

BE IT REMEMBERED THAT THE REGULAR RECESSED MEETING OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF PETAL, MS. OF JUNE 15, 1993 WAS CALLED TO ORDER ON THIS THE 22ND DAY OF JUNE, 1993 AT 5:00 P.M. IN THE BOARD ROOM OF SAID CITY.

THOSE PRESENT	MAYOR JACK GAY
ALDERMEN	JERRY CROWE DONALD H ROWELL BOBBY RUNNELS LEROY SCOTT
OTHERS	RAYMOND DEARMAN

THE MAYOR DECLARED A QUORUM PRESENT AND DECLARED THE CITY COUNCIL IN SESSION.

WHEREAS, ALDERMAN RUNNELS MADE A MOTION TO PURCHASE A 1993 CROWN VICTORIA FROM EAST FORD, INC. IN JACKSON, MS. AT THE STATE CONTRACT PRICE OF \$13,713.00 FOR THE FINANCIAL DEPARTMENT. ALDERMAN ROWELL SECONDED THE MOTION.

THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE

WHEREAS, RAYMOND DEARMAN, CITY ENGINEER, PRESENTED AN AMENDED CONTRACT FOR THE ENGINEERING SERVICES FOR THE PLANNING AND CONSTRUCTION OF THE SEWER EXTENSIONS INCLUDED IN THE SEWER REVOLVING FUND LOAN PROGRAM.

SEE EXHIBIT "A"

THEREUPON, ALDERMAN CROWE MADE A MOTION TO AUTHORIZE THE MAYOR TO EXECUTE THE FOREGOING CONTRACT BETWEEN THE CITY AND SHOWS, DEARMAN, AND WAITS, INC. ALDERMAN ROWELL SECONDED THE MOTION.

THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE

WHEREAS, MAYOR GAY PRESENTED THE FIRST AND FINAL BILL FROM C. J. MORGAN FOR THE SEWER EXTENSION ON THREE MILE CUT-OFF IN THE AMOUNT OF \$8,000.75. MAYOR GAY STATED THAT THE ADDITIONAL \$10.00 WAS FOR AND 8 X 6 TEE.

THEREUPON, ALDERMAN ROWELL MADE A MOTION TO PAY C. J. MORGAN \$8000.75 FOR THE SEWER EXTENSION. ALDERMAN RUNNELS SECONDED THE MOTION.

THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE

WHEREAS, MAYOR GAY PRESENTED A QUOTE FOR 142 STREET SIGNS AT A COST OF \$1,982.32, 8 STOP SIGNS AT A COST OF \$76.00 AND 1 RAILROAD CAUTION SIGN AT \$32.06 A TOTAL ON STATE CONTRACT BID PRICE OF \$2,090.38.

THEREUPON, ALDERMAN ROWELL MADE A MOTION TO AUTHORIZE THE PURCHASE OF THE SIGNS ON THE STATE CONTRACT AT A COST OF \$2,090.38. ALDERMAN CROWE SECONDED THE MOTION.

THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE

WHEREAS, MAYOR GAY PRESENTED THE FOLLOWING RESOLUTION TO AMEND THE BUDGET OF FY 92-93.

SEE EXHIBIT "B"

THEREUPON, ALDERMAN ROWELL MADE A MOTION TO ADOPT THE FOREGOING RESOLUTION AMENDING THE FY 92-93 BUDGET. ALDERMAN CROWE SECONDED THE MOTION.

THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE

THEREUPON, ALDERMAN ROWELL MADE A MOTION TO ADJOURN. ALDERMAN SCOTT SECONDED THE MOTION.

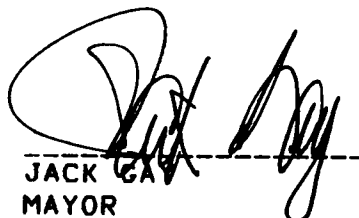
THOSE PRESENT AND VOTING "AYE":

ALDERMAN JERRY CROWE
ALDERMAN DONALD H ROWELL
ALDERMAN BOBBY RUNNELS
ALDERMAN LEROY SCOTT

THOSE PRESENT AND VOTING "NAY":

NONE


THEREBEING NO FURTHER BUSINESS, THE REGULAR RECESSED MEETING OF THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF PETAL, MISSISSIPPI OF JUNE 15, 1993 WAS ADJOURNED ON THIS THE 22ND DAY OF JUNE, A.D., 1993.



