

MOTION was made by Councilwoman Denard and seconded by Councilman Naylor to Authorize Mayor to execute Water Purchase and Effluent Treatment Agreement between the City of Hattiesburg, Mississippi and U.S.A. Yeast Company, LLC; said agreement sets forth the terms and conditions under which the City of Hattiesburg will provide water and wastewater treatment for the production facility to be constructed by U.S.A. Yeast Company located on John Merle Tatum Industrial Drive, East of the Hattiesburg Municipal Airport.

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

YEAS: Rowell  
Denard  
Carroll  
Bailey  
Naylor

NAYS: None

This being the 4th day of December, A.D., 2001.

(Copies)

**WATER PURCHASE  
AND  
EFFLUENT TREATMENT AGREEMENT**

**by and between**

**U. S. A. YEAST COMPANY, LLC**

**and**

**CITY OF HATTIESBURG, MISSISSIPPI**

**December 4, 2001**

STATE OF MISSISSIPPI )

COUNTY OF FOREST )

## WATER PURCHASE AND EFFLUENT TREATMENT AGREEMENT

**THIS AGREEMENT** is made and entered into as of the 4<sup>th</sup> day of December, 2001, effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2002, by and between **U. S. A. YEAST COMPANY, LLC**, an Alabama limited liability company and its successors and assigns (collectively, "**U. S. A. Yeast**"), and the **CITY OF HATTIESBURG, MISSISSIPPI**, a municipal corporation organized and existing under the laws of the State of Mississippi and its successors (collectively, the "**City**").

### WITNESSETH:

**WHEREAS**, U. S. A. Yeast has been induced to locate its new manufacturing facility for the production of baker's yeast in the City (as further defined below, the "**Project**") which will provide substantial benefits for the State of Mississippi and the citizens of the Hattiesburg metropolitan area; and

**WHEREAS**, the City owns and operates certain publicly-owned water ("**Water System**") and wastewater treatment facilities ("**Wastewater Treatment System**") (as further defined below, collectively, the "**Facility or Facilities**") for the treatment and distribution of drinking-quality, potable water ("**Water**") and the handling, treatment and disposal of wastewater which meets and is anticipated to continue to meet all applicable governmental requirements (such wastewater, as further defined below, "**Effluent**"); and

**WHEREAS**, U. S. A. Yeast desires to acquire and City desires to grant to U. S. A. Yeast the exclusive right to purchase the Water for U. S. A. Yeast's sole use and not for resale, and upon exercise of such right, the City is willing to provide and supply and U. S. A. Yeast is willing to take and accept, in each case pursuant to the terms of this Agreement, potable Water; and

**WHEREAS**, U. S. A. Yeast will require a potable Water supply sufficient to meet its manufacturing requirements; and

**WHEREAS**, the City owns and operates a water supply distribution system with a capacity currently capable of supplying water in sufficient quantities and of sufficient quality to meet the manufacturing requirements of U. S. A. Yeast; and

**WHEREAS**, as a normal by-product of its manufacturing process, U. S. A. Yeast produces Effluent that must be properly handled and treated, and the City owns and operates a wastewater treatment system with a capacity currently capable of handling, treating and otherwise disposing of Effluent to be produced by U. S. A. Yeast; and

**NOW, THEREFORE**, for and in consideration of the premises and the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, U. S. A. Yeast and the City hereby agree as follows:

### ARTICLE I: DEFINITIONS

#### 1.1 CERTAIN DEFINITIONS

For purposes of this Agreement, the following capitalized terms shall have the meanings specified with respect thereto below (all terms used in this Agreement which are not defined in this Article I but defined elsewhere in this Agreement, shall have, for purposes of this Agreement, the meanings set forth elsewhere in this Agreement):

**"Building"** means the main manufacturing plant located on the Project Site.

**"Business Day"** means any day other than a Saturday, a Sunday or a day on which banking institutions are authorized or obligated by law or executive order to close in the City of Hattiesburg, Mississippi, or the State of Mississippi.

**"City"** means the City of Hattiesburg, Mississippi.

**"Commencement Date"** means the date specified in the Commencement Notice delivered to the City designated by U. S. A. Yeast as the date that U. S. A. Yeast desires Water to be supplied to the Project Site for the start-up operations of the Project.

**"Commencement Notice"** means a written notice from U. S. A. Yeast to the City specifying that delivery of Water is to commence in accordance with the terms of this Agreement as of the Commencement Date.

