

**THE FOLLOWING RESOLUTION WAS INTRODUCED BY COUNCIL
MEMBER ZUCKERMAN AND SECONDED FOR ADOPTION BY
COUNCIL MEMBER _____**

RESOLUTION NO. 24-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MANDEVILLE
AUTHORIZING THE MAYOR OF THE CITY OF MANDEVILLE TO EXECUTE
A PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF
MANDEVILLE AND COMITE RESOURCES, INC. FOR WETLAND ASSIMILATION
BIOLOGICAL MONITORING, AND PROVIDING FOR OTHER MATTERS IN
CONNECTION THEREWITH**

WHEREAS; the City of Mandeville was issued a permit from the Louisiana Department of Environmental Quality to discharge effluent from the City treatment plant to the Chinchuba Swamp and East Tchefoncte Marsh as part of its treatment system in order to reduce nutrient and sediment concentrations in its secondarily treated municipal effluent; and

WHEREAS, as part of the permit, the City is required to carry out monitoring of various aspects of the ecology and chemistry of the wastewater effluent and the receiving wetland; and

WHEREAS, the City desires to enter into a professional services agreement with Comite Resources, Inc. for the purpose of administrating and coordinating the measurements to specifically meet the requirements of the Louisiana Department of Environmental Quality's permit; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Mandeville, hereby authorizes and empowers the Mayor of the City to execute a professional services agreement with Comite Resources, Inc., for wetland assimilation biological monitoring on behalf of the City of Mandeville.

With the above resolution having been properly introduced and duly seconded, the vote was as follows:

AYES:

NAYS:

ABSTENTIONS:

ABSENT:

and the resolution was declared adopted this _____ day of _____, 2024.

Kristine Scherer
Clerk of Council

Jason Zuckerman
Council Chairman



Comite Resources, Inc.
21245 Smith Road
Covington, LA 70435

John W. Day, Ph.D.
jwday@comiteres.com

Robert R. Lane, Ph.D.
rlane@comiteres.com

Rachael G. Hunter, Ph.D.
rhunter@comiteres.com

225-247-3917

225-439-3931

Introduction

The City of Mandeville was issued a permit from the Louisiana Dept. of Environmental Quality (Louisiana Pollutant Discharge Elimination System (LPDES) permit LA0038288) to discharge effluent from the City wastewater treatment plant to the Chinchuba Swamp and East Tchefoncté Marsh to reduce nutrient and sediment concentrations in its secondarily treated municipal effluent. As part of the conditions of permit, the City is required to carry out monitoring of the receiving wetland (See LPDES permit LA0038288 -Wetland System Monitoring). The overall objective of this scope of services is to conduct monitoring to specifically meet the requirements of the LPDES permit. The details of the proposed monitoring and reporting schedule are given below. The proposed work is based on the results of the field investigations and monitoring of the site described in the Use Attainability Analysis (UAA) as well as discussions with Louisiana Department of Environmental Quality (LDEQ) and City personnel.

Objectives

The overall objective of this scope of work is to meet the monitoring requirements of the LPDES permit. Measurements of hydrology, vegetation, water and soil chemistry and accretion will be carried out as dictated by the discharge permit (Table 1). Quarterly monitoring reports and annual reports will be prepared in order to ascertain that the specific criteria for protection of the receiving wetland are met. Meetings will be held with City personnel and LDEQ as necessary to ensure satisfactory completion of the monitoring.

Table 1. Monitoring requirements for each of the assimilation wetland study sites.

Parameter	Flora	Sediment	Surface Water
Flora Species Diversity	P		
Aboveground Vegetation Productivity	A		
Water Level Measurements			M
Metals: Mg, Pb, Cd, Cr, Cu, Zn, Fe, Ni, Ag, Se	P	P	P
Nutrient Analysis I: TKN, TP	P	P	Q
Nutrient Analysis II: NH ₃ N, NO ₂ ⁻ +NO ₃ N, PO ₄		P	Q
Others: BOD ₅ , TSS, pH, Dissolved Oxygen, Salinity, Temp			Q
Accretion Rate		P	
Nutrient Loading Rates			A
Adaptive Management Practices			A

P: Periodically – Must be made once during the fourth year of the permit period for all wetland areas.

