

Exhibit No.:

Issues: Payroll Expense; Plant in  
Service; Rate Base;  
Contributions in Aid of  
Construction (CIAC)

Witness: Graham A. Vesely

Sponsoring Party: MoPSC Staff

Type of Exhibit: Rebuttal Testimony

Case Nos.: WR-2006-0425 and  
SR-2006-0426 (Consolidated)

Date Testimony Prepared: December 28, 2006

**MISSOURI PUBLIC SERVICE COMMISSION**

**UTILITY SERVICES DIVISION**

**REBUTTAL TESTIMONY**

**OF**

**GRAHAM A. VESELY**

**FILED<sup>2</sup>**

**FEB 08 2007**

**Missouri Public  
Service Commission**

**ALGONQUIN WATER RESOURCES OF MISSOURI, LLC**

**CASE NOS. WR-2006-0425 and SR-2006-0426  
(Consolidated)**

Jefferson City, Missouri  
December 2006

**\*\*Denotes Highly Confidential Information\*\***

**NP**

**STAFF** Exhibit No. 9  
Case No(s). WR-2006-0425  
Date 1-22-06 Rptr KF

**BEFORE THE PUBLIC SERVICE COMMISSION**

**OF THE STATE OF MISSOURI**

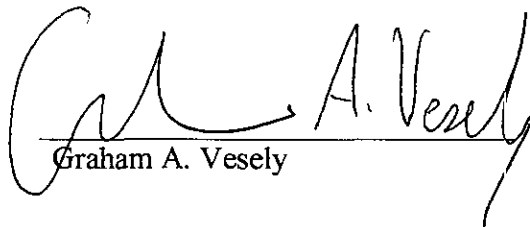
In the Matter of the Tariff Filing Algonquin Water )  
Resources of Missouri, LLC to Implement a )  
General Rate Increase for Water and Sewer Service )  
Provided to Customers in Its Missouri Service )  
Areas. )

Case No. WR-2006-0425

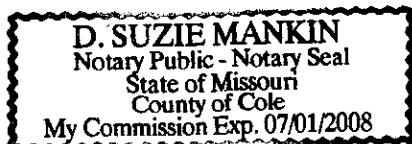
**AFFIDAVIT OF GRAHAM A. VESELY**

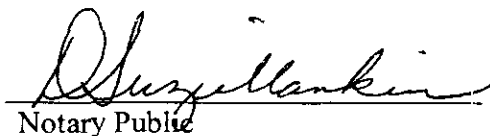
STATE OF MISSOURI     )  
                                  )  
COUNTY OF COLE     )     ss.

Graham A. Vesely, of lawful age, on his oath states: that he has participated in the preparation of the foregoing Rebuttal Testimony in question and answer form, consisting of 25 pages to be presented in the above case; that the answers in the foregoing Rebuttal Testimony were given by him; that he has knowledge of the matters set forth in such answers; and that such matters are true and correct to the best of his knowledge and belief.

  
Graham A. Vesely

Subscribed and sworn to before me this 27<sup>th</sup> day of December 2006.



  
Notary Public

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12

**TABLE OF CONTENTS**  
**REBUTTAL TESTIMONY**  
**OF**  
**GRAHAM A. VESELY**  
**ALGONQUIN WATER RESOURCES OF MISSOURI, LLC**  
**CASE NOS. WR-2006-0425 and SR-2006-0426**  
**(CONSOLIDATED)**

EXECUTIVE SUMMARY ..... 1

PAYROLL EXPENSE..... 2

PLANT IN SERVICE, CONTRIBUTED PLANT, RATE BASE ..... 10

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22

7

8

9

10  
11

12  
13

14  
15  
16  
17

18

19  
20

## 21

22

1           A.     I explain Staff's position that any plant investment must be supported with  
2 adequate evidence, such as invoices, checks, construction contracts, bids, etc. in order to be  
3 included in plant in service, and that such plant should be valued at the original cost when  
4 first placed in service. Any plant not meeting this test is treated as contributed by the  
5 developer, at no cost to the utility. This applies to all plant, regardless of when placed in  
6 service. All plant must that meets this test must also be compared with the tariff language to  
7 determine whether or not it falls into the plant types that are required to be contributed by the  
8 developer, at no cost to the utility. These types of plant are those that are required to connect  
9 the developer's facilities to the utility systems, such as transmission mains, but include  
10 others. For plant installed prior to any of these utility systems becoming regulated by the  
11 Commission, both a lack of documentation and the absence of an expectation on the utility  
12 owner's part of recovery through utility sales, generally prevent any such plant from  
13 obtaining rate base treatment.

14           Q.     Please summarize your testimony on payroll expense.

15           A.     I explain the reasons for Staff's recommendation to accept an increase over  
16 payroll levels under the previous owner of the utility; reasons for recommending against  
17 100% of the cost of adding two new positions to payroll; and how Algonquin's position on  
18 these payroll cost represents a large increase over what it had planned originally, and how it  
19 was actually staffing the Missouri utility operations for the better part of a year.

20           **PAYROLL EXPENSE**

21           Q.     Please describe how Algonquin arrived at the amount of payroll expense it  
22 recommends be included in cost of service.

Rebuttal Testimony of  
Graham A. Vesely

1           A.     In response to Staff's Data Request No. 14 (attached as Schedule 1 to this  
2 rebuttal testimony), Algonquin provided a spreadsheet indicating that it currently charges  
3 100% of the compensation of three employees to its Missouri water and sewer systems. It  
4 also allocates a portion of the compensation of the president and eight operations employees.

5           Q.     Please describe the three employee positions whose compensation is 100%  
6 charged to Algonquin's Missouri operations.

7           A.     Staff issued Data Request No. 52 to obtain the job descriptions of personnel  
8 whose compensation Algonquin proposes to charge to Missouri customers. The first of these  
9 positions is described in the response to Data Request No. 52 as Wastewater/Water Utilities  
10 Superintendent, assigned to the department of Missouri/Illinois operations. This position was  
11 referred to previously in Data Request No. 14 as WW Operator III (Chief Operator). The  
12 next position is described in Data Request No. 52 as Missouri Facility Accountant,  
13 previously labeled Utility Supervisor in Data Request No. 14. The third position is described  
14 in Data Request No. 52 as Missouri Utilities Assistant, which was labeled Admin/Lab Tech  
15 in Data Request No. 14. These three job descriptions are attached as Rebuttal Schedule 2.

16          Q.     In your Direct Testimony (page 7, line 3) you stated Staff's recommendation  
17 for "including in rates charged to Algonquin's Missouri customers 100% of the payroll costs  
18 for a utility manager." Is this the same position described in Data Request No. 52 as the  
19 Missouri Facility Accountant?

20          A.     Yes, it is. This position also existed previously when Silverleaf owned and  
21 operated these same Missouri water and sewer systems, before selling them to Algonquin.  
22 However, Silverleaf only charged 40% to 50% of this position's compensation costs to  
23 Missouri ratepayers. For reasons stated in my Direct Testimony, and discussed again below,

1 Staff is agreeable to increasing the portion of this compensation charged to ratepayers to  
2 100%.

3 Q. Next, what is Staff's recommendation regarding the position of Missouri  
4 Utilities Assistant, which Algonquin is also recommending be included in payroll costs  
5 charged to Missouri ratepayers?

6 A. Let me premise my answer by pointing out that, since Algonquin assumed  
7 ownership of these Missouri utility systems, as approved by the Commission in Case No.  
8 WO-2005-0206, which authorized the transfer of assets from Silverleaf to Algonquin  
9 (effective August 14, 2005), neither the scope of utility operations, nor the nature of the  
10 utility services being provided by Algonquin to Missouri water and sewer customers has  
11 changed, except for the factors I have previously described in my direct testimony. These  
12 relevant factors all relate to the strict post-transfer separation between Algonquin, as the  
13 utility, and the largest utility customer, Silverleaf. This condition did not exist before the  
14 transfer of assets when Silverleaf not only owned the resort operations, but also owned the  
15 utilities. Staff considered these factors when recommending the treatment of payroll expense  
16 related to the Missouri Facility Accountant. However, including in utility rates the payroll  
17 costs of the Missouri Utilities Assistant, on top of now allowing all of the Missouri Facility  
18 Accountant's compensation, would appear to pose an unnecessary burden on ratepayers,  
19 which is attributable solely to the change in ownership of the utility systems in question.  
20 Staff, therefore, recommends against charging any of the Missouri Utilities Assistant's  
21 compensation to Missouri ratepayers.

22 Q. Did a position equivalent to that of Missouri Utilities Assistant exist when  
23 Silverleaf owned the utility, before it transferred the assets to Algonquin?

1 A. No, it did not.

2 Q. Algonquin is requesting that 100% of the payroll costs for the  
3 Wastewater/Water Utilities Superintendent be charged to Missouri customers. What is  
4 Staff's recommendation regarding these payroll costs?

5 A. Staff recommends that only 50% of these costs be charged to Algonquin's  
6 Missouri water and sewer customers. In fact, charging any of this position's payroll costs to  
7 Missouri customers represents an increase in payroll costs over those that were charged to  
8 these customers before the transfer of assets to Algonquin, which the Commission authorized  
9 in Case No. WO-2005-0206.

10 Q. Please explain.

11 A. The actual day-to-day operation of Algonquin's Missouri water and sewer  
12 systems is contracted out (currently to the firm Construction Management Specialists), much  
13 in the same manner as Silverleaf did before the transfer of assets. However, whereas under  
14 Silverleaf the independent contract operator would provide its reports to Silverleaf's office  
15 manager in the Branson, Missouri, utility office, Algonquin has created the new position of  
16 Wastewater/Water Utilities Superintendent, and the contract operator now reports to the  
17 employee filling this position.

18 Q. What functions does the independent contract operator perform?

19 A. The contractor's duties are as specified in its contracts with Algonquin. As an  
20 example, the Water Plant & Meter Reading Service Agreement (Agreement) at Holiday Hills  
21 between Algonquin and this operator, states for example:

22 \*\* \_\_\_\_\_  
23 \_\_\_\_\_  
24 \_\_\_\_\_  
25 \_\_\_\_\_



## Rebuttal Testimony of Graham A. Vesely

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36

[illegible]

1  
2  
3  
4  
5  
6  
7  
8  
9  
10

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ \*\*

11 The above is representative of how detailed and extensive are the independent contract  
12 operator's responsibilities at all of Algonquin's Missouri water and sewer systems.

13 Q. Is Staff recommending that Algonquin's Missouri customers pay for the costs  
14 charged by the contract operator for carrying out the above-detailed list of functions?

15 A. Yes. I would point out that Algonquin has recently incurred costs to acquire  
16 an automated meter reading system (AMR), and 100 transmitter-equipped water meters to  
17 work with the AMR system, and has charged these costs to its plant account balances in the  
18 current rate case. When the AMR system is operational it essentially eliminates monthly  
19 meter reading costs, as the system will read the signal transmitted by the meters as the  
20 operator merely drives by the location. Since this equipment is not operational, however, the  
21 cost of the AMR should not be included in rate base, and therefore the monthly costs for  
22 reading customers' meters should be included as part of the costs of the operator's contract.

23 Q. Has Staff included all of the costs of the contract operator in customers' rates?

24 A. Yes, it has. Despite this fact, and the fact that Silverleaf successfully provided  
25 utility service for many years with the contract operator reporting to the office manager,  
26 Algonquin is still seeking to include in rates the total payroll costs deriving from the

1 Wastewater/Water Utilities Superintendent's salary, consisting of approximately  
2 \*\* \_\_\_\_\_ \*\* per year (grossed up to include all payroll taxes and benefit costs).

3 Q. Does this represent a change in position on Algonquin's part?

4 A. Yes, it does. The AGREEMENT TO PROVIDE OPERATIONS AND  
5 MAINTENANCE SERVICE (Service Agreement) shows that Algonquin Water Services  
6 LLC (AWS) agreed to charge the Company a monthly fixed fee of \$6,761 for "direct  
7 operations" at the Missouri water and sewer systems. The effective date of the Service  
8 Agreement is shown as August 15, 2005, — the day after Algonquin assumed ownership of  
9 these systems. Further, the Service Agreement indicates an expiration date of December 31,  
10 2009. But Algonquin amended the Service Agreement, effective July 1, 2006, to increase the  
11 monthly "direct operations" fee to \$20,010. This much higher monthly amount is calculated,  
12 as explained earlier in my testimony, to cover 100% of the payroll costs of the three positions  
13 I have been describing, plus an allocated percentage of the payroll costs of the president of  
14 AWS and eight other operations personnel. The differing descriptions of these three  
15 positions that the Company provided in the response to Staff Data Request No. 14, compared  
16 with those that it provided in response to Staff Data Request No. 52, together with the  
17 proposed tripling of the monthly fee for "direct operations" indicate that Algonquin may  
18 need to give the matter more consideration. This conclusion is supported by the fact that the  
19 Company updated the job descriptions of the Missouri Facility Accountant and Missouri  
20 Facilities Assistant, apparently in response to Staff's issuance of Data Request No. 52 on  
21 October 31, 2006. The Company also updated the job description of the Wastewater/Water  
22 Utilities Superintendent on September 26, 2006.

1 Q. Could Algonquin's proposed increase in the personnel level assigned to its  
2 Missouri systems over the originally contemplated staffing level merely reflect an up-to-date  
3 understanding of operational requirements gained through actual experience managing the  
4 Missouri systems?

5 A. Even if this were the case, it would indicate a remarkable underestimation of  
6 these requirements on Algonquin's part as it undertook operation of the Missouri properties  
7 after the transfer of assets in Case No. WO-2005-0206. It should be recalled that in seeking  
8 the Commission's approval for acquiring these systems, Algonquin portrayed itself as an  
9 experienced manager of similar systems. Further, then, this supposed under-staffing  
10 condition persisted, undetected by Algonquin, through the first nine and one-half months of  
11 Algonquin's ownership, until June 1, 2006, when the Wastewater/Water Utilities  
12 Superintendent's position was created, and was not fully remedied until June 31, 2006 with  
13 the creation of the Missouri Facilities Assistant's position. Staff can see some benefit,  
14 particularly to the largest Missouri customer, Silverleaf, of having an on-site Algonquin  
15 employee filling the position of Wastewater/Water Utilities Superintendent. Therefore, Staff  
16 recommends charging 50% of this position's salary to Missouri customers.

17 Q. Does the job description for the position of Wastewater/Water Utilities  
18 Superintendent indicate this individual is assigned to the "Department of Missouri/Illinois  
19 Operations"?

20 A. Yes, it does. However, Algonquin has charged 100% of this position's  
21 payroll costs to Missouri customers. Staff recommends that the Commission reject this  
22 approach.

