

City of Hattiesburg, MS

*200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401*



Meeting Agenda

Thursday, December 15, 2011

4:30 PM

Special Called Meeting

Council Chambers

City Council

2011-0398

Consider the need to go into executive session to be briefed, to discuss, and to consider proposed settlement of the U.S.A. Yeast pending litigation and contractual matter.

Attachments:

[USA Yeast Agreement](#)

[USA Yeast - Ground Lease Agreement](#)

[USA Yeast - Evaporator Plant Agreement](#)

[USA Yeast - Memorandum of Agreement](#)

[executed USA Yeast - Resolution 2011-189](#)

[12-15-11 Statement from Council-USA Yeast](#)



City of Hattiesburg, MS

200 Forrest St.
P.O. Box 1898
Hattiesburg, MS 39401

Master

File Number: 2011-0398

File ID: 2011-0398

Type: Resolution

Status: Passed

Version: 1

Reference:

In Control: City Council

Requester: Kim Bradley

Cost:

File Created: 12/15/2011

Brief Title: Executive Session - U.S.A. Yeast proposed settlement

Final Action: 12/15/2011

Minute Book Number: MB 2011-6/201-204

Title:

Consider the need to go into executive session to be briefed, to discuss, and to consider proposed settlement of the U.S.A. Yeast pending litigation and contractual matter.

Notes:

Agenda Date:

Agenda Number:

Sponsors:

Enactment Date:

Attachments: USA Yeast Agreement, USA Yeast - Ground Lease Agreement, USA Yeast - Evaporator Plant Agreement, USA Yeast - Memorandum of Agreement, executed USA Yeast - Resolution 2011-189, 12-15-11 Statement from Council-USA Yeast

Enactment Number:

Contact:

Meeting Date: 12/15/2011

Drafter: Debbie Bernardo

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council	12/15/2011	Approve				Pass

Action Text: A MOTION was made by Council Member Carroll and seconded by Council Member Delgado to Consider the need to go into executive session to be briefed, to discuss, and to consider proposed settlement of the U.S.A. Yeast pending litigation and contractual matter, in accordance with MS Code Section 25-41-7(b).

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - Bradley, Delgado, Carroll and Ware

Absent: 1 - Naylor

A MOTION was made by Council Member Carroll and seconded by Council Member Delgado to go into executive session to be briefed, to discuss, and to consider proposed settlement of the U.S.A. Yeast pending litigation and contractual matter, in accordance with MS Code Section 25-41-7(b).

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - Bradley, Delgado, Carroll and Ware

Absent: 1 - Naylor

Those present for the executive session were the Mayor; City Council members Bradley, Delgado, Carroll and Ware; Mr. Kuyrkendall; Mr. Boutwell; Attorney Lawrence; Mr. Brown; Ms. Bernardo; Nathan Husman of Neel-Schaffer; and attorneys John Milner and Larry Allison of Brunini Associates.

A MOTION was made by Council member Carroll and seconded by Council member Delgado to approve an Agreement, a Memorandum of Agreement, a Ground Lease Agreement, and an Evaporator Plant Operation and Maintenance Agreement between the City of Hattiesburg and USA Yeast Company, LLC, effective December 15, 2011 for a term that ends on or about December 31, 2021, and to authorize Mayor to execute the same.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - Bradley, Delgado, Carroll and Ware

Absent: 1 - Naylor

A MOTION was made by Council member Carroll and seconded by Council member Delgado to come out of executive session at 5:35 p.m.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - Bradley, Delgado, Carroll and Ware

Absent: 1 - Naylor

Council member Naylor arrived at 6:15 p.m.

A MOTION was made by Council member Carroll and seconded by Council member Delgado to go back into executive session.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Ware and Naylor

A MOTION was made at 6:25 p.m. by Council member Carroll and seconded by Council member Delgado to come out of executive session.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Ware and Naylor

A MOTION was made at 6:27 p.m. by Council member Carroll and seconded by Council member Delgado to temporarily recess to sign documents.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Ware and Naylor

A MOTION was made by Council member Carroll and seconded by Council member Delgado to re-convene the meeting at 6:40 p.m.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Ware and Naylor

Director of Administration/City Clerk, Eddie Myers, entered the room.

A MOTION was made by Council member Carroll and seconded by Council member Delgado to Adopt a Resolution requesting the Legislature of the State of Mississippi to enact certain local and private legislation relating to USA Yeast Company, LLC.

There being no discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 5 - Bradley, Delgado, Carroll, Ware and Naylor

Following the vote, Council President Bradley read aloud a short statement regarding the action taken by the Council during executive session.

Yea: 4 President Bradley
 Council Member Delgado
 Council Member Carroll
 Vice President Ware

TEL-No Vote: 0

Text of Legislative File 2011-0398

Title

Consider the need to go into executive session to be briefed, to discuss, and to consider proposed settlement of the U.S.A. Yeast pending litigation and contractual matter.

Summary

Consider executive session - U.S.A. Yeast proposed settlement

Budget Information

Expenditure Type

Purchasing Item

Publication Information

AGREEMENT

This Agreement ("Agreement") is made and entered into by and between the **CITY OF HATTIESBURG, MISSISSIPPI**, a municipal corporation whose address is 200 Forrest Street, Post Office Box 1898 (39403), Hattiesburg Mississippi 39401 (the "City"), and **USA YEAST COMPANY, LLC**, an Alabama limited liability company whose address is 457 J.M. Tatum Industrial Drive, Hattiesburg, Mississippi ("USA Yeast").

ARTICLE I

DESIGN AND CONSTRUCTION OF USA YEAST PRETREATMENT FACILITY

1.1 Pretreatment Plant. USA Yeast owns and operates a manufacturing facility located within the City. USA Yeast manufactures baker's yeast in the facility. USA Yeast discharges the wastewater from its manufacturing operations into the City's sanitary sewer system. The effluent is currently discharged into the City's sanitary sewer system without pretreatment. USA Yeast agrees to design and construct a wastewater pretreatment facility (the "Evaporator Plant") for the purpose of pretreating its effluent before it is discharged into the City's sanitary sewer system, all in accordance with the provisions set forth in this Agreement.

1.2 Design and Construction of Evaporator Plant. USA Yeast shall be solely responsible for the design and construction of the Evaporator Plant. USA Yeast agrees to proceed with the design and construction of the Evaporator Plant immediately upon execution of this Agreement by the Parties.

1.3 Grant Application. As provided below in Article II, Section 2.1, the City agrees to make application to the Mississippi Development Authority ("MDA") for a grant in the amount of \$5.0 million, which grant, if approved, will be issued by or under authority of the United States Department of Housing and Urban Development ("HUD") and will be administered on behalf of HUD by MDA.

1.4 Cost of Design and Construction. USA Yeast has obtained preliminary estimates that indicate the total cost of the design and construction of the Evaporator Plant will exceed the amount of \$8.5 million. USA Yeast shall be solely responsible and liable for the cost of design and construction of the Evaporator Plant, except to the extent that the net proceeds of the grant may be utilized to purchase certain equipment and/or components that will be utilized in the construction of the Evaporator Plant as provided below in Article II, Section 2.5.

ARTICLE II

KATRINA SUPPLEMENTAL CDBG ECONOMIC DEVELOPMENT GRANT

2.1 Grant Application. As stated above in Article I, Section 1.3, the City agrees to make application to MDA for a Katrina Supplemental CDBG Economic Development Grant ("CDBG") in the amount of \$5.0 million. The CDBG, if approved, will be issued by or under authority of the United States Department of Housing and Urban Development ("HUD") and will be administered on behalf of HUD by MDA. The City shall proceed with the grant application process immediately upon execution of this Agreement by the Parties.

2.2 USA Yeast Cooperation. USA Yeast shall cooperate with the City to enable the City to prepare and submit the application for the CDBG, including providing all such information about USA Yeast and its operations, the Evaporator Plant and other matters as may be required to enable the City to complete the application process. In the event the CDBG is approved and issued, USA Yeast agrees to comply with all laws, regulations and rules governing the CDBG, and further agrees to cooperate with the City to enable the City to comply with all such laws, regulations and rules.

2.3 CDBG Conditioned on Execution of this Agreement. The Parties have been informed by MDA, and therefore acknowledge and agree, that the Parties' proper execution of this Agreement will be a condition of the CDBG, if the CDBG is approved and issued.

2.4 Use of CDBG Funds by City. If the CDBG is approved and issued, the Parties agree that the CDBG funds shall be used to pay the reasonable costs and expenses incurred by the City that are eligible to be paid from the CDBG funds, including eligible costs and expenses incurred in connection with the application for the CDBG, eligible engineering fees and expenses, eligible legal fees and expenses, eligible fees and expenses of the administrator of the CDBG, and any other costs and expenses of the City that are eligible to be paid from the CDBG funds.

2.5 Use of CDBG Funds by USA Yeast. If the CDBG is approved and issued, the Parties agree that the balance of the CDBG funds, after payment of the eligible costs and expenses referenced in Article II, Section 2.4, (the "Net CDBG Funds") may be utilized to pay for the purchase of certain equipment and/or components to be utilized in the construction of the Evaporator Plant, as described in the CDBG application and in the grant agreement to be entered into between the City and MDA.

2.6 Ownership of Equipment and/or Components Purchased with Net CDBG Funds. The Parties have been informed by MDA, and therefore acknowledge and agree, that applicable laws, regulations and rules governing the CDBG will require that the City retain title to any equipment or components of the Evaporator Plant for which any of the Net CDBG Funds are expended. The Parties have been further informed by MDA, and therefore acknowledge and agree, that the City shall be required to retain title to any such equipment or components from the date purchased until the expiration of the term of this Agreement. Upon expiration of the term of this Agreement, such equipment or components shall be abandoned by the City, and title to same

shall automatically, without further act by either Party, vest in USA Yeast. Title to all remaining equipment and components, for which no Net CDBG Funds are expended, shall vest and remain in USA Yeast from the date of purchase.

2.7 Ground Lease. Because the City will be required to retain title to any equipment or components of the Evaporator Plant for which any of the Net CDBG Funds are expended, and in order to comply with the conditions of the CDBG, USA Yeast agrees to execute a ground lease to the City covering a separately surveyed portion of USA Yeast's property on which such equipment and components will be installed or constructed, and granting to the City a non-exclusive easement across USA Yeast's property for ingress and egress to such leased property (the "Ground Lease"). The Ground Lease shall be in a form substantially similar to the document that is attached hereto as Exhibit A, and shall be executed by the Parties contemporaneously with the execution of this Agreement. Provided, however, that the Ground Lease shall not become effective unless and until the CDBG is approved and issued, and its term shall expire upon the expiration of the term of this Agreement. Further provided, that the rights and obligations of the Parties under the indemnity provision contained in the Ground Lease shall survive the termination of the Ground Lease and shall survive the termination of this Agreement. A breach of any provision of the Ground Lease by either Party shall also constitute a breach of this Agreement by such Party.

