

**CITY OF CLINTON
REGULAR MEETING OF THE MAYOR AND BOARD OF ALDERMEN
WEDNESDAY, JANUARY 2, 2002 - 5:30 P.M.
MUNICIPAL COURTROOM - 305 MONROE STREET**

WELCOME AND CALL TO ORDER - Mayor Rosemary Aultman

INVOCATION AND PLEDGE OF ALLEGIANCE TO THE FLAG

The invocation was led by Alderman Brabham followed by the Pledge of Allegiance to the Flag led by Alderman Hisaw.

ROLL CALL - City Clerk Wayne Derrick

Present: Jehu Brabham - Alderman-At-Large
 Tony Hisaw - Alderman Ward 1
 Tony Greer - Alderman Ward 2
 Clint Brantley - Alderman Ward 3
 Phil Fisher - Alderman Ward 4
 Herb Touchton - Alderman Ward 5
 Sharbert Lott - Alderman Ward 6
 Ken Dreher - City Attorney

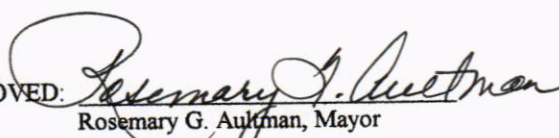
APPROVAL OF AGENDA ITEMS A-JJ

MOTION made by Alderman Greer and **SECONDED** by Alderman Brantley to approve Consent Agenda Items A-JJ. **MOTION CARRIED UNANIMOUSLY**

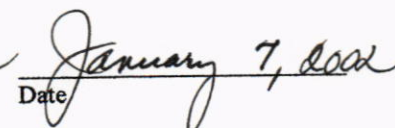
ADJOURN 5:35 P.M.

MOTION made by Alderman Touchton and **SECONDED** by Alderman Greer to adjourn.
MOTION CARRIED UNANIMOUSLY

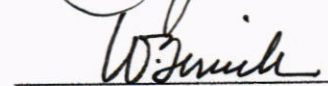
APPROVED:


Rosemary G. Aultman, Mayor

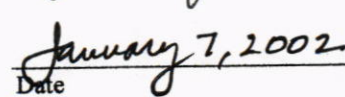
Date


January 7, 2002

ATTEST:


Wayne Derrick, City Clerk

Date


January 7, 2002

SEAL:



NEEL-SCHAFFER, INC.
ENGINEERS · PLANNERS

P.O. Box 22625 / 39225-2625
666 North Street, Suite 201 / 39202
Jackson, MS / (601) 948-3071
FAX: (601) 948-3178

January 3, 2002

Honorable Rosemary Aultman
Mayor, City of Clinton
P.O. Box 156
Clinton, MS 39060

REFERENCE: NORTHSIDE DRIVE IMPROVEMENTS
 PHASE 2
 CITY OF CLINTON, MISSISSIPPI

Dear Mayor Aultman:

As per the agreement dated January 5, 2001, Neel-Schaffer is submitting a Scope of Work and estimated fee for completing environmental documents for the project limits identified in Phase I (Preliminary Engineering) presented and approved by the Board in October 2001.

We are estimating approximately six months to complete the draft environmental documents to send to MDOT and FHWA for concurrence to conduct a public hearing. It will take another three to six months to complete the final environmental documents, seeking a Finding of No Significant Impact (FONSI).

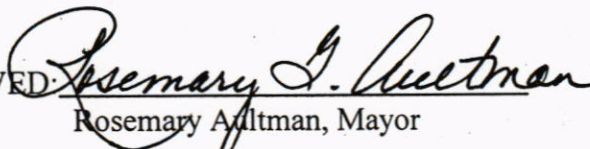
If you agree to the scope and the lump sum fee of \$75,000, please sign one original and return to our office. Your approval will serve as our notice to proceed.

Sincerely,

NEEL-SCHAFFER, INC.

Mark G. Bailey, P.E.
Vice President
Manager, Transportation Engineering

ble

APPROVED: 

Rosemary Aultman, Mayor

DATE: 01/16/02

PHASE 2
NORTHSIDE DRIVE, PINEHAVEN DRIVE
ENVIRONMENTAL DOCUMENTATION
SCOPE OF WORK

PREPARATION OF ENVIRONMENTAL DOCUMENTS

Draft Environmental Documents

Neel-Schaffer will assemble and summarize technical information and methodologies in accordance with the National Environmental Policy Act; 23 CFR-771 and FHWA Technical Advisory 6640.8A and MDOT's S.O.P. ENV-02-01-00-000.

The draft environmental documents will include a summary, purpose and need for action, a discussion of alternates, environmental consequences, list of agencies contacted and comments and coordination necessary. The draft document will be submitted to MDOT and FHWA for review comments and then be corrected as noted.

After approval of the draft documents, a public hearing will be held in the City of Clinton (the city will prepare and submit the legal notice to the paper). Neel-Schaffer will be responsible for summarizing the hearing and incorporating any public comments.

Final Environmental Documents

After the public hearing, any concerns or information presented at the hearing may be incorporated into the final documents. The final documents will then be submitted to MDOT and FHWA requesting a Finding of No Significant Impact (FONSI).