1           Q.     What is the impact on Missouri customers' rates as a result of higher payroll  
2 costs under Algonquin's ownership and management?

3           A.     As an example of the large impact of these payroll increases, Silverleaf had  
4 budgeted \$97,350 for 2005 payroll expenses, payroll taxes, and benefits, as shown in Data  
5 Request 14.1. Even with Staff's recommended reductions in the payroll expense included by  
6 Algonquin in its direct filed case, payroll expense still amounts to \$177,127, which would be  
7 an 82% increase.

8           **PLANT IN SERVICE, CONTRIBUTED PLANT, RATE BASE**

9           Q.     On page 12 of his Direct Testimony, Algonquin witness Loos states that  
10 Algonquin's current rates "were never evaluated and tested based on rate of return on rate  
11 base during a pro forma test year." Does Staff agree with this?

12          A.     No, the rates of Algonquin's predecessor, Silverleaf, were, in fact, evaluated  
13 and tested in 1997, 2000 and 2002, prior to Algonquin's acquisition. Such rates were  
14 increased in 1998, as a result of Staff's evaluation of Silverleaf's test year 1997 conditions.  
15 If Mr. Loos is referring to the fact that rates have not been tested since being adopted by  
16 Algonquin, the reason for this is answered by Mr. Loos himself on page 12 in item 3, that  
17 "Algonquin only recently acquired the property." If, on the other hand, he means that  
18 Silverleaf's rates, as adopted by Algonquin, are not the result of a formal rate increase filing,  
19 this is because, for water and sewer companies with the customer levels of Algonquin's  
20 Missouri systems, the Commission has in place a procedure that such companies can apply  
21 for rate increases under the Small Company Rate Increase Request process. Staff witness  
22 Kofi Boateng presents Staff's position on rate case expense in his Direct and Rebuttal  
23 Testimonies filed in this case.

1 Q. Continuing with Algonquin witness Larry W. Loos, how do you characterize  
2 pages 12 through 18 of his Direct Testimony?

3 A. In this portion of his testimony he lays out the argument that Silverleaf, being  
4 primarily a developer and operator of vacation resorts, was not really in the public utility  
5 business like Algonquin is; that furthermore it operated for about ten years before applying  
6 for and receiving a Certificate of Convenience and Necessity (Certificate) from the  
7 Commission; that Silverleaf, from the beginning was therefore not likely to separately  
8 identify assets used for utility service in accounting for all of its fixed assets; and that once it  
9 became regulated by the Commission and opened its separate utility books, it did in fact  
10 neglect to identify and record on such books the investment that it made in utility plant made  
11 before it was certificated; and lastly, that the magnitude of such omitted plant investment  
12 should be estimated and included in the value of the plant acquired by Algonquin from  
13 Silverleaf.

14 Q. Does Staff agree with Algonquin that it acquired a utility system that had  
15 substantial plant investment that was not recorded on the utility books and records?

16 A. No. Staff believes that no such "unrecorded plant" investment exists.

17 Q. Was Silverleaf both a public utility and a utility customer and, if so, did this  
18 affect any of the rights and responsibilities in the relationship between the utility and its  
19 customers, as outlined by the Commission's tariffs?

20 A. As a result of being issued a Certificate by the Commission, Silverleaf was a  
21 public utility before it transferred its utility assets to Algonquin. Silverleaf was also the main  
22 customer of the utility. Silverleaf's tariffs made no distinction in detailing the rights and  
23 responsibilities of customers, or of the utility, whether the customer was Silverleaf or an

1 | unrelated party. Staff has applied the tariff requirements equally to all utility customers, and  
2 | it rejects the notion that Mr. Loos advances throughout his Direct Testimony that Silverleaf,  
3 | as a customer of the utility, should somehow have been treated differently. When applying  
4 | to be connected to the utility systems, Silverleaf was acting as a prospective customer of the  
5 | utility and should have been treated the way the tariff required customers to be treated.  
6 | Doing otherwise would result in some costs that were properly incurred by Silverleaf, as a  
7 | developer seeking to access utility service, being shifted, instead, to rate-paying customers,  
8 | some of which are not affiliated with Silverleaf. The Silverleaf tariffs provide, instead, for  
9 | the cost of connecting a customer to the system to be charged directly, and up front, to that  
10 | customer, in the form of a Contribution in Aid of Construction (CIAC). I will discuss this  
11 | matter again further on in my testimony. Though Silverleaf was the developer in every  
12 | instance, and thus the customer applying to be connected to the utility systems, some rate-  
13 | paying customers became unaffiliated with Silverleaf when they purchased from Silverleaf  
14 | (the developer) either a separately metered unit in a condominium complex, or a developed  
15 | lot on which to build a residence. While Staff has always made a distinction between  
16 | Silverleaf, the developer and resort owner, and Silverleaf the public utility, the distinction  
17 | became even more critical when the utility property was sold to an outside party, Algonquin.  
18 | Staff never crossed the lines between the responsibilities of Silverleaf as a resort operator and  
19 | its responsibilities as a public utility operator. It was very important to maintain that  
20 | distinction when Silverleaf owned the properties, which enabled the distinction to be carried  
21 | forward when Algonquin acquired the property to operate as a completely separate and  
22 | stand-alone entity apart from Silverleaf. Silverleaf today, as it was treated in the past by

1 Staff, is a utility customer of Algonquin; and Algonquin is required to treat all customers the  
2 same, with no preference to any one customer over another.

3 Q. What is the significance of Silverleaf being primarily a developer of resorts,  
4 and of having operated the utility systems for years prior to obtaining a Certificate?

5 A. Once Silverleaf became regulated by the Commission, the Staff treated  
6 Silverleaf no differently than it treated other owners of water and sewer systems. The intent  
7 was that Silverleaf, the developer, would receive neither favor nor disadvantage, as compared  
8 to unaffiliated utility customers when it applied for and received utility service. As far as  
9 Silverleaf's accounting for the investment it made in utility plant before it received its  
10 Certificate, the Staff's evaluation and discussion with Silverleaf took place during the  
11 processing of the request for the Certificate.

12 Q. During the progress of Certificate Cases Nos. WA-94-60 and WA-94-246  
13 (Certificate Cases), did Silverleaf object to the adequacy of Staff's findings on the amount of  
14 Silverleaf's investment in plant?

15 A. No, throughout that process, which extended over a period of several months,  
16 Silverleaf did not object to the plant investment levels and contributed plant levels that Staff  
17 found to be incurred before Silverleaf received its Certificate.

18 Q. Did the inadequacy of Silverleaf's recordkeeping and accounting for  
19 investment in utility plant in the pre-certificated period have a bearing on Staff's  
20 recommendations in the above Certificate Cases?

21 A. Neither the public record, nor Staff work papers I have examined, mentions  
22 the lack of documentary support being a hindrance to the process of establishing Silverleaf's  
23 rate base in the Certificate Cases. As previously stated, Silverleaf had ample opportunity to



1 | dispute Staff's findings by presenting its own case based on good evidence of investment in  
2 | utility plant. I can state, from reviewing the case record, that Staff indicated during the  
3 | Certificate Cases that it would give rate base treatment to qualified plant installed in 1993 or  
4 | later. And since the Certificate Cases took place in the 1993-1994 periods, cost  
5 | documentation would have been available from Silverleaf for plant being installed virtually  
6 | concurrently with the certification process. Staff indicated that the plant installed before 1993  
7 | should generally be treated as contributed because of a lack of cost documentation and due to  
8 | questions on how Silverleaf may have accounted for recovering the cost of such plant. Even  
9 | Mr. Loos acknowledges that such plant would have already been in operation by this time for  
10 | up to ten or more years. During this entire period Silverleaf would have had to make other  
11 | arrangements for recovering its investment in utility plant other than through utility revenues  
12 | since it did not bill for water and sewer service prior to obtaining a Certificate, and no water  
13 | and sewer service revenue could be used to recover this investment. To assume that, in  
14 | performing the profitability analysis for the venture that created Silverleaf's Missouri resorts  
15 | no utility costs were considered, is not reasonable. Yet, such profitability, acceptable as it  
16 | was to induce undertaking the venture, clearly did not depend on recovering utility costs  
17 | through utility billings of customers.

18 | Q. If Silverleaf did not reflect the costs to develop the water and sewer systems  
19 | of its resorts in the rates that it charged for utility service prior to being certificated by the  
20 | Commission, how would it have recovered these costs?

21 | A. Silverleaf would have charged those costs as development costs, as any other  
22 | developer would do. There are a variety of costs relating to developing land for either the  
23 | sale of lots or, as is the case for Silverleaf, for the sale of time shares, condominiums or

1 private residences. The actual cost of the land itself is a major cost. But there are other costs  
2 for land improvements such as site preparation for excavation, curbing, streets, and all utility  
3 services, including the piping of water and sewer systems. Since Silverleaf was not  
4 certificated as a public utility prior to 1994, the only means for it to recover its substantial  
5 investment in the water and sewer systems was by selling resort property through time  
6 shares, condominiums and/or private residences. Clearly, Silverleaf, just like any other  
7 developer, required an avenue for recovering the investment it made to develop these resort  
8 properties. A firm could not stay in business long if it can not pass actual costs on to its  
9 customers, in this case resort and time-share customers. The very costs that Mr. Loos and  
10 Algonquin are trying to include in this case as rate base investment were not anticipated  
11 being recovered through billings of utility customers. Silverleaf, many years ago during the  
12 development of these resorts, recovered its investment through the sale of the time shares and  
13 other resort property. Algonquin, if its proposal is adopted in this case, would recover these  
14 development costs again from customers paying utility rates. Clearly, the plant investment  
15 made by Silverleaf prior to certification as public utility was treated as development costs,  
16 and was not included in Algonquin's utility property records.

17 Q. Has Staff seen evidence that Silverleaf treated the development costs of its  
18 resorts prior to the 1994 certification process in a matter that is inconsistent with the way that  
19 Algonquin now proposes to treat them in this case?

20 A. Yes. Staff made mention in the Certificate Cases of having reviewed a  
21 Silverleaf income tax return and finding all outlays to have been expensed, without any being  
22 capitalized for recovery in future periods through depreciation charges. This approach is

1 inconsistent with an intention to match the cost of a utility investment with future utility  
2 revenues, as rate-regulated utilities do.

3 Q. Did Silverleaf recognize the unrecorded plant that Algonquin witness Loos  
4 asserts he has discovered?

5 A. No. Silverleaf never referred to any such plant investment during the  
6 Certificate Cases, or in any of the rate cases it requested, or in the Staff's earnings  
7 investigation case. Silverleaf did not identify any amount of unrecorded plant on its books  
8 and records in the sale case, Case No. WO-2005-0206.

9 Q. Is Mr. Loos presenting any new documents such as contracts and construction  
10 agreements, engineering plans, cost estimates, construction bids, builder's schedules of  
11 values, invoices for work performed, or cancelled checks written to pay such invoices, that  
12 support a higher level of pre-certificated investment in utility plant than was determined in  
13 the above-mentioned Certificate Cases?

14 A. No, according to Mr. Loos's testimony, he has neither uncovered, nor relied  
15 on, any such documents to produce his estimate of the value of plant he describes as  
16 "unrecorded." He further confirms this in his response to Staff Data Request No. 5, where he  
17 said he did not possess any of the above type of evidence. I have attached this response to  
18 my Rebuttal Testimony as Schedule 3. A conceptual weakness in the starting point for his  
19 statement that some of Silverleaf's pre-certificated (pre-1993) investment in utility plant has  
20 gone unrecorded these many years is that no entries in Silverleaf's general ledger predate  
21 1993. Since separate books for Silverleaf's utility operations were not created until the need  
22 for them arose around the time of the Certificate Cases, no entries could have been made  
23 predating this time. Backdated entries, to be meaningful, could only be made if research

1 revealed the actual dates when earlier investments were actually made -- assuming the ledger  
2 software program would have even permitted backdated entries to be made, which is  
3 questionable.

4         On the other hand, because a cost was entered in the ledger in 1993 does not mean  
5 that it did not reflect a cost that had been incurred at an earlier date. Staff's work papers  
6 from the Certificate Cases include copies of signed contracts (attached hereto as Rebuttal  
7 Schedule 4) for water and sewer work at Holiday Hills Resort. These documents, which bear  
8 a date of 1984, are direct evidence of Silverleaf's pre-1993 utility investments, as opposed to  
9 the approach Mr. Loos has taken. Further, these contract documents of early vintage are an  
10 indication that at the time of the Certificate Cases, Silverleaf knew what its pre-1993  
11 investments in utility were; was able to convey this information to Staff by means of the  
12 above-described contract documents, and was thus able to make an informed judgment in  
13 accepting the rate base Staff proposed in the Certificate Cases. All of this contradicts the  
14 scenario depicted by Mr. Loos, in which he suggests that Silverleaf had lost track of its pre-  
15 1993 utility investments, and thus could not possibly have reported on such to Staff during  
16 the Certificate Cases.

17         Q.     How much of an adjustment to plant in service at September 30, 2005 is  
18 Algonquin's witness Larry W. Loos requesting to make due to his "unrecorded plant"  
19 theory?

20         A.     He proposes to increase distribution and collection plant by \$729,427. He  
21 further proposes to increase source of supply and treatment plant by \$1,184,606. The total of  
22 his two adjustments for unrecorded plant is \$1,914,033, all related to the water plant at  
23 Holiday Hills and the water and sewer plants at Ozark Mountain. He also proposes an

1 adjustment, unrelated to the theory of unrecorded plant, to remove \$238,072 of sewer plant  
2 costs at Holiday Hills from the books, because Silverleaf sold the sewer system at that  
3 location in 1998. The end result of these proposed adjustments is to increase total gross plant  
4 in service from the \$4,635,010 Silverleaf had on its books, to \$6,310,970, or an increase of  
5 36%.

6 Q. What is the value Staff recommends be used for plant in service at  
7 September 30, 2005?

8 A. Staff's audited value of gross plant in service at September 30, 2005 is  
9 \$3,820,051. This should be compared to a value of \$4,396,938, which is what Mr. Loos's  
10 calculations would show if his \$238,072 adjustment to eliminate sewer plant at Holiday Hills  
11 is subtracted from the \$4,635,010 on Silverleaf's books, but before making any adjustments  
12 for his "unrecorded plant" theory. In reviewing Silverleaf's ledger in the past, Staff had  
13 previously realized the need for the adjustment to eliminate sewer plant costs at Holiday  
14 Hills, as Mr. Loos is proposing. Staff has deliberately attempted to avoid including any  
15 sewer plant costs in its assessment of plant in service at Holiday Hills.

16 Q. Did the balance of plant in service change between August 14, 2005, the  
17 effective date of sale of the utility assets, and September 30, 2005, the end of the test year?