2.8 Operation and Maintenance of Evaporator Plant. USA Yeast, at its sole cost and expense, agrees to be solely responsible for operation and maintenance of the Evaporator Plant, including any portion of the Evaporator Plant that is located on the premises that is leased to the City under the Ground Lease. Therefore, USA Yeast agrees to execute an operating and maintenance agreement in a form substantially similar to the document that is attached hereto as Exhibit B (the "Evaporator Plant Operation and Maintenance Agreement"). Such agreement shall be executed by the Parties contemporaneously with the execution of this Agreement. Provided, however, that such agreement shall not become effective until the construction of the Evaporator Plant has been completed and the plant becomes operational. In that connection, the City acknowledges that USA Yeast has informed it that the design and construction of the Evaporator Plant could require twelve (12) to eighteen (18) months to complete. The term of such agreement shall expire upon the expiration of the term of this Agreement. Provided, however, that the rights and obligations of the Parties under the indemnity provision contained in such agreement shall survive the termination of the agreement and shall survive the termination of this Agreement. A breach of any provision of the Evaporator Plant Operation and Maintenance Agreement by either Party shall also constitute a breach of this Agreement by such Party.

2.9 If CDBG Application Not Approved, or CDBG Not Issued. In the event the City properly submits the CDBG application, but MDA or HUD decline to approve the application or decline to issue the CDBG, then such action by MDA or HUD shall not affect the rights and obligations of the Parties under this Agreement, except that the City shall not retain title to any part of the Evaporator Plant designed and constructed by USA Yeast without benefit of the CDBG, and the provisions contained in this Agreement requiring the execution of the Ground Lease and the Evaporator Plant Operation and Maintenance Agreement will be abrogated and cancelled without further action by either Party.

ARTICLE III

SALE AND PURCHASE OF WATER

3.1 Sale and Purchase of Water. The City agrees to supply and sell to USA Yeast from the City's water system potable water in quantities of up to one million (1,000,000) gallons per day.

3.2 Service Interruptions and Shortfalls in Delivery of Water. In the event of a temporary interruption or curtailment in the City's ability to provide potable water to USA Yeast in quantities stated above in Article III, Section 3.1, and the interruption or curtailment is attributable to a shortage of water, the presence of non-potable water in the City's water system, a failure or breakdown of the City's water treatment system, a break or leak in the City's water pipeline, or other events, the City shall have a reasonable period of time within which to make necessary repairs and/or to take such other actions as may be reasonably required in order to enable it to restore full service. Upon the occurrence of any such event, the City shall ensure that USA Yeast is promptly notified and, upon inquiry by USA Yeast, shall provide USA Yeast such information as is available to the City's Director of Water and Sewer concerning the status of the City's efforts to restore service and the City's estimate as to when the problem will be likely be resolved.

3.3 Ownership and Maintenance of Water Pipelines. The City, at its own cost and expense, agrees to maintain and keep in good working order and condition the existing water pipeline from its water main to the property line of USA Yeast's manufacturing facility, such water pipeline being owned by the City. The City agrees that if any portion of its water pipeline is replaced, the size of the replacement pipe shall be sufficient to enable the City to provide the maximum quantity of water to be supplied under this Agreement. USA Yeast, at its own cost and expense, agrees to maintain and keep in good working order and condition the exiting water pipeline and any new water pipeline located on its property, such water pipelines being owned by USA Yeast.

3.4 Rates. The City agrees to sell potable water to USA Yeast at the following rates:

(a) From the date of this Agreement through December 31, 2017, the City shall provide water to USA Yeast at the rate of eighty cents (\$0.80) per one thousand (1,000) gallons;

(b) From January 1, 2018, through December 31, 2021, the City shall provide water to USA Yeast at the rate of one dollar and twenty cents (\$1.20) per 1,000 gallons;

(c) After December 31, 2021, the City shall provide water to USA Yeast at the rate set by the then existing City ordinance, as the ordinance may be amended from time to time; provided, however, that USA Yeast shall not be charged a rate that exceeds the rate charged to any other large industrial user.

3.5 Water Meter. The City has installed a water meter at USA Yeast's property line, and the City agrees to ensure that the meter is properly calibrated and to keep the meter fully operational.

3.6 City Water Ordinance. Except as is expressly provided to the contrary in this Article of this Agreement, the City shall provide water service to USA Yeast in accordance with the provisions of the City's ordinance, as the ordinance may be amended from time to time.

ARTICLE IV

TREATMENT OF USA YEAST INDUSTRIAL EFFLUENT

4.1 Treatment of USA Yeast Wastewater. The City agrees to accept and treat the industrial effluent discharged by USA Yeast into the City's sanitary sewer system in accordance with the provisions of this Agreement.

4.2 Quantity. The City agrees to accept into its sanitary sewer system and to treat in its wastewater treatment system up to 800,000 gallons of USA Yeast's wastewater effluent per day.

4.3 pH of Effluent. USA Yeast agrees that the pH of its effluent shall be maintained within a range of 5.5 and 9.5.

4.4 Loading of Effluent.

(a) From the date of this Agreement to the date on which the Evaporator Plant becomes operational, but not later than July 1, 2013, USA Yeast shall continue to comply with its current NPDES Pretreatment Permit;

(b) From the date on which the Evaporator Plant becomes operational, but not later than July 1, 2013, and through the remaining term of this Agreement, USA Yeast agrees that its effluent loads shall not exceed 10,000 pounds per day of five-day biochemical oxygen demand ("BOD₅"), and 6,000 pounds per day of total suspended solids ("TSS");

(c) After the date on which the Evaporator Plant becomes operational and through the remaining term of this Agreement, the City agrees to support USA Yeast's request to the Mississippi Environmental Quality Permit Board to modify its current NPDES Pretreatment Permit to establish limits for the BOD₅ and TSS loadings referenced above, and to require only "report only" for daily average concentrations and daily maximum concentrations of BOD₅ and TSS in the modified pretreatment permit.

(d) After December 31, 2021, USA Yeast's effluent shall meet the loading limits and concentrations for BOD₅ and TSS required by the then existing City ordinance, as the ordinance may be amended from time to time.

4.5 Treatment of Effluent if Evaporator Plant Temporarily Goes Off-Line. The Parties acknowledge and agree that if the Evaporator Plant should, for any reason, go off-line and become temporarily unable to pretreat USA Yeast's effluent, the provisions of the City's Sewage Disposal Ordinance, including Sections 21-24 and 21-27 shall govern (provided, however, that the limits prescribed in subparagraphs 8 and 10 of Section 21-24(C) shall be amended and replaced by the limits set forth in Article IV, Section 4.4 of this Agreement). Provided, however, that the City hereby confirms that it will work cooperatively with USA Yeast in such an event, including taking reasonable actions in an effort to prevent the occurrence of any effects and conditions that could cause the City to reject the effluent. USA Yeast shall be liable for all direct and consequential damages, expenses, charges, costs, fines and liabilities that the City may incur as a result of any such discharge by USA Yeast.

4.6 Service Interruptions. In the event of a temporary interruption or curtailment in the City's ability to transport or treat USA Yeast's effluent in the quantity referenced above in Article IV, Section 4.2, and the interruption or curtailment is attributable to a breakdown in the pumping station, or a break or leak in the City's effluent pipeline, or a breakdown in the City's treatment system, or other events, the City shall have a reasonable period of time within which to make necessary repairs and/or to take such other actions as may be reasonably required in order to enable it to restore full service. Upon the occurrence of any such event, the City shall ensure that USA Yeast is promptly notified and, upon inquiry by USA Yeast, shall provide USA Yeast such information as is available to the City's Director of Water and Sewer concerning the status of the City's efforts to restore service and the City's estimate as to when the problem will likely be resolved.

4.7 Ownership and Maintenance of Effluent Pipeline. The City, at its own cost and expense, agrees to maintain and keep in good working order and condition the existing pumping station, as well as the effluent pipeline from the pumping station to the property line of USA Yeast, where it joins the City's pipeline, such pumping station and pipeline being owned by the City. The City agrees that if the pumping station or any portion of this pipeline is replaced, the replacement shall be sufficient to handle the maximum quantity of effluent that the City agrees to accept from USA Yeast under the provisions of this Agreement. USA Yeast, at its own cost and expense, agrees to maintain and keep in good working order and condition any other existing effluent pipeline and any new effluent pipeline located on its property that delivers industrial effluent and other wastewater from USA Yeast's manufacturing facility to the City's sanitary sewer system, such pipelines being owned by USA Yeast.

4.8 Rates. The City hereby agrees to treat USA Yeast's effluent discharged into the City's sanitary sewer system at the following rates:

(a) From the date of this Agreement to the date on which the Evaporator Plant becomes operational, but no later than July 1, 2013, the City shall continue to treat USA Yeast's effluent at a monthly rate equal to the rate per one thousand (1,000) gallons currently charged USA Yeast for treatment of its effluent, according to the existing rate table shown on Exhibit "C";

(b) From the date on which the Evaporator Plant becomes operational, but not later than July 1, 2013, through December 31, 2017, the City shall treat USA Yeast's

effluent at a monthly rate of two dollars (\$2.00) per one thousand (1,000) gallons for the first 100,000 gallons, and one dollar and sixty-six cents (\$1.66) per 1,000 gallons for the remainder;

(c) From January 1, 2018, through December 31, 2021, the City shall provide treatment of USA Yeast's effluent at a monthly rate of two dollars and twenty cents (\$2.20) per one thousand (1,000) gallons for the first 100,000 gallons, and one dollar and eighty-three cents (\$1.83) per 1,000 gallons for the remainder; and

(d) After December 31, 2021, the City shall provide treatment of USA Yeast's effluent at the rate set by the then existing City ordinance, as the ordinance may be amended from time to time; provided, however, that USA Yeast shall not be charged a rate that exceeds the rate charged to any other large industrial user.

4.9 Installation of Effluent Flow Meter. The City agrees, at the City's sole cost and expense, to purchase, install and maintain a properly-calibrated flow meter for metering effluent discharged by USA Yeast into the City's sanitary sewer system.

4.10 City Sewage Disposal Ordinance. Except as is expressly provided to the contrary in this Article of this Agreement, the City shall provide sewage treatment service to USA Yeast in accordance with the provisions of the City's ordinance, as the ordinance may be amended from time to time.

ARTICLE V

ATTORNEY GENERAL OPINION AND LOCAL AND PRIVATE LEGISLATION

5.1 Attorney General Opinion. The Parties agree that prior to execution of this Agreement, the City shall seek from the Mississippi Attorney General an opinion that: (i) the City has the authority to enter into this Agreement, including the related Evaporator Plant Operation and Maintenance Agreement and Ground Lease which are attached to this Agreement and incorporated herein by reference, (ii) this Agreement, including the related Evaporator Plant Operation and Maintenance Agreement and Ground Lease which are attached to this Agreement and incorporated herein by reference, are each fully binding on and enforceable by both Parties from the date on which they are executed through the term of the current City administration, and (iii) this Agreement, and including the related Evaporator Plant Operation and Maintenance Agreement and Ground Lease which are attached to this Agreement and incorporated herein by reference, are not voidable by successor City administrations and are each fully binding on and enforceable by both Parties from the date on they are executed by the Parties through their respective approximately ten year terms.