A: Annually – Once per year at all wetland areas.

Q: Quarterly – Once per three months at all wetland areas.

M: Monthly – Once per month at all wetland areas.

METHODS

Experimental Design

The City of Mandeville is discharging secondarily treated sewage effluent from the City wastewater treatment plant to the Chinchuba Swamp and the Tchefuncte Marsh. In order to effectively monitor the effect of this discharge on the vegetation, soil, and surface water in the receiving wetlands, several study locations were identified and delineated (Figure 1). The region surrounding the discharge pipe within the Chinchuba Swamp was designated as Discharge site 1 (D_1). The region where effluent leaves the receiving wetlands into natural water bodies was designated as Out site 1 (O_1). A Mid site (M_1) was located equidistant between the D_1 and O_1 sites. A Reference site ($M\text{-Con}$) was located in the Bayou Castine wetlands, which are ecologically similar to the receiving wetlands, but not influenced by treated effluent. A second set of sites was established within the East Tchefuncte Marsh. The region surrounding the discharge pipe was designated as the Discharge site 2 (D_2). The region where effluent leaves the receiving wetlands into natural water bodies was designated as the Out site 2 (O_2). Two Mid sites (M_w and M_e) were located equidistant between the D_2 and O_2 sites. A Reference site (R_e) was located in an area nearby and ecologically similar to the receiving wetlands, but not influenced by treated effluent. Together, these sites will be referred to as the ‘study sites’ in this document.



Figure 1. Location of the Mandeville WTP and Bayou Chinchuba and Tchefuncte assimilation wetlands. Upper case letters indicate sampling sites. Arrows indicate general direction of water flow.

Water Analysis

In Situ Measurements

Conductivity, salinity, dissolved oxygen, pH and temperature will be recorded using an In-Situ AquaTROLL400 Multiparameter Handheld probe (<https://in-situ.com/us/aqua-troll-400-multiparameter-probe>). The probe will be calibrated with known standards prior to field measurements. Data will be uploaded to a mobile device, and then archived and backed-up upon return from the field. These measurements will be taken during monthly site visits at all monitoring sites.

Nutrients and Suspended Solids

Discrete water samples for nutrient and total suspended solids (TSS) analysis will be collected quarterly at the study sites and the discharge pipe as dictated by the discharge permit. Single water samples will be taken 5 to 10 cm below the water surface with effort taken not to stir bottom sediments or include any film that may be present on water surface. Samples will be collected in 500 ml acid washed polyethylene bottles or as provided by the laboratory. The samples will be immediately stored at 4°C until transported to an analytical laboratory and within 24 hours filtered and subsampled. The samples will be analyzed for nitrite (NO₂-N), nitrate (NO₃-N), ammonium (NH₃-N), total Kjeldahl nitrogen (TKN), total phosphorus (TP), and ortho-phosphate (PO₄-P) by Pace Analytical, an EPA approved analytical laboratory, using standard methods (APHA 1985).

Metals Analysis

Triplicate water samples will be collected once during September through November in the fourth year of the permit from each of the study sites as dictated by the discharge permit. The following parameters will be analyzed for by Pace Analytical: magnesium (Mg), lead (Pb), cadmium (Cd), chromium (Cr), copper (Cu), zinc (Zn), iron (Fe), nickel (Ni), silver (Ag), and selenium (Se).

