

**PRIVATIZATION OF OPERATION  
AND MAINTENANCE  
OF WATER AND SEWER SERVICES**

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PRIVATIZATION OF OPERATION AND MAINTENANCE OF  
WATER AND SEWER SERVICES

1. Conduct an Assessment of existing Systems and Operations to determine whether or not a Municipality should enter into a contract with a private company or public entity to provide Water Production and Distribution and Wastewater Collection Services
  - Should the City consider entering into a “partnership” with another public entity to provide these services through an Interlocal agreement
  - Small Town v. Large City
- a. Choose a small team of qualified City staff and/or elected officials to make an objective determination as to what problems or issues currently exist with the existing services being provided by the City and determine whether or not they can be “fixed” or should be fixed.
  - Don’t limit the team to the existing City employees that already provide these services as they may have certain biases that hinder a frank assessment.
  - Consider having an outside person join the team to offer insight as to public perception of how services are currently being provided and could be improved upon.
- b. Pros and Cons – See Attached
  - Save money. Maybe
  - Provide services more efficiently. Depends
  - Accountability - Does the contract provide that the City officials or staff will retain control over how, when, and where services will be provided
  - Does the contract provide for performance metrics and oversight by City staff?
  - Will City staff actually monitor the performance of the contractor?
- c. Make an inventory of the components and equipment for the operation and maintenance of water and sewer systems
  - What is the condition of the components of the systems and the equipment necessary to operate and maintain same?
  - Are major or minor repairs required?
  - Do these upgrades or repairs need to be done before or after the City enters into a contract for operation and maintenance?
  - What vehicles and equipment need to be placed at the disposal of the private contractor to perform these operations?
  - What equipment or vehicles will the contractor be expected to provide to perform the scope of the work?
  - Will the City or the contractor be responsible for the maintenance of the equipment?
  - Responsibility for insurance to cover City equipment used by contractor

- Expected hours of work and response time of contractor personnel including weekend, holiday and after-hours work
  - Work outside of normal and customary work and Emergency services
  - Clarify responsibilities of contractor for any special areas where the scope of work for unique circumstances would be limited.
  - Require that the contractor have an operator certified by the State.
  - Purchasing of supplies and materials according to public purchasing laws and local guidelines. (Important, but see AG Opinion attached). Recordkeeping of inventory. Avoid commingling with contractor's other materials and supplies.
  - Preparation and filing of timely environmental reports with State and Federal agencies
  - Utility Billing and services to be provided by that department. Overlap?
  - Contract Term -- Renewal -- Ratification after New Term of Office
  - Insurance -- Liability and Workers Compensation -- Use of City Equipment
  - Drug Testing of employees
- g. Communication and Monitoring of Performance
- Work Orders sent to Contractor by Utility Billing Department or other departments
  - Citizen complaints
  - Contractor designates representative for contract compliance and reporting to City
  - Budget process

## PROS AND CONS FOR PRIVATIZATION

### Arguments for:

- **Efficiency and Cost Savings:** Private companies are often seen as more efficient and cost-effective due to competition and profit incentives.
- **Increased Innovation:** Private companies may be more innovative and adaptable to changing needs.
- **Reduced Government Burden:** Privatization can free up government resources and allow them to focus on core functions.
- **Economic Growth:** Privatization can stimulate economic activity and attract investment.

### Arguments Against:

- **Loss of Public Control:**  
Privatization can lead to a loss of public oversight and accountability.
- **Increased Inequality:**  
Private companies may prioritize profits over public good, potentially leading to higher prices or reduced access to services.
- **Job Losses:**  
Privatization can result in job losses for public employees, as private companies may restructure operations.
- **Potential for Corruption:**  
Contracting with private companies can create opportunities for corruption and mismanagement.
- **Reduced Service Quality:**  
Private companies may cut costs by reducing service quality or skimping on maintenance.

Note: Nearly 73 million Americans rely on private companies for drinking and wastewater needs, according to the National Association of Water Companies, which represents a substantial increase over the past five years.

The governing authorities of municipalities shall have the power to acquire by purchase, donation or condemnation, in the name of the municipality, suitable grounds, within or without the corporate limits, upon which to erect waterworks, and also the right-of-way to and from such works and the right-of-way for laying water pipes within the corporate limits, and from such waterworks to the municipality, and to extend such right-of-way from time to time. The governing authorities shall have the power to contract with any person for the maintenance and operation of waterworks. **The authorities shall have the power to contract with any person for the erection and maintenance of waterworks for a term not exceeding twenty-five (25) years,** fixing water rates in the contract subject to municipal regulations. A contract for the erection or purchase of waterworks shall not, however, be entered into until submitted to a vote of the qualified electors and approved by a majority of those voting. A contract for maintenance under which the person who will perform such maintenance is wholly or partially responsible for fixing water rates shall not be entered into until submitted to a vote of the qualified electors and approved by a majority of those voting. It shall be unlawful for any municipally owned waterworks to supply water free of charge, or in any amount less than the fixed charges, to any person, firm or corporation, except as is expressly authorized by law.

MCA Section 21-27-7(2)

**(r) Solid waste contract proposal procedure.** Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or **contract for sewage collection** or disposal, which involves an expenditure of more than Seventy-five Thousand Dollars (\$75,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter into contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated. ....

MCA Section 31-7-13(r)

## REQUEST FOR PROPOSALS

### OPERATION AND MAINTENANCE OF THE COMBINED WATER AND SEWER DEPARTMENT OF THE CITY OF \_\_\_\_\_, MS

You are invited to submit a proposal in accordance with this request to the Mayor and Board of Aldermen/City Council of the City of \_\_\_\_\_, MS, \_\_\_\_\_, MS \_\_\_\_\_, not later than 4:00 PM on the \_\_\_\_\_ day of \_\_\_\_\_, 2025. Proposals will be opened by the City Clerk or her designee in the presence of all interested persons or entities at City Hall and referred to the Selection Committee to be selected by the Mayor (and City Council/Board of Aldermen).

A contract will be offered to the contractor whose proposal is within the competitive range as determined to be the most advantageous to the City, considering the price, financial and legal responsibility, technology, qualifications, experience, capacity to perform, past performance, familiarity with the City's facilities and operations, and other relevant factors.

The scope of the services that the contractor shall be required to furnish for the operation and maintenance of the combined water and sewer department shall be as described in the proposed contract. The contractor will be responsible for providing all vehicles and specialized equipment for the operations and maintenance function of the department, all as more particularly provided in the proposed contracts, unless otherwise indicated by the City in its Information to Proposers. Any contractor may direct written questions to the City Clerk (or some other designee) to obtain a more detailed description of the above services. All questions must be received five working days prior to the proposal submittal date. All responses by the City to these questions will be available for inspection and copying at the office of the City Clerk by any interested contractor. Contact with the City's elected officials during the solicitation process is expressly prohibited and any intentional violation may result in the disqualification of any prospective contractor.

The contracts will be on a lump sum basis with monthly payments to be made by the City. The contract term shall be for \_\_\_\_\_ years, but the contract shall be subject to ratification or cancellation by the new administration at the end of the remainder of the term of office of the current administration.

Those desiring consideration of their proposals must submit same by the time and date provided above, clearly marked as a proposal for the combined water and sewer department and acknowledge on the face of the envelope any addendums and provide their current State Certificate of Responsibility number, if applicable. At a minimum any prospective contractor should include the following in their proposals:

1. Qualifications, Capacity to Perform, and Experience. List of qualifications of each staff person who will be assigned to the project, including a full resume of the project manager. Also, a detailed history of the experience of the firm and the assigned employees involving similar project activities previously undertaken. Experience in the public sector will be preferred.
2. List of vehicles and other specialized equipment available to perform the work. All contractors must indicate whether the listed vehicles and equipment are owned or leased by the contractor or to be acquired. The City reserves the right to inspect all such equipment and vehicles at a location to be designated by the City.
3. Past or Pending Litigation and claims. All contractors must provide a detailed account of all past and pending litigation or claims involving their past performance with similar project activities.

4. Certifications. All contractors must provide current copies of all certifications required by law to operate the City's facilities and perform this work.

5. References. All contractors must provide the name, address, and telephone numbers of at least three references who have worked with the contractor or their staff on similar projects.

6. Financial Capacity. All contractors shall submit adequate documentation of their financial capacity to perform the work.

7. Familiarity with the City's facilities and operations. All contractors must provide documentation of their familiarity with the City's facilities and operations. Questions regarding the City's wastewater collection and water production and distribution operation and facilities must be directed to \_\_\_\_\_.

Proposals will be referred to and reviewed by a Selection Committee. The Selection Committee will review and make a recommendation of the proposals considering the aforementioned factors and will assign points to each proposal based upon the following criteria:

Maximum Points

1. Qualifications	20
2. Experience	30
3. Capacity for Performance	30
4. Price	20

Negotiations will be conducted to determine a mutually satisfactory contract or contracts with the contractor(s) submitting the most qualified proposal(s) considering all factors stated herein and any other relevant factor the City deems in its discretion that should be considered. If the initial negotiations with the first contractor selected are unsuccessful, the City will commence negotiations with other contractors who have submitted proposals according to the rank as determined by the governing authorities of the City in their sole discretion. Price will be only one of the factors considered by the City in making its decision in this regard. The Mayor and Board of Aldermen (or City Council, as the case may be) will make the final decision concerning the award of this contract.

The City reserves the right to reject any and all proposals and to waive any irregularities or informalities in the proposed bidding and selection process. No performance or bid bond will be required. The City is an equal opportunity employer. No proposal may be withdrawn without the consent of the City for sixty days after the proposals are opened.

\_\_\_\_\_, City Clerk

Publish: two consecutive weeks



CONTRACT FOR "TURNKEY" OPERATIONS OF WATER  
AND WASTEWATER SYSTEMS

This AGREEMENT shall become effective on the \_\_\_\_ day of \_\_\_\_\_, 2025, by and between the CITY OF \_\_\_\_\_, MISSISSIPPI, a body corporate and politic of the State of Mississippi ("CITY") and \_\_\_\_\_), a Mississippi Corporation ("CONTRACTOR").

RECITALS:

Whereas the CITY owns and operates a water FACILITY system consisting of a water production system, a water distribution system capable of carrying water at an adequate volume and pressure to each of its customers, and a wastewater collection system (the "FACILITIES").

