

**CITY OF GAUTIER
MEMORANDUM**

To: Samantha Abell, City Manager
From: Cindy Steen, Purchasing Agent
Through: Cindy Russell, City Clerk
Date: August 10, 2015
Subject: Cellular South Supplemental Contract

REQUEST:

City Council action is requested to accept the option within the current contract for an additional one (1) year term to provide Cellular South cell phones services for the City of Gautier.

RECOMMENDATION:

Based on the information provided, Staff recommends that Council approve to accept the additional one (1) year term for Cellular South supplemental contract to provide cell phone services for the City of Gautier.

ATTACHMENT:

Cellular south Supplemental Contract

**GOVERNING AUTHORITY SUPPLEMENT TO
MASTER CELLULAR VOICE AND DATA SERVICE AND EQUIPMENT
AGREEMENT
BETWEEN
CELLULAR SOUTH, INC. D/B/A C SPIRE WIRELESS
AND
MISSISSIPPI DEPARTMENT OF INFORMATION TECHNOLOGY SERVICES
AS CONTRACTING AGENT FOR THE
AGENCIES AND INSTITUTIONS OF THE STATE OF MISSISSIPPI**

This document shall serve as a Governing Authority Supplement (the "Supplement") to the original Master Cellular Voice and Data Service and Equipment Agreement executed June 26, 2007, and amended on September 5, 2007, January 21, 2009, September 2, 2009, December 1, 2009, February 16, 2010, October 8, 2010, March 29, 2011, June 16, 2011, October 18, 2011, and November 11, 2011 (hereinafter collectively referred to as "Master Agreement") between Cellular South, Inc. d/b/a C Spire Wireless, a Mississippi corporation having its principal offices at 1018 Highland Colony Parkway, Suite 520, Ridgeland, Mississippi 39157, (hereinafter referred to as "Contractor"), and the Mississippi Department of Information Technology Services, having its principal place of business at 3771 Eastwood Drive, Jackson, Mississippi 39211 (hereinafter referred to as "ITS"), as contracting agent for the governmental agencies, educational institutions and governing authorities of the State of Mississippi. It is understood that this Supplement is entered into as of the date it is signed by all Parties (the "Effective Date") by and between Contractor and City of Gautier having its principal offices at 3330 Highway 90, Gautier, MS 39553 (hereinafter referred to as "Governing Authority"). Contractor and Governing Authority are sometimes referred to collectively herein as the "Parties" and individually as a "Party".

WHEREAS, ITS, pursuant to Request for Proposals ("RFP") No. 3489, requested proposals for the acquisition of master agreements containing the terms and conditions which will govern any orders placed by ITS or other designated entities during the term of this Master Agreement for cellular voice and data service (collectively referred to as "Services") and Products, which will be administered by ITS;

WHEREAS, the Contractor was the successful proposer in an open, fair and competitive procurement process to provide the above-mentioned Services and Products;

WHEREAS, the Master Agreement is E-Rate qualified for those Products and Services that are E-Rate reimbursable; and

WHEREAS, Contractor and Governing Authority desire to enter into the Supplement to specify certain terms and conditions upon which Governing Authority may purchase the Products and Services from Contractor;

NOW THEREFORE, in consideration of the mutual understandings, promises, consideration and agreements set forth, the Parties hereto agree as follows:

1) The initial term of this Supplement begins on the Effective Date and continues for a period of two (2) years (the "Initial Term"). At the end of the Initial Term this Supplement may, upon the written agreement of the Parties, be renewed on a month to month basis or such other term as the Parties may agree upon (each a "Renewal Term") until such time as either Party gives the other Party thirty (30) days prior written notice of termination. The Initial Term and any Renewal Term are sometimes collectively referred to herein as the "Term".

2) It is understood and agreed that during the Term, Contractor shall be the designated provider of all Services and Products for Governing Authority. Any exceptions will be on a case-by-case basis for specific Products for which adequate coverage cannot be provided by Contractor or for specific business requirements for which functionality cannot be provided by Contractor.

