

**SPECIAL MEETING OF THE MAYOR AND BOARD OF ALDERMEN
MONDAY, AUGUST 23, 1993 - 5:15 P.M.
CITY HALL CONFERENCE ROOM**

The Mayor and Board of Aldermen of the City of Clinton met in the City Hall Conference Room, 300 Jefferson Street, on Monday, August 23, 1993, 5:15 p.m., for a **SPECIAL MEETING** called by Mayor Rosemary Aultman for the purpose of discussing items named in the Original Notice of said special meeting as found on page 85 of this Minute Book W.

CALL TO ORDER AND INVOCATION - Mayor Rosemary Aultman

ROLL CALL - City Clerk Nelson Byrd

Present - Jehu Brabham - Alderman-at-Large
O. C. George Ferrell - Alderman Ward 1
Rodney DePriest - Alderman Ward 2
Ben Todd - Alderman Ward 3
Phil Fisher - Alderman Ward 4
Herb Touchton - Alderman Ward 5 - Arrived 5:22 p.m.
Sharbert Lott - Alderman Ward 6
Mayor Rosemary Aultman - Presiding
City Attorney Ken Dreher
City Clerk Nelson Byrd

Also present were Public Works Director Harold Alderman, City Engineer Richard Broome, Police Chief Don Byington, Parks & Recreation Director Carroll Arledge, Comptroller Lois McKay, Engineer Greg Gearhart, Public Works Secretary Norma Ashburn, and Deputy Clerk Brooxye Sessums.

APPROVAL OF CONTRACT WITH WILLIFORD, GEARHART, & KNIGHT FOR BRIARS WWTF

Following a lengthy discussion and agreement by Greg Gearhart to delete the wording "Engineer accepts absolutely no responsibility for the performance of the facilities plan and design elements prepared by the design engineer under a separate contract" as found on the last line of paragraph three on page 1" of the proposed professional services agreement between the City of Clinton and Williford, Gearhart & Knight for professional services regarding the Briars Wastewater Treatment Plant Relocation, **MOTION** made by Alderman Fisher and **SECONDED** by Alderman Lott to approve that engineering contract with Williford, Gearhart & Knight for construction services for the Briars Wastewater Treatment Plant Relocation with the above agreed deletion. **MOTION CARRIED 6-1** with Alderman DePriest casting the "nay" vote. Copy of said contract may be found on pages 86-103 of this Minute Book W.

APPROVAL OF PAYMENT FOR EASEMENTS FOR BRIARS WWTF RE-LOCATION

Upon request of City Engineer Broome to approve the following payments for necessary sanitary sewer easements in conjunction with the Briars Wastewater Treatment Facility relocation to (1) Bee-Joe Corporation in the amount of \$418.00 and (2) to Lloyd Burton et al in the amount of \$7,132.00 for both temporary and permanent easements required for a gravity sewer line proposed to be constructed through said properties as shown on exhibits which are attached to said executed easements located in the Office of the City Clerk, **MOTION** made by Alderman Touchton and **SECONDED** by Alderman Ferrell to execute said easements. **MOTION CARRIED UNANIMOUSLY.**

AUTHORIZATION TO ADVERTISE FOR BIDS FOR BRIARS WWTF RELOCATION

MOTION made by Alderman Fisher and **SECONDED** by Alderman Lott to grant authority to advertise for bids for the Briars Wastewater Treatment Plant relocation. **MOTION CARRIED UNANIMOUSLY.**

AUTHORIZATION TO SIGN LOAN AGREEMENT FOR BRIARS WWTF RELOCATION

MOTION made by Alderman Ferrell and **SECONDED** by Alderman Fisher authorizing Mayor Aultman to sign loan agreement for Briars Wastewater Treatment Plant Relocation. **MOTION CARRIED 6-1** with Alderman DePriest casting the "nay" vote.

ADJOURNMENT - 6:23 P.M.

