

City of Hattiesburg, MS

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



Meeting Agenda

Thursday, January 9, 2014

12:00 PM

Council Chambers

City Council - Special Called Meeting

*City Council
Special Called Meeting*

1. 2014-0859

Authorize Mayor to execute a contract with Groundworx, LLC, to collect, store, transport, treat and dispose of wastewater through a land application disposal system in accordance with the rules and regulations of the Mississippi Commission on Environmental Quality (MDEQ) and the United States Environmental Protection Agency (EPA) for an agreed-to fee.

Attachments: Groundworx Agreement - 1-8-14



City of Hattiesburg, MS

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

Master

File Number: 2014-0859

File ID: 2014-0859

Type: Regular Agenda Item

Status: Approved

Version: 1

Reference:

In Control: City Council

File Created: 01/08/2014

Brief Title: Groundworx contract

Final Action: 01/09/2014

Minute Book Number: MB2014-13-14

Title:

Authorize Mayor to execute a contract with Groundworx, LLC, to collect, store, transport, treat and dispose of wastewater through a land application disposal system in accordance with the rules and regulations of the Mississippi Commission on Environmental Quality (MDEQ) and the United States Environmental Protection Agency (EPA) for an agreed-to fee.

Notes:

Sponsors:

Enactment Date:

Attachments: Groundworx Agreement - 1-8-14

Enactment Number:

Contact:

Meeting Date: 01/09/2014

Drafter:

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	City Council - Special Called Meeting	01/09/2014	Approve and Authorize				Pass

Action Text: A MOTION was made by Council member Carroll and seconded by Council member Dryden to Approve the form of the contract and Authorize Mayor to execute a contract with Groundworx, LLC, to collect, store, transport, treat and dispose of wastewater through a land application disposal system in accordance with the rules and regulations of the Mississippi Commission on Environmental Quality (MCEQ) and the United States Environmental Protection Agency (EPA) for an agreed-to fee.

Council President Bradley stated that [the City] has worked [on a new wastewater disposal system] for the last couple years. He said he is very proud that issues with the lagoon [are being resolved], that the odor problem will be eliminated in two or three years and that effluent will no longer be put in the Leaf River but instead [will be directed] to an irrigation system that will help grow grass and trees. Council President Bradley said the new system will serve as a legacy for the Council, the Mayor and Dr. York and his team; he expressed enthusiasm that the project is moving forward.

Council member Dryden said that this is a very historic day. She said [the new wastewater treatment system] is extremely progressive and forward thinking in its use of natural resources and in [keeping] waste out of the Leaf River. She said she has been bothered since she was a child that sewage was put in the river, and that it is very exciting that [wastewater treatment will be done] differently.

Council member Naylor said that all Council members have done what they feel is best for [their respective] wards and for the City, not only at this time but also for years to come. He stated that it certainly is a historic moment.

Council member Delgado said that though a tremendous amount of research has gone into the matter presented for a vote today, she is not able to support it. She read aloud a memo stating her reasons. (See attachment)

Following discussion, the Motion received the affirmative vote of the Council as follows:

Yeas: 4 - Bradley, Carroll, Dryden and Naylor

Nays: 1 - Delgado

Yea: 4 Bradley
 Carroll
 Naylor
 Dryden

Nay: 1 Delgado

TEL-No Vote: 0

Text of Legislative File 2014-0859

Title

Authorize Mayor to execute a contract with Groundworx, LLC, to collect, store, transport, treat and dispose of wastewater through a land application disposal system in accordance with the rules and regulations of the Mississippi Commission on Environmental Quality (MDEQ) and the United States Environmental Protection Agency (EPA) for an agreed-to fee.

Summary

Groundworx contract, land application

Budget Information

Expenditure Type

Purchasing Item

Publication Information

1 **AGREEMENT FOR THE TREATMENT OF WASTEWATER**

2 **between**

3 **CITY OF HATTIESBURG, MISSISSIPPI**

4 **and**

5 **GROUNDWORX, LLC**

6
7 **RECITALS:**

8 **WHEREAS**, the City of Hattiesburg, Mississippi (“City”) owns and operates wastewater
9 collection, storage, transportation, disposal and treatment facilities to collect, store, transport,
10 dispose of and/or treat wastewater from residential, commercial and industrial customers of the
11 City, including two Wastewater lagoons, commonly referred to as the north lagoon and the south
12 lagoon (collectively, the “Lagoons”); and
13

14 **WHEREAS**, the City will be subject to new, more stringent wastewater discharge limits by
15 2017 pursuant to Amended Agreed Order No. 6034 11, dated February 13, 2012 between the
16 Mississippi Commission of Environmental Quality and the City (the “Agreed Order”); and
17

18 **WHEREAS**, pursuant to the Local and Private Legislation of the Legislature of the State of
19 Mississippi during its Regular Session of 2012, enacted as House Bill No. 1529 ("Act"), the City is
20 authorized to contract with private parties for the operation, lease, collection, storage,
21 transportation, disposal and/or treatment of Wastewater (as hereinafter defined); and
22

23 **WHEREAS**, pursuant to the requirements of the Act, on or about October 8, 2013, the
24 City requested proposals for the land application of treated wastewater effluent; and
25

26 **WHEREAS**, on or about November 11, 2013, Groundworx, LLC, a Mississippi limited
27 liability company (“Groundworx”) submitted a proposal to the City for a service agreement for
28 the land application of wastewater effluent (the “Proposal”); and
29

30 **WHEREAS**, Groundworx desires to enter into an Agreement with City for the treatment
31 of Wastewater of the City, through a system of direct land application and other mechanisms, as

hereinafter described ("System"); and

WHEREAS, City is desirous of entering into an Agreement with Groundworx for the provision of the long-term disposal and/or treatment of City's Wastewater;

NOW, THEREFORE, City and Groundworx (hereinafter the "Parties"), for and in consideration of the terms and conditions herein recited enter into an Agreement for the Term described herein for the disposal and/or treatment of the City's Wastewater, and do hereby contract and agree as follows:

ARTICLE I

DEFINITIONS

The following terms and expressions, when used in this Agreement, shall have the meanings set forth in this Article, as any of such terms and expressions may be further defined in this Agreement. The Definitions are intended to be a material part of the Agreement and in some cases set forth certain of the rights, obligations and liabilities of the Parties hereunder.

"Accounting Effective Date" means the first date of receipt of Wastewater into the System at both of the Interconnects (one at the Metering Station – Industrial Park and the other at the Metering Station – South Lagoon), provided that such Wastewater is properly treated by Groundworx as required by this Agreement and successfully disposed of by land application in accordance with the requirements of all Applicable Laws.

"Act" means House Bill No. 1529 of the Regular Session of 2012, as enacted.

"Adjusted Baseline Annual Payment" shall have the meaning given to such term in Section 4.2.2 of this Agreement.

"Agreed Order" shall have the meaning given to such term in the Recitals of this Agreement.

"Agreement" means this Agreement for the Treatment of Wastewater between City of Hattiesburg, Mississippi and Groundworx, LLC.

"Annual Review Report" means an annual report caused to be prepared by Groundworx and furnished to the City at the close of each Fiscal Year pursuant to Section 4.1.7 of this Agreement reviewing System operations for the prior Fiscal Year.

"Applicable Law" or "Applicable Laws" means any state or federal law, including, but not being limited to, any Environmental Law, any statute, ordinance, judicial decision, executive order, regulation or environmental permit or any condition therein having the force and effect of law which governs any matter within the scope of this Agreement.

"Applicable Standards" shall mean the standards and criteria for the discharge of Wastewater to the System as set forth under Section 3.1.4 of this Agreement.

"Baseline Annual Payment" means the amount of money to be paid by City to Groundworx during each Fiscal Year or part thereof during the Term, beginning on the Accounting Effective Date. During each full Fiscal Year, the Baseline Annual Payment shall be equal to the System Annual Budget and shall be payable in twelve (12) equal monthly installments. During any partial Fiscal Year, the Baseline Annual Payment shall be equal to the System Annual Budget, which shall be calculated based upon expenses to be paid during the months of the partial Fiscal Year, even if the same are expenses, such as Debt Service or insurance premiums, which are not monthly payments, provided the same are paid during the partial Fiscal Year. In the case of both full and partial Fiscal Years, the Baseline Annual Payment shall be divided by the months in said year and paid in equal monthly installments. The Baseline Annual Payment for any Fiscal Year can never be less than the System Annual Budget calculated based upon a minimum flow of Wastewater of 12.5 MGD averaged annually and payable in equal monthly installments. The City shall pay the Baseline Annual Payment for each full or partial Fiscal Year regardless of the volume of Wastewater actually delivered to the System.

"Capacity Expansion" means any increase in the transportation, storage, treatment or land application capacity of System, including without limitation, the construction of additional treatment facilities, acquisition of additional equipment and other personal property, lease or purchase of any necessary additional real property, the addition of Capital Improvements and/or implementation of any other improvements to the System that result in optimization of the System, any of which allow greater transportation, storage, treatment or land application capacity for the City's Wastewater than the original Design Capacity of the System or Design Capacity - Industrial. The payment by City for any cost of Capacity Expansion shall not create any ownership interest in System.

"Capacity Expansion Charge" means the amount of money to be paid for a Capacity Expansion, payable first from the Capacity Expansion Reserve Account, and payable second by City, if and only to the extent the Capacity Expansion cost exceeds the amount available in the Capacity Expansion Reserve Account, payable by the City as provided in Section 4.3.

"Capacity Expansion Reserve Account" means the interest bearing bank account to be established by Groundworx to hold Capacity Expansion Reserves. Any amounts remaining and available in the Capacity Expansion Reserve Account at the end of the Term of the Agreement, and all extensions thereof, shall be paid over to the City.

"Capacity Expansion Reserves" means the amount set aside from the System Annual Budget for each Fiscal Year by Groundworx, from the City's payment for the purpose of payment of Capacity Expansion which may be required to be made to the System. During each Fiscal Year beginning with the Accounting Effective Date, monthly deposits will be made to the Capacity Expansion Reserve Account by Groundworx in the annual amount of 20.84% of the Debt Service Coverage Amount for such Fiscal Year.

"Capital" is defined as the Capital Investment together with any additional Capital Improvements and Capacity Expansions, to the extent such were not paid for by the Capital Improvements Reserves, the Capacity Expansion Reserves or directly by the City.

“Capital Investment” means the total of all hard and soft costs, whether tangible or intangible, incurred by Groundworx to acquire, finance, construct, install, erect and develop the System, including without limitation, all costs to acquire any real and/or personal property used in operation of the System, all costs incurred to construct, install, erect and/or develop the System and other improvements to any of the real property included as part of the System, all costs of off-site improvements related to the System, all closing costs related to the financing of the System, whether for a loan, bond or other financing, and any rent or other sums paid pursuant to any lease of real and/or personal property to the extent said rent is paid prior to the Accounting Effective Date.

“Capital Improvements” means any replacement or major repair of components of the System undertaken by Groundworx to keep the System operating at its Design Capacity, or Design Capacity – Industrial, and efficiency.

“Capital Improvements Reserve Account” means the interest bearing bank account to be established by Groundworx to hold the Capital Improvements Reserve. Any amounts remaining and available in the Capital Improvements Reserve Account at the end of the Term of the Agreement, and all extensions thereof, shall be paid over to Groundworx, subject to the terms of the Option to Purchase.

“Capital Improvements Reserve” means the amount set aside in the Capital Improvements Reserve Account for each Fiscal Year by Groundworx from the City’s payment for the purpose of funding Capital Improvements which may be required to be made to the System. During each Fiscal Year beginning with the Annual Effective Date, monthly deposits will be made to the Capital Improvements Reserve Account by Groundworx in the annual amount of 7.44% of the Debt Service Coverage Amount for such Fiscal Year.

“City” means the City of Hattiesburg, Mississippi.

“City Improvements” shall have the meaning given to such term in Section 2.2.5 of this Agreement.

“City’s System” means the local Wastewater collection, storage, transportation, treatment and/or disposal system of the City, excluding for purposes of this Agreement any part of the System.

“Commission” means the Mississippi Commission on Environmental Quality.

"Contracting Party" or "Contracting Parties" means one or more parties, private or public, which, prior to the Effective Date, are sending Wastewater to the City or have entered into an agreement with the City for receiving, transporting, treating, and/or disposing of Wastewater through the City’s System.

“Debt Service” means the sum of principal and interest required to be paid during the applicable period in respect of debt incurred to finance the Capital Investment, the term of which shall be thirty (30) years and the initial principal payment of which shall commence thirty-six (36) months after the date of closing of the proposed financing.

“Debt Service Coverage Amount” means the product of (a) the Debt Service of Groundworx for the applicable Fiscal Year times (b) thirty percent (30%).

“Design Capacity” shall be the design capacity of the System to receive Wastewater meeting the Wastewater Parameters expressed in MGD, averaged over a 365-day year beginning on the Effective Date of this Agreement. The System has a Design Capacity, expressed in MGD, of Fifteen (15.0) MGD, averaged over a 365-day year, of Wastewater that can be delivered by the City to the System, of which 2 MGD is capable of being used for Wastewater delivered at the Metering Station-Industrial Park..

“Design Capacity-Industrial” shall be the design capacity of that portion of the System consisting of the Industrial Park System to receive Wastewater meeting the Wastewater Parameters at the Metering Station-Industrial Park expressed in MGD, averaged over a 365-day year beginning on the Effective Date of this Agreement. The System has a Design Capacity expressed in MGD of Fifteen (15.0) MGD averaged over a 365-day year, of Wastewater that can be delivered by the

City to the System, of which 2 MGD is capable of being used for Wastewater delivered at the Metering Station-Industrial Park.

"Domestic Wastewater" means liquid and waterborne waste discharged from sanitary conveniences of dwellings, business buildings, institutions and the like, as distinct from wastes in Industrial Wastewater.

"Effective Date" means the last date of execution by all Parties to this Agreement.

"Environmental Law" or "Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, environmental permits and the like, as well as common law, relating to protection of human health or the environment, relating to the transportation or treatment of Wastewater, relating to liability for or costs of Remediation or prevention of Releases of Wastewater or relating to liability for or costs of other actual or threatened danger to human health or the environment. "Environmental Law" or "Environmental Laws" includes, but is not limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Clean Water Act; Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Solid Waste Disposal Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act, the National Environmental Policy Act, the Mississippi Air and Water Pollution Control Law and the Mississippi Solid Waste Law.

"Environmental Losses" includes any losses, damages, costs, fees, expenses, claims, suits, judgments, awards, liens, liabilities (including but not limited to strict liabilities), obligations, debts, diminutions in value, fines, penalties, charges, costs of Remediation, amounts paid in settlement, litigation costs, attorney's fees, engineer's fees, environmental consultant's fees, and investigation costs (including but not limited to costs for sampling, testing and analysis of soil,

water, air, building materials, and other materials and substances whether solid, liquid or gas), of whatever kind or nature, resulting from the violation of any Environmental Law; provided, however, the term "Environmental Losses" shall not include consequential, lost profits, business interruption, or business opportunity, punitive, exemplary or speculative damages.

"EPA" means the United States Environmental Protection Agency.

"Fiscal Year" means the twelve (12) month period beginning October 1 of each year (i.e., Fiscal Year 2013 is the twelve (12) month period ending September 30, 2013. However, there may be a partial Fiscal Year commencing on the Accounting Effective Date and ending on the next occurring September 30, and there may be a partial Fiscal Year at the end of the Term. "GAAP" means Generally Accepted Accounting Principles as issued by the Financial Standards Accounting Board.

