

The State of Mississippi, Acting for Itself and
Parens Patriae vs. City of Memphis, Tennessee
and Memphis Light, Gas & Water Division

COUNSEL RETENTION AGREEMENT

This Counsel Retention Agreement ("Retention Agreement") is made and entered between the State of Mississippi (sometimes referred to herein as the/this "State"), by and through the Office of the Attorney General (hereinafter sometimes referred to as the "Attorney General") and Daniel Coker Horton & Bell, P.A. (hereinafter referred to as the "Attorneys").

RECITALS

A. **WHEREAS**, the State of Mississippi, by and through the Attorney General, has the authority and responsibility to enforce and preserve the public trust and to take measures to effectively and efficiently manage, protect, and supervise the use of the water resources of Mississippi consistent with and in promotion of the general welfare and best interests of the People of this State; and

B. **WHEREAS**, Miss. CODE ANN. §51-3-1 expressly authorizes and requires the State to manage, supervise, control, develop, regulate, and protect, through the exercise of its police powers, all matters regarding the conservation, the lawful beneficial use and the enforcement of the State's rights and interests, and the rights and interests of the People of Mississippi, in and to Mississippi's water resources; and

C. **WHEREAS**, the State, acting for itself and *parens patriae* for and on behalf of the People of the State of Mississippi, has determined that the State has claims, and the constitutional mandate to pursue such claims, for damages, declaratory relief, injunctive relief and other rights and remedies against The City of Memphis, Tennessee and/or Memphis Light, Gas & Water Division (collectively, "MLGW") related to and caused by MLGW's unreasonable and unlawful use, diversion and excessive or improper withdrawal of groundwater from the Memphis Sand Aquifer underlying, *inter alia*, Desoto County, Mississippi, and any associated claims, causes of action, demands, disputes, controversies or issues involving or arising from such illegal conduct of MLGW or related or other parties, including the State of Tennessee (the "Claims"); and

D. **WHEREAS**, the Attorney General has determined that the investigation, research, litigation and all related or other dispute resolution procedures and processes associated with or arising from the Claims will require, over an extended period of time, the expenditure of large sums of money and the work of numerous lawyers, consultants, experts and accountants (including their respective professional staffs and resources) who are knowledgeable of and familiar with the Claims and who have experience and expertise in natural resources and water rights law and/or litigation and other dispute resolution procedures or processes pertaining thereto; and

E. **WHEREAS**, the Attorney General has further determined that the Attorneys have the requisite experience and expertise and that it is, and will be, in the best interests of the State and its citizens that the State retain and empower the Attorneys to pursue the Claims; and

F. **WHEREAS**, the State has requested the Attorneys to represent the State on a contingent fee basis and to take any actions reasonably necessary or appropriate to pursue and resolve the Claims, including all proceedings or processes referenced in Paragraph No. III. hereof; and

G. **WHEREAS**, the Attorneys have agreed to accept representation of the State of Mississippi, in association with the Attorney General, in relation to the Claims and pursuant to the provisions hereof.

NOW, THEREFORE, in consideration of the matters set forth in the foregoing Recitals and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and agreed, the State of Mississippi, by and through the Attorney General, and the Attorneys agree as follows:

I. The Client. The Client shall be the State, represented by its duly authorized agent and counsel, the Attorney General, as follows:

The State of Mississippi
c/o The Office of the Attorney General
Geoffrey C. Morgan, Chief of Staff
George W. Neville, Special Assistant Attorney General
Carroll Gartin Justice Building, 450 High Street
Post Office Box 220
Jackson, Mississippi 39205-0220
Telephone: (601) 359-3680
Facsimile: (601) 359-3796
E-mail: gmorg@ago.state.ms.us
gnevi@ago.state.ms.us

II. The Attorneys. The Attorneys, as referenced herein, are: Daniel Coker Horton & Bell, P.A., Oxford Square North, 265 North Lamar Boulevard, Suite R, Post Office Box 1396, Oxford, Mississippi 38655 [Telephone: (662) 232-8979; Facsimile: (662) 232-8940; E-mail: acameron@danielcoker.com] and such law firm's principal members, Larry D. Moffett and Alan B. Cameron, who, as private outside counsel, are hereby authorized and duly empowered by, and to act for and in conjunction with the Attorney General for the purposes of investigation, researching, filing, prosecuting and handling the Claims as set forth in Paragraph Nos. III. and IV. hereof. This Retention Agreement is entered between the State of Mississippi and the Attorneys specified herein only; provided, however, that, except for, or in addition to, the terms or conditions set forth in Paragraph No. IV.(E) hereof, nothing contained in this Retention Agreement shall limit or prohibit the Attorneys from associating additional counsel or other personnel as part of a litigation team, or "Counsel Group," as may be necessary or appropriate to handle and staff the work to be

performed within the scope of the representation set forth herein.

