

SECTION 1 -- DEFINITIONS

The following definitions shall for all purposes of this Agreement have the following respective meaning unless the context otherwise specifies or requires or unless otherwise defined herein:

“Acceptance” means the Customer has signed the Certificate of Substantial Completion or taken beneficial occupancy of the IIMs.

“Acceptance Date” means the date on which the Customer signs the Certificate of Substantial Completion or taken beneficial occupancy of the IIMs.

“Commencement Date” means the date on which Contractor begins performing the Work, established by Customer issuing to Contractor a written Notice To Proceed letter.

“Construction Period” means the period from the Commencement Date to the Acceptance Date.

“Facilities” means those buildings or sites where the IIMs will be implemented.

“Infrastructure Improvement Measures” (“IIMs”) means various items of equipment, devices, materials and/or software installed by Contractor at the Facilities or Infrastructure, for the purpose of improving the operation and the efficiency of the equipment at the Facilities or Infrastructure, as described in Exhibit A (Scope of Work).

“Total Project Costs” means all costs incurred at such time or times relating to this Agreement including evaluation, engineering, procurement, installation, and financing (interest). Financing costs, if any, are to be paid by Customer to the financial institution selected by the Customer for this Agreement.

“Work” means the collective labor, equipment and services comprising the IIMs to be performed by CONTRACTOR, as described in the Scope of Work, Exhibit A, hereto.

SECTION 2 -- FACILITY & OPERATIONAL TERMS AND CONDITIONS

2.1 Work by Contractor

Contractor will, at its sole cost and expense:

- a) Designate a person to be known as the Contractor Representative. The Contractor Representative will act as a single point of contact on behalf of Contractor with respect to all matters under this Agreement and will become familiar with the progress and quality of the completed Work.
- b) Take all actions that are necessary to perform the Work.

2.2 Assistance to be Provided by the Customer

In order to assist Contractor in the implementation of the Work and to encourage the efficient use of resources, the Customer will, at its sole cost and expense:

- a) Designate a person to be known as the Customer Representative. The Customer Representative will act as a single point of contact on behalf of the Customer with respect to all matters under this Agreement and will become familiar with the progress and quality of the completed Work.
- b) Furnish Contractor with those blueprints, surveys, legal descriptions of the site, and other information regarding the Facility as Contractor may reasonably request in order to complete the Work. Originals furnished to the Contractor shall be returned to the Customer. Otherwise, copies made by the Contractor shall become the property of Contractor.
- c) Promptly, and in any event within fifteen (15) business days, respond to samples or documents submitted by Contractor to the Customer for review and approval under this Agreement.
- d) Allow reasonable means of twenty-four (24) hour access to its Facility in order to accomplish the Work. Contractor should provide a minimum of five (5) days notice to the Customer when extraordinary access to the Facility is required. Contractor is to notify Customer prior to commencement of Work at the Facility. Contractor will not be allowed to work at certain times during times in certain areas (such as when events are taking place) Customer will notify Contractor of these schedules of constraint within sufficient time to allow Contractor to not be unreasonably hindered in the performance of the Work, and in any event, not less than five (5) days ahead of the time that Work will be affected. The customer will not unreasonably hinder the Contractor in its ability to perform the Work.
- e) Operate equipment according to the manufacturer's recommendations.
- f) Notify Contractor in writing of any policies (e.g. safety) of the Facility that affects the Work.

2.3 Changes

- a) Either party may request additions, deletions, modifications or other changes ("Changes") to the Work. Requests for Changes will not be unreasonably denied. Changes will be authorized only by a written agreement executed by both parties, and only after ratification by the Customers council.
- b) Contractor may, in its sole discretion, substitute alternative parts or equipment provided that the alternative parts and equipment perform the functions of and are of equal or better quality than the parts and equipment for which they are substituted.

2.4 Acceptance

- a) When Contractor believes that all, or an independent, definable phase, of the Work has been completed in accordance with the terms of this Agreement, Contractor will submit a Certificate of Substantial Completion to the Customer.
- b) If the Work substantially conforms to the description of that Work, the Customer will accept that Work by signing the Certificate of Substantial Completion and returning it to Contractor. If the Work does not substantially conform, then the Customer Representative shall so notify Contractor within five (5) business days of the discrepancies. Upon notification of the discrepancies, the Contractor shall correct the Work to conform in accordance with the description of the Work and resubmit the Certificate of Substantial Completion to the Customer. If the Customer Representative does not deliver written notice to Contractor within five (5) business days of receiving the Certificate of Substantial Completion, the Customer will be deemed to have signed and returned the Certificate of Substantial Completion.