"Governmental Authority" means any court, board, agency, commission, office or other authority of any nature whatsoever for any governmental unit (federal, state, county, municipal, local or otherwise) whether now or hereafter in existence.

"Hazardous Material" or "Hazardous Materials" means any and all substances (whether solid, liquid or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or effect regulated under any present or future Environmental Laws, including, but not limited to, Domestic Wastewater, Industrial Wastewater, petroleum and petroleum products, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives.

"Industrial Park" means the industrial park where Marshall Durbin, USA Yeast and Wis-Pak are currently located as of the Effective Date.

"Industrial Park System" is described in Exhibit 2.2.4.2 and Exhibit 2.2.5.2.

"Industrial Wastewater" means the liquid and waterborne wastes from industrial processes as distinct from wastes in Domestic Wastewater.

"Infiltration" means water that has migrated from the ground into the City's System or the System.

"Inflow" means water which is not Domestic Wastewater or Industrial Wastewater or Infiltration which enters into the City's System or the System. Inflow includes, but is not limited to, storm water, ground water, roof run-offs, sub-surface drainage, down spouts, yard drains, fountains, ponds and swimming pools.

"Interconnect" or "Interconnects" means the physical connections between City and System, as detailed in the schematic attached hereto as Exhibit 3.2.

"Lagoons" shall have the meaning given to such term in the Recitals of this Agreement.

"Local Wastewater Facilities" means any Wastewater collection and transmission facilities delivering Domestic Wastewater or Industrial Wastewater to City which ultimately is discharged to System and are not owned by Groundworx

"Metering Station -South Lagoon" means the meter at System Interconnect measuring the total flow of Wastewater being delivered to System by City from the City's south lagoon.

"Metering Station-Industrial Park" means the meter at System Interconnect measuring the total flow of Industrial Wastewater being delivered to System by City from the Industrial Park.

"Metering Stations" means both the Metering Station -South Lagoon and the Metering Station-Industrial Park.

"MDEQ" means the Mississippi Department of Environmental Quality.

“Minimum City-Supplied Storage Capacity” means 319 million gallons of storage capacity to be provided and owned by the City, situated prior to the Metering Station-South Lagoon, which shall be used to provide temporary and seasonal storage of the Wastewater treated at the City’s south lagoon for those times when Wastewater volumes into the City’s System exceeds either the Design Capacity of the System or what the operation of the System will allow.

"MGD" means 1,000,000 gallons per day, U. S. Standard Liquid Measure.

"Operation and Maintenance Expenses of System" means the actual but reasonable expenses paid or accrued, without mark up for profit, from the Accounting Effective Date with respect to the operation and maintenance of the System which shall include operation, maintenance and ordinary current repairs of System, and shall also include insurance premiums, administrative expenses of Groundworx, wages and salaries, power and fuel, necessary chemicals, and such other reasonable and necessary expenses, all relating solely to System, as shall be determined in accordance with GAAP.

“Option to Purchase” shall have the meaning given to such term in Section 2.5 of this Agreement.

“Party” and “Parties” shall mean the City of Hattiesburg and Groundworx, LLC.

“Release” or “Releases” means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Hazardous Materials not authorized by Environmental Laws.

“Remediation” means any response, remedial, removal, or corrective action; any activity to clean up, detoxify, decontaminate, contain or otherwise remediate any Release of Hazardous Material; any actions to prevent, cure or mitigate any Release of any Hazardous Material; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling and testing, laboratory or other analysis, or evaluation relating to any Release of Hazardous Material.

309
310 "Sewer Ordinance" shall have the meaning given to such term in Section 3.7 of this Agreement.

311
312 "System Annual Budget" means the amount of money required to pay the cost of the following for
313 the applicable Fiscal Year (including any Fiscal Year which is a partial year): (i) the Operation
314 and Maintenance Expenses of System; (ii) the annual Debt Service of Groundworx; (iii) the total
315 of all rent and other sums due to any owners of real property being used as part of the System and
316 all rent and other sums due or to become due for any equipment or other personal property being
317 used in operation of the System for such Fiscal Year; (iv) the capitalized costs of major repair,
318 replacement or Capacity Expansion of the System paid or to be paid during the applicable Fiscal
319 Year with funds other than loan, bond or grant funds or funds available in the Capital
320 Improvements Reserve Account or the Capacity Expansion Reserve Account; (v) the Debt
321 Service Coverage Amount; (vi) less Federal and State grant amounts, if any, actually received or
322 to be received by Groundworx during the applicable Fiscal Year which are not required to be
323 repaid by Groundworx; and (vii) less any net income, actually received or to be received by
324 Groundworx during the applicable Fiscal Year attributable to easements, leases, towers, etc.,
325 permitted by Section 6.23.1. Groundworx shall deposit into the Capacity Expansion Reserve
326 Account and the Capital Improvements Reserve Account that portion of the Debt Service
327 Coverage Amount required by the definitions of such reserve accounts. That portion of the Debt
328 Service Coverage Amount not required to be deposited in the Capacity Expansion Reserve
329 Account or the Capital Improvements Reserve Account shall be attributable to a
330 management/development fee to Groundworx, and/or return on investment by Groundworx, with
331 the allocation between/among such categories to be determined by Groundworx.

332
333 "System" means the land treatment system and all of the facilities for collecting, receiving,
334 storing, transporting, treating and/or disposing of Wastewater acquired, constructed, installed,
335 erected, developed, leased, and/or owned by Groundworx, together with any improvements,
336 enlargements or additions to said facilities and any extensions or replacements of said facilities
337 constructed or otherwise incorporated into said facilities in the future.

338
339 "Term" shall mean the initial 30 year term of the Agreement and any extensions of said term.

"Total Annual Requirement" means the sum of the following for the applicable Fiscal Year (including any Fiscal Year which is a partial Fiscal Year) : (i) Baseline Annual Payment; (ii) Capacity Expansion Charge, if any; and (iii) any losses, including but not limited to Environmental Losses, or other sums due to Groundworx as provided in Section 3.4.3 of this Agreement; less any Environmental Losses or other sums due to the City as provided in Section 3.4.4 of this Agreement.

"Wastewater" means Domestic Wastewater, Industrial Wastewater, and pretreated Wastewater effluent, together with such Infiltration and Inflow that may be present.

"Wastewater Parameters" shall have the meaning given to such term in Section 3.1.4 of this Agreement.

ARTICLE II
DEVELOPMENT AND CONSTRUCTION OF SYSTEM,
AND TERM OF AGREEMENT, AND OPTION TO PURCHASE

Section 2.1 General Obligation. Groundworx will design, build, construct, own, operate and maintain the System for the purpose of collecting, treating, storing, transporting, and disposal of the City's Wastewater, all in accordance with the terms and conditions of this Agreement.

Section 2.2 Development and Construction of System by Groundworx.

2.2.1 Plans and Specifications. Groundworx shall cause plans and specifications to be developed which shall describe the major components to be included in the System ("Plans and Specifications"). Groundworx shall build the System per the Plans and Specifications, which shall be approved by MDEQ. Before becoming final, the City shall be given an opportunity to review and comment on the Plans and Specifications during the design process, and Groundworx will consider in good faith any comments or recommendations by the City. However, approval of the Plans and Specifications of the System will be determined solely by Groundworx and MDEQ. The City shall assist Groundworx in

determining suitable design parameters for the pretreatment facility to be constructed by Groundworx for the Industrial Park System. The Plans and Specifications, when developed, shall be included in this Agreement at Exhibit 2.2.1.

2.2.2 Guaranteed Maximum Price. Groundworx shall be responsible for construction and development of the System at a Guaranteed Maximum Price ("GMP") of \$137,100,000 for land acquisition and system development costs, as set forth in the Construction and Development Budget in the Proposal attached hereto as Exhibit 2.2.2. The GMP may be adjusted based upon changed requirements of the City and additional requirements which may be imposed by the Commission or the EPA. For avoidance of doubt, financing costs are in addition to the GMP, and changes in interest rates are at the risk of the City, subject to Section 6.19 of this Agreement. When construction of the System is complete, Groundworx will certify to the City the total amount of the Capital Investment spent for land acquisition and system development costs, and if such amount is less than the GMP, as adjusted pursuant to the second sentence of this subsection 2.2.2, then Groundworx shall use such savings, up to \$5,000,000, , provided that such is permitted by Groundworx's financing documents and funded, to prefund the Liquidity Reserve required by Section 6.22.1.

2.2.3 Construction Schedule. A construction schedule which provides a projected commencement date and completion dates for various phases of the project is attached as Exhibit 2.2.3 to this Agreement. Groundworx shall have no liability for failure to meet the construction schedule unless such failure results in Environmental Losses to the City, including but not limited to for this purpose any fines or penalties imposed on the City pursuant to the Agreed Order.

2.2.4 Scope of Work. Scope of Work to be included in System constructed by Groundworx is described on Exhibit 2.2.4.1 and Exhibit 2.2.4.2 attached to this Agreement.

2.2.5 City Improvements. The City agrees to construct the improvements to the City's System as set forth in Exhibit 2.2.5.1 and Exhibit 2.2.5.2 to this Agreement (the "City Improvements") by a time sufficient to enable the City to deliver Wastewater to Groundworx when various phases of the System are scheduled to be completed pursuant to Exhibit 2.2.3. City shall submit all plans and technical specifications for such City Improvements to Groundworx, and

the City will consider in good faith any comments or recommendations by Groundworx. However, approval of the plans and specifications for the City Improvements will be determined solely by the City and MDEQ, if required by Applicable Law. City acknowledges that the City Improvements must be compatible with the System being designed by Groundworx and are integral to Groundworx's construction and operation of the System, and therefore coordination between Parties on this point is essential.

2.2.6 City's Failure To Undertake The City Improvements. In the event that the City does not undertake the City Improvements, Groundworx shall undertake a Capacity Expansion, the cost of which will be added to the Total Annual Requirement until paid.

2.2.7. Notice of Completion. Groundworx will give the City notices of substantial completion not later than forty-five (45) days before (a) the date that Groundworx will be ready to accept Industrial Wastewater at the Interconnect at Metering Station-Industrial Park and (b) the date that Groundworx will be ready to accept Wastewater at the Interconnect at the Metering Station-South Lagoon. The City will be ready to deliver Wastewater meeting the Wastewater Parameters on such dates; provided, that the applicable notice of substantial completion will not be delivered prior to forty-five (45) days before the date that the applicable portion of the System is scheduled to be complete pursuant to Exhibit 2.2.3. If the applicable portion of the System is complete and ready to accept Wastewater on or after forty-five (45) days after the notice of substantial completion is given and the City is not ready to deliver Wastewater by such date, then the City will nevertheless commence the payments required by Section 4.1.1.

Section 2.3 The Parties hereto acknowledge that Groundworx shall be the sole owner of the System, including all real property used in operation of the System, some of which will be owned by Groundworx in fee simple and some of which will be leased by Groundworx, and that all Wastewater collection, transportation, storage, disposal and/or treatment facilities owned by City shall remain the property of, and sole responsibility of, the City. City hereby waives any and all rights, title and/or claims of ownership to System, any real property or personal property included as part of the System and any and all Wastewater facilities constructed, or to be constructed, or included as part of the System, except for any rights granted to City as provided in the Option.

433
434 Section 2.4 City and Groundworx hereby enter into this Agreement for the treatment of
435 Domestic and Industrial Wastewater from City, the Term of which shall be thirty (30) years from
436 the Effective Date. From and after the Accounting Effective Date, the flow of Wastewater from
437 City to the System in the amounts herein permitted, or as such shall be increased from time to time
438 by written agreement of the Parties or by a Capacity Expansion, as otherwise provided in this
439 Agreement, shall be delivered by the City, provided that the System remains capable of accepting
440 and disposing of such Wastewater in accordance with the terms and conditions of this Agreement
441 and all Applicable Standards. This Agreement may not be terminated by either party unless the
442 Option to Purchase is exercised by City and closing of the sale of the System by Groundworx to
443 City occurs in accordance with the terms of the Option to Purchase. Following the expiration of
444 the primary term, the Parties may agree thereafter in writing to extend the Term of this Agreement
445 upon terms and conditions to be agreed upon in writing by Groundworx and City.

446
447 Section 2.5 Groundworx grants the City the option to purchase the System during the Term for
448 an amount of money and in accordance with the terms and conditions set forth in Exhibit 2.5 to this
449 Agreement (the "Option to Purchase").

450 451 **ARTICLE III**

452 **DISCHARGE OF WASTEWATER, TITLE AND METERING**

453 454 Section 3.1 DISCHARGE OF WASTEWATER.

455
456 3.1.1 South Lagoon. Groundworx agrees to accept, dispose of and/or treat pretreated
457 Wastewater delivered by the City to Groundworx at the Metering Station-South Lagoon in the amounts
458 set forth in the Design Capacity, less that portion of the Design Capacity-Industrial being delivered at the
459 Metering Station – Industrial Park and as such may be increased by Capacity Expansion, and meeting
460 the standards set forth in the Wastewater Parameters and Environmental Laws, and in accordance with
461 the terms and conditions of this Agreement. Groundworx will treat pretreated Wastewater which is
462 delivered by City to the System at the Metering Station-South Lagoon for treatment during the Term of
463 this Agreement, subject to the Design Capacity, less that portion of Design Capacity-Industrial being

delivered at the Metering Station-Industrial Park as such may be amended in writing by agreement of the Parties or by a Capacity Expansion as provided in this Agreement.

3.1.2 Industrial Park. Groundworx agrees to accept, dispose of and/or treat pretreated Industrial Wastewater delivered by the City to Groundworx at the Metering Station-Industrial Park in the amounts set forth in the Design Capacity-Industrial as such may be increased by Capacity Expansion, and meeting the standards set forth in the Wastewater Parameters and Environmental Laws, and in accordance with the terms and conditions of this Agreement. Groundworx will treat for nutrient loading and any other necessary characteristics of the pretreated Industrial Wastewater which is delivered by City to the Industrial Park System during the Term of this Agreement, subject to the Design-Capacity Industrial, as such may be amended in writing by agreement of the Parties or by a Capacity Expansion as provided elsewhere in this Agreement. Groundworx acknowledges that there are industries that discharge Wastewater that will be sent to the System that do not currently pretreat. The City acknowledges that any future industries that will discharge Wastewater that will be sent to the System will be under the City's Sewer Ordinance and be required to pretreat to the extent required by such ordinance.

3.1.3 City shall have the right to discharge Wastewater into the System from the Industrial Park and from either of its Lagoons, in the volumes and of the character in accordance with the terms and conditions of this Agreement. The unit of measurement for Wastewater delivered hereunder shall be MGD, or such other lawful unit as the Parties may hereafter determine in writing to be appropriate and applicable.

3.1.4 City agrees to establish standards for Domestic Wastewater, Industrial Wastewater and pretreated Wastewater effluent to be discharged from City into the System meeting the standards, limits, requirements and restrictions of EPA, the Commission, the Wastewater Parameters and all Applicable Laws as the same may change from time to time (collectively, the "Applicable Standards") through the City's Sewer Ordinance (as defined in Section 3.7). The current parameters permissible for discharges to the System are set forth in Exhibit 3.1.1 and Exhibit 3.1.2 to this Agreement (the "Wastewater Parameters"). The Wastewater Parameters will change from time to time if necessary to conform to changes in Environmental Laws.

