

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AUTHORIZING THE ADMINISTRATOR OF THE DEPARTMENT OF PUBLIC WORKS TO ENTER INTO AN AGREEMENT BETWEEN ENCO UTILITY SERVICES, HAMILTON COUNTY WATER AND WASTEWATER TREATMENT AUTHORITY (WWTA), AND THE CITY OF ROSSVILLE, GEORGIA (REFERRED TO COLLECTIVELY AS "THE CUSTOMER GROUP") FOR UTILITY BILLING, BILL PRINT, PAYMENT AND CREDIT, AND COLLECTION SERVICES FOR A MONTHLY RATE OF ONE AND 42/100 DOLLAR (\$1.42) PER BILL WITH NO CHARGE FOR IMPLEMENTATION SERVICES.

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BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, it is hereby authorizing the Administrator of the Department of Public Works to enter into an agreement between ENCO Utility Services, Hamilton County Water and Wastewater Treatment Authority (WWTA), and the City of Rossville, Georgia (referred to collectively as "The Customer Group") for utility billing, bill print, payment and credit, and collection services for a monthly rate of \$1.42 per bill with no charge for implementation services.

ADOPTED: \_\_\_\_\_, 2012.

/mms

# City of Chattanooga



## Resolution/Ordinance Request Form

Date Prepared: 8-16-2012

Preparer: Jerry W. Stewart, P.E.

Department: Public Works

Brief Description of Purpose for Resolution/Ordinance: \_\_\_\_\_ Res./Ord. # \_\_\_\_\_ Council District # \_\_\_\_\_

A City Council resolution is requested authorizing the Administrator of Public Works to enter into an agreement with the ENCO Utility Services for utility billing, bill print, mailing, payment and credit and collection services. This agreement is between Hamilton County Water & Wastewater Treatment Authority (WWTA), in conjunction with the City of Chattanooga, Tennessee and the City of Rossville, Georgia (referred to collectively as "The Customer Group"). This agreement is for four (4) years and may be extended in one (1) to four (4) year increments based upon mutual agreement of the Parties. ENCO will provide all services for \$1.42 per bill per month, with no charge for implementation services.

Name of Vendor/Contractor/Grant, etc.	<u>ENCO</u>	New Contract/Project? (Yes or No)	<u>Yes</u>
Annually Estimated Total project cost \$	<u>\$950,000.00</u>	Funds Budgeted? (YES or NO)	<u>Yes</u>
Total City of Chattanooga Portion \$	_____	Provide Fund	<u>6010</u>
Annually Estimated City Amount Funded \$	<u>950,000.00</u>	Provide Cost Center	<u>K30101</u>
New City Funding Required \$	_____	Proposed Funding Source if not budgeted	_____
City's Match Percentage %	_____	Grant Period (if applicable)	_____

List all other funding sources and amount for each contributor.

Amount(s)	Grantor(s)
\$ _____	_____
_____	_____
_____	_____

Agency Grant Number \_\_\_\_\_

CFDA Number if known \_\_\_\_\_

Other comments: (Include contingency amount, contractor, and other information useful in preparing resolution)

If "The Customer Group" decides to include Customer Service (Call Center) as an additional service ENCO will provide that service for an additional \$0.19 per bill charge, to be added to the total bill price of \$1.42 per bill per month.

Approved by: Jerry W. Stewart  
DESIGNATED OFFICIAL/ADMINISTRATOR

Reviewed by: FINANCE OFFICE

Please submit completed form to @budget, City Attorney and City Finance Officer

Revised: 1/26/09

**ENCO UTILITY SERVICES  
STANDARD SHORT FORM CONTRACT**

**THIS AGREEMENT** is made and entered into this day, \_\_\_\_\_, 2012, by and between Hamilton County Water & Wastewater Treatment Authority (WWTA), in conjunction with the City of Chattanooga, Tennessee and the City of Rossville, Georgia (hereinafter referred to collectively as "The Customer Group") and, ENCO Utility Services LLC (hereinafter referred to as "ENCO"). The Customer Group and ENCO may hereafter be referred to individually as a "Party" or collectively as "Parties."

**RECITALS:**

**WHEREAS**, The Customer Group desires to retain a person or firm to provide the following services: Utility Billing, Bill Print, Mailing, Payment and Credit and Collection Services.