There being no further business to discuss, **MOTION** made by Alderman DePriest and **SECONDED** by Alderman Touchton to adjourn. **MOTION CARRIED UNANIMOUSLY.**

APPROVED: Rosemary Aultman 8/27/93
Rosemary Aultman, Mayor Date

ATTEST: Nelson Byrd 8-27-93
Nelson Byrd, City Clerk Date

SEAL

NOTICE OF SPECIAL MEETING OF
THE MAYOR AND BOARD OF ALDERMEN

I, the undersigned, Rosemary Aultman, Mayor of the City of Clinton, Mississippi, do hereby call a **SPECIAL MEETING** of the Mayor and Board of Aldermen pursuant to the provisions of Section 21-3-21 of the MS Code of 1972. Said Meeting shall be held at 5:15 p.m., Monday, August 23, 1993, in the City Hall Conference Room located at 300 Jefferson Street, for the purpose of discussing the following items:

1. Approval of Williford, Gearhart & Knight engineering contract for construction services for Briars Wastewater Treatment Plant Relocation
2. Approval of payment of leases with Bee-Joe Corporation and Lloyd Burton et al for the Briars Wastewater Treatment Plant Relocation
3. Authority to advertise for bids for Briars Wastewater Treatment Plant Relocation
4. Authority for Mayor to sign loan agreement for Briars Wastewater Treatment Plant Relocation

Rosemary Aultman
Rosemary Aultman, Mayor

August 20, 1993
Date

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN THE
CITY OF CLINTON, MISSISSIPPI
AND
WILLIFORD, GEARHART & KNIGHT, INC.**

THIS IS AN AGREEMENT made this the ____ day of August, 1993, by and between the City of Clinton, Post Office Box 156, Clinton, Mississippi 39060 (OWNER) and Williford, Gearhart & Knight, Inc., Engineers & Surveyors, Post Office Box 318, Clinton, Mississippi 39060 (ENGINEER).

This Agreement is hereby established to provide the basis for provision of certain professional services on that certain project described as City of Clinton, Briars Wastewater Treatment Improvements; said project including new interceptor sewers, new pumping station and force main, construction of a new treatment facility and an effluent outfall pipeline; said improvements having a current total probable construction cost of \$1,178,347; as more particularly described in the Plans and Specifications prepared by Anderson Engineers, P.A. dated September 1992, and revised by Williford, Gearhart & Knight dated June 1993.

The OWNER has provided the ENGINEER with plans and specifications prepared by Anderson Engineers, P.A. (design Engineer). The ENGINEER has reviewed these documents for general conformance with hydraulic, structural and wastewater disinfection design guidelines issued by the State Office of Pollution Control, and has made limited revisions to the design engineer's work. ~~ENGINEER accepts absolutely no responsibility for the performance of the facilities plan and design elements prepared by the design engineer under a separate contract.~~ *M 8/23/93*

The OWNER hereby employs the ENGINEER to perform the professional services described herein, the ENGINEER agrees to provide the professional services prescribed herein, and the OWNER agrees to compensate the ENGINEER for the services rendered under this Agreement.

SECTION 1 - ENGINEER'S RESPONSIBILITIES

- 1.1 **Basic Services:** The ENGINEER agrees to perform the professional services specified herein, as necessary for the successful prosecution of the PROJECT, including normal civil engineering and land surveying services related to the preconstruction and construction phases of the PROJECT, as described more particularly herein below.
- 1.2 **Preconstruction Phase Services:** Upon the written approval of the OWNER and appropriate regulatory agencies of the Plans, Specifications, Contract Documents and final Opinion of the Construction Cost, and upon receipt of the written authorization of the OWNER to proceed with the Preconstruction Phase, the ENGINEER shall:

- 1.2.1 Furnish Advertisement for Bids to newspapers, trade journals, contractors, minority groups, subcontractors and suppliers, as appropriate.
- 1.2.2 Schedule prebid conference with prospective bidders.
- 1.2.3 Investigate reported omissions and discrepancies in the plans, specifications and contract documents, and formulate and mail addenda as needed.
- 1.2.4 Attend and assist in conducting the bid opening with OWNER and Contractors.
- 1.2.5 Analyze bids received for irregularities, errors or omissions.
- 1.2.6 Review submittals of substitute materials and equipment, and recommend acceptance/rejection to the OWNER.
- 1.2.7 Review proof of bidder's qualifications and recommend contract award or rejection to the OWNER.
- 1.2.8 Prepare and distribute certified tabulation of bids for project to OWNER, Contractors and other parties as appropriate.
- 1.2.9 Prepare and submit the bid package to the Office of Pollution Control. The bid package shall be prepared in accordance with all regulations established by the Office of Pollution Control State Revolving Fund Program.
- 1.2.10 Prepare Notice-of-Award and assist in securing its execution by successful Contractor.
- 1.2.11 Collect proofs of publication, and assist in securing approval of award and procurement procedures, where applicable.
- 1.2.12 Prepare contract documents for signature by Contractor and assist the OWNER in securing their execution, and prepare Notice-to-Proceed to Contractor for PROJECT.
- 1.2.13 Prepare and distribute contract price estimate breakdown to OWNER and Contractor, as appropriate.
- 1.2.14 Assist in scheduling and conducting a pre-construction conference with OWNER, Contractor, utility companies and Office of Pollution Control representatives.

1.2.15 Provide the OWNER two copies of the plans, specifications, and contract documents as requested.

1.2.16 Furnish to the CONTRACTOR up to five additional copies of the plans, specifications, and contract documents for execution after contract award, and for use during construction phase as needed.

1.3 **Project Review**

1.3.1 The ENGINEER shall have a qualified "full-time" resident project representative (RPR) at the project site in order to observe and monitor construction operations and progress. The representative shall prepare and submit daily reports summarizing men, equipment and material on the job site, work in progress, problems noted, and other pertinent information.

1.3.2 The representative will review all contractor's requests for payments and materials in storage and shall consult with the ENGINEER in order to verify the accuracy of construction estimates. Representative shall be present at the site during all critical construction activities and as necessary to witness the progress of the work, as determined by the ENGINEER.

1.3.3 The limits of authority, duties and responsibilities of the RPR are included as Exhibit C to this agreement.

1.4 **Project Administration**

1.4.1 The ENGINEER shall act in a general advisory and consulting capacity to the OWNER throughout the Construction period and shall make periodic visits to the site of the work to observe the progress and quality of the executed work and to determine in general if the work is proceeding in accordance with the contract documents.

1.4.2 Visits and observations by ENGINEER and the Resident Project Representative are not intended to be exhaustive or to extend to every aspect of work in progress, or to involve detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling and similar methods of general observation of the work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative. Based on information obtained during such visits and such

observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents and ENGINEER shall keep OWNER informed of the progress of the work. The responsibilities of ENGINEER contained in this paragraph are expressly subject to the limitations set forth in the following paragraph and other express or general limitations in this Agreement and elsewhere.

- 1.4.3 The purpose of ENGINEER's visits to and representation by the Resident Project Representative at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. On the other hand, ENGINEER shall not, during such visit or as a result of such observations of Contractor's work in progress, supervise, direct or have control over Contractor's work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences or procedures of construction selected by Contractor, for safety precautions and programs incident to the work of Contractor or for any failure of Contractor to comply with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents. During such visits and on the basis of such observations, ENGINEER shall have authority to disapprove of or reject Contractor's work while it is in progress if ENGINEER believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.
- 1.4.5 Clarifications and Interpretations: Field Orders. ENGINEER shall issue necessary clarifications and interpretations of the Contract Documents appropriate to the orderly completion will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.

