

RESOLUTION NO.

09-34
Series of 2009

A RESOLUTION APPROVING AN AGREEMENT FOR PROFESSIONAL UTILITY OPERATOR SERVICES WITH SWWC Services, Inc.

WHEREAS, the Town desires to retain the services of SWWC Services, Inc., to provide backup utility operator services.


BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF HUDSON:

Section 1. The Agreement for Professional Services with SWWC Services, Inc., attached as Exhibit A, is approved.

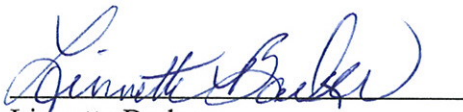
INTRODUCED, READ AND ADOPTED by the Board of Trustees this 18th day of November, 2009.

TOWN OF HUDSON, COLORADO




Neal Pontius
Mayor

ATTEST:


Linnette Barker
Town Clerk

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT FOR PROFESSIONAL SERVICES (the "Agreement") is made and entered into this 18th day of November, 2009 by and between the TOWN OF HUDSON, State of Colorado (hereinafter referred to as the "Town") and SWWC Services, Inc., a Delaware corporation (hereinafter referred to as "Operator").

RECITALS:

A. The Town requires professional Operator services from time to time as directed by the Board of Trustees or its designee.

B. Operator has held itself out to the Town as having the requisite expertise and experience to perform maintenance and operation services as may be required by a municipality.

NOW, THEREFORE, it is hereby agreed for the consideration hereinafter set forth, that Operator shall provide to the Town professional maintenance and operation services as follows.

I. SCOPE OF SERVICES

The scope of services is attached hereto as **Exhibit A**, and incorporated herein by this reference. Operator shall furnish all labor and materials to perform the work and services required for the complete and prompt execution and performance of all duties, obligations and responsibilities for projects as directed. The Town shall retain the Operator on an exclusive basis.

II. THE TOWN'S OBLIGATIONS/CONFIDENTIALITY

The Town shall provide Operator with reports and such other data as may be available to the Town and reasonably required by Operator to perform hereunder. No project information shall be disclosed by Operator to third parties without prior written consent of the Town or pursuant to a lawful court order directing such disclosure. All documents provided by the Town to Operator shall be returned to the Town. Operator is authorized by the Town to retain copies of such data and materials at Operator's expense.

III. OWNERSHIP OF WORK PRODUCT

Upon payment to Operator pursuant to this Agreement, all work, data, drawings, design standards, plans, reports, computer input and output, analyses, maps, surveys, or any other materials developed for this Project are, and shall be, the sole and exclusive property of the Town. However, any reuse of the documents by the Town without prior written authorization by Operator other than for the specific intended purpose of this Agreement will be at the Town's sole risk. Operator will provide the Town with a ten (10) day written notice prior to disposal of Project documents it has retained, during which time the Town may take physical possession of same at the storage site.

IV. COMPENSATION

A. Payment shall be made in accordance with the schedule of charges in **Exhibit A**, which is attached hereto and incorporated herein by this reference, which may be changed from time to time by written Amendment to this Agreement. Invoices will be itemized and include hourly breakdown for all personnel and other charges.

B. Operator shall submit monthly statements requesting payment. Such request shall be based upon the amount and value of the work and services performed by Operator under this Agreement, except as otherwise supplemented or accompanied by such supporting data as may be required by the Town.

1. All invoices, including Operator's verified payment request, shall be submitted by Operator to the Town no later than the twenty-fourth (24th) day of each month for payment pursuant to the terms of this Agreement. In the event Operator fails to submit any invoice on or before the twenty-fourth (24th) day of any given month, Operator defers its right to payment pursuant to said late invoice until the twenty-fourth (24th) day of the following month.

2. Progress payments may be claimed on a monthly basis for reimbursable costs actually incurred to date as supported by detailed statements, including hourly breakdowns for all personnel and other charges. The amounts of all such monthly payments shall be paid within thirty (30) days after the timely receipt of invoice as provided by this Agreement.

