CITY OF GAUTIER

To: Gautier Honorable Mayor and City Council

From: Samantha D. Abell, City Manager

Date: July 31, 2014

Subject: Consideration of a Revised Master Service Agreement and Service Schedules with Arista Information Systems for Bill Printing and Mailing and for Electronic Bill Presentment

---

REQUEST:

The City Council shall consider for approval a revised Master Service Agreement and Service Schedules for the purposes of providing more convenience and billing options to utility customers. The agreement was first approved October 2012. The revised agreement offers more options to customers including e-billing and a user-friendly online system.

The city attorney has reviewed the agreement and deems it legally sufficient.

BACKGROUND:

The City of Gautier contracts with Arista Information Systems to offer the convenience of electronic bill presentment and payment service (on-line bill payment) through a secure, PCI compliant, custom-branded website hosted by Arista Information Systems, Inc. ("Arista"), and administered by the City of Gautier ("Client"). The agreement is attached.

DISCUSSION:

The website's online payment system will:

- Provide customers the convenience of viewing a PDF image of their actual bill and paying their bills 24 X 7 via credit/debit card and e-check.
- Provide customers the convenience of using all four major credit cards including AMEX and Discover for payments.
- Provide citizens the cost effective option of paying via e-check in lieu of credit card.

- Provide customers the convenience of storing their Credit/Debit Card and checking information in a PCI compliant secure private profile.

- Provide customers PDF images of their actual bill statements that can be viewed, printed or e-mailed.

- Provide the option to customers to receive e-bills in lieu of a paper bill and eliminate the postage of mailing bills

- Mitigate financial risk by assuring compliance with *Payment Card Industry Data Security Standard (PCI DSS) Requirements and Security Assessment Procedures*

The benefits of the revised agreement include increased utilization of the on-line payment option because of user friendliness and e-check option; and reduced bill printing and postage costs for those customers that utilize the e-bill option and stop the paper bill; and integrated bill printing, on-line bill presentment and payment and e-bill services; and simplicity of dealing with one vendor. The revised agreement is a 15% reduction in the cost to the city due to improved effectiveness.

CONCLUSION AND RECOMMENDATION:

The city manager respectfully requests that the City Council approve the revised agreement.

The Council may:

1. Approve the Master Service Agreement and Service Schedules
2. Not approve the Master Service Agreement and Service Schedules

ATTACHMENTS:

Services Agreement Dated _____

Bill Printing and Mailing Service Schedule

Third Party Payment Processing Service Schedule

Arista
Master Services Agreement

This Master Services Agreement ("MSA"), dated as of the 6th day of August, 2014, by and between **Arista Information Systems, Inc. ("Arista")**, a Mississippi corporation, and the City of Gautier ("**Customer**"), a Mississippi municipality, (Arista and Customer, each a "Party" and jointly the "Parties").

WHEREAS, Arista wishes to provide, and Customer wishes to acquire, products and services as described herein;

NOW THEREFORE, in consideration of these mutual premises and benefits and for good and valuable consideration, the sufficiency of which is herein acknowledged, the Parties hereto agree as follows:

1. Services to be Provided.

This MSA sets forth the terms and conditions upon which Arista agrees to provide and Customer agrees to purchase such services as shall be specified in one or more Service Schedules that Arista and Customer shall choose to enter into from time to time. Each such Service Schedule is hereby incorporated into and made a part of this MSA by reference as fully as if set forth herein.

2. Term and Termination.

(a) The term of this MSA shall commence upon the later of (i) the last date on which either Arista or Customer executes this MSA or (ii) the effective date of any Service Schedule hereunder executed by Arista and Customer.

(b) This MSA shall terminate upon the termination of all Service Schedules executed by Arista and Customer subject to this MSA.