Vegetation Analysis

Tree Productivity

10m x 100m plots have been previously established at each forested study site in order to monitor vegetation species composition and productivity. The diameter at breast height (DBH) of all trees in each plot will be measured directly above and below an identification tag located approximately 4.5 ft above the ground. The tag will be inverted for the top measurement. The procedures have been followed as outlined in the Forest Inventory and Analysis National Core Field Guide (version 7.2). Trees with buttresses will be tagged 1.5 ft above the butt swell. In addition to the tree diameter, the species and tag number will also be recorded. Centimeter diameter tape will be used with 0.1 cm increments. Forked trees will be measured differently depending where the fork originates: if below 1.0 foot then they are treated as distinctly separate trees; if between 1.0 and 4.5 feet DBH of each fork is measured at a point 3.5 feet above the pith intersection; and if the fork is above 4.5 feet DBH will be taken at 4.5 or slightly below if the fork is at 4.5 ft. Trees with swellings, bumps,

depressions, and branches at 4.5 ft, DBH will be measured immediately above the irregularity at the place it ceases to affect normal stem form. The DBH of leaning trees will be made 4.5 ft from the ground along the bole as measured along the underside face of the bole.

Stem production will be estimated from annual changes in wood biomass calculated using allometric equations based on stem dbh as the independent variable (Table 1). Aboveground net primary production (NPP) will be calculated as the difference in biomass from year to year.

Table 1. Allometric equations used to convert diameter at breast height (dbh) to woody biomass.

Species	Biomass (kg)	f(D)	DBH Range	Reference
<i>Fraxinus spp.</i>	Biomass(kg) =	$((2.669 * ((DBHcm * 0.394)^2)^{1.16332}) * 0.454$	>10 cm	Megonigal et al. '97
<i>Taxodium distichum</i>	Biomass(kg) =	$10^{(-.97 + 2.34 * LOG10(DBHcm))}$	>10 cm	Megonigal et al. '97
<i>Nyssa aquatica</i>	Biomass(kg) =	$10^{(-.919 + 2.291 * LOG10(DBHcm))}$	>10 cm	Megonigal et al. '97
<i>Acer rubrum</i>	Biomass(kg) =	$((2.39959 * ((DBHcm * 0.394)^2)^{1.2003}) * 0.454$	10-28 cm	Megonigal et al. '97
<i>Quercus nigra</i>	Biomass(kg) =	$((3.15067 * ((DBHcm * 0.394)^2)^{1.21955}) * 0.45$	10-28 cm	Megonigal et al. '97
	Biomass(kg) =	$((5.99898 * ((DBHcm * 0.394)^2)^{1.08527}) * 0.45$	>28 cm	Megonigal et al. '97
<i>Salix spp.</i>	Biomass(kg) =	$10^{(-1.5 + 2.78 * LOG10(DBHcm))}$	n.a.	Scott et al. 1985
Other Species	Biomass(kg) =	$((2.54671 * ((DBHcm * 0.394)^2)^{1.20138}) * 0.45$	10-28 cm	Megonigal et al. '97
	Biomass(kg) =	$((1.80526 * ((DBHcm * 0.394)^2)^{1.27313}) * 0.45$	>28	Megonigal et al. '97
All species < 5 cm	Biomass(kg) =	$((2.50008 * ((DBHcm * 0.394)^2)^{1.19572}) * 0.45$	<10cm	Phillips 1981

Marsh Productivity

Net primary productivity (NPP) of emergent wetlands will be measured using the End of season live (EOSL) technique (White et al. 1978; Burdick et al. 1989). EOSL biomass will be collected during the last week of September or the first week of October during each year of the project. Aboveground biomass will be sampled using five 0.1 m² clip plots (Shew et al. 1981). Vegetation within each clip plot will be cut as close to the wetland surface as possible, placed in labeled paper bags, and brought back to the laboratory where live vegetation will be separated from dead, dried at 60°C, and weighed. The dry weight of the live material will be extrapolated to live dry weight per square meter (g dry wgt/m²).

Metals & Nutrient Analysis

Triplicate green leaf samples will be collected once during September through November of the fourth year from the major species at the study sites as dictated by the discharge permit. These samples will be analyzed for TP and TKN by Pace Analytical. In addition, samples will be analyzed for metal concentrations, including Mg, Pb, Cd, Cr, Cu, Zn, Fe, Ni, Ag, and Se.

