

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Cindy Steen, Purchasing Agent
Through: Cindy Russell
Date: July 9th, 2013
Subject: Ratify Professional Service Agreement with ClearWater Solutions LLC.

REQUEST:

City Council authorization is requested to ratify the Professional Service Agreement between the City and ClearWater Solutions LLC.

BACKGROUND:

Approval of the Service Provider Contract between the City of Gautier and ClearWater Solutions, LLC for Water Distribution, Wastewater Collection, Water and Garbage Disposal Billing, Public Works Operation and Management Services.

RECOMMENDATION:

The Council may:

- (1) Ratify the Contract
- (2) Direct the City Manager to negotiate terms and conditions, and or
- (3) Terminate the Contract

ATTACHMENT(S):

Yes



PROFESSIONAL SERVICE AGREEMENT

This Service Agreement (the "**Contract**") is entered into on the 1st day of December, 2012, between the City of Gautier, Mississippi ("**City**"), whose address is 3330 Highway 90, Gautier, Mississippi 39553 and ClearWater Solutions, LLC, ("**Service Provider**"), whose address is 3101 Frederick Road, Suite 1, Opelika, Alabama 36801 and together referred to as "the Parties."

RECITALS

WHEREAS, the Service Provider will manage, operate and maintain the City's water and wastewater system in Gautier, Mississippi ("**System**") and,

WHEREAS, by execution of this Contract, the City shall terminate its labor for self operation, maintenance, and management responsibilities of the System to be effective on the Contract Commencement Date as defined in the Contract, and the Service Provider shall commence operation, maintenance, and management responsibilities effective on the Contract Commencement Date;

WHEREFORE, in exchange for valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the parties therefore agree as follows:

ARTICLE I - COMPANY OBLIGATIONS

General Obligations - The Service Provider shall:

1. City shall compensate Service Provider, and Service Provider shall provide services to City, pursuant to the terms of this Agreement;
2. The Service Provider shall manage, operate, maintain and assume all responsibilities, obligations, and commitments associated with said contract;
3. The Service Provider shall Operate and manage the System on a 24-hour per day, 7 day per week basis;
4. To the extent required by any applicable state regulations, the Service Provider shall provide all information necessary to secure Governmental Approvals and otherwise manage and operate the System as to comply with Applicable Law and the terms and conditions of the RFP and Contract;
5. Service Provider shall operate and manage the City's water, wastewater systems, and street maintenance, including: generating work orders, meter reading downloads, and all associated duties;
6. Service Provider shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and wastewater process control, operations, maintenance, safety, and supervisory skills with the Service Provider paying for such training and education;
7. Unless capital recommendations are required to meet regulatory criteria, Service Provider shall not be relieved of the responsibility to perform if the recommendations made to the City by the Service Provider for system improvements are not implemented;
8. Service Provider shall maintain an employee safety program and an OSHA compliance program in compliance with applicable laws, rules and regulations and make recommendations to City regarding the need, if any, for City to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to Service Provider's operations hereunder and federal regulations promulgated pursuant to the Americans With Disability Act ("**ADA**"). Nothing herein shall be construed to place upon Service Provider a duty to find and report violations of either the safety laws or the ADA at the Facility other than reporting to the City;
9. In an emergency affecting the safety of persons or property, Service Provider may act without written amendment or change order, at Service Provider's discretion, to prevent threatened damage, injury or loss;



10. Service Provider shall prepare operating reports, test results, accountings and all other reports as required by federal and/or state law or regulations (including, but not limited to, those which are required by the Mississippi Department of Environmental Quality), and shall submit them to City for signature and transmittal to appropriate authorities as so requested;
11. Service Provider shall provide all labor for laboratory testing and sampling presently required by system performance portions of the Water Supply permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees;
12. Equipment Leasing or Purchase: After successful implementation and operation of this contract by the Operator, the City may in its discretion consider leasing, selling, or a combination of both, some, or all of the equipment and property presently owned by the City and which may be used in the course of business pursuant to the contract, each in exchange of fair market value, with such a determination of value made by the City. The City shall have the right to accept, reject, or negotiate any and all bids, proposals, and offers for equipment leasing or purchase;
13. Current City employees shall be allowed to carry over and retain their current accrued Vacation and Sick leave time that they have accrued as employed by the City; and
14. Service Provider shall recognize all current employees time as employed by City, and hired by Service Provider, when accruing future leave with Service Provider: and
15. Service Provider shall adjust pay for all current employees of City, hired by Service Provider, to cover increase in health insurance premiums with Service Provider.
16. The Service Provider shall begin work pursuant to this Contract on December 1, 2012 (the "Contract Commencement Date").

