

RECEIVED

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

MAR 04 2019

PUBLIC SERVICE
COMMISSION

In the Matter of:

CITY OF DRAKESBORO D/B/A)
DRAKESBORO NATURAL GAS)
COMPANY)
_____)
)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.495, 807 KAR 5:027, AND)
49 C.F.R. PART 192)

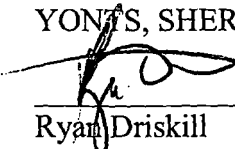
NOTICE OF FILING

This shall serve notice that the City of Drakesboro, by counsel, has filed with the Public Service Commission proof of its contracting with a qualified third party operator of its natural gas company services. This information was provided by email directly to the Commission by the mayor. Further, counsel attempted to electronically file this document on March 1, 2019 pursuant to the recommendation of the Commission. Unfortunately, the electronically filing system did not permit such a filing. An email is attached showing correspondence with Brandon Bruner indicating that electronically filing is not possible.

Counsel further advises that pursuant to his March 1, 2019 conversation with Mr. Lyons, he has been provided leave to file a substantive responsive filing to the Staff Report by the end of business on Tuesday, March 6, 2019.

Respectfully submitted,

YONTS, SHERMAN & DRISKILL, P.S.C.

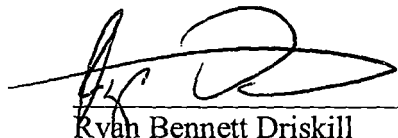


Ryan Driskill
P.O. Box 370
Greenville, KY 42345

CERTIFICATE OF SERVICE

This is to certify that the above motion was mailed via first class prepaid, overnight, USPS mail to the Commission on this the 2nd day of March, 2019 at the following address:

211 Sower Boulevard
Frankfort, Kentucky 40601



Ryan Bennett Driskill

**AGREEMENT FOR
OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES**

THIS AGREEMENT made and effective this day of March 1, 2019, by and between:

The City of Drakesboro, a political subdivision of the State of Kentucky, with its principal address as 212 Mose Rager Street, Drakeboro, Kentucky 42167 (hereinafter "CITY")

and

RussMar Utility Management, with its principal address at 2371 Irvine Road, Richmond, Madison County, Kentucky, (hereinafter "RUSSMAR").

WHEREAS, the CITY owns and provides for the operation of the public works systems which includes: the CITY's wastewater treatment plant, water treatment plant, sewer collection system, lift stations and siphons, potable water storage and distribution system, natural gas distribution system, and water and gas meter reading, all as more particularly described in Appendix B (hereinafter collectively the "Project"); and

WHEREAS, CITY and RUSSMAR desire to enter into an agreement, the contractual relationship between the parties, in accordance with terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, CITY and RUSSMAR agree as follows:

1. General

1.1 Definitions of words and phrases used in this Agreement and the attachments are contained in Appendix A.

1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereinafter acquired or owned by CITY shall remain the exclusive property of CITY unless specifically provided for otherwise in this Agreement.

1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the State of Kentucky.

1.4 This Agreement shall be binding upon the successors and assigns of each of the parties. RUSSMAR shall not assign, sublet or transfer all or any portion of this Agreement without the prior written consent of the CITY.

1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively:

- a. when delivered, if delivered personally or by courier mail services, i.e., Federal Express or DHL;
- b. when delivered when such notice has been deposited in the United States mail postage prepaid, if mailed certified or registered U.S. mail, return receipt requested; or
- c. when received by the party for which notice is intended if given in any other manner.

1.6 This Agreement, including Appendices, is the entire Agreement between the parties. This Agreement may be modified only by written agreement signed by both parties. Wherever used, the terms "RUSSMAR" and "CITY" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors. Only the Commission of the CITY has the authority to modify this Agreement upon a vote at a public meeting.

1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

1.8 It is understood that the relationship of RUSSMAR to CITY is that of independent contractor. The services provided under this Agreement are of a professional nature and shall be performed in accordance with good and accepted industry practices for contract operators similarly situated. However, such services should not be confused with engineering services and nothing herein is intended to imply that RUSSMAR is to supply professional engineering services to CITY unless specifically stated in this Agreement to the contrary.