C. The Town has the right to ask for clarification on any Operator invoice after receipt of the invoice by the Town.

D. In the event payment for services rendered has not been made within forty-five (45) days from the receipt of the invoice for any uncontested billing, interest will accrue at the legal rate of interest. In the event payment has not been made within ninety (90) days from the receipt of the invoice for any uncontested billing, Operator may, after giving seven (7) days' written notice and without penalty or liability of any nature, suspend all work on all authorized services specified herein. In the event payment in full is not received within thirty (30) days of giving the seven (7) days' written notice, Operator may terminate this Agreement. Upon receipt of payment in full for services rendered, Operator has the option to continue with all authorized services as soon as practicable in which case the Town shall provide Operator with adequate assurance of future performance or Operator may terminate this Agreement.

E. Final payment shall be made within sixty (60) calendar days after all data and reports (which are suitable for reproduction and distribution by the Town) required by this Agreement have been turned over to and approved by the Town, and upon receipt by the Town of Operator's certification that services required herein by Operator have been fully completed in accordance with this Agreement and all data and reports for the Project.

V. COMMENCEMENT AND COMPLETION OF WORK

Operator shall commence work upon execution of this Agreement.

VI. PROFESSIONAL RESPONSIBILITY

A. Operator hereby warrants that it is qualified to assume the responsibilities and render the services described herein, and has all requisite corporate authority and professional licenses in good standing required by law.

B. The work performed by Operator shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

C. Operator shall be responsible for the professional quality, technical accuracy, timely completion and the coordination of all designs, drawings, specifications, reports and other services furnished by Operator under this Agreement. Operator shall, without additional compensation, correct or resolve any errors or deficiencies in its designs, drawings, specifications, reports and other services, which fall below the standard of professional practice.

D. Approval by the Town of drawings, designs, specifications, reports and incidental work or materials furnished hereunder shall not in any way relieve Operator of responsibility for technical adequacy of the work. Neither the Town's review, approval, or acceptance of, nor payment for, any of the services shall be construed to operate as a waiver of the rights under this Agreement, and Operator shall be and remain liable in accordance with applicable performance of any of the services furnished under this Agreement.

E. The rights and remedies of the Town provided for under this Agreement are in addition to any other rights and remedies provided by law.

VII. COMPLIANCE WITH LAW

The work and services to be performed by Operator hereunder shall be done in compliance with Operator's best interpretation of applicable laws, ordinances, rules and regulations.

VIII. INDEMNIFICATION

Operator agrees to indemnify and hold harmless the Town, its officers, employees and insurers, from and against all liability, claims and demands, on account of injury, loss or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence or other fault of Operator, or any officer, employee, representative or agent of Operator, or which arise out of any workmen's compensation claim of any employee of Operator. Operator agrees to investigate, handle, respond to, and to provide defense for and defend against, any

such liability, claims or demands at the sole expense of Operator, or at the option of the Town, agrees to pay the Town or reimburse the Town for the defense costs incurred by the Town in connection with, any such liability, claims or demands. Operator also agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. If it is determined by the final judgment of a court of any competent jurisdiction that such injury, loss or damage was caused in whole or in part by the act, omission or other fault of the Town, its officers or its employees, the Town shall reimburse Operator for the portion of the judgment attributable to such act, omission or other fault of the Town, its officers or employees.

IX. INSURANCE

A. Operator agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands and other obligations assumed by Operator pursuant to Section VIII. Indemnification, above. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. Operator shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to Section VIII. Indemnification, above, by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

B. Operator shall procure and maintain the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Town. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Operator pursuant to Section VIII. Indemnification, above. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

1. Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement and Employer's Liability insurance with minimum limits in accordance with Colorado law. Evidence of qualified self-insured status may be substituted for the worker's compensation requirements of this paragraph.

2. Commercial general liability insurance with minimum combined single limits of six hundred thousand (\$600,000) each occurrence and one million dollars (\$1,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests provision.