- c) Any disputes concerning the completion of the Work will be resolved by a third party professional engineering firm acceptable to both Contractor and the Customer. The determination of this firm will be a final and binding resolution. The parties will each be responsible for half of the fees of this firm.

2.5 Equipment Warranty

- a) Contractor warrants that all equipment manufactured by it or bearing its nameplate will be free from defects in materials and workmanship arising from normal use. This warranty will be effective with respect to each piece of the equipment, for a period of one year from its Acceptance Date. If any of the equipment should prove defective under this warranty, Contractor will, at its option, repair, replace or issue credit for the item.
- b) For equipment not manufactured by Contractor, Contractor will provide only the warranty service provided by the original manufacturer's warranty. Contractor is not providing an additional warranty for equipment not manufactured by Contractor. Contractor assigns to the Customer, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such equipment..
- c) Any claim under the limited warranty granted above must be made in writing to Contractor within thirty (30) days after discovery of the claimed defect unless discovered directly by Contractor. Such limited warranty only extends to the Customer and not to any subsequent owner of the equipment. The Customer's sole and exclusive remedy for any equipment or services not conforming with this limited warranty is limited to, at Consultant's option: (i) repair or replacement of defective components of covered equipment; (ii) re-performance of the defective portion of the services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the equipment or services.
- d) Contractor shall not be required to repair or replace more than the component(s) of the equipment or the portion of the work and services actually found to be defective. Repaired or replaced equipment or services will be warranted hereunder only for the remaining portion of the original warranty period.
- e) THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

2.6 Discovery and Disposal of Hazardous Substances

- a) Other than those items noted hereinafter, the Customer warrants that to its knowledge there is no asbestos, asbestos containing material, formaldehyde, refrigerant fluid, mercury, PCBs or other toxic or hazardous substance (each a "Hazardous Substance") at the Facility that could create an unsafe condition where the Work is to be performed. The Contractor shall handle any PCB contaminated light ballasts in accordance and compliance with all applicable laws. The Customer is responsible for all costs associated with the disposal of all hazardous substances. The Customer acknowledges that the disposal of such PCB contaminated light ballasts is the responsibility of the Customer. Contractor will assist Customer in the proper disposal of the PCB contaminated light ballasts.

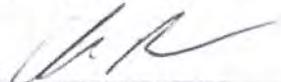
Contractor shall be responsible for surveying all Facilities for any hazardous substances before directing its employees or subcontractors to begin the Work. If discovered then or in the course of the Work, Contractor shall cease work in the area and notify the Customer.

- b) If any Hazardous Substance is discovered at the Facility during the Work, such discovery shall constitute a cause beyond Contractor's reasonable control and Contractor shall have the right to cease the Work until the Customer, at its expense, as appropriate, tests, abates, encapsulates, cleans up, removes and disposes of such Hazardous Substances.
- c) Any hazardous material addressed as part of the Scope in Section 4 above, remains the property of the Customer. Contractor is assisting the Customer in the arrangements of the disposal of said materials only, and does not assume any ownership or liability for the materials.
- d) Contractor is responsible for supplying proper disposal containers for any lamps containing mercury and ballasts containing PCBs. Contractor is also responsible for instructing, directing and monitoring the proper handling of all lamps and ballasts by their employees, subcontractors, representatives and agents. Contractor shall supply Customer with certified documentation of proper disposal of all lamps and ballasts.

WHEREFORE, the parties have caused this Energy Services Agreement to be signed by their duly authorized representatives on the date first above written, and this Agreement may be executed in counterparts, each of which shall be deemed an original and together shall constitute one and the same instrument.

CONTRACTOR:

McNeil Rhoads, LLC.