Additional Services

1. Special studies required if Section 4(f) or 6(f) encroachments occur. (None are anticipated at this time).
2. Preparation of Environmental Impact Statements.
3. Studies along alternate routes not included in the Phase I, Preliminary Engineering Study.
4. Up to four small group presentations are estimated, i.e., school district, home owners association. More than four presentations will be additional services.

PHASE 2

**NORTHSIDE DRIVE, PINEHAVEN DRIVE IMPROVEMENTS
ENVIRONMENTAL DOCUMENTATION**

MANHOUR ESTIMATE

	Officer	Senior Project Manager	Project Manager	Senior Engineer	Assistant Engineer	Technician	Clerical	Total/Task
Draft Environmental Documentation								
Project Kickoff	12	4	20	4	12	12	4	68
Draft Environment Document Subtasks:								
1. Land Use Impacts	2		6		2			10
2. Farmland Impacts	1		2				2	5
3. Social Impacts			2					2
4. Relocation Impacts	2		20		30	20	2	74
5. Economic Impacts	1		2					3
6. Air Quality Impacts			2					2
7. Noise Impacts	4	12	20		24	24	4	88
8. National Resources/Wetlands	2	20	12		6	10		50
9. Floodplain			2		2			4
10. Historic and Archaeological Preservation	2			4	2		2	10
11. Construction Impacts			2					2
12. Visual Impacts			2					2
13. Hazardous Material Evaluation	1		6	12				19
14. Mineral Resources			2					2
15. Energy			2					2
16. Section 4(f) and 6(f) properties	1		2					3
17. Environmental Justice	2		8	8				18
Document Preparation and Submittal	8	8	60	20	40	60	8	204
Reviews/Changes	6	6	20	4	20	24	4	84
Small Group Presentations	24	4	24	4	24	24	4	108
Public Hearing and Summary	20	6	40	6	24	24	12	132
Final Environmental Documentation								
Final Environmental Documents	6	10	20	4	24	24	16	104
Request for FONSI	6	6	12		2		2	28
TOTAL MANHOURS	100	76	288	66	212	222	60	1024

PHASE 2
NORTHSIDE DRIVE, PINEHAVEN DRIVE IMPROVEMENTS
ENVIRONMENTAL DOCUMENTATION

COST ESTIMATE

CLASSIFICATION	ESTIMATED LABOR (HR.)	ESTIMATED LABOR RATE	COST
Officer	100	\$ 38.20	\$ 3,820.00
Senior Project Mang	76	\$ 33.28	\$ 2,529.28
Project Manager	288	\$ 29.64	\$ 8,536.32
Senior Engineer	66	\$ 30.00	\$ 1,980.00
Asst. Engineer	212	\$ 21.00	\$ 4,452.00
Technician	222	\$ 20.24	\$ 4,493.28
Clerical	60	\$ 14.70	\$ 882.00

Direct Salary Cost	\$ 26,692.88
Overhead	\$ 37,332.66
TOTAL LABOR	\$ 64,025.54

Direct Expenses	
Reproductions - Copies	\$ 535.00
Mileage - 200 miles x \$.325/mile	\$ 65.00
Exhibits	\$ 250.00
Archaeologist	\$ 1,750.00
Court Reporter	\$ 300.00

TOTAL DIRECT EXPENSES	\$ 2,900.00
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Subtotal	\$ 66,925.54
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Fixed Fee	\$ 8,031.07
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TOTAL FEE -	\$ 74,956.61
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Total Lump Sum Fee	\$75,000
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Operator representative shall be notified prior to, and shall be permitted to observe, the inspection. The Operator shall provide the Owner with access, during normal business hours and upon reasonable prior notice, to the Operator's financial and operating records related to the Treatment Facilities for the purpose of auditing costs or verifying the Operator's performance under this Agreement.

Section 7.8 - Force Majeure

A party's performance of any obligation under this Agreement, other than an obligation to pay money, shall be excused if, and to the extent that, the party is unable to perform because of events of force majeure, which shall include, but shall not be limited to, storms, floods and other Acts of God, the acts of civil or military authority, quarantine restrictions, riots, strikes, lockouts or other labor disputes, commercial impossibility, epidemics, fires, explosions and bombings, the inability to obtain or delays in obtaining permits or other private or governmental approvals, or because of any other cause or causes beyond the reasonable control of the party seeking to be excused from performance. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause which excused performance hereunder. A party invoking this force majeure provision shall immediately give written notice to the other party.

The Owner shall be responsible for maintenance and repair costs resulting from Force Majeure.

Section 7.9 - Authority to Contract

Each party warrants and represents that it has full power and authority to enter into this Agreement and to perform its obligations, including any payment obligations, under this Agreement.

Section 7.10 - Governing Law

- (a) The Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi.

Section 7.11 - Notices

All notices will be in writing and will be delivered in person or transmitted by certified mail, return receipt requested. Notices required to be given to the Operator will be addressed to:

Severn Trent Environmental Services, Inc.