Soils Analysis

Sediment Accretion

Accretion will be measured using the feldspar marker technique (Cahoon and Turner 1989). Feldspar marker horizons are prepared by spreading a thin (~1cm) layer of white feldspar clay on the wetland surface. The center of the plot was marked with a PVC pole. Material accumulated above the feldspar marker is measured periodically. The rate of vertical accretion is calculated by dividing the mean thickness of material above the surface of the horizon by the amount of time the horizon had been in place.

Metals & Nutrient Analysis

Triplicate sediment samples will be collected at the study sites during September through November in the fourth year of the study as dictated by the discharge permit. These samples will be analyzed for TP and TKN by Pace Analytical. In addition, samples will be analyzed for metal concentrations, including Mg, Pb, Cd, Cr, Cu, Zn, Fe, Ni, Ag, and Se.

Statistical Analyses

All summary and diagnostic statistics will be made using JMP statistical software (Sall et al. 2017). Other appropriate statistical analysis will also be conducted as needed.

Responsibilities and Deliverables

Comite Resources will be responsible for sample collection, data analysis and interpretation, and meeting with City and LDEQ personnel sufficient to ensure satisfactory progress of the project. The City will be responsible for the payment of all sample analyses. Deliverables include Quarterly Progress Reports and three (3) Annual Reports.

Literature Cited

- APHA (American Public Health Association). 1985. A.E. Greenberg, R.R. Trussell, L.S. Clesceri, and M.A.H. Franson (eds.), *Standard Methods for the Examination of Water and Wastewater*, 16th Ed., Washington, D.C.
- Burdick, D.M., I.A. Mendelssohn, and K.L. McKee. 1989. Live standing crop and metabolism of the marsh grass *Spartina patens* as related to edaphic factors in a brackish, mixed marsh community in Louisiana. *Estuaries* 12: 195-204.
- Cahoon, D.R. and R.E. Turner. 1989. Accretion and canal impacts in a rapidly subsiding wetland. II. Feldspar marker horizon technique. *Estuaries* 12:260-268.
- Sall, J., M. Stephens, A. Lehman, and S. Loring. 2017. *JMP Start Statistics: A guide to statistical and data analysis using JMP*, sixth edition. Cary, NC: SAS Institute Inc. 660p.
- Shew, D.M., R.A. Linthurst, and E.D. Seneca. 1981. Comparison of production computation methods in a southeastern North Carolina *Spartina alterniflora* salt marsh. *Estuaries* 4: 97-109.
- White, D.A., T.A. Weiss, J.M. Trapani, and L.B. Thien. 1978. Productivity and decomposition of the dominant salt marsh plants in Louisiana. *Ecology* 59: 751-759.

THIS IS AN AGREEMENT effective as of January 1, 2024, (“Effective Date”) between CITY OF MANDEVILLE (“CITY”) and COMITE RESOURCES, INC. (“COMITE”).

A. COMITE has been retained by CITY to provide services under this Agreement generally described as follows:

Wetland Assimilation Biological Monitoring Scope of Services for the period of January 1, 2024 through December 31, 2026.

B. The part of the Project for which COMITE is to perform its services is referred to herein as “This Part of the Project”.

C. COMITE shall be the general administrator and coordinator of the Professional services for the Project, and shall facilitate the exchange of information among the consultants retained by CITY for the Project as necessary for the coordination of their respective services.

D. COMITE shall provide services under this Agreement as CITY’S consultant for This Part of the Project, shall be solely responsible for the means and methods used in providing these services under this Agreement, is independent of the CITY, and is not a joint venture with CITY.

CITY and COMITE in consideration of their mutual covenants as set forth herein, agree as follows:

ARTICLE 1 – SERVICES OF COMITE

1.01 Scope

A. COMITE shall provide the Basic Services set forth herein and in Exhibit A, which is specifically designed to meet the monitoring requirements as set forth in the LPDES permit.

