12/31/2020

Still needs work on it.

SECOND AMENDED and RESTATED

WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT

Between

~~SEVERN TRENT ENVIRONMENTAL SERVICES, INC.~~INFRAMARK, LLC

and

THE CLINTON PUBLIC WORKS AUTHORITY

~~May 2015~~[INSERT DATE]

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SECOND AMENDED AND RESTATED WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT

THIS SECOND AMENDED AND RESTATED WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT (hereinafter, the "Agreement") is made and entered into this day of ~~May, 2015~~ [INSERT DATE], by and between the Clinton Public Works Authority, an Oklahoma Public Trust organized under the laws of the State of Oklahoma, whose sole beneficiary is the City of Clinton, a municipal corporation organized under the laws of the State of Oklahoma (hereinafter the "Municipality"), and ~~Severn Trent Environmental Services, Inc.~~Inframark, LLC, a Texas ~~corporation~~ limited liability company with its principal place of business at 2002 W. Grand Parkway N., Suite 200, Katy, Texas 77449 ~~16337 Park Row, Houston, Texas 77084~~ (hereinafter the "Operator").

WHEREAS, the Municipality desires to hire a professional firm to operate and maintain the Municipality's Facilities (defined below in Exhibit C) and the Operator desires to provide said operations and maintenance services to the Municipality; and

WHEREAS, the parties desire to Amend and Restate the Amended and Restated Agreement between the Parties dated July 1st, 2015~~0~~ such that this Second Amended and Restated Agreement shall supersede all prior Agreements and Amendments thereto.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, and subject to the terms and conditions herein stated, the parties agree as follows:

Article 1 DEFINITIONS

"Abnormal or Biologically Toxic Material" is defined as any substance or combination of substances contained in the raw water or influent wastewater received or treated at any of the Facilities in sufficient concentrations or amounts so as to either:

(I) interfere with the biological processes necessary for the removal of organic and chemical constituents from the raw water or wastewater in a manner required to meet Applicable Law including the discharge limits specified in the Municipality's Environmental Permit(s); or

(ii) cause the effluent wastewater discharged from the Facilities to become or create Process Residue or other materials classified as hazardous waste as defined under RCRA and/or hazardous substances as defined under CERCLA.

Abnormal or Biologically Toxic Materials may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA standards for finished water after the routine processing of the influent wastewater and raw water.

"Additional Services" shall mean services performed by the Operator that are outside of Operator's scope of Services as set forth in Article 4 of this Agreement.

"Adjustment Date" shall mean July 1st of each and every ~~anniversary of the Commencement Date~~Agreement Year.

"Affiliate" shall mean "related parties" to the Operator and Municipality within the meaning of Section 144(a)(3) of the Internal Revenue Code.

"Agreement" is defined in the Preamble to this Agreement.

"Agreement Year" is defined as any consecutive twelve (12) month period during the term of the Agreement (including the renewal options) that begins on the Commencement Date and subsequently ends on each anniversary of that date.

"Annual Maintenance Expenditures" is defined as the total of all expenses incurred annually by the Operator in connection with the discharge of its maintenance responsibilities as provided by Section 4.4 of this Agreement; provided however that the Annual Maintenance Expenditures shall exclude Operator's direct labor expenses and related benefits for those individuals exclusively assigned by the Operator to the operations and maintenance of the Facilities and whose cost is included in the Base ~~Compensation~~ Fee hereunder. The Annual Maintenance Expenditures shall specifically include, but shall not be limited to, all materials, supplies, parts, tools, outside subcontractors, specialized services, rental equipment and all of the Operator's overtime costs and related benefits, as well as the cost of Operator's personnel not exclusively assigned to the operation and maintenance of the Facilities at an agreed hourly billing rate, provided, however, that Operator shall consult Municipality regarding purchases of services, equipment or tools that may or could be provided by the Municipality. As stated in Section 4.5 hereunder, any individual expenditure for the repair and/or replacement of Facilities' equipment or structure, other than a Capital Improvement, whose unit cost (as to any single event or function) exceeds five thousand dollars ($5,000.00) shall be subject to the Municipality's prior approval. The cost of such approved expenditures shall be included in the Annual Maintenance Expenditures.

"Annual Repair and Maintenance Limit" is defined as the total of all Annual Maintenance Expenditures in an amount up to a maximum of One Hundred Twelve thousand dollars ($112,000) for the first Agreement Year. For each Agreement Year thereafter, the Annual Repair and Maintenance Limit shall be agreed to by the parties. In the event that parties are unable to reach agreement, the Annual Repair and Maintenance Limit shall be the same amount as in the prior Agreement Year.

"Applicable Law" is defined as those laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing, including CERCLA, SDWA and RCRA, in each case that pertain to the (a) parties' respective responsibilities under this Agreement; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, treatment and disposal of the Municipality's raw and finished water, wastewater, Process Residue and/or related wastes. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facilities, to the collection, delivery, pretreatment, or treatment of the Municipality's raw and finished water and/or wastewater, to the handling, transportation, treatment and disposal of Process Residue and to each of the Municipality's Environmental Permits issued for the Facilities.

"Authorized Representative" is defined in Section 7.1 of this Agreement.

"Base Compensation" is defined in Section 8.14 of this Agreement.

"Baseline Conditions" shall mean the hydraulic influent flow of water and wastewater received and/or processed at the Facilities, and the maximum wastewater influent loading limits contained in such influent wastewater, all as outlined in Exhibit A. The Baseline Conditions shall be reset and adjusted on each and every Adjustment Date to reflect the actual influent hydraulic flows and loadings processed at the Facilities during the Agreement Year just ended.

"Capital Improvement(s)" shall mean changes, additions, other than repair, which result in an upgrade to the Facilities constructed or implemented by the Municipality or with the Municipality's prior approval.

"CERCLA" is defined as the federal Comprehensive Environmental Response Compensation and Liability Act, as same may be amended from time to time, 42 USC §9601 et seq.

"Change of Law" is defined as the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in (a) the need to make a Capital Improvement at or to the Facilities in order for the Operator to operate the Facilities in accordance with this Agreement and Applicable Law; or (b) an increase or decrease to the cost of managing, operating or maintaining the Facilities in accordance with this Agreement and Applicable Law; or (c) a material and adverse effect on the scope of the Operator's liabilities or obligations under this Agreement

(i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date this Agreement is executed; or

(ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Agreement; or

(iii) following the execution of this Agreement, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body containing interpretations of any Applicable Law relating to the operation or maintenance of the Facilities or the health and safety of the Operator's employees that is inconsistent with generally accepted interpretations in effect on the date this Agreement is executed; or

(iv) after the effective date of this Agreement, any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by the Operator to comply with the terms of this Agreement) of any official permit, license or necessary approval by the USEPA, the Occupational Safety and Health Administration or the State Environmental Agency.

"Commencement Date" shall mean the date designated by the parties hereunder for the commencement of their respective obligations. The parties agree that the Commencement Date shall be July 1, 2020

"Environmental Compliance Guarantee" is defined in Section 6.1.

"Facilities" or "Municipality's Facilities" is defined as the surface water treatment plant (SWTP), Reverse Osmosis water treatment plant (RO), wastewater treatment plant (WWTP), and all associated facilities as described in Exhibit C to this Agreement.

"Force Majeure" is defined as any act, event, or condition to the extent that it adversely impacts the cost of performance of, or adversely affects the ability of, either party to perform any obligation under this Agreement (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the party relying thereon; provided, however, that the contesting party in good faith or failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either party.