Whereas the CITY is authorized under the Constitution and laws of the State to enter into this agreement for the purposes set forth herein:

NOW THEREFORE, in consideration of the premises, mutual covenants and provisions contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby, and acknowledged, the CONTRACTOR agrees to furnish the CITY certain maintenance and other services necessary for the proper operation of the FACILITIES, and the CITY agrees to compensate the CONTRACTOR for these services, all in accordance with the following terms and condition:

ARTICLE 1 - GENERAL

1.01 SCOPE OF WORK - CONTRACTOR shall provide knowledgeable, high quality

Operations, management, and maintenance expertise services to the CITY for the existing water and wastewater FACILITIES under the CITY'S jurisdiction. This service shall include, but is not limited to:

A. All supervision, labor transportation, tools, equipment and all appurtenances thereto in good operating order and in a clean, neat, and attractive condition.

B. CONTRACTOR shall operate all FACILITIES under applicable regulatory requirements, meet or exceed all government-imposed standards and/or reporting standards;

C. And on all urgent trouble reports CONTRACTOR shall provide service call response time not to exceed thirty minutes from the time the service call is received by the CONTRACTOR; otherwise, to be resolved in a reasonable time.

## ARTICLE 2 - OTHER SERVICES

2.01 OPERATIONS - At its expense, in addition to those services named in Section 1.01, CONTRACTOR shall provide the following services under the conditions set forth herein:

A. Adequately staff the FACILITIES with competent employees experienced in water and wastewater and systems operation and maintenance procedures. The staff shall have the required State of Mississippi Operation Certificates and other/or licenses required by law, including but not limited to any State or Federal, legally impose rule or regulation.

CONTRACTOR affirms that all of the CITY'S FACILITIES shall be operated under the direct supervision of personnel who possess valid certificates of competency as required by the Federal Government and the State of Mississippi consistent with the requirements of the regulatory agencies having jurisdiction over the scope of this Agreement.

B. Facility inspection and maintenance - CONTRACTOR shall inspect each CITY water well at least once each working day, and inspect each lift station at least two times each work week and maintain a written operator-certified log of each such public water well system inspection as part of the permanent records of the CITY. Other more frequent inspections shall be performed as required. Additionally, after the CONTRACTOR shall have a reasonable period of time to locate water valves not otherwise identified on drawings or by other means from the City Engineer or by the Contractor's personnel, the CONTRACTOR shall inspect and repair, if necessary, and exercise all water valves at least annually and as activities shall determine. CONTRACTOR shall also inspect and clean, if necessary, all known manholes on an annual basis using the CITY's vacuum truck as made available by the Public Works Department or sooner as shall be directed by the CITY engineer or other authorized City official. CONTRACTOR shall correct or repair any deficiencies within a reasonable period of time after inspection. If the CITY's vacuum truck is not otherwise available or suitable for the required work, the CONTRACTOR with the CITY's approval shall rent another vacuum truck and bill the City for the actual equipment rental rate.

C. Maintain complete and accurate records of operation and maintenance activities, which will be available for inspection by the CITY during normal working hours and reported no less frequently than monthly to the CITY.

D. Properly maintain existing and operable security systems of all FACILITIES within the existing fences.

E. Preventive Maintenance - CONTRACTOR shall furnish personnel, tools, materials and equipment required to properly lubricate, operate and maintain all mechanized equipment; to replace control lamps or light bulbs; to adjust or replace pump shaft packing and to perform other preventive maintenance required at specific intervals by the equipment manufactures. CONTRACTOR shall perform these services for each separate pieces of equipment throughout the CITY'S FACILITIES. The scheduling of proper service intervals and the compilation of history of all such service performed shall be accomplished utilizing a system applicable solely to the CITY's equipment and shall, at the termination of this Agreement, be considered to be the property of the CITY. CONTRACTOR shall likewise perform all normal repair and maintenance of the FACILITIES to keep them in good working order. The CONTRACTOR shall be required to inspect and maintain on a regular basis as shall be approved by the CITY all wastewater pumping stations and City-maintained grinder pumps on individual property sites as identified by the CITY.

The CITY's Contract Administrator (per Section 3.03 of this Agreement) or, in his absence, his designee, shall have the right to inspect these maintenance records during normal business hours. CONTRACTOR will submit to the CITY, documentation of the cost effectiveness of "repair versus replace" decisions on "Major Repairs" (as defined in Sections 2.08 and 2.09) made by the CONTRACTOR prior to any action being taken. Maintenance and repairs shall not include costs associated with flood, fire, Acts of God or other similar extraordinary occurrences.

F. Buildings, structures and Grounds - CONTRACTOR shall maintain and keep clean and neat all existing buildings, pump houses, structures, and grounds located at the FACILITIES, provided that, however, CONTRACTOR shall be under no obligation to improve the current condition of such existing buildings and facilities. The CITY shall be responsible for cutting the grass and maintaining access to facilities outside of the fenced areas.

CONTRACTOR shall obtain CITY approval prior to any modifications or major maintenance affecting appearance or the FACILITIES and maintain the cleanliness and appearance of the FACILITIES' sites in a professional manner.

CONTRACTOR shall not be required to maintain its office within the City limits; however, CONTRACTOR will be required to adhere to the Response times and provide staffing of at least two (2) qualified persons within a reasonable proximity of the City limits to perform work required under this contract in a timely manner.

G. Special Maintenance Services, not covered by Section 2.08 for Emergency Repairs, may be requested of CONTRACTOR which under routine conditions, would be contracted out by the CITY. When this need occurs, CONTRACTOR's unit price will not exceed direct cost plus twelve (12) percent (or as bid or proposed by CONTRACTOR or as reflected in the Contractor's Rate Schedule Reference A, Attachment). The CITY reserves the right to solicit Unit Price Bids on an annual basis or to contract with others to cover these type of Special Maintenance Services

H. Comply with all applicable Federal and State of Mississippi laws and regulations as they pertain to the scope of CONTRACTOR's responsibilities under this Agreement. The scope includes, but is not limited to, providing, at CITY's cost, the necessary testing and laboratory analysis as required by currently existing regulatory agencies and for process control; preparing and signing all regulatory agency-required monitoring and operating reports; and submitting them to the proper State and Federal agencies, with monthly copies to the CITY. Existing laboratories and laboratory equipment shall remain the property of the CITY and will be available to CONTRACTOR. Submit water samples to an authorized health department laboratory in compliance with applicable health department regulations. All test results shall be kept in a permanent file in the CONTRACTOR's offices and shall remain the property of the CITY.

I. Meet with the CITY's Contract Administrator at a regularly scheduled meeting semi-annually and as needed. The purpose will be to discuss operations and maintenance. Information to be covered during these meetings shall include an accounting of maintenance expenditures to date. CONTRACTOR will provide a written monthly report that will include, but not limited to, preventive maintenance for exercising water valves, inspecting and cleaning manholes, and other maintenance work, corrective maintenance, lift stations and pumps, capital expenditures, water accountability, sewer accountability, line repairs, meters, repaired/replaced, taps, and inspections and fire hydrants inspected/repaired.

J. Maintain and operate the FACILITIES so that product water, with regular treatment, conforms to regulatory agency current standards. CONTRACTOR is not responsible for meeting such standards if (A) the raw water contains substances which cannot, under normal or periodic conditions, be treated or removed by the existing FACILITIES or (B) Raw water characteristics exceeding the treatment design characteristics of the FACILITIES.

K. The City shall purchase and maintain an inventory of chlorine for the use by CONTRACTOR at FACILITIES at CITY expense. CITY will also provide updated gas chlorine hazard equipment and a cylinder repair kit as required by regulatory agencies for use by CONTRACTOR.

L. Notify the CITY within twenty-four (24) hours of any abnormal treatment condition or occurrences and make recommendations to effect necessary changes to the process to achieve a suitable product under the existing requirements.

M. Operate the FACILITIES to minimize odors. Deal in a professional manner with community groups concerned with odors or any other facets of operation. CONTRACTOR will notify the CITY of complaints the same or next working day.

N. Telemetric Monitoring - CONTRACTOR shall at the CITY'S request monitor telemetric signal devices (SCADA) installed in any of the CITY'S FACILITIES. Installation of such devices shall be at the CITY's discretion. The CITY shall purchase and pay for the installation of such equipment, including installation of telephone lines. CITY shall pay the monthly costs for telephone service.

O. Utilize local purchasing and banking and hire any additional staff from the local area to the greatest extent possible.

P. Provide an ongoing education and safety program for all employees. The cost of this program will be the responsibility of the CONTRACTOR. The program shall encourage employees to develop good safety and work habits and to develop operator skills required to take and successfully pass appropriate tests for State licensing.

Q. Submit annually, in response to CITY's request given 30 days in advance, an estimated budget for the following fiscal year, which will include the necessary capital improvements or replacements in the opinion of CONTRACTOR, if any, to be provided by the CITY.

R. CONTRACTOR shall furnish all labor, equipment, tools, at least three (3) service trucks, car, and their fuel required to perform the base duties for the base fee herein, see paragraph 1.01 and paragraph 2.01E, as follows:

1. Facilities

1. FACILITIES for Operations and Maintenance
2. Four water wells
3. Three (3) wastewater grinder pumping stations at the Old Harbor ( Boat Pump-Out Station, and Harbormaster office)\*
4. Thirty-Seven wastewater pumping stations
5. Numerous individual grinder pump stations to be identified separately by CITY.
6. All wastewater grinder pump and lift stations in the New Harbor as follows:
  - A) Operate and maintain two (2) Sewer Pump Stations, one (1) on the East side at the foot of the Bridge and one (1) by the Bathroom on the West side.
  - B) Operate and maintain four (4) Grinder Pump Stations (GPS) on the Bridge on East side. One (1) for the bathroom on the Bridge and three (3) for the Seafood Dealers that are disposable units.

Note: Contractor's responsibility stops at the surface / top of the concrete Bridge. Any work required under the surface of the Bridge will be performed by a Specialty Contractor.

C) Operate and maintain five (5) 1 1/2" water meters, one (1) each for piers P-5, P-6, C-4, C-5, and C-6.

Note: Contractor's responsibility stops at each pier and the Harbor Department has the full responsibility for operating and maintaining all facilities on the piers including implementation of the approved Freeze Plan.