By: 
Authorized Signature

By: Chris McNeil | President
Printed Name and Title

CUSTOMER:

City of Gautier

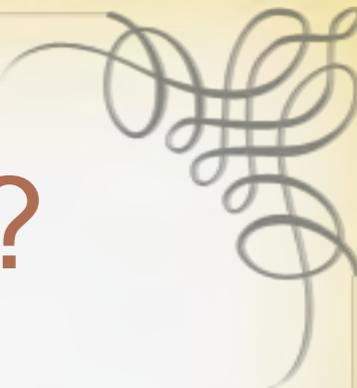
By: 
Authorized Signature

By: Samantha D. Abell, City Manager
Printed Name and Title

CITY OF GAUTIER

Energy Services Program



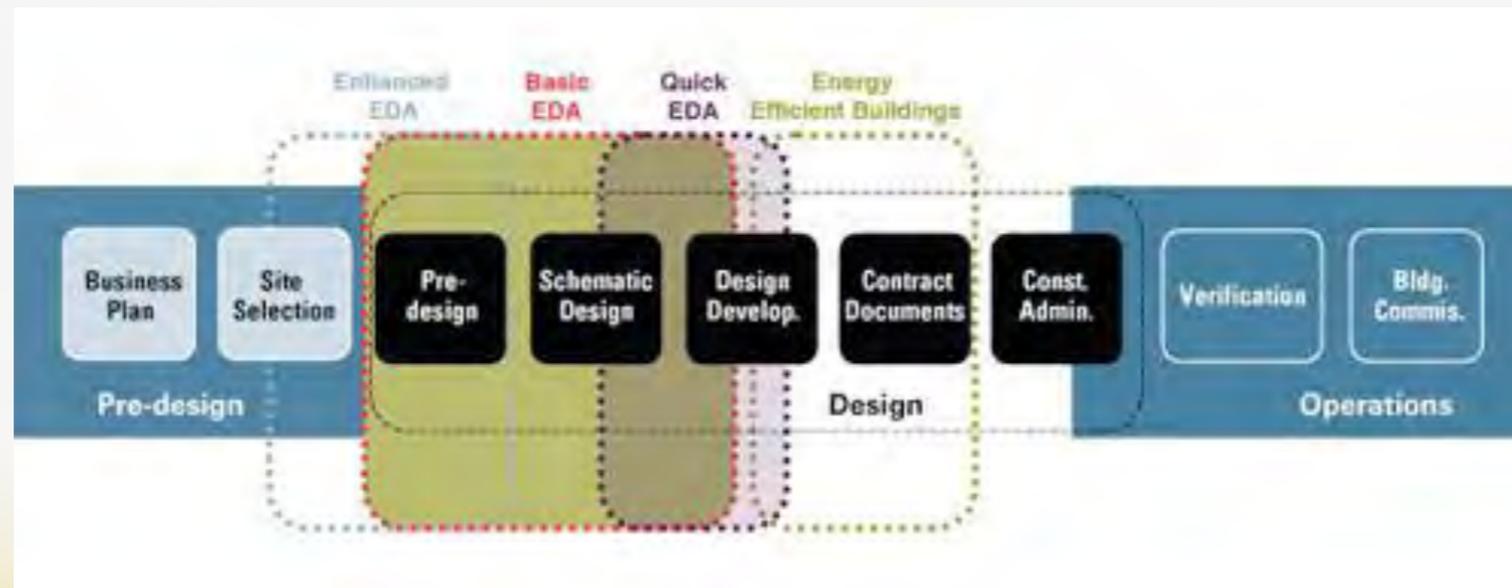


WHAT IS ENERGY SERVICES?

- * MDA Regulated Program
- * Self-Funded Improvements to Infrastructure
- * Procurement Mechanism authorized by MS Legislature
- * Risk Mitigation to the City of Gautier
- * Part of Governor's Energy & Natural Resource Initiative

DESIGN/BUILD CONSTRUCTION

- * Turn Key Guaranteed Max Price Contract
- * No change orders or outside fees
- * 1 Point of Responsibility
- * Product Selection based on Life Cycle Cost



FINANCIAL TOOL

- * Only Self-Funded Improvements are Included
- * MDA Loan Program Available
- * Project Pays for Itself
- * Allows City to Minimize Cost and Maximize Revenues



GAUTIER PROJECT

- * Building/Outdoor Lighting
- * Water Meter Replacement



LIGHTING

- ✱ 952 Retrofitted Interior Fixtures
- ✱ Standardized 25W T-8's
- ✱ New LED Exit Lighting
- ✱ New LED Pole Lighting for City Park and City Hall