1.9 Nothing herein is intended by the parties to amend, modify or otherwise change any legal obligation owed by one party to the other which has heretofore matured or vested under the Existing Contract Documents.

1.10 Nothing in this Agreement shall be construed to create in any third party or in favor of any third party any right(s), license(s), or privilege(s).

1.11 Each party shall designate in writing an employee or other representative of the designating party who shall have full authority to render decisions promptly and furnish information expeditiously to the other party when necessary.

2. RUSSMAR's Services – General

2.1 RUSSMAR will staff the Project with employees who have met appropriate licensing and certification requirement of the State of Kentucky.

2.2 RUSSMAR will provide ongoing training and education for appropriate personnel in all necessary areas of modern public works, water and/or wastewater process control, maintenance, safety and supervisory skills.

2.3 Within thirty (30) days after RUSSMAR begins service under this Agreement, RUSSMAR will provide a physical inventory of CITY's vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.

2.4 RUSSMAR shall operate, maintain and/or monitor the Project on a 24-hour per day, seven day per week schedule.

2.5 Visits may be made at any reasonable time by CITY's officers and employees. CITY shall at all times have keys to the Project. All visitors to the Project shall comply with RUSSMAR's operating and safety procedures.

2.6 RUSSMAR will implement and maintain an employee safety program in compliance with applicable laws, rules and regulations and make recommendations to CITY regarding the need, if any, for CITY to rehabilitate, expand or modify the Project to comply with governmental safety regulations applicable to RUSSMAR's operations hereunder and federal regulations promulgated pursuant to the Americans with Disability Act ("ADA"). Nothing herein shall be construed to place upon RUSSMAR a duty to find and report violations of either the safety laws or the ADA at the Facility to any federal or state agency.

2.7 RUSSMAR may modify the process and/or facilities to achieve the objectives of this Agreement, provided, however, no modification shall be without CITY's prior written approval if the complete modification Cost shall be in excess of Two Thousand (\$2,000.00) Dollars.

2.8 In an emergency affecting the safety of persons or property, RUSSMAR may act without written authorization of a Change of Scope, at RUSSMAR's discretion, to prevent threatened damage, injury or loss. CITY shall compensate RUSSMAR for any such emergency work notwithstanding the lack of a written authorization. Such compensation shall include RUSSMAR's non-labor direct Cost for the emergency work. Nothing contained in this Section shall impose upon RUSSMAR a duty to perform any emergency work absent a modification of the Scope of Work approved by the CITY and failure to perform any such emergency work shall not impose upon RUSSMAR any liability for errors and omissions.

2.9 As required by law, permit or court order, RUSSMAR will prepare all necessary reports related to performance of the Public Works System and submit them to CITY for signature and transmittal to appropriate authorities. RUSSMAR will assist the CITY with the timely application for all necessary environmental permits and extensions of environmental permits for the operation of the Public Works system including the Water and Sewer System.

2.10 RUSSMAR will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act, and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements or judicial and regulatory orders and decrees, including, but not limited to, required testing and sampling for the gas system, sanitation collection and storm water management. Any changes in testing requirements by regulatory agencies in the above systems will result in a scope change.

2.11 RUSSMAR will provide for the collection and hauling of screenings, grit, sludge and scum to the Recycling Center located in the Industrial Park which is owned by CITY. It shall be the sole right and responsibility of CITY to designate, approve or select landfill facilities to be used by RUSSMAR for CITY's waste materials. All waste and/or by-product collected, treated and/or generated during RUSSMAR's performance of services is and shall remain the sole and exclusive property of CITY. All manifests or other documentation required for disposal of sludge shall be signed by or in the name of the CITY.