(c) Arista may terminate this MSA and any related Service Schedule upon five (5) days' prior written notice to Customer in case of the occurrence of any of the following events (each an "Event of Default"):

(i) A material adverse change in the business, financial condition, business procedures, products or services of Customer; or

(ii) A sale of all or a substantial portion of Customer's assets; or

(iii) Customer commences a voluntary case under the Bankruptcy Code (Title 11 of the United States Code); files a petition seeking to take advantage of any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or entry into an arrangement for adjustment of debts; consents to or fails to contest in a timely and appropriate manner any petition filed against it in an involuntary case under such bankruptcy laws or other laws; generally becomes unable to pay its debts or trade obligations as they become due; makes a general assignment for the benefit of creditors; or takes any corporate action for the purpose of authorizing any of the foregoing; or

(iv) Commencement of a case or other proceeding against Customer in any court of competent jurisdiction seeking relief under the Bankruptcy Code or under any other laws, domestic or foreign, relating to bankruptcy, insolvency, reorganization, winding up or adjustment of debts, or the appointment of a trustee, receiver, custodian, liquidator or the like of Customer; or

(v) Customer defaults in any material respect in the performance or observance of any term, covenant, condition or agreement contained in this MSA or any related Service Schedule.

Upon the occurrence of any such Event of Default, all amounts payable hereunder by Customer to Arista shall be due and payable on demand.

(d) After termination or expiration of this MSA or any related Service Schedule for any reason whatsoever, Customer shall continue to bear total responsibility for all fees, credits and adjustments resulting from transactions processed pursuant to this MSA.

3. Pricing/Invoicing.

(a) The prices for any products and services are set forth in the applicable Service Schedule.

(b) Any sales and use taxes, and any other similar taxes applicable to any production, sale, use, storage, delivery or transportation of products and services provided by Arista shall be calculated by Arista and included in Customer's monthly statement to be paid by Customer.

(c) Arista will send a statement of the compensation due it under this MSA and any related Service Schedule by the fifteenth (15th) day of each month, and Customer shall make payment within ten (10) days after receipt of the statement.

(d) A late payment charge of 1.5% per month, compounded monthly, shall apply to any payment or reimbursement due from Customer that is in arrears for a period of thirty (30) days or more from the date such payment first became due.

4. Parties' Data /Proprietary Rights.

(a) All data furnished to Arista or its agent by Customer pursuant to this MSA and any related Service Schedule shall at all times remain the property of the Customer. Arista shall have the right to copy and retain all such data and materials for its files as it deems necessary for emergency backup and internal processing use.

(b) Customer shall use its best efforts to assure the accuracy and adequacy of all data and other items provided to Arista, and for all results obtained therefrom. Arista shall not be responsible for errors or omissions resulting from any inaccuracy or defect in any data or materials supplied by its agents or by third parties. Customer shall pay Arista, at rates specified in the applicable Service

Schedule, or at Arista's then prevailing rates if not specified in such Service Schedule, for any processing reruns or other additional work performed by Arista due to Customer data or materials which are incorrect or incomplete.

(c) Arista agrees to deny unauthorized access to and take reasonable steps to protect the confidentiality of Customer's data and materials and any resultant output that is designated as confidential by Customer. Notwithstanding the foregoing, Arista may provide such information as Arista deems reasonably necessary to any third parties, including its affiliates, who may provide any of the products or services under this MSA and any related Service Schedule, provided such third party agrees to keep such confidential data and material confidential.

(d) All information, programs, software, artwork, films, molds, plates, dyes, negatives, positives and all other items, machinery or materials furnished, developed or created by Arista, its contractors, subcontractors, affiliates or agents in providing the products and services under this MSA and any related Service Schedule, and all operating manuals related thereto shall remain Arista's exclusive property.