III. Retention, Scope of Retention and Representation of Attorneys. The State of Mississippi, through the Attorney General, hereby retains the Attorneys to perform legal services, and the Attorneys agree to perform such services faithfully and with due diligence, in relation to all proceedings, processes or transactions with reference to which the services are to be performed for purposes of the investigation, initiation, prosecution and resolution of any and all lawsuits, arbitral or administrative proceedings, transactional matters, negotiations, analyses and all related or other proceedings or processes associated with or arising from the Claims as defined in the Recitals herein.

IV. Nature of Contingency; Staffing and Fees and Expenses. The contingency upon which compensation of the Attorneys is to be paid is the recovery of any monetary sum, benefit or value, or the establishment of a right, interest or entitlement of the State of Mississippi, whether for itself or for or on behalf of the People of this State, to receive any monetary payments, funds or damages or other sum(s), benefit(s) or value(s) of any kind or character (any or all of which shall be referred to herein and in Exhibits "A" and "B" hereto as "Recovery"), as a result of or arising from the resolution of the Claims, subject to the following terms and conditions:

(A) The Attorney General does not relinquish any constitutional or statutory authority or responsibility through this Retention Agreement. The Attorney General has the sole authority to settle the Claims on behalf of the State of Mississippi and its citizens. The Attorneys shall consult with the Attorney General and obtain approval of the Attorney General on all material matters pertinent to the Claims, and any litigation or other formal or informal proceedings or processes arising therefrom or associated therewith, and the Attorney General shall cooperate with the Attorneys and, consistent with the constitutional mandate and statutory duties and powers set forth in the Recitals herein, use best efforts to secure the cooperation of other governmental departments, branches or agencies of the State of Mississippi. The Attorney General is not, however, required to assign any members of the staff of the Attorney General to pursue the Claims, but may from time to time afford staff and other support services as the Attorney General deems appropriate. The Attorney General shall designate a staff member(s) or appointed special assistant to monitor these Claims, and the Attorneys shall keep the Attorney General and any designated staff member(s) or assistant(s) fully informed of all matters pertaining to the Claims.

(B) The Attorney General and the Attorneys both recognize that the Claims present numerous factual and legal obstacles, and that no assurance of success or recovery on the Claims has been or can be made.

(C) The Attorney General shall maintain responsibility for the public distribution or dissemination of information concerning this matter. All press or media inquiries shall be referred to the Attorney General for comment and response.

(D) Notwithstanding the potential difficulties associated with handling and resolution of the Claims, the Attorneys have agreed to represent the State of Mississippi

and the Attorney General hereby agrees that the Attorneys will be compensated for their legal services, work, expenditure of time or money, and all other efforts from and after October 1, 2002, on the following bases:

(1) Fee Agreements. Subject to the terms and conditions of Paragraph No. IV.(D)(3) hereof, the Attorneys shall receive and be paid an aggregate fee based upon the applicable specified percentage(s), as set forth on Exhibits "A" and "B" annexed hereto, of any Recovery (as defined herein) awarded, paid, owed or attributed to and/or allocated, recovered or received by, the State of Mississippi, or its citizens, as a result of or arising from any litigation, transactional arrangement(s), arbitration or other proceedings or processes of any kind or character culminating in resolution of the Claims, whether by judgment, award, compromise and settlement, contract, compact, administrative, regulatory or legislative action or otherwise based solely upon the schedule of structured contingent fees reflected on Exhibits "A" and "B" which are incorporated herein by reference; provided, however, consistent with the terms and conditions of this paragraph and Paragraph No. V hereof, nothing in this Retention Agreement will prohibit the Attorneys, whether or not acting for, on behalf of or with the approval of the Attorney General, from obtaining an award of fees and expenses from any Court or other judicial or quasi-judicial body of competent jurisdiction.

