

RESOLUTION NO. 28903

A RESOLUTION TO AWARD A CONTRACT TO ENCO UTILITY SERVICES TO PERFORM QUALITY CONTROL MEASURES ON WATER USAGE DATA, TO ENSURE ACCURATE SEWER BILLING, AND TO PROVIDE ONLINE BILL PAY FILES WHEREIN DATA WILL BE DELIVERED IN A FORMAT UPLOADABLE TO THE CITY'S UTILITY BILLING SYSTEM, FOR AN ANNUAL COST ESTIMATED AT ONE HUNDRED TWENTY THOUSAND DOLLARS (\$120,000.00).

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, that it is hereby awarding a contract to ENCO Utility Services to perform quality control measures on water usage data, to ensure accurate sewer billing, and to provide online bill pay files wherein data will be delivered in a format uploadable to the City's utility billing system, for an annual cost estimated at \$120,000.00.

This agreement has a term of one (1) year with an option for four (4), one (1) year renewals upon written agreement by the parties.

ADOPTED: January 24, 2017

/mem

**ENCO UTILITY SERVICES
STANDARD SHORT FORM CONTRACT**

THIS AGREEMENT is made and entered into this day, _____, 2017, by and between the City of Chattanooga, Tennessee (hereinafter referred to as "City") and, ENCO Utility Services LLC (hereinafter referred to as "ENCO"). The City and ENCO may hereafter be referred to individually as a "Party" or collectively as "Parties."

RECITALS:

WHEREAS, the City desires to retain a person or firm to provide the following services: Billing, Data Quality Control Services and Other Support Services.

WHEREAS, ENCO warrants that it is qualified and competent to render the previously mentioned services;

NOW, THEREFORE, for and in consideration of the agreement made, and the payments to be made by the City, the Parties agree to the following:

1. **SCOPE OF SERVICES.**

ENCO agrees to provide all the services described in Exhibit A attached hereto and by this reference made a part hereof. ENCO agrees that the services will Go-Live within 30 days of the City's acceptance of the Project Plan.

2. **FURNISHED SERVICES.**

The City agrees to:

- A. Provide access to and make provisions for ENCO to obtain information required to perform its work. The City will designate ENCO as an Authorized User to access TAW's (Tennessee American Water) system to obtain the data needed for the billing system and for data quality control.
- B. Make available all pertinent data and records within City's possession and data that is available to the City 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 A** 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 City with its Federal Tax I.D. number prior to submitting the first invoice. Invoices submitted by ENCO will be paid within 30 days from date of invoice.

4. **TERM.**

This Agreement shall commence on date signed by the City and shall be for a term of one year with an option for four (4), one (1) year renewals upon written agreement by the Parties. The final invoice must be submitted within thirty (30) days of completion of the stated scope of services.

5. **TERMINATION.**

This agreement may be terminated by either party upon ninety days (90) written notice to all Parties. The City's obligation to make payments herein for satisfactory performance shall remain in effect for all services provided by ENCO up until the date of termination. Notwithstanding the foregoing, the City Standard Terms and Conditions' termination provisions for cause and for convenience shall apply at all times.

6. **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 City:

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 City. The general liability policy shall be endorsed naming the City of Chattanooga, Tennessee as an additional insured. The certificate(s) of insurance and required endorsement shall be furnished to The City prior to commencement of work. Each

certificate shall provide for thirty (30) days advance notice to The City 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 City 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.**

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 law. All data and records are and shall remain the property of the City.

6.1 **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 City representatives, including but not limited to department heads, The City Council 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 City access to all records relating to the City as set forth in Section 7 of this Agreement.
- e) Notwithstanding the foregoing, Contractor use of City data shall be for the sole purpose of providing the services required under this Agreement. Any disclosure to third parties or use for marketing, advertising or other purposes not set forth in this Agreement shall be considered an intentional disclosure for which the Contractor may be liable.

6.2 **Survival of Obligations.**

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

6.3 **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 and The City's rules and regulations.

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

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

6.6 **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 The City may perform an audit of the records containing information bearing upon the performance of ENCO's obligations under this Agreement (including digital). The City 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 seven (7) 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 City during normal business hours with at least forty-eight (48) business hours advanced written notice. ENCO will work with The City and prepare materials required by The City 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 City or its assign, including the provision of files in electronic format if requested by the City.

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 City.

7.5 Costs of any audits conducted under the authority of this section and not addressed elsewhere will be borne by the City unless the audit identifies significant findings that would benefit the City. ENCO shall reimburse the City for the total costs of an audit that shows that the City has overpaid ENCO by more than 5%.

7.6 This Section shall not be construed to limit, revoke, or abridge any other rights, powers, or obligations relating to audit which the City 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 City 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. Mediation under this section is a condition precedent to filing any action in court.