JACK GAY
MAYOR

(SEAL)

ATTEST:



PRISCILLA C. DANIEL
CITY CLERK

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

Prepared by
ENGINEERS' JOINT CONTRACT DOCUMENTS COMMITTEE
and
Issued and Published Jointly By



PROFESSIONAL ENGINEERS IN PRIVATE PRACTICE
A practice division of the
NATIONAL SOCIETY OF PROFESSIONAL ENGINEERS
AMERICAN CONSULTING ENGINEERS COUNCIL
AMERICAN SOCIETY OF CIVIL ENGINEERS
CONSTRUCTION SPECIFICATIONS INSTITUTE

ECDC No. 1910-1 (1984 Edition)

EXHIBIT A TO AGREEMENT BETWEEN OWNER AND
ENGINEER FOR PROFESSIONAL SERVICES, dated
19__ (for use with No. 1910-1/1984 Edition).

Further Description of Basic Engineering Services and Related Matters

1. This is an exhibit attached to, made a part of and incorporated by reference into the Agreement made on 19 93 between City of Petal & Shows, Deazman & Waits, Inc. (OWNER) and (ENGINEER) providing for professional engineering services. The Basic Services of Engineer as described in Section I of the Agreement are amended or supplemented as indicated below and the time periods for the performance of certain services as indicated in Section 4 of the Agreement are stipulated as indicated below.

2. During the Study and Report Phase ENGINEER shall: Prepare the 201 Facility Plan Update
(insert amendments or supplements to paragraph 1.2.)

The Study and Report Phase Services will be completed and the Report submitted before May 1, 1993
~~before May 1, 1993~~

3. During the Preliminary Design Phase ENGINEER shall:
(insert amendments or supplements to paragraph 1.3.)

The Preliminary Design Phase Services will be completed and ENGINEER's documentation and opinion of costs submitted within N/A calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

4. During the Final Design Phase ENGINEER shall:
(insert amendments or supplements to paragraph 1.4.)

The Final Design Phase Services will be completed and Contract Documents and ENGINEER's opinion of costs submitted within 60 calendar days following written authorization from OWNER to ENGINEER to proceed with that phase of services.

[If it is to be performed under more than one prime contract and the times of performance are staggered, the provisions of paragraph 4.12 will probably apply and it will be necessary to prepare a special schedule for the Final Design Phase Services.]

5. During the Bidding or Negotiating Phase ENGINEER shall:
(insert amendments or supplements to paragraph 1.5.)

[If the construction work is to be performed under more than one prime contract and the times of performance are to be staggered, the provisions of paragraph 4.12 will probably apply and it will be necessary to prepare a special schedule for the Bidding or Negotiating Phase Services.]

6. During the Construction Phase ENGINEER shall:
(insert amendments or supplements to paragraph 1.6.)

[If the construction work is to be performed under more than one prime contract and the times of performance are to be staggered, the provisions of paragraph 4.12 will probably apply and it will be necessary to prepare a special schedule for the Construction Phase Services.]

[If an outside date for completion of construction is to be added, it should be added here.]

Note: This change has to be coordinated with those in *4.1 and 4.7.

7. During the Operational Phase ENGINEER shall:
(insert amendments or supplements to paragraph 1.7)

[If an outside date for completion of all services is to be added, it should be added here.]

Note: This change is to be coordinated with those in *4.1 and 4.8.

EXHIBIT B TO AGREEMENT BETWEEN OWNER AND
ENGINEER FOR PROFESSIONAL SERVICES, dated
19__ (for use with No. 1910-1/1984 Edition).

A LISTING OF THE DUTIES, RESPONSIBILITIES AND LIMITATIONS OF AUTHORITY OF THE RESIDENT PROJECT REPRESENTATIVE.

This is an Exhibit attached to, made a part of and incorporated by reference with the Agreement made on 19 93 between City of Petal & Shows, Deazman & Waits, Inc. (OWNER) and (ENGINEER) providing for professional engineering services.

ENGINEER shall furnish a Resident Project Representative (RPR), assistants and other field staff to assist ENGINEER in observing performance of the work of Contractor.

Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the work of CONTRACTOR; but, the furnishing of such services will not make ENGINEER responsible for or give ENGINEER control over construction means, methods, techniques, sequences or procedures or for safety precautions or programs, or responsibility for CONTRACTOR's failure to perform the Work in accordance with the Contract Documents and in particular the specific limitations set forth in paragraph 1.6 of the Agreement are applicable.

The duties and responsibilities of the RPR are limited to those of ENGINEER in ENGINEER's agreement with the OWNER and in the construction Contract Documents, and are further limited and described as follows:

A. General
RPR is ENGINEER's agent at the site, will act as directed by and under the supervision of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters pertaining to the on-site work shall be with ENGINEER and CONTRACTOR keeping OWNER advised as necessary. RPR's dealings with CONTRACTOR shall only be through or with the full knowledge and approval of CONTRACTOR. RPR shall communicate with OWNER with the knowledge of and under the direction of ENGINEER.

