Tricia Thigpen

From: Samantha Abell <sabell@gautier-ms.gov>
Sent: Friday, August 01, 2014 9:30 AM
To: tthigpen@gautier-ms.gov; crussell@gautier-ms.gov
Subject: FW: Revised Drainage Contract
Attachments: 2014 Hourly Rate and Fee Schedule.pdf; 140707_Scope of Services Phase 1.docx; GMC Responses_Engineering Agreement.docx; 140710_Revised Engineering Agreement.docx

Use the revised and make Josh's changes for my review.

From: Lawrence Wilson [mailto:lawrence.wilson@gmcnetwork.com]
Sent: Thursday, July 10, 2014 3:04 PM
To: Samantha D. Abell (sabell@gautier-ms.gov)
Subject: Revised Drainage Contract

Samantha,
Attached is the revised contract, scope, and fee schedule. I have tried to answer/address all of your comments. I know we will need to discuss a couple of items, so fill free to call me any time.

Lawrence A. Wilson PE
Civil Engineering
Tel 251.460.4006
Fax 251.460.4423
Cell 251.680.2241

lawrence.wilson@gmcnetwork.com
11 North Water St
Suite 15250
Mobile, Al 36602

GOODWYN | MILLS | CAWOOD
GMCNETWORK.COM

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AGREEMENT FOR ENGINEERING SERVICES
GMC PROJECT NO.

THIS AGREEMENT, made and entered into this __ day of_____, 2_____, by and between The City of Gautier, hereinafter referred to as the OWNER, and GOODWYN, MILLS & CAWOOD, INC., hereinafter referred to as the ENGINEER.

WHEREAS, the OWNER desires to have professional Engineering services and consultation performed relative to the preparation of plans and specifications for construction of Drainage System Clearing and Improvements, Phase 1, and Construction Inspection Services, hereinafter referred to as the Project, see attachment 1 for detailed scope.

WHEREAS, not having engaged any other engineers for the Project, OWNER desires to retain the ENGINEER as its sole and exclusive Engineering and consulting firm for the Project;

NOW THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the OWNER and ENGINEER do agree, each with the other, as follows:

ARTICLE 1. Basic Services.

Final Design Phase

1.1 On the basis of the accepted conceptual layout and the opinion of probable Project Cost, prepare for incorporation in the Contract Documents final maps that show the character and extent of the Project (hereinafter called "Drawings") and Specifications.

1.2 Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits and approvals typically required by law for similar projects.

1.3 Preparation of the following regulatory permit applications will be considered as part of Basic Services compensation: MDEQ Storm water Permits.

1.4 Advise OWNER of any adjustments to the latest opinion of probable Project Cost caused by changes in extent or design requirements of the Project or Construction Costs and furnish a revised opinion of probable Project Cost based on the Drawings and Specifications. ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Project Cost prepared by ENGINEER.

1.5 Prepare for review and approval by OWNER, its legal counsel and other advisors, contract agreement forms, general conditions and supplementary conditions, and (where appropriate) bid forms, invitations to bid and instructions to bidders, and assist in the preparation of other related documents.

1.6 Furnish copies of the above documents and present and review this in person with OWNER.

Bidding Phase

1.7 After the OWNER's acceptance of the plans and specifications as well as ENGINEER's most recent estimate of probable Project cost, and upon OWNER's authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding Phase. This phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase.

1.8 The ENGINEER will assist the OWNER in preparing the Contract Documents, the bid and any pre-qualification packages, and any necessary advertisements, in receiving bids and any pre-qualification applications for the Project, in conducting any pre-bid conferences and bid openings, and in making recommendations for qualifying contractors and awarding contracts for construction. For projects subject to the competitive bid law, the OWNER is responsible for the final determination of the lowest responsible and responsive bidder to whom a construction contract is awarded, shall obtain such legal counsel as necessary to make that determination.-

1.9 Issue addenda as appropriate to clarify, correct or change the bidding documents.

1.10 Consult with and advise OWNER as to the acceptability of subcontractors and other persons and organizations proposed by the prime contractor(s) (hereinafter called "Contractor(s)") for those portions of the work as to which such acceptability is required by the bidding documents.