**"Effluent"** means wastewater produced as a normal by-product of U. S. A. Yeast's manufacturing process which is pumped from the U. S. A. Yeast Project site to the City's Facilities for treatment and disposal.

**"Facility" or "Facilities"** means collectively, one or more water treatment and distribution facilities in the City's Water System as well as one or more wastewater treatment facilities in the City's Wastewater Treatment System, all owned and operated by the City located in Hattiesburg, Mississippi, or if located outside of Hattiesburg, Mississippi, controlled by the City, which will provide Water to the U. S. A. Yeast Project Site and will accept from said Project Site Effluent for treatment and disposal, and when used herein, whether in the singular or plural, it shall include all such Facilities of the City.

**"Force Majeure"** means an event beyond the reasonable control, and not attributable to the negligence or willful misconduct, of the Party affected, including but not limited to the following: flood; earthquake; lightning; fire; explosion; war; riot; civil disturbance; strike; sabotage; or electrical outage; provided, however, that Force Majeure shall not include any equipment failure due to normal wear and tear or due to neglected maintenance or repair.

**"Governmental Approval"** means any law, rule or regulation of any governmental agency (including but not limited to the Mississippi Department of Environmental Management and the United States Environmental Protection Agency) and any authorization, consent, approval, license, franchise, lease, ruling, permit (including but not limited to any National Pollutant Discharge Elimination System (NPDES) permit), tariff, rate, certification, exemption, filing or registration with any governmental agency (including, without limitation, zoning variances, special exceptions and nonconforming uses) relating to the construction, ownership, operation or maintenance of the Project, the Primary Pipeline or the Facility (including those relating to Effluent), as the case may be.

**"Non-Conforming Water"** means Water from the Facility which would otherwise be potable Water but for its failure to meet all requirements of applicable Governmental Approvals.

**"Non-Conforming Notice"** has the meaning specified in Article II Section 2.1.4.

**"Party"** means either of U. S. A. Yeast or the City, and **"Parties"** means, collectively, U. S. A. Yeast and the City.

**"Person"** means any individual, corporation, partnership, limited liability company, joint venture, incorporated or unincorporated association, joint stock company, trust or other unincorporated organization, governmental body, instrumentality or agency or other entity of any kind.

"Pipeline" or "Pipelines" means the pipelines owned and operated by the City to deliver Water or to transport Effluent and may be hereinafter sometimes referred to as Water Pipeline or Effluent Pipeline, as the context may require.

"Point of Delivery" means the U. S. A. Yeast Project Site.

"Project" means the new manufacturing facility to be constructed by U. S. A. Yeast at the Project Site for the production of baker's yeast.

"Project Site" means the acreage more particularly described on the attached Exhibit "A", upon which the Project will be constructed.

"Shortfall Notice" has the meaning specified in Article II, Section 2.1.3.

## ARTICLE II: WATER PURCHASE AGREEMENT

### 2.1 AGREEMENT TO SUPPLY WATER

**2.1.1 Agreement To Supply and To Purchase.** The City agrees to supply and U. S. A. Yeast agrees to purchase Water in sufficient quantities and at the rate of delivery specified in Article II, Section 2.1.2 below to meet the manufacturing requirements of U. S. A. Yeast.

**2.1.2 Quantity and Flow Rate.** The City acknowledges and agrees that its Facilities are currently capable of supplying one million (1,000,000) gallons per day of Water to the Project Site, and the City agrees to supply up to 1,000,000 gallons of Water to U. S. A. Yeast at its Project Site at a peak-flow rate of three thousand (3,000) gallons per minute at a constant pressure of sixty (60) pounds per square inch (the "**Water Peak-Flow Rate**"). Title and risk of loss of Water shall pass to U. S. A. Yeast upon U. S. A. Yeast's receipt of such Water at the Point of Delivery. Until such time as title to the Water passes to U. S. A. Yeast, the City shall bear risk of loss of Water and shall retain liability for any and all claims, costs, demands, damages, expenses, liabilities and losses relating to said Water.