- B. Duties and Responsibilities of RPR
- Schedules:** Review the progress schedule, schedule of Shop Drawing submittals and schedule of values provided by CONTRACTOR and consult with ENGINEER concerning acceptability.
 - Conferences and Meetings:** Attend meetings with CONTRACTOR, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - Liaison:**
 - Serve as ENGINEER's liaison with CONTRACTOR, working principally through CONTRACTOR's superintendent and assist in understanding the intent of the Contract Documents; and assist ENGINEER in serving as OWNER's liaison with CONTRACTOR when CONTRACTOR's operations affect OWNER's on-site operations.
 - Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
 - Shop Drawings and Samples:**
 - Record date of receipt of Shop Drawings and samples.
 - Receive samples which are furnished at the site by CONTRACTOR, and notify ENGINEER of availability of samples for examination.
 - Advise ENGINEER and CONTRACTOR of the commencement of any Work requiring a Shop Drawing or sample if the submittal has not been approved by ENGINEER.
 - Review of Work, Rejection of Defective Work, Inspections and Tests:**
 - Conduct on-site observations of the Work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - Report to ENGINEER whenever RPR believes that any Work is unsatisfactory, faulty or defective or does not conform to the Contract Documents, or has been damaged, or does not meet the requirements

- of any inspection, test or approval required to be made; and advise ENGINEER of Work that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - Verify that tests, equipment and systems startups and operating and maintenance training are conducted in the presence of appropriate personnel, and that CONTRACTOR maintains adequate records thereof; and observe, record and report to ENGINEER appropriate details relative to the test procedures and startups.
 - Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections and report to ENGINEER.
6. **Interpretation of Contract Documents:** Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to CONTRACTOR clarifications and interpretations as issued by ENGINEER.
7. **Modifications:** Consider and evaluate CONTRACTOR's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to CONTRACTOR decisions as issued by ENGINEER.
8. **Records:**
 - Maintain at the job site orderly files for correspondence, reports of job conferences, Shop Drawings and samples, reproductions of original Contract Documents including all Work Directive Changes, Addenda, Change Orders, Field Orders, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, and other Project related documents.
 - Keep a diary or log book, recording CONTRACTOR hours on the job site, weather conditions, data relative to questions of Work Directive Changes, Change Orders or changed conditions, list of job site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
 - Record names, addresses and telephone numbers of all CONTRACTORS, subcontractors and major suppliers of materials and equipment.
9. **Reports:**
 - Furnish ENGINEER periodic reports as required of progress of the Work and of CONTRACTOR's compliance with the progress schedule and schedule of Shop Drawing and sample submittals.
 - Consult with ENGINEER in advance of scheduled major tests, inspections or start of important phases of the Work.
 - Draft proposed Change Orders and Work Directive Changes, obtaining backup material from CONTRACTOR and recommend to ENGINEER Change Orders, Work Directive Changes, and Field Orders.
 - Report immediately to ENGINEER and OWNER upon the occurrence of any accident.
10. **Payment Requests:** Review applications for payment with CONTRACTOR for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values. Work completed and materials and equipment delivered at the site but not incorporated in the Work.
11. **Certificates, Maintenance and Operation Manuals:** During the course of the Work, verify that certificates, maintenance and operation manuals and other data required to be assembled and furnished by CONTRACTOR are applicable to the items actually installed and in accordance with the Contract Documents, and have this material delivered to ENGINEER for review and forwarding to OWNER prior to final payment for the Work.
12. **Completion:**
 - Before ENGINEER issues a Certificate of Substantial Completion, submit to CONTRACTOR a list of observed items requiring completion or correction.
 - Conduct final inspection in the company of ENGINEER, OWNER, and CONTRACTOR and prepare a final list of items to be completed or corrected.
 - Observe that all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance.

C. Limitations of Authority

Resident Project Representative:

- Shall not authorize any deviation from the Contract Documents or substitution of materials or equipment, unless authorized by ENGINEER.
- Shall not exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- Shall not undertake any of the responsibilities of CONTRACTOR, subcontractors or CONTRACTOR's superintendent.
- Shall not advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of construction unless such advice or directions are specifically required by the Contract Documents.
- Shall not advise on, issue directions regarding or assume control over safety precautions and programs in connection with the Work.
- Shall not accept Shop Drawing or sample submittals from anyone other than CONTRACTOR.
- Shall not authorize OWNER to occupy the Project in whole or in part.
- Shall not participate in specialized field or laboratory tests or inspections conducted by others except as specifically authorized by ENGINEER.

This document has important legal consequences; consultation with an attorney is encouraged with respect to its completion or modification.