5.2 Local and Private Legislation.

5.2.1 Although the Parties agree that this Agreement, as well as the related Evaporator Plant Operation and Maintenance Agreement and Ground Lease, will be

binding upon and enforceable by the Parties from the date(s) on which they are executed through the end of the term of the current City administration on July 13, 2013, and even though the City believes that the existing laws of this State render the agreements non-voidable by future City administrations and, thus, binding on future City administrations, USA Yeast nevertheless wishes to ensure that the agreements will not be voidable by future City administrations by seeking local and private legislation which will ratify and confirm the agreements as to successor City administrations in order to confirm their enforceability against successor administrations.

5.2.2 Therefore, the City agrees to adopt a resolution requesting the enactment of local and private legislation that will ratify and confirm the authority of the City's current administration to bind successor City administrations by execution of one or more agreements that extend beyond the term of the current City administration when the subject agreements are made a condition of a Katrina Supplemental CDBG Economic Development Grant issued to the City by the United States Department of Housing and Urban Development under a federal program that is administered by the Mississippi Development Authority, and when the subject agreements are mandated by the grant agreement entered into between the City and the Mississippi Development Authority.

5.2.3 The City further agrees to request each member of the local legislative delegation to agree to sponsor and support such local and private legislation, and to pre-file a bill as soon as practicable before the 2012 Regular Session of the Mississippi State Legislature.

5.2.4 Provided, however, that the City's obligations with respect to the requested local and private legislation shall be satisfied when the resolution requesting the legislation is passed and the City has requested the local delegation to agree to sponsor and support the legislation, as provided above in Article V, Section 5.2.3. Neither the failure of any member of the local delegation to sponsor or support the requested local and private legislation, nor the ultimate failure of the legislature to enact such local and private legislation shall affect the rights or obligations of the Parties under this Agreement or under the related agreements that are attached hereto as **Exhibits B and C.**

ARTICLE VI

SETTLEMENT OF PENDING CONTROVERSY

6.1 Pending Controversy Between the Parties. There is presently pending in the Chancery Court of Forrest County, Mississippi, an action, being Civil Action No. 11-0355 on the docket of that Court, involving the mutual rights and obligations of the Parties under a certain agreement that was dated and executed by the Parties on or about December 4, 2001. The City, by Council resolution enacted and adopted on November 4, 2011, unilaterally declared the agreement to be void. Nevertheless, both Parties to this Agreement intend, and therefore agree, that the execution of this Agreement by both Parties shall effect a compromise and settlement of the litigation, and shall resolve all the controversies between them with respect to the agreement that is at issue in that litigation.

6.2 Mutual Release and Excluded Claims.

6.2.1 Mutual Release. The City, for itself and on behalf of its officers, Council members, agents, servants, employees, representatives, insurers, successors and assigns, and USA Yeast, for itself and on behalf of its parents, subsidiaries, affiliates, shareholders, members, officers, directors, agents, servants, employees, representatives, insurers, successors and assigns, each fully, completely and finally releases and discharges the other and the other's agents, servants, employees, representatives, insurers, successors, and assigns from any and all claims, demands, damages, costs, expenses, actions and causes of action of every kind or nature whatsoever which arose, or which could have arisen, under the contract at issue in the litigation referenced above in Article VI, Section 6.1.

6.2.2 Claims Excluded from Mutual Release. Provided, however, the Parties agree that the following claims shall be excluded from the claims released by the provisions of the Mutual Release set forth above in Article VI, Section 6.2.1:

(a) South Lagoon Bio-Dredging. The City seeks a 50% reimbursement from USA Yeast for the costs incurred by the City in bio-dredging of the South Lagoon. The costs incurred amount to \$52,161.90; therefore, the reimbursement sought from USA Yeast is in the amount of \$26,080.95;

(b) Repairs to the Sewer Pump Station. The City seeks a 50% reimbursement from USA Yeast for the costs incurred by the City in making repairs to the sewer pump station. The costs incurred by the City amount to \$575,300.04; therefore, the reimbursement sought from USA Yeast is in the amount of \$287,650.02;

(c) Repairs to the Sewer Force Main. The City has not paid invoices for repairs to the sewer force main damaged by the temperature of effluent discharged by USA Yeast. The invoices for such repairs amount to \$212,589.78. The City seeks to have such invoices paid direct by USA Yeast to the contractor.

(d) Ongoing Water and Sewer Charges. Ongoing charges for water and sewer services provided to USA Yeast are also excluded from the claims that are subject to the Mutual Release.

6.3 Dismissal of Civil Action No. 11-0355. Having settled and compromised Civil Action No. 11-0355, the Parties agree to submit to the Chancery Judge an agreed order dismissing the action, and providing that each party shall bear its own costs.

ARTICLE VII

TERM OF AGREEMENT

7.1 Term. The term of this Agreement shall be approximately ten (10) years. It shall become legally binding on the Parties upon mutual execution, and shall terminate at 12:00 o'clock midnight CST, on December 31, 2021.

ARTICLE VIII

MISCELLANEOUS

8.1 Representations and Warranties.

8.1.1 Organization of the City. The City represents and warrants that (i) it is a governmental body, a municipal corporation, duly constituted and validly existing under the laws of the State of Mississippi, with full right, power and authority under its charter documents and under the laws of the State of Mississippi to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (ii) it has the power to carry on its business as now being conducted and as proposed to be conducted.

8.1.2 Authorization and Enforceability Against the City. The City represents and warrants that it has taken all necessary actions to authorize the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the City, and constitutes the legal, valid and binding obligation of the City that became enforceable upon execution.

8.1.3 Organization and Qualification of USA Yeast. USA Yeast represents and warrants that (i) it is a limited liability company, duly organized and existing under the laws of the State of Alabama, and is qualified to do business in Mississippi, with all right, power and authority under its organizational documents and under the laws of the state of its organization to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (ii) has the power to carry on its business as now being conducted and as proposed to be conducted.

8.1.4 Authorization and Enforceability Against USA Yeast. USA Yeast represents and warrants that it has taken all necessary actions to authorize the execution and delivery of this Agreement, and that the person executing this Agreement on behalf of USA Yeast has been duly authorized to do so. This Agreement has been duly executed and delivered by USA Yeast, and constitutes the legal, valid and binding obligation of USA Yeast that became enforceable upon execution.

8.2 Force Majeure. If either Party shall be unable to carry out any obligation under this Agreement due to Force Majeure, this Agreement shall remain in effect, but such obligation shall be suspended for the period necessary as a result of the Force Majeure.

8.3 Amendments, etc. No amendment or waiver of any provision of this Agreement shall be effective unless the same is in writing and signed by all Parties to this Agreement. Further, this Agreement supersedes any and all prior agreements, either written or oral, between the Parties with respect to the subject matter of this Agreement.

8.4 Assignment. No Party to this Agreement may assign delegate, pledge, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

8.5 Delivery of Notice. All notices and other communications required or permitted to be given under the provisions of this Agreement shall be in writing [including by telecopier and electronic mail ("e-mail")] and shall be mailed, telecopied, e-mailed or delivered in person, as follows:

If Notice is to USA Yeast by mail or in person:

USA Yeast
ATTN: Mike Lavallee
457 J. M. Tatum Industrial Drive
Hattiesburg, Mississippi 39401

If Notice is to USA Yeast by telecopier:

USA Yeast
ATTN: Mike Lavallee
Telecopier Number: 601-602-0057

If Notice is to USA Yeast by electronic mail:

USA Yeast
ATTN: Mike Lavallee
Email Address: mlavallee@usayeast.com

If Notice is to City by mail:

City of Hattiesburg
ATTN: City's Director of Water and Sewer
Post Office Box 1898
Hattiesburg, MS 39403-1898

If Notice is to City in person:

City of Hattiesburg
ATTN: City's Director of Water and Sewer
200 Forrest Drive
Hattiesburg, MS

If Notice is to City by telecopier:

City of Hattiesburg
ATTN: City's Director of Water and Sewer
Telecopier Number: 601-545-4689

If Notice is to City by electronic mail:

City of Hattiesburg
ATTN: City's Director of Water and Sewer
Email Address: mboutwell@hattiesburgms.com

Notice to any Party may also be provided to the attention of such other person and to such other address, telecopier number or e-mail address as may be designated by such Party in a written notice to the other Party to this Agreement.

8.6 Severability. Any provision of this Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions of this Agreement, or affecting the validity, enforceability or authorization of such provision in any other jurisdiction.

8.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

8.8 Governing Law and Interpretation. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REFERENCE TO THE CONFLICT OF LAW PRINCIPLES THEREOF. Additionally, should any provision of this Agreement require interpretation or construction, this Agreement shall be interpreted and construed without any presumption that the provisions of this Agreement are to be construed against the Party which itself, or through its agents or attorneys, prepared this Agreement. The Parties and their respective attorneys have fully and equally participated in the preparation, negotiation, review and approval of this Agreement.

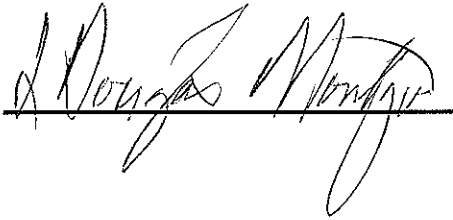
8.9 Headings. The Article, Section and any Subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement

8.10 Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which then together shall constitute one and the same agreement.

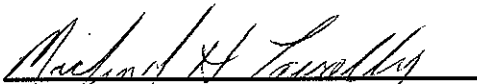
8.11 Enforcement, Recovery of Costs and Expenses. Should it become necessary for any Party to this Agreement, or to the Evaporator Plant Operation and Maintenance Agreement or to the Ground Lease which are attached to this Agreement and incorporated herein by reference, to engage an attorney (or attorneys) to take any action (through litigation or otherwise) to enforce any provision of this Agreement, then the prevailing party shall be entitled to recover its actual costs and expenses, including reasonable attorneys' fees, in addition to any other or further relief to which it may be entitled.

IN WITNESS WHEREOF, the Parties hereto have each caused this Agreement to be executed by their duly authorized officers on this the 15th day of December, 2011.