Article II - SERVICE PROVIDER'S SCOPE OF SERVICES

1. This Article shall apply to Service Provider's services for the City's water, wastewater, streets and sanitation systems, as specified in the RFP.
2. Within the design capacity and capabilities of the Systems, Service Provider shall provide the labor to manage, operate and maintain the System so that water produced from the Well(s) and distributed to customers meets the requirements of all federal, state, EPA, and MDEQ rules and regulations and any/all city ordinances.
3. Service Provider shall operate the wells, distribution lines and sewage lift station(s) in compliance with all federal and state law and regulations and pursuant to good and accepted industry practices for similarly situated contract operators.
4. Service Provider shall perform all Maintenance and Repairs under normal working conditions for the Project.
5. Service Provider shall pay for the following as outlined more specifically in the RFP:
 - a. Salary and benefits for employees
 - b. Liability insurance, umbrella insurance, workers comp, FICA, FUTA
 - c. Medical, dental, long and short term disability insurance and eye insurance for employees
 - d. Offer employee 401 K retirement incentive plan
 - e. Annual employee bonus and safety incentive programs
 - f. Safety and training of employees – we have certified training instructors
 - g. Professional fees, dues, and subscriptions for ClearWater employees
 - h. Cell / two-way radios
 - i. Safety supplies: i.e., boots, gloves, safety glasses etc. per year
 - j. Lab testing supplies and compliance testing supplies
 - k. All treatment chemicals
 - l. Prepare and submit MDEQ and City reports



- m. Grounds maintenance around wells, tanks and lift stations
- n. Leak repairs, pipe installation, work orders, meter reading, meter maintenance
- o. Water loss program
- p. Meter change out program, valve and fire hydrant maintenance program
- q. Pump Maintenance
- r. Equipment, vehicle, and machine maintenance as well as tracking cost & documentation of all maintenance performed on all equipment owned by the City
- s. Fuel for service provider and City vehicles and equipment
- t. 24/7 emergency call outs
- u. Prepare standard operating procedures for day-to-day procedures (SOP's)
- v. Miscellaneous tools and equipment for performing routine maintenance
- w. Required safety equipment
- x. Perform a 5 year Comprehensive Plan on sewer
- y. 100,000+ LF of sewer line in the first year of service to be smoke tested, cleaned and CCTV with documentation, reports, and recommendation to sewer system. 600,000 total LF within the five (5) year contract period
- z. CMMS & OPSWIN software programs for tracking maintenance and QA/QC in the lab and process control testing
- aa. Update of all Operation and Maintenance Manuals
- bb. Responsible for compliance / fines as a result of failure to comply with permit terms and conditions
- cc. Will hold harmless the City and its agents, officers, assigns, employees, etc. from any loss or liability for claims, damages, lawsuits for reasons resulting from the Service Provider's negligence during the period of partnership
- dd. Responsible for maintaining all manufactures' warranties on new equipment purchased by the City and will assist the City in enforcing existing equipment warranties and guarantees
- ee. Responsible for the safety of the firm's employees
- ff. Sewer cleaning / TV equipment
- gg. GIS / GPS Mapping
- hh. Engineering expertise up to \$51,000 per year
- ii. Grant assistance
- jj. Investigate radio read meters and provide labor for installation
- kk. Investigate Bemis Avenue and provide design and labor for remediation
- ll. Will install the pipe connecting these wells and provide the labor to do so at no additional cost to the city
- mm. Will be responsible for repairing water leaks, pipe breaks, meter reading, fire hydrant repairs, flow testing, new service installations, work orders, meter cut-offs/on, service restoration, emergency repairs, exercising water valves, as well as other services necessary to operate the water distribution system
- nn. Will manage the public works department and have employees trained in streets and sidewalk repairs and maintenance, grass cutting, right of way maintenance, refuse removal and pickup, storm drain cleaning and maintenance, as well as all related duties associated with such
- oo. Will be responsible for sewer backups, installation of sewer taps, line breaks, manhole locations and repairs, and sewer overflow responses
- pp. Will employ a staff of trained employees capable of performing routine, preventive, and corrective maintenance on City owned vehicles and equipment.
- qq. Will maintain all necessary licenses, certifications, and accreditations as necessary to operate, maintain, and manage the system



- rr. Will repair and maintain the System and the city's facilities and equipment, so as to preserve and improve the City of Gautier's assets, investments, and services
- ss. Will provide the highest level of friendly, reliable, professional, and responsive customer service utilizing to the extent feasible the City's existing assets, facilities, office, and equipment
- tt. Will maximize revenues and operate and maintain the System at the lowest possible cost to the customers and interconnection recipients of the City of Gautier
- uu. Will operate the System pursuant to the Annual Budget and fee schedule adopted by the City of Gautier using the City's existing assets, resources, and leases
- vv. Will provide revenues that more than offset operating costs
- ww. Will provide water, wastewater testing, monitoring and reporting as required by state, federal, and local law, and industry standards
- xx. Will be responsible for the Billing contract that the City currently has in place.