1.11 Consult with and advise OWNER as the acceptability of substitute materials and equipment proposed by Contractor(s) when substitution prior to the award of contracts is allowed by the bidding documents.

1.12 Attend the bid opening, prepare bid tabulation sheets and assist OWNER in evaluating bids or proposals and assembling and awarding contracts for construction, materials, equipment and services.

Construction Phase

1.13 The ENGINEER will participate in a Pre-Construction Conference prior to commencement of Construction of the Project.

1.14 The ENGINEER will make recommendations to the OWNER as to the relative merits of materials and equipment.

1.15 The ENGINEER will check and approve any necessary shop and working drawings furnished by contractors.

1.16 The ENGINEER will interpret the plans and specifications to protect the original intent of the design as approved by the OWNER, and advise the contractor(s) accordingly. The ENGINEER will not, however, guarantee the performance of any contractor.

1.17 The ENGINEER will provide part-time Engineering observation of the work of the Contractor as construction progresses, including site visits (approximately 5-10 hours per week as needed) at intervals appropriate to the various stages of construction as are necessary in order to observe as an experienced and qualified design professional the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the Contract Documents. The ENGINEER does not guarantee the performance of the Contractor by the ENGINEER's performance of such construction observation. The ENGINEER's undertaking hereunder shall not relieve the Contractor of his obligation to perform the work in conformity with the Contract Documents, including plans and specifications, and in a workmanlike manner; shall not make the ENGINEER an insurer of the contractor's performance; and shall not impose upon the ENGINEER any obligation to see that the work is performed in a safe manner.

1.18 The ENGINEER shall have no responsibility for any Contractors' means, methods, techniques, equipment choice and usage, sequence, schedule, safety programs or safety practices, nor shall ENGINEER have any authority or responsibility to stop or direct the work of any Contractor. However, ENGINEER shall have the authority to reject work which does not conform to the Contract Documents.

1.19 The ENGINEER will review and approve estimates for progress and final payments. Such recommendations of payments will constitute a representation to OWNER, based on such observations and review, that the work has progressed to the point indicated, that, to the best of ENGINEER's knowledge, information and belief, the quality of such work is in accordance with the Contract Documents (subject to an evaluation of such work as a functioning Project upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents, and to any qualifications stated in its recommendation), and that payment of the amount recommended is due Contractor(s), but by recommending any payment, ENGINEER will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by ENGINEER to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that ENGINEER has made an examination to ascertain how or for what purposes any Contractor has used the monies paid on account of the Contract Price, or that title to any of the work, materials or equipment has passed to OWNER free and clear of any lien, claims, security interests or encumbrances, or that Contractor(s)

have completed their work exactly in accordance with the Contract Documents.

1.20 The ENGINEER will make a final review of the completed improvements to assess compliance with the Contract Documents, including plans and specifications, and will make necessary recommendations to the OWNER.

1.21 The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractor(s). If the Project involves more than one prime contract, Construction Phase services may be rendered at different times with respect to the separate contracts. Time extensions or time over runs on the construction contract will require an extension of the Engineering services for this phase along with an equitable adjustment to compensate ENGINEER for such additional services.

1.22 ENGINEER shall not be responsible for the acts or omissions of any Contractor or subcontractor, or any of the Contractor(s)' or subcontractors' agents or employees, or any other persons (except ENGINEER's own employees and agents) at the site or otherwise performing any of the Contractor(s), work. ENGINEER shall not be responsible for the adequacy of the Contractor's safety program, safety supervision, or any safety measure which the Contractor takes or fails to take in, on, or near the project site.

1.23 Prepare and furnish to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor.

ARTICLE 2. Additional Services

The following scope of services shall be considered additional work from the Basic Services outlined in Article 1.Unless the Additional Services are authorized in Article 4, Compensation, in this Agreement, then the OWNER and ENGINEER shall agree through a written amendment hereto, for the ENGINEER to furnish, or obtain from others, additional services of the types listed below. These services will be paid for by the OWNER as indicated in the Agreement.

