or indicated thereon. The original Certificate(s) or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to the City. The City shall have no duty to pay or perform under said Agreement until such Certificate shall have been delivered to the Purchasing Department, *Attn: Cindy Steen*, and no officer or employee, other than the *City Clerk* , shall have authority to waive this requirement.

The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof and to modify insurance coverages and their limits when deemed necessary and prudent by the *City Clerk*, based upon changes in statutory law, court decisions or circumstances surrounding the Agreement, but in no instance will City allow modification whereupon City may incur increased risk.

Respondent's financial integrity is of interest to the City, and, therefore, subject to Respondent's right to maintain reasonable deductibles in such amounts as are approved by the City, Respondent shall obtain and maintain in full force and effect, for the duration of the Agreement, and any extension thereof, at Respondent's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Mississippi.

<u>Coverage</u>	<u>Limits of Liability</u>
Workmen's Compensation	Statutory
Employer's Liability	\$1,000.000.
Bodily Injury Liability	\$1,000.000.each occurrence
except automobile	\$1,000.000.aggregate
Property Damage Liability	\$1,000.000.each occurrence
except automobile	\$1,000.000.aggregate
Automobile Bodily Injury	\$1,000.000.each person
Liability	\$1,000.000.each occurrence
Excess Umbrella Liability	\$1,000.000.each occurrence

The CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by the CITY, and may require the deletion, revision or modification of particular policy terms, conditions, limitations or

exclusions, except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies. Respondent shall be required to comply with any such requests and shall submit a copy of the replacement Certificate of Insurance to CITY at an address provided by CITY within ten (10) days of the requested change. Respondent shall pay any costs incurred resulting from said changes.

Respondent agrees that, with respect to the above-required insurance, all insurance contracts and Certificate(s) of Insurance will contain the following required provisions:

1. Name the City and its officials, employees, volunteers and elected representatives as additional insureds as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
2. Provide for an endorsement that the "other insurance" clause shall not apply to the City of Gautier where the City is an additional insured shown on the policy;
3. Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of the City.

When there is a cancellation, non-renewal or material change in coverage, which is not made pursuant to a request by City, Respondent shall notify the City of such and shall give such notices not less than thirty (30) days prior to the change, if Respondent knows of said change in advance, or ten (10) days notice after the change, if the Respondent did not know of the change in advance. Such notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to the City at the following addresses:

City of Gautier	City of Gautier
City Clerk	Public Works Director
Municipal Solid Waste Collection, Disposal Services for the Gautier Area 2012	Municipal Solid Waste Collection, Disposal Services for the City of Gautier Area 2012
3330 Hwy 90	3305 Gautier Vancleave Rd
Gautier, MS 39553	Gautier, MS 39553

If Respondent fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, the CITY may obtain such insurance, and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement; however, procuring of said insurance by the CITY is an alternative to other remedies the CITY may have and is not the exclusive remedy for failure of Respondent to maintain said insurance or secure such endorsement. In addition to any other remedies the CITY may have upon Respondent's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the CITY shall have the right to order Respondent to stop work under the Agreement, and/or withhold any payment(s) which become due to Respondent thereunder until Respondent demonstrates compliance with the requirements hereof.

Nothing herein contained shall be construed as limiting in any way the extent to which Respondent may be held responsible for payments of damages to persons or property resulting from Respondent's or its subCONTRACTORS' performance of the work covered under the Agreement. It is agreed that Respondent's insurance shall be deemed primary with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this contract.

ATTACHMENT F INDEMNIFICATION REQUIREMENTS

RESPONDENT / PROPONENT, if selected, hereafter referred to as RESPONDENT OR CONTRACTOR, covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually or collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to RESPONDENT's, if selected, activities under this CONTRACT, including any acts or omissions of RESPONDENT, if selected, any agent, officer, director, representative, employee, consultant or subCONTRACTOR of CONTRACTOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT, all without however, waiving any governmental immunity available to the CITY under Texas Law and without waiving any defenses of the parties under Texas Law. IT IS FURTHER COVENANTED AND AGREED THAT SUCH INDEMNITY SHALL APPLY EVEN WHERE SUCH COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND/OR SUITS ARISE IN ANY PART FROM THE NEGLIGENCE OF CITY, THE ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF CITY, UNDER THIS CONTRACT. The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. RESPONDENT, if selected, shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or RESPONDENT, known to RESPONDENT, related to or arising out of RESPONDENT's activities under this CONTRACT and shall see to the investigation and defense of such claim or demand at RESPONDENT's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving CONTRACTOR / RESPONDENT of any of its obligations under this paragraph.

It is the EXPRESS INTENT of the parties to this CONTRACT, that the INDEMNITY provided for in this section, is an INDEMNITY extended by RESPONDENT, if selected, to INDEMNIFY, PROTECT and HOLD HARMLESS, the CITY from the consequences of the CITY'S OWN NEGLIGENCE, provided however, that the INDEMNITY provided for in this section SHALL APPLY only when the NEGLIGENT ACT of the City is a CONTRIBUTORY CAUSE of the resultant injury, death, or damage,