**2.1.3 Shortfall in Delivery of Water.** From and after the Commencement Date, the City shall make available a daily quantity of Water of not less than 1,000,000 gallons per day as specified in Article II, Section 2.1.2 above. If the City is unable on any day to make available such daily minimum quantity of Water, whether due to a shortage of Water, due to the presence of Non-Conforming Water or otherwise, the City shall promptly (but in any event within 5 hours of obtaining knowledge thereof) notify U. S. A. Yeast orally (with prompt written confirmation thereof) or in writing of such inability to provide the minimum daily quantity of Water (a "**Shortfall Notice**"). Each Shortfall Notice shall specify (i) that a shortfall in the delivery of Water has occurred or will occur, the amount of such shortfall, the reasons for such shortfall and the anticipated length of such shortfall, including in each case all relevant dates, and (ii) the steps the City is taking to remedy the shortfall.

**2.1.4 Non-Conforming Water.** If the City becomes aware that it has provided or will provide Non-Conforming Water, the City shall promptly [but in any event within five (5) hours of obtaining knowledge thereof] notify U. S. A. Yeast orally (with prompt written confirmation thereof) or in writing (a "**Non-Conforming Notice**"). Each Non-Conforming Notice shall specify (i) when deliveries of Non-Conforming Water began or will begin (ii) the amount of Non-Conforming Water delivered or in-route, (iii) the cause of such Water being Non-Conforming Water, and (iv) the steps the City is taking to remedy the situation.

**2.1.5 Construction of Pipeline for Water Delivery.** The City agrees to construct, at its own cost and expense, a Pipeline from its water main to within five (5) feet of the Building. The City agrees that the size of the pipe used shall be sufficient to handle the quantity of Water to be supplied hereunder at the Water Peak-Flow Rate.

**2.1.6 Installation of Water Meter.** The City agrees, at its sole cost and expense, to purchase and install a properly-calibrated Water meter for metering Water delivered to and used by U. S. A. Yeast at the Project Site.

## **2.2 PURCHASE PRICE OF WATER**

**2.2.1 Price of Water.** The City hereby agrees to sell Water to U. S. A. Yeast in an initial quantity of up to 1,000,000 gallons per day from the City's Facilities for a price of eighty cents (\$0.80) per one thousand (1000) gallons (the "Purchase Price") on the terms and conditions set forth herein.

**2.2.2 No Deposit or Connection Fee.** There will be no deposit or separate tap fee or connection fee charged to U. S. A. Yeast by the City to connect the Building and/or the Project to the City's Water System.

**2.2.3 Billing Procedure.** The City agrees to furnish U. S. A. Yeast at the address shown below with an itemized statement of the amount of Water furnished to U. S. A. Yeast during the preceding month.

## **2.3 MAINTENANCE OF WATER PIPELINE**

**2.3.1 Ownership and Maintenance of Water Pipeline.** The City shall own, operate and maintain the Water Pipeline delivering the Water to the Project Site, including but not limited to all Pipeline located on the Project Site, in a workmanlike manner, consistent with prudent practices and shall continuously maintain the Water Pipeline in good operating condition and in compliance with all Governmental Approvals applicable to the Water Pipeline. Such operation and maintenance shall be accomplished in a manner so as to minimize to the maximum extent practicable any disruption of or interruption in the services to be provided under this Agreement.

**2.3.2 Service Interruptions.** Upon the event of a temporary interruption or curtailment in Water delivery attributable to a break or leak in the Pipeline or otherwise, the City shall have a reasonable period of time, not to exceed eighteen (18) hours from the commencement of the interruption or curtailment, to make needed repairs and to restore full service. The City shall provide a Shortfall Notice in accordance with Article II, Section 2.1.3 upon the interruption or curtailment of Water under this Article II, Section 2.3.2.

**2.3.3 Ownership and Maintenance of Meter.** The City shall own, operate and maintain metering equipment to measure the delivery of Water to the Point of Delivery. The City may elect to read the meters monthly to confirm the quantities of Water supplied. At least once every year, or more frequently if requested by U. S. A. Yeast, and with at least one week prior written notice to U. S. A. Yeast, the City shall test the accuracy of the metering equipment, at which time U. S. A. Yeast shall have the right to be present. If such test indicates that the metering equipment is not measuring accurately, the City shall re-calibrate or replace the metering equipment.

**2.3.4 Modifications to the Water Pipeline.** In the event the City or U. S. A. Yeast reasonably determines that modifications to the Water Pipeline are required, such Party shall notify the other Party, and the Parties shall meet in good faith to determine the scope of such modifications. The cost and expense of any modifications shall be borne by the City.