2.1 Geotechnical Investigations and Report including but not limited to soil borings and physical testing of materials and equipment to be incorporated in the work and other such analysis or testing when necessary or deemed advisable by the ENGINEER for the design of the Project.

2.2 Geotechnical Materials testing services during construction, including but not limited to collection and testing of concrete cylinders, density testing of compacted soils, asphalt testing, laboratory tests of soils and materials.

2.3 Once the regulatory permits, including those outlined in Article 1, are submitted to the regulatory agencies, the ENGINEER will monitor the permitting process and all such time for tracking and monitoring and for re-submittal to an Agency who had lost the application, shall be considered as an Additional Service. Tracking and monitoring will consist of telephone calls, meeting with Agency personnel, and courier services.

2.4 Performing Storm water Permitting Services including preparation of MDEQ permits and BMP Plans and performing Storm water Inspection Services during Construction.

2.5 Performing survey work for preparation of easements and deeds, courthouse research, easement preparation and acquisition, research of legal documents, boundary surveys, and post construction services.

2.6 Performing survey work for engineering controls and construction staking costs, which include alignment, grade and benchmark control staking.

2.7 Preparation, submittal and tracking of permits required from the following agencies or any other regulatory agency, other than those specific permits listed in Article 1, Final Design Phase: US Fish & Wildlife Service, Mississippi Department of History and Archives, Soil Conservation Service, EPA, Corps of ENGINEERs, MDEQ, County Health Department. Performing environmental permitting and investigation work including but not limited to wetlands delineation, wetlands mitigation, and field and office work associated with assisting the OWNER in obtaining agency approvals.

2.8 Preparation of applications and supporting documents (in addition to those furnished under Article 1, if applicable) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.

2.9 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.

2.10 Services resulting from significant changes in the scope, extent, or character of the portions of the Services designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

2.11 Providing renderings or models not defined as part of construction plans for OWNER's use.

2.12 Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for a Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.

2.13 Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's office.

2.14 Additional survey, drafting and field work to prepare Record Drawings showing appropriate record information should the annotated record documents received from Contractor be insufficient for the preparation of the Record Drawings.

2.15 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, or other dispute resolution process related to the Project.

2.16 Assisting OWNER in consultations and discussions with Contractor concerning issues of warranty work required of the Contractor during the specified warranty period.

2.17 Preparation of Operations and maintenance manuals.

2.18 Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) the presence at the Site of any Constituent of Concern, (3) Work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.

2.19 Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

ARTICLE 3. Responsibilities of the OWNER

OWNER agrees to provide ENGINEER with complete information concerning the requirements of the project and to perform the following services:

3.1 The OWNER shall provide all criteria and complete information as to the OWNER's requirements for the Project and shall furnish all design and construction standards which the OWNER will require to be included in the Engineering plans, specifications, and operational narrative.

3.2 The OWNER will assist the ENGINEER by placing at the ENGINEER's disposal all available information pertinent to the Project.

3.3 Hold promptly all required meetings, serve all required notices, fulfill all requirements necessary in the development of the project, and pay all costs incidental thereto.

3.4 The OWNER shall arrange for access to and make all provisions for the ENGINEER to enter upon public and private property to perform surveying, testing and other data collection as required for ENGINEER to perform services under this Agreement. OWNER shall appoint and designate in writing a person to act as OWNER's site access representative for such purpose, and shall include contact information for the individual so designated.

3.5 Furnish ENGINEER with a 'copy of any design and construction standards he shall require ENGINEER to follow for the project.

3.6 Furnish ENGINEER with copies of all deeds, plats, property maps and other information necessary to the description and location of all easements and deeds needed for the project.

3.7 Designate, in writing, a single person to act as OWNER's Representative with respect to the work to be performed under this agreement. The person designated as Representative shall have complete authority to transmit instructions and to receive information with respect to the work covered by this agreement.

3.8 The OWNER shall provide such accounting, independent cost estimating as may be required for the Project. The OWNER shall also provide such legal services as the OWNER may require or the ENGINEER may reasonably request with regard to legal issues pertaining to the Project that must be resolved in order for the ENGINEER to carry out its obligations under this Agreement. It is expressly understood and agreed that the ENGINEER itself shall not furnish or render any legal opinions or legal interpretations as to matters of law or application of law.