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS AN AGREEMENT made as of June 22, 19 93

between City of Petal, Mississippi (OWNER) and

Shows, Deazman & Waits, Inc. (ENGINEER)

OWNER intends to construct sanitary sewer extensions to four (4)
areas of the City to serve previously unsewered customers and to
obtain SRF funding from the State of Mississippi.

(hereinafter called the Project).

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION I—BASIC SERVICES OF ENGINEER

1.2. Study and Report Phase.

After written authorization to proceed, ENGINEER shall:

1.1. General.

1.1.1. ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this Agreement applies as hereinafter provided. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil, structural, mechanical and electrical engineering services and customary architectural services incidental thereto.

1.2.1. Consult with OWNER to clarify and define OWNER's requirements for the Project and review available data.

1.2.2. Advise OWNER as to the necessity of OWNER's providing or obtaining from others data or services of the types described in paragraph 1.3, and assist OWNER in obtaining such data and services.

EXHIBIT "A"

FACILITIES PLANNING AND DESIGN
PERCENTAGE METHOD OF PAYMENT

otherwise in Exhibit A "Further Description of Basic Engineering Services and Related Matters" to enable Contractor(s) to proceed with the layout of the work.

3.6. Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this Agreement.

3.7. Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay the services of ENGINEER.

3.8. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.

3.9. Provide such accounting, independent cost estimating and insurance consulting services as may be required for the Project, such legal services as OWNER may require or ENGINEER may reasonably require with respect to legal matters pertaining to the Project including any that may be raised by Contractor(s), such auditing as OWNER may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as OWNER may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.

3.10. If OWNER designates a person to represent OWNER at the site who is not ENGINEER or ENGINEER's agent or employee, the duties, responsibilities and limitations of authority of such other person and the effect thereof on the duties and responsibilities of ENGINEER and the Resident Project Representative (and any assistants) will be set forth in an exhibit that is to be identified, attached to and made a part of this Agreement before such services begin.

3.11. If more than one prime contract is to be awarded for construction, materials, equipment and services for the entire Project, designate a person or organization to have authority and responsibility for coordinating the activities among the various prime contractors.

3.12. Furnish to ENGINEER data or estimated figures as to OWNER's anticipated costs for services to be provided by others for OWNER (such as services pursuant to paragraphs 3.7 through 3.11), inclusive and

other costs of the types referred to in paragraph 1.2.04 so that ENGINEER may make the necessary findings to support opinions of probable Total Project Costs.

3.13. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings and substantial completion inspections and final payment inspections.

3.14. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or non-conformance in the work of any Contractor.

3.15. Furnish, or direct ENGINEER to provide, Additional Services as stipulated in paragraph 2.1 of this Agreement or other services as required.

3.16. Bear all costs incident to compliance with the requirements of this Section 3.

SECTION 4—PERIODS OF SERVICE

4.1. The provisions of this Section 4 and the various rates of compensation for ENGINEER's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion of the Construction Phase. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereof. If in Exhibit A "Further Description of Basic Engineering Services and Related Matters" set forth or specific dates by which services are to be completed are provided and if such dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.

4.2. The services called for in the Study and Report Phase will be completed and the Report submitted within the stipulated period indicated in paragraph 2 of Exhibit A "Further Description of Basic Engineering Services and Related Matters" after written authorization to proceed with that phase of services which will be given by OWNER within thirty days after ENGINEER has signed this Agreement.

4.3. After acceptance by OWNER of the Study and Report Phase documents indicating any specific modification

to be completed. Construction Phase services may be rendered at different times in respect to periods of prime contracts if the Project involves more than one prime contract.

4.8. The Operational Phase will commence during the Construction Phase and will terminate one year after the date of Substantial Completion of the last prime contract for construction, materials and equipment on which substantial completion is achieved.

4.9. If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.

4.10. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if the Construction Phase has not commenced within 180 calendar days (plus such additional time as may be required to complete the services called for under paragraph 4.3.1.5) after completion of the Final Design Phase, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement.

4.11. If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this Agreement) be paid as provided in paragraph 5.3.2. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials or equipment more than one year after Substantial Completion is achieved under that contract, the various rates of compensation provided for elsewhere in this Agreement shall be subject to equitable adjustment.

4.12. In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is

ifications or changes in the general scope, extent or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Preliminary Design Phase, and shall submit preliminary design documents and a revised opinion of probable Total Project Costs within the stipulated period indicated in paragraph 3 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

4.4. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Total Project Costs, indicating any specific modifications or changes in the general scope, extent or character of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall proceed with the performance of the services called for in the Final Design Phase; and shall deliver Contract Documents and a revised opinion of probable Total Project Costs for all work of Contractor(s) on the Project within the stipulated period indicated in paragraph 4 of Exhibit A "Further Description of Basic Engineering Services and Related Matters".