495
496 Section 3.2 INTERCONNECT.
497

498 City shall discharge its Wastewater at one or more Interconnects designated for City as shown in the
499 attached Exhibit 3.2, or at such additional locations as may be mutually agreed upon by the Parties hereto in
500 writing. In the event City proposes to change the location of any Interconnect, City shall provide one
501 hundred eighty (180) days prior notice to Groundworx, in order for Groundworx to make any necessary
502 modifications to the System. In such an event, City shall bear all costs incurred to make any such
503 modifications to the System. In the event the relocation is required by a change of Applicable Law, City shall
504 bear all costs of any such relocation.
505

506 Section 3.3 CONVEYANCE TO INTERCONNECT.
507

508 It shall be the sole responsibility of City to transport and convey all Wastewater to be
509 delivered to the System to the Interconnect. City shall be solely responsible for any liability
510 incurred in connection with transporting and conveying the Wastewater to the Interconnect.
511

512 Section 3.4 TITLE TO WASTEWATER AND RESPONSIBILITY THEREFORE.
513

514 3.4.1 Title to all Wastewater shall remain in City to the Interconnect, and upon passing through the
515 Interconnect, title thereto and to all Wastewater therefrom shall pass to Groundworx.
516

517 3.4.2 As between the Parties hereto, Groundworx is responsible for the proper transportation,
518 treatment and disposal of all such Wastewater downstream from the Interconnect, and the responsibility for,
519 and right to ownership of, the effluent and sludge from operation of the System, together with the
520 responsibility for its transportation, treatment and disposal.
521

522 3.4.3 In the event, and to the extent that, any Wastewater is determined to have been
523 discharged into the System in violation of any of the Applicable Standards or by any discharger to City
524 in violation of City's Sewer Ordinance, or a violation either by City or any of its dischargers of any

Applicable Law occurs, City shall be responsible for and shall reimburse Groundworx for all losses and Environmental Losses incurred by Groundworx related to any such violation.

3.4.4 In the event the City incurs any Environmental Losses arising out of or related to Groundworx's operation of the System, including but not limited to the receipt, treatment, transportation, and disposal of Wastewater, Groundworx shall be responsible for and shall reimburse the City for any such Environmental Losses.

3.4.5 Each Party hereto agrees to be responsible for all claims, demands, and causes of action and the damages that flow therefrom which may be asserted by anyone on account of the action or inaction of such Party arising out of the operation of this Agreement. However, to the extent any cause of action is covered by the Mississippi Torts Claims Act, sections 11-46-1 *et seq.* or to the extent same applies to any action, nothing contained herein shall be construed to waive any cap or limitation of damages under such Act.

Section 3.5 METERING.

3.5.1 Groundworx will furnish, install, operate and maintain the Metering Stations, and the necessary equipment and devices of standard type for measuring properly all Wastewater to be discharged into the System under this Agreement. The Metering Stations and other measuring equipment shall remain the property of Groundworx, except as may be later agreed between the Parties in writing upon any transfer to City of ownership or other interest to the System.

3.5.2 City shall have access to the Metering Stations at all reasonable times for inspection and examination, but the reading, calibration, and adjustment thereof shall be done only by employees or agents of Groundworx. City may have a representative present at any calibration and adjustment of any of the Metering Stations if it so desires. All readings of meters will be entered upon proper books of metering records maintained by Groundworx, which may be stored electronically. Upon written request City may have access to said metering record books and records during reasonable business hours. City shall have the right to review and inspect Groundworx's metering record books during reasonable business hours.

556
557 3.5.3 Not more than once each month, Groundworx shall calibrate the Metering Stations, if
558 requested in writing by City to do so, in the presence of a representative of City, and the Parties shall
559 jointly observe any adjustments which are made to the meters in case any adjustment is found to be
560 necessary. If, for any reason, any meters are out of service or out of repair, or if, upon any calibration,
561 any meter is found to be inaccurate by five percent (5%) or more, plus or minus, registration of readings
562 thereof on the metering record books shall be corrected for a period of time extending back to the time
563 when such inaccuracy began, if such time is ascertainable, and if such time is not ascertainable, then for a
564 period extending back one-half of the time elapsed since the date of the last calibration, but in no event
565 further back than a period of three (3) months.

566
567 3.5.4 City may, at its option and its own expense, install and operate a check meter to verify
568 flows measured by each meter installed by Groundworx, but the measurement of Wastewater for the
569 purposes of this Agreement shall be solely by Groundworx's meters, except in the cases described in this
570 Section to the contrary. All such check meters shall be of standard make and shall be subject at all
571 reasonable times to inspection and examination by any employee or agent of Groundworx, but the
572 reading, calibration and adjustment thereof shall be made only by City, except during any period when a
573 check meter may be used under specific written consent by Groundworx for measuring the volume of
574 Wastewater for purposes of this Agreement, in which case the reading, calibration and adjustment
575 thereof shall be made by Groundworx with like effect as if such check meter or meters had been
576 furnished or installed by Groundworx.

577
578 Section 3.6 INFILTRATION AND INFLOW.
579

580 3.6.1 City shall operate and maintain the City's System in such a manner as to minimize
581 excessive Infiltration and Inflow. Through its Sewer Ordinance, City agrees to diligently pursue
582 reductions in Infiltration and Inflow throughout its own local wastewater collection and transportation
583 system, and among the local systems of the parties contributing Wastewater to the City which is treated
584 at the System. City will comply with sanitary sewer overflow ("SSO") rules as such are promulgated by
585 the Commission, the EPA and any other governmental body having legal authority to set standards for
586 municipal sewer systems of similar size and character.

3.6.2 City, within eighteen (18) months from execution of this Agreement, shall complete a study of the Inflow and Infiltration within the City's System and shall deliver a report of such study to Groundworx. Should the report conclude that excessive Infiltration and Inflow exists within the City's System, City shall work to determine adequate and economically viable solutions to reduce such Infiltration and Inflow. By cooperating with City to reduce excessive Infiltration and Inflow, Groundworx does not thereby assume any responsibility or liability for any excessive Infiltration and Inflow originating with the City's System or any of the Local Wastewater Facilities delivering Wastewater to City's System or the System.

3.6.3 Except to protect human health or the environment or the integrity of the System, Groundworx shall not restrict flow from the City due to excessive Inflow and Infiltration.

Section 3.7 COMPREHENSIVE SEWER USE ORDINANCE.

City shall adopt and maintain in effect a Comprehensive Sewer Use Ordinance ("Sewer Ordinance") compatible and in conformity with the standards and restrictions of the EPA, the Commission, and that of any other governmental body having legal authority to set such standards and restrictions for publicly owned treatment works of similar size and character. City shall periodically review and, if necessary, revise its Sewer Ordinance to ensure compliance with Federal and State standards and restrictions and that of any other governmental body having legal authority to set such standards and restrictions. City agrees that it will file a copy of its Sewer Ordinance with Groundworx as soon as said Sewer Ordinance is prepared and available and will file a copy of any amendments subsequently adopted to the Sewer Ordinance with Groundworx as soon as the same are prepared and available.

Section 3.8 COMPLIANCE WITH CITY'S SEWER ORDINANCE.

City agrees to enforce compliance throughout City's System with City's Sewer Ordinance, such that Wastewater delivered to the Interconnect shall be in compliance in all respects thereof. The City shall be responsible for the payment of and the collection from its customers of, fines and penalties for

Wastewater that exceeds the parameters established in City's Sewer Ordinance. Notwithstanding the foregoing, the Parties recognize that certain Contracting Parties will be exempt from City's Sewer Ordinance as a result of existing contract obligations.

Section 3.9 INDUSTRIAL WASTEWATER.

City will coordinate with Groundworx on issuance of industrial permits for the discharge of Industrial Wastewater into the City's System to ensure compliance with City's Sewer Ordinance and to insure that the Wastewater to be discharged into the System complies with the Applicable Standards. Groundworx shall be entitled to review and to object to MDEQ regarding any applications to the Mississippi Department of Environmental Quality Permit Board for any such industrial permits based on technical infeasibility or non-compliance with any of the Applicable Standards. City will also object to MDEQ regarding any such application objected to by Groundworx if the City determines that the discharge proposed by such application is technically infeasible or would not be compliant with the Sewer Ordinance.

Section 3.10 INSURANCE.

Groundworx agrees to provide casualty, fire and extended coverage for System adequate (as reasonably determined by Groundworx's bondholders from time to time, or if none, then by Groundworx) to repair or rebuild the System in the event of damage or loss; to provide Errors and Omissions insurance covering the acts, errors and omissions of the operation by employees or contract operators of the System; and to provide general commercial liability insurance of the types and in the amounts prudent operators of businesses comparable to the System would carry. The City shall be a named additional insured on such errors and omissions insurance and liability insurance policies. Groundworx shall be allowed to carry insurance with deductibles deemed acceptable by its bondholders and shall comply with all insurance requirements as set forth by said bondholders.

ARTICLE IV
PAYMENTS BY CITY TO GROUNDWORX

Section 4.1 TOTAL ANNUAL REQUIREMENT.

4.1.1 City unconditionally and irrevocably covenants and agrees to pay to Groundworx: (i) beginning on the Effective Date, the interest portion of Groundworx's Debt Service payments, with the same to be billed and paid in a manner to ensure that Groundworx receives the payments at least fifteen (15) days prior to the due date for the Debt Service payment; (ii) beginning on the date the work required by Exhibit 2.2.4.2 is complete and subject to Section 2.2.7, and continuing until the payments provided for by the following sentence commence, the amount set forth in Exhibit 4.1.1 which may be adjusted based upon changed requirements of the City, and additional requirements which may be imposed by the Commission or the EPA and Groundworx's Debt Service payments, with the same to be billed and paid in a manner to ensure that Groundworx receives the payments at least fifteen (15) days prior to the due date for the Debt Service payment; and (iii) during each Fiscal Year or part thereof during the Term from any monies legally available for such purpose to the City, at the time and in the manner hereinafter provided, commencing with the Accounting Effective Date of this Agreement, the Total Annual Requirement for such Fiscal Year.

4.1.2 The Baseline Annual Payment for the first Fiscal Year or part thereof commencing with the Accounting Effective Date will be based on the System Annual Budget for such year attached hereto as Exhibit 4.1.2 which may be adjusted based upon the actual Debt Service, changed requirements of the City and additional requirements which may be imposed by the Commission or the EPA.

4.1.3 Groundworx shall cause to be prepared as herein provided its estimate of the System Annual Budget for operation of the System for each ensuing Fiscal Year which will include an estimate of the Total Annual Requirement for such ensuing Fiscal Year. The timing of submission of the System Annual Budget is as follows: (i) for any Fiscal Year preceded by a full Fiscal Year, ninety (90) days before the commencement of the ensuing Fiscal Year; (ii) for any Fiscal Year preceded by a partial Fiscal Year of six (6) months or more, ninety (90) days before commencement of the ensuing Fiscal Year; and (iii) for any Fiscal Year preceded by a partial Fiscal Year less than six (6) months, a System Annual

677 Budget will not be presented for the ensuing Fiscal Year immediately following the partial Fiscal Year,
678 but in the second Fiscal Year immediately following the partial Fiscal Year. Before the Total Annual
679 Requirement for the ensuing Fiscal Year becomes final, the City shall be given an opportunity to review
680 such budget and submit comments to Groundworx, which Groundworx will consider in good faith. In
681 the event that the System Annual Budget for the ensuing Fiscal Year established by Groundworx after
682 comments by the City does not exceed the System Annual Budget for the prior Fiscal Year by more than
683 two times any percentage increase in the consumer price index for the sewer and water industry from the
684 beginning of the prior Fiscal Year to the beginning of the ensuing Fiscal Year, then such System Annual
685 Budget shall be deemed approved and shall be used in determining the Total Annual Requirement for the
686 ensuing Fiscal Year. In the event that the estimated System Annual Budget for the ensuing Fiscal Year
687 exceeds the System Annual Budget for the prior fiscal year by more than two times the percentage
688 increase in the consumer price index for the water/sewer industry, the City shall have the right to object to
689 the estimated System Annual Budget within forty-five (45) days after receipt thereof. In the event that the
690 City and Groundworx have not resolved such objection prior to the commencement of the ensuing Fiscal
691 Year, the City will pay to Groundworx a monthly payment based on the System Annual Budget for the
692 preceding fiscal year increased by the percentage increase in the consumer price index for the water and
693 sewer industry until such objection is resolved. If such objection is not resolved by the commencement of
694 the ensuing Fiscal Year, the parties shall submit the System Annual Budget to a referee. The referee shall
695 be an independent firm of certified public accountants mutually agreed to by the Parties or, if they are
696 unable to agree, a recognized regional or national firm of certified public accountants appointed by the
697 American Arbitration Association shall be used. The referee shall determine what a reasonable System
698 Annual Budget for the ensuing Fiscal Year would be based on facts deemed relevant by the referee and
699 the requirements of this Agreement. The minimum System Annual Budget that the referee can determine
700 is the prior year's System Annual Budget increased by the percentage increase in the consumer price
701 index for the water/sewer industry, and the maximum System Annual Budget that the referee can
702 determine is the System Annual Budget proposed by Groundworx to which the City objects. Once the
703 referee has rendered its decision, the monthly payments due to the City by Groundworx for the remainder
704 of the ensuing Fiscal Year shall be adjusted to the end that, by the end of the ensuing Fiscal Year, the City
705 shall have paid Groundworx the Total Annual Requirement for such Fiscal Year based on the established
706 System Annual Budget. In the event that the process set forth above for resolving any objections by the
707 City to the proposed System Annual Budget is determined not to be enforceable under Applicable Law,

708 then the parties shall submit such matter to the Chancery Court of Forrest County, Mississippi, and
709 request such Court to act as the referee set forth in such process.

710
711 4.1.4 On or before September 1 of each Fiscal Year, Groundworx shall furnish City with
712 a schedule of the monthly payments to be made by City for the ensuing Fiscal Year. Said schedule
713 shall be established by Groundworx based on the Total Annual Requirement as determined by
714 Groundworx based on the volume of Wastewater City estimates will be sent by City to the System
715 during the ensuing Fiscal Year.

716
717 4.1.5 Subject to the provisions of Section 4.1.3 applicable during resolution of objections by
718 the City to the proposed System Annual Budget, City hereby agrees that it will make monthly payments
719 to Groundworx in accordance with the schedule furnished to City by Groundworx per Section 4.1.4 with
720 such payments to be made on a current basis for the then present month on or before the 10th day of each
721 month.

722
723 4.1.6 **Reserved.**

724
725 4.1.7 Annual Review Report. Groundworx shall, at the close of each Fiscal Year, cause to be
726 prepared and when prepared shall furnish to City an Annual Review Report prepared by a competent and
727 independent certified public accountant. Such report shall contain such matters and information as may be
728 reasonably considered necessary and useful by the Parties. City may perform an independent audit of the
729 costs comprised in the Total Annual Requirement for any Fiscal Year; however, such audit shall be at the cost
730 of the City.

731
732 Section 4.2 BASELINE ANNUAL PAYMENT.

733
734 4.2.1 The first component of the Total Annual Requirement is the Baseline Annual Payment. The
735 City shall pay to Groundworx the Baseline Annual Payment which shall be based upon the System Annual
736 Budget and payable as provided in the definition of Baseline Annual Payment.