Article III – CITY'S DUTIES

1. The City shall pay for all power and maintenance materials.
2. The City shall fund all necessary Capital Expenditures.
3. Any loss, damage, or injury resulting from City's failure to provide capital improvements and/or funds when reasonably requested by Service Provider shall be the sole responsibility of City.
4. The City shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to City and are not transferred to Service Provider under this Agreement.
5. City shall provide all registrations, insurance and licenses for City's vehicles used in connection with the Project.
6. City shall provide for Service Provider's primary use of all vehicles and equipment presently in full-time use at the Project.
7. City shall provide the use of office space and shop area currently being used by the City.
8. City shall provide the use of billing software and computers.
9. City shall provide the current stock – maintenance parts and material.
10. City shall provide office supplies: postage, bills, consumer confidence reports, paper, printer supplies, etc.
11. City shall be responsible for all debt service payments.
12. City shall pay for all building maintenance repairs and rent.
13. City shall pay for all computer support.
14. City shall pay for engineering/professional services, including medical.
15. City shall pay the wastewater treatment invoices.
16. City shall be responsible for all transfers to the general fund account.
17. City shall be responsible for paying for signal and street lighting.
18. City shall be responsible for paying for all electrical cost.
19. City shall be responsible for paying for all repair and replacement parts and materials.
20. City shall be responsible for uniforms until current City contract ends.
21. City shall be responsible for employee cell phones until current City contract ends.

Article IV - COMPENSATION

1. Service Provider's compensation under this Agreement for year (1) of this contract shall consist of an Annual Fee of \$1,741,000 or \$145,083 per month. The annual fee covers all items listed in Article II-5.



2. Service Provider's compensation under this Agreement for year(s) (2-5) of this contract shall consist of an Annual Fee of \$1,757,000 or \$146,417 per month. The annual fee covers all items listed in Article II-5. The annual fee covers all items listed in Article II-III. This fee also covers items 21 and 22 listed in Article III, which were paid by the City in year 1.
3. Service Provider and the City of Gautier will negotiate an increase/decrease to the annual fee three (3) months before the anniversary date of each year. If at any time the Service Provider and the City should not agree on an increase/decrease to the annual fee, then the basis for increase/decrease shall be the current CPI, All Urban Users, and Southern District.

Article V - PAYMENT OF COMPENSATION

1. One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable by the 20th of the month for each month that services are provided.
2. All other compensation to Service Provider is due upon receipt of Service Provider's invoice and payable within fifteen (15) days.
3. City shall pay interest at an annual rate equal to the prime rate, said rate of interest not to exceed any limitation provided by law, on payments not paid and received within twenty (20) calendar days of the due date, such interest being calculated from the due date of the payment. In the event the charges hereunder might exceed any limitation provided by law, such charges shall be reduced to the highest rate or amount within such limitation.

Article VI - SCOPE CHANGES

1. Service Provider will request a rate adjustment on the annual fee, which the City will entertain in good faith, based on the following:
 - a. If, at any time, the cost to operate the system due to new permits, rules, regulations or requirements relating to the operation of the system or other matters contained in the Agreement, and in the event that compliance by Service Provider with such new permits, ordinances, rules, regulations, or requirements would materially increase Service Provider's cost of performing under the Agreement, then the City and Service Provider shall mutually agree on an Amendment to the existing Agreement to modify the Contract. In turn, if the above would reduce the said contract then Service Provider and the City would agree on a reduction to the annual fee.
 - b. The contact will provide for the term of the agreement between the City and the Firm to be for five (5) years with a contingency clause which states that the contract shall be approved by new Council members after elections.
 - c. The Service Provider will negotiate with the City an increase or decrease in the annual price in the event any legal or regulatory requirement changes occur in the project operation, reporting requirements, monitoring requirements, level of treatment required, personnel qualifications or staffing required by an governmental agency having jurisdiction over such changes.
 - d. Employees shall be given a standard of living increase of a minimum of 3% each year of the contract period.

Article VII - TERM, TERMINATION AND DEFAULT

This Professional Service Agreement shall take effect on the Contract Commencement Date and remain in effect for five (5) years or any shorter period as effectuated through a termination under the terms of the Contract. The



City or Service Provider may terminate the Agreement for convenience at any time during the Agreement by giving the City or Service Provider 120 day's prior written notice of such termination, however, the City shall provide the Service Provider with 120 days written notice of any deficiencies and allow the Service Provider to correct them before executing the termination clause.

1. Upon notice of termination by City, Service Provider shall assist City in assuming operation of the Project. If Service Provider incurs additional cost at request of City, City shall pay Service Provider such cost within 15 days of invoice receipt.
2. Upon termination of this Agreement and all renewals and extensions of it, Service Provider shall return the Facilities to City in the same condition, as it was upon the effective date of this Agreement, ordinary wear and tear expected.