4.5. ENGINEER's services under the Study and Report Phase, Preliminary Design Phase and Final Design Phase shall each be considered complete at the earlier of (1) the date when the submissions for that phase have been accepted by OWNER or (2) thirty days after the date when such submissions are delivered to OWNER for final acceptance, plus in each case such additional time as may be considered reasonable for obtaining approval of governmental authorities having jurisdiction to approve the design of the Project.

4.6. After acceptance by OWNER of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Total Project Costs and upon written authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Bidding or Negotiating Phase. This Phase shall terminate and the services to be rendered thereunder shall be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractor(s) (except as may otherwise be required to complete the services called for in paragraph 4.2.2.5).

4.7. The Construction Phase will commence with the execution of the first prime contract to be executed for the work of the Project or any part thereof, and will terminate upon written recommendation by ENGINEER of final payment on the last prime contract to

be prepared whether or not the work under such contracts is to proceed concurrently and is to be included in Exhibit A "Further Description of Basic Engineering

Services and Related Matters", and the provisions of paragraphs 4.4 through 4.10 inclusive, will be modified accordingly.

[The remainder of this page was left blank intentionally.]

SECTION 5—PAYMENTS TO ENGINEER

5.1. Methods of Payment for Services and Expenses of ENGINEER.

5.1.1. For Basic Services, OWNER shall pay ENGINEER for Basic Services rendered under Section 1 (as amended and supplemented by Exhibit A "Further Description of Basic Engineering Services and Related Matters") as follows:

5.1.1.1. One Prime Contract. If only one prime contract is awarded for construction, materials and equipment for the Project, an amount equal to 12.0866% of the Construction Cost for all Basic Services (as defined in paragraph 1.2.04) shall be paid to ENGINEER; but, if the prime contract contains cost-plus or incentive savings provisions for the Contractor's basic compensation, an amount equal to N/A% of the Construction Cost for such services.

5.1.1.2. Several Prime Contracts. If more than one but less than N/A separate prime contracts are awarded for construction, materials and equipment for the Project, an amount equal to N/A% of the Construction Cost for all Basic Services (except services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1 and Operational Phase services furnished under paragraph 1.7); but, if any prime contract contains cost-plus or incentive savings provisions for Contractor's basic compensation, N/A% of the Construction Cost for such services.

5.1.1.3. Resident Project Services. For services of ENGINEER's Resident Project Representative (and assistants) furnished under paragraph 1.6.2.1, on the basis of Salary Costs times a factor of N/A for services rendered by principals and employees assigned to resident Project representation.

5.1.1.4. Operational Phase Services. For Operational Phase services furnished under paragraph 1.7, an amount equal to ENGINEER's Salary Costs times a factor of N/A for services rendered by principals and employees engaged directly on the Project.

5.1.2. For Additional Services, OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

5.1.2.1. General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 or 2.2 (except services as a consultant or witness under paragraph 2.1.13), on the basis of ENGINEER's Salary Costs times a factor of N/A.

5.1.2.2. Professional Associates and Consultants. For services and Reimbursable Expenses of independent professional associates and consultants employed by ENGINEER to render Additional Services pursuant to paragraph 2.1 or 2.2, the amount billed to ENGINEER therefor times a factor of N/A.

5.1.2.3. Serving as a Witness. For services rendered by ENGINEER's principals and employees as consultants or witnesses in any litigation, arbitration or other legal or administrative proceeding in accordance with paragraph 2.1.13, at the rate of \$ 250.00 per day or any portion thereof (but compensation for time spent in preparing to appear in any such litigation, arbitration or proceeding will be on the basis provided in paragraph 3.1.2.1). Compensation for ENGINEER's independent professional associates and consultants will be on the basis provided in paragraph 5.1.2.2.

5.1.3. For Reimbursable Expenses. In addition to payments provided for in paragraphs 5.1.1 and 5.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services.

5.1.4. As used in this paragraph 5.1, the terms "Salary Costs" and "Reimbursable Expenses" have the meanings assigned to them in paragraph 5.4, and the term "Construction Cost" has the meaning assigned to it in paragraph 6.1. When Construction Cost is used as a basis for payment it will be based on one of the following sources with precedence in the order listed for work designed or specified by ENGINEER:

5.1.4.1. For completed construction work, the total cost of all work performed as designed or specified by ENGINEER.

5.1.4.2. For work designed or specified but not constructed, the lowest bona fide bid received from a qualified bidder for such work; or, if the work is not bid, the lowest bona fide negotiated proposal for such work.

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5.1.4.3. For work designed or specified but not constructed upon which no such bid or proposal is received, the most recent estimate of Construction Cost, or, if none is available, ENGINEER's most recent opinion of probable Construction Cost.