(a) Inclusions subject to the foregoing, such acts, events or conditions may include, but shall not be limited to, the following:

(I) an act of God, pandemic, landslide, earthquake, fire, explosion, flood, hurricane, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance;

(ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;

(iii) any failure of title to the Facilities or any placement or enforcement of any lien, charge or encumbrance on the Facilities or on any improvements thereon that is not consented to in writing by, or arising out of any action or agreement entered into by, either party to the Agreement;

(iv) the inability of the Operator and its subcontractors to gain and maintain access to all areas of the Facilities and/or adjoining the Facilities where the Operator is required to provide services or perform any work hereunder;

(v) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the Facilities, or in the performance of the Services to be performed by Operator hereunder;

(vi) strikes, work stoppages, or labor disputes affecting the Operator and any subcontractor (excluding material suppliers) of the Operator;

(vii) with respect to the Operator, the presence at the Facilities of (i) subsurface structures, materials or conditions having historical, geological, archeological, religious or similar significance; (ii) any habitat of an endangered or protected species; or (iii) functioning subsurface structures used by utilities on, underneath, near or adjacent to the Facilities;

(viii) with respect to the Operator, (i) the presence anywhere in, on or under the Facilities on the Commencement Date of underground storage tanks; (ii) the presence of hazardous materials or regulated substances in environmental media anywhere in, on or under the Facilities as of the Commencement Date; (iii) the off-site migration of pollutants and/or off-site contamination, including any migration of pollutants that is not caused by the negligence of the Operator; or (iv) contamination of the Facilities from groundwater, soil or airborne hazardous materials or regulated substances migrating from sources outside the Facilities to the extent not caused by the Operator's negligence;

(ix) with respect to the Operator, damage to the Facilities caused by third parties not related to or under the control of the Operator including, but not limited to, other contractors and subcontractors for the Municipality;

(x) the failure of any subcontractor or supplier to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected the Operator directly, and the Operator is not able after exercising all reasonable efforts to timely obtain substitutes; and

(xi) the breach of this Agreement by one of the parties to the extent that it adversely impacts the non-breaching party's cost of performance under this Agreement or adversely affects the ability of the non-breaching party to perform any obligation under this Agreement,

(b) Exclusions. None of the following acts, events or conditions shall constitute an event of Force Majeure:

(i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;

(ii) changes in the financial condition of the Municipality, the Operator, or any of their Affiliates or subcontractors;

(iii) union work rules which increase the Operator's operating cost for the Facilities;

(iv) any impact of prevailing wage laws on the Operator's costs, provided however that such requirements or demands may constitute a Change of Law entitling the Operator to additional compensation;

(v) the consequence of Operator error, including any errors of Operator Affiliates or subcontractors; and/or

(vi) litigation against the Municipality and/or Operator.

"Indemnified Party" is defined in Section 10.1.

"Independent Engineer" refers to a nationally recognized independent consulting engineering firm experienced in the design and/or the operation of water and wastewater treatment systems as selected in accordance with the procedures set forth in Article 11 herein.

"Municipality" is defined in the Preamble to this Agreement.

"Municipality's Discharge Permit(s)" and/or *"Discharge Permit(s)"* shall refer to ~~all~~ permits and licenses issued to Municipality and required for the discharge of wastewater from the Facilities as listed in Exhibit B.

"Municipality's Environmental Permit(s)" or "Environmental Permit(s)" shall refer to the Municipality's Discharge Permits and ~~all~~ other permits and licenses issued to the Municipality and required for the supply of finished water from the Facilities. Copies of all Environmental Permits are attached as Exhibit B to this Agreement.

"Non-Processible Water or Wastewater" is defined as influent water or wastewater (i) which contains Abnormal or Biologically Toxic Materials; or (ii) which is otherwise detrimental to the operation and performance of the Facilities; or (iii) which is unable to be treated by the Facilities or exceeds the design capabilities of the Facilities as defined by the Operations and Maintenance Manual for the Facilities or as provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities.

"Operator" is defined in the Preamble to this Agreement.

"Price Index" shall mean the Consumer Price Index for all Urban Consumers – Water and Sewerage Maintenance (CPI-U) for the U.S. City Average ~~Consumers (CPI-U) for the South-Size Class D for All Services~~ 1982-84 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics. In the event, that this Price Index is changed, or if a substantial change is made in the terms or number of items contained in the Price Index, then the Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Price Index in effect as of the Commencement Date not been altered. In the event such Price Index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information therefore used in determining the Price Index shall be used. No adjustments or re-computations, retroactive or otherwise, shall be made due to ~~any revision that may later be made in the first published figure of the Price Index for any year.~~

"Price Index Increase" shall mean the percentage increase between the Price Index in effect as of the February of the current Agreement Year over the Price Index in effect *as* of prior February. The Price Index Increase shall be calculated as of each and every Adjustment Date for the purpose of adjusting the Base Compensation and the Baseline Power Rate.

"Process Residue" is defined as grit, screenings, water and wastewater sludge, and other residue generated by or through the operation of the Facilities.

"RCRA" is defined as the Resource Conservation Recovery Act, as same may be amended from time to time, 42 USC §8921 et seq.

"Reverse Osmosis Plant" is defined as the Municipality's reverse osmosis water treatment plant located at 3601 W. Modelle Avenue, Clinton, OK 73601

"SDWA" is defined as the Safe Water Drinking Act, as may be amended from time to time, 42 USC §300f et seq.

"Services" is defined in Section 4.1.

"Sewer Use Ordinance" is defined as the Municipality's ordinance, order, regulation or policy which establishes the requirements for persons discharging wastewater to Municipality's sewer system, as same may be amended from time to time.

"Shutdown" is defined as the cessation or substantial interruption of normal operations at the Facilities due to the failure of operating equipment or interruption of the processes of the Facilities for reasons other than the negligence of the Operator or its employees, agents or subcontractors.

"State" is defined as the State within which geographical boundaries the Municipality is located.

"USEPA" refers to the United States Environmental Protection Agency.

Article 2 PURPOSE

Commencing on the Commencement Date and during the term of this Agreement, the Municipality agrees to engage the Operator as an independent contractor to operate and maintain the Facilities, and Operator agrees to operate, and maintain the Facilities in accordance with the terms and conditions of this Agreement, Applicable Law, ~~and all permits, licenses~~Discharge Permits, manufacturer's protocols, and specifications applicable to the operation and maintenance of the Facilities. Each party hereto agrees that it will cooperate in good faith with the other and its agents, employees, representatives, officers, contractors, and subcontractors to facilitate the performance of the mutual obligations set forth in this Agreement.

Article 3 REPRESENTATIONS AND WARRANTIES OF THE PARTIES

Section 3.1 Representations and Warranties of the Municipality

Municipality hereby represents and warrants that, as of the date hereof:

(a) It is an Oklahoma Public Trust, whose sole beneficiary is a municipal corporation of the State duly organized, validly existing and in good standing under the laws of the State, with all legal right, power and authority to enter into this Agreement, to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement.

(b) This Agreement, Municipality's execution and delivery of this Agreement and Municipality's performance of its obligations hereunder, have been duly and validly authorized. This Agreement has been validly executed and delivered by Municipality and constitutes a legal, valid, and binding obligation of Municipality, enforceable in accordance with its terms.

(c) Municipality's execution, delivery, and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice or lapse of time, or both, would constitute a default under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind Municipality or any of its assets and properties.

(d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Municipality's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder.

(e) The Municipality and its representatives are fully familiar with this Agreement and the obligations set forth herein, including all the exhibits and schedules attached to this Agreement, if any, and Municipality is fully capable of performing and complying with the same.

Section 3.2 Representations and Warranties of the Operator

Operator hereby represents and warrants to Municipality that, as of the date hereof:

(a) It is a ~~corporation~~ limited liability company duly organized, validly existing and in good standing under the laws of the State of Texas, and qualified to conduct business in the State with full corporate power and authority to enter into this Agreement, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform this Agreement.

(b) This Agreement, Operator's execution and delivery of this Agreement, and Operator's performance of its obligations hereunder, have been duly and validly authorized by Operator by all necessary corporate action. This Agreement has been validly executed and delivered by Operator and constitutes a legal, valid and binding obligation of Operator, enforceable in accordance with its terms.

(e) The execution, delivery and performance of this Agreement will not conflict with, or result in any violation of, or constitute a default or a condition which upon notice of lapse of time, or both, would constitute a default, under the organizational documents of Operator nor under any judgment, order, writ, injunction, decree, rule, regulation, permit, license, note, agreement, mortgage, deed, contract or other instruments that apply to, or which bind, Operator or any of its assets or properties.

(d) There are no actions, suits, proceedings or governmental investigations pending, or, to its best knowledge, threatened against it or its assets or properties, and no judgments, decrees, orders, rulings, writs or injunctions outstanding against it or its assets or properties, that would in any case have a material adverse effect upon Operator's ability to execute this Agreement or otherwise to consummate and perform its respective obligations hereunder.

(e) The Operator is fully familiar with this Agreement and the obligations set forth herein, including all exhibits and schedules attached to this Agreement, if any, and Operator is capable of performing and complying with same.