18 A. No. Although Staff and Algonquin have different assessments of plant in  
19 service, neither side's assessment changed between August 14, 2005 and September 30,  
20 2005, because both sides agree that no additions were made between those two dates.

21 Q. Essentially, then, is it correct that before Mr. Loos makes any adjustments for  
22 his "unrecorded plant" theory, but after removing sewer plant costs at Holiday Hills, he  
23 acknowledges a difference of \$576,887 existed between Staff's and Algonquin's assessment

1 of the value of plant on Silverleaf's books when Silverleaf transferred the assets to  
2 Algonquin, on August 14, 2005?

3 A. Yes, it is. This follows directly from Mr. Loos's assertion of plant value on  
4 Silverleaf's books, as well as the need he acknowledges for removing any booked costs for  
5 sewer plant at Holiday Hills. The relationship between Algonquin and Staff's plant values,  
6 before any adjustments for Mr. Loos's unrecorded plant theory, are shown in the table below:

August 14, 2005 Plant in Service (gross)			
(1)	(2)	(3)	(4)
<u>Algonquin</u>	<u>Algonquin</u>	<u>Staff</u>	<u>Difference</u>
Before Adjustment to Remove	After Adjustment to Remove		
Sewer Costs at Holiday Hills	Sewer Costs at Holiday Hills		
\$4,635,010	\$4,396,938	\$3,820,051	\$576,887

14  
15 Q. What is the cause of this \$576,887 difference in plant value on August 14,  
16 2005?

17 A. Staff's ongoing assessment of plant in service, from the Certificate Cases  
18 forward, included a recommended disallowance of construction cost overruns at Holiday  
19 Hills, which I have presented in my Direct Testimony filed in this case. I also testified to this  
20 recommended disallowance in sale Case No. WO-2005-0206, thus making Algonquin aware  
21 of this matter before it completed the purchase of Silverleaf's Missouri utilities. Since the  
22 project that experienced these cost overruns was completed in 2002, it is understandable that  
23 a typical presentation of plant values on August 14, 2005 would reflect this disallowance.  
24 Staff's position on this disallowance is that it is worth \$186,373.

1       The remainder of the \$576,887 difference highlighted above is due to unexplained  
2 differences between Silverleaf's and Staff's assessments of plant in service. I first became  
3 aware of such differences in account balances when I worked on the 2000 small company  
4 rate case, and I brought the question up to Silverleaf when I reported the results of Staff's  
5 audit findings, with the intention of achieving a resolution. The Staff mentioned these  
6 differences to Silverleaf again, after it performed its earnings investigation in Cases Nos.  
7 WC-2002-1040 and SC-2002-1039. I provide Staff's recommendation for addressing these  
8 unexplained differences further along in my Rebuttal Testimony.

9       Q.     Does Staff's plant balance differ from Mr. Loos's plant balance, with regard  
10 to contributed plant?

11       A.     Yes, it does. As described in my Direct Testimony in this case, Staff applied  
12 the plain language of the tariffs in determining which items of plant are required to be  
13 contributed by the developer/customer that is requesting to be connected to the utility  
14 systems. Therefore, from the beginning, Staff has determined that a significant portion of  
15 Silverleaf's plant in service, which now belongs to Algonquin, must be treated as contributed  
16 at no cost to the utility.

17       Q.     Did Silverleaf initially not recognize the tariff requirement that a portion of its  
18 plant in service must be treated as contributed at no cost to the utility?

19       A.     Yes, initially it did, but after Staff clarified these requirements during the  
20 course of the audit in conjunction with the 1997 small company rate increase request, Resorts  
21 Utilities Company, or RUC (as Silverleaf referred to its utility arm), indicated that it intended  
22 to begin reflecting the existence of contributed plant (CIAC) on its books. This can be seen  
23 in the copy of the January 26, 1998, letter from RUC, which is attached hereto as Schedule 5.

1           Q.     What amount of contributed (CIAC) plant did Silverleaf report, in the last  
2 Annual Report that it filed with the Commission before it exited the utility business in  
3 Missouri and transferred its utility systems to Algonquin, on August 14, 2005?

4           A.     On the Consolidated Balance Sheet that is contained in its 2004 Annual  
5 Report, Silverleaf reported that its gross (unamortized) CIAC totals up to \$3,387,254, for its  
6 Missouri utilities, as shown on my Schedule 6. This amount is even much greater than what  
7 Staff estimates it should be; but more importantly, it indicates that Silverleaf acknowledged  
8 that the tariffs require part of the plant in service to be contributed, at no cost to the utility.

9           Q.     Has Mr. Loos acknowledged that a portion of the utility plant in service it  
10 acquired from Silverleaf is CIAC, that it had no investment value in Silverleaf's hands, and  
11 that therefore it has no utility investment value in Algonquin's hands?

12          A.     No, on pages 28 and 29 of his testimony he denies that any of the plant  
13 acquired from Silverleaf should be seen as contributed. Though his rationale for doing so is  
14 not quite clear, he cites considerations of fairness and equity and, on page 28, lines 21-23, he  
15 seems to focus on the fact that Silverleaf was both the developer and the utility even though  
16 on page 29, lines 14-15, he claims that by tariff Silverleaf, the developer, was not a customer  
17 of Silverleaf, the utility.

18          Q.     Was Algonquin aware, before closing the transaction to acquire the Missouri  
19 utility properties, that Silverleaf considered a portion of its plant in service to be contributed?

20          A.     Algonquin might have become aware of this fact if it had reviewed the most  
21 recent Annual Report of Silverleaf that was then available, which would have been for  
22 calendar year 2003. However, to assist Algonquin in not unknowingly paying in excess of  
23 net original cost for the properties it was seeking to acquire from Silverleaf, Staff updated its



1 | assessment of plant in service, depreciation reserve, and contributed plant during the sale  
2 | Case No. WO-2005-0206, and provided this updated information as Attachment 1,  
3 | Summaries of Ratemaking Rate Base, which was attached to the Staff Recommendation filed  
4 | in Case No. WO-2005-0206. A copy of the Summaries is included as Schedule 7 to this  
5 | Rebuttal Testimony. This information clearly shows that according to Staff's assessment, the  
6 | \$3,800,000 purchase price that Algonquin agreed to pay for Silverleaf's Missouri properties  
7 | included an unexplainably large acquisition premium. To Staff's knowledge, negotiators for  
8 | Algonquin did not change course and, rather simply, carried out the transaction as  
9 | contemplated.

10 | Q. In addition to Algonquin's failure to recognize contributed plant could its  
11 | knowledge of the existence of "unrecorded plant" help explain the high purchase price that it  
12 | offered to Silverleaf?

13 | A. This cannot explain the offer. In response to Staff Data Request No. 7,  
14 | Algonquin's witness Larry W. Loos replied that: "Mr. Loos initially informed Algonquin of  
15 | the fact that available accounting information did not reflect consideration of the 'unrecorded  
16 | plant' in December 2005." Algonquin had already taken possession of the Missouri  
17 | properties four months earlier, on August 14, 2005. This response is shown in Schedule 8  
18 | hereto.

19 | Q. If Mr. Loos did not notify Algonquin of his "unrecorded plant" theory until  
20 | after Algonquin purchased the Missouri properties from Silverleaf, could Algonquin have  
21 | intended to pay Silverleaf anything for such plant?

22 | A. That does not seem possible. This raises a question as to how Algonquin could  
23 | have any investment in plant, which -- even if it really does exist -- it paid nothing for.

1 Q. Is there any other evidence that Algonquin's belief in the theory of  
2 "unrecorded plant" is less than firm?

3 A. Yes, it is provided in the response to Staff Data Request No. 47, which  
4 requested Algonquin's declaration of property values. It does not appear that for 2006  
5 Algonquin included its estimate of "unrecorded plant" in the declared value of its Missouri  
6 properties.

7 Q. Do you have any other observation regarding Mr. Loos's "unrecorded plant"  
8 theory, as it relates to the price Algonquin paid for acquiring Silverleaf's Missouri  
9 properties?

10 A. Staff witness Cary Featherstone will address other considerations of the  
11 purchase price in his Rebuttal Testimony in this case. I will point out, however, that  
12 Mr. Loos's estimate of "unrecorded plant" increases Algonquin's assessment of plant in  
13 service to a net value of \$4,108,718. Mr. Loos wishes the Commission to believe that this  
14 number was arrived at independently, and that even though Algonquin was not aware of it  
15 when it made its offer to Silverleaf, this assessment fortuitously lends support to the  
16 \$3,800,000 purchase price.

17 Q. Returning to the fact presented earlier in this Rebuttal Testimony, that there  
18 are unexplained differences between Staff's and Algonquin's assessments of the plant in  
19 service that was transferred from Silverleaf on August 14, 2005, before any adjustments for  
20 the theory of "unrecorded plant", would Staff consider recognizing additional plant  
21 investment, beyond the amounts being recommended in this case, if the Company can  
22 provide new evidence to support it?

1           A.     Yes, it would. If Algonquin provides any documentation that substantiates the  
2 legitimate existence of plant investment, originating either before or after August 14, 2005,  
3 for which Staff has not yet seen support, we will certainly review and carefully consider any  
4 such documentation. As stated throughout my Direct Testimony, and now again in my  
5 Rebuttal Testimony, however, any such documentation would be held to the same standard  
6 applied in the past, and would have to be sufficient and competent evidence, which would be  
7 tested against the language of the tariffs to determine whether the utility plant in question it  
8 was required to be contributed.

9           Q.     Please summarize your testimony.

10          A.     Staff recommends against increasing payroll costs beyond allowing 100% of  
11 the Missouri Utility Accountant's compensation, and 50% of the Wastewater/Water Utilities  
12 Superintendent's compensation. This payroll level already represents an 82% increase over  
13 the 2005 payroll costs budgeted by the previous owner of the systems, Silverleaf.

14          Staff recommends against increasing the value of plant in service that has been  
15 established over the course of years for these systems, beginning in the Certificate Cases of  
16 1993 and 1994, continuing through the rate increase ordered by the Commission in the 1997  
17 Small Company Rate Increase Request. No substantive evidence has been provided by  
18 Algonquin to support increasing plant in service for the theoretical existence of unrecorded  
19 plant. To qualify for inclusion into plant in service, direct evidence of investment must be  
20 provided, as established by documents containing financial information. Plant in service  
21 should be valued at the original cost of when it was first placed into service. To further  
22 qualify for rate base treatment, any plant in service must not be required by tariff to be  
23 contributed by the developer/customer at no cost to the utility.

Rebuttal Testimony of  
Graham A. Vesely

1 Q. Does this conclude your rebuttal testimony?

2 A. Yes, it does.

**SCHEDULE 1**

**DEEMED**

**HIGHLY CONFIDENTIAL**

**IN ITS**

**ENTIRETY**

# Algonquin Water Services, LLC

---

## Job Title: Missouri Facility Accountant

Department: Accounting / Finance

Immediate

Supervisor: Financial Analyst

Origination Date:	06/21/2005
Revision Date:	11/16/06

### BRIEF DESCRIPTION OF THE JOB:

Provides accounting functions for Missouri Water & Waste Water Facilities. Providing historical data as the need occurs with operations, accounting records and any Regulatory Authority. Providing excellent customer service, maintaining service and customer records. Processing all Accounts Receivable. Offers support during audits and rate cases. Performs other duties as may be assigned.

### ESSENTIAL FUNCTIONS:

*This information is intended to be descriptive of the key responsibilities of the position. The following examples do not identify all duties performed by any single incumbent.*

Physical Strength Code		ESSENTIAL FUNCTIONS
1	S	Provides accounting functions for Missouri Water & Waste Water Facilities. Analysis, paperwork and use of computer. Works with computerized reports.
2	S	Process all Accounts Receivable: Handles cash deposits, reconciliation and related complex customer inquiries.
3	L	Makes trips to the bank, post office and climbing stairs to retrieve historical files from upstairs office.
4	S	Assists co-worker(s) with multiple tasks relating to all aspects of Missouri Operations and office functions.

## Algonquin Water Services, LLC

### JOB REQUIREMENTS:

JOB REQUIREMENTS	
Formal Education / Knowledge	Work requires a high school diploma. Knowledge and experience in computer systems, billing software, accounts payable and cash receipts. Excellent understanding of general accounting procedures.
Experience	Requires recent experience with accounts payable, accounts receivable, customer service and general bookkeeping and accounting. Additional academic education, professional training or work experience which demonstrates the potential to perform the duties of the position. Some work experience in a utility is helpful.
Certifications and Other Requirements	Valid Missouri Driver's License.
Reading	High - Work requires the ability to read and process various accounting and industry terms, spreadsheets, vendor invoices, state statutes, federal laws, line extension agreements, service area maps, correspondence, legal documents and contracts.
Math	Moderate - Work requires the ability to perform math calculations such as addition, subtraction and analysis. Ability to calculate, add, subtract, estimate, communicate, understand and catch errors in customer service, vendor and accounting daily activity.
Writing	High - Work requires the ability to effectively write letters, memos and emails to management and external individuals. Must be able to summarize research performed in a manner that can easily be followed and reviewed. Documentation of follow-up, prepare and maintain reports and records.
Managerial	Moderate - Work requires the ability to make decisions that are within office and corporate standards and guidelines, seeking assistance when necessary. Must be able to perform duties and function effectively with minimal supervision. This position has no direct reports but does interact with all levels of personnel on a daily basis. Performance is reviewed periodically.
Budget Responsibility	Low - Will work within and follow established budget guidelines and get managerial approval for any expenditure. Will assist with annual budget process as requested in terms of compiling, documentation, and analysis. Will respond to managerial inquiries.
Complexity	Moderate - Work is widely varied, to include involvement with customers, vendors, and customer service, accounting and operations personnel. Must learn and understand the interdependency of all company operations and be able to analyze and prioritize situations as they arise on a daily basis.
Interpersonal / Human Relations Skills	High - Excellent written and oral communication skills are required. Facilitates work flow between facility and home office. Must be able to communicate research results effectively with customers, vendors, corporate personnel and other staff members as it relates to customers, office, field and accounting.

# Algonquin Water Services, LLC

## OVERALL PHYSICAL STRENGTH DEMANDS:

Sedentary	Light	Medium	Heavy	Very Heavy
S = Sedentary Exerting up to 10 lbs. occasionally or negligible weights frequently; sitting most of the time	L = Light Exerting up to 20 lbs. occasionally, 10 lbs. frequently, or negligible amounts constantly OR requires walking or standing to a significant degree.	M = Medium Exerting 20-50 lbs. occasionally, 10-25 lbs. frequently, or up to 10 lbs. constantly.	H = Heavy Exerting 50-100 lbs. occasionally, 25-50 lbs. frequently, or up to 10-20 lbs. constantly.	VH = Very Heavy Exerting over 100 lbs. occasionally, 50-100 lbs. frequently, or up to 20-50 lbs. constantly.

## PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

*This is a description of the way this job is currently performed; it does not address the potential for accommodation.*

PHYSICAL DEMANDS	FREQUENCY CODE	DESCRIPTION
Standing	O	Assisting other personnel at their desks, filing, copier use, postage machine use, bank, post office
Sitting	F	Computer use, desk work, research, meetings
Walking	O	Inter-office, research, bank, post office
Lifting	O	Files, paperwork
Carrying	O	Files, paperwork, storage boxes
Pushing/Pulling	O	Chair, file cabinet drawers, storage boxes
Reaching	O	Files, paperwork, binders
Handling	F	Files, paperwork, binders, fax, copier, postage machine, checks
Fine Dexterity	C	Computer keyboard, calculator, writing, telephone keypad, alarm keypad
Kneeling	R	Retrieving files
Crouching	R	Retrieving files
Crawling	N	
Bending	O	Retrieving files, invoices for mailing
Twisting	R	Retrieving files, invoices for mailing
Climbing	O	Retrieving files (upstairs office)
Balancing	N	
Vision	C	Computer, desk work, reading, analysis, observations, driving
Hearing	C	Other staff, managers, customers, vendors, telephone, meetings, presentations
Talking	F	Other staff, managers, customers, vendors, telephone, meetings, presentations
Foot Controls	O	Driving
Other(specify)	N	



## Algonquin Water Services, LLC

### MACHINES, TOOLS, EQUIPMENT, AND WORK AIDS:

Computer, calculator, telephone, fax machine, copier, postage machine, typewriter, vehicle, laser or inkjet printer. Microsoft Windows and Office applications. Great Plains software experience desired but not required. Various types of billing software.

### ENVIRONMENTAL FACTORS:

D = Daily	W = Several Times Per Week	M = Several Times Per Month	S = Seasonally	N = Never
-----------	-------------------------------	--------------------------------	----------------	-----------

HEALTH AND SAFETY		ENVIRONMENTAL FACTORS	
Mechanical Hazards	N	Dirt and Dust (see 2 below)	D
Chemical Hazards	N	Extreme Temperatures	N
Electrical Hazards	N	Noise and Vibration	N
Fire Hazards	N	Fumes and Odors	N
Explosives	N	Wetness/Humidity	N
Communicable Diseases (see 1 below)	D	Darkness or Poor Lighting	N
Physical Danger or Abuse	N		
Other			

PRIMARY WORK LOCATION	
Office Environment	X
Warehouse	
Shop	
Vehicle	
Outdoors	
Other	

- (1) May work with the public on a daily basis with talking and handling.  
 (2) Printer and copier dust, dirt and dust coming in through entry/exit doors.

### PROTECTIVE EQUIPMENT REQUIRED:

None

### NON-PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

NON-PHYSICAL DEMANDS	
Time Pressures	F
Emergency Situations	R
Frequent Change of Tasks	F
Irregular Work Schedule/Overtime	R
Performing Multiple Tasks Simultaneously	C
Working Closely with Others as Part of a Team	C
Tedious or Exacting Work	C
Noisy/Distracting Environment	F
Other	N

## Algonquin Water Services, LLC

### EXPECTED BEHAVIOR:

#### **Staff – Expected Behavior**

The incumbent is expected to embrace, support, and promote the Company's values, beliefs, and culture, which include but are not limited to the following:

- ◆ High ethical standards
- ◆ Active participation in teamwork
- ◆ Strong safety principles and safety awareness
- ◆ Active participation in Companywide activities

These traits are not basic job requirements but are expected behavior. Other duties and responsibilities will be performed as assigned.

### SIGNATURES—REVIEW AND COMMENT:

I have reviewed this job analysis and its attachments and find it to be an accurate description of the demands of this job.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Job Title of Supervisor

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Job Title of Department Director

\_\_\_\_\_  
Signature of Department Director

\_\_\_\_\_  
Date

**Comments:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
The above statements are intended to describe the general nature and level of work being performed by individuals assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified in this position. This job description is subject to change as the needs and requirements of the job change.

## Algonquin Water Services LLC

### Job Title: Wastewater/Water Utilities Superintendent

Department: Missouri/Illinois Operations

Immediate

Supervisor: Regional Operations Manager

Origination Date:	06-01-06
Revision Date:	09/26/06

#### **BRIEF DESCRIPTION OF THE JOB:**

The Utilities Superintendent manages staff and operations of the facilities along with performing professional and technical level water and wastewater duties for the facilities owned by AWS. Duties include data analysis, development and implementation process control strategies for water and wastewater reclamation facilities, staff supervision, equipment troubleshooting and maintenance, and report generation and submittal. This position provides technical and administration assistance regarding operational issues to staff, outside consultants, regulatory agencies and performs other duties as assigned.

#### **ESSENTIAL FUNCTIONS:**

*This information is intended to be descriptive of the key responsibilities of the position. The following examples do not identify all duties performed by any single incumbent.*

Physical Strength Code	ESSENTIAL FUNCTIONS
1 L	Plans, organizes, and supervises the work of operators, laborers, and maintenance personnel in the control of water reclamation facilities.
2 L	Prepares and monitors shift work schedules to assure staffing levels needed to operate facilities.
3 L	Manages the operations and maintenance of water reclamation facilities for capital improvement projects.
4 L	Supervises staff by directing operators to resolve operational issues, providing direction, and evaluating staff.
5 M	Trains staff in monitoring and controlling of facilities and equipment.
6 S	Prepares and monitors divisional budget.
7 L	Conducts, administers, and supervises all company work related efforts and activities within the rules regulations and responsibilities of the most current company safety policy and OSHA regulation.

#### **JOB REQUIREMENTS:**

<b>JOB REQUIREMENTS</b>
-------------------------

## Algonquin Water Services LLC

JOB REQUIREMENTS	
Formal Education / Knowledge	Work requires specialized knowledge of wastewater treatment and water reclamation principals and practices at a professional or technical level. Work requires knowledge of: Laws and regulations governing water reclamation facilities. Procedures necessary to operate water reclamation facilities. Computerized treatment process applications and data logging functions. State of Arizona aquifer protection permit (APP) reuse permit regulations.
Experience	At least ten years experience in the operation of wastewater treatment or water reclamation facilities. Three years of supervisory experience is also required.
Certifications and Other Requirements	Valid Driver's License. Grade A Water and Wastewater Treatment Plant Operator Certification issued by the State of Missouri or similar qualifications
Reading	Work requires the ability to read and understand technical reports, technical maps and drawings, local codes and ordinances, construction plans and specifications, state statutes and federal laws, correspondences and legal documents, at a college level.
Math	Work requires the ability to perform general math calculations such as addition, subtraction, multiplication and division, as well as algebra and geometry.
Writing	Work requires the ability to write technical reports, develop budgets, project update summaries, technical data presentations, correspondences, and memorandums.
Managerial	Regulated - Work requires managing and monitoring operation and maintenance projects as well as staff and contracted work performance, including evaluating program/work objectives and effectiveness, establishing broad organizational goals and realigning work and staffing assignments for the division. Significant - Within this job, the employee normally performs the duty assignment within broad parameters defined by general organizational requirements and accepted practices. Total end results determine effectiveness of job performance.
Budget Responsibility	Has responsibility for capital improvement budgetary recommendations to Company Management. Monitors progress toward fiscal objectives and adjusts plans as necessary to reach them.
Complexity	Work is widely varied, involving analyzing and evaluating many complex and significant variables. Company-wide policies, procedures, or precedents may be developed and/or recommended.
Interpersonal / Human Relations Skills	Moderate - Final decisions regarding policy development and implementation are made and/or recommended. Interaction with others outside the Company requires exercising participative management skills that support team efforts and quality processes.

### **PROTECTIVE EQUIPMENT REQUIRED:**

Personal Protective Equipment (PPE) as appropriate when working onsite

# Algonquin Water Services LLC

## OVERALL PHYSICAL STRENGTH DEMANDS:

Sedentary	Light	Medium X	Heavy	Very Heavy
S = Sedentary Exerting up to 10 lbs. occasionally or negligible weights frequently; sitting most of the time	L = Light Exerting up to 20 lbs. occasionally, 10 lbs. frequently, or negligible amounts constantly OR requires walking or standing to a significant degree.	M = Medium Exerting 20-30 lbs. occasionally, 10-25 lbs. frequently, or up to 10 lbs. constantly.	H = Heavy Exerting 50-100 lbs. occasionally, 25-50 lbs. frequently, or up to 10-20 lbs. constantly.	VH = Very Heavy Exerting over 100 lbs. occasionally, 50-100 lbs. frequently, or up to 20-50 lbs. constantly.

## PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

*This is a description of the way this job is currently performed; it does not address the potential for accommodation.*

PHYSICAL DEMANDS	FREQUENCY CODE	DESCRIPTION
Standing	F	Inspecting facility and equipment, laboratory work
Sitting	F	Computer, desk work, supervision of staff, meetings
Walking	F	Inspecting facility and equipment
Lifting	R	Repairing equipment
Carrying	F	Inspection forms, tools, parts
Pushing/Pulling	O	Equipment maintenance and repair, screenings bins
Reaching	C	File cabinet drawers
Handling	F	Documents, manuals, files
Fine Dexterity	F	Computer keyboard, writing, telephone keypad
Kneeling	R	Inspecting facility and equipment
Crouching	R	Inspecting facility and equipment
Crawling	R	Inspecting facility and equipment
Bending	R	Inspecting facility and equipment
Twisting	R	Inspecting facility and equipment
Climbing	R	Inspecting facility and equipment
Balancing	N	
Vision	C	Computer, desk work, lab work, supervision of staff, reading
Hearing	C	Staff, supervisor, meetings, presentations, telephone
Talking	C	Staff, supervisor, developers, meetings, presentations, telephone
Foot Controls	F	Driving
Other(specify)	N	

## Algonquin Water Services LLC

### MACHINES, TOOLS, EQUIPMENT, AND WORK AIDS:

Hand and power tools, portable pumps, overhead cranes, forklift, calculator, telephone, fax machine, vehicles, computer, Microsoft Windows Office software, SCADA interface software, standard laser or inkjet printers.

### ENVIRONMENTAL FACTORS:

D = Daily	W = Several Times Per Week	M = Several Times Per Month	S = Seasonally	N = Never
-----------	-------------------------------	--------------------------------	----------------	-----------

HEALTH AND SAFETY		ENVIRONMENTAL FACTORS	
Mechanical Hazards	D	Dirt and Dust	D
Chemical Hazards	D	Extreme Temperatures	S
Electrical Hazards	D	Noise and Vibration	D
Fire Hazards	W	Fumes and Odors	D
Explosives	N	Wetness/Humidity	D
	/		
	M		
Communicable Diseases	D	Darkness or Poor Lighting	W
Physical Danger or Abuse	D		
Other			

PRIMARY WORK LOCATION	
Office Environment	X
Warehouse	
Shop	X
Vehicle	
Outdoors	X
Other (see 1 below)	X

(1) Water & Wastewater Reclamation Facility Buildings and Areas

(2)

### PROTECTIVE EQUIPMENT REQUIRED:

Facility operations require hardhat, safety vest, steel toe boots and all other identified personal protective equipment (PPE) on an "as needed" basis.

### NON-PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

NON-PHYSICAL DEMANDS	
Time Pressures	F
Emergency Situations	R
Frequent Change of Tasks	C
Irregular Work Schedule/Overtime	F
Performing Multiple Tasks Simultaneously	C
Working Closely with Others as Part of a Team	C
Tedious or Exacting Work	F
Noisy/Distracting Environment	O
Other (see 3 below)	

(3)

## **Algonquin Water Services LLC**

---

### **EXPECTED BEHAVIOR:**

#### **Wastewater Operations Supervisor – Expected Behavior**

The incumbent is expected to embrace, support, and promote the Company's values, beliefs, and culture, which include but are not limited to the following:

- ♦ High ethical standards
- ♦ Active participation in teamwork
- ♦ Strong safety principles and safety awareness

These traits are not basic job requirements but are expected behavior. Other duties and responsibilities will be performed as assigned.

### **SIGNATURES—REVIEW AND COMMENT:**

I have reviewed this job analysis and its attachments and find it to be an accurate description of the demands of this job.

\_\_\_\_\_  
Signature of Employee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Job Title of Supervisor

\_\_\_\_\_  
Signature of Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Job Title of General Manager

\_\_\_\_\_  
Signature of General Manager

\_\_\_\_\_  
Date

**Comments:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
The above statements are intended to describe the general nature and level of work being performed by individuals assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified in this position. This job description is subject to change as the needs and requirements of the job change.

## Algonquin Water Services LLC

### Job Title: Missouri Utilities Assistant

Department: Missouri Operations

Immediate Supervisor: Regional Operations Manager

Origination Date:	06-31-06
Revision Date:	11/01/06

#### **BRIEF DESCRIPTION OF THE JOB:**

Performs a variety of clerical, secretarial and routine administrative duties for the Missouri facilities. Answers telephones, processes mail, provides customer assistance, orders office supplies, develops and maintains various files. Performs other duties as may be assigned.

#### **ESSENTIAL FUNCTIONS:**

*This information is intended to be descriptive of the key responsibilities of the position. The following examples do not identify all duties performed by any single incumbent.*

Physical Strength Code		ESSENTIAL FUNCTIONS
1	S	Supports operations and administration by performing routine clerical and administrative work, answering telephones, processing mail, providing customer service, maintaining log books and assisting in various projects as needed.
2	S	Supports operations by collecting samples, readings, delivering samples to the laboratory, completing laboratory paperwork and recording of test results on a as needed basis. To maintain these testing files for information and required documentation.
3	S	Assist operations by doing data entry for the Discharge Monitoring Report forms that are required by the Missouri Department of Environmental Quality. Keep files on all reports required by governmental agencies and maintain the files for documentation.
4	S	Assists with filing by maintaining computer logs and files for the Missouri facilities.
5	S	Reads and interprets meters, gauges, and instruments along with entering daily readings into computer databases as required.