D) Operate and maintain four (4) 1 1/2" water meters on the East side Bridge, one (1) each for four (4) Harbor business customers and operate and maintain one (1) 3/4" water meter on the East side Bridge for the Bathroom.

Note: Contractor's responsibility stops at the surface/top of the concrete Bridge. Any work required under the surface of the Bridge will be performed by a Specialty Contractor.

E) Operate and maintain one (1) 3/4" water meter on the West side behind \_\_\_\_\_ store.

F) Operate and maintain one (1) 2" water meter for the New Harbor Sprinkler System on the West side and one 1 1/2" water meter for the Harbormaster's office.

Specialized equipment and technicians/labor required for working \_\_\_\_\_ on water and sewer main piping under the access bridge on East side and under the piers for Piers C-4, C5, C-6, P-5 and Pier P-6, and Public Boat Launch are considered to be outside of regular Scope of Work of CONTRACTOR.

## II. Personnel:

1. Clerical Staff
2. Supervisor/Operations Manager\*
3. Certified Operator\*
4. Equipment Operator\*
5. Laborer(s) \*

\*(On call twenty-four (24) hours a day

## III. Equipment: Contractor to provide (or have readily available as needed) the following:

1. Data processing equipment and system
2. Transportation vehicles equipped with cellular telephones

3. Chlorine test kit
4. Line trimmer/Brush cutter
5. Mower
6. AC/DC Volt/Ohms meter(s)
7. Volt/Continuity tester
8. 580 Case loader/extendahoe
9. Sewer cleaner 225 gal, 13 GPM, with 3000 psi for sewer service lines and manholes.
10. Air Compressor 185 CFM diesel
11. 3/4" thru 2" Tapping Machine
12. Multi-Purpose Saw and Asphalt/Concrete Saw for Road Repair
13. 3" Gas Pump
14. Pneumatic boring machine up to 2"
15. Equipment to install Taps less than 2"

#### IV. Special Equipment

All other equipment required that is not listed above (III) will be furnished per Rate Schedule attached (Reference A, Attachment 1). The CITY reserves the right to require CONTRACTOR to rent Special Equipment from other vendors if such rental costs are more economically feasible for CITY.

CONTRACTOR will be required to own or have reasonably available the above equipment and maintain same within the City limits or within reasonable proximity thereto to provide service as required.

S. CONTRACTOR shall within sixty (60) days of the effective date of this Agreement inform the CITY's Contract Administrator of any existing defects in operating equipment or systems. CONTRACTOR shall also provide a cost estimate with documentation on repair and/or replacement recommendation made for said equipment or system. The CITY will review the defects noted and will take appropriate action to correct deficiencies, if warranted in the opinion of the CITY.

T. CONTRACTOR affirms that it shall pay at its sole expense, all corporate income and franchise taxes arising out of its operations and all employment taxes or contributions imposed by law, regulations or trade union contract measured by the compensation paid to employees of CONTRACTOR or its subcontractor, including, but not limited to, taxes or contributions for unemployment compensation. CONTRACTOR shall also be responsible to pay any other federal, state, county and local taxes, which shall be made to proper authorities. CONTRACTOR shall defend, indemnify, and hold the CITY, its officials and employees, harmless from and liability for any and all such taxes for failure to pay same, including reasonable attorney's fees or cost and whether disputed or not.

U. CONTRACTOR shall advise CITY's Contract Administrator of all inspections, inquiries, correspondence, notices, and complaints received. Written, as well as verbal, notification will be given within two (2) working days of occurrence

V. Perform all operational and maintenance services for the FACILITIES and perform these services in a timely, competent, qualified, professional, workmanlike manner

and to the satisfaction of the Mayor and Board of Alderman of the CITY. In addition to any other material breach under this contract, the failure of CONTRACTOR to perform this Contract or any provision thereof, to the satisfaction of the Mayor and Board of Alderman shall constitute a material breach of this Contract, as contemplated under Article 6, Section 6.01, thereof.

W. Promptly prepare and submit all operational reports require by the agencies of the State of Mississippi, the federal government, the Environmental Protection Agency, or any other local, state or federal agency authorized by the CITY to receive such reports.

x. CONTRACTOR shall be required to have one of its personnel as shall be approved by the CITY to attend all Technical Committee meetings or other meetings of the Harrison County Utility Authority on a regular basis.

2.02 BILLING and COLLECTIONS- CITY shall perform billing and collection services and WPSCO shall not be responsible for such services beginning on December 27, 2019.

2.03 OPERATIONS REPORTS- CONTRACTOR shall submit to the CITY a monthly operation report, including but not limited to, the following information:

- A) Total service connections
- B) Estimated population
- C) Bacteriological test summary
- D) New meter order and installations
- E) Total water produced or purchased
- F) Scheduled maintenance and repair reports
- G) Summary of maintenance and repair by water and sewer facilities separately
- H) Insurance claims filed or pending disposition
- I) Copies of all reports and correspondence made by CONTRACTOR to local, state, or federal regulatory agencies on behalf of the CITY.

2.04 HOURS OF OPERATION- Normal hours of operation of CONTRACTOR's personnel shall be from 6:30am to 3:00pm, Monday through Friday of each week, with days designated as holidays for the CITY of Pass Christian employees excluded. During other hours, CONTRACTOR shall designate the necessary staff members to respond to emergency calls. CONTRACTOR's designated personnel shall be required to reside within the City limits or be able



to respond within thirty minutes to all emergency calls and shall notify CITY's Mayor or Contract Administrator immediately if they are unable to respond within the required time frame.

2.05 CHEMICAL INVENTORIES- CITY shall purchase and maintain an inventory of chemical routinely used in the operation of the FACILITIES. Such chemicals shall be safely stored as required by law at locations within or near the FACILITIES in quantities sufficient to ensure continuous operations of the FACILITIES.

2.06 DAMAGE TO FACILITIES- Notwithstanding Section 2.01 Paragraph E, of this Agreement, CONTRACTOR shall not be required to repair all or any portion of the FACILITIES damaged due to flood, fire, explosion, riot, revolution, civil disturbance, war, other Acts of God, or any other cause whatsoever beyond the control of CONTRACTOR or due to the acts or omission of any person other than CONTRACTOR, its employees agents or subcontractor, except as provided herein for under Paragraph 2.08. CONTRACTOR agrees to notify the CITY of such damage verbally immediately and in writing within two (2) days of its occurrence.

2.07 WINTERIZING OF FACILITIES - CONTRACTOR shall provide all personnel and tools, excluding materials and supplies, necessary to winterize the FACILITIES to protect said FACILITIES from damage caused by freezing temperatures.

2.08 EMERGENCY CONDITIONS - Emergencies are defined as follows:

- A. Hazardous, abnormal, or unusual condition;
- B. Major Water Repairs - A significant loss of water pressure requiring a legal "boil water" notice and/or major leak, main repair or serious degradation of water quality due to water well or chlorination system failure or significant diminishment at one or more areas affecting numerous customer locations;
- C. Major Sewer Repairs - A substantial blockage or leak or failure in the sewage collection/distribution /force/main/ and wastewater pumping station(s) causing sewer to back up into a home or business or a substantial sinkhole causing road collapse or hazardous condition requiring an immediate point repair of same to protect life or property;
- D. All other water and sewer repairs on a regular, routine and reoccurring basis shall be deemed Minor Repairs.
- E. A condition in which, in the opinion of CONTRACTOR and any other representative of the CITY, including the City Engineer, poses an immediate threat to the health and welfare of the public and may develop into one of the emergencies listed above.

In the event of an Emergency as defined herein CONTRACTOR shall receive authorization from the CITY's Mayor or any other authorized representative of the CITY prior to performing emergency repairs or if required under the

exigencies of the situation, as such situation is being corrected. CONTRACTOR will be diligent in attempting to communicate and obtain approval of emergency work with the authorized CITY representatives as such work progresses.

If in the opinion of the Contract Administrator, or Mayor in his absence, such Emergency work can be scheduled and performed by CONTRACTOR within normal Hours of Operation (see Section 2.04) and Overtime hours for Non-Emergency Repairs by the CONTRACTOR's regular personnel and equipment as required under this contract, then such CONTRACTOR shall not be entitled additional compensation for such work. However, if in the opinion of the Mayor, upon advice from the City Engineer or other City staff, the CITY's FACILITIES shall experience multiple Emergency Conditions or other circumstances outside of the CONTRACTOR's control that make it unreasonable and impractical for the CONTRACTOR to effect all of such emergency repairs within a reasonable period of time given the exigencies of the situation, then in such event the CITY shall negotiate a separate contract with CONTRACTOR for such emergency repairs pursuant to the CONTRACTOR'S approved Rate Schedule or the CITY reserves the right to enter into a separate contract with another contractor to perform any portion of such work, with such work to be supervised by the City Engineer or others under pre-existing Unit Price Contracts or otherwise. In making such determination the City agrees to act in good faith and exercise fair dealing with the CONTRACTOR to this Agreement considering all relevant circumstances at the time of the Emergency Condition. The parties agree that in the event the Mayor is not available upon reasonable request from the CONTRACTOR to make the aforementioned determination within a timely manner given the circumstances of the emergency, then, in such event, the CONTRACTOR shall contact the Contract Administrator who shall make the determination in the place and stead of the Mayor. The Mayor or Contract Administrator, as the case may be, will be required to approve all emergency repairs as required in this paragraph after having been contacted by Contractor via telephone at his office/home or cell telephone after normal working hours.

The CITY understands and agrees that in the event the CONTRACTOR shall be required to perform any Emergency Work under this agreement that during such time the CONTRACTOR'S normally scheduled routine work and scheduled maintenance may be delayed or suspended for a time period. During such reasonable delay or such suspension as determined by the City Engineer the CONTRACTOR shall not be held in default for performance under this agreement, but the CONTRACTOR shall use its reasonable best efforts to resume its scheduled work and maintenance as soon as the Emergency Conditions are corrected.