**WHEREAS**, ENCO warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by The Customer Group, the parties agree to the following:

**1. SCOPE OF SERVICES:**

ENCO agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

The Customer Group agrees to:

- A. Provide access to and make provisions for ENCO to obtain information required to perform its work. The Customer Group will designate ENCO as an Authorized User to access TAW's (Tennessee American Water) system to obtain the data needed for the billing system to produce the bills.
- B. Make available all pertinent data and records within Customer Group's possession and data that is available to the Customer Group by TAW (Tennessee American Water).

**3. FEES AND PAYMENT SCHEDULE:**

The fees, payment schedule and term for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees and schedules shall remain in effect as described for the term of the Contract. ENCO shall provide The Customer Group with its Federal Tax I.D. number prior to submitting the first invoice. ENCO will submit three (3) separate invoices for the two (2) marketing mailings in separate invoices for each mailing after each mailing has been completed. The first billing services invoice will commence when ENCO produces the bills for the Customer Group with the first billing cycle in the new system. Three (3) separate invoices will be done on a monthly basis to each of the Customer Group for the bills produced that month. Invoices submitted by ENCO will be paid within 30 days from date of invoice.



**4. TIME OF AGREEMENT:**

This Agreement shall commence on date signed and shall terminate four (4) years after the date listed above. Contract may be extended in one (1) to four (4) year increments based upon mutual agreement of the Parties. Certificate(s) of Insurance must be current on day Contract commences and, if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to ENCO. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services. This agreement may be terminated by either party upon three hundred sixty (360) day written notice to all other Parties. The Customer Group's obligation to make payments herein shall remain in effect for all services provided by ENCO up until the date of termination.

At the end of year three (3) of the agreement the Customer Group would have the right to enter into contract negotiations with ENCO for future billing services if the Customer Group wishes to continue with the billing arrangement with ENCO.

ENCO agrees that the system will be live by the Go-Live date of January, 1, 2013 or the Customer Group will apply penalties in the amount of \$10,000 each day the system is delayed, if such delay is caused by ENCO.

**5. INSURANCE:**

The following insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to The Customer Group:

1. Commercial General Liability Insurance: \$2,000,000 per occurrence for property damage and bodily injury. This coverage will be provided on a claims-made basis and will include:
  - a. Premise/Operations
  - b. Explosion, Collapse and Underground Property Damage Hazard (only applicable to the project)
  - c. Products/Completed Operations
  - d. Contractual
  - e. Independent Contractors
  - f. Broad Form Property Coverage
  - g. Personal Injury
2. Workers Compensation: Statutory limits as required by the state of California.
3. Employer's Liability Insurance: \$1,000,000 per incident
4. Errors and Omissions Coverage with Fiduciary Coverage: \$1,000,000 per occurrence
5. Dishonesty/Theft Coverage: \$1,000,000 per occurrence
6. Computer Fraud Coverage: \$1,000,000 per occurrence

ENCO shall also supply copies of all the aforementioned insurance policies, including declaration pages, to the Customer Group.

The general liability policy shall be endorsed naming the Customer Group, Hamilton County WWTA, in conjunction with the City of Chattanooga, Tennessee and the City of Rossville, Georgia as an additional insured. The certificate(s) of insurance and required endorsement

shall be furnished to The Customer Group prior to commencement of work. Each certificate shall provide for thirty (30) days advance notice to The Customer Group of any cancellation in coverage. Said policies shall remain in force through the life of this Contract.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of the agreement. In addition to any other available remedies, The Customer Group may suspend payment to ENCO for any services provided during any time that insurance was not in effect and until such time as ENCO provides adequate evidence that ENCO has obtained the required coverage.

**6. CONFIDENTIALITY AND PUBLICATION; SURVIVAL OF OBLIGATIONS:**

6.1 Confidential Information. The term “Confidential Information” means written, recorded, and machine-readable information, or other information provided in tangible form by one Party to the other Party relating to the subject matter of this Agreement, and which is clearly marked as “Confidential Information,” and which is not a “public record” or which otherwise need not be disclosed under Tennessee and Georgia law. All data and records are and shall remain the property of the Customer Group.