## Algonquin Water Services LLC

### JOB REQUIREMENTS:

JOB REQUIREMENTS	
Formal Education / Knowledge	Work requires knowledge necessary to understand basic operational, technical, or office processes. Level of knowledge equivalent to four years of high school or equivalency. Appropriate certification may be required.
Experience	Over two years up to and including four years in a related field.
Certifications and Other Requirements	Valid Missouri Operator's Driver's License.
Reading	Work requires the ability to read reports, memorandums, letters, and general correspondence.
Math	Work requires the ability to perform general math calculations such as addition, subtraction, multiplication and division.
Writing	Work requires the ability to write general correspondence, memorandums, reports, and letters.
Managerial	Job has no responsibility for the direction or supervision of others. Moderate - The employee normally performs the duty assignment after receiving general instructions as to methods, procedures, and desired end results with some discretion when making selections among a few, easily identifiable choices. Assignment is reviewed upon completion.
Budget Responsibility	Depending on requirement, this position may do research for documents, compile data for computer entry, and/or enter or oversee data entry.
Complexity	Work involves choices of action within limits set by standard practices and procedures. Professional judgment is required to apply the proper course of action.
Interpersonal / Human Relations Skills	The employee(s) in this position contact others within the organization. These contacts may involve similar work units or departments within Algonquin Water Services which may be involved in decision making or providing approval or decision making authority for projects. In addition, these employees work with individuals outside Algonquin Water Services who may belong to professional or peer organizations. Working with various state and federal agencies may also be required of the employee. Vendors and suppliers may also be called upon for information on purchases, supplies or products.

### PROTECTIVE EQUIPMENT REQUIRED:

Personal Protective Equipment (PPE) as appropriate when working onsite in required areas.

# Algonquin Water Services LLC

## OVERALL PHYSICAL STRENGTH DEMANDS:

Sedentary	Light	Medium X	Heavy	Very Heavy
S = Sedentary Exerting up to 10 lbs. occasionally or negligible weights frequently; sitting most of the time	L = Light Exerting up to 20 lbs. occasionally, 10 lbs. frequently, or negligible amounts constantly OR requires walking or standing to a significant degree.	M = Medium Exerting 20-50 lbs. occasionally, 10-25 lbs. frequently, or up to 10 lbs. constantly.	H = Heavy Exerting 50-100 lbs. occasionally, 25-50 lbs. frequently, or up to 10-20 lbs. constantly.	VH = Very Heavy Exerting over 100 lbs. occasionally, 50-100 lbs. frequently, or up to 20-50 lbs. constantly.

## PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

*This is a description of the way this job is currently performed; it does not address the potential for accommodation.*

PHYSICAL DEMANDS	FREQUENCY CODE	DESCRIPTION
Standing	F	Copier, fax machine, filing, researching
Sitting	F	Computer, desk work, researching, answering telephones, meetings
Walking	F	Delivering mail, inter-office; to/from meetings, other buildings, and office equipment
Lifting	F	Boxes, office supplies, files
Carrying	F	Boxes, office supplies, files
Pushing/Pulling	O	Moving files and boxes, doors, chairs, file cabinet drawers
Reaching	F	Filing in cabinet drawers, office supplies, storage closet
Handling	F	Mail distribution, office supplies, files, books
Fine Dexterity	F	Computer keyboard, writing, telephone keypad
Kneeling	R	Filing in cabinet drawer, retrieving files
Crouching	R	Filing in cabinet drawer, retrieving files
Crawling	N	
Bending	O	Filing in cabinet drawer, retrieving files
Twisting	O	Filing in cabinet drawer, retrieving files
Climbing	R	Stairs
Balancing	R	On stairs
Vision	C	Computer, desk work, writing, reading, writing, use of office equipment, filing, researching
Hearing	C	Telephone, co-workers, staff, supervisor, secretaries, clerks, meetings, training
Talking	F	Telephone, co-workers, staff, supervisor, secretaries, clerks, meetings, training
Foot Controls	F	Driving
Other(specify)	N	

# Algonquin Water Services LLC

## MACHINES, TOOLS, EQUIPMENT, AND WORK AIDS:

Telephone, copy machine, fax machine, paper cutter, typewriter, binding machine, general office supplies, computer, scanner, printer, standard Microsoft Windows and Office software, Visio, Lotus Notes, QV Link, Smart Label Printer, Adobe PageMaker, MDT, Digital Camera, Web Browser and Adobe Acrobat.

## ENVIRONMENTAL FACTORS:

D = Daily	W = Several Times Per Week	M = Several Times Per Month	S = Seasonally	N = Never
-----------	-------------------------------	--------------------------------	----------------	-----------

HEALTH AND SAFETY		ENVIRONMENTAL FACTORS	
Mechanical Hazards	N	Dirt and Dust	N
Chemical Hazards	N	Extreme Temperatures	N
Electrical Hazards	N	Noise and Vibration	N
Fire Hazards	N	Fumes and Odors	N
Explosives	N	Wetness/Humidity	N
Communicable Diseases	N	Darkness or Poor Lighting	N
Physical Danger or Abuse	N		
Other			

PRIMARY WORK LOCATION	
Office Environment	X
Warehouse	
Shop	
Vehicle	
Outdoors	
Other	

(1)

(2)

## PROTECTIVE EQUIPMENT REQUIRED:

Facility operations require hardhat, safety vest, steel toe boots and all other identified personal protective equipment (PPE) on an "as needed" basis.

## NON-PHYSICAL DEMANDS:

C = Continuously 2/3 or more of the time.	F = Frequently From 1/3 to 2/3 of the time.	O = Occasionally Up to 1/3 of the time.	R = Rarely Less than 1 hour per week.	N = Never Never occurs.
--	--	--	--	----------------------------

NON-PHYSICAL DEMANDS	
Time Pressures	R
Emergency Situations	R
Frequent Change of Tasks	O
Irregular Work Schedule/Overtime	N
Performing Multiple Tasks Simultaneously	O
Working Closely with Others as Part of a Team	O
Tedious or Exacting Work	O
Noisy/Distracting Environment	R
Other	

(3)

## Algonquin Water Services LLC

### EXPECTED BEHAVIOR:

#### **Missouri Utilities Assistant – Expected Behavior**

The incumbent is expected to embrace, support, and promote the Company's values, beliefs, and culture, which include but are not limited to the following:

- ♦ High ethical standards
- ♦ Active participation in teamwork
- ♦ Strong safety principles and safety awareness

These traits are not basic job requirements but are expected behavior. Other duties and responsibilities will be performed as assigned.

### SIGNATURES—REVIEW AND COMMENT:

I have reviewed this job analysis and its attachments and find it to be an accurate description of the demands of this job.

_____ Job Title of Employee	_____ Signature of Employee	_____ Date
_____ Job Title of Direct Manager	_____ Signature of Direct Manager	_____ Date
_____ Job Title of General Manager	_____ Signature of General Manager	_____ Date

Comments: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The above statements are intended to describe the general nature and level of work being performed by individuals assigned to this job. They are not intended to be an exhaustive list of all responsibilities, duties, and skills required of personnel so classified in this position. This job description is subject to change as the needs and requirements of the job change.

**ALGONQUIN WATER RESOURCES OF MISSOURI, LLC**  
**WATER RATE CASE No. WR-2006-0425**  
**RESPONSE TO MISSOURI PUBLIC SERVICE COMMISSION**  
**DATA REQUEST No. 0005**

**DATE OF REQUEST:** June 26, 2006  
**REQUESTOR:** Graham Vesely  
**ANSWERED BY:** Larry Loos  
**SUBJECT:** Rate Base - Plant in Service

---

**QUESTION:**

With respect to the unrecorded plant identified by Mr. Larry Loos in his direct testimony, please provide all support for its existence and original cost, including but not limited to, capital project authorization memos, contracts for engineering design services, engineering construction cost estimates, construction plans and specifications, memo documenting pre-construction/constructability conference, bidding documents, successful bidder notification, receipt of builder's bond, issuance of notice to proceed, monthly/periodic construction logs by construction administrator, builder's applications for progress payments, records of payments for any or all of these services received, and accounting entries for any or all of these costs incurred, anywhere on the books of the entity first incurring these costs.

**RESPONSE:**

Mr. Loos supports the existence of the "unrecorded plant" for the reasons set forth beginning on page 15 of his prepared direct testimony. Mr. Loos explains his development of the original cost of this "unrecorded plant" beginning on page 19 of his prepared direct testimony. Mr. Loos supplements his testimony regarding this "unrecorded plant" in Schedule LWL-3, Workpapers supporting LWL-3 found on pages 7 - 29 of LWL Workpapers, and the maps submitted in response to Staff Data Request No. 1.

Algonquin does not have any of the documentation listed.

**ATTACHMENT:**

None

## MATERIALS PURCHASE CONTRACT

This contract for the purchase of goods (the "Agreement") is entered into this 20th day of July, 1984, between Freedom Financial Corp. ("Buyer") and Morrison Environmental, Inc. ("Seller"), subject to the terms and conditions of this purchase contract (the "Agreement"). Buyer and Seller represent and agree that they are merchants with respect to the subject matter of this Agreement.

1. Description of Goods. Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the products, materials, and goods (collectively the "Goods") described below:

Water Supply - see Exhibit "A"

A. All Goods sold pursuant to this Agreement shall meet or exceed the product specifications attached hereto as Exhibit "A".

B. Any specifications, drawings, notes, instructions, relating to the Goods shall be deemed to be incorporated herein by reference and made a part hereof as if fully set forth.

C. Seller acknowledges that the quality of the Goods purchased pursuant to this Agreement is an essential condition of this Agreement, and that any non-compliance shall give Buyer the right to reject any or all of the Goods and to repudiate this Agreement.

D. Seller acknowledges that the Goods covered by this Agreement are unique and the circumstances of this transaction warrant the remedy of specific performance.

2. Price and Payment. The price and payment schedule for the Goods shall be as follows:

\$68,500 - Total

\$13,700 With order

Balance upon delivery and acceptance by owner

A. Prices recorded in this Agreement are not subject to increase. No additional amounts shall be chargeable to Buyer because of taxes or excises, presently or hereafter levied on Seller. If Seller's quoted prices for the Goods covered by this Agreement are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) at the time of any shipment, Seller agrees that the price to Buyer for such Goods will be reduced accordingly, and that the Buyer will be billed at such reduced prices.

B. Except as may be otherwise provided in this Agreement, the contract price includes all applicable federal, state, and local taxes or excises in effect on the date of this Agreement. If such taxes or excises or any

part thereof are hereafter refunded to Seller, Seller shall immediately pay Buyer the amount of such refund.

C. Seller certifies that the prices herein are not higher than the prices being charged to other organizations purchasing identical Goods in smaller quantities at this particular time and do not discriminate against Buyer.

D. If at any time during the term of this Agreement the Buyer is able to secure a specific amount of any products herein specified of equal quality from another manufacturer at a lower price than that herein stated and if, after notice in writing, Seller is unwilling to meet such lower price, the Buyer shall have the right of purchasing such specific amount from another source and cancelling the balance of this Agreement.

E. All purchases are subject to a One and one half percent (1.5%) cash discount if paid on or before ten (10) days following the date the invoice was received by Buyer.

F. Seller hereby agrees to rely solely upon Buyer's financial responsibility and expressly waives any mechanics', materialmen's, or suppliers' statutory or constitutional lien on any jobsite or on any property of Buyer and agrees to look solely to Buyer for payment of all sums due hereunder.

G. Seller agrees to indemnify and hold Buyer harmless of and from all expenses and damages, including attorneys' fees, incurred by Buyer as a result of or in connection with the attachment or attempted attachment of any lien against Buyer's property by any of Seller's suppliers or subcontractors. At any time during the term of this Agreement, Seller, upon request of Buyer, agrees to secure an express lien waiver satisfactory to Buyer from each of Seller's suppliers and subcontractors.

H. All claims or monies due or to become due from Buyer shall be subject to the deduction by Buyer for any setoff or any counterclaim arising out of this or any other agreement that Buyer has with Seller.

3. Quantity. The specific amount of Goods purchased pursuant to this Agreement are as follows:

See Exhibit "A"

Shipments must be in exact amounts unless otherwise agreed upon by Buyer.

4. Shipment and Delivery. Shipment and delivery of the goods shall be as follows:

A. The Goods to be delivered to Buyer shall be delivered and invoiced according to the procedures set forth in the Operating Statement attached hereto as Exhibit "B" and made a part hereof for all purposes.

B. Seller shall, at its own expense, properly package and deliver all goods to Buyer at Buyer's jobsite; and Seller shall bear the risk of any loss, deterioration, or damage until the Goods are delivered as specified herein.

C. Buyer's receiving of any Goods under this Agreement shall not be deemed a waiver of any right to damages for any prior failure to ship or receive any Goods in accordance herewith.

5. Deferred Delivery and Cancellation.

A. Buyer may defer delivery of any order, installment, or any units thereof upon notification to Seller, at least 24 hours in advance of shipment by Seller, of the Goods or units so deferred. Should Buyer exercise its rights to defer delivery of any order or installment, all subsequent deliveries or orders or installments hereunder shall be similarly deferred.

B. Buyer shall have the right to cancel this contract if, due to Buyer's requirements, product specifications change to such an extent that the Goods are no longer suitable for Buyer's purposes. Buyer's cancellation pursuant to this paragraph shall be effective thirty (30) days after written notification thereof to Seller.

C. Whenever Buyer has reason to believe that in connection with this Agreement Seller, or any agent thereof, has attempted or initiated any unethical business practice in regard to Buyer, or any agent thereof, Buyer may unconditionally cancel this Agreement. In addition to cancellation, Buyer shall be entitled to pursue all legal and equitable remedies to which Buyer may be entitled under applicable law and under this Agreement. Seller agrees to provide Buyer with access to all books, records, and documents reasonably necessary to aid Buyer in determining the extent of the unethical conduct and the identities of the parties involved.

6. Inspection and Rejection.

A. Final inspection of the Goods shall be on Buyer's premises unless otherwise agreed in writing. All Goods not fully up to standard or not otherwise in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for Goods described, or not shipped in containers conforming to Buyer's specifications, or which are manufactured, produced, sold, invoiced, packaged, labelled, or shipped in violation of any statute, ordinance, administrative order, rule or regulation which allegedly invades or infringes any patent, copyright, trademark, or other proprietary interest, may be rejected by Buyer in whole or in part, which may return or hold such Goods at Seller's expense and risk.

B. Buyer may, at its option, reject a delayed or otherwise non-conforming installment or, in the alternative, terminate this Agreement with no further obligation to Seller other than payment for the conforming Goods actually received and accepted. Buyer's acceptance of delayed or otherwise non-conforming installments or Buyer's demand for future performance shall not prejudice Buyer's right to reject future delayed or otherwise non-conforming installments or to terminate this Agreement in accordance herewith.

C. If Goods are rejected, Buyer may at its option return the rejected Goods to Seller immediately. Within a reasonable time, Buyer shall notify Seller that the Goods are being returned. Return shall be at Seller's risk.



and Seller shall pay the handling and transportation expenses incurred. If Buyer elects to hold the rejected Goods pending Seller's direction as to the disposition of such Goods at Seller's expense, Seller shall direct Buyer as to the disposition of such Goods within seven (7) days notification that the Goods have been rejected. If Seller fails to so direct Buyer within seven (7) days, Buyer shall have no further obligation to Seller with respect to the rejected Goods.