- 1.4.6 Change Orders and Work Change Directives: ENGINEER shall recommend Change Orders and Work Change Directives to OWNER as appropriate, and shall prepare Change Orders and Work Change Directives as required.
- 1.4.7 ENGINEER shall be available to the Contractor for interpretation of drawings, specifications, and contract documents and prepare construction change orders as they are required for the proper execution of the work.
- 1.4.8 Shop Drawings: ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings and Samples and other data which Contractor is required to submit but only for general conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 1.4.9 Substitutes: ENGINEER shall evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. Acceptance of items which necessitate substantial modification of the plans shall only be done for additional compensation.
- 1.4.10 Inspections and Tests: ENGINEER may require special inspections or tests of the work, and shall receive and review all certificates of inspections, tests and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
- 1.4.11 Disagreements between OWNER and Contractor: ENGINEER shall render the initial decisions on all claims of OWNER and Contractor relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of work. In rendering such decisions, ENGINEER shall be fair and not show partiality to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.

- 1.4.12 Applications for Payment: Based on ENGINEER's on-site observations as an experienced and qualified design professional and on review of Applications for Payment and the accompanying data and schedules:
- 1.4.12.1 ENGINEER shall determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, the work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of such work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe the work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of such work (subject to any subsequent adjustments allowed by the Contract Documents).
- 1.4.12.2 By recommending any payment ENGINEER shall not thereby be deemed to have represented that on-site observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of the work in progress, or involved detailed inspections of the work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment (including final payment) will impose on ENGINEER responsibility to supervise, direct or control such work or for the means, methods, techniques, sequences or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with laws, rules, regulations, ordinances, codes or orders applicable to Contractor's furnishing and performing the work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any of the work, materials or equipment has passed to OWNER free and clear of any liens, claims, security interest or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.

- 1.4.12.3 Contractor's Completion Documents: ENGINEER shall receive, review and transmit to owner with written comments maintenance and operating instructions, schedules, guarantees, Bonds, certificates or other evidence of insurance required by the Contract Documents, certificates of inspection, tests and approvals, and marked-up record documents including Shop Drawings, samples and other data approved and marked-up record Drawings which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. ENGINEER's review of such documents will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, test and approvals that the results certified indicate compliance with the Contract Documents.
- 1.4.12.4 Substantial Completion: Following notice from Contractor that Contractor considers the entire work ready for its intended use, ENGINEER and OWNER, accompanied by Contractor, shall conduct an inspection to determine if the work is substantially complete. If after considering any objections of OWNER, ENGINEER considers the work substantially complete, ENGINEER shall deliver a certificate of Substantial Completion to OWNER and Contractor.
- 1.4.12.5 Final Notice of Acceptability of the Work: ENGINEER shall conduct a final inspection to determine if the completed work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor.
- 1.4.13 Limitation of Responsibilities: ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any subcontractor, any supplier, or of any other person or organization performing or furnishing any of the work. ENGINEER shall not be responsible for Contractor's failure to perform or furnish the work in accordance with the Contract Documents. Furthermore, ENGINEER is not responsible for the suitability or proper performance of any aspect of the project design performed by any other engineer.
- 1.4.14 ENGINEER will submit by 50% of construction time a plan of how operators are to be hired and certified in accordance with Section III.E.(7)(i) and (f) of the SRF Loan Program Regulations.
- 1.4.15 Conduct in company with the OWNER a final inspection of the project for compliance with the information given in the contract documents and approve in writing final payment to the Contractor. The ENGINEER shall not be responsible for the methods and means employed by the contractor in the

performance of the construction work. Further, the ENGINEER shall not be responsible for the safety of the workmen and others who might be injured during the course of construction work by the Contractor, or for property which may be damaged; his obligation under this section of the Contract being limited to the making of periodic observations and reports to the OWNER concerning the compliance of the completed construction work with the Contract Documents.

1.5 Operation and Maintenance Manual

1.5.1 The ENGINEER shall prepare an operation and maintenance manual covering all aspects of the facilities installed under the construction contract. This manual will include but will not be limited to a narrative description of all treatment processes, schematic drawings indicating the general operational characteristics of the facility, recommended maintenance intervals and procedures, a listing of all equipment manufacturers and suppliers utilized for this project, and other information necessary to the successful continued operation and maintenance of the facilities constructed.