**2.3.5 Damage of U. S. A. Yeast Property.** In the event that the City or its agents causes damage to the Project Site or to any other property of U. S. A. Yeast while constructing, installing, operating, maintaining or repairing the Water Pipeline, the Meter or any subsequent modifications thereto, the City shall restore or pay U. S. A. Yeast to restore, at U. S. A. Yeast's election, U. S. A. Yeast's property as nearly as possible to its condition prior to such damage.

## **ARTICLE III: EFFLUENT TREATMENT AGREEMENT**

### 3.1 DELIVERY SYSTEM FOR EFFLUENT

**3.1.1 Agreement To Treat Effluent.** The City agrees to treat all Effluent discharged into the Effluent Pipeline for the price and in compliance with the terms and conditions of this Agreement.

**3.1.2 Quantity of Effluent.** The City acknowledges and agrees that its Facilities are currently capable of accepting and treating eight hundred thousand (800,000) gallons per day of Effluent from the Project Site, and the City agrees to accept said Effluent at the Effluent Peak-Flow Rate defined in Section 3.1.3 below. Title and risk of loss of Effluent shall pass to the City upon discharge of such Effluent into the Effluent Pipeline, and the City shall bear risk of loss of Effluent and shall retain liability for any and all claims, costs, demands, damages, expenses, liabilities and losses relating to said Effluent.

**3.1.3 Pumping Station and Pipeline For Effluent.** The City agrees that the pumping station and Effluent Pipeline which it will construct on U. S. A. Yeast's Project Site to within five feet of the building will be constructed to handle and deliver to the City's Facilities 800,000 gallons per day of Effluent at the peak-flow rate of two thousand five hundred (2,500) gallons per minute (the "Effluent Peak-Flow Rate").

**3.1.4 Installation of Effluent Meter.** The City agrees, at its sole cost and expense, to purchase and install a properly-calibrated meter for metering Effluent discharged by U. S. A. Yeast at the Project Site through the pumping station and the Effluent Pipeline to the City.

### 3.2 PRICE OF EFFLUENT TREATMENT

**3.2.1 Price of Treatment.** During the Initial Term hereof, the City hereby agrees to accept, treat and dispose of Effluent, in an initial quantity of up to 800,000 gallons per day, discharged by U. S. A. Yeast from the Project into the City's Facilities for a price per gallon determined in accordance with the schedule attached hereto as Exhibit "B" on the terms and conditions set forth herein.

**3.2.2 No Deposit or Connection Fee.** There will be no separate deposit or tap fee or connection fee charged to U. S. A. Yeast by the City to connect the Building and/or the Project to the City's Wastewater Treatment System.

**3.2.3 Billing Procedure.** The City agrees to furnish U. S. A. Yeast at the address shown below with an itemized statement of the amount of Effluent discharged by U. S. A. Yeast and treated by the City during the preceding month.

### 3.3 MAINTENANCE OF EFFLUENT PIPELINE AND PUMPING STATION

**3.3.1 Ownership and Maintenance of Effluent Pipeline.** The City shall own, operate and maintain the pumping station and the Pipeline transporting discharged Effluent from the Building on the Project Site, including but not limited to all Effluent Pipeline located on the Project Site, in a workmanlike manner, consistent with prudent practices and shall continuously maintain the pumping station and Effluent Pipeline in good operating condition and in compliance with all Governmental Approvals applicable to the pumping station and the Effluent Pipeline. Such operation and maintenance shall be accomplished in a manner so as to minimize to the maximum extent practicable any disruption of or interruption in the services to be provided under this Agreement.

**3.3.2 Service Interruptions.** Upon the event of a temporary interruption or curtailment in transport of discharged Effluent attributable to a breakdown in the pumping station or a break or leak in the Effluent Pipeline or otherwise, the City shall have a reasonable period of time, not to exceed eighteen (18) hours from the commencement of the interruption or curtailment, to make needed repairs and to restore full service. Promptly upon obtaining knowledge thereof (but in any event within 5 hours of obtaining knowledge thereof), the City shall provide U. S. A. Yeast with oral (with prompt written confirmation thereof) or written notice of the occurrence of an interruption or curtailment of transport and delivery of Effluent.

**3.3.3 Ownership and Maintenance of Meter.** The City shall own, operate and maintain metering equipment to measure the amount of Effluent discharged into the Effluent Pipeline and delivered to the City's Facilities for treatment. The City may elect to read the meters monthly to confirm the quantities of Effluent discharged. At least once every year, or more frequently if requested by U. S. A. Yeast, and with at least one week prior written notice to U. S. A. Yeast, the City shall test the accuracy of the metering equipment, at which time U. S. A. Yeast shall have the right to be present. If such test indicates that the metering equipment is not measuring accurately, the City shall re-calibrate or replace the metering equipment.