6.2 Nondisclosure Obligations.

- a) If a Party has designated information as Confidential Information, neither Party shall disclose it in whole or in part, including derivations thereof, to any third party without the prior written consent of the other Party unless required to do so by law, in which case, the disclosing Party shall notify the other Party as soon as practicable.
- b) A Party shall not be liable to the other Party for inadvertent or accidental disclosure of Confidential Information if the disclosing Party:
  - i. Holds the Confidential Information in strictest confidence.
  - ii. Limits access to the Confidential Information to its employees and agents who are involved in subject matter of the Confidential Information and informs its employees and agents who have access to the Confidential Information of the Party’s duty not to disclose, provided however, that ENCO acknowledges that The Customer Group representatives, including but not limited to department heads, The Customer Group Board, and legal counsel may have access to any and all Confidential Information and nothing herein shall be construed as prohibiting or limiting such access.
  - iii. Upon discovery of inadvertent disclosure, endeavors to prevent any further disclosure.
- c) Either Party may disclose any Confidential Information when required by applicable law, order of a court, or other governmental authority, but shall promptly notify the other Party before making such disclosure. Nothing in this subsection is intended to limit the rights of either Party to challenge any disclosure request or order from a court or any other governmental authority.
- d) ENCO must allow the Customer Group access to all records relating to the Customer Group as set forth in Section 7 of this Agreement.

6.3 Survival of Obligations. The obligations set forth in this Section shall survive the termination of the Agreement.

6.4 Customer Information. ENCO shall not disclose to third parties Customer information, including, but not limited to Customer name, service address, billing address, credit history, usage history, social security numbers, driver license numbers, banking account information, credit card information or other sensitive customer information without the express written authorization of the Customer and in strict compliance with applicable State of Tennessee, State of Georgia and The Customer Group's rules and regulations.

6.5 Customer Group recognizes that ENCO has no control over the security protocol and procedures used by Tennessee American Water and by the Customer Group Members and thus ENCO is not responsible and can not be held liable for data and information security provided by these entities.

6.6 ENCO maintains the right to conduct information security audit and implementation work consistent with our information security policies and procedures.

6.7 Publication. Unless agreed upon in writing, no Party shall publish or use the other Party's name, language, pictures, or symbols from which the other Party's name may be reasonably inferred or implied in any advertising, promotion, or any other publicity. Either Party may refer to this Agreement and its relationship to the other Party as a matter of fact.

## **7. AUDIT PROVISION.**

7.1 Upon sixty (60) days' prior written notice, The Customer Group may perform an audit of the records containing information bearing upon the performance of ENCO's obligations under this Agreement (including digital). The Customer Group shall conduct the audit in compliance with the ENCO's security procedures, during normal business hours, and without undue interference with ENCO's business operations. The Parties shall agree on a commencement date for the audit, the estimated duration, the location, the subject matter of the audit, and the materials to be audited or examined. Each Party shall bear its own expenses in connection with the audit.

7.2 ENCO shall at all times during the term of the Agreement and for a period of five years after the end of this Agreement, keep and maintain all records auditable pursuant to this Agreement. All such records shall be maintained in accordance with best business practices and financial records shall be maintained in accordance with accounting principles consistently applied. ENCO shall at its own expense make all customer billing, payment processing, collections and other customer records associated with the delivery of services available for inspection and audit (including copies and extracts of records as required) by the Customer Group during normal business hours with at least forty-eight (48) business hours advanced written notice. ENCO will work with The Customer Group and prepare materials required by The Customer Group for internal audit of utility operations and utility financial audits quarterly and annually as requested.

7.3 ENCO agrees to cooperate fully with any audit which is conducted by the Customer Group or its assign, including the provision of files in electronic format if requested by the Customer Group.

7.4 The obligations of this Section shall be explicitly included in any subcontracts or agreements formed between ENCO and any subcontractors or suppliers of goods or services to the extent that those subcontracts or agreements relate to fulfillment of ENCO's obligations to the Customer Group.

7.5 Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the Customer Group unless the audit identifies significant findings that would benefit the Customer Group. ENCO shall reimburse the Customer Group for the total costs of an audit that shows that the Customer Group has overpaid ENCO by more than 5%. The Customer Group shall not retain any third party auditor whose compensation is based, in whole or in part, on discovery of facts that would benefit the Customer Group. The Parties shall agree on any outside auditor selected.

7.6 This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the Customer Group may have by Federal, State, Municipal, or Administrative law, whether those rights, powers, or obligations are express or implied.

## **8. DISPUTE RESOLUTION PROCEDURE.**

8.1 Any controversies between ENCO and The Customer Group regarding the construction or application of this Agreement, and claims arising out of this contract or its breach, shall be submitted to mediation within thirty (30) days of the written request thereof by either Party delivered to the other Party.

8.2 The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request that the Circuit Court of Hamilton County, Tennessee appoint a mediator. The Parties shall agree, in good faith, to attempt to resolve the dispute prior to mediation.