1.5.2 The ENGINEER will prepare the operation and maintenance manual in accordance with O.P.C. guidelines and recommendations and will submit the draft, finalized, and approved copies of this manual in accordance with Section III.E.(7)(e) and (f) of the SRF Loan Program Regulations.

1.6 **Record Drawing Preparation:** Upon the completion of all construction awarded in accordance with the terms of this contract, the ENGINEER shall furnish to the OWNER a set of reproducible record drawings covering the work actually installed and a blueline set of same to the Mississippi Office of Pollution Control.

1.7 Startup Services

1.7.1 Once construction of the treatment facility is complete, the ENGINEER will be available for a sixty day startup in period to:

1.7.1.1 Brief municipal officials concerning performance standards and overall plant operation.

1.7.1.2 Brief plant personnel on proper operation and maintenance procedures.

1.7.1.3 Provide assistance with warranty work.

1.7.1.4 Serve in a general advisory and consulting capacity to the OWNER in order to ensure successful initial and continued operation of the plant.

1.8 **One Year Project Performance Certification**

1.8.1 During the first year of operation of the treatment plant, the ENGINEER shall monitor the performance of the facility.

1.8.2 The ENGINEER will make periodic visits to the facility during this period to monitor the overall operation of the facility.

1.8.3 The ENGINEER will carefully monitor all test results conducted within the plant as well as the monthly discharge monitoring reports to determine the performance of the facility.

1.8.4 The ENGINEER will prepare a semi-annual project performance report.

1.8.5 The ENGINEER will prepare and present to the OWNER the final project performance report, certificate and transmittal letter certifying successful one year operation.

1.9 **Additional Services**

1.9.1 The method of reimbursement and payment for services rendered in compliance with additional services shall be agreed upon in writing by the OWNER and the ENGINEER at the time of the authorization for said work. Additional services may include the following types of services:

1.9.1.1. Services related to Change Orders to reflect changes requested by the OWNER.

1.9.1.2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or equal" items; and services after the award of the construction contract in evaluating and determining the acceptability of a substitution which is inappropriate for the project or an excessive number of substitutions.

1.9.1.3. Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of materials, equipment or energy shortages.

- 1.9.1.4. Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective, neglected or delayed work of Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, or (4) default by Contractor.
- 1.9.1.5. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the work.
- 1.9.1.6. Provision of additional assistance in the start-up, testing, adjusting or balancing, or operation of equipment or systems, or arranging for training personnel for operation or maintenance of equipment or systems, following the initial sixty day start-up period.
- 1.9.1.7. Provision of services as an expert witness for the OWNER in connection with litigation or other proceedings involving or relating to the Project.

SECTION 2 - OWNER'S RESPONSIBILITIES

Under the provisions of this Agreement, the OWNER shall:

- 2.1 Provide the necessary support and assistance in a timely manner so as not to delay the services of the ENGINEER.
- 2.2 Provide to the ENGINEER all criteria, design and construction standards and full information as to the OWNER's requirements for the project.
- 2.3 Designate in writing a person authorized to act as the OWNER's representative. The OWNER or his representative shall receive and examine documents submitted by the ENGINEER, interpret and define the OWNER's policies and render decisions and authorizations in writing promptly to prevent unreasonable delay in the progress of the ENGINEER's services.
- 2.4 Furnish to the ENGINEER complete land deed records and title opinions for all lands on the Project site which shall include, but not be limited to, ownership, easements, rights-of-way, encroachments, zoning and deed restrictions, as required and requested by the Engineer.
- 2.5 Furnish existing soils data including but not limited to reports, test borings test pits, probings, subsurface explorations, soil bearings values, percolation test,

ground corrosion and resistivity test, all with appropriate professional interpretation.