Section 3.3 Disclosure of Information

The Municipality and the Operator each represent and warrant to the other that each has disclosed, and will in the future disclose, any and all information it now has, or may have in the future, relating to the Facilities that may be relevant to the other in performing its duties and obligations.

Such information shall include, but shall not be limited to, the appropriate sections of any vulnerability or security assessment performed (including any vulnerability assessments performed in accordance with 42 USCS §300i-2 or any other similar statute), environmental audits, prior permit violations and/or dealings with regulatory agencies.

Article 4 SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITIES

Section 4.1 General

Subject to the terms and conditions provided herein, the Operator shall provide labor, tools, utilities and materials, including an on-site routine stock of chemicals (at the Municipality's expense) necessary for the operation and maintenance of the Facilities to the extent specifically set forth in this Article 4 (hereinafter the "Services"). The Parties agree that the technical expertise and management associated with the Services are of primary importance. The Labor identified herein is incidental to any management services. The Services include: (a) treatment of wastewater influent delivered to the Facilities; (b) the production of treated water as necessary to meet the demand for water by the Municipality's customers, as well as using reasonable efforts to ~~maintain full~~manage water storage capacity levels for both water quantity and water quality in all water storage facilities in the distribution system, consistent with the parties' understanding the ~~current capability of the water plant is 1.8 MGD~~designed capabilities of the Facilities; (c) routine preventative maintenance of the Facilities; (d) repair and replacement of the Facilities' equipment; (e) laboratory testing and analysis; and (f)0 preparation and prompt delivery of all applicable and required filings, including discharge reports, to Municipality and to regulatory agencies as prescribed by Applicable Law.

Section 4.2 Standard of Care

The Services provided under this Agreement are of a professional nature and shall be performed in accordance with the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities.

Section 4.3 Process Control

(a) The Operator shall operate and maintain the Facilities ~~and all~~ equipment and processes contained therein in accordance with relevant operation and maintenance manuals and warranties for the Facilities, Applicable Law, the existing raw water supply and the Environmental Permits.

(b) During any Municipality-approved construction or other modification of the Facilities, the Municipality and the Operator will work together to maintain Operator's access to the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. The Municipality and the Operator will jointly develop a plan of action that will address protection to the Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities to the extent reasonably possible.

Section 4.4 Routine Maintenance of the Facilities and Equipment

Subject to the limitations set forth in Section 4.5, Section 8.2 and Section 8.4 below, the Operator shall (i) perform routine preventive maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities;

(ii) repair and/or replace equipment; (iii) clean and lubricate equipment; (iv) make equipment inspections and needed adjustments; (v) ~~perform predictive maintenance as appropriate; (vi)~~ perform building and grounds janitorial services for the Facilities and cleaning of all equipment and vehicles; however, Operator shall perform grounds maintenance if the lawn is higher than four (4) inches tall within one hundred (100) feet of the Facility or any road, sidewalk, or walkway connected thereto or higher than twelve (12) inches anywhere else at the Facility. Operator's costs for such grounds maintenance shall be an Annual Maintenance Expenditure that is incurred against the Annual Repair and Maintenance Limit; (vii) perform plumbing and electrical maintenance; (viii) maintain vehicles and light duty service trucks necessary for daily operations; and (viiiix) maintain all of the Facilities' instrumentation, including instrumentation provided to the Operator by the Municipality pursuant to this Agreement. Operator shall schedule and track all preventive and corrective maintenance ~~and perform spare parts inventory control~~ in accordance with standard industry practice.

Section 4.5 Repairs and Replacement

(a) The Operatori shall be responsible for all Annual Maintenance Expenditures not to exceed the Annual Repair and Maintenance Limit (which Annual Repair and Maintenance Limit shall be included in the Base Compensation and adjusted on each and every Adjustment Date)~~.~~. Any and all costs in excess of the Annual Repair and Maintenance Limit shall be the responsibility of the Municipality and shall be paid directly by the Municipality or reimbursed to the Operator in accordance with Section 8.4.

(b) The Operator shall not incur any single maintenance related expenditure whose unit cost exceeds five thousand dollars ($5,000.00) without the prior written approval of the Municipality, except in the case of emergencies threatening the immediate Shutdown of, or the substantial reduction in the operational capacity of any of the Facilities, or the life, health or property of the Municipality and/or the Operator, their employees and/or agents or others (for purposes of this Section 4.5 only, all such emergencies shall be referred to collectively and individually as an "Emergency"). When the Operator determines that a condition constitutes an Emergency, the Operator may begin taking the necessary abatement action, including all necessary equipment repairs, immediately without the Municipality's prior approval. Any cost incurred during the Emergency shall be included in the Annual Maintenance Expenditures, subject to the Municipality's subsequent review and approval. Any such cost unnecessarily incurred in an~~.~~ Emergency shall be borne by the Operator without reimbursement by the Municipality, but only to the extent it is subsequently determined that the Operator's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to the Operator at the time the decision to incur such cost was made.

Section 4.6 Staffing

(a) The Operator shall provide qualified and, where required, certified staffing for the operation and maintenance of the Facilities in accordance with the Municipality's Environmental Permits.

(b) The Operator shall provide an appropriate level of training for its personnel.

(c) The Operator shall comply with the requirements and policies of the Municipality regarding minority hiring, but only to the extent same is in compliance with Applicable Law.

(d) Operator shall offer employment to all current, qualified, regular full-time individuals employed at the Facilities as of the date hereof at a combination of salary and benefits comparable to those provided to such individuals immediately prior to the date hereof.

Section 4.7 Disposal of Process Residue

(a) As the agent for the Municipality, the Operator shall dispose of Process Residue.

(b) The Operator shall follow the current practices of the Municipality and dispose of Process Residue either at an approved landfill designated as a disposal site by the Municipality or at an approved land application site designated and made available by the Municipality. Throughout the term of this Agreement, the Municipality shall be responsible for locating and designating duly licensed disposal sites for the Municipality's Process Residue. Except to the extent caused by its own negligence, in no event shall Operator be responsible for any fines, penalties or damages resulting from the improper disposal of the Municipality's Process Residue. Title and ownership of Process Residue shall remain with the Municipality notwithstanding any such services by the Operator.

(c) The costs of transportation and disposal of Process Residue at the disposal sites utilized by the Municipality as of the Commencement Date shall be included in the Base Compensation. In the event that the Municipality designates new disposal sites or practices for the disposal of Process Residue and such practices result in additional costs to the Operator, Operator shall be entitled to compensation for such additional costs.

Section 4.8 Testing and Laboratory Analysis

Operator shall perform or shall contract with a laboratory certified by the State to perform all sampling and laboratory analysis required by the Municipality's Environmental Permits. ~~Within thirty (30) days following the Commence Date, Operator and Municipality~~ have ~~shall agreed upon a list of the laboratory analysis to be provide by a State-certified laboratory and the analysis to be provided by the Operator.~~ Laboratory testing required by the Safe Drinking Water Act shall be provided by the Operator, except for those parameters which are currently tested by the ODEQ laboratory. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater, or shall be in accordance with testing requirements of the Municipality's Discharge Permits.

Section 4.9 Distribution System

Within thirty (30) days following the Commence Date, Operator and Municipality shall agreed upon a list of the distribution sampling and analysis to be provided by the Operator~~Operator shall perform any distribution testing and monitoring in accordance with Applicable Law~~. Operator will flush dead end hydrants in accordance with Municipality'~~ie~~s current schedule.

Section 4.10 Odor and Noise Control

(a) Operator shall operate the Facilities within the limits and capabilities of the Facilities' equipment to effectively control odor and noise and insure that there is no avoidable disruption of adjacent neighborhoods.

(b) Odor complaints received by the Operator shall be reported to the Municipality within twenty-four (24) hours and contain the name, address, phone number, date and time, Operator contact person, nature of odor, probable origin of the odor and the action the Operator will implement or has implemented to remedy and/or mitigate said odor.

Section 4.11 Safety

The Operator shall implement a proper safety program prior to beginning its Services under this Agreement. Such safety program shall comply with Applicable Laws and Operator agrees that it will adhere to all portions of that safety program; provided however that under all circumstances, Operator should not assume any obligation or incur any liability for any injury, death or damage caused by (i) unsafe site conditions not created by the Operator or by any of its agents, employees and subcontractors, (ii) work being performed by other parties not related to the Operator, (iii) the negligence of Municipality, and/or (iv) the negligence of any third party not related to the Operator.