(2) Out-of-Pocket Expenses. All reasonable and necessary costs and expenses of litigation or other dispute resolution procedures or processes, including, but not limited to, court costs, travel expenses, witness fees, costs for court reporters, costs for copies or reprographic services, delivery, mailing(s) and overnight courier services, on-line legal or other research costs, fees and expenses for experts, consultants, accountants, arbitrators, mediators and/or other providers of technical or scientific or other services and all other or related costs, expenses or expenditures made or incurred in relation to any proceedings or processes referenced in or contemplated by Paragraph No. III hereof ("out-of-pocket expense"), as may be approved by the Attorney General and the Attorneys, shall be initially borne or funded entirely by the Attorneys, but shall, except as provided in Paragraph No. IV.(D)(3) hereof, be reimbursed to the Attorneys exclusively from funds or other elements of value comprising the gross proceeds or payments made or to be made to, or the benefits or values conferred or to be conferred upon, or for the benefit of, the State by virtue of any Recovery before deduction of fees owed or paid to the Attorneys pursuant to Paragraph No. IV.(D)(1) hereof; provided, however, that the Attorneys shall be consulted by, and will have joint authority and control with, the Attorney General over the selection and payment of experts, consultants, arbitrators, mediators or other providers of professional services.

(3) Quantum Meruit Arrangements. Apart from the fee and expense reimbursement agreements set forth in Paragraph Nos. IV.(D)(1)&(2) hereof, and notwithstanding any terms, conditions, provisions, or any other matters

addressed herein to the contrary, the Attorneys shall be entitled to receive and shall be paid for (a) reimbursement for all out-of-pocket expense and (b) fees equal to the product of (i) the aggregate hours posted or billed by the Attorneys (including attorneys associated under Paragraph IV.(E) hereof) multiplied by (ii) reasonable hourly rate(s) charged by experienced, qualified counsel in similar or comparable cases (such entitlement and payment being referred to as "*Quantum Meruit* Arrangement") in the event that (x) the State, acting through the Attorney General or otherwise, limits, suspends or terminates the Attorneys' representation or withdraws from or ceases for any reason the prosecution or pursuit of the Claims or Recovery of any relief of any kind or character in any forum or that (y) any Recovery awarded, paid, owed or attributed to and/or allocated, recovered or received by the State, or its citizens, does not include or involve a monetary sum or formula or is otherwise based upon or results in non-monetary values, elements or terms. In the event that this provision regarding *Quantum Meruit* Arrangements is triggered by the events set forth in subparagraphs (x) and/or (y) hereof, the Attorney General agrees to cooperate reasonably with the Attorneys to obtain funding for all such expenses and fees by any measures or means necessary or appropriate, including, but not limited to, any funding available, or which may become available, through State budgetary processes or procedures such as requests for deficit appropriations by or through the Attorney General's office or otherwise.

(4) Scope of Fee and Expense Arrangement(s). Subject to the terms and conditions of Paragraph No. V hereof, the Attorneys shall receive no compensation or reimbursement directly from the State of Mississippi in any amount or by any other means other than as set forth hereinabove.

(E) With the approval of the Attorney General, the Attorneys may associate other attorneys at their own expense and at no cost to the State of Mississippi. Notwithstanding such association of other attorneys, this Retention Agreement is non-assignable and non-transferable, and the commitments of Attorneys, including any associated attorneys, are not delegable without the express, written approval of the Attorney General.

V. Court-Awarded or Other Alternative Fee and Expense Arrangements. Notwithstanding any term, condition or other provision of any numbered, unnumbered or alphanumerically designated Paragraph or sub-paragraph herein, the Attorneys shall be entitled to receive, and shall not be precluded by operation of this Retention Agreement or otherwise from requesting and recovering from any Court or other judicial or quasi-judicial body of competent jurisdiction, an award of all out-of-pocket expenses (where applicable) and of any and all fees greater than, or in addition to, the contingent fees set forth in Paragraph No. IV. (A) (1) (such additional expenses and fees being referenced herein as "Court-awarded expenses" and "Court-awarded fees," respectively); provided, further however, that, in the event that any judgement, award, compromise and settlement, administrative, regulatory, legislative or other action, ruling, arrangement or agreement, including, *inter alia*, any structured settlement, results in a Recovery which includes as an

element, component, term, assumption or provision thereof, an award of attorneys' fees and/or expenses, the Attorneys shall be entitled to, and shall receive, an aggregate fee and/or reimbursement of expenses based upon either (a) such award or (b) the fees set forth in Paragraph No. IV. (A) (1), whichever amount is greater. As to Court-awarded fees only, in the event that the Attorneys receive fees greater than the contingent fees set forth in Paragraph No. IV.(A)(1), the State shall be entitled to its percentage share of such additional fees based upon the applicable Recovery percentages set forth on Exhibits "A" and "B" hereto; provided, however, that it is understood and agreed that the State will not be entitled to receive or demand any portion of Court-awarded expenses.