B. Upon this Agreement becoming effective, COMITE is authorized to begin Basic Services as set forth in Exhibit A.

ARTICLE 2 – CITY’S RESPONSIBILITIES

2.01 General

A. CITY shall have the responsibilities set forth herein.

ARTICLE 3 – TIMES FOR RENDERING SERVICES

3.01 General

- A. COMITE’S services and compensation under this Agreement have been agreed to assuming the orderly and continuous progress of the Project through completion.
- B. If in this Agreement specific periods of time for rendering services are set forth, or specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of COMITE, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If CITY has requested changes in the scope, extent, or character of This Part of the Project, the time of performance of COMITE’S services shall be subject to equitable adjustment.
- C. For purposes of this Agreement, the term “day” means a calendar day of 24 hours.

3.02 Suspension

- A. If CITY fails to give prompt written authorization to proceed with any phase of the services after completion of the immediately proceeding phase, or if COMITE’S services are delayed through no fault of COMITE, COMITE may, after giving seven days written notice to CITY, suspend services under this Agreement.
- B. If COMITE’S services are delayed or suspended in whole or in part by CITY, or if COMITE’S services are extended by CITY’S actions or inactions for more than 90 days through no fault of COMITE, COMITE may be entitled to an adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect responsible costs incurred by COMITE in connection with, among other things, such delay or suspension and reactivation and the fact that the time of performance under this Agreement has been revised.

ARTICLE 4 – PAYMENTS TO COMITE

4.01 Methods of Payment for Services of COMITE

- A. *For Basic Services.* CITY shall pay COMITE **\$126,000.00** for Basic Services, as outlined in Exhibit A, performed in twelve (12) quarterly payments of \$10,5000.00 based upon submittal of invoices, twelve (12) quarterly monitoring reports, and three (3) annual reports.

4.02 Other Provisions Concerning Payments

- A. *Preparation of Invoices.* Invoices will be prepared in accordance with COMITE’S standard invoicing practices and will be submitted to CITY by COMITE.

B. *Approval of Invoices.* CITY shall review invoices submitted by COMITE within 15 days of receipt and shall promptly either approve said invoices or notify COMITE of any disputed items. Approval of invoices by CITY shall not be unreasonably withheld.

C. *Unpaid Invoices.* If CITY has received and approved an invoice from COMITE for services, and if thereafter CITY fails to pay COMITE for the services and expenses covered by such invoice within 60 days of said invoice from COMITE, then after the 60th day, whichever occurs first, the unpaid amounts covered by such invoice will be increased at the rate of 1% per month from the date which first occurs. Payments will be credited first to interest and then to principal.

D. *Payments Upon Termination.*

1. In the event of any termination under paragraph 5.04, COMITE will be entitled to invoice CITY and will be paid in accordance with this Agreement for all services satisfactorily performed or furnished as determined by CITY, including Reimbursable Expenses and COMITE charges incurred through the effective date of termination.

2. In the event of termination by CITY for convenience or by COMITE for cause, COMITE, shall be entitled to invoice CITY and shall be paid a responsible amount for services and expenses attributable to termination, such as reassignment of personnel, costs of terminating contracts with COMITE, and other related close-out costs.

E. *Records of COMITE'S Costs.* Records of COMITE'S costs pertinent to COMITE'S compensation and payments under this Agreement will be kept in accordance with generally accepted accounting practices. To the extent necessary to verify COMITE'S charges and upon CITY'S reasonable request, copies of such records will be made available to CITY at cost.

F. *Legislative Actions.* In the event of any legislative actions after the Effective Date of this Agreement by any level of government that impose taxes, fees or costs on COMITE services in connection with this Project, such new taxes, fees or costs shall be invoiced to and paid by CITY as a Reimbursable Expense to which a factor of 1.0 shall be applied. Should such costs be imposed, they shall be in addition to COMITE'S estimated total compensation.

ARTICLE 5 – GENERAL CONSIDERATIONS

5.01 Standards of Performance

A. The standard of care for all professional and related services performed or furnished by COMITE under this Agreement will be the care and skill ordinarily used by members of COMITE'S profession practicing under similar circumstances at the same time and in the same locality. COMITE makes no warranties, express or implied, under this Agreement or otherwise, in connection with these services.