Section 4.12 Communications

(a) To keep the Municipality informed about the status of the Facilities, the Operator shall comply with ~~, within thirty (30) working days of the Commencement Date, develop an~~the informational communications program developed for ~~, subject to~~ Municipality's ~~approval~~, which is ~~shall be~~ comprised of a written monthly report to Municipality on the operational status and maintenance of the Facilities.

(b) Operator is hereby given permission to interface with regulatory agencies without Municipality's consent in matters related to compliance with the Municipality's Environmental Permits, including the Discharge Permits, and/or with respect to matters required under the Operator's staff certification and licensing requirements and/or as otherwise necessary to comply with Applicable Law, including communication during emergency situations. Operator shall, as soon as practicable and in reasonable detail, inform the Municipality of the subject matter of such communications with regulatory agencies. All other communications with regulatory agencies, the media, or community groups may occur only upon Municipality's request or with Municipality's prior approval.

Section 4.13 Reports

(a) Operator shall maintain computerized and other necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the Municipality a monthly report, delivered to the Municipality not later than the third ($3r^d$) Tuesday following the end of each month, including a narrative and itemized summary of operations, maintenance, repair and replacement activities (including the draw-down against the Annual Repair and. Maintenance Limit) and data required for monthly reporting to local, state and federal agencies. The monthly report shall also include the following items: (i) copies of waste and sludge manifests; (ii) insurance claims that are filed or pending; and (iii) copies of all reports and correspondence made by the Operator to local, State and federal regulatory agencies on behalf of the Municipality.

The Operator shall collect the data for all permit monitoring and operating reports required by Applicable Law or by this Agreement and shall deliver the required monitoring and operating reports to the Municipality and to the appropriate regulatory agencies having competent jurisdiction over same. If required pursuant to Applicable Law, the Operator shall attest as to the accuracy and completeness of the data collected for each report. The Municipality, however, shall at all times be responsible for maintaining all required permits for the ownership and operation of the Facilities.

All Facilities' records and data, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding Operator's budgetary, ~~and~~ financial, and other confidential and proprietary information, are the property of the Municipality and cannot be destroyed by Operator without written consent of the Municipality. All site-specific operating procedure guidelines, preventive maintenance and safety programs and plant evaluation reports will, upon termination of this Agreement, become and remain the property of the Municipality.

Section 4.14 Emergency Response

Operator shall provide emergency response when required. Emergencies include situations in which, absent Operator's action, there is a risk of: (i) the Facilities' noncompliance with Applicable Law; (ii) failure of the Facilities to operate within a reasonably foreseeable period of time;

(iii) circumstances immediately affecting the safety of persons or property; (iv) adverse impact of snow and other extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or Shutdown.

Operator shall provide said emergency response as promptly as possible, but, absent extraordinary circumstances, within ninety (90) minutes of being notified of the existence of the emergency and the need to respond thereto.

All costs incurred by the Operator in responding to emergencies shall be borne by the Municipality, except where specifically provided otherwise, and where such emergency, production stoppage or failure of the Facilities to operate is a direct result of Operator's failure to operate and maintain the Facilities in accordance with the terms of this Agreement.

(d) In the event of sudden damage or destruction of any portion of the Facilities, or in the event of an emergency which in the reasonable judgment of the Operator is likely to result in material loss or damage to any portion of the Facilities, or constitute a threat to human health or safety, the Operator may suspend operations of those portions of the Facilities which are reasonably determined to be affected by the emergency and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. The Operator shall provide prompt notice to the Municipality of any such damage, destruction or threat and of any emergency repairs that have or will be taken. The Municipality and the Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety, or the environment.

(e) ~~Within thirty (30) days of the Commencement Date, the~~ Operator shall ~~shall develop~~maintain an emergency response plan that ~~shall~~ designate~~s~~ emergency team members and identifie~~sy~~s the standard operating procedures to be followed. In the event of an evacuation, the Operator will report to the Municipality's designated emergency management location, or other site to be specified by the Municipality's authorized representative.

Section 4.15 Accounting Records

Operator shall maintain up-to-date financial and accounting records as they apply to the Annual Maintenance Expenditures. The records must be kept in accordance with the Operator's standard accounting practices and made available to the Municipality within thirty (30) working days of Municipality's written request.

Section 4.16 Inventory and Condition of Facilities Equipment

(a) ~~Within ninety (90) days of the Commencement Date,~~ Operator shall ~~submit~~ maintain a written inventory of all hand tools, consumables and expendable supplies and spare parts at each of the Facilities. ~~Within ninety (90) days of the Commencement Date, the Operator shall also submit a written inventory of any and all Process Residue stockpiled or contained at the Facilities.~~ Municipality agrees and shall take all necessary measures to ensure that the volume or quantity of all Process Residue stockpiled or contained within the Facilities ~~as of the Commencement Date~~ shall not exceed the volume or quantity of Process Residue typically generated from the operation of the Facilities in an average month. ~~The Municipality shall have twenty (20) days to verify and accept Operator's written inventories submitted pursuant to this Section 4.16(a).~~

(b) At the termination of this Agreement, the Operator shall provide the Municipality with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted. The Operator shall be permitted to leave only an amount of Process Residue at the Facilities that is less than or equal to the amount of Process Residue listed in the inventory prepared by the Operator and accepted by the Municipality pursuant to Section4.16(a) above.

~~(c) At the termination of this Agreement, the Operator shall provide the Municipality with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted. The Operator shall be permitted to leave only an amount of Process Residue at the Facilities that is less than or equal to the amount of Process Residue listed in the inventory prepared by the Operator and accepted by the Municipality pursuant to Section4.16(a) above.~~

~~(e) Within ninety (90) days of the Commencement Date, the Operator shall prepare and submit an assessment report on the conditions of the Facilities and process equipment. The assessment report shall include a list of repair or replacement projects and recommended Capital Improvements necessary to ensure that the operation of the Facilities will conform to Applicable Law together with the projected costs associated with same.~~

Section 4.17 Manufacturers' Warranties

The Operator shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by the Municipality after the Commencement Date. In addition, the Operator shall assist the Municipality in enforcing the warranties and guarantees, if any, for existing equipment used in connection with the operation of the Facilities. Under no circumstances shall the Operator's obligations hereunder include any express or implied warranties with respect to all Facilities equipment.

Section 4.18 Reverse Osmosis Plant Services

(a) On February 1, 2021, Operator shall provide the services for the Reverse Osmosis Plant as set forth in Exhibit E; provided however, Operator shall not be required to provide said services until the Municipality provides Operator a commissioning report that has been accepted by Operator and completes the planned upgrades to the Reverse Osmosis Plant's SCADA system. Operator shall not be responsible for any fines, penalties, or damages related to the Reverse Osmosis Plant until Operator is required to provide said services under this Section 4.18.

(b) If outlined in the Operations Plan outlined in Exhibit E and agreed upon by Municipality and Inframark, it is determined the Reverse Osmosis Plant must operate to deliver water to the distribution system that meets Oklahoma Department of Environmental Quality ("ODEQ") regulations for public water supplies then the Operator will provide the same services outlined in Article 4 of this Agreement for the Facilities to the extent those services are applicable to the Reverse Osmosis Plant; Operator's obligations with regard to the Surface Water Treatment Plant as identified in Exhibit C to this Agreement shall be the same as those outlined in Exhibit E of the Agreement to the extent those services are applicable to the Surface Water Treatment Plant.

(c) Operator may perform additional services for the Reverse Osmosis Plant beyond the services specified in this Agreement with the mutual consent of both parties. The parties shall separately negotiate the costs of any such additional services.

(d) When the Operator determines that a condition constitutes an Emergency as defined in Section 4.5 for the Reverse Osmosis Plant, Operator may begin taking the necessary abatement action, including all necessary equipment repairs, immediately without the Municipality's prior approval. Any cost, including Operator's labor costs, incurred during the Emergency at the Reverse Osmosis Plant shall be included in the Annual Maintenance Expenditures, subject to the Municipality's subsequent review and approval. Any such cost

unnecessarily incurred in an. Emergency shall be borne by the Operator without reimbursement by the Municipality, but only to the extent it is subsequently determined that the Operator's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to the Operator at the time the decision to incur such cost was made.