2.09 NON-EMERGENCY REPAIRS - CONTRACTOR shall perform non-emergency repairs, per paragraph 2.01 under the Base Monthly Contract Amount during its regular work day, per paragraph 2.04, and as directed by the Mayor or CITY

Contract Administrator. The City and CONTRACTOR have negotiated an amount to be included within the Base Monthly Contract Amount to cover overtime hours and equipment rates expended by or incurred by the CONTRACTOR based upon the CONTRACTOR'S past billings to the City for such overtime and equipment rates. The City and CONTRACTOR agree that they will review CONTRACTOR'S overtime and equipment rate charges for Non-Emergency Work on the annual anniversary date of this contract to determine if the parties mutually agree that the Base Monthly Contract Amount should be adjusted. It is the parties' intent that the new Base Monthly Contract Amount will cover all compensation for work to be performed by CONTRACTOR for regular work under this Contract and Non-Emergency Work. Hereafter CONTRACTOR shall only bill the City for overtime compensation and equipment rates for work performed under Emergency Conditions as defined in Section 2.08 herein and not included in the estimated overtime already included in the Base Monthly Contract Amount. CONTRACTOR shall schedule such non-emergency repairs on a first call, first service basis and will dispatch crews to repair normal and regular water and sewer problems in a reasonable period of time after the receipt of such trouble reports subject to the work load at the time of the receipt of the reports.

- 2.10 NEW SERVICE Without additional cost to the CITY, CONTRACTOR shall install service line extensions heretofore installed by CITY employees to provide service to new accounts and all new single-family residence and new commercial meters upon receipt of the appropriate fees specified in the CITY's rates. CITY may install said meter at its option. Taps larger than "2 shall be installed by Owner at no additional cost to CITY.
- 2.11 WATER METERS - Subject to the provisions of Section 2.09 of this Agreement, CONTRACTOR will repair or replace defective water meters, unless the CONTRACTOR and CITY mutually agree that such work should be performed by the City meter reader or other CITY personnel. Cost of new meters and replacement parts to be paid by CITY.
- 2.12 DISCONNECT/RECONNECTS CONTRACTOR shall terminate or reconnect water service as required by delinquent policies established by the CITY or at the request of the CITY's Contract Administrator or the Mayor, or his designee, unless the CONTRACTOR and CITY mutually agree that such work should be performed by the City meter reader or other CITY personnel.
- 2.13 METER REMOVAL At the direction of the CITY's utility billing department manager, the CONTRACTOR shall remove a customer's water meter when a customer restores service without paying the amount owed the CITY. CONTRACTOR will reinstall the meter when the customer pays all amounts owed the CITY, including any additional charges owed because of the meter removal or makes other financial arrangements, unless the CONTRACTOR and CITY mutually agree that such work should be performed by the City meter reader or other CITY personnel. Any exceptions to this policy must be authorized in writing by the CITY.

2.14.1 INSPECTIONS - In addition to the foregoing, the CONTRACTOR shall perform the following inspections:

- A. Hydrant Inspections - Assist Fire Department personnel with inspection of all fire hydrants within the CITY on at least an annual basis and provide input to the Fire Department to submit a written status report to the CITY. CONTRACTOR shall be required to use food grade grease and oil when servicing all fire hydrants.
- B. Sanitary Sewer Tap Inspections - Perform inspections of each newly installed tap (in coordination with the Community Development/Building Code Office) into the CITY's sanitary sewage collection system and maintain a permanent record of each such inspection in accordance with all applicable federal and state laws and regulations and CITY policies.
- C. Other inspections - CONTRACTOR shall perform such other inspections as the CITY may request or which CONTRACTOR believes are necessary to protect the welfare of the general public. Inspections contemplated by this Section include, but are not limited to, new FACILITIES prior to acceptance by the CITY, sampling wells, and potential cross-connections in the CITY'S water system. Inspections of Grease Traps will be in accordance with regulations or guidelines adopted by the Harrison County Utility Authority.

2.15 SUBCONTRACTORS - Subcontractors of CONTRACTOR must obtain all applicable state, federal or municipal licenses, permits and certificates, provided that any subcontractor so chosen by CONTRACTOR must be approved by the city, which may disapprove of any subcontractor without cause. However, such subcontracting shall not relieve CONTRACTOR of any of its obligations under this Agreement.

2.16 GUARANTIES - CONTRACTOR shall use good judgment with respect to materials and replacement equipment, but CONTRACTOR shall not be responsible to the CITY for any warranty or guaranties in connection with such materials or replacement equipment, except for damages incurred by the CITY due to the negligence of CONTRACTOR, its subcontractors, agents or employees. The use of substandard materials and equipment is prohibited under this Agreement. Any warranties or guaranties received by CONTRACTOR from manufacturer or supplier of such materials or replacement equipment will be assigned to the CITY and, further, CONTRACTOR agrees to assist the CITY asserting any warranties or guaranties that are not assignable.

2A7 ANNUAL WRITTEN EVALUATION- Within one hundred twenty (120) days after the date of execution of this Agreement and annually thereafter, through and including the full term of this Agreement, CONTRACTOR shall provide to the CITY an evaluation of the FACILITIES, which evaluation shall contain recommendations concerning improvements and changes in the FACILITIES that, in the opinion of CONTRACTOR, should be made to the FACILITIES.

2.18 COMPLIANCE WITH REGULATION OF EXCAVATION LAWS-

CONTRACTOR shall comply with all applicable requirements of Chapter 13 Title 77, Miss Code Ann. and as amended. It is understood that for purposes of said Laws, CONTRACTOR shall be deemed the "operator" of the FACILITIES that are subject of this Agreement and shall respond to calls from Mississippi One-Call System, Inc., a Mississippi nonprofit corporation, by locating and marking underground water and sewer lines in the time and manner prescribed by law.

2.19 EMERGENCY POWER EQUIPMENT-CONTRACTOR- shall be required to cycle all emergency generators at CONTRACTOR's office every other week as required. CONTRACTOR shall cycle emergency equipment at site and all emergency generators connected to facilities, such as water wells or sewer lift stations for 30 minutes under full load at least quarterly. CITY shall reimburse CONTRACTOR for all fuel and lubrication necessary to test and maintain operational such emergency equipment. Load tests and polishing fuels for this equipment will be performed by outside contractor.

2.20 ADDITIONAL SERVICES TO BE FURNISHED AND PERFORMED- CONTRACTOR shall perform the following services and comply with the following procedure in connection with repair called for pursuant to the terms of this Agreement, subject to Section 2.09 of this Agreement:

- A. Locate the problem area
- B. Notify the CITY's Contract Administrator
- C. Excavate , if necessary
- D. Repair only the problem area.
- E. Permit inspection of repair by the CITY, which inspection must take place within one (1) hour of the time CONTRACTOR calls for such inspection.
- F. Back fill, compact the excavation with native or imported sandy backfill and pack the area, if necessary. Install and compact minimum 8" thick, #610 limestone base, if excavation is in a paved area.
- G. Perform general cleanup around the area of repair.
- H. Barricade and otherwise isolate the repair area, if necessary.
- I. After sufficient time for compaction of the base material, the City will prepare the area and provide concrete and blacktop work only in the work area disturbed as needed. Even though it is CONTRACTOR's responsibility to provide the labor for this work, the CONTRACT and the CITY have agreed that the CITY's Public Works Dept. can perform the work in a more timely manner than a third party contractor hired by CONTRACTOR and therefore, the CITY will deduct from

CONTRACTOR's Base Monthly Contract Compensation the sum of \$250.00 for each time the CITY provides concrete and/or asphalt for the repair of such work areas that do not exceed 3 X 3 feet in size. For larger repair areas, no amount will be deducted from CONTRACTOR's monthly compensation. The parties herein agree that they will review the amount that is deducted from CONTRACTOR's compensation on an annual basis and the parties may adjust such amount to be deducted for these purposes as they shall mutually agree in writing.

### ARTICLE 3- CITY RESPONSIBILITIES

- 3.01 Beginning on July 1, 2025, the CITY shall pay to CONTRACTOR as compensation for the services performed the sum \$\_\_\_\_\_ per month, payable by the \_\_\_ day of the month after which their services were performed. Compensation may be subsequently increased or decreased as described in Articles 5 and 7 herein. Late payments will be subject to an interest charge at the maximum legal rate for the State of Mississippi. In the event of termination, CITY shall pay CONTRACTOR for services rendered through the effective date of termination per Article 6, not later than the \_\_\_\_\_ day of the month following such termination date. After the existing Contract expires, the parties herein agree to continue the original contract for a period not to exceed 180 days and then on a month-to-month basis, if necessary, at the same monthly rate of compensation during the request for proposals and selection process of a new contractor.
- 3.02 CONTRACT ADMINISTRATOR - The CITY shall designate an individual for the purpose of administering the relationship promulgated by this Agreement, who shall be identified as the Contract Administrator. For purposes of this Agreement, the Contract Administrator's primary responsibility shall be an advisor/liaison to the parties hereto.
- 3.03 The CITY shall be responsible for paying reasonable electrical bills, heating fuels and potable water bill at the FACILITIES. The CONTRACTOR shall be responsible for electrical bills, heating fuels and potable water bills at its office or offices.
- 3.04 The CITY will furnish electrical power and telephone services for the FACILITIES.
- 3.05 CAPITAL EXPENDITURES - Except as specified in the Section 3.05, the CITY shall be responsible for Capital Expenditures.

For the purpose of this Agreement, Capital Expenditures are defined as:

- A. Non-routine, nonrecurring expenditures of \$1,000.00 or more for the purchase of new and replacement equipment for the FACILITIES, usually preplanned, that significantly enhance performance or extends service life.

B. Expenditures of \$1,000.00 or more that meet the definition of Capital Expenditures under the Generally Accepted Accounting Principles.

Capital Expenditures less \$1,000.00 will be controlled by Section 2.09 of this Agreement.

CITY shall retain the right, without obligation, to acquire unit prices, multiple quotations and/or competitive bids on Capital Projects in excess of \$1,000.00. CONTRACTOR retains the right, without obligation, to participate in such process of multiple quotations and competitive bidding.

3.06 The CITY will maintain easement and licenses and provide access for the mutual benefit of both parties.

3.07 The CITY will furnish CONTRACTOR a copy of all applicable regulatory permits received. The CITY will keep CONTRACTOR advised in writing of all inquiries, complaints, or order received.

3.08 The CITY shall remain the named permittee on all required permits and shall meet all regulatory requirements not specifically assumed herein by CONTRACTOR as its responsibility.