Attention: Bob Maines

3810 1-55 Savannah St Exit

Jackson, MS 39284-7578

With Copy To:

The Elias Group

Attention: Dan Elias

411 Theodore Fremd Avenue

Suite 102

Rye, NY 10580

Notices required to be given to the Owner will be addressed to:

City of Clinton

P.O. Box 156

Clinton, MS 39060

With Copy To:

Pyle, Dreher, Mills & Dye

Attorneys at Law

P.O. Box 23004

Jackson, MS 39225-3004

BOARD APPROVED

Section 7.12 - Severability

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

IN WITNESS WHEREOF the parties have duly executed this Amended and Restated Agreement effective as of _____.

ATTEST:

W. J. Smith City Clerk

Owner:

CITY OF CLINTON, MISSISSIPPI

BY: Rosemary J. Ruetman
Title: Mayor

ATTEST:

SEVERN TRENT ENVIRONMENTAL
SERVICES, INC.

Christine M. Okenquist

BY: L. L. Grayson
Title: PRESIDENT

Attachment A**Definitions**

"Abnormal or Biologically Toxic Material" is defined as any substance or combination of substances contained in the plant influent in sufficient concentrations so as to (i) interfere with chemical constituents of the wastewater or cause a failure to meet the discharge requirements of the Owner's NPDES permit or (ii) create effluent, sludges, or other material classified as a hazardous waste under RCRA. Abnormal or Biologically Toxic Materials include, but are not limited to, heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA industrial pretreatment standards, the Sewer Use Ordinance of the Owner, or any applicable sewer use ordinance.

"Adequate Nutrients" is defined as nitrogen, phosphorus and iron contained in the wastewater influent flow received at the WWTP in such proportionate amounts relative to the minimum ratio of five (5) parts nitrogen, one (1) part phosphorus, and one half (0.5) part iron for each one hundred (100) parts BOD₅.

"Adjustment Date" shall mean each and every first day of October commencing on October 1, 2001 during the term of this Agreement.

"Baseline Conditions" is defined as the existing flow and loading conditions specified in Attachment B.

"Discharge Violation" is defined as any violation of the Effluent Requirements as defined herein.

"Effluent Requirements" is defined as the following:

Effluent Requirements BOD₅

Plant	Flow gpd	BOD₅ mg/l monthly average	BOD₅ mg/l max. weekly average	BOD₅ lbs. monthly average	BOD₅ lbs. max. weekly average
Lovett	276,000	15	22.5	35	52
Southwest	600,000	10	15	79	119
Northeast	300,000	10	15	25	38
Briars (Biolac)	630,000	10	15	53	79
South Central Lagoon	519,000	10	15	43	64
Southside	3,500,000	10	15	292	438

Effluent Requirements TSS

Plant	Flow gpd	TSS mg/l monthly average	TSS mg/l max. weekly average	TSS lbs. monthly average	TSS lbs. max. weekly average
Lovett	276,000	30	45	69	104
Southwest	600,000	30	45	238	357
Northeast	300,000	30	45	75	113
Briars (Biolac)	630,000	30	45	158	237
South Central Lagoon	519,000	30	45	130	195
Southside	3,500,000	30	45	876	1,314

Effluent Requirements NH3-N and Fecal Coliform

Plant	NH3-N	Fecal Coliform col./100mls monthly average May – Oct.	Fecal Coliform col./100 mls max. weekly average May – Oct.	Fecal Coliform col./100 mls monthly average Nov. - April	Fecal Coliform col./100 mls max. weekly average Nov. - April
Lovett	2/3	200	400	2,000	4,000
Southwest	2/3	200	400	200	400
Northeast	2/3	200	400	2,000	4,000
Briars (Biolac)	2/3	200	400	2,000	4,000
South Central Lagoon	N/A	200	400	2,000	4,000
Southside	2/3	200	400	2,000	4,000

At such time as the Southside Oxidation Ditch/ Activated Sludge facility has been placed into service, effluent requirements for the Southside facility have begun, and effluent requirements for the Southeast Lagoon/ Sand Filter will cease.

“Expenditures for Capital Improvements and Repairs” is defined as any expenditure for equipment, major repair or replacement, or structure that significantly extends services life, represents a non-routine type of purchase, and costs \$1,500 or more.

“Treatment Facilities” is defined as all facilities (including wastewater treatment facilities and pump station/collection systems), and equipment as described in Exhibit One, together with the grounds, sewers, structures, pipes, and pumps at the sites of the said facilities. “Treatment

Facilities" shall not include any sewers, under-ground pipes or other equipment located off the sites of the said facilities.

"Price Index" shall mean the Consumer Price Index for all Urban Consumers (CPI-U) for the US City Average for all Items, 1982-84=100 as published by the U.S. Department of Commerce, Bureau of Labor Statistics. In the event that the Price Index is changed, or if a substantial change is made in the terms or number of items contained in the Price Index, then, the Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Price Index in effect as of the date of this Agreement had not been altered. In the event such Price Index (or a successor or a substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information therefore used in determining the Price Index acceptable to both parties shall be used.