- 2.6 Furnish existing laboratory tests, air and water pollution tests, reports, and inspections of samples, materials or other items required by law or by governmental authorities having jurisdiction over this project.
- 2.7 Provide legal, accounting, and insurance counseling services necessary for the PROJECT, legal review of the Construction Contract Documents, and such auditing services as the OWNER may require to account for expenditures of sums paid to the Contractor.
- 2.8 Furnish permits and approvals from all governmental authorities having jurisdiction over this project and from others as may be necessary for completion of the Project.
- 2.9 Furnish above services at the OWNER's expense and in such manner that the ENGINEER may rely upon them in the performance of his services under this Agreement.
- 2.10 Protect and preserve all survey stakes and markers placed at the Project site prior to the assumption of this responsibility by the Contractor and bear all cost of replacing stakes or markers damaged or removed during said time interval.
- 2.11 Guarantee full and free access for the ENGINEER to enter upon all property required for the performance of the ENGINEER's services under this Agreement.
- 2.12 Give prompt written notice to the ENGINEER whenever the OWNER observes or otherwise becomes aware of any defect in the Project or other event which may substantially affect the ENGINEER's performance of services under this agreement.
- 2.13 Compensate the ENGINEER for the services rendered under this Agreement in a timely manner.
- 2.14 Bear the costs of permits, legal advertisements, notices, approvals and other direct expenses incident to completion of the Project.
- 2.15 Provide such inspection or monitoring services by an individual or entity other than ENGINEER as OWNER may desire to verify. That Contractor is complying

with any law, rule, regulation, ordinance, code or order applicable to Contractor's performing and furnishing the work or that Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

- 2.16 Bear all costs incident to compliance with or performance of the requirements of this provision.

SECTION 3 - PERIOD OF SERVICE

- 3.1 The professional services authorized by this Agreement shall be performed in accordance with this Agreement during calendar years 1993, 1994 and 1995.
- 3.2 If ENGINEER's services during construction of the Project are delayed or suspended in whole or in part by OWNER:
- 3.2.1 For more than six months through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, among other things, reasonable costs incurred by ENGINEER in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised; or
- 3.2.2 For more than one year through no fault of ENGINEER, or if ENGINEER for any reason is required to render Construction Phase services more than one year after Substantial Completion is achieved, the rates and amounts of compensation provided for elsewhere in this Agreement will be subject to equitable adjustment to reflect, among other things, changes in the various elements that comprise such rates of compensation.
- 3.3 This Agreement shall commence upon the date set forth herein above, and shall expire at the completion of the one year warranty period.

SECTION 4 - ENGINEER'S COMPENSATION

- 4.1 **Methods of Payment for Services and Expenses of ENGINEER.**
- 4.1.1. For Basic Services. OWNER shall pay ENGINEER for Basic Services performed or furnished under Section 2 on the basis set forth below:

4.1.1.1. Basic Services described in Article One shall be provided for a lump sum cost of \$109,000. This amount may not be exceeded without formally amending this Agreement prior to incurrence of additional costs.

4.1.1.2 The lump sum amount shall be apportioned as follows:

Bid Acceptance and Evaluation: \$7000, billable upon submittal of bid package to the OPC.

Preconstruction Conference: \$500, billable upon issuance of conference minutes.

Project Review and Administration: \$67,500, billable as a percentage of construction completed.

Operation and Maintenance Manual: \$15,000, billable upon approval of Manual by OPC.

Record Drawings: \$3000, billable upon submittal to OWNER and OPC.

Startup Services: \$8000, billable in two equal monthly installments after initiation of plant startup.

One Year Performance Certification: \$8,000, billable in twelve equal monthly payments during the performance period.

4.1.2. For Additional Services. OWNER shall pay ENGINEER for Additional Services performed or furnished as agreed upon authorization of said services.

4.2 Other Provisions Concerning Payments.

4.2.1. Preparation of Invoices. Invoices for Basic and Additional Services and Reimbursable Expenses will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER at least monthly. Invoices are due and payable on receipt.