3.09 The CONTRACTOR shall be responsible for the performance of all concrete and blacktop work resulting from repairs performed by CONTRACTOR pursuant to the terms of this Agreement and such repair work shall be performed in a workmanlike and non-negligent manner. CITY will pay for materials only and CONTRACTOR will pay for labor and equipment for such repairs to the CITY as provided herein in Paragraph 2.20(I).

3.10 RECORD DRAWINGS - The CITY (through its City Engineer) shall provide CONTRACTOR with a complete set of its drawing with timely revisions of the FACILITIES, water wells, water distributions system, all valve locations, wastewater pumping stations, wastewater collection systems, and force mains. CONTRACTOR shall maintain these drawings in its service office in manner that allows their efficient and effective use in solving systems problem and shall return them to the CITY at termination of this Agreement, together with any additions or revisions made thereto during the term of this Agreement.

3.11 WELL PRODUCTION AND ELEVATED WATER TOWER TESTS -- CONTRACTOR shall arrange for production test for all wells every two (2) years and elevated water towers every five (5) years or as required by regulatory agencies, if more frequently. CONTRACTOR shall provide the CITY with copies of all reports resulting from these test, which shall be paid by the CITY.

3.12 USE OF SPACE -- In consideration of the services to the provided by the CONTRACTOR in operating and maintaining the FACILITIES of the CITY

under the terms of this Agreement, the CITY may provide the CONTRACTOR with any available space, including storage space, for its use in providing these services at no charge to CONTRACTOR.

#### ARTICLE 4 - INSURANCE/BONDS

4.01 CONTRACTOR shall furnish the CITY with acceptable certificate(s) of insurance naming CITY as additional insured and with customary waivers of subrogation evidencing the following coverage:

- A. Workers Compensation and Employer's Liability
- B. Comprehensive General Liability, including coverage of the following risks and the listed amounts:  
  
Comprehensive single- limit bodily injury and property damage coverage \$1,000,000.00 per occurrence; \$2,000,000.00 aggregate.
- C. Automobile or Vehicle Comprehensive Liability coverage in the following amount Combined single- limit bodily injury and property damage coverage \$500,000.00 and Umbrellas General Liability of \$3,000,000 or aggregate of \$5,000,000.

4.02 The CITY at its discretion will maintain the standard wind, fire and flood insurance policies for its FACILITIES where economically feasible in the sole discretion of the CITY and shall, if requested, name CONTRACTOR as an additional insured according to its insurable interest under these policies during the term of the Agreement. Notwithstanding the indemnification provisions of this Agreement, to the fullest extent allowed by law the CONTRACTOR shall not be liable to the CITY for any loss, damage, or destruction that is covered under such policies but for the fact that the amount exceeds policy limits, whether such loss, damage, or destruction arises under contract, tort (including active or passive negligence of CONTRACTOR) or otherwise. The CONTRACTOR will be responsible for providing insurance on its contents or personal property for its own equipment and company vehicles.

4.03 The CITY maintains various types of insurance to protect against loss to property and is required to notify its insurance agent of such claims. In the event of loss or damage, the cooperation of CONTRACTOR may be required in resolving the claim. In this regard, CONTRACTOR shall notify the CITY of any occurrence or situation that might give rise to a claim due to accident, property damage or loss.

#### ARTICLE 5 RENEWAL AND ADJUSTMENTS

5.01 TERM- The original term of this agreement shall be for a period of \_\_\_\_\_ years commencing on the \_\_\_\_ day of \_\_\_\_\_, 2025. If the term of this Agreement extends past the current term of office of the CITY officials it will be subject to and must be ratified or canceled by the governing authorities who take office for the next succeeding term.

5.02 PRICE ADJUSTMENT FOR INFLATION OR DEFLATION- From commencement of this Agreement until the Agreement expires; compensation shall



be increased or decreased annually according to geographically applicable U.S. Department of Labor Statistics.

The percentage increase or decrease in service compensation to be calculated annually shall be the then current Agreement price using the following formula:

Current Price X	Index Change	Adjustment
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The first annual increase or decrease in compensation shall be applicable on the anniversary date of this Agreement. Each subsequent increase or decrease in compensation shall be effective on anniversary date of this Agreement. This increase or decrease amount will be added to or subtracted from the current monthly compensation.

- 5.03 EXTRAORDINARY COSTS- If at any time during the term of this Agreement, a storm, hurricane, tornado, flood, or other natural disaster shall occur and adversely affect the FACILITIES, causing extraordinary expenditures by CONTRACTOR, the CONTRACTOR shall submit a detailed proposal for expenditures to the CITY, and after such proposal is examined and approved by the CITY as reasonable and necessary expenditures stemming from such natural disaster, the CITY shall pay to CONTRACTOR the approved amount within the time required by law. Notwithstanding the foregoing, if in the event of a declared state of local emergency the Mayor of the City or the City's authorized designee under such emergency shall direct the CONTRACTOR to perform such work under these circumstances the CONTRACTOR shall be paid for such services as authorized by State law.

#### ARTICLE 6- TERMINATION

- 6.01 TIME - Subject to Section 5.01, either party to this Agreement may terminate this Agreement upon material breach by other party, providing that such terminating party first provides written notice of such breach to the other party and such breach is not corrected within thirty (30) days. This thirty (30) - day correction period may be extended by mutual agreement of both parties. In such event, if directed by the CITY the CONTRACTOR will continue to provide the current operations staff and contractual services for a period up to one hundred and eighty (180) days beyond the set date of termination at the monthly rate then in effect under this Agreement.
- 6.02 EMPLOYEES- Upon termination of this Agreement by the CITY or CONTRACTOR, the CITY may extend an offer of employment to any or all onsite personnel in employ of CONTRACTOR at the FACILITIES to become CITY employees and CONTRACTOR will not discourage the acceptance of employment by the CITY.

#### ARTICLE 7 - CHANGE IN SCOPE ADJUSTMENT

- 7.01 GENERAL PROVISION FOR ADJUSTMENT If any material changes in the scope of operation for the FACILITIES should occur, including, but not limited to change in governmental regulation, reporting requirements, and product water standards that substantially increase the CONTRACTOR'S demonstrated direct costs of operating the FACILITIES, the CONTRACTOR and CITY will enter into negotiations to agree upon additional compensation to cover such changes in the

scope of work. If no negotiated agreement is achieved within thirty (30) days of commencement of negotiations, CONTRACTOR shall be entitled to a compensation adjustment of CONTRACTOR's cost times 1.01 profit fee multiplier until a negotiated settlement is reached or the termination of this contract as provided hereinafter. If after reasonable good faith negotiations the parties are unable to mutually agree upon additional compensation within 90 days of commencement of negotiations, either party may provide 90 days additional notice to the other party to terminate this agreement.

#### ARTICLE 8 - INDEMNITY AND LIMITATIONS

- 8.01 INDEMNITY AND HOLD HARMLESS - Except as otherwise set forth in this Agreement, CONTRACTOR hereby agrees to, and shall indemnify and hold harmless CITY, its elective and appointive boards, officers, agents and employees against any claims, loss, liability, damage, injury, or expense, including attorneys fees, whether disputed or not, which directly arises from CONTRACTOR's intentional, willful or negligent operations under this Agreement; provided, however that this does not apply to and CONTRACTOR shall not indemnify or hold CITY harmless from any claim, loss, liability, damage, injury, or expense arising out of the discharge, dispersal, release, or escape of sewage odors into or upon land, the atmosphere, or any water course or body of water not the fault of CONTRACTOR. CONTRACTOR, its officers, agents, and employees shall not be liable to CITY for: [a] any claim, loss, liability, damage, injury, or expense, including attorneys fees, which arises from: [I] any cause other than intentional, willful or negligent operations of CONTRACTOR [II] the discharge, dispersal, release, or escape of sewage or odors into or upon land, the atmosphere, or any other water course or body of water not the fault of CONTRACTOR, [b] to the fullest extent allowed by law any liability for consequential or incidental damages not the fault of CONTRACTOR, however caused, and [c] fines of civil penalties not caused by the acts or omissions of CONTRACTOR. This release and hold harmless of CONTRACTOR by CITY shall apply whether the item to which it applies arises under contract, tort (including active or passive negligence of CONTRACTOR) or otherwise and will survive the termination of this Contract.
- 8.02 ABNORMAL CONDITIONS- Notwithstanding any other provision of this Agreement, should the FACILITIES exceed design parameters, or should influent contain abnormal, toxic or other substance which violate the applicable sewage ordinance (" Abnormal Conditions"), CONTRACTOR will use its best effort to maximize the FACILITIES performance, but shall not be responsible for claims or for associated damages, fines, penalties, or claims resulting therefore not caused by the acts or omissions of CONTRACTOR. CONTRACTOR shall advise the CITY in a timely manner of the abnormal situation and planned course of action and shall use its best efforts to return the FACILITIES to contract limits after influent returns to acceptable limits.
- 8.03 FORCE MAJEURE - CONTRACTOR shall not be deemed to be default if performance of the obligation required by this Agreement is delayed, disrupted or becomes impossible because of any act of God, war, earthquake, fire, strike, labor stoppage, sickness, accident, civil commotion, epidemic, not caused by or under the control of the parties ("Force Majeure"). Upon occurrence of any such event, CONTRACTOR shall operate the FACILITIES on a best efforts basis (at no

additional costs to CONTRACTOR) and shall not be responsible for damages, fines, penalties or claims resulting therefrom; if any additional expense is incurred it will be considered an Extraordinary Cost within the meaning of section 5.03 of this Agreement and shall be handled as provided in such section.

- 8.04 REASONABLE DILIGENCE CONTRACTOR agrees to use reasonable knowledgeable diligence in the operation of the CITY's FACILITIES, but to the fullest extent allowed by law the CONTRACTOR shall not be liable for any direct or indirect loss, injury, or damage resulting from diminution of service within the system unless such diminution or interruption of service results from the willful misconduct or negligence of CONTRACTOR, its agents, subcontractors, or employees.

#### ARTICLE 9 - GENERAL PROVISIONS

- 9.01 EQUIPMENT INSTALLED BY CONTRACTOR - The CITY and CONTRACTOR agree that any capital or proprietary equipment, excluding pipe, valves, and meters integrated into the distribution system and telemetry monitoring equipment, owned, installed, provided and paid for solely by CONTRACTOR during the term of this Agreement, shall remain the sole and exclusive property of CONTRACTOR. Upon termination of this Agreement for any reason, CONTRACTOR shall have the right to remove all of such equipment from the FACILITIES, provided that the CONTRACTOR shall identify all such equipment and notify the CITY of its intention to remove same at least one hundred eighty (180) days prior to its removal.