B. COMITE shall be responsible for the technical accuracy of its services, data and Documents resulting therefrom, and the CITY shall not be responsible for discovering deficiencies

therein. COMITE shall correct such deficiencies without additional compensation, except to the extent that such action is directly attributable to deficiencies in CITY-furnished information.

C. COMITE shall maintain on file in legible form, for a period of five years following the completion of its services, all its Documents, records (fiscal and other) and design calculations pertinent to its performance under this Agreement. A copy of these shall be available to the CITY at cost.

D. COMITE may employ consultants, as COMITE deems necessary to assist in performance or furnishing of such services. COMITE shall not be required to employ any consultants unacceptable to COMITE.

E. CITY and COMITE shall comply with applicable Laws and Regulations and with standards mandated by CITY. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to CITY'S responsibilities and to the scope, schedule, and compensation of or for the COMITE'S services.

F. Unless indicated otherwise by CITY at the time of transmittal to COMITE, CITY shall be responsible for, and COMITE may rely on, the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by CITY pursuant to this Agreement.

G. COMITE shall not be requested to sign any documents, no matter by whom requested, that would result in COMITE'S having to certify, guarantee or warrant the existence of conditions whose existence COMITE cannot ascertain and, within the scope of COMITE'S services hereunder have not been and could not be ascertained. CITY agrees not to make resolution of any dispute with COMITE or payment of any amount due to COMITE in any way contingent upon COMITE signing any such certification.

H. Material, Equipment and Services to be Provided. COMITE agrees to provide all equipment and consulting services necessary to perform COMITE'S obligations under this AGREEMENT except as otherwise expressly provided herein. COMITE agrees to provide all other necessary manpower, materials, equipment, services and facilities necessary to complete the Monitoring as called for by this AGREEMENT. COMITE agrees to provide and maintain in usable condition the following material, equipment and services: twenty-six (26) leaf litter boxes. The CITY agrees to provide and maintain in usable condition the following material, equipment and services: one airboat as needed, and agrees to bear the cost of all analytical costs including, but not limited to: laboratory fees, field sampling and testing fees, sample vessels and equipment, and related expenses.

5.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, COMITE and CITY shall designate specific individuals to serve as COMITE'S and CITY'S representatives with respect to the services to be performed or furnished by COMITE under this Agreement. Such individuals shall have the authority to transmit instructions, receive information and render decisions relative to This Part of the Project on behalf of each respective party.

5.03 Use of Documents

A. All Documents prepared or furnished by COMITE pursuant to this Agreement are instruments of service in respect to This Part of the Project and COMITE may retain an ownership and property interest therein (including the right of re-use at the discretion of COMITE) whether or not This Part of the Project is completed

B. Copies of CITY-furnished data that may be relied upon by COMITE include printed copies (also known as hard copies) that are delivered to COMITE as well as electronic media format of text, data, and graphics.

C. Copies of Documents that may be relied upon by CITY include printed copies (also known as hard copies) that are signed or sealed by COMITE as well as electronic media format of text, data, and graphics.

D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. However, if COMITE'S electronic files are delivered to CITY for CITY'S delivery, the 60-day acceptance period will be corrected by the party delivering the electronic files.

E. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

F. When transferring documents in electronic media format, neither COMITE nor CITY make representations as to long-term compatibility, usability or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by COMITE and CITY, respectively, at the completion of This Part of the Project.

G. CITY may make and retain copies of Documents for information and reference in connection with the use and occupancy of This Part of the Project by CITY'S related design services. Such Documents are not intended or represented to be suitable for re-use by CITY, CITY'S, or others on extensions of This Part of the Project or on any other project. Any such re-use or modification without written verification or adaptation by COMITE as appropriate for the specific purpose intended will be at the re-user's sole risk and without liability or legal exposure to COMITE or to COMITE'S consultants. CITY shall indemnify and hold harmless COMITE and

COMITE'S consultants from all damages, losses and expenses, including attorneys' fees arising out of or resulting therefrom.