(e) The Municipality and Operator shall develop standard procedures for blending water required for the services set forth in Exhibit E by ~~July 1, 2020~~within 120 days from signing of this ~~a~~Agreement.

Section 4.19 Pump Station Services

With regard to the pump stations listed in Exhibit C and included in the definition of "Facilities", Operator shall provide routine inspections of the pump stations and provide SCADA monitoring of the pump stations. Municipality shall be solely responsible for all other services related to said pump stations, unless otherwise agreed upon by the parties.

Article 5 CAPITAL PROJECTS

[THIS ARTICLE INTENTIONALLY LEFT BLANK]

Article 6 ENVIRONMENTAL COMPLIANCE

Section 6.1 Environmental Compliance Guarantee

The Operator hereby guarantees (the "Environmental Compliance Guarantee") that the operation of the Facilities will comply with the all provisions of Applicable Law, including the Municipality's ~~Environmental~~ Discharge Permits ~~listed in Exhibit B~~. The Operator's Environmental Compliance Guarantee does not apply ~~,~~ ~~subject~~ to the following conditions:

(a) The receipt at the Facilities of influent that contains. Non-Processible Water or Wastewater; and/or

(b) An event of Force Majeure or Shutdown; and/or

(c) Municipality's failure or refusal to approve or fund necessary Capital Improvements, maintenance, repair, and/or replacement activities in excess of the single expenditure repair and maintenance approval limit or the Annual Repair and Maintenance Limit; and/or

(d) Municipality's failure or refusal to approve operational/process changes necessary in order to allow the Operator to continue to comply with Applicable Law.

(e) Non-compliant conditions caused by water delivered to the Municipality by the Foss water system, Canute Water Wells, Dixon Water Wells, or any future acquired water wells.

In the event that the Operator is excused from meeting the provisions of the Environmental Compliance Guarantee for any of the reasons set forth in this Section above, the Operator shall provide the best treatment reasonably possible within the constraints of the Facilities' design, condition and physical limitations and shall resume normal operations within a reasonable time.

Section 6.2 Fines and Penalties

In the event that wastewater discharge or treated water violations occur following the Commencement Date and such violations constitute a breach of Operator's Environmental Compliance Guarantee, the Operator shall be responsible for fines, penalties, or damages or the admission of Operator fault for violations that may be imposed by Applicable Law. Operator shall only be responsible for such fines, penalties, or damages to the extent Operator's breach of this Environmental Compliance Guarantee resulted in the fine, penalty, or damages. Prior to settlement or payment of any such fines, penalties or damages, the Operator reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

Article 7 MUNICIPALITY'S RESPONSIBILITIES

Section 7.1 Municipality's and Operator's Representatives

On or before the Commencement Date, the Municipality and the Operator shall each designate authorized representatives (each an "Authorized Representative") to administer this Agreement. Either party to this Agreement shall provide written notice to the other party of any change to the Authorized Representatives no less than fifteen (15) days prior to said change.

Section 7.2 Permits

The Municipality shall be responsible for obtaining, maintaining and directly paying for all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the Municipality's Environmental Permits. Municipality shall also be responsible for the payment of all regulatory and governmental fees associated with ownership and operation of the Facilities and the Municipality's equipment used in connection with the operation and maintenance of the Facilities. The Operator shall provide reasonable assistance to the Municipality in obtaining and maintaining all required state, federal, and local permits and licenses associated with the ownership, operation and maintenance of the Facilities. Operator shall notify Municipality when it becomes aware of any permits and licenses currently required by Applicable Law, or which may be required in the future, that the Municipality does not currently possess.

Section 7.3 Utilities

(a) The Municipality shall assume all responsibility and cost for arranging for the delivery of utility services to the Facilities, including water, electricity natural gas services, phone and high-speed internet service and shall be responsible for maintaining water service to the Facilities at its sole cost and expense.

(b) The Operator shall assume all costs related to the consumption of gasoline and telephone usage, including internet service, at the Facilities.

Section 7.4 Compliance with Laws

The Municipality will comply with Applicable Law pertaining to the management, ownership, operation, maintenance, repair and replacement of the Facilities to the extent that the responsibility of complying with those laws is not specifically assumed by the Operator under the terms of this Agreement. The Operator shall not be responsible for Municipality's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by the Operator hereunder. In the event that Operator becomes aware that the Municipality is in violation of Applicable Law, Operator shall inform the Municipality. Notwithstanding this provision, any failure to inform the Municipality shall not render Operator responsible for violations of Applicable Law by the Municipality.

Section 7.5 License to Use the Facilities

The Municipality hereby grants the Operator, without charge, a license during the term of this Agreement for the Operator's use of the Facilities, including all equipment, structures, facilities and vehicles under Municipality's ownership and which have been assigned by Municipality to the Facilities. The Municipality shall provide Operator with a list of such items on or before the Commencement Date and shall update the list from time-to-time as necessary. Operator shall not use such items for any purpose other than the performance of the Services hereunder.

Section 7.6 Notice of Litigation

In the event that the M~~ti~~unicipality receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Municipality shall give the Operator prompt notice of such proceedings and shall inform the Operator in advance of all hearings regarding such action, claim, suit, proceeding, or investigation. In the event the Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities and/or this Agreement, the Operator shall give Municipality prompt notice of such proceedings.

Section 7.7 Access

The Municipality shall have full and unrestricted access to any and all parts of the Facilities at any and all times to review the performance of the Operator and inspect the Facilities during normal business hours. If notice is not provided prior to any such visit or inspection, such visit or inspection must be announced immediately upon the arrival of the visiting and/or inspection party at the Facilities. In connection with such visits and inspections, the Municipality agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable safety rules and regulations adopted by the Operator and/or promulgated by any governmental authority that regulates work place safety.

Section 7.8 Combined Sewer Overflow and Infiltration and Inflow

(a) The Municipality shall be responsible for complying with applicable combined sewer overflow regulations under local, state and federal laws and the Operator shall not be responsible for any such noncompliance or resulting penalties or fines.

(b) The Municipality shall maintain all sewer lines, pipes, force mains, and all other wastewater transportation lines that are not part, of the Facilities under Operator's control in a manner that will control, to the extent practicable, any leakage of water and/or wastewater from or any infiltration or inflow of storm water into any such lines to the extent that the infiltration or inflow causes damage to the operation of any of the Facilities.

Section 7.9 Approval or Disapproval of Proposed Extraordinary Costs

~~(a)~~ In the event that the Operator provides written notice to the Municipality in accordance with Section 4.5(b) that it proposes to incur an expenditure requiring the Municipality's approval, the Municipality shall provide Operator ~~with approval or disapproval of the proposed action within four (4) business days of receipt of such notice.In the event that the Operator provides written notice to the Client in accordance with Section 4.5(b) that it shall incur a single maintenance cost in excess of $5,000, the Client shall provide Operator~~ with approval or disapproval of the proposed action within forty-eight (48) hours of receipt of such notice. In the event that the Operator does not receive notice of approval or disapproval within forty-eight (48) hours, the Client will be deemed to have approved of the proposed action.

Section 7.10 General Authority

The Municipality shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by the Operator pursuant to the terms of this Agreement.

Article 8 COMPENSATION

Section 8.1 Base Compensation

(a) For the period beginning on ~~July 1, 2015~~the Commencement Date, the Municipality shall pay the Operator an annual fee (the "Base Compensation") in the amount of One Million, Forty-Eight Thousand and Forty-One dollars ($1,048,041.00). The Base Compensation includes the annual maintenance and repair budget for year one of One Hundred Thirty Thousand Dollars ($130,000). The Base Compensation shall be payable in equal monthly installments of Eighty-Seven Thousand Three Hundred Thirty-Six dollars and Seventy-Five cents ($87,336.75), in advance, on the first day of each and every month for the duration of the Agreement, as adjusted pursuant to subparagraph (b) below.