In the event CONTRACTOR desires to sell all or any portion of such equipment, the CITY shall be given the right to first refusal to purchase said equipment for its fair market value, provided that the exercise of such right shall not conflict with the laws of the State of Mississippi. Said property shall remain in use until the fair market value is agreed upon. In the event of a dispute over fair market value, each side shall appoint an appraiser, they shall appoint a third appraiser, and the three (3) appraisers shall agree upon the fair market value. Cost of such appraisers shall be borne equally by the parties hereto.

- 9.02 OTHER EQUIPMENT - CONTRACTOR shall have first option to purchase, at fair market value, any equipment that the CITY has been using in its water and wastewater operations and is willing to sell, provided that the exercise of such rights shall not conflict with the laws of the State of Mississippi. In the event of a dispute over fair market value, each side shall appoint an appraiser, they shall appoint a third appraiser, and the three (3) appraisers shall agree upon the fair market value. Cost of such appraisers shall be borne equally by the parties hereto.

At the termination or end of this Agreement, CITY shall have the right to purchase, at fair market value, any equipment that CONTRACTOR owns and has been using in its water and wastewater operations under this Agreement. In the event of a dispute over fair market value, each side shall appoint an appraiser, they shall appoint a third appraiser, and the three (3) appraisers shall agree on the fair market value within thirty (30) days. Cost of such appraisers shall be borne equally by the parties hereto.

- 9.03 It is understood that the relationship of CONTRACTOR to the City is that of an independent Contractor and that none of the employees or agents of CONTRACTOR shall be considered employees of the CITY.
- 9.04 The failure on the part of either party to enforce its right as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.
- 9.05 This Agreement shall not be assigned by either party without written consent of the other.
- 9.06 CONTRACTOR shall be an Equal Opportunity Employer and shall be subject to all Federal and State laws and regulations or as provided in the acceptance of public funds by Grants or otherwise by the CITY and as required of CONTRACTOR.
- 9.07 This Agreement contains the entire agreement between the CITY and CONTRACTOR and supersedes all previous or contemporaneous communications, representations or agreements. This Agreement may be modified only by written amendment signed by both parties.
- 9.08 SAFE DRINKING WATER ACT- The CITY believes that all water to be pumped from the ground by its water wells that form a part of the FACILITIES, after regular treatment, will comply with the minimum constituent requirements of the water quality standards as set by the Safe Drinking Water Act, Public Law 93-523, as amended, and Mississippi laws. In the event such water does not comply with the requirements of said laws, after regular and required treatment, CONTRACTOR shall have no responsibility, financially or otherwise, to bring or cause to be brought such potable water to meet such standards, provided that such water is in a condition of noncompliance with said water quality standards before it is drawn from the ground and after regular treatment, and further provided that such noncompliance is not the result of any act or omission of CONTRACTOR, its employees, agents or subcontractors. Subject to the aforesaid provisions, such obligation to bring water quality to said standards after said treatment shall be the sole responsibility of the CITY.
- 9.09 ACCESS - CITY officials and representatives shall have access to the FACILITIES covered by this Agreement during normal working hours (as specified herein) and at other times, for reasons of safety, upon twenty-four (24) hours' prior written notice to CONTRACTOR with the exception of the CITY's Mayor or Contract Administrator, who has access at any time.
- 9.10 A clear audit trail of all CONTRACTOR transactions on behalf of or with the CITY shall be maintained by CONTRACTOR. Records of such transactions shall be available to the CITY's staff and auditors (including federal, state, and private) during normal working hours and CONTRACTOR shall provide fullest cooperation and adequate working space for the conduct of audits. CONTRACTOR shall retain all records required by the CITY for inspection and copying for the time required by law for retention of public records.
- 9.11 CORRESPONDENCE AND WRITTEN INQUIRES - CONTRACTOR shall respond directly to all correspondence or written inquiries from the CITY's

customers in a prompt, professional manner. CONTRACTOR shall respond, through the CITY's Contract Administrator, to all correspondence or written inquiries from the CITY's elected officials and consultants in a prompt, professional manner.

9.12 CUSTOMER RELATIONS - CONTRACTOR shall render to the CITY any and all reasonable assistance in the promotion of good relations with the CITY's customers. CONTRACTOR shall attend such public council meetings of the CITY as shall be required and provide reports, advice and counsel to CITY officials as shall be reasonably requested and required.

9.13 IDENTIFICATION - Employees of CONTRACTOR shall readily identify themselves when communicating within the CITY and with CITY customers. Maintenance and operating personnel shall wear distinctive clothing bearing the CONTRACTOR's name, and their vehicles shall display distinct identification.

9.14 EXPENDABLE ITEMS CONTRACTOR agrees to pay for, expendable items used in operation of CITY's FACILITIES. Such items include but are not limited to brooms, mops, trash receptacles, trash bags, shovels, rakes, hoses, nozzles, dip nets and padlocks.

INVENTORY CONTROLS - CONTRACTOR agrees to comply with all inventory control and purchasing practices and policies as shall be required by the CITY in purchasing and storing all materials and supplies on behalf of the CITY as shall be acquired by the CONTRACTOR in performing under this contract.

9.15 CITY RECORDS - If this Agreement is terminated, CONTRACTOR agrees to deliver to the CITY or the CITY's designated agents, all records pertaining to the operations of the CITY's FACILITIES. The CITY agrees, however, that CONTRACTOR may make copies, at CONTRACTOR's expense, of those records CONTRACTORS believes it should retain.

9.16 REASONABLE DILIGENCE - CONTRACTOR agrees to use reasonable diligence in the operation, management, administration, and repair of the CITY's water and sewer system.

9.17 AUDIT- CONTRACTOR is deemed to have performed reasonable audits and inspections of the water and sewer operations of the CITY, and CONTRACTOR represents that it will perform all reasonable services, per Paragraphs 1.01 necessary to fulfill CONTRACTOR's obligations under the terms and standard of this Agreement.

9.18 Should any provision of this Agreement be determined to be in conflict with the laws of the State of Mississippi, the parties hereto agree to amend such provision to ensure compliance with the laws of the State of Mississippi.

9.19 GOVERNING LAW AND CONSENT TO JURISDICTION - The CONTRACTOR hereby agrees and certifies that it is duly licensed corporation in the State of Mississippi and that in negotiating and consummating this Agreement, all of the above occurred in the State of Mississippi and has dealt directly with the City of \_\_\_\_\_, Mississippi, and is transacting business in said state. The parties agree that the Laws of the State of Mississippi shall apply to this Agreement.

9.20 All notices shall be in writing and delivered in person or transmitted by certified mail, returned receipt requested, postage prepaid. Notices required to be given to CONTRACTOR shall be notice as follows

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Notices required to be given to the CITY shall be addressed as follows:

CITY OF \_\_\_\_\_ MISSISSIPPI

\_\_\_\_\_  
\_\_\_\_\_

Or such other address as may be specified in written notice.

WITNESS our signatures on this the \_\_\_\_\_ day of \_\_\_\_\_, 2025.

CITY OF \_\_\_\_\_, MS

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
ATTEST - City Clerk

\_\_\_\_\_  
(Contractor)

BY: \_\_\_\_\_

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the above County and state, the within named, \_\_\_\_\_ and \_\_\_\_\_, Mayor and City Clerk, respectively, who have authority to execute the foregoing instrument for and on behalf of the said CITY OF \_\_\_\_\_, a municipal corporation, and who acknowledged to me that they signed and delivered the above and foregoing instrument on the day and year therein written in the capacity stated, for the purposes therein set forth, after first being duly authorized so to do.

Given under my hand and official seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2025.

My Commission Expires:

\_\_\_\_\_  
NOTARY PUBLIC

STATE OF MISSISSIPPI  
COUNTY OF HARRISON

PERSONALLY appeared before me, the undersigned authority in and for the above County and state, the within named \_\_\_\_\_ who as \_\_\_\_\_ of \_\_\_\_\_, a Mississippi Corporation, has authority to execute the foregoing instrument for and on behalf of the said City, and who acknowledged to me that he signed and delivered the above and foregoing instrument on the day and year therein written in the capacity stated, for the purposes therein set forth, after first being duly authorized so to do.

Given under my hand and official seal of office, this \_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

\_\_\_\_\_

THOMSON REUTERS

**WESTLAW Mississippi Attorney General Opinions***Mr. Wayne Cole*

Office of the Attorney General

April 5, 2002

2002 WL 1057909 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

\*1

Opinion No. 2002-0147

\*1 April 5, 2002

**Re: Contract for Management of Waste Water Treatment Plant**

\*1 Mr. Wayne Cole

\*1 100 North Street

\*1 P. O. Box 1439

\*1 Cleveland, Mississippi 38732

Dear Mr. Cole:

\*1 Attorney General Mike Moore has received your recent letter on behalf of the City of Cleveland and has asked me to respond. Your letter states:

\*1 The City of Cleveland is currently under **contract** with Severn Trent Services to provide management services for our waste **water** treatment plant, maintenance and repair on our **water** and **sewer** lines, pumps, wells, etc.; meter reading services; and a position in city hall assisting the **water** department with customer relations.

\*1 The treatment plant services include operating and managing our overland flow treatment facility, maintaining lagoons, performing DEQ required tests and analysis and other **sewer** related disposal and collection services. The city is the owner of all infrastructure that is being managed by ST Services and is ultimately responsible for the operation of **sewer** disposal and collection. The costs for these services exceed \$50,000.00.

\*1 Please let me know if the services described above would require advertisement for proposals in accordance with Miss. Code Ann. Section 31 - 7 - 13 (r).

\*1 Miss. Code Ann. Section 31 - 7 - 13 (Supp. 2001) addresses **contracts** for solid waste collection or disposal and **contracts** for sewage collection or disposal along with **contracts** for purchasing commodities, public construction and rentals. Section 31 - 7 - 13 (m) (xxii) exempts from requirements for advertising and bidding " **contracts** for garbage collection or disposal, **contracts** for solid waste collection or disposal and **contracts** for sewage collection or disposal." Section 31 - 7 - 13 (r) sets forth the procedure for governing authorities to **contract** for sewage collection or disposal, stating in relevant part:

\*1 Before entering into any **contract** for garbage collection or disposal, **contract** for solid waste collection or disposal or **contract** for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00); a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter **contracts** with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinitiated.