WITNESS:

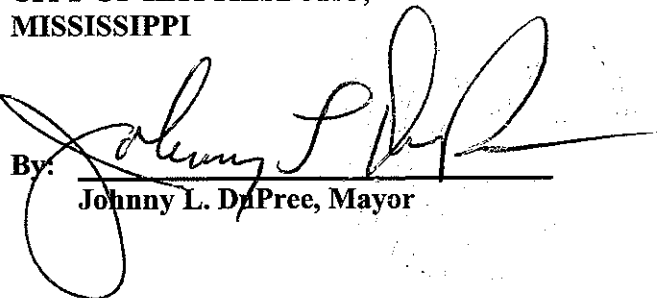


USA YEAST COMPANY, LLC

By: 

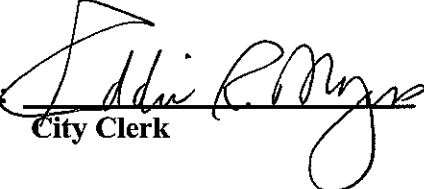
Michael H. Lavalley, Manager

**CITY OF HATTIESBURG,
MISSISSIPPI**

By: 

Johnny L. DaPree, Mayor

ATTEST:

By: 

City Clerk

AGREEMENT - EXHIBIT A

GROUND LEASE

STATE OF MISSISSIPPI

COUNTY OF FORREST

GROUND LEASE AGREEMENT

THIS GROUND LEASE (this "Lease") is made and entered into by and between **USA YEAST COMPANY, LLC**, an Alabama limited liability company ("**Lessor**"), and the **CITY OF HATTIESBURG, MISSISSIPPI**, a municipal corporation organized under the laws of the State of Mississippi ("**Lessee**").

WHEREAS, Lessor is the owner of a tract of land improved with a manufacturing plant for the production of baker's yeast located at 457 J. M. Tatum Industrial Drive, Hattiesburg, Forrest County, Mississippi 39401 (the "**USA Yeast Manufacturing Facility**"); and

WHEREAS, Lessor and Lessee have entered into an Agreement dated on or about December 15, 2011, (the "**Agreement**") and this Lease is made by and executed on behalf of Lessor and Lessee in compliance with Article II, Section 2.7, of the Agreement; and

NOW, THEREFORE, for and in consideration of the promises, terms, conditions and obligations contained herein and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee hereby agree as follows:

1. **Leased Premises**. Lessor hereby leases to Lessee and Lessee hereby leases from Lessor a certain parcel located on the USA Yeast Manufacturing Facility site (the "**Leased Premises**"), which parcel, together with an easement for ingress and egress (the "**Easement**"), is more particularly described in **Exhibit "1"**, which is attached hereto and incorporated herein by reference. The Leased Premises and the Easement are further depicted on the survey plat attached hereto and incorporated herein by reference as **Exhibit "2"**. The Lessor and Lessee acknowledge and agree that certain equipment and/or components that are to be utilized by Lessor in the construction of a wastewater pretreatment facility (the "**Evaporator Plant**") will be installed or constructed on the Leased Premises. The Evaporator Plant will pretreat Lessor's effluent before the effluent is discharged into Lessee's sanitary sewer system. Lessor and Lessee

acknowledge and agree that Lessor shall be solely responsible and liable for the cost of design and construction of the Evaporator Plant, including the equipment and/or components installed or constructed on the Leased Premises, as provided in the Agreement.

2. CDBG Grant. Pursuant to the terms of the Agreement, Lessee has agreed to make application to the Mississippi Development Authority ("MDA") for a Katrina Supplemental CDBG Economic Development Grant ("CDBG") in the amount of \$5,000,000 to fund a portion of the costs of Lessor's Evaporator Plant. The Parties have been informed by MDA, and therefore acknowledge and agree, that applicable laws, regulations and rules governing the CDBG will require that Lessee retain title to any equipment or components of the Evaporator Plant for which any of the CDBG funds are expended. The Parties have been further informed by MDA, and therefore acknowledge and agree, that Lessee shall be required to retain title to any such equipment or components from the date purchased until the expiration of the term of the Agreement. Upon expiration of the term of the Agreement, such equipment or components shall be abandoned by the Lessee, and title to same shall automatically, without further act by either Party, vest in Lessor. Title to all remaining equipment and components, for which no CDBG funds are expended, shall vest and remain in Lessor from the date of purchase.

3. Term. The term of this Lease shall be approximately ten (10) years (the "Term"), commencing on the date on which it is executed by the Parties and terminating at 12:00 o'clock midnight CST, on December 31, 2021, or on the date and at the time when the Agreement terminates, whichever is earlier.

4. Rent. During the Term, Lessee agrees to pay rental to Lessor in the amount of One Dollar (\$1.00) per year, which shall be due and payable on or before the first business day of each calendar year during the Term.

5. Use of Leased Premises. Lessor and Lessee agree that the Leased Premises shall be utilized solely to house equipment or components of the Evaporator Plant, including all equipment or components for which CDBG funds are expended, and for no other purpose, without the prior written agreement of the Parties.

6. Operation and Repairs to Evaporator Module and Equipment. Lessor and Lessee shall enter into a separate agreement for the operation and maintenance of the Evaporator Plant (the “**Evaporator Plant Operation and Maintenance Agreement**” or “**O&M Agreement**”). The O&M Agreement shall be executed simultaneously herewith, and shall provide that Lessor shall, at its sole cost and expense, have full responsibility and liability for the operation and maintenance of the Evaporator Plant, including the equipment or components of the Evaporator Plant that are located on the Leased Premises and all such equipment or components for which CDBG funds are expended.

7. Fixtures and Personal Property.

(a) **No Fixtures.** All equipment or components for which any of the CDBG funds are expended and that are attached to and made an integral part of the Evaporator Plant shall **NOT** become fixtures and shall **NOT** be deemed to be a part of the real estate. Title to all such equipment or components shall remain in Lessee during the Term of this Lease. Upon expiration of the Term of this Lease, Lessee shall vacate the Leased Premises, and shall abandon any equipment or components of the Evaporator Plant for which any CDBG funds were expended, title to which equipment or components shall automatically vest in Lessor without further action by either Party.

(b) **Personal Property.** All equipment or components for which any of the CDBG funds are expended and that are attached to and made an integral part of the Evaporator Plant shall be deemed the personal property of Lessee during the Term of this Lease. However, at the expiration of the Term of this Lease such equipment or components shall be abandoned by Lessee and title to same shall automatically vest in Lessor without further action by either Party.

8. Assignment and Subletting. No Party to this Lease may assign, delegate, pledge, or otherwise transfer any of its rights or obligations under this Lease without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

9. Default. If either Party to this Lease breaches or defaults under any provision of this Lease, the other Party shall provide written notice of such default to the defaulting Party. The defaulting Party shall then have thirty (30) business days within which to cure any such default. Should the defaulting Party fail to cure any such default within thirty (30) business days, the other Party shall have the right to pursue all available remedies at law or equity against the defaulting Party as a result of such default.

10. Nonwaiver of Default. Waiver of any breach of a covenant or condition by either Party shall not constitute a waiver of any other breach by such breaching Party, regardless of knowledge thereof.

11. Indemnity and Insurance.

(a) Indemnity. Lessor shall defend, indemnify and hold harmless Lessee and its individual officers, employees, representatives and agents, from and against any and all claims or demands for loss or damages resulting from loss or injury of any kind to property, including property of the Lessor, or from loss or injury of any kind, including death, to any person, including Lessee and Lessee's officers, employees, representatives and agents, from any cause whatsoever while in, on or about the Leased Premises during the Term hereof, except any claims or demands for loss or damages arising out of intentional acts of Lessee or of its officers, employees, representatives and agents. These indemnity obligations of Lessor shall survive the termination of the Lease.

(b) Insurance.

(i) Lessor shall maintain with a reputable insurance company that is duly licensed to issue policies of insurance within the State of Mississippi, at Lessor's sole cost or expense, general liability insurance providing coverage for property damage, bodily injuries or death arising out of the use of or occurring in, on or about the Leased Premises, with liability limits of not less than \$1,000,000 for property damage and \$1,000,000/\$1,000,000 for bodily injury.

(ii) Lessor shall also insure the Leased Premises against damage or destruction by maintaining comprehensive fire and casualty insurance on the improvements to the Leased Premises, including all equipment or components for which CDBG funds were expended, during the Term of this Lease in amounts sufficient to restore the Leased Premises to its condition prior to such damage or destruction and to cover the full replacement cost of the improvements to the Leased Premises, including all equipment or components for which CDBG funds were expended. In the event the proceeds of such insurance are not sufficient to repair or replace all equipment or components for which CDBG funds were expended, then Lessor shall be liable for and shall pay such additional amounts as may be required to repair, reconstruct and replace such equipment or components.

(iii) Lessee shall be named as an additional insured on all policies of insurance required above, but USA Yeast shall be sole loss payee, entitled to all receive all proceeds of the comprehensive fire and casualty insurance necessary to enable USA Yeast to repair, reconstruct or replace any damaged or destroyed portions of the Evaporator Plant located on the Leased Premises, including all equipment or components for which CDBG funds were expended.

12. Utilities and Services. During the Term of this Lease, all utility costs and expenses will be borne by Lessor, including but not limited to gas, electricity, water, janitorial services, sewage and garbage collection. Lessor shall have all utility service accounts established in its name.

13. Entry and Inspection. As is provided in the Evaporator Plant Operation and Maintenance Agreement, Lessee shall permit Lessor and its officers, employees, representatives and agents to enter the Leased Premises at any time or from time to time to operate, maintain, repair or inspect the portion of the Evaporator Plant to be constructed upon the Leased Premises. Lessor shall have such right of entry and the right to fulfill the purpose of such entry without notice to Lessee and without any claim by Lessee for any loss of occupancy or quiet enjoyment of the Leased Premises occasioned by such entry.

14. Alterations. Lessee shall **NOT** be entitled to make, or suffer to be made, any alterations of or additions to the real property improvements located on the Leased Premises without the prior written consent of Lessor. If Lessee makes any alterations or additions to the improvements on the Leased Premises with the consent of Lessor, then any such additions to, or alterations of, the improvements shall, at the expiration of the Term of this Lease, be abandoned by Lessee and title to same shall at once be vested in Lessor. Lessee and Lessor shall each cooperate to keep the Leased Premises free from any and all liens arising out of any work performed, materials furnished, or obligations incurred by either Party.

15. Condemnation. If the whole of the Leased Premises shall be taken or condemned by any authority having authority to do so, for any public use or purpose, then this Lease shall terminate. However, title to any equipment or components for which CDBG funds were expended and which constitute any part of the improvements located on the Leased Premises shall remain vested in Lessee, unless and until MDA, HUD or such other governmental authority

having jurisdiction over such equipment or components authorizes Lessee to abandon them or otherwise transfer title to Lessor. In the event of such condemnation, Lessor and Lessee shall work cooperatively to ensure that all legal and contractual conditions governing the CDBG are met. The Parties shall also work cooperatively to ensure that Lessor is able to remove and relocate such equipment or components to another location as soon as is practicable.

16. Abandonment. Lessee shall not vacate or abandon the Leased Premises at any time during the Term of this Lease. Should Lessee vacate or abandon said Leased Premises or be dispossessed by process of law or otherwise, such abandonment, vacation, or dispossession shall be a breach of this Lease and, in addition to any other rights which Lessor may have, Lessor may remove any personal property belonging to Lessee which remains on the Leased Premises and store the same, such removal and storage to be for the account of the Lessee.

17. Laws and Regulations. Lessor and Lessee shall comply with all laws, regulations, rules and orders of all federal, state and municipal and county governments, or departments, which may be applicable to the Leased Premises and to the equipment or components for which CDBG funds were expended.