**3.3.4 Modifications to the Effluent Pipeline or Pumping Station.** In the event the City or U. S. A. Yeast reasonably determines that modifications to the pumping station or the Effluent Pipeline are required, such Party shall notify the other Party, and the Parties shall meet in good faith to determine the scope of such modifications. The cost and expense of any modifications shall be borne by the City.

**3.3.5 Damage of U. S. A. Yeast Property.** In the event that the City or its agents causes damage to the Project Site or to any other property of U. S. A. Yeast while constructing, installing, operating, maintaining or repairing the pumping station, the Effluent Pipeline, the Meter or any subsequent modifications thereto, the City shall restore or pay U. S. A. Yeast to restore, at U. S. A. Yeast's election, U. S. A. Yeast's property as nearly as possible to its condition prior to such damage.

#### **ARTICLE IV: GENERAL PROVISIONS**

##### **4.1 ADDITIONAL OBLIGATIONS OF THE PARTIES**

###### **4.1.1 Additional Obligations of the City.**

(a) Promptly upon obtaining knowledge thereof (but in any event within 5 hours of obtaining knowledge thereof), the City shall provide U. S. A. Yeast with oral (with prompt written confirmation thereof) or written notice of any violation of applicable Governmental Approvals relating to the Facility. The City shall immediately implement all necessary steps to correct said violation and to prevent disruption of service to U. S. A. Yeast.

(b) The City hereby acknowledges that U. S. A. Yeast produces a fungible product and that any interruption in service of more than twenty-four (24) hours will result in irreparable harm to U. S. A. Yeast. Therefore, in compliance with Article II, Section 2.3.2 and Article III, Section 3.3.2, the City hereby covenants and agrees that it will make every effort to restore service within eighteen hours after an interruption in service occurs, and the City further covenants and agrees that it will employ all of its resources to insure that at no time will an interruption in service exceed 24 hours in duration.

(c) Upon the reasonable request of U. S. A. Yeast, the City shall execute such additional certificates, document, instruments, agreements and take such actions as may be reasonably required to give effect to the terms and conditions of this Agreement.

###### **4.1.2 Additional Obligations of U. S. A. Yeast.**

(a) Promptly upon obtaining knowledge thereof (but in any event within 5 hours of obtaining knowledge thereon, U. S. A. Yeast shall provide the City with oral (with prompt written confirmation thereof) or written notice of any violation by the City of applicable Governmental Approvals relating to the Water delivered by the City in accordance with this Agreement.

(b) Upon the reasonable request of the City, U. S. A. Yeast shall execute such additional certificates, documents, instruments, agreements and take such actions as may be reasonably required to give effect to the terms and conditions of this Agreement.



## **4.2 FORCE MAJEURE**

### **4.2.1 Force Majeure.**

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

(a) the non-performing Party gives the other Party written notice not later than forty-eight (48) hours after the occurrence of the Force Majeure describing the particulars of the Force Majeure, including but not limited to the nature of the occurrence and the expected duration of the disability, and continues to furnish timely regular reports with respect thereto during the period of Force Majeure and the disability;

(b) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure; and

(c) the non-performing Party uses its best efforts to remedy its inability to perform.

Notwithstanding the foregoing, the settlement of strikes, lockouts, and other labor disputes shall be entirely within the discretion of the affected Party, and such Party shall not be required to settle any strike, lockout or other labor dispute on terms that it deems inadvisable.

## **4.3 TERM**

**4.3.1 Initial Term of Agreement.** This Agreement shall become legally binding upon the parties hereto upon the execution hereof, but the obligations of the City to supply Water and to treat Effluent shall not take effect until the Commencement Date. The Initial Term of this Agreement shall be one hundred twenty months (10 years), unless renewed as provided in Section 4.3.2 below (the "Initial Term").