\*2 We are of the opinion that a **contract** between a municipality and a company to manage the city waste **water** treatment plant, to maintain and repair **water** and **sewer** lines, pumps, wells, etc., to read meters and to assist the **water** department with customer relations falls within the ambit of Section 31 - 7 - 13 (r), even if the municipality owns the waste **water** treatment plant and all of the infrastructure. Therefore, the City of Cleveland must follow the procedures set forth in Section 31 - 7 - 13 (r) to enter into the above **contract**. If we may be of any further assistance, please let us know.

Sincerely,



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**WESTLAW Mississippi Attorney General Opinions***Mr. Malcolm F. Jones*

Office of the Attorney General

November 8, 2002

2002 WL 31911109 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

\*1

Opinion No. 2002-0670

\*1 November 8, 2002

**Re: Contract for Management of Water and Sewer Department**

\*1 Mr. Malcolm F. Jones

\*1 City Attorney

\*1 City of Pass Christian

\*1 200 West Scenic Drive

\*1 Pass Christian, Mississippi

Dear Mr. Jones:

\*1 Attorney General Mike Moore has received your recent letter on behalf of the City of Pass Christian and has asked me to respond. In your letter you ask two questions which are answered below.

\*1 1. Is the City required to advertise for requests for proposals to interested contractors before the City enters into a new **contract** for management of its combined **water** and **sewer** department?

\*1 On January 1, 1998, the City entered into a **contract** for the management of the City's combined **water** and wastewater ( **sewer** ) systems. The **contract** was for a term of five (5) years and will expire on December 31, 2002. The **contract** provided that the contractor, an independent company, would provide personnel and equipment to operate, manage and maintain the City's combined **water** and **sewer** department. Under the **contract** the contractor would be required to repair, maintain, replace and extend the **water** and **sewer** mains, **water** wells, wastewater pumping stations and grinder pumps. The City is required to provide all materials and supplies necessary for the contractor to perform its work under the agreement. The **contract** further provides that the contractor would be paid a lump sum of approximately \$30,000.00 per month and special provisions were made for other non-routine, nonrecurring expenditures for the purchase of new and replacement equipment and facilities in excess of \$1,000. In such event, the City could enter into a separate agreement with the contractor to perform the work or seek another contractor to perform the job. The contract provided for annual adjustments based upon the Consumer Price index. The contract also provides that the contractor would provide the service for the City's "wastewater collection system" and the mains, wells, pumps and other facilities would remain the property of the City. The City participates in the Harrison County Wastewater Management District, which provides and maintains the wastewater treatment facility for both our City and neighboring areas. I am aware that Section 31-7-13(r) provides that before the City enters into a contract for "sewage collection or disposal" the governing authorities "shall issue publicly a request for proposals concerning the specification for such services..." The existing contractor and others believe that this statute may not apply because the contractor is providing "transportation" of the wastewater to the treatment facility. I am aware of your recent opinion to Wayne Cole dated April 5, 2002, concerning this matter. Can this opinion be distinguished from our situation since our contractor will not operate and maintain our wastewater treatment facility?

\*1 Miss. Code Ann. Section 31-7-13(r) sets forth the procedure for governing authorities to **contract** for sewage collection or disposal which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), stating in relevant part:

\*2 Before entering into any **contract** for garbage collection or disposal, **contract** for solid waste collection or disposal or **contract** for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than Ten Thousand Dollars (\$10,000.00). Any request for proposals when issued shall contain terms and conditions relating to price, financial responsibility, technology, legal responsibilities and other relevant factors as are determined by the governing authority or agency to be appropriate for inclusion; all factors determined relevant by the governing authority or agency or required by this paragraph (r) shall be duly included in the advertisement to elicit proposals. After responses to the request for proposals have been duly received, the governing authority or agency shall select the most qualified proposal or proposals on the basis of price, technology and other relevant factors and from such proposals, but not limited to the terms thereof, negotiate and enter contracts with one or more of the persons or firms submitting proposals. If the governing authority or agency deems none of the proposals to be qualified or otherwise acceptable, the request for proposals process may be reinstituted.

\*2 We reaffirm our opinion to Wayne Cole, April 5, 2002, which states that a **contract** between a municipality and a company to operate and manage a city wastewater treatment plant, to maintain and repair **water** and **sewer** lines, pumps and wells, to read meters and to assist the **water** department with customer relations falls within the ambit of Section 31-7-13(r), even if the municipality owns the

wastewater treatment plant and all of the infrastructure. The governing authorities of a municipality must comply with the procedures in Section 31-7-13(r)(Supp. 2002) to enter into a **contract** for **operation**, management and **maintenance** of the city's combined **water** and **sewer** system, as such a **contract** includes services of sewage collection.

\*2 2. Can the City renew the aforementioned existing **contract** for terms of one year or more without complying with MCA Section 31-7-13(r)(Supp. 2002)?

\*2 A city may not renew an existing **contract** for sewage collection or disposal of more than \$50,000.00 but must follow the procedures set forth in Section 31-7-13(r)(Supp. 2002) and request proposals.

\*2 If we may be of any further assistance, please let us know.

Sincerely,

\*2 Mike Moore

\*2 Attorney General

\*2 By: Alice Wise

\*2 Special Assistant Attorney General

2002 WL 31911109 (Miss.A.G.)

END OF DOCUMENT

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**WESTLAW Mississippi Attorney General Opinions***William S. Mullins, III*

Office of the Attorney General

July 30, 2004

2004 WL 1833096 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

\*1

Opinion No. 2004-0326

\*1 July 30, 2004

**Re: Professional Services**

\*1 William S. Mullins, III

\*1 Hortman Harlow Martindale Bassi &amp; Robinson, PLLC

\*1 414 West Oak Street

\*1 Laurel, Mississippi 39440

Dear Mr. Mullins:

\*1 Attorney General Jim Hood has received your request for an official opinion on behalf of the City of Laurel and has assigned it to me for research and response. The request centers around proposed action by the municipality to enter into an arrangement with a private company to professionally manage and operate the City's water production, water distribution and wastewater collection, transportation and treatment facilities. The private company will provide those operations and management services by predominantly utilizing professional engineers and certified and licensed water and wastewater facility operators.

\*1 Your letter of request is quite lengthy, so is attached and incorporated by reference rather than being set forth in its entirety. The question you present for our consideration is as follows:

\*1 Does the professional services exemption to public bidding requirements recognized by the State of Mississippi extend to the operation and management of municipally owned **water** and wastewater systems? Specifically, will it extend to this proposed **contract**?

\*1 You ask us to consider certain details related to the agreement being considered. You describe the proposed scope of work of the private company as follows:

\*1 "The Operator's scope of work, for which it will be paid a fixed fee, will include the overall management and control of activities associated with the operation and maintenance of the **water** and wastewater treatment facilities through directing and coordinating the work at all facilities; preparing and issuing job instructions and work schedules; management and operation of **water** and **sewer** business office, including application for service, billing, collection and deposit of collections in a City bank account; assigning work crews to specific tasks; performing regular, routine repairs and maintenance of equipment and properties; evaluating test results; taking immediate remedial action to eliminate prospective deficiencies in various areas; providing instruction through on-the-job training procedures; developing trouble-shooting capabilities to react to emergencies; evaluating and reacting to critical situations; and developing on-going effective practices related to chemical dosing required for efficient plant operation, while maintaining familiarity with local, State and federal environmental regulations and requirements as well as State licensing and certification requirements."

\*1 You further state what specific items are to be excluded from the scope of work.

\*1 "Non-routine equipment repair and replacement and other construction work at Laurel's **water** and wastewater treatment facilities would be subject to the competitive bidding requirements for normal public works projects.... The items excluded from the scope of work are: (i) installation of new **water** or **sewer** lines; (ii) major repair or replacement of existing **water** distribution lines, sewage collection lines, force mains, **water** and wastewater treatment plant outfall lines and other below-ground lines; (iii) substantial replacement of any coating system; (iv) dredging of wastewater lagoons and disposal of any materials therefrom; (v) the provision of laboratory equipment and analytical chemicals and expendable; (vi) repair or replacement of equipment, facilities, buildings, machinery, ground, wiring, etc., damaged by any incident of force majeure; (vii) repair or replacement of equipment, facilities, buildings, machinery, grounds, wiring etc.; (viii) replacement of any major item of equipment (instrumentation, process, etc.); (ix) replacement of any structure, below-ground line, treatment plant outfall line, or the like; (x) structural repairs, such as walls, roofs, etc.; and (xi) disposal of any and all sludge or process residue. Where required for these items, Laurel will award such work to private entities through a separate public bidding process."

\*2 You reference two prior opinions of this office in which the Attorney General found that **contracts** for operation and maintenance of **water** and wastewater treatment systems are subject to the requirements of Section 31-7-13(r). In support of your request, you state that the proposed **contract** between the Operator and the City of Laurel is distinguishable from those reviewed previously by this office in that the proposed **contract** only includes in the scope of services exempt professional services, and does not include any non-exempt professional services, such as construction or repair services requiring the acquisition or replacement of equipment. You further provide examples of services which this office has held to be "professional services," and thus exempt from the bid requirements of Section 31-7-13,

and it is your assertion that the types of services to be provided by the contractor under the proposed contract with the City of Laurel should also be considered outside the requirement of Section 31-7-13.

\* \* \* \* \*

\*2 Miss. Code Ann. Section 31-7-13(r) reads, in part, as follows:

\*2 (r) Solid waste contract proposal procedure. Before entering into any contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00), a governing authority or agency shall issue publicly a request for proposals concerning the specifications for such services which shall be advertised for in the same manner as provided in this section for seeking bids for purchases which involve an expenditure of more than the amount provided in paragraph (c) of this section. [emphasis added]

\*2 As you indicate in your letter, this office has previously held that the provisions of Section 31-7-13(r), which requires a governing body to issue publicly a request for proposals prior to **contracting** for sewage collection or disposal services in excess of \$50,000.00, applies to **contracts** for **water** and wastewater facility operation and management. MS AG Op., Cole (April 5, 2002); MS AG Op., **Jones** ( **November 8** , **2002** ). The ultimate question you have presented for our consideration is whether the City of Laurel, by including in its proposed **contract** only exempt professional services and excluding services which have specifically been found non-exempt, has changed the character of the **contract** from one for sewage collection and disposal to one for professional services, thereby removing that **contract** from the requirements of Section 31-7-13(r). It is the opinion of this office that the **contract** in question continues to be a **contract** for the collection and disposal of sewage, and that limiting the scope of the **contract** does not remove it from the provisions of Section 31-7-13(r) requiring RFPs.