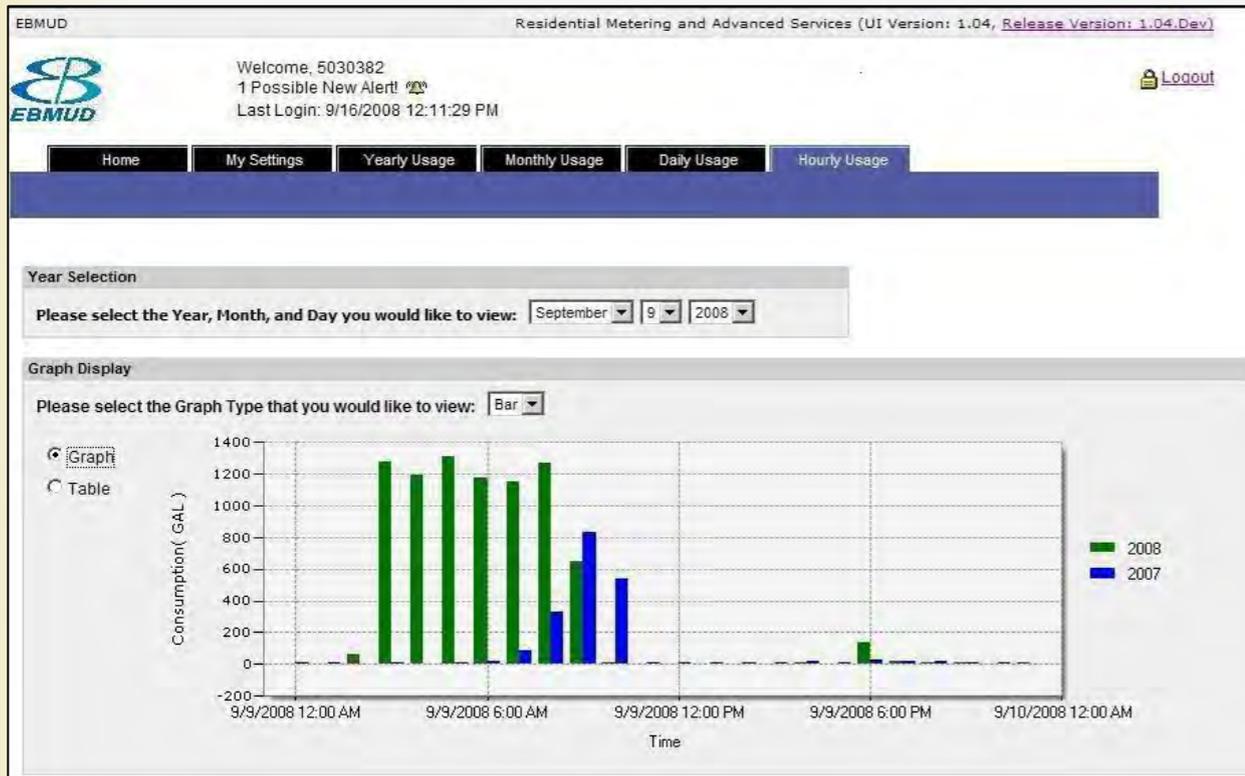


WATER METERS

- * 7,010 Active Accounts
- * 275 Meters for Inventory
- * HbMag on all Commercial
 - * No maintenance or calibration needed
- * Drive-by System
 - * Eliminates Human Error in Readings
 - * Hourly Data on Consumption