3.9 The OWNER agrees to pay ENGINEER the Additional Services as may be required for the Project, as outlined in this agreement "as approved by council."

3.10 Be the Applicant for all permits and environmental clearances necessary to construct the Project and pay for any and all regulatory permitting and application fees.

3.11 Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and Substantial Completion and final payment inspections. Routinely perform site visits to observe the progress and quality of the various aspects of contractor's work and to determine, in general, if such work is proceeding in accordance with the OWNER's requirements of the Project.

ARTICLE 4. Compensation

4.1 The OWNER agrees to pay to the ENGINEER the following fees which shall be paid in monthly installments as work progresses:

4.2 For the Design Phase and the Bidding Phase, the OWNER will pay ENGINEER a lump sum fee of **$10,000.00.**

4.3 For the Construction Phase, the OWNER will pay ENGINEER a lump sum fee of **$25,159.00.**

4.4 For Geotechnical Borings and Report during the Design Phase, the OWNER will pay ENGINEER a lump sum fee, which will be negotiated once the final scope of work is determined. A written amendment to this agreement will be made. The fees shall be paid in monthly installments as work progresses. **Not Anticipated** "as approved by council."

4.5 For Geotechnical Engineering and Materials Testing Services during the Construction Phase, the OWNER will pay ENGINEER a fee based upon the attached Geotechnical Rate & Fee Schedule. A cash allowance may be established in the Construction Contract at the discretion of the OWNER. The fees shall be paid in monthly installments as work progresses. **Not Anticipated**. "as approved by council."

4.6 For Storm water Permitting costs, which include permit and BMP preparation, permit transfer, permit

termination and monthly inspections, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule and the fee will be included as a cash allowance in the construction contract. **Not Anticipated**. "as approved by council."

4.7 For easement and deed surveys and preparation, if needed, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses. **Not Anticipated.** "as approved by council."

4.8 Omit.

4.9 For environmental and regulatory permitting in accordance with Article 2, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses. **Not Anticipated**. "as approved by council."

4.10 For tracking and monitoring regulatory permit applications in accordance with Article 2, the OWNER will pay ENGINEER a fee based upon the attached GM&C Standard Rate & Fee Schedule. The fees shall be paid in monthly installments as work progresses. Not Anticipated. "as approved by council."

4.11 The OWNER may, from time to time, request changes in the scope of the services of the ENGINEER to be performed hereunder. Such changes, including any increase or decrease in the amount of ENGINEER's compensation, that are mutually agreed upon by the OWNER and the ENGINEER, shall be incorporated in written amendments to this Agreement. "as approved by council."

4.12 If the period of service for construction observation or for Engineering services during construction is extended due to time extensions or time overruns to the construction contract, compensation for these additional construction observation and Engineering services during the extended Period of Service shall be at the rates shown in the GM&C Standard Rate & Fee Schedule. The OWNER and ENGINEER will mutually agree upon the level of additional construction observation at the time of such occurrence. "as approved by council."

4.13 OWNER shall reimburse ENGINEER for all costs incurred for the OWNER's direct instruction to rebid the project at the rates shown in the GM&C Standard Rate & Fee Schedule. "as approved by council."

4.14 Compensation for services performed by ENGINEER's employees as witnesses giving testimony in any litigation, ~~arbitration~~ or administrative proceeding shall be paid by OWNER at a rate of two times the ENGINEER's standard hourly rates. Whenever ENGINEER's bill to OWNER includes charges for ENGINEER's consultants for such services, those charges shall be the amounts billed by ENGINEER's consultant to ENGINEER times a factor of two. "as approved by council."