D. Buyer and Seller agree that where the Goods become integrated into the construction of a residence, Buyer cannot reasonably discover non-conformity until completion of the construction and occupancy of the residence, building, or structure ("Building") for a reasonable period of time. Therefore, Buyer and Seller acknowledge that a reasonable time for discovery of non-conformity shall not be earlier than one year after the occupancy of any Building into which the non-conforming Goods are integrated.

7. Excused Performance by Seller.

A. Commercial impracticability shall not excuse Seller's performance hereunder. Subject to the exceptions provided in this section, Seller agrees that the occurrence or non-occurrence of any contingency, whether or not a basic assumption on which this Agreement was made, shall not excuse Seller's failure to perform any part of an obligation under this Agreement.

1. Delay in delivery, non-conformity in delivery, or non-delivery of any installment hereunder by Seller is not a breach of Seller's duty under this Agreement if performance is made impossible (as opposed to merely commercially impracticable) as a result of government intervention or regulation; transportation stoppages; or severe weather, fire, flood, tornado, or any other causes attributable to acts of nature and therefore beyond the control of the Seller; provided, however, that in the case of government intervention or regulation, such delay, non-conforming delivery, or non-delivery will constitute a breach of this Agreement if Seller could reasonably alter the goods or its procedures to conform to the government requirements and still comply with this Agreement.

2. No event described in this section shall excuse full performance unless Seller has, in good faith and with Buyer's prior written approval, attempted to find alternate means of fulfilling its obligations hereunder including, without limitation, purchasing Goods substantially the same of or greater value as those covered by the Agreement in tendering them to Buyer.

B. Upon the occurrence of any of the events set forth in Section VII. A., Seller shall notify Buyer that there will be a delay, non-conforming delivery, or non-delivery, stating in detail the reasons therefor and the probable effect on Seller's ability to continue to perform when the cause or non-performance ceases to exist. Buyer may, at its option, reject a delayed or otherwise non-conforming installment and/or terminate the entire Agreement with no further obligation hereunder other than the payment

for any Goods actually received and accepted by Buyer. Buyer's acceptance of delayed or otherwise non-conforming installment or Buyer's demand for future performance shall not prejudice Buyer's right to terminate the entire Agreement in accordance herewith.

8. Warranties.

A. Seller warrants all materials or services delivered hereunder to be free from defect of any material or workmanship and to conform strictly to the specifications, drawings, or sample(s) specified or furnished. Goods delivered are subject to inspection, testing, and approval by Buyer before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, in that the Goods delivered hereunder will be of good quality, material, and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, or payment by the Buyer of the Goods or services.

B. Except as provided in VI. D., should any failure to conform to this warranty become apparent during the first 90 day period after date of sale, Seller shall be responsible for correcting such non-conformity by repair or replacement and for the payment of all costs, expenses, and damages resulting therefrom.

C. Seller warrants that the sale or use of Goods of Seller's design or Seller's patents covered by this order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademarks or copyrights either in the U.S.A. or foreign countries, and the Seller covenants to defend every suit which will be brought against the Buyer or any party selling or using the Buyer's products for any alleged infringements of any patents, trademarks, or copyrights by reason of the sale or use of said materials either alone, or in combination with other materials and to pay all expenses and fees of counsel which shall be incurred in or about defending every such suit at all costs, damages, and profits recoverable in every such suit.

9. Assignment and Delegation. Seller shall not delegate or assign any rights, duties or claims under this Agreement without Buyer's prior written consent. Any such delegation or assignment attempted without the previous written consent of Buyer shall result in, at option of Buyer, the cancellation of Buyer's obligations hereunder.

10. Modification. This Agreement may be modified only by an instrument signed by both Buyer and Seller and dated subsequent to the date hereof.

11. Breach.

A. Upon a breach of this Agreement by Buyer, Seller shall have only the following remedies, which shall be Seller's sole and exclusive remedies for any such breach:

1. Upon the breach by Buyer on account of Buyer's wrongful rejection or wrongful revocation of acceptance of the Goods, or on account of wrongful repudiation of this Agreement with respect to a part or the whole of the Goods,

Seller may recover damages from Buyer; the measure of said damages shall be the difference between the market price of the Goods at the time and place for tender and the unpaid contract price, if any, without incidental damages, and less expenses saved in consequence of Buyer's breach.

2. Upon Buyer's wrongful failure to pay any part of the purchase price when due, Seller may recover the amount of such unpaid purchase price from Buyer, but without attorneys' fees or other expenses of collection.

B. Upon the happening of any one or more of the following events, Buyer shall have the unrestricted right to terminate this Agreement without cause or liability to Buyer:

1. Seller's insolvency or inability to meet obligations as they become due;

2. Filing of voluntary or involuntary petition of bankruptcy by or against Seller;

3. Institution of legal proceedings against Seller by creditors or stockholders;

4. Appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of Goods or performance and the occurrence of any of the events stated hereinabove shall not affect the right of Buyer to cancel any additional obligations in regards to Seller.

C. If Seller shall fail to perform any material part of this Agreement, the Buyer may, at its election, within ten (10) days after delivery, either reject the Goods and repudiate this Agreement, or retain the Goods without prejudice to any right to damages for breach of this Agreement or to any other right arising from such breach.

D. If Seller fails to make delivery or repudiates or if Buyer rightfully rejects the Goods or justifiably revokes acceptance thereof, then with respect to any Goods involved, and with respect to the whole Agreement, the Buyer may cancel this Agreement. The Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of Goods in substitution for those due from the Seller. The Buyer shall recover from the Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

E. In addition to the remedies listed hereinabove, Buyer shall be entitled to all remedies available pursuant to Article 2 of the Uniform Commercial Code as adopted in the State of Texas.

12. Termination. Buyer reserves the right at any time and from time to time for cause, to cancel all or any part of the undelivered portion of this order by written notice to Seller. In the event of such cancellation, Buyer shall not be liable to Seller for loss of anticipatory profits.

13. Indemnification. Seller will indemnify, hold harmless, and defend Buyer from any and all liability, loss, damage, or injury to persons or property in any manner

arising out of or incident to the performance of this Agreement unless said liability is directly caused by the gross negligence of Buyer.

14. Interpretation. This instrument is intended by the parties to be a final, exclusive, and complete expression of their Agreement and its terms. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to object.

15. Governing Law.

A. This contract shall be construed and interpreted in accordance with the laws of the State of Texas.

B. Seller agrees that the performance of any work pursuant to this Agreement is and shall be subject in all respects to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state, and federal governments and all subdivisions thereof which now govern or may hereafter govern the manufacture, sale, or delivery of parts, supplies, and goods, contemplated by this Agreement.

16. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by the Seller to the Buyer, or from the Buyer to the Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this paragraph. All Notices shall be in writing and delivered to the person to whom the Notice is directed, either in person or by United States mail, as a registered or certified item, return receipt requested. Notices delivered by mail shall be deemed given when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, addressed as follows:

Buyer: Freedom Financial Corporation  
1907 Elm Street, Suite 700  
Dallas, Texas 75201  
Attn: Donald P. Herzog

Seller: Vice President, Development  
Morrison Environmental, Inc.  
Route 4, Box 229A  
Tyler, Texas 75703

Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address. Notices given otherwise than by mail shall be deemed given upon actual receipt thereof.

17. Miscellaneous.

A. The captions used in this Agreement are for the convenience of the parties only and shall not be construed in interpreting this Agreement.

B. If any portion of this Agreement shall be held invalid or inoperative, then, insofar as possible and reasonable:

1. The remainder of this Agreement shall be considered valid and operative; and

2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

C. The terms of this Agreement shall be binding upon the heirs, executors, and administrators, and successors of the parties hereto.

D. All rights and remedies of Buyer under this Agreement are in addition to Buyer's other rights and remedies and are cumulative, not alternative.

E. This Agreement, and the exhibits attached hereto, constitute the complete understanding of the parties hereto. This Agreement cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous written or oral agreements, except as otherwise provided herein. It is the intention of Buyer and Seller that any custom or usage of trade or business inconsistent with any provision of this Agreement shall have no affect hereon.

F. The parties have agreed to be bound by the terms and conditions hereof and no addition, modification, or rescission of this Agreement can be made except by a writing signed by both parties, unless otherwise provided herein. No waiver of this section or of any other portion of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is asserted.

G. This Agreement is performable in whole and in part in the County of Dallas, State of Texas.

H. The parties specifically intend that the provisions of the Texas Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, and that all the definitions contained therein will be applicable here except where this Agreement may expressly provide otherwise.

I. Any added provisions determined to be inconsistent with the printed material contained in this Agreement shall be disregarded and, in the case of such inconsistency, the printed material shall control.

BUYER:

FREEDOM FINANCIAL CORPORATION

By: 

Donald P. Hagg

Title: Vice President, Development

SELLER:

Morrison Environmental, Inc.

By: Joe Morrison

Title: President

EXHIBIT "A"

WATER SUPPLY & DISTRIBUTION EQUIPMENT

1. All equipment to be in accordance with Plans and Specifications prepared by Wasteline Engineering, Inc. (Holiday Hills Resort Water Supply and Distribution System)
  - a. Service pumps -- Specification Item 502
  - b. Hydro-pneumatic tank and controls - Specification Item 509
  - c. Ground Storage Tank - Specification Item 510
  - d. Chlorinator and Diffuser piping - Specification Item 533
2. Work to be completed by August 31, 1984. The penalty shall be One Hundred Dollars (\$100.00) per day beyond this date.
3. Should the Contractor be delayed by the owner for reasons not the fault of the Contractor, such delay shall be considered toward the completion date. Acts of God beyond the control of the supplier shall also be considered.
4. Prices shall be in accordance with the June 26, 1984 quotations submitted by the Contractor.

EXHIBIT "B"

OPERATING STATEMENT

The supplier shall provide the necessary personnel to set up and instruct the owner's personnel for installation and to start the water supply and associated equipment. Ground storage tank to include labor.



# SUBCONTRACTOR AGREEMENT

This agreement is entered into between HOLIDAY HILLS RESORT, a resort of Freedom Financial Corporation, with offices located at 1907 Elm Street, Post Office Box 214061, Dallas, Texas 75221 ("Owner") and F. H. EDDS CO., INC. with offices located at P.O. Box 1, Branson, MO 65616 ("Subcontractor").

Owner is engaged in the development of a resort project located in Taney County, State of Missouri, commonly known as HOLIDAY HILLS RESORT (the "Project").

Owner desires to retain Subcontractor and Subcontractor desires to be retained by Owner to perform all labor, purchase all materials and furnish all equipment, other than the materials and equipment to be provided by Owner as described below, necessary for the proper execution and completion of the following described work (the "Work"), which is a part of the construction for the Project:

- Installation of approximately 3,540 lineal feet of sewer line per Plans and Specifications
- Sewage Collection System for HOLIDAY HILLS RESORT.
- Owner to furnish all pipe and manhole rings and covers, as well as bedding for the pipe.
- Contractor to furnish all labor and equipment to ditch lay and backfill the sewer line, to furnish manholes and set them, as well as materials and labor for the lift stations.
- Owner to install pumps and wiring.

It is intended that the description of the Work shall include all work which may be reasonably inferable from such description as being necessary to produce the intended results. Subcontractor acknowledges having been provided with the following described Project documents (the "Project Documents"), which are incorporated herein by reference:

Plans and Specifications for Sewage Collection System for Holiday Hills Resort, and cut sheets

Owner shall pay Subcontractor the sum of (see breakdown below) as consideration for Subcontractor's performance of the Work (the "Agreed Sum"). Payments of the Agreed Sum shall be made by Owner to Subcontractor in the following manner:

8" sewer line . . . . .	\$ 10.50/ft.
Manholes furnished and set . . . . .	850.00
6" force main . . . . .	10.50/ft.
Wet well material and labor . . . . .	1,850.00
Rock drilled and shot . . . . .	30.00 per cubic yard based on 30" wide ditch

Payments to be made on weekly basis, as billed.

I.D. or Social Security # 43-1123462

Subcontractor shall commence performance of the Work on the date specified by Owner, but in no event later than 7/1, 1984, and shall complete the Work within the time period specified in the work schedule published by Owner for performance of the Work (the "Time Limits").

The printed Terms and Conditions which accompany this agreement are incorporated by this reference and shall constitute a part of this agreement.

This agreement represents the entire agreement between Owner and Subcontractor and supersedes all prior negotiations, representations or agreements, whether written or oral. This agreement may be modified only by a written amendment, agreed to and executed by both Owner and Subcontractor.

## TERMS AND CONDITIONS

Owner and Subcontractor agree that Subcontractor's performance of the Work and Owner's performance of the Work shall be subject to the following terms and conditions:

- By executing this agreement, Subcontractor represents that he has visited the Project, familiarized himself with the local conditions under which the Work will be performed and correlated his observations with the performance requirements established in the description of the Work and the Project Documents. He has verified the correctness of the information needed to perform the Work properly and as required hereunder and, except as otherwise expressly provided herein, assumes full responsibility and all risks for any mistakes in such information. He agrees that the Work be successfully executed as required.
- Subcontractor shall comply with all laws, ordinances, codes, rules and regulations, of all governmental bodies and agencies which may be applicable to the Work, and shall indemnify and hold Owner harmless from and against all claims or other costs and expenses incurred by reason of any violation of same.
- Subcontractor shall arrange and pay for all permits, bonds and fees relating to and/or required for the completion of the Work, except as may be expressly provided elsewhere in this agreement.
- Owner has selected Subcontractor to perform the Work because of Subcontractor's particular abilities and expertise. Therefore, Subcontractor shall not be permitted to assign or broker his duties and obligations under this agreement. Subcontractor may, however, retain such sub-subcontractors as are deemed to be acceptable to Owner and confirmed in writing.
- As soon as practicable following the execution of this agreement, Subcontractor shall furnish a list of all subcontractors and materialmen whom Subcontractor anticipates he will be using to Owner. Upon Owner's request

Schedule 4-12

ICATIONS

FOR

**The**  
**H. EPPS CO. INC.**

P.O. BOX 1 BRANSON, MISSOURI 65616

PHONE: AREA 417-334-4188

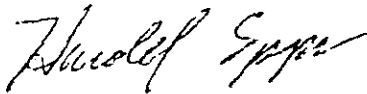
June 27, 1984

Dear Sir:

Attached is our bid for the approximate 3540 L.FT. of Sewer line. It is my understanding that Holiday Hills will furnish all pipe and manhole rings and covers, also the bedding for the pipe. The H. Epps Co., Inc. is to furnish all labor and equipment to ditch lay and back fill the sewer line. Also we will furnish the manholes and set them. We will furnish the material and labor for the lift stations. Owner is to install pumps and wiring.