(e) Customer agrees that Arista has a proprietary interest in the services and that establishing services may require information which is or should reasonably be understood to be confidential or proprietary to Arista to be exchanged between Customer and Arista relating to computer hardware systems, software systems, communications systems, data security systems, passwords, data formats, or other technological or procedural information. As a condition for Arista to provide such information to Customer relating to a service, Customer agrees that it shall: (1) keep such confidential information confidential to the extent permitted by law; (2) implement commercially reasonable procedures to maintain its confidentiality; (3) use it only for the purposes for which it was disclosed; and (4) not disclose such information to any party other than those for whom the receipt of the Confidential Information is necessary for the establishment and ongoing provision of the service to the extent permitted by law. Customer shall ensure that its affiliates, employees, directors, officer's agents or representatives maintain the confidentiality of the such confidential information to the extent permitted by law. If Customer ceases to use any service, Customer shall return to Arista all related confidential information it has received.

(f) Neither Party shall be required to keep confidential any information or data which is or becomes publicly available, is already known or is independently developed by such Party outside the scope of this MSA and any related Service Schedule, or is rightfully obtained by third parties.

(g) The Parties agree that if any of the provisions of this Section 4 are breached, or threatened to be breached, a remedy at law may be inadequate and, therefore, without limiting any other remedy available at law or in equity, an injunction, specific performance or other forms of equitable relief or any combination thereof shall be available to the non-breaching Party. The non-breaching Party also shall be entitled to recover such damages as allowed under Ms. Law.

5. <u>Warranties</u>.

(a) Upon written request of Customer, Arista shall pursue with reasonable diligence a claim

for breach of, or at Arista's option shall assign and transfer to Customer, any warranty available to Arista from manufacturers or third-party vendors for products supplied to Customers under the terms of this MSA or any related Service Schedule.

(b) Arista shall use reasonable care in processing all data and materials submitted to it and in performing and providing the services set forth in this MSA and any related Service Schedule. Data and materials shall be processed in accordance with commercially reasonable data processing procedures. If computer services are interrupted or delayed for any reason, Arista will resume the computer services as soon as reasonably practical.

(c) THE FOREGOING COMPRISES CUSTOMER'S SOLE AND ENTIRE WARRANTY. THIS MSA AND ANY RELATED SERVICE SCHEDULE ARE SERVICE AGREEMENTS AND TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW.

(d) CUSTOMER AGREES THAT NO ORAL OR WRITTEN ADVICE OR REPRESENTATION OBTAINED FROM ANY EMPLOYEE OR REPRESENTATIVE OF ARISTA OR ITS AFFILIATES SHALL CREATE A WARRANTY OR REPRESENTATION FOR PURPOSES OF THIS MSA OR ANY SERVICES TO BE PERFORMED PURSUANT TO ANY RELATED SERVICE SCHEDULE.

6. Limitation of Liabilities.

(a) Arista undertakes to perform only such duties as are expressly set forth in this MSA and any related Service Schedule, and Arista shall not be bound by any agreement or document between Customer and any other parties to which Arista is not a signatory, whether or not Arista has knowledge thereof. Notwithstanding any other provision of this MSA and any related Service Schedule, it is agreed by the Parties hereto that Arista shall not be liable for any action taken by it or any of its directors, officers, affiliates, agents or employees substantially in accordance with this MSA and any related Service Schedule, including, without limitation, any action so taken at the request of Customer, except for Arista's or such person's own gross negligence or willful misconduct. Accordingly, Arista shall not incur any such liability with respect to any action taken or omitted to be taken in reliance upon any documents, including any written notice or instructions provided for in this MSA or any related Service Schedule, not only as to its due execution and to the validity and effectiveness of its provision, but also as to the truth and accuracy of any information contained therein, which Arista shall in good faith believe to be genuine, to have been signed or presented by the proper person or persons, and to conform with the provisions of this MSA and any related Service Schedule.

(b) In the event errors or deficiencies in completed work result from Arista's performance under this MSA or any related Service Schedule, Arista will correct such errors or deficiencies for which Arista receives timely notice from Customer, but Arista's obligations shall be limited to correcting such errors or deficiencies. Where correction is impossible or impractical, Customer shall be entitled to a refund for that portion of the computer services or products which contain such errors or deficiencies caused by Arista's performance.