4.2.2 At the close of each Fiscal Year, Groundworx shall re-determine City's Baseline Annual Payment for the Fiscal Year just ended based upon the actually achieved System Annual Budget results for that particular Fiscal Year, the "Adjusted Baseline Annual Payment". The difference between the Adjusted Baseline Annual Payment and the Baseline Annual Payment, if any, when determined, shall be applied as a credit or debit to City's account with Groundworx and shall be credited or debited, as applicable, to the City in the calculation of the next subsequent Fiscal Year's Baseline Annual Payment. Groundworx shall use its good faith, commercial, reasonable efforts to cause the Adjusted Baseline Annual Payment not to exceed the Baseline Annual Payment originally determined with respect to such Fiscal Year.

Section 4.3 CAPACITY EXPANSION CHARGE.

4.3.1 The second component to the Total Annual Requirement is the Capacity Expansion Charge, if applicable. The Design Capacity of the System was established based on volumes of Wastewater meeting the Wastewater Parameters that the City and Groundworx estimated would be sent to the System for treatment during the Term. This Capacity Expansion Charge is established in order to accommodate situations whereby the Wastewater Parameters are consistently exceeded or the volume of the Wastewater flow delivered to the System by City consistently exceeds the Design Capacity of the System, or the Design Capacity – Industrial, or if a change in Applicable Law occurs, with the result that a Capacity Expansion is determined to be necessary in order for Groundworx to fulfill its obligations under the Agreement related to Wastewater delivered to the System. For such a Capacity Expansion, Groundworx would look first to the Capacity Expansion Reserve Account established by it to fund the needed Capacity Expansion. However, to the extent that the amount then held in the Capacity Expansion Reserve Account is insufficient to cover the costs of the needed Capacity Expansion, then a Capacity Expansion Charge would be required and implemented.

4.3.2 At the end of each Fiscal Year, Groundworx will cause a Report, as defined in Section 5.1 of this Agreement, to be prepared which will include an evaluation of the remaining Design Capacity of the System as of the end of such Fiscal Year. Should the Report indicate that due to situations whereby the Wastewater Parameters are consistently exceeded or the volume of Wastewater flow delivered by the City to the System consistently exceeds the Design Capacity of

the System, or the Design Capacity – Industrial, or if a change in Applicable Law occurs, and the System will not be adequate for Groundworx to fulfill its obligations under this Agreement to the end of the Term, in accordance with all Applicable Laws, then Groundworx shall implement the necessary planning for a Capacity Expansion. Groundworx shall submit capacity plans, schedule and budget to the City once they are prepared. The City shall be given the opportunity to review and comment on such plans, schedule and budget before they become final, and Groundworx shall consider in good faith any recommendations by the City. After receiving approval of implementation of a Capacity Expansion by the City, subject to MDEQ approval, the Capacity Expansion will be constructed in accordance with such plans, specifications, and budget. To the extent the Capacity Expansion Reserve Account established does not have sufficient funds in it to fund the needed Capacity Expansion, a Capacity Expansion Charge shall be payable by City to Groundworx as provided in Article IV as part of the Total Annual Requirement.

4.3.3 In the event Groundworx does not incur debt to finance a Capacity Expansion, payments by the City to Groundworx to cover the cost of the Capacity Expansion shall be due as a Capacity Expansion Charge payable on a schedule agreed to between Groundworx and the City prior to the Capacity Expansion, and such payments shall be calculated each Fiscal Year as a part of the Total Annual Requirement for the ensuing Fiscal Year.

4.3.4 In the event Groundworx intends to incur debt to pay for a Capacity Expansion, the City reserves the right to review and approve the terms of the proposed financing. In the event the proposed financing is approved, City shall pay to Groundworx an additional sum each month, as a Capacity Expansion Charge, equal to the monthly debt service payment, including principal and interest, due by Groundworx in payment of the debt incurred by Groundworx to pay the cost of any such Capacity Expansion. City's monthly payment shall be billed and paid in a manner to ensure that Groundworx receives the payment at least thirty days prior to the due date for the debt service payment.

4.3.5. In the event that a Capacity Expansion is required as determined by the Report but the City does not agree to the plans, schedule, budget, payment schedule, or financing for the Capacity Expansion or the Parties mutually agree that a Capacity Expansion is not technically or economically feasible to meet the requirements of the City in excess of the original Design

Capacity or Design Capacity - Industrial, then the City shall implement a moratorium on new connections or expansions to the City's System that is physically connected to the System until such time that either (i) the City is able to reduce the metered flow into the System in an amount sufficient to meet the Design Capacity or Design Capacity - Industrial, or (ii) both parties mutually agree on a course of action that prevents Groundworx from exceeding its permitted Design Capacity or Design Capacity - Industrial.

Section 4.4 FINES, SURCHARGES AND PENALTIES.

4.4.1 The third component of the Total Annual Requirement are any payments due by City to Groundworx as provided in Section 3.4.3 of this Agreement that exceed the amount of any payments due by Groundworx to the City as provided in Section 3.4.4. of this Agreement. Payment by the City to Groundworx for any such Environmental Losses known at the beginning of any Fiscal Year and scheduled for payment during such Fiscal Year will be calculated and paid as a part of the Total Annual Requirement, and payment by Groundworx to the City for any such Environmental Losses known at the beginning of any Fiscal Year and scheduled for payment during such fiscal year shall be calculated and credited against the Total Annual Requirement.

4.4.2 In the event any additional payments are determined to be due by City to Groundworx as provided in Section 3.4.3 of this Agreement during any Fiscal Year, Groundworx will bill City for such payments on or before the fifth day of the month following the determination of the amount of the payment and City shall make such payment on or before the tenth day of the month following the receipt of any such bill. In the event any additional payments are determined to be due by Groundworx to the City as provided in Section 3.4.4 of this Agreement during any Fiscal Year, the City will bill Groundworx for such payments on or before the fifth day of the month following the determination of the amount of the payment and Groundworx shall make such payment on or before the tenth day of the month following the receipt of any such bill.

ARTICLE V

CAPACITY EXPANSION

Section 5.1 To ensure coordination between the Parties, by August 1 of each Fiscal Year, Groundworx shall have prepared, or cause to be prepared, and delivered to City a report of remaining capacity of the System for both Domestic Wastewater and Industrial Wastewater transportation, storage, treatment and land application and City shall provide its estimate of both Domestic Wastewater and Industrial Wastewater to be delivered to the System for the upcoming year and any needs City has for Capacity Expansion ("Report"). City and Groundworx will meet not later than September 30 of each Year following delivery of the Report to discuss Capacity Expansion planning to assure coordination between the Parties for any Capacity Expansion needs.

ARTICLE VI

GENERAL PROVISIONS

Section 6.1 SUPERSEDEENCE.

This Agreement supersedes any other agreement, oral or written, between the Parties on the subject matters of this Agreement.

Section 6.2 CONSTRUCTION OF AGREEMENT.

Each Party, with the assistance of competent legal counsel, has participated in the drafting of this Agreement and any ambiguity should not be construed for or against any Party on account of such drafting.

Section 6.3 WAIVER OF BREACH.

No waiver or indulgence of any breach or series of breaches of this Agreement shall be deemed or construed as a waiver of any breach of the same or any other provision hereof or affect the enforceability of any part or all of this Agreement. No waiver shall be valid unless executed in writing by the waiving Party.

Section 6.4 AWARENESS OF CONTENTS/LEGAL EFFECT.

The Parties expressly declare and represent that they have read the Agreement and that they have consulted with their respective counsel regarding the meaning of the terms and conditions contained herein. The Parties further expressly declare and represent that they fully understand the content and effect of this Agreement and they approve and accept the terms and conditions contained herein, and that this Agreement is executed freely and voluntarily.

Section 6.5 AGREEMENT BINDING ON ALL.

This Agreement shall be binding upon and shall inure to the benefit of each of the Parties. All the covenants contained in this Agreement are for the express benefit of each of the Parties to this Agreement. This Agreement is not intended to benefit any third parties.

Section 6.6 SEVERABILITY.

Should any non-material provision of this Agreement be held invalid or illegal, such invalidity or illegality shall not invalidate the whole of this Agreement, but, rather, the Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the Parties shall be construed and enforced accordingly.

Section 6.7 CAPTIONS.

The captions contained herein are included solely for convenience and shall not be construed as part of this Agreement or as full or accurate descriptions of the terms hereof.

Section 6.8 CHOICE OF LAW.

This Agreement shall be construed and enforced pursuant to the laws of the State of Mississippi.

Section 6.9 AUTHORITY AND BINDING EFFECT.

Each Party represents and warrants that its respective obligations herein are legal and binding obligations of such Party, that each Party is fully authorized to enter into this Agreement, and that the persons signing this Agreement hereinafter for each Party has been duly authorized to sign this Agreement on behalf of said Party.

Section 6.10 NOTICE.

6.10.1 Any notice required under this Agreement shall be written and shall be served either by personal delivery, mail, express mail or overnight courier.

6.10.2 In the case of service by personal delivery, no additional time, in days, shall be added to the time in which a right may be exercised or any act may be done.

6.10.3 In the case of service by mail, notice must be deposited in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the representative(s) of the Party on whom it is to be served, at the address set forth in Section 6.10.4 below. The service is complete at the time of deposit. In the case of service by mail, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by mail shall be extended five (5) days. In the case of service by express mail, overnight courier or other method of overnight delivery, any period of notice and any right or duty to do any act or make any response within any period or on a date certain after service of notice by express mail, overnight courier or other method of overnight delivery shall be extended by two (2) days.

6.10.4 Any notice required by this Agreement shall be served on the following representative(s) of the Parties:

Mayor of the City of Hattiesburg
P. O. Box 1898
Hattiesburg, MS 39403-1898
Telephone: 601.545.0503
Email: jdupree@hattiesburgms.com

With a Copy to:

925 City of Hattiesburg
926 Clerk of Council
927 P.O. Box 1898
928 Hattiesburg, MS 39403-1898
929 Telephone: 601.545.4551
930 Email: dbernaardo@hattiesburgms.com

931
932 Groundworx, LLC
933 c/o Bennett V. York
934 112 Sheffield Loop, Suite D
935 Hattiesburg, MS 39402
936 Telephone: 601.264.0403
937 Email: bennettyork@groundworxusa.com

938
939 With a copy to:
940 Groundworx, LLC
941 c/o Elizabeth L. Strickland
942 112 Sheffield Loop, Suite D
943 Hattiesburg, MS 39402
944 Telephone: 601.264.0403
945 Email: lizstrickland@groundworxusa.com
946 The Parties may, upon written notice, add or substitute representatives or addresses.

947

948 Section 6.11 AMENDMENTS OR CHANGES TO AGREEMENT.

949

950 Any amendments or changes to this Agreement must be in writing, signed by a duly
951 authorized representative of the Parties hereto, and must expressly state the mutual intent of the
952 Parties to amend the Agreement as set forth herein.

953

954 Section 6.12 FORCE MAJEURE.

955

956 6.12.1 Should Groundworx be forced to suspend, reduce, or interrupt service to City
957 because of any emergency condition reasonably beyond the control of Groundworx (a "Force
958 Majeure Event"), including, without limitation, floods, fires, ice, windstorms, lightning, strikes,
959 lockouts, Acts of God, or of the public enemy, or acts, orders, or directives of the Federal or State
960 Government or Court, then Groundworx need not deliver any services that it is unable to deliver by
961 reason of such conditions. In the event a suspension of service is necessary as a consequence of a
962 Force Majeure Event, Groundworx will notify City as soon as Groundworx becomes aware of the

963 event. Groundworx will use best efforts to resume service following a Force Majeure Event. In
964 the event that a Force Majeure Event results in a suspension in service, City shall continue to make
965 payments to Groundworx in the amount of the monthly installments of the Baseline Annual
966 Payment for a period of one month. If service is suspended for more than one month, the City may
967 reduce its monthly payment to that portion of the payment attributable to debt service, operations
968 and maintenance, and land leases until service is resumed.

969
970 6.12.2 In the event either Party hereto shall be rendered unable wholly or in part to carry
971 out its obligations under this Agreement as a result of the occurrence of a Force Majeure Event,
972 then the affected Party shall give notice and full particulars of such event in writing to the other
973 Party within a reasonable time after occurrence of the event or cause relied on. The obligation of
974 the Party giving such notice, so far as it is affected by such Force Majeure Event, shall be
975 suspended during the continuance of the inability then claimed, but for no longer period, and any
976 such Party shall endeavor to remove or overcome such inability with all reasonable dispatch;
977 provided, in the event of a Force Majeure Event affecting the City's ability to perform its
978 obligations, the City nevertheless shall continue to pay that portion of the monthly payment to
979 Groundworx attributable to debt service, operations and maintenance, and land leases until the
980 Force Majeure Event is no longer in effect.

981
982 Section 6.13 Guaranties.

983
984 It shall be a condition to the City's obligations under this Agreement that Groundworx
985 provide to the City, contemporaneously with the execution of this Agreement, the following
986 guaranties:

987
988 6.13.1 A Completion Guaranty executed by Bennett V. York in the form attached hereto as
989 Exhibit 6.13.1 guaranteeing the completion of the System.

990
991 6.13.2 A Performance Guaranty executed by Bennett V. York in the form attached hereto
992 as Exhibit 6.13.2 guaranteeing the obligations of Groundworx for a period of ten years from the

Accounting Effective Date, with a maximum liability of \$10 million. This guarantee will be subject to the following additional provisions:

1. Groundworx has agreed, in Section 6.22.1 of this Agreement, to reserve \$500,000 per year for a period of ten years as a Liquidity Reserve. The obligations of Dr. York under the Performance Guaranty shall be reduced dollar for dollar for each dollar held by Groundworx in the Liquidity Reserve.

2. The Performance Guaranty and the requirement of the Liquidity Reserve can be satisfied and released in the event Groundworx provides to the City a performance bond or similar security in the amount of \$10 million issued by a surety and with terms and conditions acceptable to the City. Amounts held within the Liquidity Reserve may be used to purchase such a bond.

3. The Performance Guaranty shall terminate at the end of the tenth year after the Accounting Effective Date.

Section 6.14 DEFAULT.

6.14.1 Default by City. Each of the following constitutes a default by City under this Agreement: (i) City fails to pay any monetary amount due by City to Groundworx pursuant to this Agreement, including any applicable interest, fines, surcharges and/or penalties, within ten (10) days of the due date; or (ii) City fails to observe or perform any other term, obligation or condition to be performed or observed by City as provided in this Agreement other than payment of a monetary amount due by City to Groundworx, and such failure continues for a period of ninety (90) days after a written notice of default is served by City to Groundworx.

6.14.2 Default by Groundworx. Each of the following constitutes a default by Groundworx under this Agreement: (i) Groundworx fails to accept and treat the Wastewater transported to the Interconnect by City and the City is in compliance with all provisions of this Agreement, including the Applicable Standards, and is current on all payments due by City to Groundworx as provided in this

Agreement (except as excused by a Force Majeure Event); (ii) Groundworx fails to observe or perform any other term, obligation or condition to be performed or observed by Groundworx as provided in this Agreement, and such failure continues for a period of ninety (90) days after a written notice of default is served by Groundworx to City

Section 6.15 REMEDIES

In the event of a default, the Parties shall have the following rights and remedies:

6.15.1 Termination. In the event of default by Groundworx under this Agreement, the City shall have the right to terminate this Agreement only if the City simultaneously exercises its Option to Purchase the System and the closing of the sale of the System by Groundworx to the City occurs in accordance with Section 2.5 and Exhibit 2.5 attached hereto.

