PUBLIC NOTICE OF A REGULAR MEETING
OF THE PUBLIC WORKS AUTHORITY
TUESDAY, MAY 19, 2015 AT 5:30 PM
CLINTON CITY HALL

AGENDA

Source listing: 05/19/15 Meetings
Original source: https://agendas.clintonok.gov/archive/2015/051915/launch.htm
Original authority agenda: https://agendas.clintonok.gov/archive/2015/051915/council.htm
Original authority agenda: https://agendas.clintonok.gov/archive/2015/051915/publicwork.htm

1. Call to Order
2. Opening Prayer /Pledge
3. Consent Agenda Greg Hill, First Church of God
    A. Consider Approval of Minutes on May 5, 2015
4. Action Items:
    A. Consider Amendment to Agreement with Severn Trent Environmental Services, Inc.
5. Trustee's Report
6. City Manager's Report
7. Audience Participation
8. Adjournment
    A. Proceed to City Council Agenda

Filed this 15th day of May, 2015. Posted on the bulletin board in the lobby of the Clinton City Hall on May 15, 2015 at 1:30 p.m.

_____

Not recorded

MINUTES OF CLINTON PUBLIC WORKS AUTHORITY MEETING
MAY 5, 2015

Minutes of the regular meeting of the Chairman and Trustees of the Clinton Public Works Authority of Clinton, Oklahoma, Custer County, held in the City Council Room, City Hall on Tuesday, May 5, 2015, at 5:30 p.m. A notice of this meeting with agenda was posted on the bulletin board in the lobby of Clinton City Hall on May 1, 2015.

Chairman Seth Adams called the meeting to order with the following present;

MAYOR: Seth Adams
COUNCIL: Don Rodolph, Jason Hulin, Lucas Martinez, Wheeler Lowry
CITY MANAGER: Mark Skiles
CITY CLERK: Lisa Anders
CITY TREASURER: Debra Blanchard
DEPUTY CLERK: Lisa Anders
CITY ATTORNEY: Ryan Meacham
NEWS MEDIA: Gerald Green
OTHERS: Donald Webb, Kris Wermy, Joyce Kinney, Julie Menge, Keaton Modi, Gene McCullough, Jeremy Brush, Matt Jett, Karissa King, Conan Wilson, Wade Anders and others.

Gerald Green opened the meeting with prayer and Trustee Wheeler Lowry led the Pledge of Allegiance.

AGENDA ITEM NO. 3: CONSENT AGENDA

A. Minutes of Regular Meeting of April 7, 2015
B. Consider Claims

Moved by Trustee Hulin and seconded by Trustee Lowry that Consent Agenda Item No. 3 (a-b) be approved.

Chairman put the motion to a roll call vote:

Aye: Hulin, Lowry, Martinez, Rodolph, Adams
Nay: None

Chairman declared the motion carried.

AGENDA ITEM NO. 4 ACTION ITEMS

4A. ACKNOWLEDGE RECEIPT OF AMENDED PERMIT NO. WW000020150007 FOR THE CONSTRUCTION OF PWS WATER WELL TO SERVICE THE CITY OF CLINTON BY THE OKLAHOMA DEPARTMENT OF ENVIRONMENTAL QUALITY

City Manager Mark Skiles reported that amended water well permit for the Dixon Well has been received from the Oklahoma Department of Environmental Quality.

Motion was made by Trustee Rodolph and seconded by Trustee Hulin to acknowledge receipt of the amended water well permit for the Dixon Well from Oklahoma Department of Environmental Quality.

Chairman put the motion to a roll call vote:

Aye: Rodolph, Hulin, Lowry, Martinez, Adams
Nay: None

Chairman declared the motion carried.

4B. CONSIDER AND TAKE ACTION ON AMENDMENT TO CANUTE WATER AGREEMENT

Trustee Rodolph explained that he had worked with Canute Attorney Pat Cornell and discussed the existing water agreement. It was agreed that the June 1 deadline would not be met so the amendment agreement presented tonight would extend the deadline to November 1, 2015. He said that it would be requested that Canute consider and approve the agreement.

