

ORDINANCE 2003-03

AN ORDINANCE GRANTING A
FRANCHISE FOR THE OPERATION OF
A SANITARY SEWER SYSTEM
AND APPURTENANT FACILITIES

BE IT ORDAINED by the Mayor and Town Council of the TOWN OF VINCENT, ALABAMA (herein called the "Municipality"), as follows:

Section 1. The Municipality hereby grants to Enviro-Systems, L. L. C., an Alabama limited liability company (herein called the "Sewer Operator"), its successors and assigns, the right, privilege, authority and franchise to acquire, construct, own, repair, maintain, enlarge, extend, improve, replace and operate a sanitary sewer system, as well as all appurtenant facilities (which are herein together called the "System:") to serve the Municipality and the surrounding territory and the inhabitants thereof and businesses and institutions situated therein, and to use the streets, avenues, alleys and public ways and places in the Municipality for such purposes.

Section 2. The Municipality hereby grants to the Sewer Operator the right, privilege, authority and franchise at any time and from time to time during the period covered by this franchise, to construct, repair, maintain, enlarge, extend, improve and replace its pumps, mains, pipes, conduits and facilities in, over, under, across or along any street, avenue, alley or public way or place in the Municipality and to make all excavations necessary therefor, for the purpose of constructing, repairing, maintaining, improving, enlarging, extending, replacing or operating any portion of the System.

Section 3. The Sewer Operator shall, and by accepting this franchise agrees that it will, operate the System and keep the same in good repair and operating condition so as to provide adequate sanitary sewer service to the Municipality and its inhabitant, businesses and institutions at all times.

Section 4. The Sewer Operator shall, and by accepting this franchise agrees that it will, upon making any excavation in the streets, avenues, alleys, public ways and places of the Municipality in the exercise of this franchise, restore the surface and paving at the point of such excavation in substantially the same condition as before the work was done, within a reasonable time thereafter, and will save the Municipality harmless from any liability arising out of any change in the condition of any street, avenue, alley, public way or place by the Sewer Operator.

Section 5. The rights, privileges, authorities and franchise hereby granted shall continue in force and effect for a period of thirty (30) years from the effective date of this ordinance

Section 6. The Municipality hereby consents and agrees that the franchise hereby granted may be covered by any mortgage or deed or indenture of trust executed by the Sewer Operator for the purpose of securing the payment of the principal of and interest on any bonds or other obligations (including any refunding bonds or refunding obligations) issued by (or for the benefit of) the Sewer Operator in order to acquire, construct, enlarge, extend, improve, replace, maintain, repair or operate the System or any other system or systems which the Sewer operator may hereafter acquire, and any such mortgage or deed or indenture of trust shall constitute a lien on this franchise, and this franchise may be transferred or assigned in accordance with the provisions of any such mortgage or deed or indenture of trust; but this franchise shall not otherwise be transferred or assigned.

Section 7. The franchise herein granted by the Municipality to the Sewer Operator is granted in consideration of the agreement on the part of the Sewer Operator to operate the System in the Municipality, and the Sewer Operation shall not be required to pay any franchise or other such fees in connection with the franchise herein granted. The said agreement of the Sewer Operator shall be made pursuant to a Franchise Agreement (the "Franchise Agreement"), which shall be in substantially the form presented to the meeting of the Mayor and Town Council of the Municipality at which this ordinance is adopted (which form shall be attached to this ordinance as Exhibit I and which is hereby adopted in all respects as if set out in full herein), with such changes as the Mayor, acting with the advice of counsel to the Municipality, shall determine to be necessary or desirable

in order to consummate the transactions authorized by this ordinance; provided, however, that the determination of the definitive form of the Franchise Agreement by the Mayor shall be conclusively established by his executing of such document. The Mayor is hereby authorized and directed to execute and deliver the Franchise Agreement for and in the name and behalf of the Municipality, and the Town Clerk, of the Municipality is hereby authorized and directed to affix the official and corporate seal of the Municipality to the Franchise Agreement and to attest the same.

Section 8. The provisions of this ordinance shall be severable and, if any one or more thereof should be held invalid for any reason, the rest shall nevertheless stand and be fully effective.

Section 9. All ordinances, resolutions or orders or parts thereof in conflict with this ordinance are hereby repealed, to the extent of such conflict.

Section 10. The Town Clerk is hereby authorized and directed to publish this ordinance in one issue of The Shelby County Reporter, a newspaper published in Shelby County and having general circulation in the Town of Vincent.