2.12 Upon request of CITY or as it shall deem necessary, RUSSMAR will provide a listing of recommended capital improvements required for the Project. RUSSMAR will not be relieved of its responsibility to perform if the recommendations are not implemented; provided, however, the failure to meet effluent requirements (or other damage or injury) resulting from the failure to make recommended capital improvements necessary to meet federal, state or local laws, rules or regulations for the safety of persons in or about the facilities and to meet ADA requirements shall not be optional for the CITY. If approved, the CITY will make arrangements for the design and construction of said improvements.

2.13 Services that are the subject of this Agreement are budgeted as 1,520 actual straight time man-hours per payroll period (consisting of a two (2) successive week period). Overtime hours in excess of those budgeted caused by abnormal excessive natural events, including but not limited to an act of God, excessive snowfall, tornado or flood, shall be billed to the CITY on a monthly basis with mark-up including additional taxes, fees or insurance resulting from the extra money paid, i.e., FICA, unemployment insurance, workers compensation. An "actual straight time man-hour" shall mean an actual hour of labor by one person unburdened by vacation, holiday or other leave allowance.

2.14 Subject to the availability of funds in the Maintenance and Repair Limit, RUSSMAR shall maintain and repair only the motor vehicles and equipment solely used in support of the Project (whether owned by CITY or RUSSMAR).

2.15 RUSSMAR shall maintain all records and documents required specifically herein and such other documents concerning the operation of the CITY's Public Works Department such that they may be inspected by the CITY upon reasonable notice.

3. RUSSMAR Scope of Services – Natural Gas Distribution System

3.1 The scope of RUSSMAR's service for the field service division shall be as designated in Appendix _____.

3.2 Costs (other than labor) associated with the services described in this Article shall be charged to the Maintenance and Repair Limit.

4. CITY'S Duties

4.1 The CITY shall fund all necessary Capital Expenditures. Priority shall be given to safety and the ADA related expenses described in Section 2.11. Any loss, damage, or injury resulting from CITY's failure to provide capital improvements and/or funds in excess of the Maintenance and Repair Limit when reasonably requested by RUSSMAR, shall be the sole liability of CITY.

4.2 The CITY shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to CITY and are not transferred to RUSSMAR under this Agreement.

4.3 The CITY shall pay all sales, excise, ad valorem, property, franchise, occupational and disposal taxes, or other taxes associated with the Project other than taxes imposed upon RUSSMAR's net income and/or payroll taxes for RUSSMAR employees, as set forth in Section 2.8, taxes imposed on RUSSMAR owned equipment and/or sales taxes on items purchased by RUSSMAR for the project.

4.4 The CITY shall provide RUSSMAR, within a reasonable time after request and on an "as available" basis, with the temporary use of any piece of CITY's heavy equipment that is available so that RUSSMAR may discharge its obligations under this Agreement in the most cost-effective manner.

4.5 CITY shall provide all registrations and licenses for CITY's vehicles used in connection with the Project.

4.6 CITY shall provide for RUSSMAR's exclusive use of all vehicles and equipment presently in full time use at the Project and any replacement if necessary.

4.7 CITY shall provide the Project with appropriate security personnel and/or devices to protect against any losses resulting from the theft, damage, or unauthorized use of property owned by CITY and shall accept liability for such losses.

4.8 The CITY shall pay all costs for water, sewer user fees, natural gas deodorizers and natural gas for the Project.

4.9 The CITY shall provide for RUSSMAR access to all easements, right-of-ways, and access to discharge RUSSMAR's obligation under this Agreement.

5. COMPENSATION

5.1 RUSSMAR's compensation under this Agreement shall consist of an Annual Management Fee. For the first year of this Agreement, RUSSMAR's Annual Management Fee is \$135,000. This management fee represents one qualified person and management fee only. The CITY shall pay all other costs under RUSSMAR advisement.

6. PAYMENT OF COMPENSATION

6.1 One-twelfth (1/12) of the Annual Management Fee for the current year shall be due and payable on the first of the month for each month the services are provided.