Labor furnished by OWNER for the Project will be included in the Construction Cost at current market rates including a reasonable allowance for overhead rates. Materials and equipment furnished by OWNER will be included at current market prices. In addition, there shall be a deduction for any amount of any penalty, liquidated damages, or other amounts withheld from payments to Contractor(s).

5.2. Times of Payments.

5.2.1. ENGINEER shall submit monthly statements for Basic and Additional Services rendered and for Reimbursable Expenses incurred. The statements will be based upon ENGINEER's estimate of the proportion of the total services actually completed at the time of billing. OWNER shall make prompt monthly payments in response to ENGINEER's monthly statements.

5.2.2. Upon conclusion of each phase of Basic Services, OWNER shall pay such additional amount, if any, as may be necessary to bring total compensation paid on account of such phase to the following percentages of total compensation payable for all phases of Basic Services:

Phase	Insert Actual Percentage	%
Study and Report	30	%
Preliminary Design	30	%
Final Design	25	%
Bidding or Negotiating	N/A	%
Construction	N/A	%
Operational	100	%

5.3. Other Provisions Concerning Payments.

5.3.1. If OWNER fails to make any payment due ENGINEER for services and expenses within thirty days after receipt of ENGINEER's statement therefor, the amounts due ENGINEER will be increased at the rate of 1% per month from said thirtieth day, and in rate of 1% per month from said thirtieth day, and in addition, ENGINEER may, after giving seven days' written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses and charges.

5.3.2. In the event of termination by OWNER under paragraph 7.1 upon the completion due ENGINEER Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ENGINEER's Salary Costs times a factor of N/A for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly on the Project. In the event of any engaged directly on the Project, in the event of any termination, ENGINEER shall be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services, and paid for all unpaid Additional Services and unpaid Reimbursable Expenses, plus all termination expenses. Termination expenses mean additional Reimbursable Expenses directly attributable to termination, which, if termination is at Owner's convenience, shall include an amount computed as a percentage of total compensation for Basic Services earned by ENGINEER to the date of termination, as follows:

20% if termination occurs after commencement of the Preliminary Design Phase but prior to commencement of the Final Design Phase; or

10% if termination occurs after commencement of the Final Design Phase.

5.3.3. Records of ENGINEER's Salary Costs pertinent to ENGINEER's compensation under this Agreement will be kept in accordance with generally accepted accounting principles. Copies will be made available to OWNER at cost on request; prior to final payment for ENGINEER's services.

5.3.4. Whenever a factor is applied to Salary Costs in determining compensation payable to ENGINEER that factor will be adjusted periodically and equitably to reflect changes in the various elements that comprise such factor. All such adjustments will be in accordance with generally accepted accounting practices as applied with ENGINEER's overall compensation practices and procedures.

5.4. Definitions.

5.4.1. The Salary Costs used as a basis for payment to mean salaries and wages (basic and incentive) paid to all ENGINEER's personnel engaged directly on the Project, including, but not limited to, engineers, architects, surveyors, designers, draftsmen, specification writers, estimators, other technical and business personnel; plus the cost of customary and statutory benefits including, but not limited to, social security contributions, unemployment, excise and payroll taxes, workers' compensation, health and retirement benefits, leave, vacation and holiday and other group benefits. For the purposes of this Agreement, the principals of ENGINEER and their current hourly Salary Costs are:

N/A

N/A

The hourly Salary Costs of principals of ENGINEER will be adjusted equitably to reflect changes in personnel and in ENGINEER's overall compensation procedures and practices.

The amount of customary and statutory benefits of all other personnel of ENGINEER will be considered equal

to N/A% of salaries and wages, subject to equitable adjustment to reflect changes in ENGINEER's overall compensation procedures and practices.

5.4.2. Reimbursable Expenses mean the actual expenses incurred by ENGINEER or ENGINEER's independent professional associates or consultants, directly or indirectly in connection with the Project, such as expenses for: transportation and subsistence incidental thereto; obtaining bids or proposals from Contractor(s); providing and maintaining field office facilities including furnishings and utilities; subsistence and transportation of Resident Project Representatives and their assistants; toll telephone calls and telegrams; reproduction of reports, Drawings, Specifications, Bidding Documents, and similar Project-related items in addition to those required under Section 1; and, if authorized in advance by OWNER, overtime work requiring higher than regular rates.

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EXHIBIT "A"

7.A. Arbitration.