6.15.2 Specific Performance. In addition to any other remedies available to the Parties, the Parties agree and recognize that the rights and obligations set forth in the Agreement are unique and of such a nature as to be inherently difficult or impossible to value monetarily. If one Party does not perform in accordance with the specific wording of any of the provisions in this Agreement applicable to that Party, or fails to observe or perform any term, obligation or condition to be performed or observed by that Party as provided in this Agreement, an action at law for damages or other remedies at law would be wholly inadequate to protect the unique rights and interests of the other Party to the Agreement. Accordingly, the parties agree that this Agreement's provisions and any obligations arising therefrom may be enforceable in a court of equity by specific performance. The specific performance remedy is not exclusive and is in addition to any other remedy available to the Parties as otherwise provided in this Agreement.

6.15.3 Cumulative Rights and Remedies. The Parties do not intend that any right or remedy given to a Party on the breach of any provision under this Agreement be exclusive, except where the same is stated to be limited such as Sections 2.4 and 6.15.1. Each such right or remedy is cumulative and in addition to any other remedy provided in the Agreement or otherwise available at law or in equity. If the non-breaching Party fails to exercise or delays in exercising any right or remedy, the non-breaching Party does not thereby waive

that right or remedy. Furthermore, no single or partial exercise of any right, power, or privilege precludes any further exercise of a right, power, or privilege granted by this Agreement or otherwise.

6.15.4 Attorneys' Fees. In the event that either Party is required to pursue any action in any court to enforce the obligations, conditions and terms of this Agreement against the other Party, the prevailing Party shall be entitled to recover all its costs and expenses, including, but not limited to, reasonable attorneys' fees and expert witnesses. A Party is a prevailing Party if it obtains all or a substantial part of the relief that it seeks in the lawsuit.

6.15.5 Forum for Any Claim or Action. Any claim or action brought by any Party relating to this Agreement and its subject matter shall be brought in the Chancery or Circuit Court of Forrest County, Mississippi.

6.15.6 For the benefit of Groundworx's bondholders, in the event that City desires to exercise any remedies, including termination of this Agreement and exercise of its Option to Purchase the System, as a result of a default of this Agreement by Groundworx, said bondholders will be provided written notice and a thirty (30) day opportunity to cure any default on the part of Groundworx before the City may exercise any remedy for default.

Section 6.16 CITY CONTRACTS WITH OTHERS.

6.16.1 Service Agreements with Others. City shall have the right to enter into Wastewater service agreements with other persons outside the limits of City, natural or corporate, private or public, to receive Wastewater from such persons to the extent allowed by Applicable Law. City covenants that it will advise Groundworx of all such service agreements and will, if requested by Groundworx, furnish Groundworx with a copy of such service agreements, subject to any legally permissible confidentiality provisions. City may service any person outside its limits provided that a City has annexed or is in the formal process of annexation of such area. Provided, however, this Section is not intended to supersede any other provisions of this Agreement, including, without limitation, the provisions for Capacity Expansion in the event the City's deliveries of Wastewater consistently exceed the Design Capacity or Design Capacity - Industrial.

Section 6.17 ASSIGNMENT.

6.17.1 Neither Party will have the right to assign this Agreement or delegate its duties hereunder to another party without the consent of the other, with such consent not to be unreasonably conditioned, withheld, or delayed; provided, however, both parties agree and acknowledge that the payment obligations under this Agreement may be assigned as necessary to a trustee for the benefit of the bondholders in order to accomplish the proposed financing.

Section 6.18 FINANCING TERMS.

6.18.1 Any notes, bonds, or other instruments initially issued, all of the proceeds of which will be used by Groundworx to finance the project contemplated by this Agreement, will have a 10-year optional redemption call provision consistent with the financing summary in the Proposal, pursuant to which Groundworx will have the right to repay the debt at that time at par, with no prepayment penalties, make whole provisions, or other defeasance costs.

Section 6.19 INTEREST RATE.

6.19.1 In the event the interest rate structure for Groundworx's initial financing is materially greater than the interest rate structure assumed in the Proposal for reasons other than an increase in market interest rates generally, Groundworx will give the City notice of such increase prior to closing the financing together with an explanation of the effect that the increase will have on the annual debt service of Groundworx that will be a part of the System Annual Budget. The City will have a period of five (5) business days after receipt of such notice and explanation to terminate this Agreement. In the event that the City does not timely exercise such right, then the City's right to terminate will become null and void and this Agreement will remain in full force and effect.

Section 6.20 COMPLIANCE.

1116 6.20.1 During the term of this Agreement, Groundworx will comply in all material
1117 respects with all Applicable Laws, except when (a) the failure to comply will not have a material
1118 adverse effect on (1) the financial condition or operations of Groundworx or (2) the ability of
1119 Groundworx to perform its obligations under this Agreement, or (b) the failure to comply is caused
1120 by the City's non-performance of its obligations under this Agreement.

1121
1122 Section 6.21 FINANCING CONTINGENCY

1123
1124 6.21.1 In the event that Groundworx has not closed its financing for the acquisition and
1125 construction the System by April 1, 2014, either party shall have the right to terminate this
1126 Agreement by written notice to the other delivered on or after April 1, 2014, and before the date
1127 such financing is closed.

1128
1129 Section 6.22 DISTRIBUTION; LIQUIDITY RESERVE.

1130
1131 6.22.1 To the extent that Groundworx has positive cash flow after funding the Capital
1132 Improvement Reserve and the Capacity Expansion Reserve, Groundworx shall have the right to
1133 distribute to its members with respect to each Fiscal Year an amount equal to 45% of the taxable
1134 income of Groundworx flowed through to its members pursuant to Internal Revenue Form K-1.
1135 Groundworx shall not make further distributions to its members unless Groundworx has funded a
1136 reserve (the "Liquidity Reserve") in the amount of \$500,000 per year for each of the first ten (10)
1137 Fiscal Years occurring after the Accounting Effective Date, for a total Liquidity Reserve of \$5
1138 million. The purpose of the Liquidity Reserve is to provide a fund for unexpected liabilities of
1139 Groundworx that are not properly included in the System Annual Budget. Groundworx's
1140 obligation to retain the Liquidity Reserve shall terminate at the end of the tenth year after the
1141 Accounting Effective Date.

1142
1143 Section 6.23 REAL ESTATE.

1144
1145 6.23.1 During the term of this Agreement and any extension thereof, Groundworx will
1146 not convey, contract to convey, lease, contract to lease, or otherwise grant rights to third parties

(with the exception of easements, pipelines, hunting leases, towers, and comparable uses) to acquire any interest in real property that is a part of the System unless Groundworx simultaneously acquires substitute real property of comparable acreage which is suitable for use as part of the System. Notwithstanding the foregoing or anything to the contrary, during the term of this Agreement, Groundworx shall have the right to (i) grant easements, permits, licenses, leases and/or rights of way with respect to any portion of the real property that is a part of the System for purposes of hunting, fishing, and/or other recreational purposes, timber operations or purposes, farming purposes, other silvicultural and/or agricultural purposes, pipelines, cellular or other towers, utilities, and/or other comparable purposes or uses and rights of ingress, egress, access and roads related to any of the foregoing; (ii) sell timber, crops, and other silvicultural or agricultural products grown on any portion of said real property; (iii) grant oil, gas and/or mineral leases with respect to any portion of said real property; and (iv) grant deeds of trust, security interests and/or other liens encumbering said real property and/or any other portions of the System for the benefit of Groundworx's bondholders.

ARTICLE VII

REPRESENTATIONS AND WARRANTIES

Section 7

7.1 **Existence and Authority.** Groundworx is a limited liability company duly formed and in good standing under the laws of the state of Mississippi and has all requisite limited liability company power and authority to own its assets and carry on its business as now being and proposed to be conducted, and has limited liability company power and authority to execute, deliver, and perform its obligations under this Agreement.

7.2 **No Conflicts.** The execution and delivery of this Agreement and the performance of its obligations hereunder by Groundworx do not conflict with and are not prohibited by (a) the Certificate of Formation or Operating Agreement of Groundworx, (b) any contract or agreement to which Groundworx is a party or which otherwise is binding on Groundworx or its property, or (c) any Applicable Law.

1178
1179 7.3 Litigation and Judgments. There are no actions, suits, investigations, or proceedings
1180 before or by any Governmental Authority or third party with jurisdiction over Groundworx
1181 pending, or to the knowledge of Groundworx threatened, against Groundworx that would, if
1182 adversely determined, have a material adverse effect on the financial condition or operations of
1183 Groundworx. There are no outstanding judgments against Groundworx.

1184
1185 7.4 Proposal. Groundworx has no reason to believe that any material assumptions
1186 underlying the Proposal, including but not limited to land acquisition costs, system development
1187 costs, financing costs, and terms of financing, were not reasonable at the time of the Proposal and
1188 do not continue to be reasonable as of the date hereof.

1189
1190 7.5 Site Control. Groundworx has valid, legally enforceable contracts, options to
1191 purchase, leases, or options to lease (collectively, "Options") covering the real estate described in
1192 Addendum A to the Proposal which consists of more than 10,000 acres, approximately 7,400
1193 acres of which are to be purchased by Groundworx and approximately 2,710 acres of which are to
1194 be leased. None of Groundworx's rights under any of the Options will expire prior to February
1195 28, 2014. Groundworx is in full compliance with all of its obligations under each of the Options,
1196 and none of the counterparties to any of the Options has the right to terminate the Options. By the
1197 time of closing of the transactions contemplated by the Options, Groundworx will have obtained
1198 good and valid fee simple title, or a good and valid leasehold interest for a period of not less than
1199 30 years, to 10,000 acres of land, subject or subjected to such matters as are listed in paragraph
1200 3.c.(i) – (vi) of Exhibit 2.5 and any deeds of trust, security interests and/or other liens granted for
1201 the benefit of Groundworx's bondholders, plus or minus five percent (5%), at least 70% of which
1202 will be purchased in fee simple. The land to be acquired shall be sufficient for Groundworx to use
1203 for the land application purposes contemplated by this Agreement for the initial Design Capacity
1204 of the System during the entire initial Term of this Agreement. In the event of a title defect,
1205 Groundworx may satisfy its obligations hereunder by obtaining substitute acreage.

1206
1207 7.6 Permits. Groundworx has had substantial interaction with the Mississippi
1208 Department of Environmental Quality concerning the transaction contemplated by this Agreement,

and Groundworx has no reason to believe that it will not be able to obtain all regulatory permits which may be necessary or appropriate to enable Groundworx to perform its obligations under this Agreement.

7.7 Financing. Groundworx has had substantial interaction with Stephens Inc. concerning the financing of the acquisition and construction of the System, and Groundworx has no reason to believe that the financing described in the Proposal will not be available to Groundworx upon the execution of this Agreement.

IN WITNESS WHEREOF, the Parties hereto, with the City acting under authority of its governing body, have caused this Agreement to be executed as of the Effective Date.

CITY OF HATTIESBURG, MISSISSIPPI

By: _____

Name: _____

Its: _____

Date: _____

ATTEST:

By: _____

Name: _____

Its: _____

GROUNDWORX, LLC,
a Mississippi limited liability company

1235

1236

By: _____

1237

Name: _____

1238

Its: _____

1239

Date: _____

1240

1241

1242

Exhibit 2.2.1

1243

1244

The Plans and Specifications, when developed, shall be included here.

1245

Exhibit 2.2.2

Construction and Development Budget

Land Acquisition

Land	28,629,733	
Total Land Acquisition		28,629,733

System Development Costs

Transfer to 98 South	10,568,087
98 South Irrigation	23,782,592
Leaf River Irrigation	15,415,749
Transfer to Lamar	9,111,319
Lamar Irrigation	25,899,752
Force Main from the Industrial Pump Station	2,084,720
Mechanical Treatment (2.0 MGD)	11,621,200
Property Tax during Construction Period	200,000
Lease Payments during Construction Period	1,212,459
Main Entrance - Gate and Landscaping	30,000
Signage at gates	2,500
Signs and Notices throughout LAS	2,500
Roadways and Parking at Welcome Center	30,000
Office Building with Welcome Center at Sims Ranch	100,000
Office FF&E	50,000
Office Computers and Copier	15,000
Security Systems	5,000
Utility Hookups	2,500
Utility Service to Property Line	-
Utility Service to Office, Barn and Pumps	2,500
Utilities during Construction Period	25,000
Landscaping at Welcome Center	5,000
Exterior Lighting at Welcome Center	5,000
Decorative Fencing at entrance 98 Complex	75,000
Landscaping at entrance to 98 Complex	10,000
Backup Generator for Welcome Center	20,000
Construction - Groundworx Superintendent	200,000
Materials Coordinator Groundworx	125,000
Mechanical Plant Operator	75,000
Human Resources - Preopening	25,000
Employee Training Programs - Preopening	20,000
Employee Uniforms (Jacket, Rain Suit, Overalls, Shirts)	5,000
Blueprints, Printing, Postage, Reimbursables	10,000
Barn - Equipment Storage	30,000
Light Eqmt - Mowers, ATVs, Weed Eaters	100,000
Herbicides and application eqmt	10,000
Tools	50,000
Pickup Trucks and Small Trailers (2)	60,000
Heavy Truck and Low-Boy	75,000
Dozer	225,000
Backhoe - Track	225,000
Backhoe - Rubber Tire	75,000
Farm Tractor (3)	210,000
Bobcat (2)	150,000
Wetland Mapping	35,500
Public Relations	20,000
Threatened and Endangered Species Survey	10,000
Cultural Resources	2,300
Consultants - Regulatory	175,000

Exhibit 2.2.2

Construction and Development Budget

Consultants - Financing	100,000	
Consultants - LAS Construction (Barnett)	35,000	
Consultants - Feasibility	150,000	
Construction Consulting - LAS Operation Experts	15,000	
Travel	5,000	
Professional Fees - Legal (Project)	250,000	
Environmental - Phase I ESA	22,000	
Professional Fees - Other	175,000	
Lenders Construction Inspector	30,000	
Builder's Risk	300,000	
Title Insurance and Exams	220,000	
Financial Reporting Accounting	95,000	
Contract, Administration, Supervision and Overhead	1,400,000	
Contractor's Tax (3.5% of service contracts)	2,423,000	
Contingency for Soft Items	1,061,588	(Hard Contingency in Estimates)
Total System Development Costs		108,470,266
Grand Total – System Land and Development Costs		<u>137,100,000</u>