8.3 If such matter cannot be resolved despite good faith attempts after a reasonable period of time, a mediation meeting not to exceed one day (eight (8) hours) shall be held. The Parties may agree to extend the time allowed for mediation under this Agreement. The mediator will be called upon to opine as to a resolution of such matter, which shall not be binding on the Parties and shall, in the mediator's reasonable opinion, be the most likely outcome if decided by a court of law in the appropriate jurisdiction.

8.4 Each party shall bear their own costs and expenses for the mediation, except that the cost of the mediator and the mediation facilities, if any, shall be borne by the Parties equally.

8.5 Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation which arises out of any dispute related to this Agreement, the prevailing Party in such proceeding shall be entitled to its reasonable attorneys' fees, expert

witness fees and non-Taxable costs to the extent incurred as a result of a dispute under this Agreement.

8.6 This agreement shall be interpreted in accordance with Tennessee and Georgia Law, and any judicial proceeding arising out of this agreement shall be filed in the Circuit Court of Hamilton County, Tennessee.

#### 9. **INDEMNIFICATION.**

Indemnification by ENCO. ENCO shall indemnify and hold harmless The Customer Group, its Affiliates, directors, officers, attorneys, employees, subcontractors and agents, and their respective permitted successors and assigns from and against all claims, losses and expense that may arise by ENCO's negligent actions or omissions or caused by ENCO subcontractor's negligent actions or omissions in the performance of or failure to perform its obligations under this Agreement.

Indemnification by The Customer Group. The Customer Group shall indemnify and hold harmless ENCO, its Affiliates, directors, officers, attorneys, employees, subcontractors and agents, and their respective permitted successors and assigns from and against all claims, losses and expense that may arise by The Customer Group's negligent actions or omissions.

#### 10. **REMEDIES.**

In the event of a material breach of this Agreement, the non-breaching party may, at its sole discretion, pursue dispute resolution pursuant to the provisions of Section 9, pursue all available remedies, or elect to terminate the Agreement. Except as otherwise provided in this Agreement, all rights of termination, cancellation, or other remedies in this Agreement are cumulative.

#### 11. **LIMITATION OF LIABILITY.**

Each Party's liability to the other for any losses relating to or arising out of any act or omission, except for gross negligence or willful misconduct, in its performance of obligations under this Agreement shall be limited to the amount of direct damages, expenses and costs, and neither Party shall be liable to the other Party for any indirect, special, punitive or consequential damages of any kind whatsoever. The limitations set forth in this paragraph shall not apply to the Parties' indemnity obligations set forth above, nor to acts or omissions arising out of a Party's gross negligence or willful misconduct. Damages to Customer Group shall be considered direct damages if liability exists to customers, third party contractors or penalties to government agencies.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written.

**The Customer Group**

**ENCO Utility Services, LLC,**  
a Delaware Limited Liability Company

Hamilton County WWTA

By:

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

\_\_\_\_\_  
Name: Ruby M. Irigoyen  
Title: Sr. VP Customer Services  
  
Date: \_\_\_\_\_

City of Chattanooga, TN

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

City of Rossville, GA

By:

\_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
  
Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES**

The following describes the scope of services to be provided to The Customer Group:

- ENCO will set up separate instances of the billing system for each Customer Group member using the Data West Corporation BillMaster Customer Billing System Software.
- Each instance of the software will be configured with the member's rates and rules separately. For WWTA the software will be configured with a code that will allow WWTA to determine what "territory" an account belongs to, either Hamilton County, Lookout Mountain, TN, East Ridge, TN, Red Bank, TN and Ridgeside, TN.
- Each instance will be configured to allow only authorized users to access the information and billing data for that specific utility with leveled access privileges.
- ENCO will provide each organization additional custom reports as needed at no cost.
- ENCO will set up contracts with retail organizations that The Customer Group's customers are using now to make their TAWC payments so that they can make their sewer payments at the same location.
- ENCO will set up additional payment locations as requested by each Customer Group member.
- ENCO will set up the following remittance processes with three separate instances for:
  - a. IVR phone payments, three (3) separate toll free numbers will be provided
  - b. Online web payments
  - c. Mailed check payments via lockbox services
- All customer payments will go directly into the Customer Group member's individual bank account on a daily basis.
- ENCO will back up all data live locally and will also back up, via Sync Deck software, at its secure remote nodes plus knighting backups at secure data repositories currently located in Los Angeles, California and Boston, Massachusetts.
- ENCO will provide implementation and professional services via its own staff, the staff of the Data West Corporation and its IT provider, Access Consulting Group (ACG) and others as needed. The Customer Group also has the ability to change staff ENCO provides if not suitable to the Customer Group. ENCO will dedicate an experienced data conversion specialist who will be solely be assigned to the Customer Group project and not to any other projects.
- ENCO will ensure that the system is live on or before the Go-Live date of January 1, 2013.
- ENCO will provide onsite and remote training for the staff of each Customer Group member on the use of the BillMaster software and then ongoing help desk/coaching as required.
- ENCO will work with the Customer Group members to identify interfaces that are needed and then work with the members to establish and allow ENCO to maintain those interfaces.
- ENCO will provide all hardware required by ENCO to deliver its services. Customer Members will provide all hardware needed by its staff to access the BillMaster billing system services.