4.15 Invoices are due and payable within 45 days of receipt. If OWNER fails to make any payment due ENGINEER for services and expenses within 45 days after receipt of ENGINEER's invoice therefore, the amounts due ENGINEER will be increased at the rate of 1.5 per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

ARTICLE 5. Relationship of the Parties

5.1 The parties intend that this Agreement create an independent contractor relationship between them. The ENGINEER is a professional corporation and is not an agent or employee of OWNER for any purpose. The ENGINEER cannot and will not represent that he has the authority to bind OWNER in any contractual manner. Nevertheless, with regard to the bidding and construction phases, it is understood that ENGINEER may serve as the OWNER's representative with full authority to participate therein as designated in Article 1, above.

5.2 Neither party is to represent to others that the relationship between them is other than as stated above.

5.3 Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the OWNER and the

ENGINEER and not for the benefit of any other party.

5.4 The OWNER and the ENGINEER each is hereby bound and the partners, successors, executors, administrators, legal representatives and assigns (to the extent permitted by Paragraph 6.5 below) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrations, legal representatives and said assigns of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

5.5 Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance of services hereunder.

5.6 ENGINEER may employ such independent professional associates, consultants, subcontractors, and vendors as the ENGINEER may deem appropriate to assist in the performance or furnishing of services under this Agreement. ENGINEER shall not be required to employ any consultant unacceptable to ENGINEER.

ARTICLE 6. Ownership and Use of Project Documents

6.1 All documents are instruments of service in respect to the Services, and ENGINEER shall retain an ownership and proprietary property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Services are completed.

6.2 Copies of documents that may be relied on by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.

6.3 OWNER may make and retain copies of documents for information and reference in connection with the services by OWNER. Such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the services or on any other project.

6.4 In the event of a discrepancy between the electronic files and the hard copies, the hard copies govern.

6.5 Any verification or adaptation of the documents for extensions of the services or for any other services will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

ARTICLE 7. Liability and Indemnity

7.1 The ENGINEER will not be responsible for delays, disruptions or obstacles attributable to acts of God, acts of third parties, weather, intervention of public authorities, work stoppages, changes in the applicable laws or regulations after the date of commencement of performance hereunder and any other acts or omissions or events which are beyond the control of the ENGINEER.

7.2 OWNER may not utilize ENGINEER's construction cost estimate after thirty calendar days from the date of delivery to OWNER without ENGINEER's written consent. Estimates of cost are made on the basis of the ENGINEER's experience, qualifications, and professional judgment, but since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee or warrant that proposals, bids or actual construction costs will not vary from estimates of probable costs prepared by ENGINEER. Approvals, recommendations, estimates and decisions by the ENGINEER are made on the basis of the ENGINEER's experience, qualifications, and professional judgment and are not to be construed as warranties or guarantees.

ARTICLE 8. Termination

8.1 This Agreement shall be subject to termination by either party hereto, with or without cause, upon twenty (20) days advance notice in writing. Payment due ENGINEER at such time shall be computed upon applicable terms of Article 4, the amount of work completed or in progress as of the termination date and ENGINEER's reasonable cost of winding down its services after termination.

ARTICLE 10. Miscellaneous

10.1 This Agreement represents the entire and integrated Agreement between the OWNER and ENGINEER and supersedes all prior negotiations, representations or agreements, whether written or oral. This Agreement may only be amended, supplemented or modified by written instrument executed by both the OWNER and the ENGINEER.

10.2 It is understood and agreed by the parties hereto, that if any part, term or provision of this Agreement is held by any court of competent jurisdiction to be illegal or in conflict with any applicable law, the validity of the remaining portion or portions of this Agreement shall not be affected and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10.3 It is expressively understood and agreed that the indemnity and insurance obligations of this Agreement, as well as the ENGINEER's proprietary interest in its Engineering plans and specifications, shall survive the termination of this Agreement under Article 8 above as well as the completion of services under this Agreement.

10.4 This Agreement is to be governed by the laws of the State of Mississippi.
WHEREFORE, the undersigned, by their signatures, certify that they have carefully read this Agreement, understand the terms and conditions contained herein, have proper authority to execute this Agreement, and do so as their own free act:

OWNER:

_____

By:_____

Title:_____

Attest:

_____
(Name and Title)

ENGINEER:

GOODWYN, MILLS & CAWOOD, INC.

By:_____

Title:_____

Attest:

_____
(Name and Title)