7.A.1. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or the breach thereof will be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association then obtaining, subject to the limitations and restrictions stated in paragraphs 7.A.3 and 7.A.4 below. This Agreement to arbitrate and any other agreement or consent to arbitrate covered here in accordance herewith as provided in this paragraph 7.A. will be specifically enforceable under the prevailing law of any court having jurisdiction.

and costs. The arbitrator will not have jurisdiction, power or authority to consider, or make findings except in direct of their own jurisdiction concerning any claim, counterclaim, dispute or other matter in question where the amount in controversy of any such claim, counterclaim, dispute or matter is more than \$200,000 exclusive of interest and costs.

7.A.4. No arbitration arising out of, or relating to, this Agreement may include, by consolidation, joinder or in any other manner, any person or entity who is not a party to this Agreement.

7.A.5. By written consent signed by all the parties to this Agreement and containing a specific reference hereto, the limitations and restrictions contained in paragraphs 7.A.3 and 7.A.4 may be waived in whole or in part as to any claim, counterclaim, dispute or other matter specifically described in such consent. No consent to arbitration in respect of a specifically described claim, counterclaim, dispute or other matter in question will constitute consent to arbitrate any other claim, counterclaim, dispute or other matter in question which is not specifically described in such consent or in which the sum or value in controversy exceeds \$200,000 exclusive of interest and costs) or which is with any party not specifically described therein.

7.A.2. Motions for demand for arbitration must be filed in writing with the other parties to this Agreement and with the American Arbitration Association. The demand must be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event may the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.

7.A.3. All demands for arbitration and all answering statements thereto which include any monetary claim (exclusive of interest and costs) and the arbitrator will not have jurisdiction, power or authority to render a monetary award in response thereto against any party which totals more than \$200,000 exclusive of interest

7.A.6. The award rendered by the arbitrator will be final. Judgment may be entered upon it in any court having jurisdiction thereof, and will not be subject to modification or appeal except to the extent permitted by Sections 10 and 11 of the Federal Arbitration Act 9 U.S.C. §§10, 11.

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SECTION 6—CONSTRUCTION COST AND OPINIONS OF COST

6.1. Construction Cost.

The construction cost of the entire Project (hereinafter referred to as "Construction Cost") means the total cost to OWNER of those portions of the entire Project designed and specified by ENGINEER, but it will not include ENGINEER's compensation and expenses, the cost of land, rights-of-way, or compensation for or damages to, properties unless this Agreement so specifies, nor will it include OWNER's legal, accounting, insurance consulting or auditing services, or interest and financing charges incurred in connection with the Project or the cost of other services to be provided by others to OWNER pursuant to paragraphs 3.7 through 3.11, inclusive. (Construction Cost is one of the items comprising Total Project Costs which is defined in paragraph 1.2.3.)

6.2. Opinions of Cost.

6.2.1. Since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER's opinions of probable Total Project Costs and Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but ENGINEER cannot and does not guarantee that proposals, bids or actual Total Project or Construction Costs will not vary from opinions of probable cost prepared by ENGINEER. If prior to the Bidding or Negotiating Phase OWNER wishes greater assurance as to Total Project or Construction Costs, OWNER shall employ an independent cost estimator as provided in paragraph 3.5.

6.2.2. If a Construction Cost limit is established by written agreement between OWNER and ENGINEER and specifically set forth in this Agreement in a condition thereto, the following will apply:

6.2.2.1. The acceptance by OWNER at any time during the Basic Services of a revised opinion of probable Total Project or Construction Costs in excess of the then established cost limit will constitute a corresponding revision to the Construction Cost limit to the extent indicated in such revised opinion.

6.2.2.2. Any Construction Cost limit so established will include a contingency of ten percent unless another amount is agreed upon in writing.

6.2.2.3. ENGINEER will be permitted to determine what types of materials, equipment and component systems are to be included in the Drawings and Specifications and to make reasonable adjustments in the general scope, extent and character of the Project to bring it within the cost limit.

6.2.2.4. If the Bidding or Negotiating Phase has not commenced within six months after completion of the Final Design Phase, the established Construction Cost limit will not be binding on ENGINEER, and OWNER shall consent to an adjustment in such cost limit commensurate with any applicable change in the general level of prices in the construction industry between the date of completion of the Final Design Phase and the date on which proposals or bids are sought.

6.2.2.5. If the lowest bona fide proposal or bid exceeds the established Construction Cost limit, OWNER shall (1) give written approval or withholding the Project within a reasonable time, or (2) negotiate in revising the Project's general scope, extent or character to the extent consistent with the Project's requirements and with sound engineering practice. In the case of (2), ENGINEER shall modify the Contract Documents as necessary to bring the Construction Cost within the cost limit. In the event of such modification for services in making such adjustment, OWNER shall pay ENGINEER, ENGINEER's cost of such services, all overhead expenses reasonably related thereto and reasonable Expenses, but without profit to ENGINEER on account of such services. The providing of such services will be the limit of ENGINEER's responsibility in this regard and, having done so, ENGINEER shall be entitled to payment for services in accordance with this Agreement and will not otherwise be liable for damages attributable to the lowest bona fide proposal or bid exceeding the established Construction Cost.