"Price Index Increase" shall mean the percentage increase in the monthly Price Index in effect on each and every Adjustment Date over the monthly Price Index in effect on October 1, 2001.

Other Definitions

Other terms defined in this Agreement have the meanings so given them.

Attachment B**Existing Flow and Loading Conditions**

The Owner represents that the following are the flow and loading conditions at the Treatment Facilities on October 1, 2001 (the "Baseline Conditions") and that the existing flow and loading conditions meet all the standards or requirements set forth in the Owner's sewer-use ordinance, meet all the standards or requirements of the Clean Water Act, as amended, and contain Adequate Nutrients, as defined in Attachment A.

Average Annual Flow and Loadings

Plant	Flow (MGD)	BOD5 (mg/l)	TSS (mg/l)
Lovett	0.13	167	118
Southwest	0.59	148	165
Northeast	0.24	108	92
Briars (Biolac)	0.3	165	195
South Central	0.447	148	139
Southside	No Data	No Data	No Data

The foregoing Average Annual Flow and Loadings for each plant, when considered together, constitute the existing combined wastewater flow characteristics.

Exhibit One**Treatment Facilities**

Wastewater Treatment Facilities located at:

Wastewater Treatment Facility	Permit Number
Lovett	MS0023230
Southwest	MS0045896 to Flow Equalization
Northeast	MS0021164
Briars Biolac	MS0047619
South Central Lagoon	MS0021199 to Flow Equalization
Southside	MS0054992

Pump Station/Collection Systems located at:

1. Kelly Drive
2. Susie Lane
3. Rosa Lane
4. Manyfield Drive
5. Lovett Drive
6. Clinton Heights
7. Industrial Park
8. Woodmoor
9. Sleephollow
10. Garaywa Road
11. Royal Oak- (to be decommissioned)
12. Olde Vineyard #2- (to be decommissioned)
13. Willowbrook- (decommissioned)
14. Trailwood
15. 4-Cells
16. Country Meadow
17. Olde Vineyard #1
18. Banks Road
19. Hunter Oaks
20. Parker Drive
21. Northside
22. Briars TRT Plant
23. Northeast
24. Shady Springs
25. Jostens
26. Cotten Acres
27. Wickstead Road
28. Hunters Ridge
29. Clinton – Raymond Road (Truck Stop)- (decommissioned)

30. Trace Ridge Pump Station
31. 100 Cotton Acres
32. 104 Lauren Lane
33. 106 Lauren Lane
34. West Street (adjacent to City Barn)
35. 301 Capitol Street (adjacent to No. 1 Fire Station)
36. 1659 W. Northside Drive (next to No. 3 Fire Station)
37. Soccer Row (next to Parks and Recreation Center)
38. Baseball Alley (next to Field No. 6)
39. Soccer Row (Between Fields 7&8)
40. Baseball Field No. 3
41. 604 Clinton Blvd.
42. Southside Influent
43. Bruenburg
44. Cedar Grove- (Newly commissioned)
45. Hobby Farms #1
46. Hobby Farms #2

Equipment

1. Dissolved Oxygen Meter, Hach, Model No. 16046, **obliterated due to placement**
2. pH Meter, Fischer Scientific, Model No. 1001, Serial No. 102386
3. pH Meter, Fischer Scientific, Model No. 1003, Serial No. 301109
4. Scales, Denver Instrument Co., Model No. 100A, Serial No. 0055841
5. Furnace, Barnstead/Thermolyne, Model No. FB1315M, Serial No. 745930800477
6. Oven, Fischer Scientific, Isotemp 500 Series, Serial No. 21000268
7. Vacuum Pump, Fischer Scientific, Model No. SA55JXGTD-4144, Serial No. 0792
8. 8-Foot Utility Trailer, Vehicle Identification No. 46UF0818N1025877 (**returned to City in June 2001**)

- Repair and maintenance of high voltage sub stations; and
- The cost of underground line repairs.

If expenditures are made by the Operator on Owner's behalf for items specified above, Owner agrees to reimburse the Operator, within thirty (30) days, for such expenditures upon submission of reasonable documentation verifying such expenditures.

Section 2.19 - Emergency Situations

In the event of sudden damage or destruction of the Treatment Facilities or an emergency which in the reasonable judgment of the Operator is likely to result in material loss or damage to the Treatment Facilities or constitute a threat to human health or safety, the Operator may suspend operations of the Treatment Facilities and may make such emergency repairs, without the consent of the Owner, as are necessary to mitigate or reduce such loss, damage, or threat. The Operator shall provide prompt notice to the Owner of any such damage, destruction, or threat and of any emergency repairs which have been or will be taken. The Owner shall provide prompt notice to the Operator of any alarm(s) or other notices of emergency conditions at the Treatment Facilities. Owner and the Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety and in preparing and implementing an emergency operations plan.

Owner shall be responsible for the direct payment or reimbursement to the Operator of all reasonable costs incurred by the Operator in responding to such emergency situation, including emergency repairs. Such Operator costs may include direct labor charges at standard Operator rates for services exceeding those required pursuant to this Agreement.