ADOPTED and APPROVED this the _____ day of _____, 2003.

Mayor

Authenticated:

Town Clerk

CERTIFICATE OF PUBLICATION

I, the undersigned Town Clerk of the TOWN OF VINCENT, ALABAMA, hereby certify that a copy of the foregoing ordinance was published in the issue of The Shelby County Reporter published on _____, 2003.

DATED THIS _____ day of _____, 2003.

Town Clerk

FRANCHISE AGREEMENT between the **TOWN OF VINCENT, ALABAMA**, a municipal corporation under the laws of the State of Alabama (herein called the "Municipality"), and **ENVIRO-SYSTEMS, L. L. C.**, a limited liability company organized and existing under the laws of the State of Alabama (herein called the "Sewer Operator"),

RECITALS

The Sewer Operator proposes to acquire, construct, equip and operate a sanitary sewer system (herein called the "System"), by which the Sewer Operator will provide sanitary sewer services to the public in the corporate limits of the Municipality and in the surrounding territory. In the near future the Sewer Operator expects for The Governmental Utility Services Corporation of the Town of Westover to issue approximately \$3, 500, 000 in principal amount of its Sewer Revenue Bonds, Series 2003 (herein called the "Series 2003 Bonds"), and to lend the proceeds of the Series 2003 Bonds to the Sewer Operator for the purpose of financing the costs of acquiring, constructing and equipping the System. Accordingly, in connection with the issuance of the Series 2003 Bonds it is necessary and desirable for the Municipality to grant a franchise for the operation of the System in the corporate limits of the Municipality to the Sewer Operator. To that end, the Municipality and the Sewer Operator have entered into this Franchise Agreement.

NOW, THEREFORE, THIS FRANCHISE AGREEMENT

WITNESSETH:

For the aforesaid purpose and in consideration of the respective agreements herein contained, it is hereby agreed between the parties signatory hereto, each with the other, as follows:

Section 1. Contemporaneously with the delivery of this Agreement, the Municipality will adopt an appropriate ordinance (herein called the "Franchise Ordinance") granting a franchise to the Sewer Operator for the operation of the System in the corporate limits of the Municipality for a period of thirty (30) years from the date hereof.

Section 2. This Agreement shall remain in effect for so long as the franchise granted by the franchise Ordinance (of any renewal or extension thereof) shall remain in effect.

Section 3. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Alabama.

Section 4. This Agreement shall be binding upon, and shall inure to the benefit of, the Municipality, the Sewer Operator and their respective successors and assigns, and shall also be constructed to be a contract for the benefit of the holders of any indebtedness of the Sewer Operator.

Section 5. The provisions of this Agreement are severable. In the event any provision hereof is held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

IN WITNESS WHEREOF, the Municipality and the Sewer Operator have caused this Agreement to be executed in their respective corporate names, have caused their respective seals to be hereunto affixed, have caused this Agreement to be attested, all by their duly authorized officers, in seven (7) counterparts, and have caused this Franchise Agreement to be dated as of April 1, 2003, although actually executed and delivered by the parties hereto on _____, 2003.

TOWN OF VINCENT, ALABAMA

By _____
Mayor

ATTEST:

Its Town Clerk

[S E A L]

ENVIRO-SYSTEMS, L. L. C.

By: Cheyenne Environmental, L. L. C.

By: _____
Manager

STATE OF ALABAMA)
:
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that _____, whose name as Mayor of the TOWN OF VINCENT, ALABAMA, a municipal corporation in the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said municipal corporation.

GIVEN under my hand and official seal of office, the _____ Day of _____, 2003.

[NOTARIAL SEAL]

NOTARY PUBLIC

My Commission Expires: _____

STATE OF ALABAMA)
 :
SHELBY COUNTY)

I, the undersigned authority, a Notary Public in and for said county in said state, hereby certify that Ernest E. Hale, III, whose name as Manager of Cheyenne Environmental, L. L. C., a limited liability company organized and existing under the laws of the State of Alabama, acting in its capacity as Manager of ENVIRO-SYSTEMS, L. L. C., a limited liability company organized and existing under the laws of the State of Alabama, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said Enviro-Systems, L. L. C.

GIVEN under my hand and official seal of office, the _____ day of _____, 2003.

[NOTARIAL SEAL]

Notary Public

My Commission Expires: _____