(b) The amount of the Base Compensations shall be increased as of each Adjustment Date in accordance with the formula set forth in Exhibit D hereunder in proportion to the Price Index Increase~~; provided however, the Base Compensation shall not be subject to such increase on the Adjustment Date on July 1, 2020~~. The Base Compensation shall not be reduced by virtue of this Section

~~(c)~~ The Municipality shall pay the Operator at the then current rate of compensation until such time

~~(d)~~(c) as the Operator notifies the Municipality that the Base Compensation has been adjusted. In conjunction with such notification, the Operator will invoice the municipality for any additional compensation owed retroactive to the Adjustment Date and the Municipality shall pay such invoice within thirty (30) days.

Section 8.2 Annual Repair and Maintenance Limit

The Operator will track Annual Maintenance Expenditures incurred against the Annual Repair and Maintenance Limit. If, at any point during the Agreement Year, the actual Annual Maintenance Expenditures incurred to that point exceed the Annual Repair and Maintenance Limit, the Operator will invoice the Municipality for the excess costs in accordance with Section 8.4 and will continue to invoice any additional excess costs on a monthly basis thereafter. Any portion of the Annual Maintenance Limit that has not been spent at the end of each Agreement Year will be credited to the Municipality against the Based Compensation in the subsequent Agreement Year. In the event the Agreement is not renewed in accordance with Section 9.1(b), any portion of the Annual Maintenance Limit that has not been spent at the end of the final Agreement Year will be reimbursed to the Municipality within thirty (30) days following the end of the final Agreement Year.

Section 8.3 Additional Services

Except in connection with an Emergency or Shutdown, the parties shall agree upon a price for any Additional Services to be provided by the Operator prior to the delivery of such Additional Services. The Municipality shall pay the Operator at the agreed price for any Additional Services within thirty (30) days of receipt of Operator's invoices for such Additional Services.

Section 8.4 Other Costs and Expenses

Unless specifically provided otherwise in this Agreement, the Operator will not be required to bear the costs of the following:

(a) Expenses resulting from a change in the scope of Services or physical change(s) to the Facilities in accordance with Section 8.5;

(b) Expenses resulting from a Change of Law in accordance with Section 8.5;

(c) All repairs necessitated by the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;

(d) Special, additional or extraordinary expenses incurred by the Operator in providing an emergency response following the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;

(e) Water or sewage use fees associated with and/or equated to domestic water usage and/or wastewater discharge including the all sewer service charges and volume charges levied under the Sewer Use Ordinance;

(0 Expenses related to municipal or private surveillance and alarm monitoring by third party vendors;

(g) Fire protection;

(h) Professional engineering fees;

(i) Expenses resulting from hydraulic or organic loads exceeding the Baseline Conditions. All calculations to determine whether or not the Baseline Conditions have been exceeded shall be made annually as of each Adjustment Date;

(j) Expenses incurred from the treatment of Non-Processible Water or Wastewater, including without limitation, any penalties and fines that may be assessed as a result therefrom;

(k) All costs attributable to the consumption of electric power;

(1) Capital Improvements, unless agreed to otherwise by the parties;

(m) Taxes as provided in Section 8.6 below;

(n) All expenses necessitated by the repair and/or replacement of equipment or structure damages by parties unrelated to and not under the supervision of the Operator;

(o) Any and all Annual Maintenance Expenditures in excess of the Annual Repair and. Maintenance Limit.

(p) Any cost for each and every other obligation assumed by the Municipality pursuant to this Agreement, but not specifically delineated in this Section 8.4.

(q) Laboratory analyses paid for under the State permit fees.

(r) Chemicals

The Municipality shall directly pay and/or reimburse and/or compensate the Operator for all expenses incurred or paid by the Operator for those items listed in (a) through (r) above within thirty (30) days of Operator's submission of Operator's invoices. For the listed items specified above, the Municipality shall reimburse or compensate the Operator only for authorized costs incurred by the Operator. All costs or expenses subject to reimbursement (excluding any taxes as provided in Section 8.6 below, or Surcharges) shall include an administrative fee of ~~ten~~ fifteen percent (10~~5~~%), plus any finance costs incurred in connection with any or Capital Improvements financed by the Operator for the benefit of the Municipality.

Section 8.5 Change in Scope

(a) In the event of a change in scope or Change of Law which results in ~~the necessity for either~~ an increase ~~or decrease of ten percent (10%) or more~~ in the Operator's cost of providing the Services hereunder, ~~one party~~Operator may provide notice to the ~~other party~~Municipality in accordance with Section 12.8 and the parties shall negotiate in good faith to adjust the Base Compensation to account for such change in Operator's costs.

(b) If the parties are unable to reach a negotiated agreement within thirty (30) days of the date of notice, then the contract may be terminated immediately by ~~either party~~Operator.

~~(b) Reduction of the overall scope of Services performed by the Operator under this Agreement may not, over the entire term of this Agreement, reduce the Base Compensation by an amount greater than ten percent (10%) of the Base Compensation as of the Commencement Date.~~

Section 8.6 Taxes

Municipality shall pay all property, ad valorem, franchise, sales, use, excise, gross receipts, transaction privilege or other taxes, if any, associated with the Services and the ownership, operation and maintenance of the Facilities, other *than taxes imposed on Operator's net income or payroll. Municipality shall pay directly or reimburse Operator for any such taxes that Operator may be required to pay under Applicable Law, including without limitation, any and all sales, use, gross receipts and/or transaction privilege taxes due in connection with or as a result of the Operator's purchase, consumption, or use, in performing the Services hereunder, of tangible personal property and/or subcontracted services.

Section 8.7 Accrual of Interest on Late Payments

Any and all late payments due to either party from the other party shall accrue interest at the rate of one and one-half percent (1_1/2%) per month or the maximum rate permitted by Applicable Law, whichever is greater, from the original due date and until payment is received.

Article 9 TERM AND TERMINATION

Section 9.1 Term

(a) This Agreement shall remain in full force and effect for ~~five (5) years~~ from the Commencement Date until midnight of June 30, 2025, unless terminated for cause as provided for in Section 9.2 below.

(b) Thereafter, this Agreement shall be automatically renewed for successive five (5) year periods unless cancelled in writing by either party at least sixty (60) days prior to the expiration of the then current term. Modifications to the Base Compensation shall be made pursuant to Section 8.1(b) of this Agreement.

Section 9.2 Termination

(a) The failure of either party to comply with any of the material terms of this Agreement shall constitute a default. Upon default by one party, the other party shall send written Notice of Termination. Such notice shall clearly specify the nature of the default and provide the defaulting party forty-five (45) days to cure the default. If the default is capable of being cured within forty-five (45) days but is not cured within forty-five (45) days, the Agreement shall terminate at midnight of the forty-fifth (45th) day following receipt of the Notice. In the case of default that cannot be cured within forty-five (45) days, this Agreement shall not terminate so long as the defaulting party has given written notice of the extension to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the party determined to be in default to the satisfaction of the other party.

(b) In the event of the termination of this Agreement under (a) above, the Municipality shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination plus the unamortized balance of Capital Improvements financed or paid for by the Operator as reflected on Operator's financial statements. Payment shall be made within thirty (30) days of the date of termination.

Article 10 RISK MANAGEMENT

Section 10.1 Indemnification

(a) During the term of this Agreement and to the extent permit by law, each party (the "Indemnifying Party") ~~the Operator~~ shall defend, indemnify and hold harmless the ~~Municipality~~ other party and its respective successors and assigns (each is referred to herein as an "Indemnified Party") against any and all liability for damages, costs, losses, and expenses, including reasonable attorney's fees, resulting from any claim asserted by a third party against the Indemnified Party for wrongful death, bodily injury and/or property damage, but only to the extent caused by the willful or negligent acts or omissions of the ~~Operator~~Indemnifying Party. Notwithstanding any of the foregoing, with respect to any loss, damage, injury or other claims made against the Municipality as a result of or based upon the presence, removal, handling, storage, release, discharge, escape or other disposition of any hazardous substances, waste, pollutants or contaminants, the Operator's obligations to Municipality for indemnity and/or contribution shall not apply if such removal, handling, storage, release, discharge, or other disposition is not required by any local, State or federal law, rule or regulation, or where the loss, damage, injury or claim is not the result of Operator's gross negligence or willful misconduct. The indemnification of Operator by Municipality under this Section 10.1 is made without waiving the Municipality's sovereign immunity under Applicable Law.