H. Any verification or adaptation of the Documents for extensions of This Part of the Project or for any other project will entitle COMITE to further compensation at rates to be agreed upon by CITY and COMITE.

5.04 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. *For cause:*

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins, within seven days or receipt of such notice, to correct its failure to perform and proceed diligently to cure such failure within no more than 30 days of receipt thereof. However, if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

b. By COMITE:

1) upon seven days written notice if COMITE believes that COMITE is being requested by CITY to furnish or perform services contrary to COMITE'S responsibilities as a licensed professional; or

2) upon seven days written notice if COMITE'S services for This Part of the Project are delayed or suspended for more than 90 days for reasons beyond COMITE'S control.

3) COMITE shall have no liability to CITY on account of termination under paragraph 5.06.A.

2. *For convenience:*

a. By CITY effective upon receipt of notice by COMITE.

b. By COMITE, if COMITE'S services under this Agreement cannot be performed because of a Hazardous Environmental Condition.

B. CITY may establish the effective date of termination under paragraph 5.04A.1 up to 30 days later than otherwise provided to allow COMITE to demobilize personnel and equipment, to

complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble materials for This Part of the Project in orderly files.

5.05 Dispute Resolution

A. CITY and COMITE agree to negotiate all disputes between them in good faith for a period of ten days from the date of notice prior to exercising their rights under other provisions of this Agreement, or under law.

5.06 Hazardous Environmental Condition

A. CITY has disclosed all data available to CITY concerning known or suspected Hazardous Environmental Conditions or has represented that, to the best of CITY'S knowledge, a Hazardous Environmental Condition does not exist at or near the site.

B. Based on CITY'S disclosures and representations to COMITE, to the best of its knowledge, has disclosed to COMITE the existence of all known Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material, if any, located at or near the Site including type, quantity and location.

C. If any Hazardous Environmental Condition is encountered, or alleged, COMITE shall have the obligation to notify CITY and, to the extent of applicable Laws and Regulations, appropriate governmental officials.

D. It is acknowledged by both parties that COMITE'S scope of work does not include any services related to an undisclosed Hazardous Environmental Condition. In the event COMITE or any party encounters a Hazardous Environmental Condition, COMITE may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of This Part of the Project affected thereby until CITY or other appropriate party: (i) retains appropriate specialist COMITE(s) or CITY(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

E. CITY acknowledges and agrees that COMITE is performing professional services for CITY and that COMITE is not and shall not be required to become an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation and Liabilities Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with COMITE'S activities under this Agreement.

5.07 Allocation of Risks

A. *Indemnification.*

1. To the fullest extent permitted by law, COMITE shall indemnify, hold harmless, and defend the CITY, CITY'S consultants, CITY'S officers, directors, partners and employees from and against any and all costs, losses and damages (including, but not limited to, all fees and charges of CITY'S, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of COMITE or COMITE'S officers, directors, partners, employees, or COMITE'S consultants in the performance and furnishing of COMITE'S services under this Agreement.

2. To the fullest extent permitted by law, CITY shall indemnify and hold harmless COMITE, and COMITE'S officers, directors, partners and employees from and against any and all costs, losses and damages (including, but not limited to, all fees and charges of CITY'S, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of CITY or CITY'S officers, directors, partners, employees, and CITY'S consultants with respect to this Agreement.

3. To the fullest extent permitted by law, COMITE'S total liability to CITY and anyone claiming by, through, or under CITY for any cost, loss or damages caused in part by the negligence of COMITE, including those for whom COMITE is responsible, and in part by the negligence of CITY or any other negligent entity or individual, shall not exceed the percentage share that COMITE'S negligence bears to the total negligence of CITY, COMITE, and all other negligent entities and individuals.