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

9. INDEMNIFICATION.

9.1 Indemnification by ENCO.

ENCO shall indemnify and hold harmless The City, 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.

9.2 Third Party Claims.

Subject to the provisions of the Governmental Tort Liability Act, T.C.A. Section 29-20-101 et seq., City shall defend and, if found liable, be responsible for paying damages arising from third party claims, suits, liabilities and judgments for personal injuries or damage to resulting conduct by City, excepting any such injury, damage or loss caused, in whole or part, by the negligence or willful misconduct of a third party or ENCO and their affiliates, directors, officers, employees, shareholders and representatives.

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 8, 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 City shall be considered direct damages if liability exists to customers, third party contractors or penalties to government agencies.

12. CITY STANDARD TERMS.

This Agreement is governed by the City Purchase Order Standard Terms and Conditions ("City Terms") accessible via <http://www.chattanooga.gov/purchasing/standard-terms-and-conditions>. Exclusive of the insurance limitations set forth herein, to the extent a conflict exists between the City Terms and the provisions of this Agreement, the City Terms shall apply.

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

The City of Chattanooga

ENCO Utility Services, LLC,
A Delaware Limited Liability Company

By:
Title:
Date:

By: Ruby M. Irigoyen
Title: SR VP Customer Services
Date:

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EXHIBIT A
SCOPE OF SERVICES & FEES

Work Item: Billing Data Quality Control Services: Estimated Monthly is based on 60,000 accounts per month	Price per Account	Monthly Flat Rate Price
<p>Primary Weekly Process:</p> <ol style="list-style-type: none"> 1) Download all daily Usage and Account Change files from the TAW MFT website 2) Combine both Usage and Account Change data files into respective weekly files 3) Perform quality control procedures on the Usage data <ol style="list-style-type: none"> a) Verify that the data records will not be duplicating data previously uploaded (TAW will sometimes transmit data previously received because of water tax adjustments – these adjustments do not affect the sewer charges but will cause duplicate transactions to be posted to customer’s accounts) b) Verify and correct the spelling of service and mailing address cities c) Verify and correct zip codes of service and mailing addresses d) Verify that the customer’s name (Last, First, and Middle) are properly formatted and checked for spelling errors e) Verify and (if necessary) complete any missing TAW route numbers f) Verify and (if necessary) complete any missing City of Chattanooga rate codes assigned to the customer (CHA would need to provide a list of all rate codes used by MSGOVERN) 4) Perform quality control procedures on the Account Change data <ol style="list-style-type: none"> a) Verify and eliminate all duplicate Account Change data records b) Verify and (if necessary) correct the spelling of service and mailing address cities c) Verify and (if necessary) correct zip codes of service and mailing addresses d) Verify that the customer’s name (Last, First, and Middle) are properly formatted and checked for spelling errors 	\$0.09	\$5,400
<p>Secondary Weekly Process:</p> <ol style="list-style-type: none"> 1) Upload the data files into the BillMaster system and perform verifications and tests of the data <ol style="list-style-type: none"> a) Report all meters not billed within the last 30 days b) Analyze TAW adjustments and determine whether they “make sense” by comparing them to prior customer billings c) Create reports that refine the billing data 	\$0.07	\$4,200

<ol style="list-style-type: none"> 1) Records to be pulled from consideration of this week's billing (Example: Consecutive reads that do not sync, Active accounts without read, New accounts with less than a five day read, Accounts that require TAW Special Account interaction, etc.). 2) Records that will create an adjusting bill 3) Records that have passed quality control and are ready for billing 4) Other reports as requested by the City (price based on billable rates) 		
Work Item: Billing Data Quality Control Services:		
Detailed Reporting by account on nature of correction and tabulated summaries along with narratives of corrected anomaly or inconsistency.	This will be a very time consuming, tedious process. This will be billed on ENCO's billable rates: IT Manager: \$85/Hr Analyst: \$85/Hr	
<p>Delivery of Data to Chattanooga Once the secondary process is completed, the data records can be reformatted into whatever file structure is required for easy upload into the MSGOVERN system.</p>	There would/should be a onetime set up item. Billed at standard ENCO billable rates: Programming: \$175/Hr IT Manager: \$85/Hr Data Manager: \$65/Hr	
Work Item: FISERV (CheckFree)		
FISERV Data Preparation and Transmission		
<p>The set up would include creating the layout for the upload file to send to Chattanooga</p> <p>Daily, ENCO would receive the email from Fiserv with the payment listing and convert that to an upload file and email to Chattanooga billing staff. The price for daily creation of the upload file to be emailed to you daily is: \$0.09 per payment.</p>	<p>Cost + 15%</p> <p>\$0.09 per payment.</p>	

Other optional services may be provided as described in the proposal and proposal interview. These optional services may include full billing, call center for 24/7 or overflow and afterhours, and remittance processing.