18. Notice. All notices and other communications required or permitted to be given under the provisions of this Lease shall be in writing and may be transmitted by certified mail, return receipt requested, or in person, as follows:

If Notice is to Lessor:

USA Yeast
ATTN: Mike Lavallee
457 J. M. Tatum Industrial Drive
Hattiesburg, Mississippi 39401

If Notice is to Lessee:

City of Hattiesburg
ATTN: Director of Water and Sewer
200 Forest Drive
Hattiesburg, MS 39403-1898

Notice to any Party may also be provided to the attention of such other person and to such other address as may be designated by such Party in a written notice to the other Party to this Lease.

19. Amendments, etc. No amendment or waiver of any provision of this Lease shall be effective unless the same is in writing and signed by all Parties to this Lease.

20. Severability. Any provision of this Lease that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the remaining provisions of this Lease, or affecting the validity, enforceability or authorization of such provision in any other jurisdiction.

21. Attorney's Fees. Should it become necessary for any Party to this Lease to engage an attorney (or attorneys) to take any action (through litigation or otherwise) to enforce any provision of this Lease, then the prevailing Party shall be entitled to recover its actual costs and expenses, including reasonable attorneys' fees, in addition to any other or further relief to which it may be entitled.

22. Governing Law and Interpretation. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REFERENCE TO THE CONFLICT OF LAW PRINCIPLES THEREOF. Additionally, should any provision of this Lease require interpretation or construction, this Lease shall be interpreted and construed without any presumption that the provisions of this Lease are to be construed against the Party which itself, or through its agents or

attorneys, prepared this Lease. The Parties and their respective attorneys have fully and equally participated in the preparation, negotiation, review and approval of this Lease.

23. **Headings.** The Article, Section and any Subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Lease.

24. **Execution in Counterparts.** This Lease may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which, when so executed, shall be deemed to be an original and all of which then together shall constitute one and the same agreement.

25. **Recording of Lease.** This Lease or a memorandum of this Lease may be recorded by either Party hereto.

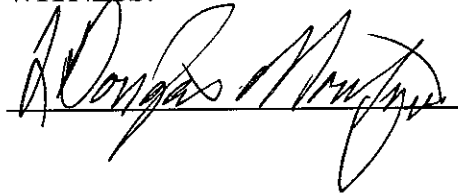
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IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be executed by their respective duly-authorized and empowered officers on this the 15th day of December, 2011.

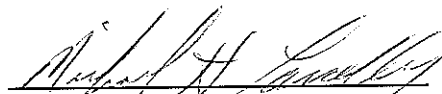
LESSOR:

**USA YEAST COMPANY, LLC,
an Alabama limited liability company**

WITNESS:



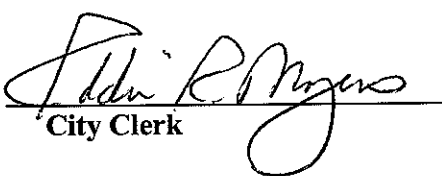
By:


Michael H. Lavallee, Manager

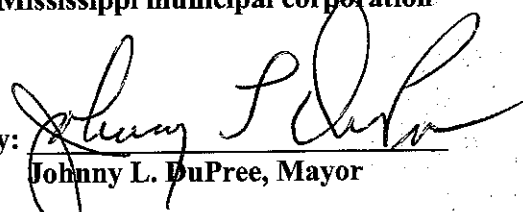
LESSEE:

**CITY OF HATTIESBURG, MISSISSIPPI,
a Mississippi municipal corporation**

ATTEST:

By: 
City Clerk

By:


Johnny L. DuPree, Mayor

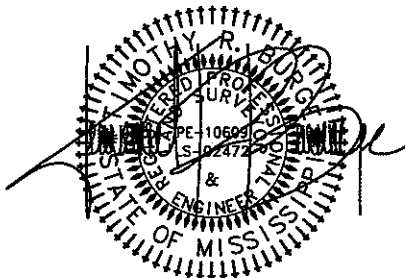
[SEAL]

GROUND LEASE - EXHIBIT 1

LEGAL DESCRIPTION OF LEASED PREMISES AND EASEMENT

LEGAL DESCRIPTION**PROJID:** 1131/USAY **CLIENT:** USA YEAST, HATTIESBURG, MS**DATE:** DECEMBER 08, 2011 **DRAWING FILE:** 1131 MSTR SRVYPLAT.DWG**REMARKS:** 90 FOOTx 105 FOOT PROPOSED TREATMENT SITE LEASE PARCEL**DESCRIPTION:** A PART OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST,
FORREST COUNTY, MISSISSIPPI;**MORE PARTICULARLY DESCRIBED AS FOLLOWS:**

- 1) COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY BOUNDARY OF J.M. TATUM INDUSTRIAL DRIVE WITH THE NORTHEASTERLY RIGHT-OF-WAY BOUNDARY OF THE ILLINOIS CENTRAL RAIROAD, SAID POINT BEING SITUATED IN THE NE 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST, FORREST COUNTY, MISSISSIPPI;
- 2) THENCE RUN NORTH EIGHTY EIGHT DEGREES FIFTY MINUTES FORTY SIX SECONDS EAST (N88°50'46"E), ALONG THE SOUTH RIGHT-OF-WAY BOUNDARY OF J.M. TATUM INDUSTRIAL DRIVE FOR 316.56 FEET;
- 3) THENCE, LEAVING SAID RIGHT-OF-WAY BOUNDARY, RUN SOUTH ZERO DEGREES NINE MINUTES FORTY-SIX SECONDS EAST (S00°09'46"E), FOR 323.25 FEET;
- 4) THENCE RUN SOUTHEASTERLY, A DISTANCE OF 133.47 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 90.00 FEET, A CHORD BEARING OF SOUTH FORTY TWO DEGREES THIRTY-EIGHT MINUTES FIFTY-THREE SECONDS EAST (S42°38'53"E), AND A CHORD LENGTH OF 121.57 FEET;
- 5) THENCE RUN SOUTH EIGHTY-FIVE DEGREES SEVEN MINUTES FIFTY-NINE SECONDS EAST (S85°07'59"E), FOR 31.94 FEET TO THE POINT OF BEGINNING;
- 6) THENCE CONTINUE SOUTH EIGHTY-FIVE DEGREES SEVEN MINUTES FIFTY-NINE SECONDS EAST (S85°07'59"E) ALONG SAID LINE, A DISTANCE OF 105.00 FEET;
- 7) THENCE RUN SOUTH FOUR DEGREES FIFTY-TWO MINUTES ONE SECOND WEST (S04°52'01"W), FOR 90.00 FEET;
- 8) THENCE RUN NORTH EIGHTY-FIVE DEGREES SEVEN MINUTES FIFTY-NINE SECONDS WEST (N85°07'59"W), FOR 105.00 FEET;
- 9) THENCE RUN NORTH FOUR DEGREES FIFTY-TWO MINUTES ONE SECOND EAST (N04°52'01"E) FOR 90.00 FEET BACK TO THE POINT OF BEGINNING.
- 10) SAID PARCEL LYING ENTIRELY WITHIN THE NE 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST, FORREST COUNTY, MISSISSIPPI, AND CONTAINING 9,450 SQUARE FEET, OR 0.22 ACRES.



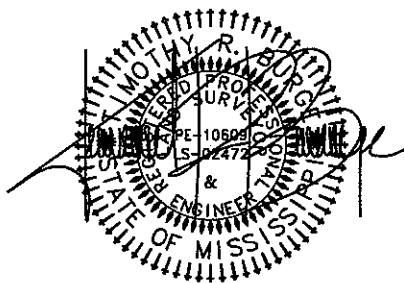
LEGAL DESCRIPTION

PROJID: 1131/USAY **CLIENT:** USA YEAST, HATTIESBURG, MS
DATE: DECEMBER 08, 2011 **DRAWING FILE:** 1131_MSTR_SRVYPLAT.DWG
REMARKS: 40 FOOT WIDE INGRESS-EGRESS EASEMENT FROM J.M. TATUM INDUSTRIAL DRIVE ALONG
EXISTING ASPHALT ENTRY DRIVE TO TREATMENT SITE LEASE PARCEL.
DESCRIPTION: A PART OF THE NORTHEAST 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST,
FORREST COUNTY, MISSISSIPPI;

MORE PARTICULARLY DESCRIBED AS FOLLOWS:

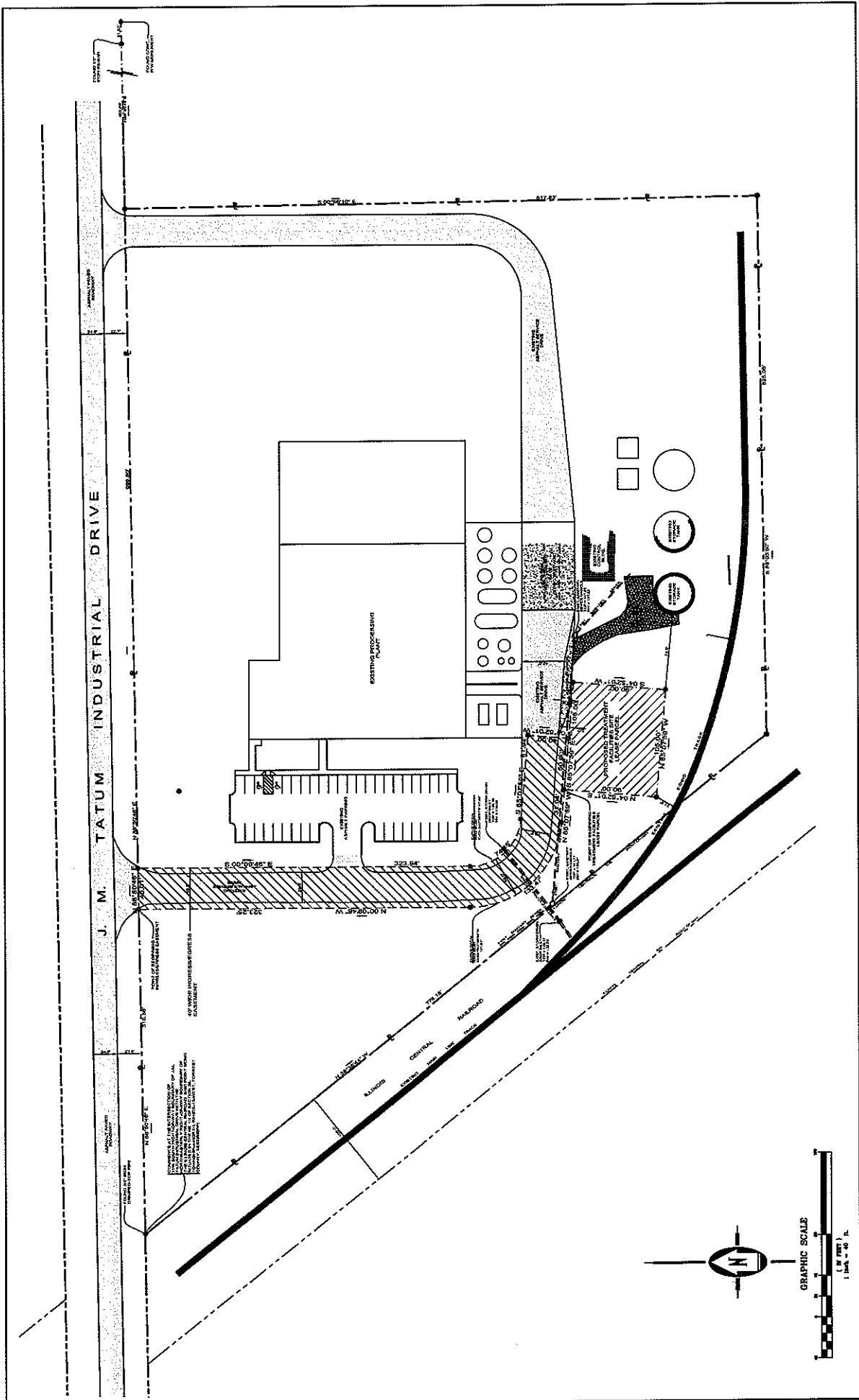
- 1) COMMENCE AT THE INTERSECTION OF THE SOUTH RIGHT-OF-WAY BOUNDARY OF J.M. TATUM INDUSTRIAL DRIVE WITH THE NORTHEASTERLY RIGHT-OF-WAY BOUNDARY OF THE ILLINOIS CENTRAL RAIROAD, SAID POINT BEING SITUATED IN THE NE 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST, FORREST COUNTY, MISSISSIPPI;
- 2) THENCE RUN NORTH EIGHTY EIGHT DEGREES FIFTY MINUTES FORTY SIX SECONDS EAST (N88°50'46"E), ALONG THE SOUTH RIGHT-OF-WAY BOUNDARY OF J.M. TATUM INDUSTRIAL DRIVE FOR 316.56 FEET TO THE POINT OF BEGINNING;
- 3) THENCE CONTINUE EASTERLY ALONG SAID RIGHT-OF-WAY BOUNDARY, A DISTANCE OF 40.01 FEET;
- 4) THENCE, LEAVING SAID RIGHT-OF-WAY BOUNDARY, RUN SOUTH ZERO DEGREES NINE MINUTES FORTY-SIX SECONDS EAST (S00°09'46"E), FOR 323.94 FEET;
- 5) THENCE RUN SOUTHEASTERLY, A DISTANCE OF 74.15 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 50.00 FEET, A CHORD BEARING OF SOUTH FORTY TWO DEGREES THIRTY-EIGHT MINUTES FIFTY-THREE SECONDS EAST (S42°38'53"E), AND A CHORD LENGTH OF 67.54 FEET;
- 6) THENCE RUN SOUTH EIGHTY-FIVE DEGREES SEVEN MINUTES FIFTY-NINE SECONDS EAST (S85°07'59"E), FOR 81.94 FEET;
- 7) THENCE RUN SOUTH FOUR DEGREES FIFTY-TWO MINUTES ONE SECOND WEST (S04°52'01"W), FOR 40.00 FEET;
- 8) THENCE RUN NORTH EIGHTY-FIVE DEGREES SEVEN MINUTES FIFTY-NINE SECONDS WEST (S85°07'59"E), FOR 81.94 FEET;

- 9) THENCE RUN NORTHWESTERLY, A DISTANCE OF 133.47 FEET ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 90.00 FEET, A CHORD BEARING OF NORTH FORTY TWO DEGREES THIRTY-EIGHT MINUTES FIFTY-THREE SECONDS WEST (N42°38'53"W), AND A CHORD LENGTH OF 121.57 FEET;
- 10) THENCE RUN NORTH ZERO DEGREES NINE MINUTES FORTY-SIX SECONDS WEST (N00°09'46"W), FOR 323.25 FEET BACK TO THE POINT OF BEGINNING;
- 11) SAID PARCEL LYING ENTIRELY WITHIN THE NE 1/4 OF SECTION 36, TOWNSHIP-4-NORTH, RANGE-13-WEST, FORREST COUNTY, MISSISSIPPI, AND CONTAINING 20,374 SQUARE FEET, OR 0.47 ACRES.



GROUND LEASE - EXHIBIT 2

PLAT OF LEASED PREMISES AND EASEMENT



PROPOSED SITE FOR:
WASTEWATER PRE-TREATMENT FACILITY
USA YEAST
 457 J.M. TATUM INDUSTRIAL DRIVE
 HATTIESBURG, MISSISSIPPI

USA YEAST
 457 J.M. TATUM INDUSTRIAL DRIVE
 HATTIESBURG, MISSISSIPPI

EASEMENTS SURVEY PLAT

PROJECT NO. 13-1000
FILE NAME: 13-1000
DRAWN BY: J. M. TATUM
CHECKED BY: J. M. TATUM
DATE: 10/1/13
NO. V-1.00

GRAPHIC SCALE
 1" = 40' H.

CivilSouth Group
 Engineering & Surveying Consultants, LLC
 6775 Lakeshore Drive
 Hattiesburg, MS 39402-2579

**EVAPORATOR PLANT
OPERATION AND MAINTENANCE AGREEMENT**

THIS EVAPORATOR PLANT OPERATION AND MAINTENANCE AGREEMENT ("O&M Agreement") is made and entered into by and between **USA YEAST COMPANY, LLC**, an Alabama limited liability company whose address is 457 J. M. Tatum Industrial Drive, Hattiesburg, Mississippi 39401 (hereinafter referred to as **"USA Yeast"**), and the **CITY OF HATTIESBURG, MISSISSIPPI**, a municipal corporation organized under the laws of the State of Mississippi whose address is 200 Forrest Street, Hattiesburg, Mississippi 39401 (hereinafter referred to as the **"City"**).

RECITALS:

USA Yeast owns and operates a manufacturing facility for the production of baker's yeast, located at 457 J. M. Tatum Industrial Drive in the City (the **"USA Yeast Manufacturing Facility"**). USA Yeast and the City have determined that it is in their mutual best interests for USA Yeast to design, construct, install, operate and maintain an evaporator plant (the **"Evaporator Plant"**) to pretreat the effluent which is a normal by-product of USA Yeast's manufacturing process.

The City and USA Yeast have entered into a certain Agreement dated on or about December 15, 2011 (the **"Agreement"**), under which the City has agreed to make application to the Mississippi Development Authority (**"MDA"**) for a Katrina Supplemental CDBG Economic Development Grant (the **"CDBG"**) in the amount of \$5.0 million. The CDBG, if approved, will be issued by or under authority of the United States Department of Housing and Urban Development (**"HUD"**) and will be administered on behalf of HUD by MDA. If the CDBG is approved and issued, the Parties have agreed that the balance of the CDBG funds, after payment of the eligible costs and expenses incurred by the City in connection with applying for and administering the CDBG, (the **"Net CDBG Funds"**) may be utilized to pay for the purchase of certain equipment or components, as more particularly described in the CDBG application and in the grant agreement to be entered into between the City and MDA, that will be utilized in the construction of the Evaporator Plant.

The portion of the Evaporator Plant for which the Net CDBG Funds are expended will be housed on a separately-surveyed parcel of the USA Yeast Manufacturing Facility site and will be leased to the City, along with an easement for ingress and egress, for a term of approximately ten (10) years, as provided in that certain Ground Lease Agreement dated of even date herewith (the **"Lease Agreement"**) between USA Yeast, as Lessor, and the City, as Lessee. Pursuant to the provisions of the Lease Agreement, the City will abandon the equipment or components constructed or installed in the Evaporator Plant for which Net CDBG Funds are expended and title to same will automatically vest in USA Yeast or its successors or assigns at the expiration of the term of the Lease Agreement.

The Evaporator Plant will be located on the USA Yeast Manufacturing Facility site and will connect to the USA Yeast Manufacturing Facility to receive and pretreat USA Yeast's

effluent before it is discharged into the City's sanitary sewer system. Therefore, USA Yeast and the City have agreed that as between the Parties to this O&M Agreement, USA Yeast will be solely responsible for the design, construction, installation, operation and maintenance of the entire Evaporator Plant, including the equipment or components constructed or installed in the plant for which Net CDBG Funds were expended, all as hereinafter provided.

NOW, THEREFORE, in consideration of the foregoing premises, and the mutual covenants, conditions, stipulations, obligations, terms and agreements herein contained, the Parties hereto do mutually covenant and agree as follows:

1. **Design, Construction and Installation of Evaporator Plant.** USA Yeast shall be solely responsible for the design, construction and installation of the Evaporator Plant at its sole cost and expense (excepting the Net CDBG Funds if the CDBG is approved and issued, which shall be used to fund a portion of said Evaporator Plant). USA Yeast will submit to MDA any and all drawings, schematics, data and information produced in the design, engineering, construction and installation of the Evaporator Plant as may be required by MDA to process and fund the CDBG. USA Yeast also will provide to the City any and all drawings, schematics, data and information produced in the design, engineering, construction and installation of the Evaporator Plant that the City may need to apply for the CDBG or to meet its obligations in connection with the CDBG. In order to avoid unnecessary delay and to ensure prompt delivery of a fully-operational Evaporator Plant, USA Yeast hereby agrees to fully cooperate with the City and MDA, and the City hereby agrees to fully cooperate with USA Yeast and MDA, to complete the CDBG grant application and thereafter to fulfill the City's obligations under the laws, regulations and rules governing the CDBG, under the CDBG documents and under the grant agreement entered into between the City and MDA.

2. **Operation of Evaporator Plant.**

(a) **Operation.** USA Yeast shall be solely responsible for the operation of the Evaporator Plant and its component parts during the Term of this O&M Agreement. USA Yeast will operate the Evaporator Plant in a manner to ensure that USA Yeast pretreats its effluent to meet the maximum daily loadings and volume levels set forth in that certain Agreement dated of even date herewith between USA Yeast and the City.

(b) **Expenses and Costs.** All operating expenses arising from the operation of the Evaporator Plant (including without limitation wages, utilities, maintenance, insurance, taxes on real and personal property not otherwise exempted or abated, and other similar costs and expenses) shall be borne by USA Yeast. USA Yeast shall furnish and provide all necessary supervisory and management expertise necessary for the sound and efficient operation of the Evaporator Plant.

3. **Maintenance of Evaporator Plant.** During the Term of this O&M Agreement, USA Yeast shall be solely responsible for maintaining the Evaporator Plant and all component parts thereof. USA Yeast shall bear all costs and expenses of maintaining the Evaporator Plant in good condition and repair, normal wear and tear excepted. USA Yeast shall bear all costs of

repairing or replacing any component parts of the Evaporator Plant, and if any portion of the Evaporator Plant is damaged, destroyed or fails, and any such damage, destruction or failure is covered by insurance, USA Yeast shall be the sole loss payee of all such insurance as provided in Section 4 below. USA Yeast agrees to use the proceeds of insurance to make timely repairs to or to reconstruct or replace any part of the Evaporator Plant that is damaged or destroyed or for any reason fails.