Sincerely,

The H. Epps Co., Inc.



Harold Epps  
President

## MATERIALS PURCHASE CONTRACT

This contract for the purchase of goods (the "Agreement") is entered into this 20th day of July, 1984, between Freedom Financial Corp. ("Buyer") and Morrison Environmental, Inc. ("Seller"), subject to the terms and conditions of this purchase contract (the "Agreement"). Buyer and Seller represent and agree that they are merchants with respect to the subject matter of this Agreement.

1. Description of Goods. Buyer hereby agrees to purchase from Seller and Seller hereby agrees to sell to Buyer the products, materials, and goods (collectively the "Goods"), described below:

---

Wastewater Treatment Plant see Exhibit "A"

---

A. All Goods sold pursuant to this Agreement shall meet or exceed the product specifications attached hereto as Exhibit "A".

B. Any specifications, drawings, notes, instructions, relating to the Goods shall be deemed to be incorporated herein by reference and made a part hereof as if fully set forth.

C. Seller acknowledges that the quality of the Goods purchased pursuant to this Agreement is an essential condition of this Agreement, and that any non-compliance shall give Buyer the right to reject any or all of the Goods and to repudiate this Agreement.

D. Seller acknowledges that the Goods covered by this Agreement are unique and the circumstances of this transaction warrant the remedy of specific performance.

2. Price and Payment. The price and payment schedule for the Goods shall be as follows:

---

\$69,750 - Total

---

13,950 - With order

---

---

Balance upon delivery & acceptance by owner

---

A. Prices recorded in this Agreement are not subject to increase. No additional amounts shall be chargeable to Buyer because of taxes or excises, presently or hereafter levied on Seller. If Seller's quoted prices for the Goods covered by this Agreement are reduced (whether in the form of a price reduction, close-out, rebate, allowances, or additional discounts offered to anyone) at the time of any shipment, Seller agrees that the price to Buyer for such Goods will be reduced accordingly, and that the Buyer will be billed at such reduced prices.

B. Except as may be otherwise provided in this Agreement, the contract price includes all applicable federal, state, and local taxes or excises in effect on the date of this Agreement. If such taxes or excises or any

part thereof are hereafter refunded to Seller, Seller shall immediately pay Buyer the amount of such refund.

C. Seller certifies that the prices herein are not higher than the prices being charged to other organizations purchasing identical Goods in smaller quantities at this particular time and do not discriminate against Buyer.

D. If at any time during the term of this Agreement the Buyer is able to secure a specific amount of any products herein specified of equal quality from another manufacturer at a lower price than that herein stated and if, after notice in writing, Seller is unwilling to meet such lower price, the Buyer shall have the right of purchasing such specific amount from another source and cancelling the balance of this Agreement. "

*For JM*  
E. All purchases are subject to a One and one half (1.5%) cash discount if paid on or before ten (10) days following the date the invoice was received by Buyer.

F. Seller hereby agrees to rely solely upon Buyer's financial responsibility and expressly waives any mechanics', materialmen's, or suppliers' statutory or constitutional lien on any jobsite or on any property of Buyer and agrees to look solely to Buyer for payment of all sums due hereunder.

G. Seller agrees to indemnify and hold Buyer harmless of and from all expenses and damages, including attorneys' fees, incurred by Buyer as a result of or in connection with the attachment or attempted attachment of any lien against Buyer's property by any of Seller's suppliers or subcontractors. At any time during the term of this Agreement, Seller, upon request of Buyer, agrees to secure an express lien waiver satisfactory to Buyer from each of Seller's suppliers and subcontractors.

H. All claims or monies due or to become due from Buyer shall be subject to the deduction by Buyer for any setoff or any counterclaim arising out of this or any other agreement that Buyer has with Seller.

3. Quantity. The specific amount of Goods purchased pursuant to this Agreement are as follows:

One each Wastewater Treatment Plant complete,  
see Exhibit "A"

Shipments must be in exact amounts unless otherwise agreed upon by Buyer.

4. Shipment and Delivery. Shipment and delivery of the goods shall be as follows:

A. The Goods to be delivered to Buyer shall be delivered and invoiced according to the procedures set forth in the Operating Statement attached hereto as Exhibit "B" and made a part hereof for all purposes.

B. Seller shall, at its own expense, properly package and deliver all goods to Buyer at Buyer's jobsite; and Seller shall bear the risk of any loss, deterioration, or damage until the Goods are delivered as specified herein.

C. Buyer's receiving of any Goods under this Agreement shall not be deemed a waiver of any right to damages for any prior failure to ship or receive any Goods in accordance herewith.

5. Deferred Delivery and Cancellation.

A. Buyer may defer delivery of any order, installment, or any units thereof upon notification to Seller, at least 24 hours in advance of shipment by Seller, of the Goods or units so deferred. Should Buyer exercise its rights to defer delivery of any order or installment, all subsequent deliveries or orders or installments hereunder shall be similarly deferred.

B. Buyer shall have the right to cancel this contract if, due to Buyer's requirements, product specifications change to such an extent that the Goods are no longer suitable for Buyer's purposes. Buyer's cancellation pursuant to this paragraph shall be effective thirty (30) days after written notification thereof to Seller.

C. Whenever Buyer has reason to believe that in connection with this Agreement Seller, or any agent thereof, has attempted or initiated any unethical business practice in regard to Buyer, or any agent thereof, Buyer may unconditionally cancel this Agreement. In addition to cancellation, Buyer shall be entitled to pursue all legal and equitable remedies to which Buyer may be entitled under applicable law and under this Agreement. Seller agrees to provide Buyer with access to all books, records, and documents reasonably necessary to aid Buyer in determining the extent of the unethical conduct and the identities of the parties involved.

6. Inspection and Rejection.

A. Final inspection of the Goods shall be on Buyer's premises unless otherwise agreed in writing. All Goods not fully up to standard or not otherwise in compliance with the specifications hereof, or shipped contrary to instructions, or in excess of the quantities herein provided, or substituted for Goods described, or not shipped in containers conforming to Buyer's specifications, or which are manufactured, produced, sold, invoiced, packaged, labelled, or shipped in violation of any statute, ordinance, administrative order, rule or regulation which allegedly invades or infringes any patent, copyright, trademark, or other proprietary interest, may be rejected by Buyer in whole or in part, which may return or hold such Goods at Seller's expense and risk.

B. Buyer may, at its option, reject a delayed or otherwise non-conforming installment or, in the alternative, terminate this Agreement with no further obligation to Seller other than payment for the conforming Goods actually received and accepted. Buyer's acceptance of delayed or otherwise non-conforming installments or Buyer's demand for future performance shall not prejudice Buyer's right to reject future delayed or otherwise non-conforming installments or to terminate this Agreement in accordance herewith.

C. If Goods are rejected, Buyer may at its option return the rejected Goods to Seller immediately. Within a reasonable time, Buyer shall notify Seller that the Goods are being returned. Return shall be at Seller's risk.

and Seller shall pay the handling and transportation expenses incurred. If Buyer elects to hold the rejected Goods pending Seller's direction as to the disposition of such Goods at Seller's expense, Seller shall direct Buyer as to the disposition of such Goods within seven (7) days notification that the Goods have been rejected. If Seller fails to so direct Buyer within seven (7) days, Buyer shall have no further obligation to Seller with respect to the rejected Goods.

D. Buyer and Seller agree that where the Goods become integrated into the construction of a residence, Buyer cannot reasonably discover non-conformity until completion of the construction and occupancy of the residence, building, or structure ("Building") for a reasonable period of time. Therefore, Buyer and Seller acknowledge that a reasonable time for discovery of non-conformity shall not be earlier than one year after the occupancy of any Building into which the non-conforming Goods are integrated.

7. Excused Performance by Seller.

A. Commercial impracticability shall not excuse Seller's performance hereunder. Subject to the exceptions provided in this section, Seller agrees that the occurrence or non-occurrence of any contingency, whether or not a basic assumption on which this Agreement was made, shall not excuse Seller's failure to perform any part of an obligation under this Agreement.

1. Delay in delivery, non-conformity in delivery, or non-delivery of any installment hereunder by Seller is not a breach of Seller's duty under this Agreement if performance is made impossible (as opposed to merely commercially impracticable) as a result of government intervention or regulation; transportation stoppages; or severe weather, fire, flood, tornado, or any other causes attributable to acts of nature and therefore beyond the control of the Seller; provided, however, that in the case of government intervention or regulation, such delay, non-conforming delivery, or non-delivery will constitute a breach of this Agreement if Seller could reasonably alter the goods or its procedures to conform to the government requirements and still comply with this Agreement.

2. No event described in this section shall excuse full performance unless Seller has, in good faith and with Buyer's prior written approval, attempted to find alternate means of fulfilling its obligations hereunder including, without limitation, purchasing Goods substantially the same of or greater value as those covered by the Agreement in tendering them to Buyer.

B. Upon the occurrence of any of the events set forth in Section VII. A., Seller shall notify Buyer that there will be a delay, non-conforming delivery, or non-delivery, stating in detail the reasons therefor and the probable effect on Seller's ability to continue to perform when the cause or non-performance ceases to exist. Buyer may, at its option, reject a delayed or otherwise non-conforming installment and/or terminate the entire Agreement with no further obligation hereunder other than the payment

for any Goods actually received and accepted by Buyer. Buyer's acceptance of delayed or otherwise non-conforming installment or Buyer's demand for future performance shall not prejudice Buyer's right to terminate the entire Agreement in accordance herewith.

8. Warranties.

A. Seller warrants all materials or services delivered hereunder to be free from defect of any material or workmanship and to conform strictly to the specifications, drawings, or sample(s) specified or furnished. Goods delivered are subject to inspection, testing, and approval by Buyer before acceptance. Seller expressly warrants that all articles, materials, and work will conform to the applicable drawings, specifications, samples, or other descriptions given in all respects, in that the Goods delivered hereunder will be of good quality, material, and workmanship, merchantable and free from defects. This warranty shall survive any inspection, delivery, acceptance, or payment by the Buyer of the Goods or services.

B. Except as provided in VI. D., should any failure to conform to this warranty become apparent during the first 90 day period after date of sale, Seller shall be responsible for correcting such non-conformity by repair or replacement and for the payment of all costs, expenses, and damages resulting therefrom.

C. Seller warrants that the sale or use of Goods of Seller's design or Seller's patents covered by this order either alone, or in combination with other materials, will not infringe or contribute to the infringement of any patents or trademarks or copyrights either in the U.S.A. or foreign countries, and the Seller covenants to defend every suit which will be brought against the Buyer or any party selling or using the Buyer's products for any alleged infringements of any patents, trademarks, or copyrights by reason of the sale or use of said materials either alone, or in combination with other materials and to pay all expenses and fees of counsel which shall be incurred in or about defending every such suit at all costs, damages, and profits recoverable in every such suit.

9. Assignment and Delegation. Seller shall not delegate or assign any rights, duties or claims under this Agreement without Buyer's prior written consent. Any such delegation or assignment attempted without the previous written consent of Buyer shall result in, at option of Buyer, the cancellation of Buyer's obligations hereunder.

10. Modification. This Agreement may be modified only by an instrument signed by both Buyer and Seller and dated subsequent to the date hereof.

11. Breach.

A. Upon a breach of this Agreement by Buyer, Seller shall have only the following remedies, which shall be Seller's sole and exclusive remedies for any such breach:

1. Upon the breach by Buyer on account of Buyer's wrongful rejection or wrongful revocation of acceptance of the Goods, or on account of wrongful repudiation of this Agreement with respect to a part or the whole of the Goods,

Seller may recover damages from Buyer; the measure of said damages shall be the difference between the market price of the Goods at the time and place for tender and the unpaid contract price, if any, without incidental damages, and less expenses saved in consequence of Buyer's breach.

2. Upon Buyer's wrongful failure to pay any part of the purchase price when due, Seller may recover the amount of such unpaid purchase price from Buyer, but without attorneys' fees or other expenses of collection.

B. Upon the happening of any one or more of the following events, Buyer shall have the unrestricted right to terminate this Agreement without cause or liability to Buyer:

1. Seller's insolvency or inability to meet obligations as they become due;

2. Filing of voluntary or involuntary petition of bankruptcy by or against Seller;

3. Institution of legal proceedings against Seller by creditors or stockholders;

4. Appointment of a receiver for Seller by any court of competent jurisdiction. The acceptance of Goods or performance and the occurrence of any of the events stated hereinabove shall not affect the right of Buyer to cancel any additional obligations in regards to Seller.

C. If Seller shall fail to perform any material part of this Agreement, the Buyer may, at its election, within ten (10) days after delivery, either reject the Goods and repudiate this Agreement, or retain the Goods without prejudice to any right to damages for breach of this Agreement or to any other right arising from such breach.

D. If Seller fails to make delivery or repudiates or if Buyer rightfully rejects the Goods or justifiably revokes acceptance thereof, then with respect to any Goods involved, and with respect to the whole Agreement, the Buyer may cancel this Agreement. The Buyer may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of Goods in substitution for those due from the Seller. The Buyer shall recover from the Seller as damages the difference between the cost of cover and the contract price together with any incidental or consequential damages.

E. In addition to the remedies listed hereinabove, Buyer shall be entitled to all remedies available pursuant to Article 2 of the Uniform Commercial Code as adopted in the State of Texas.

12. Termination. Buyer reserves the right at any time and from time to time for cause, to cancel all or any part of the undelivered portion of this order by written notice to Seller. In the event of such cancellation, Buyer shall not be liable to Seller for loss of anticipatory profits.

13. Indemnification. Seller will indemnify, hold harmless, and defend Buyer from any and all liability, loss, damage, or injury to persons or property in any manner



arising out of or incident to the performance of this Agreement unless said liability is directly caused by the gross negligence of Buyer.

14. Interpretation. This instrument is intended by the parties to be a final, exclusive, and complete expression of their Agreement and its terms. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used herein. Acceptance of, or acquiescence in, a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and an opportunity to object.

15. Governing Law.

A. This contract shall be construed and interpreted in accordance with the laws of the State of Texas.

B. Seller agrees that the performance of any work pursuant to this Agreement is and shall be subject in all respects to and in compliance with all laws, rules, regulations, and ordinances, proclamations, demands, directives, executive orders, or other requirements of the municipal, state, and federal governments and all subdivisions thereof which now govern or may hereafter govern the manufacture, sale, or delivery of parts, supplies, and goods, contemplated by this Agreement.

16. Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by the Seller to the Buyer, or from the Buyer to the Seller, whether required by this Agreement or in any way related to the transaction contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this paragraph. All Notices shall be in writing and delivered to the person to whom the Notice is directed, either in person or by United States mail, as a registered or certified item, return receipt requested. Notices delivered by mail shall be deemed given when deposited in a post office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed, addressed as follows:

Buyer: Freedom Financial Corporation  
1907 Elm Street, Suite 700  
Dallas, Texas 75201  
Attn: Don Herzog  
Vice President, Development

Seller: Morrison Environmental, Inc.  
Rt. 4, Box 229A  
Tyler, TX 75703

Either party hereto may change the address for notice specified above by giving the other party ten (10) days advance written notice of such change of address. Notices given otherwise than by mail shall be deemed given upon actual receipt thereof.

17. Miscellaneous.

A. The captions used in this Agreement are for the convenience of the parties only and shall not be construed in interpreting this Agreement.

B. If any portion of this Agreement shall be held invalid or inoperative, then, insofar as possible and reasonable:

1. The remainder of this Agreement shall be considered valid and operative; and

2. Effect shall be given to the intent manifested by the portion held invalid or inoperative.

C. The terms of this Agreement shall be binding upon the heirs, executors, and administrators, and successors of the parties hereto.

D. All rights and remedies of Buyer under this Agreement are in addition to Buyer's other rights and remedies and are cumulative, not alternative.

E. This Agreement, and the exhibits attached hereto, constitute the complete understanding of the parties hereto. This Agreement cannot be varied, contradicted or supplemented by evidence of any prior or contemporaneous written or oral agreements, except as otherwise provided herein. It is the intention of Buyer and Seller that any custom or usage of trade or business inconsistent with any provision of this Agreement shall have no affect hereon.

F. The parties have agreed to be bound by the terms and conditions hereof and no addition, modification, or rescission of this Agreement can be made except by a writing signed by both parties, unless otherwise provided herein. No waiver of this section or of any other portion of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is asserted.

G. This Agreement is performable in whole and in part in the County of Dallas, State of Texas.

H. The parties specifically intend that the provisions of the Texas Uniform Commercial Code will control as to all aspects of this Agreement and its interpretation, and that all the definitions contained therein will be applicable here except where this Agreement may expressly provide otherwise.

I. Any added provisions determined to be inconsistent with the printed material contained in this Agreement shall be disregarded and, in the case of such inconsistency, the printed material shall control.

BUYER:

FREEDOM FINANCIAL CORPORATION

By: \_\_\_\_\_

Donald P. Herzog  
Title: Vice President, Development

SELLER: Morrison Environmental, Inc.

By: Joe Morrison  
Joe Morrison  
Title: President

EXHIBIT "A"

WASTEWATER TREATMENT PLANT

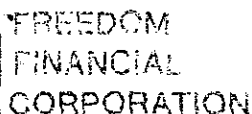
PROJECT SPECIFICATIONS

1. All equipment to be in accordance with plans and specifications prepared by Wasteline Engineering, Inc.
  - A. Item #520 Wastewater Treatment System
  - B. Chlorinator and diffuser piping, item #533
2. All equipment is to be on Site by August 31, 1984. Penalty shall be \$100.00 per day beyond this date.
3. Owner caused delays shall be taken into consideration and discussed with supplier if there are any.
4. Delays caused by acts of God beyond the suppliers control shall also be considered and discussed.

EXHIBIT "B"

OPERATING STATEMENT

The supplier shall provide the necessary personnel to set up and instruct the owner's personnel for installation and to start the Wastewater Treatment Plant and associated equipment.



## Wastewater Treatment

THIS PURCHASE ORDER NUMBER MUST BE  
SHOWN ON TAG, BOX, BILL OF LADING OR  
EXPRESS RECEIPT AND ON THE INVOICE.

P.O. BOX 358 DALLAS, TEXAS 75221

DATE: 8/8/84

VENDOR: Disposable Waste Systems, Inc.

SHIP: Holiday Hills Resort

SEND INVOICES IN DUPLCATE TO: FREEDOM FINANCIAL CORP. P.O. BOX 358 DALLAS, TEXAS 75221 ATTN: ACCTS. PAYABLE

DATE	INV. #
DATE PAID	AMOUNT

FREEDOM FINANCIAL CORPORATION

Schedule 4-25

BY \_\_\_\_\_  
PURCHASING AGENT



Howard Kitchen  
Holiday Hills Resort  
620 East Rockford Drive  
Branson, MO 65616

January 26, 1998

Dear Howard:

Last week I met with Bill Nickle and Arlie Smith, both associates of the Missouri Public Service Commission Staff (MPSC). They have given me a clear understanding on the principles and guidelines of our Tariff, last dated July 22, 1994. They have reviewed all of our Annual Reports and have recently discovered items on various pages needing correcting.

The biggest concern they had was with the Contributions-in-aid-of-Construction. This Rule stated in our Water Tariff, Sheet No. 25, No. 14 Extension of Water Mains, (c) Applicant(s) (SRI) shall enter into a contract with the company (RU) for the installation of said extension and shall tender to the company a contribution in aid of construction (CIAC) equal to the amount.....as well as the Sewer Tariff, Sheet 25, Rule No. 11 Extension of Collecting Sewers, (2) The applicant (SRI) shall enter into a contract with the company (RU) for the installation of said extension and shall tender to the company a contribution in aid of construction (CIAC) equal to the amount.....

Therefore these rules would apply to the installation of mains, services lines and meters. This would be an expense to the Construction Company as any other expense or cost associated with the construction of the condos. In order to correctly code the assets with the offset account to **2400-271-CIAC-Water** and **2401-271-CIAC-Sewer** to Resort Utilities, Resort Utilities would require the Construction Company to supply us with itemized invoices. More specifically, SRI would receive the invoice, pay the invoice coding to the appropriate expense, copy and send to Resort Utilities the invoices to code, described as follows:

The Uniform System of Accounts provided by the MPSC. *Also note the location and department number will vary depending on which resort the invoice is applicable.*

**5-500-1636-343 Water System Dev-Trans & Dist**

This account shall include the cost installed of transmission and distribution mains and appurtenances. Items include but not limited to are permits, engineering, pipes, shut offs, jointing and manholes.

**5-500-1636-345 Water Sys Dev-Services**

This account shall include the cost installed of services pipes and accessories leading to the customers' premises. A complete service begins with the connection on the main and extends to but does not include the connection with the customer's meter. Items would include but not limited to engineering, valves, joints, pipes and tapping main.

**5-500-1637-346 Water Meters**

This account shall include the cost of meters, devices and appurtenances attached thereto, used for measuring the quantity of water delivered to users; whether actually in service or held in reserve. The records covering meters shall be so kept that the utility can furnish information as to the number of meters of each type and size in service and in reserve as well as the location of each meter include in this account.

This account may and shall also include the cost of labor employed, materials used and expenses incurred in connection with the original installation of customers' meters and devices and appurtenances attached thereto. Items include are: First installation (only), meter coupling, meter bars, meter yokes, meter fittings, connections and shelves, meter vaults or boxes and stops.

**5-500-1637-348 Water Sys Dev-Hydrants**

This account shall include the cost installed of hydrants in service owned, by the utility. Records shall be kept so as to show number, size (nominal diameter of bottom connection), number and size of hose connections, diameter of main to which attached and type of hydrants classified as to public use and private use.

**5-500-1635-352 Sewer Sys Dev-Coll Sewers**

**352.1 Collection Sewers - Force.** This account shall include all sewers which are used to lift sewage from a low elevation to a higher elevation. The force sewer will include that pipe between the discharge outlet of the lift station and the receiving manhole.

**352.2 Collection Sewers - Gravity.** This account shall include the installed cost of all gravity collecting sewers, interceptor, branch, trunk, lateral including service wye, including manholes and lampholes. Manholes shall be included as a separate unit of property.

**5-500-1635-354 Sewer Sys Dev-Svcs to Customers**

This account shall include the installed cost of service sewers, from collection sewer to the customer's property to curb line. Items included are jointing & material, manhole or clean-out, inspection and permits, pavement disturbed, protection of street openings, tapping saddle and service connection wye shall be included in account 354 instead of account 352.2 when company owns service sewers to customers property or curb line.

Any cost or expense of the replacement or additions to the well, storage tank or waste water plant will be that of the company ( Resort Utilities) and will be coded appropriately.



In closing, I would prefer to receive all the necessary documents in order to insure correct entries are made into the water company. This would mean corporate would send me the invoices to code appropriately and post at the resort level. Then once the download is complete it would result in accurate records.

If you have any comments or suggestions, you may reach me at ext. 13 or (417) 334-8366.

Sincerely,



Paula T. Stokes  
Missouri Office Manager

xc: Bob Levy  
David McPhearson  
David Klammer  
Joe Connor  
Bill Nickle

**Resort Utilities- HHR, OMR, & TCR**  
**Consolidating Balance Sheet**  
**Water and Sewer Operations**  
**Liabilities**

	2004				2003				\$
	<u>HHR</u>	<u>OMR</u>	<u>TCR</u>	<u>Consolidated</u>	<u>HHR</u>	<u>OMR</u>	<u>TCR</u>	<u>Consolidated</u>	<u>Change</u>
<b>Equity Capital</b>									
1 Capital Stock				0				0	
11 Retained Earnings	(443,894)	133,348	24,870	(285,676)	(467,552)	158,378	43,574	(265,600)	(20,076)
<b>Long Term Debt</b>									
15 L/T Debt to Affiliates (Advances from Parent Company)	-	-	-	-	-	-	-	-	-
<b>Current and Accrued Liabilities</b>									
19 Accounts Payable	224,696	1,180	4,543	230,419	223,941	1,847	3,183	228,971	1,448
Due to/from other companies	703,441	50,786	(2,410)	751,817	706,761	13,024	9,997	729,782	22,035
 Contributions in Aid of Construction	1,096,427	491,809	1,799,018	3,387,254	1,079,982	481,498	1,704,490	3,265,970	121,284
Less: Amortization of CIAC	192,285	142,630	448,901	783,816	157,408	127,614	376,983	662,005	121,811
39 Net CIAC	904,142	349,179	1,350,117	2,603,438	922,574	353,884	1,327,507	2,603,965	(527)
 <b>22 Total Liabilities &amp; Equity</b>	<b>1,388,385</b>	<b>534,493</b>	<b>1,377,120</b>	<b>3,299,998</b>	<b>1,385,724</b>	<b>527,133</b>	<b>1,384,261</b>	<b>3,297,118</b>	<b>2,880</b>

**Silverleaf Resorts, Inc.**  
**Summaries of Ratemaking Rate Base**

<u>Timber Creek Service Area</u>	<u>Staff</u>			<u>Company</u>	<u>Difference</u>
	<u>Water</u>	<u>Sewer</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Total Plant in Service	\$ 1,036,675	\$ 752,795	\$ 1,789,470	\$ 1,573,320	\$ 216,150
Non-CIAC Plant Reserve	\$ 200,000	\$ 240,040	\$ 440,040	\$ 440,040	\$ -
Net Plant in Service	\$ 836,675	\$ 512,755	\$ 1,349,430	\$ 1,133,280	\$ 216,150
CIAC	\$ 308,375	\$ 185,785	\$ 494,160	\$ -	\$ 494,160
Rate Base	\$ 528,300	\$ 326,970	\$ 855,270	\$ 1,133,280	\$ (278,010)

<u>Ozark Mountain Service Area</u>	<u>Staff</u>			<u>Company</u>	<u>Difference</u>
	<u>Water</u>	<u>Sewer</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Total Plant in Service	\$ 271,455	\$ 317,940	\$ 589,395	\$ 556,985	\$ 32,410
Non-CIAC Plant Reserve	\$ 87,820	\$ 157,265	\$ 245,085	\$ 217,400	\$ 27,685
Net Plant in Service	\$ 183,635	\$ 160,675	\$ 344,310	\$ 339,585	\$ 4,725
CIAC	\$ 149,665	\$ 141,835	\$ 291,500	\$ -	\$ 291,500
Rate Base	\$ 33,970	\$ 18,840	\$ 52,810	\$ 339,585	\$ (286,775)

<u>Holiday Hills Service Area</u>	<u>Staff</u>			<u>Company</u>	<u>Difference</u>
	<u>Water</u>	<u>Sewer</u>	<u>Total</u>	<u>Total</u>	<u>Total</u>
Total Plant in Service	\$ 1,288,530	\$ -	\$ 1,288,530	\$ 2,263,860	\$ (975,330)
Non-CIAC Plant Reserve	\$ 176,320	\$ -	\$ 176,320	\$ 870,095	\$ (693,775)
Net Plant in Service	\$ 1,112,210	\$ -	\$ 1,112,210	\$ 1,393,765	\$ (281,555)
CIAC	\$ 565,890	\$ -	\$ 565,890	\$ -	\$ 565,890
Rate Base	\$ 546,320	\$ -	\$ 546,320	\$ 1,393,765	\$ (847,445)

<u>Total Company Rate Base</u>	
Staff Total	\$ 1,454,400
Company Total	\$ 2,866,630
Total Difference	\$ (1,412,230)

<u>Acquisition Premium</u>	
Staff Total Rate Base	\$ 1,454,400
Allocated Sale Price	\$ 3,800,000
Acquisition Premium	\$ (2,345,600)

**Notes:**

- (1) Numbers Shown as of 12/31/04  
(2) Difference = Staff minus Company

**ALGONQUIN WATER RESOURCES OF MISSOURI, LLC**  
**WATER RATE CASE No. WR-2006-0425**  
**RESPONSE TO MISSOURI PUBLIC SERVICE COMMISSION**  
**DATA REQUEST No. 0007**

**DATE OF REQUEST:** June 26, 2006  
**REQUESTOR:** Graham Vesely  
**ANSWERED BY:** Larry Loos  
**SUBJECT:** Discussions with Silverleaf re: un-recorded plant

---

**QUESTION:**

1) When did Algonquin first become of the opinion that the Missouri utilities contained plant not recorded on the utility books of Silverleaf? Describe the process Algonquin went through in first reaching this opinion. 2) Describe all communication that has taken place so far with Silverleaf regarding un-recorded Missouri utility plant.

**RESPONSE:**

1. a. Mr. Loos initially informed Algonquin of the fact that available accounting information did not reflect consideration of the "unrecorded plant" in December 2005.  
b. Mr. Loos describes the analysis leading to the identification of the "unrecorded plant" beginning on page 15 of his prepared direct testimony.
2. Algonquin has not contacted Silverleaf with regard to this issue. Algonquin believes that Silverleaf provided all utility related information to Algonquin at the time of the sale.

**ATTACHMENT:**

None