4. To the fullest extent permitted by law, CITY'S total liability to COMITE and anyone claiming by, through, or under COMITE for any cost, loss or damages caused in part by the negligence of CITY, and in part by the negligence of COMITE or any other negligent entity or individual, shall not exceed the percentage share that CITY'S negligence bears to the total negligence of COMITE, CITY, and all other negligent entities and individuals.

5. CITY'S indemnity with respect to a Hazardous Environmental Condition, if any, is contained in the Prime Agreement.

5.08 Appropriation of Funds

A. The continuation of this Contract is contingent upon the appropriation of funds by CITY to fulfill the requirements of the Contract. If CITY fails to appropriate sufficient monies to provide for the continuation of this or any other related Contract, or if such appropriation is reduced by the veto of the Mayor by any means provided in the appropriations Ordinance to prevent the total appropriation of the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient monies for the continuation of the

Contract, the Contract shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

B. *NON-APPROPRIATION CLAUSE.* COMITE acknowledges that CITY is a governmental entity, and the Contract's validity is based upon the availability of public funding under the authority of its statutory mandate. In the event that public funds are unavailable and not appropriated for the performance of CITY's obligations under this Contract, then this Contract shall automatically expire without penalty to CITY thirty (30) days after written notice to COMITE of the unavailability and non-appropriation of public funds. It is expressly agreed that CITY shall not activate this non-appropriation provision for its convenience or to circumvent the requirements of this Contract, but only as an emergency fiscal measure during a substantial fiscal crisis, which affects generally its governmental operations.

C. In the event of a change in CITY's statutory authority, mandate and mandated functions, by state and federal legislative or regulatory action, which adversely affects CITY's authority to continue its obligations under this Contract, then this Contract shall automatically terminate without penalty to CITY upon written notice to COMITE of such limitation or change in CITY's legal authority.

5.09 Notices

A. Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page, and given personally, or by registered or certified mail, postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

5.10 Survival

A. All express representations, indemnifications or limitations of liability included in this Agreement will survive its completion or termination for any reason.

5.11 Severability

A. Any provision or part of this Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon CITY and COMITE, who agree that this Agreement shall be reformed to replace such stricken provision or part thereof with valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

5.12 Waiver

A. Non-enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

5.13 Successors, Assigns, and Beneficiaries

A. CITY and COMITE each is hereby bound and the partners, successors, executors, administrators and legal representatives of CITY and COMITE are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.

B. Neither CITY nor COMITE may assign, sublet or transfer any rights under or interest (including, but without limitation, monies that may become due or monies that are due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting or transfer is mandated or 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.

C. Unless expressly provided otherwise in this Agreement:

1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by CITY or COMITE to any CITY, consultant, sub-consultant, supplier, other individual or entity, or to any surety for or employee of any of them.

2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of CITY and COMITE and not for the benefit of any other party.

5.14 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located unless designated otherwise in the Prime Agreement.

5.15 Headings

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 6 – ATTACHMENTS AND EXHIBITS

6.01 No Attachments Included

6.02 Exhibits Included

A. Exhibit A

6.03 Total Agreement

A. This Agreement constitutes the entire agreement between CITY and COMITE and supersedes all prior written and oral understandings. This Agreement may only be amended, supplemented, modified or canceled by a duly executed written instrument.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

CITY: City of MANDEVILLE

By: _____

Date Signed: _____

Address for giving notices:

Clay Madden, Mayor
City of MANDEVILLE
3101 East Causeway Approach
MANDEVILLE, LA 70448

Designated Representative (paragraph 6.02.A):
Name: Clif Siverd
Title: Director Public of Works
Phone Number: 985-624-3169
E-Mail Address: csiverd@cityofmandeville.com

COMITE: Comite Resources, Inc.

By: _____

Date Signed: _____

Address for giving notices:

Comite Resources, Inc.
21245 Smith Rd.
Covington, LA 70435

Designated Representative (paragraph 6.02.A):
Name: Robert R. Lane
Phone Number: 225-247-3917
E-Mail Address: rlane@comiteres.com
Website: comiteresources.net