\*2 As we stated in the opinions cited above, "a **contract** between a municipality and a company to operate and manage a city wastewater treatment plant, to maintain and repair **water** and **sewer** lines, pumps and wells, to read meters and to assist the **water** department with customer relations falls within the ambit of Section 31-7-13(r)." In each **contract** discussed in those opinions, some of the services could be correctly classified as "professional services," such as operation of the plant, reading of meters and assisting with customer relations. This office is aware of no authority which supports your suggestion that, by limiting the scope of services in such a contract to professional services only, the contract ceases to be a "contract for sewage collection or disposal."

\*3 The Office of the Attorney General is of the opinion that, in the face of the explicit statement of intent of the Legislature that any "contract for garbage collection or disposal, contract for solid waste collection or disposal or contract for sewage collection or disposal, which involves an expenditure of more than Fifty Thousand Dollars (\$50,000.00)..." be let only after publicly advertising for proposals for those services, an attempt to remove such a contract from the mandate of Section 31-7-13 by limiting the services provided to "professional services" would be impermissible.

\*3 If our office may be of further assistance, please advise.  
Sincerely,

\*3 Jim Hood  
\*3 Attorney General  
\*3 By: Heather P. Wagner  
\*3 Assistant Attorney General

2004 WL 1833096 (Miss.A.G.)

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**WESTLAW Mississippi Attorney General Opinions***Robert W. Lawrence, Esq.*

Office of the Attorney General

November 10, 2020

2020 WL 9257266 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

\*1

Opinion No. 2020-00207

\*1 November 10, 2020

**Re: Contracting with private business to collect municipal utility bills**

\*1 Robert W. Lawrence, Esq.

\*1 City Attorney, City of Crystal Springs

\*1 Post Office Box 473

\*1 Crystal Springs, Mississippi 39059

Dear Mr. Lawrence:

\*1 The Office of the Attorney General has received your request for an official opinion.

**Questions Presented**\*1 1. May the City of Crystal Springs (the "City") **contract** with a private business to accept payment of municipal **water** and **sewer** bills?

\*1 2. If the response to question 1 is affirmative, what parameters are required (i.e., payment of fees, bonding) or, what does the Office of the Attorney General suggest with respect to these parameters?

**Brief Response**\*1 With respect to your first question, yes. The governing authority of a municipality may enter into a **contract** with a private entity for the billing and collection of fees for **water** services and **sewer** services, pursuant to the municipality's authority under Sections 21 - 27 - 7 and 21-27-11 *et seq.*

\*1 With respect to your second question, given its broad nature, we make no suggestion regarding the parameters of the City's billing arrangement with the private company.

**Applicable Law and Discussion**\*1 Mississippi Code Annotated Section 21-27-7 authorizes the governing authorities of municipalities to, among other things, "erect, purchase, maintain and operate waterworks, and to regulate the same" and to "contract with any person for the maintenance and operation of waterworks." Section 21-27-11 *et seq.* governs the formation and operation of municipally-owned utility systems.\*1 Our office has previously opined that the governing authority of a municipality may enter into a **contract** with a private entity for the billing and collection of fees for **water** services and **sewer** services, pursuant to its authority under Sections 21 - 27 - 7 and 21-27-11 *et seq.* MS AG Op., *Herring* at \*1 (Jan. 12, 2007) (citing MS AG Op., *Thompson* (June 5, 1998); MS AG Op., *Littlejohn* (Feb. 23, 1995); MS AG Op., *Hall* (Oct. 3, 1997)). In our *Herring* opinion, we noted that "prior to entering into a contract on behalf of the municipality, authorization must be given to the Mayor to take such action and such approval must be accurately reflected in the official minutes of the municipality as the governing authority speaks only through its official minutes." MS AG Op., *Herring* at \*1 (citing MS AG Op., *Carroll* (July 14, 2003)). Accordingly, the City is authorized to **contract** with a private business to accept payment of municipal **water** and **sewer** bills.

\*1 With respect to your second question, given its broad nature, we make no suggestion regarding the parameters of the City's billing arrangement with the private company.

\*1 If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

\*2 Lynn Fitch

\*2 Attorney General

\*2 By: Phil Carter

\*2 Special Assistant Attorney General

2020 WL 9257266 (Miss.A.G.)

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**WESTLAW Mississippi Attorney General Opinions**

John A. Brunini, Esq.

Office of the Attorney General

August 2, 2019

2019 WL 7485276 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

\*1

Opinion No. 2019-00221

\*1 August 2, 2019

**Re: Purchase of Wastewater Equipment**

\*1 John A. Brunini, Esq.

\*1 Counsel

\*1 Madison County Wastewater Authority

\*1 Post Office Box 6010

\*1 Ridgeland, Mississippi 39158-6010

Dear Mr. Brunini:

\*1 Attorney General Jim Hood has received your request for an opinion and has assigned it to me for research and response.

**Issues Presented**

\*1 You inquire as to whether a contractor is required to comply with the provisions of Section 31-7-13 of the Mississippi Code when purchasing equipment on behalf of Canton Municipal Utilities ("CMU") and, in part, the Madison County Wastewater Authority ("MCWA"). Specifically, you ask the following:

\*1 The Madison County Wastewater Authority ("MWA"), which was created in 2001 pursuant to Chapter 962, Local and Private Laws of the State of Mississippi, **contracts** with Canton Municipal Utilities ("CMU") to operate the treatment of wastewater per the parties' Agreement for the Transportation and Treatment of Wastewater dated as of March 17, 2004 (hereinafter the "T&T Agreement"). CMU is a municipally-owned utility pursuant to Miss. Code Ann. Sections 21-27-1 *et seq.*

\*1 Pursuant to Miss. Code Ann. Section 21-27-7, CMU subcontracted its responsibilities to provide the long-term treatment of wastewater from the Authority to a private company, Veolia **Water** North America - South, LLC ("Veolia"). The Agreement for Operations, Maintenance and Management Services between CMU and Veolia, dated as of November 1, 2018 (hereinafter the "O&M Agreement"), governs this subcontracting relationship. Veolia responded and was awarded the **contract** under the Request for Proposals Professional Services for Operation, Maintenance and Management of Wastewater Facilities Canton Municipal Utilities, July 27, 2018.

\*1 MCWA and CMU's relationship is closely intertwined as a result of its co-ownership in various wastewater treatment assets, including the Beattie's Bluff Wastewater Treatment Plant ("Beattie's Bluff"). Accordingly, MCWA and CMU have certain cost sharing agreements relating to wastewater treatment expenditures pursuant to the T&T Agreement.

\*1 As it relates to this request, CMU has tasked Veolia with repairing the existing UV disinfection system which consists of Veolia procuring the equipment and installing a UV disinfection system to replace the existing one at Beattie's Bluff. Pursuant to our discussion with CMU and Veolia, Veolia will pay for the system and be reimbursed by CMU for the expenses associated with the manufacture and installation of this system. CMU will then seek reimbursement from MCWA for its portion of the costs associated with this effort, as MCWA will be a one-half owner of the UV equipment procured.

\*1 Our review of the **contract** documents between CMU and Veolia indicates that the repair and purchase of this UV disinfection system equipment will be treated as an amendment to the original O&M Agreement. Specifically, Section 6.1 provides that Veolia shall perform all capital work (defined as the purchase of new equipment or major repairs) that is necessary for Veolia to perform its obligations under the O&M Agreement, and that the details of such capital expenditures shall be documented as an amendment. Notably, the parties contemplated various repairs and capital work of CMU's system as part of Veolia's overall operations and maintenance scope under the O&M Agreement.

\*2 On behalf of and as counsel for the Madison County Wastewater Authority, I respectfully request an official opinion from your office on the following:

\*2 Is Veolia required to follow Mississippi Code Ann. Section 31-7-13 in order to procure the UV disinfection equipment on behalf of CMU, and in part, MCWA?

\*2 It is our understanding that pursuant to MS AG Op., Snyder (November 27, 2000) "the fact that a private company would be purchasing parts and equipment to operate and maintain a municipal **water** system would not make the company subject to the state public purchasing

laws, since "[a] company which purchases parts and commodities as part of a negotiated **contract** to provide **water / sewer** services does not have to comply with purchase laws. See *a/so* MS AG Op., Gore (August 14, 1991)("[T]he fact that a private company would be purchasing parts and equipment to operate and maintain a municipal **water** system would not, in our opinion, make said company subject to the State public purchasing laws.")

\*2 We are writing to confirm that our understanding of the Snyder and Gore opinions are indeed correct, and Veolia is not required to follow Mississippi bid law.

### Response

\*2 As you reference in your request, we have consistently opined that, as a general rule, a contractor is not required to comply with the competitive bidding procedures provided in Section 31-7-13 of the Mississippi Code. See MS AG Op., Norquist (September 28, 2007); MS AG Op., Snyder (November 27, 2000); MS AG Op., Gore (August 14, 1991). However, in that instance, we have also opined that public entities may not contract to reimburse a company for purchases of commodities and/or equipment for the purpose of circumventing the public purchasing statutes. See MS AG Op., Lucas (August 28, 2009); MS AG Op., Norquist (September 28, 2007); MS AG Op., Snyder (November 27, 2000); MS AG Op., Phillips (April 3, 1998); MS AG Op., Horan (February 12, 1993). Ultimately, whether the proposed purchase of the UV disinfection system equipment constitutes a circumvention of the public purchasing statutes is a factual question subject to review by the Office of the State Auditor.

\*2 If our office may be of further assistance, please advise.

Sincerely,

\*2 Jim Hood

\*2 Attorney General

\*2 By: Leigh Triche Janous

\*2 Special Assistant Attorney General

2019 WL 7485276 (Miss.A.G.)

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