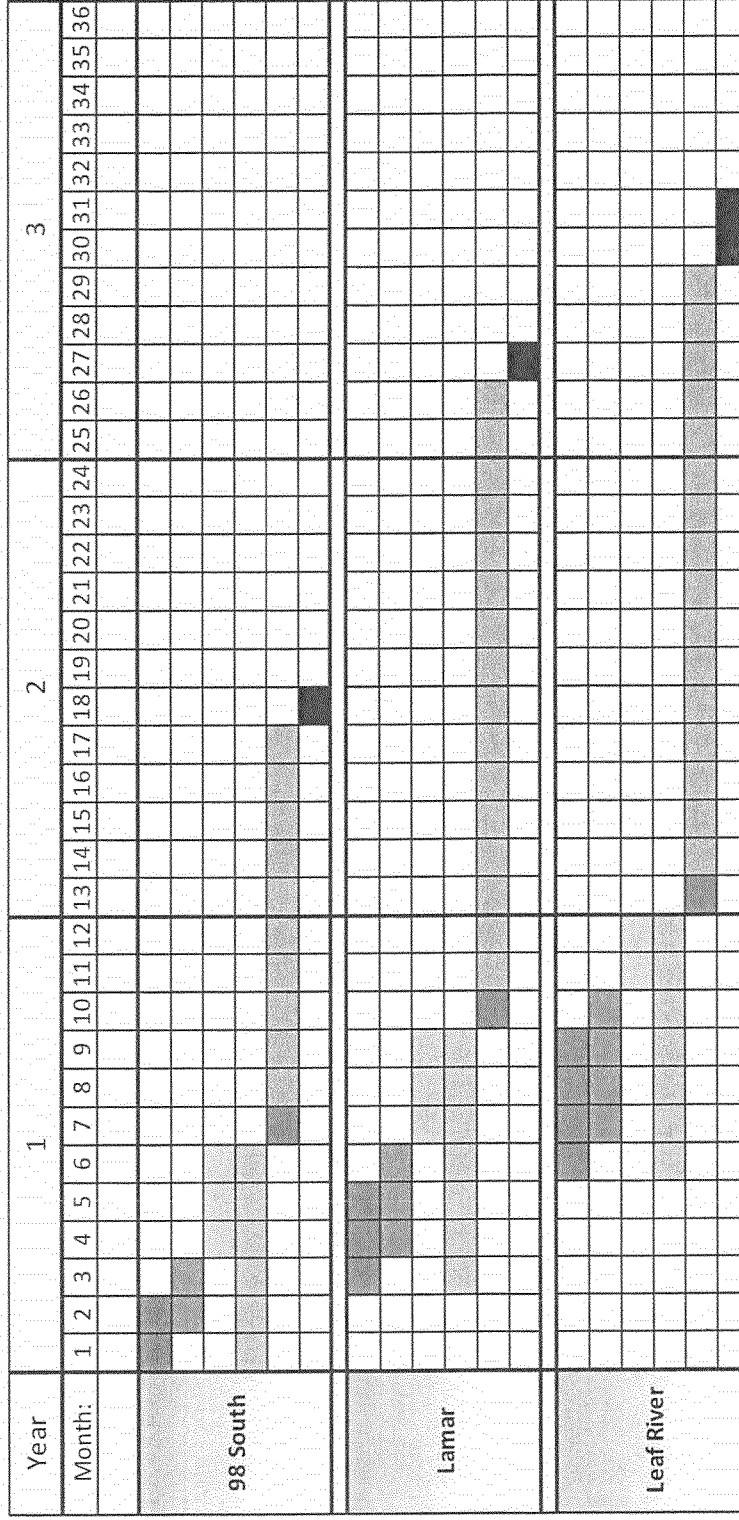
Financing Costs

Issuance Fees	4,233,750	
Capitalized Interest Fund	-	
Total Financing Costs		4,233,750
Grand Total – Capital Investment		<u>141,333,750</u>

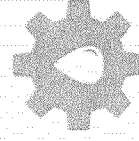
Exhibit 2.2.3

Construction Schedule

Groundworx Land Treatment System Projected Schedule



- Detailed Site Evaluation/Design Basis
- Design Report/Design Documents/Permit Application Package
- DEQ State Review & Meetings with Design Team
- All Permits, Design, Survey, Construction Contract Involvement
- Construction Initiation
- Construction Duration
- Startup and Operation Initiation



GROUNDWORX
SUSTAINABLE UTILITY SOLUTIONS

1258
1259
1260 **Exhibit 2.2.4.1**

1261
1262 **Scope of Work**

1263
1264 **South Lagoon Facility**

1265
1266
1267 Groundworx shall design, build, own and operate a no-discharge Land Treatment System (the
1268 “System” as previously defined) to accept and treat Wastewater from the City’s south lagoon.
1269 Total design capacity of the Land Treatment System to treat the Wastewater from the City shall be
1270 no less than 15.0 million gallons per day (MGD) annual daily average.
1271

1272 Groundworx will own and/or hold long-term leases on the real property on which the System is
1273 constructed. Rights-of-way and easements shall be secured by Groundworx for header and
1274 transfer piping crossing other properties.
1275

1276 Groundworx shall be responsible for the design, construction, ownership, maintenance and
1277 operation of pumping facilities, including wet well, necessary to transfer pretreated Domestic
1278 Wastewater from the City’s south lagoon to the System.
1279

1280 Groundworx shall be responsible for the design, construction, acquisition of easements and
1281 rights-of-way and operation of all effluent, header and transfer piping located behind the metering
1282 station(s), including those lines crossing other properties. Metering Station(s) shall be at or near
1283 the Groundworx property line near the southeast corner of the City’s south lagoon.
1284

1285 Groundworx shall purchase and retain ownership of additional land for future growth and expansion to
1286 accommodate a future Capacity Expansion of the System with an estimated design capacity of 1.3
1287 million gallons per day (MGD) annual daily average.

1288

1289

Exhibit 2.2.4.2

1290

1291

Scope of Work

1292

1293

Industrial Park System

1294

1295 Groundworx shall design, build, own and operate a no-discharge Land Treatment System (the
1296 “System” as previously defined) to accept Industrial Wastewater from the City originating from
1297 the Industrial Park. Total design capacity of the Land Treatment System to treat the Wastewater
1298 received from the Industrial Park System shall be no less than 2.0 million gallons per day (MGD)
1299 annual daily average of the 15.0 MGD annual daily average total capacity of the System.

1300

1301 Groundworx shall be responsible for the design, construction, ownership, operation and
1302 maintenance of a mechanical treatment plant necessary for managing the nutrient loading of the
1303 Wastewater received from the Industrial Park System. Groundworx is not responsible for a system
1304 to pre-treat any other constituents of Industrial Wastewater, other than nutrients.

1305

1306 Groundworx shall be responsible for providing all temporary and seasonal storage of the
1307 Wastewater received from the Industrial Park System.

1308

1309 Groundworx reserves the right to design, construct and operate a common land treatment system
1310 for the Wastewater received from the City.

1311

1312 Groundworx will own and/or hold long-term leases on the real property on which the System is
1313 constructed. Rights-of-way and easements shall be secured by Groundworx for header and
1314 transfer piping crossing other properties.

1315

1316 Groundworx shall be responsible for the design, construction, acquisition of rights-of-way and
1317 easements, ownership and maintenance of the transfer piping located behind the metering

1318 station(s), including those lines crossing other properties. Metering of the waste stream from the
1319 Industrial Park shall be provided at or near the Groundworx property line located nearest to the
1320 existing USA Yeast plant.

1321

1322

1323
1324 **Exhibit 2.2.5.1**

1325
1326 City Improvements

1327
1328 South Lagoon Facility

1329
1330 City shall provide for the design, construction, operation and maintenance of improvements to its
1331 south lagoon as are necessary for the pretreatment of the Wastewater and all required storage of the
1332 treated Wastewater effluent. The City's maximum pretreatment limits for the Wastewater from its
1333 lagoons shall be established by Groundworx in accordance with Exhibit 3.1.1 *Wastewater*
1334 *Parameters for City's South Lagoon.*

1335
1336 The City shall provide biological treatment within Lagoon #3. Treatment will include some
1337 provision for potential denitrification within the treatment cell. City engineers will discuss with
1338 Groundworx engineers potential treatment options with aeration/mixing controls to create optimal
1339 conditions for denitrification. The City shall also provide multiple effluent structures to provide
1340 operations flexibility with treatment efficiency. Mechanical screening of effluent shall also be
1341 required.

1342
1343 City shall provide a minimum of 319 million gallons (MG) of temporary and seasonal storage of
1344 the treated Wastewater effluent at its South lagoons, from which Groundworx shall withdraw to
1345 send to its System. Groundworx shall control the rate of withdrawal from the South
1346 lagoons/storage basins based upon the temporary and seasonal capacity of System. Withdrawal
1347 may come directly from the treatment lagoon cell during normal conditions or from the storage
1348 basins during dry season or simultaneously from both the treatment lagoon cell and the storage
1349 basins.

1350
1351 City shall provide a means of internally measuring Domestic Wastewater discharge flowrate from
1352 its treatment lagoon and from storage.

1355
1356 **Exhibit 2.2.5.2**

1357
1358 **City Improvements**

1359
1360 **Industrial Park System**

1361
1362
1363 The City shall be responsible for the design, construction, ownership and maintenance of the Industrial
1364 Park System which will include pumping systems and transfer piping necessary to separate the primary
1365 Industrial Wastewater stream from its south lagoon (including, but not necessarily limited to, Marshall
1366 Durbin, USA Yeast and Wis-Pak) and to deliver the same to an interconnect with Groundworx at its
1367 Metering Station-Industrial Park. Metering of the Industrial Park System shall be provided at or near
1368 the Groundworx property line located nearest to the existing USA yeast plant. The City shall control
1369 the rate of flow of the Industrial Wastewater effluent to the Groundworx facilities.

1370
1371 The City's maximum pretreatment limits for the Industrial Park System Wastewater shall be
1372 established by Groundworx in accordance with Exhibit 3.1.1.

1375

1376

1377
1378 **EXHIBIT 2.5**

1379
1380 **OPTION TO PURCHASE**

- 1381
- 1382 1. Groundworx hereby grants to City the Option to Purchase the System. The procedure
1383 for purchase and the formula to determine the purchase price of the System are set
1384 forth below.
- 1385
- 1386 2. Principal Purchase Option Terms:
- 1387
- 1388 a. The City may exercise its Option to Purchase the System by delivering notice
1389 in writing to Groundworx at the notice address stated in the Agreement not
1390 later than June 1 of the first full calendar year following the Accounting
1391 Effective Date, and not later than June 1 of any subsequent calendar year,
1392 announcing the binding exercise of the Option to Purchase, and stating a
1393 closing date not earlier than December 15th and not later than December 31st
1394 of the same year.
- 1395
- 1396 b. The purchase price of the System shall be the sum of the following:
- 1397
- 1398 i. the product of (X) the dollar amount of the Capital at the date of
1399 closing times (Y) the Applicable Multiplier (as defined below); and
- 1400
- 1401 ii. payment of all outstanding and unpaid expenses and ad valorem or
1402 other taxes imposed upon the System, prorated to the date of closing;
1403 and
- 1404
- 1405 iii. assumption by City of any capital lease on equipment; and
- 1406
- 1407 iv. assumption by City of all long-term land leases; and

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- v. payment of all defeasance costs related to the financing; and
- vi. payment of all actual closing costs related to the purchase by the City;
and
- vii. less the portion of the City's payments to Groundworx prior to the
date of closing attributable to the reduction of principal of
Groundworx debt incurred to finance the acquisition and construction
of the System; and
- viii. less the portion of the City's payments to Groundworx during the
Interim Service Period attributable to rent paid under long term leases
of real property.

c. The Multiplier if the Option to Purchase is exercised in Year one is 1.10,
resulting in a premium of 10% over the Capital. For every year following
Year One, the Multiplier with respect to Capital shall be as follows:

- i. The Multiplier times Capital is reduced 0.75% for each year
following Year One, so that the City will pay in any year it exercises
the Option to Purchase after Year One, the following Multiplier:
- ii. Year Two = 1.0925
- iii. Year Three = 1.085
- iv. Year Four = 1.0775

and so on for each year, decreasing the Multiplier by 0.75% following each year of
completed operations, until the Multiplier is eliminated in Year Fourteen.

3. Additional Terms and Conditions of the Option to Purchase in Any Year are as follows:

a. It will be a condition to the right of the City to exercise the Option to Purchase that the City has paid the Total Annual Requirement throughout the Term of the Agreement, subject to the provisions of the Agreement related to Force Majeure.

b. Written notice must have been delivered to Groundworx at the Notice Address stated in the Agreement not later than June 1 of any calendar year announcing the binding exercise of the Option to Purchase, stating a closing date not earlier than December 15th and not later than December 31st of the same year.

c. Full payment of the purchase price of the System within the United States and in U.S. dollars paid to Groundworx at closing and transfer of title (or assignment of leasehold or other interest, as applicable) of the System from Groundworx to the City with general warranty of title to that portion of the System consisting of real property which is then owned by Groundworx and being used as part of the System subject to (i) all encumbrances, reservations and exceptions to title to which said real property was subject or is subjected to at the time that Groundworx initially purchases or acquires an interest in the same; (ii) all applicable City, County and/or State ad valorem taxes, assessments and/or levies for the year of closing; (iii) all easements, permits, licenses, leases and/or rights of way with respect to any portion of the real property that is then a part of the System for purposes of hunting, fishing, and/or other recreational purposes, timber operations or purposes, farming purposes, other silvicultural and/or agricultural purposes, pipelines, cellular or other towers, utilities, and/or other comparable purposes or uses, including rights of ingress, egress, access, and roads related to any of the foregoing; (iv) any oil, gas and/or mineral leases with respect to any portion of said real

property; (v) any law, ordinance or governmental regulation relating to, restricting or regulating the use, occupancy or enjoyment of said real property; and (vi) the provisions of all then existing long term leases to Groundworx, as lessee, affecting any portion of said real property..

d. Assumption of all contracts and leases in place with Groundworx which cannot be canceled without penalty as of the closing date.

e. The parties anticipate that the System will be properly maintained and in good operating condition throughout the entirety of the Agreement, and that the System should be properly maintained and in good operating condition at the time of closing the sale pursuant to the Option. In the event that the System has not been properly maintained or is not in good operating condition at the time of the Closing of the Sale, so much of the Capital Improvements Reserve will be used as necessary for the purpose of maintenance and returning the System to good operating condition.

4. Default. In the event that the City terminates the Agreement and exercises this Option to Purchase for default by Groundworx, which default consists of (1) a payment default by Groundworx is declared by Groundworx's bondholders at a time when the City has made all payments due to Groundworx under the terms of this Agreement, (2) Groundworx is in repeated violation of applicable Environmental Laws and such violations are not caused by Wastewater delivered to Groundworx by the City not meeting the Wastewater Parameters or Environmental Laws, (3) the City incurs Environmental Losses required to be indemnified by Groundworx and Groundworx fails to or is unable to perform such indemnity, (4) Groundworx is unable to accept Wastewater tendered by the City at a time when the City's storage capacity is full and the System is capable of accepting, transporting and applying such Wastewater, or (5) Groundworx repudiates or intentionally refuses to perform its obligations under this Agreement, then the portion of the purchase price set forth in Section 2.b.i. of this Option to Purchase will consist of the Capital only, without

application of the Multiplier. In the event the City exercises the Option to Purchase for any other reason, then the Multiplier shall be applicable.

5. Additional Provisions at the End of the Option:

- a. Groundworx shall give the City notice not later than 180 days prior to the end of the Term, as such may be extended, of (i) the date that the Term ends, and (ii) that the City has the right to exercise the Option to acquire the System at the end of the Term. City will have the right to exercise the Option and acquire the System at the end of the Term by giving written notice to Groundworx at the notice address stated in the Agreement not later than 60 days after receipt by the City of such notice from Groundworx. In the event Groundworx fails or is late in giving such notice to the City, the City's deadline for exercising the Option shall extend until the sixtieth day after Groundworx does in fact give such notice.