Section 2.20 - Litigation Support

At the request of Owner, Operator shall provide or arrange for, at Owner's expense, legal, regulatory, or technical assistance in connection with the Owner's defense or prosecution of any actions, claims, suits, or administrative or arbitration proceedings or investigations, whether pending, threatened, or newly initiated, relating to the Treatment Facilities. For such services the Owner shall pay the Operator its total costs incurred in its performance of such services multiplied by 1.15.

Section 2.21 - Accounting Records

The Operator shall maintain up-to-date financial records as they apply to the services rendered by the Operator under the terms of this Agreement. All records will be kept in accordance with the Operator's standard accounting practices.

Section 2.22 - Disclosure of Information

The Operator represents and warrants that it has disclosed, and will in the future disclose, any and all information it has now, or may have in the future, relating to the Treatment Facilities that may be relevant to the Owner in performing its duties and obligations.

Section 2.23 – Law Changes

The Operator shall notify the Owner of any information received that concerns new or proposed laws, regulations, standards, or other requirements related to the operation of the Treatment Facilities. In the event that such legal changes result in increased efforts or costs, the Owner and the Operator shall cooperate to determine the amount of such increased efforts or costs. Operator and Owner agree to negotiate compensation for any such effort or cost increases resulting from new laws, regulations, standards, or other such requirements in good faith.

ARTICLE III RESPONSIBILITIES OF THE OWNER

Section 3.1 - Owner's Representative

On or before the effective date of this Agreement, the Owner shall designate an authorized representative (the "Authorized Representative") to administer this Agreement. Owner may change its Authorized Representative by written notice as provided in this Agreement. The Authorized Representative will be responsible for receiving and delivering all day-to-day communications exchanged between Owner and Operator during the term of this Agreement.

Section 3.2 - Permits

The Owner shall be responsible for obtaining and maintaining all necessary permits and licenses and for the payment of all fees required for Ownership and operation of the Treatment Facilities and the equipment owned by the Owner and used in connection with the Treatment Facilities.

The Southwest Bio Lac and South Central Lagoon NPDES permits shall remain in effect for a period following the start-up of the Southside Plant until such time the contents of these facilities are drawn down to a level acceptable to provide storm-water equalization. At that time, as mutually agreed upon by Owner, Operator and the Mississippi Department of Environmental Quality, wastewater treatment activities shall cease at the Southwest Bio Lac and the South Central Lagoon; and the NPDES permits shall be allowed to expire. Once these Facilities are designated as flow equalization only, Operator shall maintain the equipment and grounds; but all testing, not required by the Ms DEQ shall cease.

Section 3.3 – Pretreatment Program

If enforcement of pretreatment standards for industrial user discharge is required by federal, state, or other applicable law, the Owner shall enact, maintain, and enforce an industrial pretreatment program that complies with federal, state, and local standards as well as all relevant permits, and the Clean Water Act.

Section 3.4 - Compliance With Laws

The Owner shall comply with all applicable local, state, and federal laws, codes, ordinances, and regulations as they pertain to the Treatment Facilities, except to the extent responsible for complying with the same is specifically delegated to the Operator in this Agreement.

The Operator shall assist the Owner in complying with all such laws, codes, ordinances, and regulations known to the Operator as they pertain to Operator services. Subject to the provisions of Section 2.1, the Owner shall be responsible for any fines or penalties arising out of noncompliance by Owner with all such laws, codes, ordinances and regulations.

Section 3.5 – Taxes

The Owner shall be responsible for all real and personal property ad valorem taxes, utility taxes and excise taxes applicable to the Treatment Facilities and the services provided for under this Agreement.

In the event that the State of Mississippi or any local governing authority should enact a professional service tax requiring the Operator to pay any sales or use taxes on the value of the services provided by the Operator hereunder, or the services provided by any subcontractor of the Operator, such payments shall be reimbursed by the Owner unless the Owner furnishes a valid and properly executed exemption certificate relieving the Owner and the Operator of the obligation for such taxes. In the event that Owner furnishes an exemption certificate which is invalid or not applicable to services by the Operator, the Owner shall, within thirty (30) days, indemnify and reimburse the Operator for any taxes, interest, penalties, and incremental costs, expenses, or fees which the Operator may incur or has incurred as a result of the Operator's reliance on such certificate.

Section 3.6 - Support

The Owner shall permit use by the Operator, without charge, of all facilities and equipment, under its Ownership as described in Exhibit One or as specified in future equipment or construction specifications. The Owner shall provide the Operator with all information necessary to operate and maintain the Treatment Facilities.

Section 3.7 - Expenditures for Capital Improvements and Repairs

The Owner is responsible for undertaking and paying Expenditures for Capital Improvements and Repairs (as defined in Attachment A) which become necessary under this Agreement. Within ninety (90) days after the effective date of this Agreement, the Operator shall provide the Owner with a list of necessary Capital Improvements and Repairs. The Operator's obligations under this Agreement are predicated upon the Owner's completion of necessary Expenditures for Capital Improvements and Repairs at the Treatment Facilities in a timely manner. If the Owner fails to make the necessary Expenditures for Capital Improvements and Repairs, the Operator shall not be liable for any penalties, fines, costs, or damages arising from such failure.