6.2 All other compensation to RUSSMAR is due upon receipt of RUSSMAR's invoice and payable within thirty (30) days.

6.3 Any additional overtime hours in excess of those budgeted that are payable pursuant to Section 6.2.

7. SCOPE OF CHANGES

7.1 A Change in Scope of services shall occur when and as RUSSMAR's costs of providing services under this Agreement change as a result of:

7.1.1 any change in Project operations, personnel qualifications or staffing or other cost which is mandated or otherwise required, by a change in law, rule or regulation or an action or forbearance of any governmental body having jurisdiction to order, dictate or require such change;

7.1.2 increases or decreases of ten percent (10%) in the user base;

7.1.3 increases or decreases of not less than ten percent (10%) in the influent flow or loadings as demonstrated by a twelve (12) month floating average effective date of this Agreement (baseline flow and loading information is located in Appendix ____); and/or,

7.1.4 increases or decreases in rates or other related charges (including taxes) imposed upon RUSSMAR by a utility provider (see Section 7.3 below) or taxing authority-excluding taxes based on RUSSMAR's net income;

7.1.5 CITY's request of RUSSMAR and RUSSMAR's consent to provide additional services.

7.2 For Changes in Scope described in Sections 7.1.1 through, and including, 7.1.3, the Annual Fee shall be increased (or decreased) by an amount equal to RUSSMAR's additional (reduced) Cost associated with the Change in Scope plus ten percent (10%) Modifications of the Annual Fee as a result of conditions described in Section 7.1.3 shall be retroactive to the beginning of the twelve (12) month comparison period.

7.3 For Change in Scope described in Section 7.1.4, the Annual Fee shall be increased (or decreased) by an amount equal to RUSSMAR's additional (reduced) Cost associated with the Change in Scope.

7.4 CITY and RUSSMAR shall negotiate any increase or decrease in RUSSMAR's Annual Fee for Changes in Scope based on Section 7.1.5.

8. INDEMNITY, LIABILITY AND INSURANCE

8.1 RUSSMAR agrees to indemnify, defend and hold CITY harmless from any liability, claims, demands, losses, damages and expenses, including reasonable attorney's fees, court cost, and expert witness fees, for damages to property of the CITY, RUSSMAR, or third parties, or bodily injury (including death) of any person, including third parties, which may arise from RUSSMAR's sole negligence or willful misconduct under this Agreement.

8.2 CITY agrees to indemnify, defend and hold RUSSMAR harmless from any liability, claims, demands, losses, damages and expenses, including reasonable attorney's fees, court cost, and expert witness fees, for damages to property of the CITY, RUSSMAR or third parties, or bodily injury (including death) of any person including third parties, which may arise from CITY's sole negligence or willful misconduct under this Agreement.

8.3 CITY shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on CITY and/or RUSSMAR that are directly related to the ownership of the Project and shall indemnify and hold RUSSMAR harmless from the payment of any such fines and/or penalties.

8.4 Nothing in this Article or any other section, paragraph or article of this Agreement shall be construed to subject either party to liability or indirect, punitive or consequential damages and none shall be awarded by any tribunal against a party hereto in favor of a party hereto.

8.5 Indemnity agreements provided for in this Agreement shall survive the termination of this Agreement.

8.6 Each party shall obtain and maintain insurance coverage of a type and in the amount of One Million (\$1,000,000.00) Dollars. Each party shall provide the other party with the satisfactory proof of insurance.

9. TERM, TERMINATION AND DEFAULT

9.1 The initial term of this Agreement shall commence on March 1, 2019 and shall continue thereafter for an initial term of twenty-four (24) months until March 1, 2020. Thereafter, the CITY shall have the sole option to elect to renew this Agreement for successive terms of two (2) years each by giving written notice no less than sixty (60) days prior to expiration of the original term or the first renewal term.

9.2 During the initial two (2) years of this Agreement, either party may terminate this Agreement only for a material breach of the Agreement by the other party; only after giving written notice of breach; and, except in case of a breach by CITY for non-payment of RUSSMAR's invoices, in which case termination may be immediate by RUSSMAR, only after allowing the other party thirty (30) days to cure or commence taking reasonable steps to cure the breach and provide adequate proof of such steps.