3. Professional liability insurance with minimum limits of six hundred thousand dollars (\$600,000) each claim and one million dollars (\$1,000,000) general aggregate.

4. The policy required by paragraph 2. above shall be endorsed to include the Town and the Town's officers, employees and Operators as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Town, its officers, its employees or its Operators shall be excess and not contributory insurance to that provided by Operator. No additional insured endorsement to the policy required by paragraph 1. above shall contain any exclusion for bodily injury or property damage arising from completed operations. Operator shall be solely responsible for any deductible losses under any policy required above.

5. The certificate of insurance provided for the Town shall be completed by Operator's insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the Town prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to the Town. The completed certificate of insurance shall be sent to:

Town of Hudson
557 Ash Street
Box 351
Hudson, Colorado 80642

6. Failure on the part of Operator to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the Town may immediately terminate this Agreement, or at its discretion, the Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Town shall be repaid by Operator to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to Operator from the Town.

7. The Town reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

8. The parties hereto understand and agree that the Town, its officers and its employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as from time to time amended, or otherwise available to the Town, its officers or its employees.

X. NONASSIGNABILITY

Except in the case of a sale of all or substantially all of the assets of Operator, a merger, consolidation, or transfer of 50% or more of the stock of Operator, neither this Agreement nor any of the rights or obligations of the parties hereto shall be assigned by either party without the written consent of the other, which consent shall not be unreasonably withheld, delayed or denied.

XI. TERM AND TERMINATION

This Agreement shall terminate at such time as the work in Section I is completed and the requirements of this Agreement are satisfied, or upon the Town's providing Operator with thirty (30) days' advance written notice, whichever occurs first. In the event the Agreement is terminated by the Town's issuance of said written notice of intent to terminate, the Town shall pay Operator for all work previously authorized and completed prior to the date of termination. If, however, Operator has substantially or materially breached the standards and terms of this Agreement, the Town shall have any remedy or right of set-off available at law and equity. If the Agreement is terminated for any reason other than cause prior to completion of the Project, any use of documents by the Town thereafter shall be at the Town's sole risk, unless otherwise consented to by Operator.

XII. CONFLICT OF INTEREST

The Operator shall disclose any personal or private interest related to property or business within the Town. Upon disclosure of any such personal or private interest, the Town shall determine if the interest constitutes a conflict of interest. If the Town determines that a conflict of interest exists, the Town may treat such conflict of interest as a default and terminate this Agreement.

XIII. VENUE

This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in the County of Weld, State of Colorado.

XIV. INDEPENDENT CONTRACTOR

Operator is an independent contractor. Notwithstanding any provision appearing in this Agreement, all personnel assigned by Operator to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Operator for all purposes. Operator shall make no representation that it is the employee of the Town for any purposes.

XV. NO WAIVER

Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligations of this Agreement.

XVI. ENTIRE AGREEMENT

This Agreement and the attached Exhibit A constitute the entire Agreement between Operator and the Town, superseding all prior oral or written communications. None of the provisions of this Agreement may be amended, modified or changed, except as specified herein.

XVII. NOTICE

Any notice or communication between Operator and the Town which may be required, or which may be given, under the terms of this Agreement shall be in writing, and shall be deemed to have been sufficiently given when directly presented or sent pre-paid, first class United States mail, addressed as follows:

| | |
|-----------|---|
| The Town: | Town of Hudson 557 Ash Street Box 351 Hudson, Colorado 80642 (303) 536-9311 |
| Copy to: | Corey Y. Hoffmann, Esq. Hayes, Phillips, Hoffmann & Carberry, P.C. 1350 17 th Street, #450 Denver, Colorado 80202 (303) 825-6444 |
| Operator: | SWWC Services, Inc. 6050 West 54 th Ave Arvada, Colorado 80002 (303) 307-3200 |
| Copy to: | Ken Dix, Esq. General Counsel SouthWest Water Company One Wilshire Building 624 South Grand Avenue Suite 2900 Los Angeles, California 90017 |

IN WITNESS WHEREOF, the parties hereto each herewith subscribe the same in duplicate.