During the period of Owner's annual budget preparation, Operator shall provide a list of recommended capital improvements believed to be required for proper operation of the facilities covered under this Agreement. Should the Owner not approve any requested capital improvement, the Operator shall continue to perform its responsibilities on a 'best effort' basis.

Section 3.8 – Storm Water Discharge

The Owner shall be responsible for complying with applicable storm water discharge regulations under federal, state, and local laws.

Section 3.9 – Notice of Litigation

In the event that the Owner or the Operator receives notice of or undertakes the defense or the prosecution of any actions, claims, suits, or administrative or arbitration proceedings or investigations in connection with the Treatment Facilities, the party receiving such notice or undertaking such prosecution shall give the other party timely notice of such proceedings and will inform the other party in advance of all hearings regarding such proceedings.

Section 3.10 – Disclosure of Information

The Owner represents and warrants that it has disclosed, and will in the future disclose, any and all information it has now, or may have in the future, relating to the Treatment Facilities that may be relevant to the Operator in performing its duties and obligations.

Section 3.11 – Electricity

The Owner shall continue to pay all electricity charges for the Treatment Facilities and shall provide the Operator with copies of all payment invoices. The Operator shall monitor electrical costs and usages at the various facility locations and present this information monthly to the Owner.

Section 3.12 – Law Changes

The Owner shall notify the Operator of any information received concerning new or proposed laws, regulations, standards, or other requirements concerning the operation of the Treatment Facilities. In the event such legal changes result in increased efforts or costs, the Operator and the Owner shall cooperate to determine the amount of such increased efforts or costs. The Owner and the Operator agree to negotiate in good faith concerning compensation for any such effort or cost increases resulting from new laws, regulations, standards or other such requirements.

Section 3.13 – General Authority

The Owner shall perform all duties and discharge all responsibilities and obligations relating to its wastewater treatment system and the operation and maintenance of the Treatment Facilities not expressly assumed by the Operator pursuant to the terms of this Agreement.

Section 3.14 – Maintenance

The Owner shall be responsible for maintaining the fencing around all Treatment Facilities.

The Owner agrees to provide a metal building of approximately 3,000 square feet to the Operator during the term of this lease or any extensions thereof. The Operator is to use this building solely to perform the operations, maintenance and management of the Treatment Facilities for the Owner. The Operator is responsible for the upkeep of this building, reasonable wear and tear accepted.

Section 3.15 – Prior Obligations

The Owner shall be responsible for obligations and liabilities incurred prior to the commencement date of the Operator providing services pursuant to this Agreement.

ARTICLE IV
TERM AND TERMINATION

Section 4.1 – Term

The term of this Agreement shall commence on the 1st day of October 2001, at 12:01 A.M. C.S.T. and shall continue until midnight on September 30, 2006 (the "Scheduled Termination Date"), unless the Agreement is terminated as provided herein.

This Agreement may be extended for additional five (5) year period(s) beyond the term of this Agreement with affirmative action by, and with the written consent of both parties. Such extended term(s) shall be upon the terms and conditions hereof, as the same may have been modified or changed as of the date of such extension. At least 180 days prior to the Scheduled Termination Date, the parties should decide and finalize whether this Agreement will be extended or allowed to expire in order to allow both parties time to prepare for such extension or expiration.

Section 4.2 - Termination

This Agreement may be terminated for breach or default (collectively, "breach"), but only if (i) the breach is a material one; (ii) the party claimed to have committed the breach has received written notice from the other party of such breach given in accordance with the notice provisions of Article VII of this Agreement, which notice shall state with reasonable specificity the breach complained of and which shall state that the claimed breach is of such a nature that it, in the opinion of the non-breaching party, would give the non-breaching party a right to terminate this Agreement unless the default is cured as set forth below; and (iii) the party claimed to have breached shall have neither cured the breach within a reasonable time, but in any event within not less than ten (10) nor more than thirty (30) days from the date of its receipt of written notice of breach or, with respect to a breach which cannot be cured within said period, shall have failed to take and continue within said period reasonable steps to cure such breach. Where a party is taking and continuing reasonable steps to cure such breach, the failure to complete the cure within the said period of thirty (30) days shall not constitute cause for the termination of this Agreement. It is expressly understood and agreed that the notice required and the right to cure afforded by this provision shall apply to each and every obligation of the parties under this Agreement, whether the obligation is a general or specific one.

In the event the Agreement is terminated by the Owner, the Owner may, at its option, request the Operator to continue to provide the Scope of Services as provided in this Agreement for ninety (90) days beyond the date of termination, in which even the Operator shall receive as compensation for such services its cost plus overhead, multiplied by 1.15. Notice of the intent to terminate shall be given in writing by personal service or by certified mail, return receipt requested, addressed to the person identified as the recipient of the notices pursuant to Article VII.