Article VIII - DISPUTES AND FORCE MAJEURE

1. In the event activities by employee groups or unions unrelated to Service Provider cause a disruption in Service Provider's ability to perform at the Project, City, with Service Provider's assistance or Service Provider at its own option, may seek appropriate injunctive court orders. During any such disruption, Service Provider shall operate the facilities on a best-efforts basis until any such disruptions cease.
2. Neither party shall be liable for its failure to perform its obligations under this Agreement, if such failure is due to any unforeseen circumstances beyond its reasonable control or force majeure. However, either party to avoid, delay or otherwise affect any payments due to the other party may not use this section.
3. If a claim or dispute arises between the parties under this Agreement or the performances of any obligations set forth herein, the parties agree to endeavor in good faith to resolve such claim or dispute equitably through negotiation. If such negotiation fails, either party may request non-binding mediation to resolve such claim or dispute, before having recourse to the courts. The non-requesting party may decline such request in its sole discretion. Notwithstanding the foregoing, prior to or during negotiation or non-binding mediation, either party may initiate a legal proceeding to resolve any claim or dispute arising under this Agreement or the performance of any obligations set forth herein.

Article IX - INDEMNITY, LIABILITY AND INSURANCE

1. Service Provider Agrees to protect, defend and hold the City and its officers, employees and agents free and harmless from and against any and all losses, penalties, damages, settlements, costs, charges, professional fees or other expenses or liabilities of every kind and character arising out of or relating to any and all claims, liens, demands, obligations, actions, proceedings or causes of action of every kind and character in connection with or arising directly or indirectly out of this Service Agreement and/or the performance thereof.
2. Each party shall obtain and maintain insurance coverage of a type and in the amounts described in Appendix A. Except as provided in subparagraph 1 above, each party assumes the risk of loss or damage to its respective property and employees and shall maintain broad form property, workers compensation, and general liability insurance in order to protect both parties against any such loss. Each party shall provide the other party with satisfactory proof of insurance.
3. Except to the extent covered by the insurance policies provided by the Service Provider hereunder, neither party shall be liable to the other in an action or claim for consequential,



incidental or special damages regardless of whether the action in which recovery of damages is sought is based on contract, (including negligence), or otherwise.

- 4. Service Provider and City shall be responsible for and maintain employee insurance, i.e. workers compensation and general liability coverage for their respective employees. Neither party shall be liable to the other in an action or claim for the others employee's negligence.

CONFLICTING PROVISIONS

This Agreement is intended to be read and construed in pari materia with the City's Request for Proposal and the Service Provider's Response thereto. Should any provisions herein conflict with or create an ambiguity when construed with any provisions contained in the Request for Proposal or Service Provider's Response thereto, then the Request for Proposal or the Response thereto shall exclusively represent the parties' intent.

IN WITNESS WHEREOF, the parties hereto, acting through their duly authorized representatives, have executed this Agreement on the dates appearing adjacent to their respective signatures.

Both parties indicate their approval of this Agreement by their signatures below, and each party warrants that all corporate or governmental actions necessary to bind the parties to the terms of this Agreement have been and will be taken.

City of Gautier, MS

By: Tommy Fortenberry

Name: Tommy Fortenberry

Title: Mayor

Date: 11-13-2012

ATTEST: Chasidy Bilbo

Its: Executive Assistant

ClearWater Solutions, LLC

By: Paul Jackson

Name: Paul Jackson

Title: Vice President

Date: 11-14-2012

ATTEST: [Signature]

Its: PROJECT MANAGER



APPENDIX A

INSURANCE COVERAGE

Service Provider Shall Maintain:

- Statutory workers' compensation for all of Service Provider's employees at the project as required by the State of Mississippi.
- Comprehensive general liability insurance, insuring Service Provider's negligence, in an amount not less than \$2,000,000 combined single limits for bodily injury and/or property damage. Such policy will include the City of Gautier as additional insured.
- Pollution Liability Insurance, \$1,000,000.
- Umbrella Liability Insurance, \$4,000,000 general aggregate and \$4,000,000 each occurrence.
- Automobile Liability Insurance, \$1,000,000 for ClearWater vehicles.
- Crime/Theft/Fraud Insurance Policy: Theft - \$100,000, Forgery - \$50,000, Computer/funds transfer fraud - \$15,000, Theft, Disappearance and Destruction - \$50,000.

City Shall Maintain:

1. Automobile liability insurance for collision, comprehensive, and bodily injury on all vehicles owned by the City and utilized by the Service Provider.
2. City shall maintain insurance on all property owned by the City, such as: tanks, wells, lift stations, buildings, etc.

Service Provider will provide at least thirty (30) days notice of the cancellation of any policy it is required to maintain under this Agreement. Service Provider may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law.

will be met ins. during budget