- ENCO will provide a back up plan to ensure that bills and payments are processed. This includes back up equipment/options if printers and remittance systems go down. ENCO will also notify the Customer Group of such instances be it equipment or IT related as soon as possible and provide for an immediate solution.
- ENCO will provide all software, licenses and user fees including 3<sup>rd</sup> party license fees required to delivery these services for the duration of the contract.
- ENCO will provide for full system access for ten Customer Member users. (The system will also be configured with the appropriate security rights for each access. And ENCO will also provide for additional “read only” access as deemed necessary by the Customer Group.
- ENCO will support all modifications required as described in the RFP. Additional customization required or desired by the Customer Member Group member will be as described in the Matrix or quoted as needed.
- ENCO will provide annual support and maintenance and updates to the BillMaster software.
- ENCO will provide weekly billing for the Customer Group as files from TAW will be made available on a weekly basis to the Customer Group.
- ENCO will produce two (2) marketing mailings to educate customers regarding the upcoming changes to their bill and the new separate sewer bill. One mailing would be sent two months prior to go-live and the other one month prior to go-live. The Customer Group will compensate ENCO for the cost of producing and mailing at a cost of \$0.54 per letter and billed separately from the contract invoices.
- The following documents shall be incorporated into the Agreement as if fully set forth herein: 1) Request for Proposals (“**RFP**”) RFP #0512-157 dated May 14, 2012 and any addendums thereto and 2) ENCO’s Proposal Response to RFP #0512-157 dated, June 4 2012. In the event of a conflict among the documents comprising this Agreement, the order of priority for purposes of resolving the conflict is: 1) the terms in this Agreement; 2) ENCO’s Proposal Response to RFP #01512-157 and 3) RFP #0512-157 dated May 14, 2012 and any addendums thereto.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

ENCO will provide all services for \$1.42 per bill per month with no charge for implementation services. All services listed are included.

	<b>Billing Service Price per Bill</b>	<b>Bill Print / Mail Service per Bill</b>	<b>Credit and Collections Services per Bill</b>	<b>Other Services Price per Bill</b>	<b>Implementation Services Price per Bill (*)</b>	<b>Total Price per Bill per Month</b>
<b>Year 1</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	\$1.42
<b>Year 2</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	\$1.42
<b>Year 3</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	\$1.42
<b>Year 4</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	<b>Included</b>	\$1.42

The term of this contract is four (4) years.

OPTIONAL Service: If the Customer Group would like to include Customer Service (Call Center) as an additional service ENCO would provide that service for an additional \$0.19 per bill charge. This price would be added to the total per bill price from the chart above.

Per bill charge includes: Billing service, bill print/ mailing service, credit and collections, implementation, payment processing fees, postage and implementation team travel. ENCO absorbs all set up costs, ongoing maintenance, licensing cost and processing fees charged by ENCO's processors with the exception of a convenience fee charged to the Customer Group's end user for online, IVR (phone) and retail processing outlets. The Convenience fees charged to the end user are:

Lockbox/Mailed in Payments: None

Local retail Outlets such are Walmarts (these fees are charged by the retailer and ENCO has no control over these fees charged to customers):

Cash/Debit Cards:

- \$0.88 per transaction for three (3) day notification
- \$1.88 next business day
- \$3.95 express notification within 10 minutes

Money Order: \$0.60

Online Webshare Payments and IVR (Phone) Payments:

- \$3.00 per transaction regardless of type of payment. Payments are noted on the account instantaneously.

With the exception of the invoices for the customer communications/marketing pieces that will be billed after mailed, the first invoice will commence when ENCO produces the bills for the Customer Group with the first billing cycle in the new system. Three (3) separate invoices will be done on a monthly basis to each of the Customer Group for the bills produced that month.

Prices are stated in U.S. dollars

Integration of ENCO's solution with the Customer Group Member's existing systems as defined in the RFP response is included in this pricing.