In the event that the Treatment Facilities shall be damaged or destroyed by natural disaster or otherwise, so that they are incapable of processing waste and the Owner, after consultation with the Operator, determines to shut down the Treatment Facilities, the Owner and the Operator shall each have the right, upon ninety (90) days prior notice to the other party, to terminate this Agreement. In the event the Owner determines to re-open the Treatment Facilities after such shut down, the Operator shall be entitled to provide services with respect to the Treatment Facilities upon the terms and conditions contained in this Agreement, as the same may be modified by the parties hereto based on good faith negotiations taking into account such changes as may have taken place with respect to the Treatment Facilities.

ARTICLE V COMPENSATION

Section 5.1 - Base Compensation

During each of the Owner's fiscal years, the Owner shall pay the Operator as compensation (the "Base Compensation") for services performed on the Treatment Facilities pursuant to this Agreement, Three Hundred and Ninety Three Thousand, One Hundred and Eighty Nine Dollars (\$393,189.00), subject to the adjustments hereinafter set forth. The Base Compensation shall be paid in twelve equal monthly installments of Thirty Two Thousand, Seven Hundred and Sixty Six Dollars (\$32,766.00).

On each Adjustment Date (defined in Attachment A), the amount of the Base Compensation shall be increased on compounded basis by the Price Index Increase (defined in Attachment A). In no event shall the Base Compensation be reduced by virtue of this Section. No adjustments or re-computations, retroactive or otherwise, shall be made due to any revision which may later be made in the first published figure of the Price Index for any year.

Section 5.2 - Existing Combined Wastewater Flow Characteristics

The Base Compensation stated above is for the operation and maintenance of the Treatment Facilities at the existing combined wastewater flow characteristics at the commencement of this Agreement, as designated in Attachment B.

Section 5.3 – Repair and Replacement

- In addition to the Base Compensation stated above, the Owner shall, on a monthly basis, reimburse the Operator for repair and replacement parts, maintenance materials and other consumables, and maintenance work performed by subcontractors as utilized by the Operator in order to maintain, repair and replace equipment at the Owner's Treatment Facilities during the term of this Agreement (hereinafter "Repair and Replacement Expenses"). Repair and Replacement Expenses shall, however, specifically exclude materials and supplies (grease, oil, tools and shop supplies) used for routine and expected preventive maintenance care of the equipment at the Treatment Facilities. The cost of such materials and supplies used during routine preventive maintenance is included in the Base Compensation.

The Owner shall reimburse the Operator for all Repair and Replacement Expenses in arrears on a monthly basis.

In some cases, the replacement of equipment may be more beneficial than repair. In any repair/replacement event exceeding a cost of \$1,500.00, the Operator shall obtain the cost to repair or replace the equipment. Owner and Operator shall mutually agree upon which action is to be taken and shall be approved by Owner.

Section 5.4 – Invoices and Payments

For each month that this Agreement is in effect, the Operator shall present an invoice to the Owner for the services which have been rendered, or which will be rendered, during that month. Each invoice shall include the monthly installment for Base Compensation, the monthly adjustment for the Repair and Replacement Expenses and any other sums that may be owed by the Owner to the Operator. The Operator shall present the invoice for each month as early as reasonably possible on or after the fifteenth day of that month, but in no event later than the last Tuesday of that month, so that the invoice may be approved for payment by the Owner's Mayor and the Board of Aldermen at the regular monthly meeting to be held on the first Tuesday of the next month. Upon presentation of the invoice for each month, in the time and manner specified above, the Owner shall make the payment for that month to the Operator. Each payment for a particular month shall be made by the Owner to the Operator on the first Wednesday of the next month. For any payment for a particular month which is not paid by the Owner by the forty-fifth day after submission of the invoice for that payment, the Owner shall pay interest to the Operator at one and one-half percent per month on the unpaid balance from the said forty-fifth day after submission of the invoice until the date of payment, as provided by Section 31-7-305 of the Mississippi Code of 1972, as amended. The Owner shall further reimburse the Operator for its costs of collection, including reasonable attorney's fees, in the event the Operator commences legal action to collect any sum past due.

Section 5.5 – Expenditures for Capital Improvements and Repairs

The Operator shall not be responsible for Expenditures for Capital Improvements and Repairs, as defined in Attachment A. Except as provided in Article II under the heading "Emergency Situations", prior to proceeding with repairs or replacements, the Operator shall submit to the Owner for approval

all proposed Expenditures for Capital Improvements and Repairs. Each request for approval will identify the Expenditures for Capital Improvements and Repairs needed, the cause, the estimated costs, and the degree of urgency. If the Owner fails to approve the request, the Operator shall not be liable for any penalties, fines, costs or damages arising from the failure to make such Expenditures for Capital Improvements and Repairs.

Section 5.6 - Changes in Scope of Services

Except in case of emergency, the Operator shall not perform additional services or work where such services or work exceeds or changes the Scope of Services contemplated under Article II of this Agreement, without obtaining the prior written approval of the Owner. The Operator shall be entitled to additional compensation for such additional services or work. Such additional compensation shall include, but not be limited to, the Operator's costs, including overhead, multiplied by 1.15. Such additional compensation will be retroactive to the time of such changes. Within ninety (90) calendar days from the date of notice of such additional work or services, the parties shall mutually agree upon an equitable sum of additional compensation.