TOWN OF HUDSON, COLORADO

By: _____
Neal Pontius, Mayor

ATTEST:

Linnette Barker, Town Clerk

SWWC SERVICES, INC.

By:  _____
MARK MINTER

ATTEST:

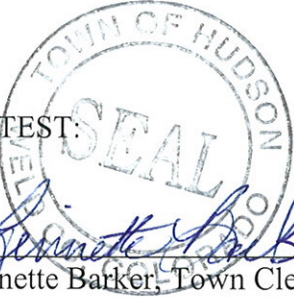
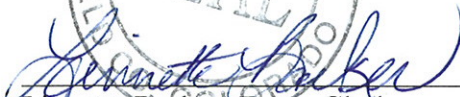
Title Date

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TOWN OF HUDSON, COLORADO

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ATTEST:



Linnette Barker, Town Clerk

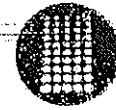
SWWC SERVICES, INC.

By: _____

ATTEST:

Title

Date



Appendix A

SWWC Rate Sheet

| Labor | Hourly Rate | OT |
|--|-------------|-------|
| Regional Manager | 84.00 | |
| Area Coordinator | 72.50 | |
| Compliance Officer | 61.00 | 91.50 |
| Senior Plant / Facility Operator (Level A) | 54.00 | 81.00 |
| Plant Operator (Level B) | 51.50 | 77.50 |
| Plant Operator (Level C) | 47.50 | 70.70 |
| Plant Operator (Level D) | 44.00 | 66.00 |
| Foreman / Crew Leader | 44.00 | 66.00 |
| Pipe Fitter/Mechanic | 44.00 | 66.00 |
| Equipment Operator | 44.00 | 66.00 |
| Skilled Labor | 39.00 | 58.50 |
| Labor/Driver | 38.00 | 57.00 |
| Office Staff (Research, mailings, etc.) | 47.25 | 70.70 |

Equipment (Partial Listing)

| | | | |
|--|--------|------------------------|--------------|
| Service Truck | 26.80 | Towable Equipment | 18.75 |
| Trailer with Tools | 16.25 | Portable Equipment | 16.25 |
| Backhoe | 41.50 | Tandem Dump Truck | 48.25 |
| Vacior Unit with Crew(4 hr min) | 213.50 | Straight Jet with Crew | 160.75 |
| TV Inspection Unit with Crew(4 hr min) | 186.50 | Mileage | \$0.505/mile |

Materials And Testing

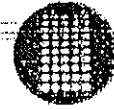
| | | | |
|--|----------|---------------------------|--------|
| Materials/Subcontractors | | Cost plus 20.00% | |
| 55 Gallon Drum 10% Hypochlorite, Delivered | | | 130.00 |
| 55 Gallon Drum Caustic Soda, Delivered | | | 185.00 |
| Chemical Pumps | | Manufacturer's List Price | |
| District Board Meetings | 55.00/hr | | |
| Bacteriological Tests | 30.00 | Inorganic Test | 285.00 |
| Nitrate + Nitrite Tests | 32.00 | TTHM/HAA5 | 310.00 |
| Lead/Copper Tests | 35.00 | Fluoride | 24.00 |
| SOC+VOC, Glysophate Waiver | 1585.00 | Glysophate | 240.00 |
| Radium 226 or 228 | 150.00 | Gross Alpha Tests | 165.00 |
| Langlier Index | 105.00 | Uranium | 135.00 |
| Ground Water MPA | 450.00 | Surface Water MPA | 660.00 |
| TDS | 22.00 | Specific Conductance | 25.00 |
| TOC & Alkalinity | 60.00 | WET Test | 950.00 |
| BOD | 31.00 | TSS | 18.00 |
| Chloride | 25.00 | Phosphorus | 30.50 |
| Sulfate | 25.00 | Ammonia | 18.00 |
| Fecal Coliform | 27.50 | E-Coli | 27.50 |