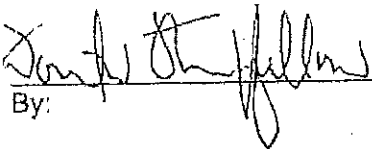
VI. Right of Attorneys to Withdraw and Terminate Representation. As a condition of, and as a basic assumption of the parties to, this Retention Agreement, it is understood and agreed that the Attorneys shall have the unqualified right to withdraw as counsel and terminate the representation of the State as provided herein at any time and under any circumstances in which the Attorneys, in their sole discretion, determine that the Claims, or the procedures or processes authorized or required hereunder or contemplated hereby, have or will become uneconomic or undesirable for any reason.

VII. Effective Date. This Retention Agreement shall be effective as of the date reflected below; however, for purposes of determining amounts and apportionment of fees and expenses of the Attorneys, this Retention Agreement shall encompass and relate to all legal services, work, expenditure of time or money and all other efforts of the Attorneys for all periods commencing on, and occurring from and after, October 1, 2002.

WITNESS OUR SIGNATURES this the ____ day of January, 2005.

ATTORNEYS:

Daniel Coker Horton & Bell, P.A.

By:  _____

CLIENT:

The Office of the Attorney General
State of Mississippi

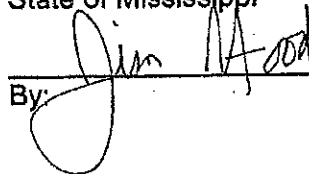
By:  _____

Exhibit "A"
(Counsel Retention Agreement)
(Matter Settled Prior to Initiation of Litigation)

For any "Matter Settled Prior to Initiation of Litigation," the following structured contingent fee schedule shall apply and govern compensation of the Attorneys:

For Recovery Up to \$25,000,000.00:

15%

For Recovery between \$25,000,000.00 and \$75,000,000.00:

13%

For Recovery between \$75,000,000.00 to \$200,000,000.00:

7%

For Recovery between \$200,000,000.00 to \$500,000,000.00:

4%

For Recovery greater than \$500,000,000.00:

2%

For Recovery greater than \$1,000,000,000.00

1%

Explanatory Note & Illustration of Fee Computation

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery (e.g., "For Recovery Up to \$25,000,000.00," etc.), there shall be a specified percentage or percentages governing the amount or valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the Attorneys. By way of illustration only, the cumulative contingent fee structure shown on this Exhibit

"A" shall be computed, utilizing the following method:

Assume Recovery of a monetary sum, benefit, or value equal to \$600,000,000.00.

The Attorneys' contingent fee will be computed by adding together the specified, applicable percentage of each category or level, as follows:

- 15% of the first \$25,000,000.00 (*i.e.*, 15% of any sums or values between 0 and \$25,000,000.00)

PLUS

- 13% of the next \$50,000,000.00 (*i.e.*, 13% of all sums or values between \$25,000,000.00 and \$75,000,000.00)

PLUS

- 7% of the next \$125,000,000.00 (*i.e.*, 7% of all sums or values between \$75,000,000.00 and \$200,000,000.00)

PLUS

- 4% of the next \$300,000,000.00 (*i.e.*, 4% of all sums or values between \$200,000,000.00 and \$500,000,000.00)

PLUS

- 2% of the next \$100,000,000.00 (*i.e.*, 2% of the difference between \$500,000,000.00 and the amount of the award greater than that sum or value, or in this example, \$600,000,000.00)

Exhibit "B"
(Counsel Retention Agreement)
(Matter Resolved After Initiation of Litigation)

For any "Matter Resolved After Initiation of Litigation", the following structured contingent fee schedule shall apply and govern compensation of the Attorneys:

For Recovery by the State of Mississippi Up to \$50,000,000:	30%
For Recovery by the State of Mississippi between \$50,000,001 to \$200,000,000	24%
For Recovery by the State of Mississippi between \$200,000,001 to \$500,000,000	15%
For Recovery by the State of Mississippi between \$500,000,001 to \$1,000,000,000	10%
For Recovery by the State of Mississippi between \$1,000,000,001 to \$2,000,000,000	6%
For Recovery by the State of Mississippi over \$2,000,000,000	4%

Explanatory Note

The structured contingent fee schedule set forth herein is intended to, and shall, operate cumulatively so that, in relation to each successive category or level of Recovery by the State of Mississippi (e.g., "For Recovery by the State of Mississippi Up to \$50,000,000.00," etc.), there shall be a specified percentage or percentages governing the amount of valuation of the aggregate contingent fee in each such category, so that the Attorneys shall be entitled to receive, and shall be paid, an aggregate sum or value equivalent computed by multiplying the percentage applicable to each such successive category or level of Recovery by the State of Mississippi by the incremental dollar amount falling within each such category and the separate products so derived by multiplying these factors in each category shall be added together to compute the aggregate fee to be paid to the Attorneys.