4. Indemnity and Insurance.

(a) **Indemnity.** USA Yeast shall defend, indemnify and hold harmless the City and its individual officers, employees, representatives and agents, from and against any and all claims or demands for loss or damages resulting from loss or injury of any kind to property, including property of the City, or from loss or injury of any kind, including death, to any person, including the City and the City's officers, employees, representatives and agents, arising from the design, construction, installation, operation and maintenance of the Evaporator Plant, except any claims or demands for loss or damages arising out of intentional acts of the City or of its officers, employees, representatives and agents. These indemnity obligations of USA Yeast shall survive the termination of this O&M Agreement.

(b) Insurance.

(i) USA Yeast shall maintain with a reputable insurance company that is duly licensed to issue policies of insurance within the State of Mississippi, at USA Yeast's sole cost and expense, general liability insurance providing coverage for property damage, bodily injuries or death arising out of the design, construction, installation, operation and maintenance of the Evaporator Plant, with liability limits of not less than \$1,000,000 for property damage and \$1,000,000/\$1,000,000 for bodily injury.

(ii) USA Yeast shall also insure the Evaporator Plant against damage or destruction by maintaining comprehensive fire and casualty insurance on the plant, including all equipment or components for which Net CDBG Funds were expended, during the Term of this O&M Agreement in amounts sufficient to restore the plant to its condition prior to such damage or destruction and to cover the full replacement cost of the plant, including all equipment or components for which Net CDBG Funds were expended. In the event the proceeds of such insurance are not sufficient to repair or replace all equipment or components for which CDBG funds were expended, then USA Yeast shall be liable for and shall pay such additional amounts as may be required to repair, reconstruct and replace such equipment or components.

(iii) The City shall be named as an additional insured on all policies of insurance required above, but USA Yeast shall be sole loss payee, entitled to all receive all proceeds of the comprehensive fire and casualty insurance necessary to enable USA Yeast to repair, reconstruct or replace any damaged or destroyed portions of the Evaporator Plant, including all equipment or components for which Net CDBG Funds were expended.

5. Taxes. During the Term of this O&M Agreement, USA Yeast will timely pay any portion of ad valorem and property taxes assessed against the Evaporator Plant not otherwise exempted or abated.

6. **Utilities.** As part of the operating expenses set forth in Section 2 above, during the Term of this O&M Agreement all utility costs will be borne by USA Yeast, including gas, electricity, water, janitorial services, sewage and garbage collection. USA Yeast shall have all utility service accounts established in its name and will be responsible for maintaining continuous utility service for any and all utilities necessary for the efficient operation of the Evaporator Plant. USA Yeast further agrees to timely pay all charges for said utilities as they become due.

7. **Term.** The term of this Agreement shall be approximately ten (10) years (the "Term"). The obligations of the Parties hereunder shall become legally binding on the Parties upon mutual execution of this O&M Agreement, and shall terminate at 12:00 o'clock midnight CST, on December 31, 2021, or on the date and at the time when the Agreement terminates, whichever is earlier.

8. **Assignment.** No Party to this O&M Agreement may assign, delegate, pledge, or otherwise transfer any of its rights or obligations under this agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld.

9. **Delivery of Notice.** All notices and other communications required or permitted to be given under the provisions of this O&M Agreement shall be in writing and transmitted by certified mail, return receipt requested, as follows:

If Notice is to USA Yeast:

USA Yeast
ATTN: Mike Lavallee
457 J. M. Tatum Industrial Drive
Hattiesburg, Mississippi 39401

If Notice is to City:

City of Hattiesburg
ATTN: Director of Water and Sewer
200 Forrest Drive
Hattiesburg, MS 39401

Notice to any Party may also be provided to the attention of such other person and to such other address as may be designated by such Party in a written notice to the other Party to this Lease.

10. **Amendments, etc.** No amendment or waiver of any provision of this O&M Agreement shall be effective unless the same is in writing and signed by all Parties to this agreement.

11. **Severability.** Any provision of this O&M Agreement that is prohibited, unenforceable or not authorized in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, unenforceability or non-authorization without invalidating the

remaining provisions of this agreement, or affecting the validity, enforceability or authorization of such provision in any other jurisdiction.

12. Governing Law and Interpretation. THIS O&M AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSISSIPPI, WITHOUT REFERENCE TO THE CONFLICT OF LAW PRINCIPLES THEREOF. Additionally, should any provision of this O&M Agreement require interpretation or construction, this agreement shall be interpreted and construed without any presumption that the provisions of this agreement are to be construed against the Party which itself, or through its agents or attorneys, prepared this O&M Agreement. The Parties and their respective attorneys have fully and equally participated in the preparation, negotiation, review and approval of this O&M Agreement.

13. Headings. The Section headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this O&M Agreement.

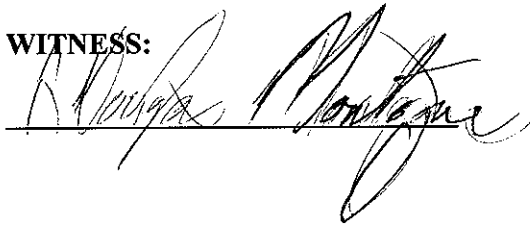
14. Execution in Counterparts. This O&M Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which then together shall constitute one and the same agreement.

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IN WITNESS WHEREOF, USA Yeast and the City have caused this O&M Agreement to be executed by their respective duly-authorized and empowered officers on this the 15th day of December, 2011.

USA YEAST COMPANY, LLC,
an Alabama limited liability company

WITNESS:



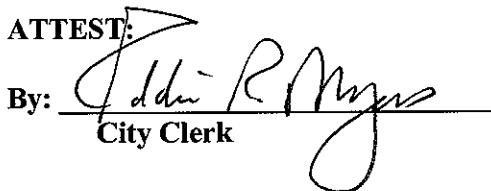
By:


Michael H. Lavalley, Manager

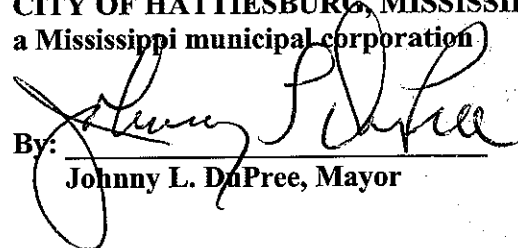
LESSEE:

CITY OF HATTIESBURG, MISSISSIPPI,
a Mississippi municipal corporation

ATTEST:

By: 
City Clerk

By:


Johnny L. DuPree, Mayor

[SEAL]

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (“MOA”) is made and entered into by the **CITY OF HATTIESBURG, MISSISSIPPI** (hereinafter referred to as “**Recipient**”) and **USA YEAST COMPANY, LLC** (hereinafter referred to as the “**Company**”) to apply for a Katrina Supplemental CDBG Economic Development Grant (the “**CDBG**”).

WHEREAS, Recipient desires the Company to increase employment opportunities and to improve the quality of the effluent that the Company discharges into the Recipient’s sanitary sewer system by expanding the Company’s manufacturing facility for the production of baker’s yeast, which is located in Hattiesburg, Forrest County, Mississippi, to include an evaporator plant for pretreatment of the effluent discharged by the Company as a natural by-product of its manufacturing process; and

WHEREAS, Recipient is in the process of applying for a \$5,000,000 CDBG, the net proceeds from which (consisting of the balance of the CDBG funds after payment of the Recipient’s eligible costs and expenses for application, engineering, legal and administration of the CDBG (the “Net CDBG Funds”)) will be utilized in the construction and installation of an Evaporator Module, as described in the Recipient’s CDBG application, (the “Project”), which is part of the evaporator plant that is to be designed and constructed by the Company to pretreat its effluent before it is discharged into the Recipient’s sanitary sewer system; and

WHEREAS, as a condition precedent to issuance of the CDBG, Recipient and the Company are required to enter into a written agreement specifying the terms and conditions of the relationship of Recipient and the Company; and

WHEREAS, Recipient and the Company have entered into a mutually binding and enforceable agreement (the “**Agreement**”) specifying the terms and conditions of their relationship, including matters related to: (i) the Recipient’s application for the CDBG; (ii) the design and construction by the Company of a pretreatment facility to pretreat the Company’s effluent prior to discharge into the Recipient’s sanitary sewer system; (iii) an agreement for the operation and maintenance by the Company of the pretreatment facility; and (iv) a ground lease (with easement for ingress and egress) between the Company (as lessor) and the Recipient (as lessee) for a parcel of real property on which the Evaporator Module portion of the pretreatment facility, as described in the Recipient’s CDBG application, will be constructed. A copy of the Agreement, together with the related lease and the related agreement for the operation and maintenance of the pretreatment facility that are exhibits thereto, is incorporated herein by reference as **Exhibit 1** and is an integral part of this MOA; and

WHEREAS, the Agreement and the related lease and the related agreement for the operation and maintenance of the pretreatment facility each has a term of approximately ten (10) years, commencing on the date(s) on which they are executed and ending on December 31, 2021; and

WHEREAS, the full performance of this MOA, including the performance of all obligations under said Agreement and under the related lease and the related agreement for the operation and maintenance of the pretreatment facility, shall be a continuing condition of the CDBG.

NOW, THEREFORE, for good and valuable considerations, the receipt and adequacy of which are acknowledged, Recipient and the Company agree as follows:

1. Recipient's responsibilities shall be the following:
 - a. Comply with all applicable state and federal laws, rules and regulations.
 - b. Conduct all environmental studies in accordance with all applicable rules and regulations of the Mississippi Development Authority of the State of Mississippi (hereinafter "MDA") and the U.S. Department of Housing and Urban Development (hereinafter "HUD").
 - c. Execute the grant agreement between MDA and Recipient if the Project is approved.
 - d. Provide for the coordination and submission of the CDBG application.
 - e. Proceed with the selection of necessary consultants in accordance with all applicable rules and regulations of MDA and HUD.
 - f. Hold public hearings in accordance with all applicable rules and regulations of the MDA and HUD.
 - g. Fully perform all of its obligations under this MOA, including full performance of its obligations under the Agreement (including the related lease and the related operating and maintenance agreement that are exhibits thereto) that is attached hereto as **Exhibit "1"**.
2. The Company's responsibilities shall be the following:
 - a. Comply with all applicable state and federal laws, rules and regulations, including performance of such acts as may be necessary to enable Recipient to comply with

Recipient's obligations with respect to its grant agreement with MDA and its obligations with respect to the CDBG.