- 4.2.2. Unpaid Invoices. If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; and, in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges. Payments will be credited first to interest and then to principal. In the event of a disputed or contested billing, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

SECTION 5 - COST CONTROL

- 5.1 The Owner's budgetary requirements and considerations with respect to each work effort or initiative shall be established from time to time by mutual agreement between the OWNER and ENGINEER; and
- 5.2 Opinions of probable construction cost, financial evaluations, feasibility studies, economic analyses of alternate solutions and utilitarian considerations of operations and maintenance costs prepared by ENGINEER hereunder will be made on the basis of ENGINEER'S experience and qualifications, and represent ENGINEER'S best judgment as an experienced and qualified design professional. It is recognized, however, the ENGINEER does not have control over the cost of labor, material, equipment, or services furnished by others, or over market conditions or contractors' methods of determining their prices, and that any utilitarian evaluation of any facility to be constructed or work to be performed on the basis of the work authorized herein must of necessity be speculative until completion of its detailed design. Accordingly, ENGINEER does not guarantee that proposals, bids or actual costs will not vary from opinions, evaluations or studies submitted by ENGINEER to OWNER hereunder.

SECTION 6 - GENERAL PROVISIONS

- 6.1 Ownership of Documents: All Plans, Specifications, Contract Documents and other work product of the ENGINEER for this Project are instruments of services for this Project only, and shall remain the property of the ENGINEER whether the Project is completed or not. Re-use of any instruments of service of the ENGINEER by the OWNER on extensions of this Project or on any other Project without the written permission of the ENGINEER shall be at the OWNER'S risk

and the OWNER agrees to defend, indemnify and hold harmless the ENGINEER from all claims, damages, and expenses including attorneys' fees arising out of such unauthorized re-use of the ENGINEER's instruments of service by the OWNER OR BY OTHERS ACTING THROUGH THE OWNER. Any re-use or adaption of the ENGINEER'S instruments of service occurring after the written agreement of the ENGINEER shall entitle the ENGINEER to further compensation in amount to be agreed upon by the OWNER AND ENGINEER.

- 6.2 Delegation of Duties: Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in, including, but without limitation, moneys that are due, this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to any assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.
- 6.3 Termination: This agreement may be terminated by either party by seven days written notice in the event of substantial failure to perform in accordance with the terms of this Agreement by the other party through no fault of the terminating party. If this Agreement is terminated for failure of the Owner to perform, the ENGINEER shall be paid for service performed to the termination notice date including Reimbursable Expenses due plus Termination Expenses. Termination Expenses are defined as Reimbursable Expenses directly attributable to termination, plus a reasonable fee to be mutually agreed upon at the appropriate time by both parties to account for ENGINEER's rescheduling adjustments, reassignment of personnel and related costs incurred due to termination.
- 6.4 Extent of Agreement: This Agreement, together with such amendments which may be executed from time to time, represents the entire and integrated agreement between the OWNER and the ENGINEER and supersedes all prior negotiations, representations or agreements, either written or oral. This agreement may be amended only by written instrument signed by both the OWNER and the ENGINEER.
- 6.5 Governing Laws: Unless otherwise specified within this Agreement, this Agreement shall be governed by the law of the State of Mississippi.

- 6.6 Litigation: Should litigation occur between the two parties relating to the provisions of this Agreement, all litigation or arbitration expenses, collection expenses, witness fees, court costs and attorneys fees incurred by the prevailing party shall be paid by the nonprevailing party to the prevailing party.
- 6.7 Performance: Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the control of the other or the other's employees and agents.
- 6.8 Validity: In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be and remain valid and binding upon the parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.
- 6.9 Safety: The ENGINEER has not been retained or compensated to provide design and construction review services relating to the Contractor's safety precautions or to means, methods, techniques, sequences, or procedures required for the Contractor to perform his work but not relating to the final or completed structure; omitted services include but are not limited to shoring, scaffolding, underpinning, temporary retainment of excavations and any erection methods and temporary bracing.
- 6.10 Practices: The ENGINEER intends to render the services under this Agreement in accordance with generally accepted professional practices for the intended use of the Project and makes no warranty, either express or implied.
- 6.11 Benefits: Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER, and not for the benefit of any other party.
- 6.12 Binding: OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER, and to the extent permitted herein, the assigns of OWNER and ENGINEER, are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives, and said assigns, of such other party, in respect of all covenants, agreements and obligations of the Agreement.