7. Change of Procedures Due to Third Parties. Customer recognizes that in order for Arista to provide certain services to and for Customer, Arista must obtain services from third parties, including Arista's affiliates, related to such services, and in doing so must comply with the procedures imposed on Arista by such parties, including any entity formed to administer and promote credit or debit cards, including without limitation MasterCard International, Incorporated, Visa U.S.A., Inc. and Visa International and with all policies, procedures, operating rules, agreements or federal or state laws and regulations applicable to e-check Transactions, including the rules and operating guidelines of the National Automated Clearing House Association. Customer acknowledges and agrees that Arista, as a result of revisions to such third party procedures, from time to time will be required to change those procedures applicable to Customer or to impose new procedures, including but not limited to procedures related to security, processing of transactions, and features and use of the services. In addition, Arista may be required to modify, amend or terminate procedures, conditions, features or requirements regarding the services or the processing of transactions in order to comply with the requirements of applicable laws, regulations, or government policies. Arista will endeavor to provide Customer with thirty (30) days' prior written notice of such changes in procedures, and those changes will be deemed incorporated into this MSA or applicable Service Schedule at the end of such period. In the event such prior notice cannot be given, Arista will endeavor to give Customer notice of such changes in procedures as soon as reasonably practicable.

8. Force Majeure. Neither Party shall be deemed in breach of this MSA or any related Service Schedule to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, act of government, shortages of materials or supplies or any other cause beyond the control of such Party ("Force Majeure"), provided that such Party gives the other Party written notice of such Force Majeure promptly and, in any event, within fifteen (15) days of discovery thereof and uses its best efforts to cure the delay. In the event of such Force Majeure, the time for performance or cure shall be extended for a period equal to the duration of the Force Majeure but not in excess of three (3) months.

9. Equal Opportunity Clause. This MSA and any related Service Schedule hereby incorporates the equal opportunity clause, Section 60-1.4, and the affirmative action clause for handicapped workers, Section 60-741.4, pursuant to Executive Order 11246, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and the Vietnam Era Veterans Readjustment Assistance Act of 1974, 38 U.S.C. 4212, and implementing regulations.

10. General Contract Provisions.

(a) Authority. Each Party warrants and represents to the other that: (i) it has the power and authority to execute, deliver and perform this MSA and (ii) the person executing this MSA on behalf of it is an officer or authorized individual authorized to bind the Party with respect to its obligations hereunder.

(b) Construction. This MSA and any related Service Schedule is an agreement between Parties who are experienced in sophisticated and complex matters similar to the transactions contemplated by this MSA and related Service Schedule, is entered into by both Parties in reliance

upon the economic and legal bargains contained herein, and shall be interpreted and construed in a fair and impartial manner without regard to such factors as the Party which prepared the instrument or drafted any portion thereof, the relative bargaining powers of the Parties, or the domicile of any Party.

(c) Publicity. Customer consents to the public use of its name as a customer of Arista.

(d) Governing Law. This MSA and any related Service Schedule shall be governed by the laws of the State of Mississippi (and overriding federal law) (regardless of the laws that might be applicable under principles of conflict of laws) as to all matters pertaining hereto, including, but not limited to, matters of validity, construction, effect, and performance. Any controversy or claim related to this MSA or any related Service Schedule but not subject to arbitration pursuant to Section 11 shall be resolved in the courts of the State of Mississippi. Each of the Parties hereto hereby submits to the personal jurisdiction of the courts of the State of Mississippi for purposes of any court action filed in connection with this MSA and any related Service Schedule, and any such action filed in any other court may be forthwith removed to the courts of the State of Mississippi by any party to such action.