3) During the Term, Governing Authority may purchase Products which are free ("Free Products") under the terms and conditions set forth in the Master Agreement.

4) During the Term, Governing Authority may purchase Products which have an initial purchase price ("Purchased Products") under the terms and conditions of the Master Agreement and on the same terms and conditions Contractor provides to its other customers as updated from time to time on Contractor's website at www.espire.com (the "Contractor Terms"). The Contractor Terms include, but are not limited to, requirements for contract terms, liquidated damages termination fees, and upgrade policies and fees. By executing this Supplement, Governing Authority acknowledges and agrees that Governing Authority is agreeing to be bound by such Contractor Terms as are in effect at the time of Governing Authority's or its employees' activation of such Purchased Products. For example, Governing Authority could elect to purchase a particular Purchased Product for full retail price, in which case no liquidated damages termination fees would apply, or Governing Authority could elect to purchase a particular Purchased Product at the promotional price. If Governing Authority elected to purchase such Purchased Product at the promotional price, then Governing Authority must agree to maintain Service with Contractor for a set period of time (currently two (2) years) or else prorated liquidated damages termination fees would apply if Governing Authority terminated Service earlier than two (2) years after activation of the Purchased Product, regardless of the Term of this Supplement. This means that if Governing Authority activated a Purchased Product at the promotional price within the last three (3) months of the Term, for example, and Governing Authority subsequently terminated this Supplement at the end of the Term, then Governing Authority would owe Contractor a liquidated damages termination fee equal to the remainder of the promotional contract term (21 months) times the applicable liquidated damages termination fee. Governing Authority's right to purchase Purchased Products as set forth in this Section 4 is in addition to Governing Authority's right to purchase Free Products under the terms of the Master Agreement.

5) Contractor shall provide the Products and Services detailed in Exhibit A to this Supplement, at the prices shown therein. Except as expressly set forth in this Supplement, the terms and conditions of the Master Agreement shall remain in full force and effect. In the event of any conflict between the terms of this Supplement and the terms of the Master Agreement, the terms of this Supplement shall prevail but only to the extent of the conflict. Any additional discounts or price decreases negotiated under the Master Agreement and/or additional Products

and Service plans added to the Master Agreement will be made available to Governing Authority by Contractor under this Supplement.

6) This Supplement has been duly authorized by both Parties and it represents a binding obligation of both Parties.

7) This Supplement may only be amended in a writing executed by both Parties. This Supplement may be executed in counterparts and sent via facsimile or email, and the counterparts, when combined, shall constitute one binding instrument.

8) Any notice required or permitted to be given under this Supplement shall be in writing and personally delivered or sent by electronic means provided that the original of such notice is sent by certified United States mail, postage prepaid, return receipt requested, or overnight courier with signed receipt, to the Party to whom the notice should be given at their address set forth below:

If to Contractor: Cellular South, Inc. d/b/a C Spire Wireless
1018 Highland Colony Parkway, Suite 520
Ridgeland, MS 39157
Attention: Janice Fitzgerald
Manager, Government Accounts
Email: msgov@cspire.com

If to Governing Authority: City of Gautier
3330 Highway 90
Gautier, MS 39553
Email: csteen@gautier-ms.gov

Notice shall be deemed given when actually received or when refused. Either Party may change their address by giving the other Party written notice of such address change in compliance with this Section.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Supplement to be executed by their authorized undersigned representatives effective as of the Effective Date.

Governing Authority:

City of Gautier

By: _____
Authorized Signature

Printed Name: Samantha Abell

Title: City Manager

Date: _____

Contractor:

Cellular South, Inc. d/b/a C Spire
Wireless

By: _____
Authorized Signature

Printed Name: Brian Caraway

Title: Senior Vice President

Date: _____

*Supplemental Term Dates:
July 30, 2015 – June 30, 2016*