**4.3.2 Renewals Term of Agreement.** This Agreement may be extended, at the sole option and discretion of U.S. A. Yeast, in eight five-year options under the same terms and conditions except that: (i) in the first five-year renewal period, the Parties agree that the price per gallon charged by the City to treat Effluent shall be One and Fifty One Hundredths (\$1.50) Dollars per 1,000 gallons of Effluent discharged by U. S. A. Yeast into the City's Wastewater System, (ii) for each the seven remaining five-year renewal options after the first renewal term, the price per gallon for Effluent shall be increased for each five-year term by the Producers Price Index ("PPI"), and (iii) for each of the eight five-year renewal options after the Initial Term hereof, the Purchase Price per 1,000 gallons of Water shall be increased for each five-year term by the PPI. Notwithstanding the foregoing price increases determined by application of the PPI, the Purchase Price for Water and the cost per gallon for treatment of Effluent shall not exceed prevailing rates set by City ordinance.

## **4.4 REPRESENTATIONS AND WARRANTIES OF THE CITY**

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

**4.4.2 Authorization and Enforceability.** The City has taken all necessary action to authorize the

transactions contemplated by this Agreement and the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the City and constitutes the legal, valid and binding obligation of the City enforceable in accordance with its terms.

**4.4.3 No Conflict.** Neither the execution and delivery of this Agreement nor compliance with any of the terms and provisions hereof (i) contravenes any Governmental Approval applicable to the City or any of its respective properties or other assets, (ii) conflicts with, breaches or contravenes the provisions of the organizational documents of the City or any contractual obligation of the City, or (iii) results in the creation or imposition of any lien upon any of the proper or assets of the City under, or in a condition or event that constitutes (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of the City.

**4.4.4 Governmental Approvals.** No Governmental Approval is required (other than those which have previously been obtained and are in full force and effect or which must be modified as hereinafter provided) to authorize, or is required in connection with the execution and delivery of this Agreement by the City. The City agrees that it will notify the Department of Environmental Quality (DEQ) in writing that U. S. A. Yeast will be discharging its wastewater into the City's Facilities, and the City further agrees to work with the DEQ (and with U.S.A. Yeast if necessary) to amend or upgrade, if necessary, the City's NPDES Permit to accommodate the wastewater discharged into the City's Facilities by U. S. A. Yeast.

#### **4.5 REPRESENTATIONS AND WARRANTIES OF U. S. A. YEAST**

**4.5.1 Organization and Qualification.** U. S. A. Yeast (i) is a limited liability company, duly organized and existing under the laws of the State of Alabama, with all right, power and authority under its organizational documents and under the laws of the state of its organization to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby, and (ii) has the power to carry on its business as now being conducted and as proposed to be conducted.

**4.5.2 Authorization and Enforceability.** U. S. A. Yeast has taken all necessary action to authorize the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by U. S. A. Yeast and constitutes the legal, valid and binding obligation of U. S. A. Yeast enforceable in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally and (ii) general equitable principles regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

**4.5.3 No Conflict.** Neither the execution and delivery of this Agreement nor compliance with any of the terms and provisions hereof (i) contravenes any Governmental Approval applicable to U. S. A. Yeast or any of its respective properties or other assets, (ii) conflicts with, breaches or contravenes the provisions of the organizational documents of U. S. A. Yeast or any contractual obligation of U. S. A. Yeast, or (iii) results in the creation or imposition of any lien upon any of the property or assets of U. S. A. Yeast under, or in a condition or event that constitute (or that, upon notice or lapse of time or both, would constitute) an event of default under any contractual obligation of U. S. A. Yeast.

**4.5.4 Governmental Approval.** No Governmental Approval is required (other than those which have previously been obtained and are in full force and effect) to authorize, or is required in connection with the execution and delivery of this Agreement by U. S. A. Yeast. However, U. S. A. Yeast acknowledges that the wastewater U. S. A. Yeast intends to discharge into the City's Facilities may require the City to upgrade its NPDES Permit, and U. S. A. Yeast hereby agrees to cooperate with the City and with DEQ to ensure that all Governmental Approvals (whether obtained in the name of U. S. A. Yeast or the City) are timely obtained.

### **ARTICLE V: MISCELLANEOUS**

#### **5.1 MISCELLANEOUS**

**5.1.1 Amendments, Etc.** No amendment or waiver of any provision of this Agreement shall be effective

unless in writing and signed or consented to by the Parties and then such waiver shall be effective only in the specific instance and for the specific purpose for which given.

**5.1.2 Assignment.** Either Party may assign delegate, pledge, or otherwise transfer this Agreement, or any of its rights or obligations under this Agreement without the prior consent of the other Party, including without limitation, any assignment of this Agreement by U. S. A. Yeast to the Financing Parties; however, the Party desiring to assign its interest hereunder shall notify the other Party of said assignment..