(b) ~~With the exception of third party claims for which Operator has an indemnity obligation to the Municipality pursuant to the terms of this Agreement, i~~In no event shall either party be liable to the other party for any special, punitive, indirect and/or consequential damages, including damages attributable to loss of use, loss of income or loss of profit even if such party has been advised of the possibility of such damages. To the extent that this Section 10.1(b) is construed by a court of competent jurisdiction to be in violation of Oklahoma law, this Section shall be void.

Section 10.2 Operator's Insurance

(a) The Operator shall provide and maintain the following levels of insurance coverage at all times subsequent to the execution of this Agreement:

(i) Commercial General Liability Insurance, including contractual liability, with a limit of one million dollars ($1,000,000) per occurrence and two million dollars ($2,000,000) aggregate; and

(ii) Workers Compensation Insurance in compliance with the statutes of the State that has jurisdiction over Operator's employees engaged in the performance of Services hereunder, to the required statutory amount; and

(iii) Automobile Liability Insurance with a combined single limit in the amount of one million dollars ($1,000,000).

(b) The Operator will furnish the Municipality with certificates of insurance which evidence that policies providing the required coverage and limits are in full force and effect. In addition, the Operator will name the Municipality as an additional insured on the general liability policy and automobile liability policy with respect to the Services performed under this Agreement during the term of this Agreement except for any claim against or loss suffered by the Municipality arising as a result of Municipality's negligence or fault and, in circumstances of joint fault or negligence, except to the extent of the loss attributable to the Municipality's proportionate degree of negligence or fault. Operator agrees to provide the Municipality with thirty (30) days notice prior to cancellation of any policy hereunder.

Section 10.3 Municipality Insurance

The Municipality will maintain all risk property insurance for the full replacement value of the Facilities; including coverage for losses resulting from certified and non-certified acts of terrorism.

Section 10.4 Operator's Liability

~~(a)~~ In the event that claims(s) raised against the Operator on account of this Agreement, or on account of the Services performed hereunder, is/are covered under Operator's insurance policies required of the Operator hereunder, the Operator shall not be responsible for any loss, damage or liability beyond the policy amounts contractually required hereunder and the amounts actually paid pursuant the limits and conditions of such insurance policies. With respect to any cause of action and/or claim raised against the Operator that is not covered by the insurance policies required of the Operator hereunder arising under this Agreement, Operator's liability shall not exceed an amount equal to the Base ~~Compensation~~ Fee in effect during the Agreement Year in which such cause of action and/or claim is raised against the Operator.

~~(b) The parties agree that Section 10.4(a) above does not apply to third party claims for which Operator has an indemnity obligation to the Municipality pursuant to the terms of this Agreement. To the extent that this Section 10.4(a) is construed by a court of competent jurisdiction to be in violation of Oklahoma law, this Section shall be void.~~

Article 11 DISPUTE RESOLUTION

Section 11.1 Applicability

To affect a timely and efficient resolution of disputes that may arise during the term of this Agreement, the parties hereto agree that all claims, controversies and disputes, shall be resolved pursuant to Section 11.2.

Section 11.2 Disputes

If a dispute arises pursuant to this Agreement and is not resolved by mutual agreement within sixty (60) calendar days and the dispute involves any matter(s) primarily requiring the exercise of engineering judgment and involves an amount, if any, of two hundred thousand dollars ($200,000) or less, the dispute shall be brought to the Independent Engineer who shall assume exclusive jurisdiction thereof. Any other dispute may be brought to the Independent Engineer mutually by the parties or shall be subject to resolution as the parties deem appropriate, including through mediation, arbitration or litigation. The determination of whether a matter primarily requires engineering judgment shall be resolved in accordance with procedures established by the American Arbitration Association. The Independent Engineer shall be required to make a final determination within thirty (30) days from receipt of such dispute by the Independent Engineer. The Municipality and the Operator shall be bound by the terms of the Independent Engineer's final determination.

The determination by the Independent Engineer shall be made in writing, shall contain written findings of fact on which the decision is based and shall be specifically enforceable by a court of competent jurisdiction. The reasonable expenses of both parties incurred in connection with the resolution of any dispute hereunder shall be borne and paid for by the party losing such dispute; except, however, that each Party shall bear the cost of its own attorney's fees, unless the Independent Engineer determines that the nature of the action or defense of the losing Party was frivolous, in which event the prevailing party's fair and equitable attorney's fees incurred will be paid by the losing party in addition to the losing party's payment of other expenses.

Section 11.3 Selection of Independent Engineer

The Independent Engineer, and any successor Independent Engineer, shall be mutually selected by the parties herein to serve in such capacity pursuant to this Agreement. The Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement. Such Independent Engineer shall have substantial knowledge with respect to water and wastewater treatment systems. Fees of the Independent Engineer so selected shall be paid one-half by the Operator and one-half by the Municipality. The Operator and the Municipality shall cooperate to retain the Independent Engineer upon terms and conditions mutually satisfactory to the Operator and the Municipality as soon as practicable after selection of the Independent Engineer.

Section 11.4 Replacement of the Independent Engineer

If the Independent Engineer resigns, if the parties mutually agree to terminate the services of the selected Independent Engineer or if either party demonstrates that the Independent Engineer is subject to a conflict of interest or has committed malfeasance, then the parties shall mutually agree on a replacement. The successor Independent Engineer shall not otherwise be affiliated with either party or associated with the transactions contemplated by this Agreement.

The successor Independent Engineer shall also have substantial knowledge with respect to water and wastewater treatment systems. If the Operator and the Municipality have not agreed upon the selection of a successor Independent Engineer within ninety (90) days of the resignation or termination of the Independent Engineer, the parties shall arrange for a new Independent Engineer to be selected by the American Arbitration Association as expeditiously as possible. The successor Independent Engineer's fees shall be paid in the same manner as provided in Section 11.3.

Section 11.3~~5~~ Covenant to Continue Work

During resolution of any dispute under this Article, the Operator and the Municipality shall each continue to perform all of their respective obligations under this Agreement without interruption or delay.

Article 12 MISCELLANEOUS

Section 12.1 Relationship

Except as provided in Section 4.7(a) of the Agreement, the relationship of the Operator to the Municipality is that of independent contractor for all purposes under this Agreement, including for the purposes of applicable wage; tax, fringe benefit and worker compensation laws. This Agreement is not intended to create, and shall not be construed as creating, between Operator and Municipality, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied; provided however, Operator may act a purchasing agent for Municipality for parts, materials, and equipment provided hereunder and use Municipality's tax exempt identification number.

Section 12.2 Construction

In construing this Agreement, the following principles shall be followed:

(i) no consideration shall be given to the captions of the articles, sections, subsections or clauses, which are inserted for convenience in locating the provisions of this Agreement and not as an aid in construction; (ii) no consideration shall be given to the fact or presumption that any of the parties had a greater or lesser hand in drafting this Agreement; (iii) examples shall not be construed to limit, expressly or by implication, the matter they illustrate; (iv) the word "includes" and its syntactic variants mean "includes, but is not limited to" and corresponding syntactic variant expressions; (v) the plural shall be deemed to include the singular,

and vice versa; (vi) each gender shall be deemed to include the other genders; (vii) each exhibit, appendix, attachment and schedule to this Agreement is a part of this Agreement;

and (viii) any reference herein or in any schedule hereto to any agreements entered into prior to the date hereof shall include any amendments or supplements made thereto.

Section 12.3 Entire Agreement; Amendments

This Agreement contains the entire agreement between the Municipality and the Operator and supersedes all prior or contemporaneous communications, representations, understandings or agreements. This Agreement may be modified only by a written amendment signed by both parties.

Section 12.4 Waiver

The failure on the part of either party to enforce its rights as to any provision of this Agreement shall not be construed as a waiver of its rights to enforce such provisions in the future.

Section 12.5 Assignment

This Agreement shall be binding upon the successors and assigns of each of the parties, but neither party shall assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. The Municipality may assign this Agreement to a new owner of the Facilities if the Municipality sells the Facilities, provided, however, that such assignee expressly and in writing assumes all obligations of the Municipality under this Agreement. Nothing contained in this Section 12.5 shall be construed to release either party in the event of an assignment of either party's interest.

Section 12.6 Force Majeure

A party's performance of any obligation under this Agreement shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Agreement upon the termination of the event or cause that excused performance hereunder.