SECTION 7 - SPECIAL PROVISIONS

- 7.1 Engineer's Insurance: The ENGINEER shall acquire and/or maintain statutory workmen's compensation insurance coverage, errors and omissions, employer's liability and general liability insurance coverage, for the life of this Agreement.
- 7.2 Contractor's Insurance: Prior to the commencement of the construction work, the OWNER shall require the Contractor and any Subcontractors to submit evidence that he (they) have obtained for the period of the construction Contract and the guarantee period comprehensive general liability insurance coverage (including completed operations coverage). This coverage shall provide for bodily injury and property damage arising directly or indirectly out of, or in connection with, the performance of the work under the Construction Contract, and have a limit of not less than **\$1,000,000** for all damages arising out of bodily injury, sickness or death of one person and an aggregate of **\$2,000,000** for damage arising out of bodily injury, sickness and death of two or more persons in any one occurrence. The Property damage portion will provide for a limit of not less than **\$500,000** for all damages arising out of injury to or destruction of property of others arising directly or indirectly out of or in connection with the performance of the work under the Construction Contract and in any one occurrence including explosion, collapse and underground explosions. Included in such coverage will be contractual coverage sufficiently broad to insure the provision of paragraph 7.4 "Indemnity". The comprehensive general liability insurance will include as additional named insureds: the OWNER; the ENGINEER; and each of their officers, agents and employees.
- 7.3 Builders Risk "All Risk" Insurance: Before commencement of the work, the OWNER will require that the Contractor and any Subcontractors submit written evidence that he (they) have obtained for the period of the Construction Contract, Builders Risk "All Risk" Completed Value Insurance Coverage (including earthquake and flood) upon the entire Project which is the subject of the Construction Contract. Such insurance shall include as additional named insureds; the OWNER; the ENGINEER; and each of their officers, agents, employees and any other persons with an insurable interest as may be designated by the OWNER. Such insurance may have a deductible clause not to exceed \$5,000, except that the earthquake deductible may be in accordance with generally accepted insurance practices in the locale where the coverage is issued.
- 7.4 Indemnity: The OWNER will require that any Contractor or Subcontractors performing work in connection with the Drawings and Specifications produced

under this Agreement to hold harmless indemnify and defend, the OWNER and the ENGINEER, their consultants and each of their officers, agents, and employees from any and all liability claims, losses or damage arising out of or alleged to arise from the Contractor's (or Subcontractor's) negligence in the performance of the work described in the Construction Contract Documents, but not including liability that may be due to the sole negligence of the OWNER, the ENGINEER, their consultants or their officers, agents and employees.

- 7.5 Audit Clause: Office of Pollution Control and its representatives will be given access to and the right to audit, inspect, copy and examine books, financial records and other documents relating directly to the receipt and disbursement of SRF funds.

SECTION 8 - EXECUTION

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be signed by their duly authorized representatives on the day and year first above written.

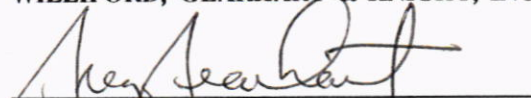
CITY OF CLINTON, MISSISSIPPI


Rosemary Aultman, Mayor

ATTEST:


Nelson Byrd, City Clerk

WILLIFORD, GEARHART & KNIGHT, INC.


Greg A. Gearhart, P.E., Principal

ATTEST:


Nancy Smith, Administrative Assistant