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Exhibit 3.1.1

Wastewater Parameters for the City's South Lagoon

Parameter	Discharge Limitations In mg/L unless otherwise specified			Monitoring Requirements			Special Conditions
	Monthly Avg.	Weekly Avg.	Annual Daily Avg.	Measurement Frequency	Sample Type	Sample Location	
Flow (MGD)	Monitor	Monitor	13.0	Seven Days/ Week	Continuous Recording	Effluent	Concentration limits to be set by MDEQ; actual limits may differ Alert Groundworx if TSS goes over 90 mg/L
Biochemical Oxygen Demand (5-day)	45	75	-	One Day/ Week	Composite	Effluent	
Total Suspended Solids (TSS)	Monitor	Monitor	-	One Day/ Week	Composite	Effluent	
Ammonia	Monitor	Monitor	-	One Day/ Week	Composite	Influent and Effluent	
TKN (as N)	Monitor	Monitor	-	One Day/ Week	Composite	Influent and Effluent	
Nitrate – Nitrite (as N)	Monitor	Monitor	-	One Day/ Week	Composite	Effluent	
Total Phosphorus	Monitor	Monitor	-	One Day/ Week	Composite	Effluent	
Total Residual Chlorine (TRC)	Monitor	Monitor	-	One Day/ Week	Grab	Effluent	Monitor only if chlorination of effluent is ever needed Minimum D.O. concentration is 2.0 mg/L
Dissolved Oxygen	2 mg/L	2 mg/L	-	One Day/ Week	Grab	Effluent	
pH	6-9 su	6-9 su	-	One Day/ Week	Grab	Effluent	

1525

Exhibit 3.1.2

Wastewater Parameters for the City's Industrial Park System

Parameter	Discharge Limitations In mg/L unless otherwise specified			Monitoring Requirements			Special Conditions
	Monthly Avg.	Daily Max.	Annual Daily Avg.	Measurement Frequency	Sample Type	Sample Location	
Flow (MGD)	2.0	2.5	2.0	Seven Days/ Week	Continuous Recording	Influent	6.0 Max Instantaneous
Biochemical Oxygen Demand (5-day)(lbs. per day)	12,250	15,312	-	One Day/ Week	Composite	Influent	
Total Suspended Solids (TSS)	Monitor	Monitor	-	One Day/ Week	Composite	Influent	
Ammonia	Monitor	Monitor	-	One Day/ Week	Composite	Influent	
TKN (as N)(lbs. per day)	1,051	1,314	-	One Day/ Week	Composite	Influent	
Nitrate – Nitrite (as N)	Monitor	Monitor	-	One Day/ Week	Composite	Influent	
Total Phosphorus	Monitor	Monitor	-	One Day/ Week	Composite	Influent	
pH	6-9 su	6-9 su	-	One Day/ Week	Grab	Influent	

Exhibit 3.2
Interconnects to System

South
Lagoon

South Lagoon Interconnect
and Metering Station

Industrial Park System
Interconnect &
Metering Station

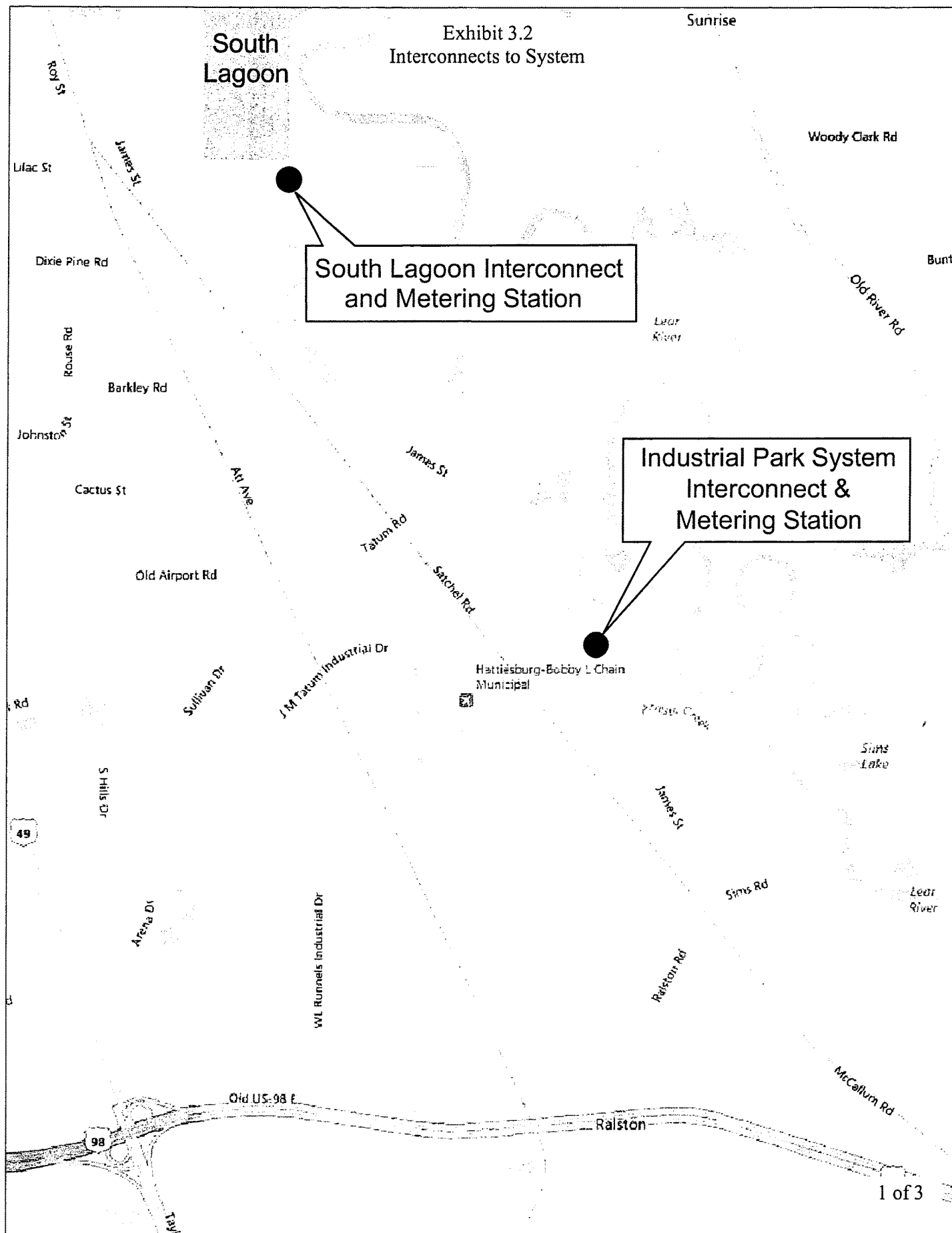
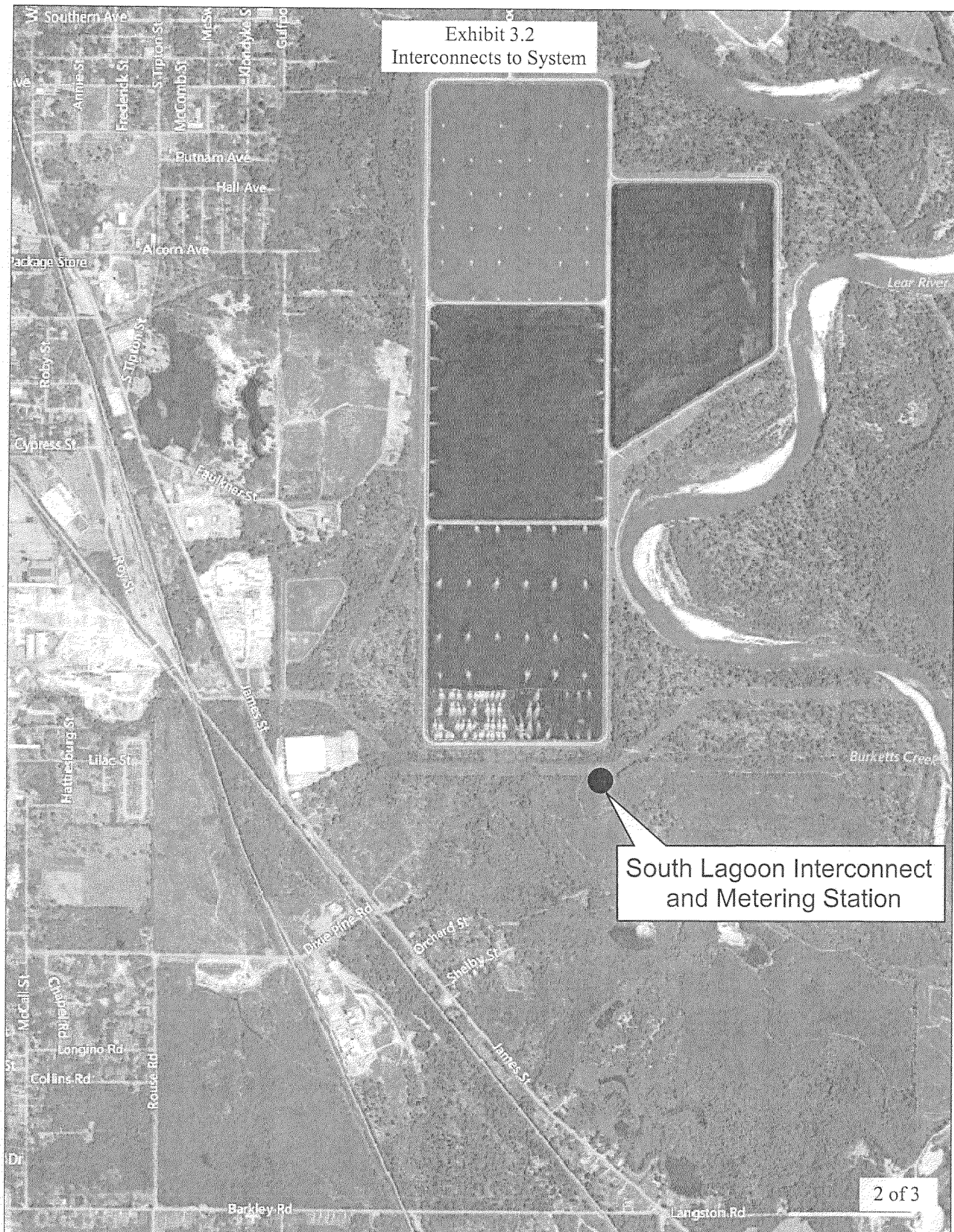


Exhibit 3.2
Interconnects to System



South Lagoon Interconnect
and Metering Station

Exhibit 3.2
Interconnects to System

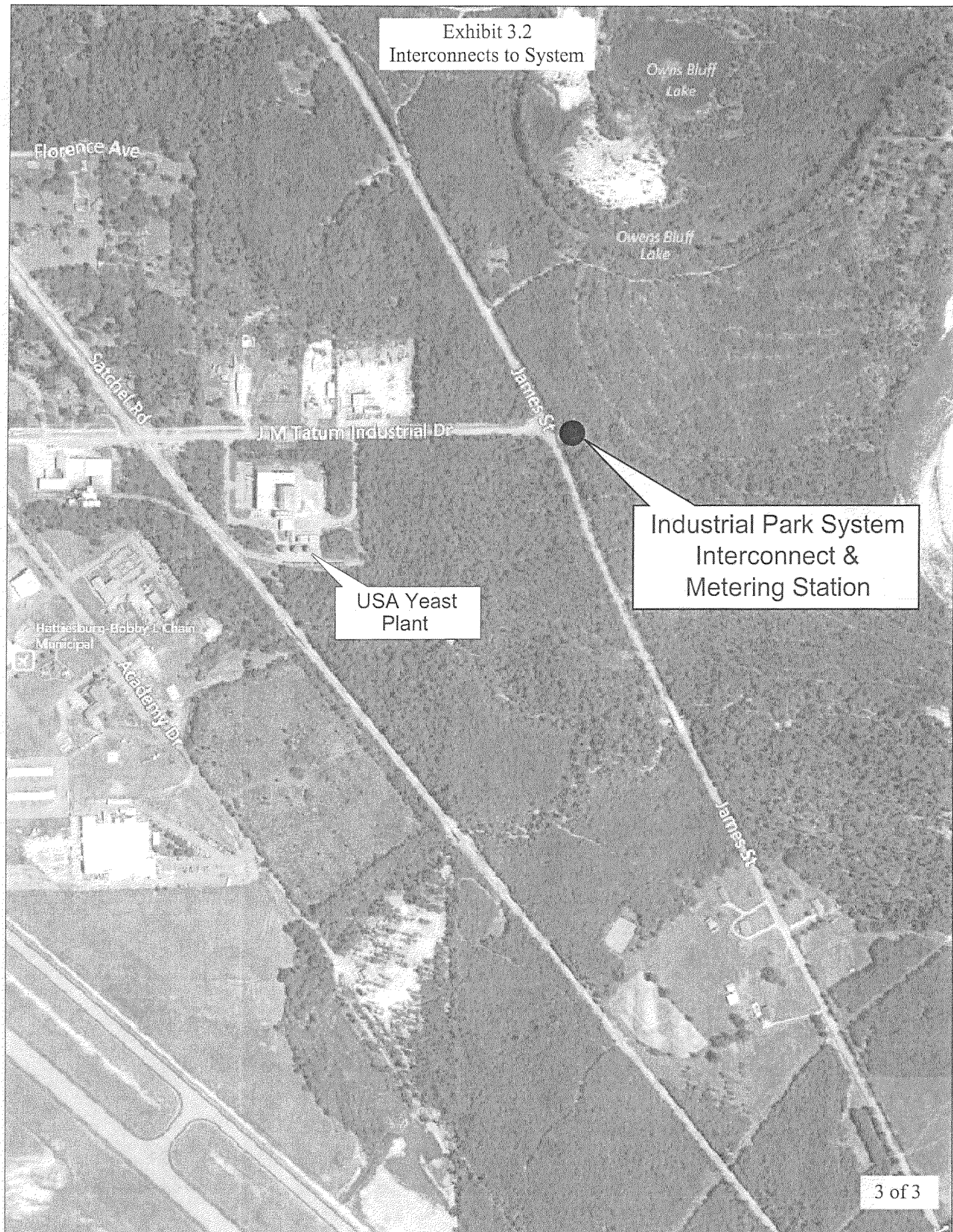


Exhibit 4.1.1

Industrial Park Interim Service Period Monthly Payments

Schedule of Interim Service Period monthly Payments

\$202,500.00

Note 1: The Industrial Park Interim Service Period (“Interim Service Period”) is the period of time from the date of the first receipt of the Wastewater at the Metering Station - Industrial Park and ending on the Accounting Effective Date.

Note 2: City will pay the Debt Service as it becomes due and payable in addition to the monthly Interim Service Payments during the Industrial Park Interim Service Period.

Note 3: Payments to Groundworx during the Interim Service Period are not subject to any reserve requirements.

Exhibit 4.1.2

Baseline Annual Payment

Baseline Annual Payment

\$16,613,403

EXHIBIT 6.13.1

COMPLETION GUARANTY

Field

Guaranty dated _____, 2014, made by **Bennett V. York (“Guarantor”)**, in favor of the **City of Hattiesburg, Mississippi (“City”)**.