9.3 Upon notice of termination by CITY, RUSSMAR shall assist CITY in assuming operation of the Project. If additional Cost is incurred by RUSSMAR at request of CITY, CITY shall pay RUSSMAR such Cost within thirty (30) days of invoice receipt.

9.4 Upon termination of this Agreement, RUSSMAR shall provide CITY with the same quantity of chemicals on hand when RUSSMAR began services under the Existing Contract Documents.

9.5 Upon termination of this Agreement and all renewals and extensions of it, RUSSMAR will return the Project to CITY in the same condition as it was upon the effective date of this Agreement, ordinary wear and tear excepted. Equipment and other personal property purchased by RUSSMAR for use in the operation or maintenance of the Project shall remain the property of RUSSMAR upon termination of this Agreement unless the property was directly paid for by CITY or CITY specifically reimbursed RUSSMAR for the cost incurred to purchase the property or this Agreement provides to the contrary.

9.6 In the event that this Agreement is terminated for any reason prior to the expiration of the initial term, the CITY shall pay to RUSSMAR a mutually agreed termination fee based upon the remaining unamortized balance of capital improvement cost incurred pursuant to Section 1.5.

10. DISPUTES AND FORCE MAJEURE

10.1 In the event activities by employee groups or unions cause a disruption in RUSSMAR's ability to perform at the Project, CITY, with RUSSMAR's assistance or RUSSMAR at its own options, may seek appropriate injunctive court orders. During any such disruption, RUSSMAR shall operate the facilities on a best-efforts basis until any such disruptions cease.

10.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control or force majeure. However, this Section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

10.3 If a claim or a dispute arises between the parties under this Agreement or the performances of any obligations set forth herein, the parties agree to endeavor in good faith to resolve such claim or dispute equitably through negotiation. If such negotiation fails, either party may request non-binding mediation to resolve such claim or dispute, under the rules of the American Arbitration Association, before having

recourse to the courts. The non-requesting party may decline such request in its sole discretion. Notwithstanding the foregoing, prior to or during negotiation or non-binding mediation, either party may initiate a legal proceeding to resolve any claim or dispute arising under this Agreement or the performance of any obligations set forth herein.

Both parties indicate their approval of this Agreement by their signature below, and each party warrants that all corporate or governmental action necessary to bind the parties to the terms of this Agreement has been and will be taken.

RUSSMAR UTILITY MANAGEMENT

By: _____

Title: _____

Date: _____

City of Drakesboro

By: Mike Jones

Title: Mayor of the City of Drakesboro

Date: 2.1.2019

Attest: Waymon Z Knight

Re: Registration for Electronic Filing

Bruner, Brandon S (PSC) <brandon.bruner@ky.gov>

Fri 3/1/2019 4:09 PM

To: Ryan Driskill <rdrisk@hotmail.com>

Ryan Driskill,

Unfortunately the City of Drakesboro case is not an electronic case. Therefore electronic submittals will not be accepted. You must submit a hard copy document sent to the Public Service Commission to be accepted into the case file. I suggest over nighting a hard copy document sent to 211 Sower Boulevard, Frankfort, Kentucky 40601. I will return to the office Monday at 8:00 a.m. if you need further assistance.

Sorry for any inconvenience.

Best regards
Brandon Bruner

Get [Outlook for Android](#)

From: Ryan Driskill <rdrisk@hotmail.com>

Sent: Friday, March 1, 2019 4:50:41 PM

To: Bruner, Brandon S (PSC)

Subject: Registration for Electronic Filing

Mr. Bruner,

I have attempted to register for e-filing. I needed to electronically file something today for the City of Drakesboro but unfortunately when I registered, the confirmation link in my email encountered some kind of an error. Then when I called, you had already left.

I need to get this document filed as soon as possible. Please provide assistance to me at your earliest convenience.

Thank you,

Ryan Driskill