Notes

- 1) Unless specified in the Contract, labor overtime will be charged for work performed:
 - a) Before 8:00 AM or after 5:00 PM on weekdays,
 - b) On weekends, or
 - c) On holidays recognized by the State of Colorado or by Southwest Water Company. _____ Client Initials

With Water Comes Responsibility

Alabama • California • Colorado • Georgia • Mississippi
New Mexico • Oklahoma • South Dakota • Texas • Wyoming



Colorado Depth of Resources

Key Project Staffing

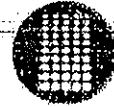
SouthWest Water Company will be providing the Town of Hudson with a facility staff and support staffing comprised of State Certified Operators in Water, Wastewater and Industrial Water Treatment, Collection and Distribution Systems. We have assembled a strong team for the operation and maintenance for the District's water and wastewater treatment facilities. To help ensure the success of the project, the "Operator in Responsible Charge" (ORC) and the Town of Hudson may utilize the vast years of knowledge and experience SWWC has accumulated in its many years as a service provider in the Water and Wastewater Treatment fields.

SWWC plans to have an operator at the facility for up to 8 hours of facilities training which will be done during the first month of the contract. This back-up operator will then be on-site every other month for 4 hours. This will ensure the operator has the training and knowledge necessary in the event that the Town of Hudson's ORC is on vacation and the Town's staff has questions for the backup operator. This Operator will have the laboratory expertise to conduct the necessary process control of the facility, and if needed make corrective process control changes to keep the plant running optimally. Also, the "Operator in Responsible Charge" (ORC) and the Town of Hudson has the support of our Auxiliary Services Group. The Auxiliary Services Group is capable of providing televising, pipeline inspections, cleaning, repair, and replacement of wastewater collection and treatment systems and repair potable water line breakages. A Jetting and Televising Program can provide the necessary equipment and manpower Certified in utilizing the Pipeline Assessment Certification Program (PACP) software. This software allows SWWC the ability to create decision matrices to determine the best types of rehabilitation based on the PACP data. The resultant PACP coding system also enables contractors, owners and consultants to communicate in standardized terms to successfully catalog inspection observations and make assessments. If repairs are necessary SWWC uses up-to-date trenchless repair technology enabling the repair to be made at the exact break in the sewer line. These line repairs can be made without disturbing the land, pavement or without by-pass pumping and disturbing the flow.

Emergency situations can arise from a variety of unanticipated events and sources, including power outages, high levels, loss of pressure, chemical spills, etc.

With Water Comes Responsibility

Alabama • California • Colorado • Georgia • Mississippi
New Mexico • Oklahoma • South Dakota • Texas • Wyoming



SWWC has trained individuals to handle emergencies on a 24/7 basis. These individuals can be reached via our 24 hour emergency response number (303-307-3200) and/or (1 877-991-1911). We require the backup operator to be able to respond to emergencies within a 1 hour response time.

Scope of Work

Southwest Water Company (SWWC) will take on the responsibility as backup operator for the Town of Hudson's water and wastewater treatment facilities provided the following conditions are fulfilled by the Town of Hudson:

SWWC will provide a qualified certified operator who will be trained by the Town's in-house staff at no less than 8 hours during the first month of the contract.

Additional to any emergency call outs or scheduled absences by the in-house staff, the SWWC backup operator will visit the Town of Hudson's water and wastewater treatment facilities for training/familiarity on the treatment systems for no less than 8 hours per month for the term of this contract at a monthly base fee (\$520.00)

Costs for emergency call outs or scheduled absences by the in-house staff will be based on a time and materials basis reflected on the 2009 Rate Sheet (Plant Operator, B Level)

Base Fee and Additional Costs

The cost for SWWC to provide a backup operator to the Town of Hudson's water and wastewater treatment facilities and listed scope of services is as follows:

Monthly Base Fee \$520

Additional Costs: See attached 2009 rate sheet