SECTION 7—GENERAL CONSIDERATION

7.1. Termination.

The obligation to provide further services under this Agreement may be terminated by either party upon thirty days' written notice in the event of substantial

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failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

7.2. Return of Documents.

All documents including Drawings and Specifications prepared or furnished by ENGINEER and ENGINEER's independent professional associates and consultants pursuant to this Agreement are instruments of service in respect of the Project and ENGINEER shall retain an ownership and property interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project by OWNER and others; however, such documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, or to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

7.3. Insurance.

7.3.1. ENGINEER shall procure and maintain insurance for protection from claims under workers' compensation acts, claims for damages because of bodily injury including personal injury, sickness or disease or death of any and all employees or of any person other than such employees, and from claims or damages because of injury to or destruction of property including loss of use resulting therefrom.

7.4. Controlling Law.

This Agreement is to be governed by the law of the principal place of business of ENGINEER.

7.5. Successors and Assigns.

7.5.1. OWNER and ENGINEER each is hereby bound to their partners, successors, executors, administrators and legal representatives of OWNER and ENGINEER and to the extent permitted by paragraph 7.5.2 the assigns of OWNER and ENGINEER are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives and legal representatives and legal assigns of such other party, in respect of all covenants, agreements and obligations of this Agreement.

7.5.2. Neither OWNER nor ENGINEER shall assign, sell or transfer any rights under or interest in including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subleasing or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist in the performance of services hereunder.

7.5.3. Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

SECTION 8—SPECIAL PROVISIONS, EXHIBITS and SCHEDULES

This Agreement is subject to the following special provisions:

- 1. A provision which gives the office of Pollution Control and its representatives access to and the right to audit, inspect copy and examine books, financial records and other documents relating to the receipt and disbursement of SRF funds.
- 2. The Operation and Maintenance instructions for the pump stations will be furnished to the City by the Engineer.

2. The following Exhibits are attached to and made a part of this Agreement:

2.1. Exhibit A "Further Description of Basic Engineering Services and Related Matters" consisting of 19 pages.

2.2. Exhibit B "Duties, Responsibilities and Limitations of Authority of Resident Project Representative" consisting of 13 pages.

2.3.

8.3. This Agreement (consisting of pages 1 to 19, inclusive) together with the Exhibits and schedules identified above constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement and said Exhibits and schedules may only be amended, supplemented, modified or amended by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement as of the day and year first above written.

OWNER: JACK B. GAY, JR., Mayor
JACK B. GAY, JR., Mayor

ENGINEER: SIDS, DEARMAN & MATTS, INC.
RICHARD H. DEARMAN, President
P. O. Box 3302

Address for giving notices:
P. O. Box 564
Petal, MS 39465

Address for giving notices:
P. O. Box 1711
Hattiesburg, MS 39403-1711

Attest: Patricia Daniel, City Clerk

Attest: Michael T. Matts, Vice-President

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EXHIBIT "B"

RESOLUTION

BE IT RESOLVED AND ORDERED by the Mayor and Board of Aldermen of the City of Petal, Mississippi, as follows:

That pursuant to Section 21-35-25 of the Mississippi Code of 1972, annotated and amended, the year commencing October 1, 1992 and ending September 30, 1993 requires amending and

WHEREAS, by Section 21-35-25, the Mayor and Board of Aldermen do hereby amend the 1992-93 fiscal budget as follows:

<u>FUND</u>	<u>INCREASE (DECREASE) BUDGET</u>	<u>REASON</u>
General Fund - Public Works(162,034.00)		To move revenues and expenditures for solid waste to an enterprise fund
Solid Waste Fund	151,881.00	To set up an enterprise fund for the solid waste revenues and expenditures
Capital Improvements	563,450.00	To budget funds for the construction of the multi-purpose center

WHEREAS, upon adoption, the City Clerk will cause this Resolution to be published if required by Section 21-35-25.

Those present and voting "AYE" and in favor of the passage, adoption and approval of the foregoing Resolution :

- Alderman Jerry Crowe
- Alderman Donald H Rowell
- Alderman Bobby Runnels
- Alderman Leroy Scott

Those present and voting "NAY" or against the adoption of the foregoing Resolution:

None

WHEREAS, the foregoing Resolution was duly passed, adopted and approved on this the 22nd day of June, 1993.

CITY OF PETAL, MISSISSIPPI

BY: 
JACK GAY, MAYOR

(SEAL)

ATTEST:


PRISCILLA C. DANIEL
CITY CLERK

THIS

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