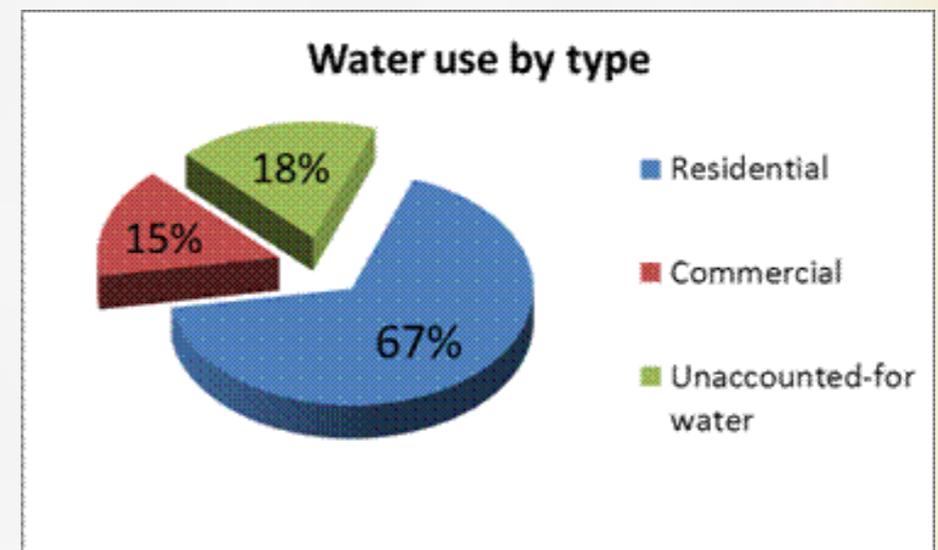


CUSTOMER INFORMATION



STUDY FINDINGS

- * 38% of Customers Excluded
 - * Do not meet mandatory minimum even with new meters
- * 11% loss in meters
- * Accounts for 21% of Unaccounted For Water





Project Financial Analysis

Client	Service	Project Manager	Project Investment	Finance Period	Interest Rate
City of Gautier	Energy	Kian Davis	\$3,196,046.75	15	3.40%

Year	Annual Savings \$				Cash Flow \$				
	Annual Consumption Increase \$	Annual Operational Savings \$	Energy Savings	Annual Program Benefits \$	Principal & Interest \$	Total Program Costs \$	City Match	Annual Cashflow	Net Cashflow
1	\$ 254,382.92	\$ 4,750.00	\$ 19,729.47	\$ 278,862.39	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 3,335.23	\$ 3,335.23
2	\$ 266,963.59	\$ 4,892.50	\$ 20,321.36	\$ 292,177.44	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 16,650.28	\$ 19,985.50
3	\$ 279,544.25	\$ 5,039.28	\$ 20,931.00	\$ 305,514.52	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 29,987.36	\$ 49,972.86
4	\$ 292,124.92	\$ 5,190.45	\$ 21,558.93	\$ 318,874.30	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 43,347.13	\$ 93,319.99
5	\$ 304,705.58	\$ 5,346.17	\$ 22,205.70	\$ 332,257.44	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 56,730.28	\$ 150,050.27
6	\$ 305,802.03	\$ 5,506.55	\$ 22,871.87	\$ 334,180.45	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 58,653.28	\$ 208,703.55
7	\$ 306,898.48	\$ 5,671.75	\$ 23,558.02	\$ 336,128.25	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 60,601.08	\$ 269,304.64
8	\$ 307,994.93	\$ 5,841.90	\$ 24,264.76	\$ 338,101.59	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 62,574.43	\$ 331,879.06
9	\$ 309,091.38	\$ 6,017.16	\$ 24,992.71	\$ 340,101.24	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 64,574.07	\$ 396,453.14
10	\$ 310,187.83	\$ 6,197.67	\$ 25,742.49	\$ 342,127.99	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 66,600.82	\$ 463,053.95
11	\$ 311,284.27	\$ 6,383.60	\$ 26,514.76	\$ 344,182.64	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 68,655.47	\$ 531,709.43
12	\$ 312,380.72	\$ 6,575.11	\$ 27,310.21	\$ 346,266.04	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 70,738.87	\$ 602,448.30
13	\$ 313,477.17	\$ 6,772.36	\$ 28,129.51	\$ 348,379.05	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 72,851.88	\$ 675,300.18
14	\$ 314,573.62	\$ 6,975.54	\$ 28,973.40	\$ 350,522.55	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 74,995.39	\$ 750,295.57
15	\$ 315,670.07	\$ 7,184.80	\$ 29,842.60	\$ 352,697.47	\$ 275,527.17	\$ 275,527.17	\$ -00	\$ 77,170.30	\$ 827,465.87
TOTALS	\$ 4,505,081.75	\$ 88,344.84	\$ 366,946.78	\$ 4,960,373.37	\$ 4,132,907.51	\$ 4,132,907.51	\$ -00	\$ 827,465.87	\$ 827,465.87