Section 12.7 Governing Law and Venue

The Agreement shall be governed by and construed in accordance with the laws of the State. The parties agree that the venue of any action arising from this Agreement shall be in the appropriate State court having competent jurisdiction located in the judicial district in which the Municipality is located.

Section 12.8 Notices

All notices will be in writing and shall be deemed given when mailed by first class mail or delivered in person. Notices required to be given to the Operator will be addressed to:

~~13742 Mary Lane~~
~~Aviston, IL 62216~~220 Gibraltar Road, Suite 200
Horsham, PA 19044
Attn: Kirt Ervin

With a copy to:

Legal Department
~~Severn Trent Environmental Services, Inc.~~Inframark, LLC
220 Gibraltar Road, Suite 200
Horsham, PA 19044

Notices required to be given to the Municipality will be addressed to:

The City of Clinton
P.O. Box 1177
Clinton, Oklahoma 73601
Attn: ~~Public Works Director~~City Manager

Section 12.9 Severability

Should any part of this Agreement for any reason be declared invalid or void, such declaration will not affect the remaining parts of this Agreement, which will remain in full force and effect as if the Agreement had been executed with the invalid portion eliminated.

Section 12.10 Counterparts

This Agreement may be executed in more than one counterpart, each of which shall be deemed an original.

Section 12.11 Modification of Agreement

No change in or modification, termination or discharge of this Agreement, in any form whatsoever, shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith or its duly Authorized Representative, provided, however, that any change in or modification, termination or discharge of this Agreement expressly provided for in this Agreement shall be effective as so provided.

Section 12.12 Survival

Termination or expiration of this Agreement shall not release either party from any liabilities or obligations set forth in this Agreement which (i) the parties have expressly agreed shall survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to be applicable following such termination or expiration.

IN WITNESS WHEREOF, the parties have duly executed this Agreement effective as of the date

EXHIBIT C
DESCRIPTION OF FACILITIES

Surface Water Treatment Plant at ~~—Rt 2, Box 12, Foss, OK~~ 10906 N 2110 Rd. Foss OK, 73647)

Canute Water Source POE at - Rt 2, Box 12, Foss, OK 73647

Reverse Osmosis Treatment Plant located at - 3601 W. Modelle Avenue, Clinton, OK 73601

Ground Water Source Locations:

Golf Course Well #1
Golf Course Well #2
Dixon Well Site

Distribution System Pump Stations:

Neptune
Canyons West
Foss
West High Side
Airport
White Dog

Wastewater Treatment Plant at — 2200 E. Commerce, Clinton, OK 73601

Dead end hydrant schedule — See table below

90 DAY FIRE HYDRANT FLUSHING SCHEDULE			
MONTH.		YEAR:	
DATE	LOCATION	RUN TIME in Minutes	C12Level (ppm)
	6th and Dougherty		
	E. of Sale Barn		
	N of Golf Course		
	Beauty Shop Essaryville		
	Jehovah's Witness Kingdom Hall		
	220 E Frisco and Glenn Smith		
	Glenn Smith and Hayes		
	Glenn Smith and Packing Plant		
	McKinsey Ballard		
	19th and Opal		
	Bob Smith West of Town		
	Golf Course Shop		
	S 20th and Modelle (Buzzy's)		
	Wade Pruitt		
	Nickel South of Town		
	2 miles East of Race Track		
	Cheyenne Cultural Center		
	Copper Ridge Addition		
	Airport		
	28th and Chapman		
	0.5 Miles W of 183 County Line Rd		
	2.5 Miles W of 183 County Line Rd		

EXHIBIT D
COMPENSATION FORMULA

The following formula shall be used to determine the increase in Base Compensation on each Adjustment Date in accordance with Section 8.1(b) of this Agreement:

AAF AFo x [P, / P.]

where:

AAF = Annual Adjusted Fee (new Base Compensation) for the upcoming Agreement Year

AFo = Annual Fee (Base Compensation) for the Agreement Year just ended

Pi = Price Index in effect as of February of the most recent Agreement Year

P. = Price Index in effect as of the prior February. With respect to the first Adjustment Date, P. shall be the Price Index in effect as of the Commencement Date of the Agreement.

EXHIBIT E

~~Page 28~~REVERSE OSMOSIS PLANT SERVICES

1- Operator shall provide the following services for the Reverse Osmosis Plant:

a) Within ninety (90) days of the Commencement Date, assess the Reverse Osmosis Plant's condition and its equipment operating status and make recommendations to the Municipality with regard to current operating condition and alert the Municipality to potential maintenance needs of the Reverse Osmosis Plant and its equipment. In the event the Municipality does not perform any such maintenance recommended by Operator, Operator will not be liable for any loss, damage or liability arising from or related to the Municipality's rejection of or refusal to perform said maintenance, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification;

b) Operate the Reverse Osmosis Plant sufficiently to operate equipment and turn over the water in the reverse osmosis ("RO") membranes and the green sand filters. The water treated during this activity will be classified as non-potable water and will be discharged to the ditch adjacent to the Reverse Osmosis Plant; operations under this provision will be considered maintaining the Reverse Osmosis Plant as a 'care-taker, ready-to-run' status;

c) Complete preventive maintenance for the Reverse Osmosis Plant in accordance with the manufacture recommendations. The Municipality shall purchase all parts and materials, which includes but is not limited to greases, oils, and lubricants, required for such preventative maintenance;

d) Identify and coordinate corrective maintenance needed for the Reverse Osmosis Plant with the Municipality to ensure that all corrective maintenance is performed in accordance with manufacture recommendations, warranty provisions or industry standards.

e) Within ninety (90) days of the Second Amendment's Effective Date, complete a review of all equipment warranty requirements and draft a preventative maintenance schedule;

f) Perform weekly preventative maintenance for the Reverse Osmosis Plant's back-up generator in accordance with the manufacturer recommendations;

g) Operate, maintain, and adjust water treatment plant pumps, motors, valves, electronic monitoring devices, chemical feeders, filters, and other water treatment plant appurtenances at the Reverse Osmosis Plant; however, this section does not apply to any equipment or processes that have not been commissioned and accepted by the Municipality as part of the completed construction of the Reverse Osmosis Plant on the Effective Date of the First Amendment;

h) Provide Municipality with a monthly report regarding the Reverse Osmosis Plant, which includes the following information:

i. The run time for the Reverse Osmosis Plant's equipment;

ii. Water treated by the Reverse Osmosis Plant;

iii. Chemical usage for the Reverse Osmosis Plant;

iv. Electrical usage for the Reverse Osmosis Plant; and

v. Maintenance activities perform by Operator and the operational status of the Reverse Osmosis Plant.

vi. Copies of all regulatory reporting documents, originals to remain on-site per ODEQ requirements.

2- Operator shall not be responsible for:

a) Semi-annual and annual maintenance of the Reverse Osmosis Plant's back-up generator;

b) Providing fuel for the Reverse Osmosis Plant's back-up generator;

c) Perform repairs other than the preventative maintenance as set forth in this Exhibit E;

d) All chemical costs for the Reverse Osmosis Plant; and

e) All laboratory equipment for the Reverse Osmosis Plant.

f) Performing corrective maintenance on equipment under warranty unless directed by the Municipality in writing; in the event the Municipality directs Operator to not perform any such corrective maintenance, Operator

will not be liable for any loss, damage or liability arising from or related to the Municipality's direction to not perform said maintenance, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.

3- Municipality shall, at its cost, provide all operations training specific to the Reverse Osmosis Plant that is related to and necessary to operate the Reverse Osmosis Plant to Operator, which is to be scheduled within thirty (30) days of the Effective Date of the First Amendment and completed no later than ninety (90) days after the Effective Date of the First Amendment. If said training cannot reasonably be scheduled and completed within ninety (90) days, the parties shall complete said training as soon as reasonably possible. Until Municipality provides said training, Operator will not be liable for any loss, damage or liability arising from or related to the services set forth in this Exhibit E, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.

4- Municipality shall make all determinations as to what water source the Operator is to use for the services set forth in this Exhibit E. Operator will not be liable for any loss, damage or liability arising from or related to Municipality's decisions on and direction regarding the water source for the RO Plant, including any loss, damage, or liability for (a) failure of the Facilities, (b) failure to comply with Applicable Law, (c) failure to meet the requirements of this Agreement or (d) claims for indemnification.