- b. Within three (3) years of completion of the Project identified in the CDBG application, the Company shall create 2 full-time and/or full-time equivalent jobs at the pretreatment facility. One full-time job is the equivalent of a minimum of 1,820 annual work hours. A minimum of 51 percent of the new jobs will be filled by or made available to persons of low and moderate income families. The Company will not be responsible for any reduction in employment caused by (i) acts of God, (ii) acts of terrorism, (iii) substantial damage to or destruction of the Company's manufacturing facility, (iv) strikes, or (v) any reduction in employment required to satisfy the "Duty to Mitigate" clause of the NPDES pretreatment permit issued to the Company under the provisions of the Clean Water Act.
- c. Keep and maintain books, records and other documents relating directly to the expenditure of private funds and the hiring of persons to fill the new jobs created as a result of the Project identified in the CDBG application. Furnish from time to time, upon request by or on behalf of the Recipient, reports on progress being made in meeting the requirements of 2.b. above.
- d. The Company agrees that any duly authorized representative of the MDA, Disaster Recovery Division, HUD and/or the Controller General of the United States shall, at all reasonable times, have access to and the right to inspect, copy, audit, and examine all such records related to private expenditures and job creation or retention as a result of the Project identified in the CDBG application

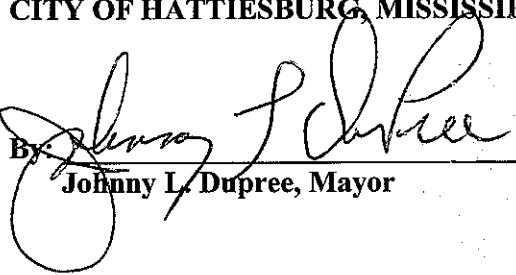
until the completion of all close-out procedures respecting the CDBG and the final settlement and conclusions of issues rising out of the CDBG.

- e. The Company has represented that the total current estimated cost of the Project, as described in the CDBG application (including the Recipient's eligible costs and expenses for application, engineering, legal and administration of the CDBG) is approximately \$5,900,000. After payment of the Recipient's eligible costs and expenses for application, engineering, legal and administration of the CDBG with CDBG funds, Recipient shall use the Net CDBG Funds for purchase and installation of the Evaporator Module and other costs and expenses of the Project, as described in the CDBG application. In the event the total actual costs and expenses of the Project exceed the total amount of the CDBG funds, then Company agrees to provide and pay to or for the benefit of Recipient funds of the Company in an amount sufficient to enable Recipient to pay, or for the Company to pay on behalf of the Recipient, all Project costs and expenses in excess of those that are paid with CDBG funds.
 - f. Fully perform all of its obligations under this MOA, including full performance of its obligations under the Agreement (including the related lease and the related operating and maintenance agreement that are exhibits thereto) that is attached hereto as **Exhibit "1"**.
3. If for any reason whatsoever, the Company does not comply with the commitments as contemplated in this MOA, Recipient's remedies shall include requiring the Company to reimburse Recipient the amount of Katrina Supplemental CDBG dollars expended as a result of this MOA, and all other remedies under law or equity.

4. If for any reason whatsoever, the Company relocates jobs to the site being assisted with CDBG funds that would result in a significant job loss as defined by 24 CFR Part 570 (Prohibition on Use of Katrina Supplemental CDBG Assistance for Job-Pirating Activities) the Company shall reimburse Recipient for any assistance provided to or expended on behalf of the Company.
5. Terms of this MOA shall be effective and binding upon execution.

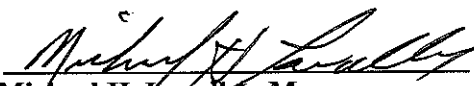
IN WITNESS WHEREOF, Recipient and the Company have executed this Memorandum of Agreement this the 15th day of December, 2011.

CITY OF HATTIESBURG, MISSISSIPPI

By: 

Johnny L. Dupree, Mayor

USA YEAST COMPANY, LLC

By: 

Michael H. Lavalée, Manager

MOA - EXHIBIT 1

AGREEMENT

RESOLUTION

THERE came on for consideration by the City Council of the City of Hattiesburg, Mississippi, a request to the Legislature of the State of Mississippi to enact certain local and private legislation. After a discussion of the subject, Council President Bradley offered and moved for the adoption of the following Resolution:

RESOLUTION REQUESTING THAT THE LEGISLATURE OF THE STATE OF MISSISSIPPI ENACT LOCAL AND PRIVATE LEGISLATION RELATING TO USA YEAST COMPANY, LLC

Whereas, the City Council of the City of Hattiesburg, Mississippi (the "City Council") hereby finds, determines and adjudicates as follows:

(1) On December 15, 2011, in a special session, the City Council authorized the Mayor of the City of Hattiesburg ("Mayor") to execute an Agreement, a Memorandum of Understanding, a Ground Lease Agreement, and an Evaporator Plant Operation and Maintenance Agreement (collectively, the "Agreements"), between the City of Hattiesburg ("City") and USA Yeast Company, LLC ("USA Yeast"), each of which is mutually binding on the City and USA Yeast for a term that ends on or about December 31, 2021.

(2) The City has been informed by the Mississippi Development Authority ("MDA") that the Agreements will be a condition of a Katrina Supplemental CDBG Economic Development Grant ("CDBG") to be issued to the City by the United States Department of Housing and Urban Development under a federal program that is administered by MDA. MDA has further informed the City that the Agreements will also be mandated by a grant agreement to be entered into between the City and MDA.

(3) The Agreements provide that they are valid and binding upon the City and USA Yeast from the date on which they are executed. Both the City and USA Yeast agree that the Agreements will be binding and enforceable through the end of the term of the current City administration on July 13, 2013. The City believes that the Agreements are not voidable and cannot be voided by future City administrations under existing State laws, because they will be conditions of the CDBG to be issued to the City and will be mandated by the grant agreement to be entered into between the City and MDA. Therefore, the City believes the Agreements are

binding on and enforceable by both the City and USA Yeast throughout their approximately ten (10) year terms.

(4) On December 9, 2011, the Mississippi Attorney General's Office issued an Opinion ("Opinion") stating that the Agreements are binding on and enforceable by both Parties throughout their approximately ten (10) year terms. The Opinion states, in part, as follows:

The municipality, in accordance with its authority under MCA Section 43-35-503, is authorized to enter into the proposed agreements regarding the subject grant, assuming that the subject grant qualifies as a grant under MCA Section 43-35-503. Assuming that the governing authorities have concluded that the subject grant is a qualified grant under MCA Section 43-35-503, the referenced agreements will be valid and enforceable, once they have been fully executed by the pertinent parties. Considering its broad authority under MCA Section 43-35-503 and MCA Section 21-17-1(11), the municipality has express authority to bind successor boards to contracts that it has entered into for the purpose of carrying out programs which are the subject of a Community Block Development Grant.

Nevertheless, despite the clear and definitive conclusion of the Opinion, USA Yeast wishes to seek local and private legislation that will ratify and confirm the enforceability of the Agreements against successor City administrations.

(5) The City has agreed to adopt a resolution requesting the enactment of local and private legislation that will ratify and confirm the authority of the City's current administration to bind successor City administrations by execution of the Agreements, each of which will be a condition of a Katrina Supplemental CDBG Economic Development Grant to be issued to the City by the United States Department of Housing and Urban Development under a federal program that is administered by MDA, and each of which will also be mandated by a grant agreement to be entered into between the City and the MDA.

(6) The Agreements were executed by the Mayor and by USA Yeast on December 15, 2011.

NOW, THEREFORE, the City Council of the City of Hattiesburg, Mississippi, hereby resolves as follows:

Section 1. The Legislature of the State of Mississippi is hereby requested to enact local and private legislation in substantially the form of Attachment 1 (House of Representatives version) and Attachment 2 (Senate version) to this Resolution to accomplish the purposes set forth hereinabove.

The above and forgoing Resolution, after having been first reduced to writing, was introduced by Council member Carroll, seconded by Council member Delgado, and was adopted by the following vote, to-wit:

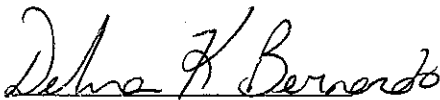
YEAS: Bradley
Delgado
Carroll
Ware
Naylor

NAYS:

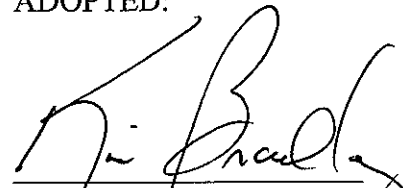
The President thereby declared the motion carried and the Resolution adopted, this the 15th day of December, 2011.

(SEAL)

ATTEST:


CLERK OF COUNCIL

ADOPTED:

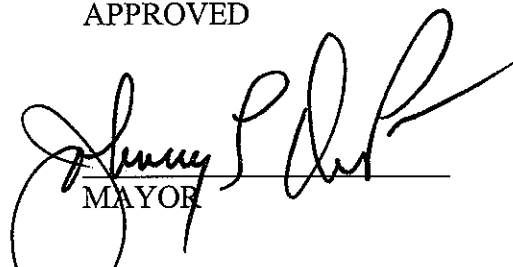

PRESIDENT

The above and foregoing Resolution having been submitted to and approved by the Mayor, this the 15th day of December 2011.

ATTEST:


CITY CLERK

APPROVED


MAYOR

ATTACHMENT 1

MISSISSIPPI LEGISLATURE
2012 Regular Session

HOUSE BILL _____

AN ACT TO RATIFY AND CONFIRM THAT CERTAIN AGREEMENTS BETWEEN THE CITY OF HATTIESBURG, MISSISSIPPI AND USA YEAST COMPANY, LLC WILL NOT BE VOIDABLE BY FUTURE CITY ADMINISTRATIONS, AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The authority of the current administration of the City of Hattiesburg, Mississippi to bind successor City administrations by execution of one or more agreements that extend beyond the term of the current City administration when the subject agreements are made a condition of a Katrina Supplemental CDBG Economic Development Grant issued to the City by the United States Department of Housing and Urban Development under a federal program that is administered by the Mississippi Development Authority, and when the subject agreements are mandated by the grant agreement entered into between the City and the Mississippi Development Authority is ratified and confirmed.

SECTION 2. This act shall take effect and be in force from and after its passage.

ATTACHMENT 2

MISSISSIPPI LEGISLATURE
2012 Regular Session

SENATE BILL _____

AN ACT TO RATIFY AND CONFIRM THAT CERTAIN AGREEMENTS BETWEEN THE CITY OF HATTIESBURG, MISSISSIPPI AND USA YEAST COMPANY, LLC WILL NOT BE VOIDABLE BY FUTURE CITY ADMINISTRATIONS, AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. The authority of the current administration of the City of Hattiesburg, Mississippi to bind successor City administrations by execution of one or more agreements that extend beyond the term of the current City administration when the subject agreements are made a condition of a Katrina Supplemental CDBG Economic Development Grant issued to the City by the United States Department of Housing and Urban Development under a federal program that is administered by the Mississippi Development Authority, and when the subject agreements are mandated by the grant agreement entered into between the City and the Mississippi Development Authority is ratified and confirmed.

SECTION 2. This act shall take effect and be in force from and after its passage.

Today, the Hattiesburg City Council approved a new, comprehensive set of agreements for wastewater treatment and water usage between USA Yeast and the City. The vote today comes after months of negotiation and analysis of our lagoon operations. These agreements are the best solution for the citizens of Hattiesburg. We look forward to partnering with U.S.A. Yeast as it continues its operations and its contributions to our community.