Changes in the Scope of Service include, but are not limited to, requests for additional services by the Owner, additional costs incurred in treating Abnormal or Biologically Toxic Material, disposing of sludge, meeting new or changed governmental regulations, testing regulations, or reporting requirements, including changed effluent standards, which increase the cost of operating the Treatment Facilities, or arising from construction of additions to, or modification of, the Treatment Facilities.

ARTICLE VI RISK MANAGEMENT

Section 6.1 - Indemnification

Claims by Owner

With respect to any and all claims by Owner, the Operator agrees to indemnify and save harmless the Owner and each of its elected or appointed officers, employees and agents from and against any claims, demands, suits, liabilities, losses and expenses incurred by the Owner which are caused solely by the negligent acts or omissions of the Operator in the performance of its services under this Agreement; provided, however, that in the event that both Owner and Operator are determined by a finder of fact to be negligent and the negligence of both is a proximate cause of such claim for damage, then in such event, Owner and Operator shall each be responsible for the portion of the liability equal to its comparative share of the total negligence; provided further, however, that with respect to any loss, damage, injury or other claims made by Owner as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminant, the Operator's obligations to Owner for indemnity or otherwise shall not apply (i) if such removal, handling, storage, release, discharge, or other disposition is required by, or executed in accordance with, local, state or federal law, rule or regulation; and (ii) unless such loss, damage, injury or claim results from the gross negligence or willful misconduct of the Operator. As

used in this section, the work "solely" refers to acts or omissions of the Operator wherein there is no negligence by the Owner.

The Operator shall not be liable, as a result of performance or non-performance of its obligations under the Agreement, for indirect or consequential damages, including, but not limited to, loss of profits or revenue or loss of the use of the Treatment Facilities, based upon contract negligence or any other cause of action, even if advised of the possibility of such damages. Provided, however, that this provision does not affect direct or actual damages for which the Operator may have liability to the Owner.

Section 6.2 – Operator's Insurance

The Operator shall maintain the following insurance during the term of this Agreement:

1. General Liability Insurance in the amount of not less than one million dollars (\$1,000,000) combined single limit for personal injury, bodily injury, and property damage.
2. Excess Liability Insurance (umbrella coverage) in the aggregate amount of Twenty Million (\$20,000,000) Dollars.
3. Worker's Compensation Insurance for all Operator employees employed at the Treatment Facilities in accordance with the requirements of Mississippi law.
4. Automobile Liability Insurance for motor vehicles owned by the Operator in the amount of five hundred thousand dollars (\$500,000) for collision, comprehensive, bodily injury and property damage coverage.

The Owner shall be included as an additional insured according to its interest during the term of this Agreement.

Within thirty (30) calendar days of the date hereof, the Operator shall furnish the Owner with a certification of such insurance coverage and the fact that the Owner has been designated as an additional insured. These policies will be in effect at the time the Operator commences services hereunder at the Treatment Facilities.

Section 6.3 – Owner's Insurance

The Owner shall purchase and maintain General Liability Insurance in regard to the Treatment Facilities. The Owner shall be an self insured in regard to damage or loss of property at the Treatment Facilities, provided, however, that the Owner shall have the right, in its discretion, to purchase property insurance in regard to the Treatment Facilities. The Operator shall be named as an additional insured according to its interest under this Agreement during the term of this Agreement.

Within thirty (30) calendar days of the date hereof, Owner shall furnish the Operator with a

certification of such insurance coverage and the fact that the Operator has been designated as an additional insured.

ARTICLE VII
MISCELLANEOUS

Section 7.1 - Relationship

The relationship of the Operator to the Owner is that of an independent contractor and authorized agent and not one of employment. None of the employees or agents of the Operator shall be considered employees of the Owner. For the purposes of all state, local and federal laws and regulations, the Owner shall exercise primary management and operational and financial decision-making authority.

Section 7.2 - Nondiscrimination

The Operator shall refrain from unlawful discrimination in employment in employing personnel under this Agreement.

Section 7.3 - Entire Agreement; Amendments

This Agreement contains the entire agreement between the Owner and the Operator and supersedes all prior or contemporaneous communications, representations, understandings, or agreements. This Agreement may be modified only by a written amendment signed by both parties.

Section 7.4 - Headings, Attachments and Exhibits

The headings contained in this Agreement are for reference only and shall not in any way affect the meaning or interpretation of this Agreement. The Attachments and Exhibits to this Agreement shall be construed as an integral part of this Agreement.

Section 7.5 - Waiver

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver or its rights to enforce such provisions in the future.

Section 7.6 - Assignment

This Agreement may not be assigned by either party without the prior written consent of the other; provided, however, that the Operator may assign its rights and obligations under this Agreement to one of its affiliates without the prior written consent of the Owner.

Section 7.7 - Access and Inspection by Owner

The Owner shall have the right to inspect the Treatment Facilities during normal business hours. An