Recitals

- A. City and Groundworx, LLC (“Groundworx”) have entered into an Agreement for the Treatment of Wastewater of even date herewith pursuant to which Groundworx has agreed to design, build, construct, operate, and maintain a system (the “System”) for collecting, receiving, storing, transporting, treating and/or disposing of Wastewater (as defined in the Agreement) for the City (“the Agreement”).
- B. It is a condition to City’s willingness to enter into the Agreement that Guarantor shall have executed and delivered to City a Guaranty of the obligation of Groundworx to complete the System.
- C. Guarantor is a member of Groundworx and has determined that his execution, delivery and performance of this Guaranty directly benefit him and are in his best interest.

Agreement

Therefore, in consideration of the premises and the agreements herein and in order to induce City to enter into the Agreement, Guarantor hereby agrees with City as follows:

SECTION 1. Guaranty.

Guarantor hereby irrevocably, absolutely and unconditionally guarantees as follows:

- (a) to cause Groundworx to proceed promptly and without delay or interruption to acquire and construct the System strictly in accordance with the Plans and Specifications as defined in Section 2.2.1 of the Agreement and with all applicable requirements of all governmental authorities;
- (b) to cause Completion by Groundworx of the acquisition and construction of the System, including the various phases thereof, in accordance with said Plans and Specifications by the time for construction completion set forth in Section 2.2.3 of the Agreement; and
- (c) in connection therewith and until the System is so Completed, to cause Groundworx to perform all of its obligations under the Agreement related to

acquisition and construction of the System in accordance with said Plans and Specifications, including, without limitation (i) the payment of all costs and expenses of Completion, and (ii) the payment of taxes and any other charges or expenses which might constitute a lien against the interest of Groundworx in the System other than the lien of Groundworx's bondholders.

For the purpose of this Guaranty, "Complete," "Completion," and variations of such terms of the System shall mean the acquisition of all necessary land and equipment and completion of construction of the System in accordance with said Plans and Specifications, free of all liens and encumbrances (other than in favor of Groundworx's bondholders) to the end that System is capable of receiving, treating and disposing of Wastewater in accordance with the terms of the Agreement. If any of the above described obligations of Groundworx in connection with the Completion of the System are not complied with, in any respect whatsoever, and without the necessity of any notice from City to Guarantor, Guarantor agrees to (i) assume all responsibility for Completion of the System and, at Guarantor's own cost and expense, cause the System to be fully Completed in accordance with said Plans and Specifications; (ii) pay all bills incurred in connection with the Completion of the System; and (iii) otherwise cause the System to be ready and capable at the time required by Section 2.2.3 of the Agreement to accept, treat and dispose of Wastewater in accordance with the terms of the Agreement.

SECTION 2. Guarantor's Obligations Unconditional.

- (a) The liability of Guarantor hereunder shall be absolute and unconditional irrespective of: (i) any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto; (ii) any change in the time or manner of performance of, or in any other term in respect of Groundworx's obligations for Completion; (iii) any release or amendment or waiver of or consent to any departure from the Agreement; (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of Guarantor in respect of Groundworx's obligations under the Agreement; or (v) the absence of any action on the part of City to obtain performance from Groundworx.
- (b) This Guaranty shall terminate on the Accounting Effective Date,

SECTION 3. Waivers.

Guarantor hereby waives (i) notice of any default by Groundworx under the Agreement; (ii) notice of any actions taken by Groundworx; (iii) all other notices, demands, protests, and other formalities of every kind in connection with the enforcement of the obligations of Guarantor hereunder, the omission of or delay in which, but for the provisions of this Section 3, might constitute grounds for relieving Guarantor of his obligations hereunder; and (iv) any requirement that City exhaust any right or take any action against Groundworx.

SECTION 4. Representations and Warranties.

Guarantor hereby represents and warrants as follows:

- (a) The execution, delivery and performance by Guarantor of this Guaranty does not and shall not contravene any law or governmental regulation or any contractual restriction binding on or affecting Guarantor or any of his properties, and does not and shall not result in or require the creation of any lien, security interest, or other charge or encumbrance upon or with respect to any of his properties.
- (b) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body is required for the due execution, delivery, and performance by Guarantor of this Guaranty.
- (c) This Guaranty is a legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- (d) There is no action, suit, or proceeding pending or threatened against or otherwise affecting Guarantor before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality which may materially adversely affect Guarantor's ability to perform his obligations hereunder.

SECTION 5. Notices, Etc.

All correspondence, statements, notices, requests, and demands (collectively "Communications") provided for hereunder shall be in writing and shall be mailed or delivered,

if to Guarantor:

Bennett V. York
112 Sheffield Loop, Suite D
Hattiesburg, MS 39402
Telephone: 601.264.0403
Facsimile: 601.264.0433
Email: eliz.strickland@gmail.com
bennettyork@groundworxusa.com

With a copy to:

Elizabeth Strickland
112 Sheffield Loop, Suite D
Hattiesburg, MS 39402
Telephone: 601.264.0403
Facsimile: 601.264.0433
Email: eliz.strickland@gmail.com
lizstrickland@groundworxusa.com

if to City:

City of Hattiesburg
Attention: Mayor of the City of Hattiesburg

P. O. Box 1898
Hattiesburg, MS 39403-1898
Telephone: 601-545-0503
Email: jdupree@hattiesburgms.com

or as to either party, at such other address as shall be designated by that party in a Communication to the other complying as to delivery with the terms of this Section 5. All Communications shall be effective when tendered for delivery at the specified address.

SECTION 6. Financial Statements.

Not later than thirty (30) days after the Effective Date of the Agreement, and on or before March 1 of each year that this Guaranty is in effect, Guarantor shall permit the Chief Financial Officer of the City and/or the City's independent auditor to review (but not copy, photograph or otherwise reproduce), at the principal office of Groundworx, a copy of a statement of the financial position of the Guarantor, including assets, liabilities and net worth, as of the previous December 31, together with a statement of the net income of the Guarantor during the calendar year ended as of the previous December 31, all of which Guarantor represents and warrants to the City will be true and accurate in all material respects and fairly present the financial position and net income of the Guarantor as of and for the period ending that December 31. By acceptance of delivery of and reliance on this Guaranty, City agrees, represents and warrants to Guarantor that all information revealed by any such statements (the "Confidential Information") shall be kept confidential by said Chief Financial Officer and the City's independent auditor, and shall only be disclosed by said Chief Financial Officer and/or the City's independent auditor to such officials of the City who have a need to be informed of any such Confidential Information, each of whom must agree prior to any such disclosure to them to keep such Confidential Information confidential and not to disclose the Confidential Information to anyone else, and the City shall cause all such Confidential Information to be kept confidential and to not be made public in any manner whatsoever, and to not be disclosed to any other person or entity except as required by a court having jurisdiction thereover.

SECTION 7. Miscellaneous.

- (a) No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor and City, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (b) No failure on the part of City to exercise, and no delay in exercising, any right hereunder or under the Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of City

provided herein and in the Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

- (c) Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- (d) This Guaranty shall (i) be binding on Guarantor and his executors, administrators, heirs, devisees and legatees, and other personal representatives and successors and (ii) inure, together with all rights and remedies of City hereunder, to the benefit of City and its successors, transferees, and assigns.
- (e) This Guaranty shall be governed by and construed in accordance with the laws of the state of Mississippi applicable to contracts made and to be performed strictly within such state.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed, as of the date first above written.

BENNETT V. YORK

EXHIBIT 6.13.2

PERFORMANCE GUARANTY

Field

Guaranty dated _____, 2014, made by **Bennett V. York** (“**Guarantor**”), in favor of the **City of Hattiesburg, Mississippi** (“**City**”).

Recitals

- A. City and Groundworx, LLC (“Groundworx”) have entered into an Agreement for the Treatment of Wastewater of even date herewith pursuant to which Groundworx has agreed to design, build, construct, operate, and maintain a system (the “System”) for collecting, receiving, storing, transporting, treating and/or disposing of Wastewater (as defined in the Agreement) for the City (“the Agreement”).
- B. It is a condition to City’s willingness to enter into the Agreement that Guarantor shall have executed and delivered to City a Guaranty of the performance by Groundworx of its obligations under the Agreement.
- C. Guarantor is a member of Groundworx and has determined that his execution, delivery and performance of this Guaranty directly benefit him and are in his best interest.

Agreement

Therefore, in consideration of the premises and the agreements herein and in order to induce City to enter into the Agreement, Guarantor hereby agrees with City as follows:

SECTION 1. Guaranty.

Guarantor hereby irrevocably, absolutely and unconditionally guarantees as follows:

- (a) the performance by Groundworx of all of its obligations under the Agreement for a period of ten (10) years commencing on the Accounting Effective Date (as defined in the Agreement);
- (b) upon failure of Groundworx to make any of the following described payments or reimbursements, the payment by Groundworx to the City of any payment obligations of Groundworx to City under the Agreement, including but not limited to reimbursing the City for any Environmental Losses (as defined in the Agreement) which Groundworx is obligated to reimburse City for under Section 3.4.4 of the Agreement and payment of any damages that City incurs as a result of failure of Groundworx to perform its obligations under the Agreement.

SECTION 2. Limitations on Guaranty.

- (a) Guarantor shall have no obligation to pay in excess of the sum of \$10,000,000 in the aggregate in performing his obligations under this Guaranty and the maximum liability of Guarantor under this Guaranty shall be \$10,000.00.
- (b) ~~†~~The amount of this Guaranty and the maximum liability of guarantor under this Guaranty shall decrease on a dollar-for-dollar basis by all amounts deposited by Groundworx from time to time in the Liquidity Reserve (as defined in the Agreement).
- (c) Guarantor shall have the right to terminate this Guaranty by posting a performance bond or other similar security in favor of the City issued by a surety acceptable to the City guaranteeing performance by Groundworx under the Agreement, in an amount not less than \$10,000,000, and on terms and conditions otherwise acceptable to the City.
- (d) This Guaranty shall terminate on the tenth (10th) anniversary of the Accounting Effective Date, or if earlier, the date of any purchase by City pursuant to the Option to Purchase (as defined in the Agreement), provided that the Guaranty shall remain in full force and effect after such tenth anniversary termination date with respect to valid claims made by the City under this Guaranty prior to such tenth anniversary termination.

SECTION 3. Guarantor's Obligations Unconditional.

The liability of Guarantor hereunder shall be absolute and unconditional irrespective of:

- (i) any lack of validity or enforceability of the Agreement or any agreement or instrument relating thereto;
- (ii) any change in the time or manner of performance of, or in any other term in respect of Groundworx's obligations;
- (iii) any release or amendment or waiver of or consent to any departure from the Agreement;
- (iv) any other circumstance which might otherwise constitute a defense available to, or a discharge of Guarantor in respect of Groundworx's obligations; or
- (vii) the absence of any action on the part of City to obtain performance from Groundworx.

SECTION 4. Waivers.

Guarantor hereby waive (i) notice of any default by Groundworx under the Agreement; (ii) notice of any actions taken by Groundworx; (iii) all other notices, demands, protests, and other formalities of every kind in connection with the enforcement of the obligations of Guarantor hereunder, the omission of or delay in which, but for the provisions of this Section 4, might constitute grounds for relieving Guarantor of his obligations hereunder; and (iv) any requirement that City exhaust any right or take any action against Groundworx.

SECTION 5. Representations and Warranties.

Guarantor hereby represents and warrants as follows:

- (a) The execution, delivery and performance by Guarantor of this Guaranty does not and shall not contravene any law or governmental regulation or any contractual restriction binding on or affecting Guarantor or any of his properties, and does not and shall not result in or require the creation of any lien, security interest, or other charge or encumbrance upon or with respect to any of his properties.
- (b) No authorization or approval or other action by, and no notice to or filing with, any governmental authority or other regulatory body is required for the due execution, delivery, and performance by Guarantor of this Guaranty.
- (c) This Guaranty is a legal, valid, and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms.
- (d) There is no action, suit, or proceeding pending or threatened against or otherwise affecting Guarantor before any court, arbitrator, or governmental department, commission, board, bureau, agency, or instrumentality which may materially adversely affect Guarantor's ability to perform his obligations hereunder.

SECTION 6. Notices, Etc.

All correspondence, statements, notices, requests, and demands (collectively "Communications") provided for hereunder shall be in writing and shall be mailed or delivered,

if to Guarantor:

Bennett V. York
112 Sheffield Loop, Suite D
Hattiesburg, MS 39402
Telephone: 601.264.0403
Facsimile: 601.264.0433
Email: eliz.strickland@gmail.com
bennettyork@groundworxusa.com

With a copy to:

Elizabeth Strickland
112 Sheffield Loop, Suite D
Hattiesburg, MS 39402
Telephone: 601.264.0403
Facsimile: 601.264.0433
Email: eliz.strickland@gmail.com
lizstrickland@groundworxusa.com

if to City:

City of Hattiesburg

Attention: Mayor of the City of Hattiesburg
P. O. Box 1898
Hattiesburg, MS 39403-1898
Telephone: 601-545-0503
Email: jdupree@hattiesburgms.com

or as to either party, at such other address as shall be designated by that party in a Communication to the other complying as to delivery with the terms of this Section 6. All Communications shall be effective when tendered for delivery at the specified address.

SECTION 7. Financial Statements.

Not later than thirty (30) days after the Effective Date of the Agreement, Guarantor shall permit the Chief Financial Officer of the City and/or the City's independent auditor to review (but not copy, photograph or otherwise reproduce), at the principal office of Groundworx, a copy of a statement of the financial position of the Guarantor, including assets, liabilities and net worth, as of the previous December 31, together with a statement of the net income of the Guarantor during the calendar year ended as of the previous December 31, all of which Guarantor represents and warrants to the City will be true and accurate in all material respects and fairly present the financial position and net income of the Guarantor as of and for the period ending that December 31. By acceptance of delivery of and reliance on this Guaranty, City agrees, represents and warrants to Guarantor that all information revealed by any such statements (the "Confidential Information") shall be kept confidential by said Chief Financial Officer and the City's independent auditor, and shall only be disclosed by said Chief Financial Officer and/or the City's independent auditor to such officials of the City who have a need to be informed of any such Confidential Information, each of whom must agree prior to any such disclosure to them to keep such Confidential Information confidential and not to disclose the Confidential Information to anyone else, and the City shall cause all such Confidential Information to be kept confidential and to not be made public in any manner whatsoever, and to not be disclosed to any other person or entity except as required by a court having jurisdiction thereover.

SECTION 8. Miscellaneous.

- (a) No amendment of any provision of this Guaranty shall be effective unless it is in writing and signed by Guarantor and City, and no waiver of any provision of this Guaranty, and no consent to any departure by Guarantor therefrom, shall be effective unless it is in writing and signed by City, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.
- (b) No failure on the part of City to exercise, and no delay in exercising, any right hereunder or under the Agreement shall operate as a waiver thereof; nor shall any

single or partial exercise of any right preclude any other or further exercise thereof or the exercise of any other right. The rights and remedies of City provided herein and in the Agreement are cumulative and are in addition to, and not exclusive of, any rights or remedies provided by law.

- (c) Any provision of this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or invalidity without invalidating the remaining portions hereof or thereof or affecting the validity or enforceability of such provision in any other jurisdiction.
- (d) This Guaranty shall (i) be binding on Guarantor and his executors, administrators, heirs, devisees and legatees, and other personal representatives and successors and (ii) inure, together with all rights and remedies of City hereunder, to the benefit of City and its successors, transferees, and assigns.
- (e) This Guaranty shall be governed by and construed in accordance with the laws of the state of Mississippi applicable to contracts made and to be performed strictly within such state.

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be executed, as of the date first above written.

BENNETT V. YORK