(e) Waiver. No consent or waiver, express or implied, by either Party to or of any breach or default by the other shall be deemed or construed to be a consent to or waiver of any other breach or default under this MSA or any related Service Schedule. Failure on the part of any Party hereto to complain of any act or failure to act of the other Party or to declare the other Party in default, irrespective of how long such failure continues, shall not constitute a waiver of the rights of such Party under this MSA or any related Service Schedule.

(f) Captions. The captions used for the paragraphs in this MSA and any related Service Schedule are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of this MSA or any related Service Schedule or any section hereof.

(g) Entire Agreement. This MSA and any related Service Schedule constitutes the entire agreement between the Parties hereto with respect to the matters covered thereby. All prior negotiations, representations and agreements with respect thereto not incorporated in this MSA and any related Service Schedule are hereby canceled.

(h) Appendices. Each and every Appendix attached to any related Service Schedule is hereby incorporated into and made a part of this MSA and such applicable Service Schedule by reference as fully as if set forth herein.

(i) Amendments. This MSA and any related Service Schedule may be amended only by written agreement executed by all Parties hereto.

(j) Counterparts. This MSA and any related Service Schedule may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same instrument.

(k) Notice. Unless otherwise provided herein, communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered as follows:

If to Arista:

Arista
Attention: Michael Thompson
100 Ashford Center North
Suite 500
Atlanta, Georgia 30338-4865
Telephone Number: (770) 414-8400
Telecopy Number: (770) 414-1122

If to Customer:

Samantha D. Abell
City Manager
City of Gautier
3330 Highway 90
Gautier, Mississippi 39553
Telephone Number: 228-497-8017

or as to either Party, at such address as shall be designated by such Party in a written notice to the other Party. All such notices and other communications shall be effective (i) if mailed, when received as evidenced by return receipt; (ii) if telecopied, when successfully transmitted; or (iii) if hand delivered, when delivered.

(l) Assignment. Neither this MSA nor any related Service Schedule may be assigned, in whole or in part, by Customer without Arista's express, written consent. Any purported assignment by Customer without such consent shall be without legal effect.

(m) Severability. If any one or more provisions in this MSA or any related Service Schedule shall be held to be invalid, illegal, void or unenforceable in any respect (i) such provision or provisions shall be given force to the fullest possible extent that can be valid, legal and enforceable, (ii) such invalidity, illegality, or unenforceability shall not affect any other provision of this MSA and any related Service Schedule, and (iii) to the extent that the intent, rights, and obligations of the Parties hereto are not materially altered, either a legal and enforceable provision shall be substituted for the one that most clearly carries into effect the intention of the original invalid or unenforceable provision or this MSA and any related Service Schedule shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(n) Relationship of the Parties. Nothing in this MSA or any related Service Schedule shall be construed as creating a partnership or joint venture of any kind between the Parties or as constituting either Party as the agent of the other Party. Neither Party has the authority or power to bind the other Party or to contract in the name of or create a liability against the other Party in any way or for any purpose

(o) Performance by Arista's Affiliate. Any request, obligation or action which Arista may be required or permitted to perform pursuant to this MSA and any related Service Schedule may be performed by one of Arista's affiliates on Arista's behalf, in which case such request, obligation or action performed by Arista's affiliate shall have the full effect under this MSA and any related Service Schedule as if it had been performed by Arista.

(p) Survival. All obligations arising before this Agreement or any related Service Schedule is terminated and all provisions allocating responsibility or liability between Arista and Customer shall survive such termination and not be prejudiced by the termination of this Agreement or related Service Schedule.

(q) Further Assurances. The Parties covenant and agree to execute such additional commercially reasonable agreements as may be reasonably necessary to effect the rights and obligations provided in this MSA and any related Service Schedule.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have executed under seal this Master Services Agreement by and through their daily authorized representatives.

ARISTA:

By: _____

Title: _____

Attest: _____

Title: _____

(Corporate Seal)

CUSTOMER:

By: _____

Title: _____

Attest: _____

Title: _____

(Corporate Seal)