**5.1.3 Cooperation in Financing.** The City agrees to cooperate from time to time with U. S. A. Yeast and the Financing Parties in connection with the financing of the Project. In furtherance thereof, the City agrees to enter into such consents to assignments or other agreements as U. S. A. Yeast or the Financing Parties may reasonably request and the City agrees to provide such certificates from its officers and such opinions of counsel (which may be outside counsel) as U. S. A. Yeast or the Financing Parties may reasonably request.

**5.1.4 Notices, Etc.** All notices and other communications provided for hereunder shall be in writing [including by telecopier and electronic mail ("e-mail")] and shall be mailed, telecopied, e-mailed or delivered, if to U. S. A. Yeast, to it at \_\_\_\_\_, ATTN: \_\_\_\_\_; if to the City, to it at \_\_\_\_\_, Hattiesburg, Mississippi 36302, ATTN: \_\_\_\_\_, as to each Party, to it at such other address or telecopier number or e-mail address as designated by such Party in a written notice to the other Parties. All such notices and communications shall be deemed received, (a) if personally delivered, upon delivery, (b) if sent by first class mail, on the third business day following deposit into the mails and (c) if sent by telecopier, upon acknowledgement of receipt thereof by the recipient.

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

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

**5.1.7 Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MISSISSIPPI WITHOUT REFERENCE TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

**5.1.8 Headings.** The section and subsection headings used herein have been inserted for convenience of reference only and do not constitute matters to be considered in interpreting this Agreement

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

**5.1.10 Waiver of Jury Trial.** PARTIES HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENTS CONTEMPLATED HEREBY TO BE EXECUTED IN CONJUNCTION HERewith OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER ORAL OR WRITTEN) OR ACTIONS OF EACH PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties hereto have each caused this Agreement to be executed by their duly authorized officers on the date first above written.

U. S. A. YEAST COMPANY, LLC

By: Michael H. Powell  
Its Manager

CITY OF HATTIESBURG, MISSISSIPPI

By: Johnny T. Davis  
Its Mayor

ATTEST:

By: Eddie R. Myers  
City Clerk

EXHIBIT "A"

LEGAL DESCRIPTION OF PROJECT SITE

EXHIBIT "B"

MONTHLY USAGE 1000'S GALLONS	RATE \$/1000 GAL
5000	7.03
6000	6.11
*7000	5.45
8000	4.95
9000	4.57
10000	4.26
11000	4.01
12000	3.80
13000	3.63

14000	3.47
15000	3.34
16000	3.23
17000	3.13
18000	3.04
19000	2.95
20000	2.88
21000	2.83
22000	2.76
23000	2.70
24000	2.65
25000	2.61
26000	2.56

#### Example Bill Calculation

Monthly usage = 24,333,333 Gallons (800,000 Gallons/Day)

Rate From Chart For 24,000,000 Gallons = \$2.65/1000 Gal

Rate From Chart For 25,000,000 Gallons = \$2.61/1000 Gal

From Chart:

25,000,000 Gal - 24,000,000 Gal = 1,000,000 Gal

\$2.65 Rate - \$2.61 Rate = \$0.04

Monthly Usage 24,333,333 Gallons - 24,000,000 Gallons from chart = 333,333 Gal

333,333 Gal ÷ 1,000,000 Gal = .3333

\$0.04 x .3333 = \$0.013

Therefore rate for monthly usage of 24,333,333 gallons is

\$2.65 - \$0.013 = \$2.637/1000 Gal

Amount of bill would be

24,333,333 Gal x \$2.637/1000 Gal = \$64,167.00

\* MINIMUM BILLING FOR ANY MONTH DURING THE TERM OF THIS AGREEMENT SHALL BE BASED UPON MINIMUM PRESUMED USAGE OF 7,000,000 GALLONS PER MONTH AT A RATE

\$5.45 PER THOUSAND GALLONS.

AGREEMENT.TSVUS\_YEAST.WATER\_WASTEWATER\_AGR

**WATER PURCHASE  
AND  
EFFLUENT TREATMENT AGREEMENT**

**by and between**

**U. S. A. YEAST COMPANY, LLC**

**and**

**CITY OF HATTIESBURG, MISSISSIPPI**

**December 4, 2001**

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15000	3.34
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AGREEMENTS\US\_YEAST.WATER\_WASTEWATER\_AGR



EXHIBIT "B"

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