Motion was made by Trustee Hulin and seconded by Trustee Martinez to approve the amendment to the Canute Water Agreement to extend the deadline to November 1, 2015.

Chairman put the motion to a roll call vote:

Aye: Hulin, Martinez, Rodolph, Lowry, Adams
Nay: None

Chairman declared the motion carried.

AGENDA ITEM NO. 5 TRUSTEE REPORT

None

AGENDA ITEM NO. 6: MANAGER'S REPORT

City Manager Mark Skiles asked Severn Trent representative Jeremy Brush to give an update on the water treatment plant repairs.

Brush said the equipment for the chlorine dioxide generator has been received and the start up operation is complete. He reported that production of water from Lake Clinton would begin tomorrow. He also reported that the lake is 40% full and receiving 100 gallon or water per minute from both creeks.

AGENDA ITEM NO. 7: AUDIENCE PARTICIPATION

None

AGENDA ITEM NO. 8: ADJOURNMENT

Moved by Trustee Lowry and seconded by Trustee Hulin to adjourn the meeting.

Chairman put the motion to a roll call vote:

Aye: Lowry, Hulin, Martinez, Rodolph, Adams
Nay: None

Chairman declared the meeting adjourned at 5:40 p.m.

AMENDED and RESTATED

WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT

Between

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.

and

THE CLINTON PUBLIC WORKS AUTHORITY

May ___, 2015

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WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT

THIS WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT (hereinafter, the "Agreement") is made and entered into this ___ day of May, 2015, 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., a Texas corporation with its principal place of business at 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) and the Operator desires to provide said operations and maintenance services to the Municipality; and

WHEREAS, the parties desire to Amend and Restate the Agreement between the Parties dated July 1st, 2010 such that this 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 each and every anniversary of the Commencement Date.

"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 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 thousand dollars ($100,000) 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 8.1 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, 2010.

"Environmental Compliance Guarantee" is defined in Section 6.1.

"Facilities" or *"Municipality's Facilities"* is defined as the water treatment plant, wastewater treatment plant, 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, 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,

"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.

"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, 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 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 water storage capacity levels 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; (c) routine preventative maintenance of the Facilities; (d) repair and replacement of the Facilities' equipment; (e) laboratory testing and analysis; and (f) 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; (vii) perform plumbing and electrical maintenance; (viii) maintain vehicles and light duty service trucks necessary for daily operations; and (ix) 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 Operator 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 shall agree 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

Operator shall perform any distribution testing and monitoring in accordance with Applicable Law. Operator will flush dead end hydrants in accordance with Municipalities 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, within thirty (30) working days of the Commencement Date, develop an informational communications program, subject to Municipality's approval, which 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 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 develop an emergency response plan that shall designate emergency team members and identify 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 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.

(d) 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.

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 Permits, 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 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 Municipality 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

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.

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 Municipality shall pay the Operator an annual fee (the "Base Compensation") in the amount of Seven Hundred Eighty-Three Thousand One Hundred and Sixty-Eight dollars ($783,168). The Base Compensation shall be payable in equal monthly installments of Sixty-Five Thousand Two Hundred and Sixty-Four dollars ($65,264), 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. 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) 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;

(l) 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 percent (10%), 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 may provide notice to the other party 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.

(c) 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 (11/2%) 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 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, the Operator shall defend, indemnify and hold harmless the Municipality 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. 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, 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 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 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 11.5 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.

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:

Severn. Trent Environmental Services, Inc.
520 W SW 59th St.
Mustang, OK 73064
Attn: John Bannen

With a copy to:

Legal Department
Severn Trent Environmental Services, Inc.
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

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 first set forth above.

MUNICIP • ITY: By: _____

Title: _____ Chairman

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.

By: _____

Title:

_____ _____

Approved as to form and legal sufficiency this _____ day of _____

EXHIBIT A
BASELINE CONDITIONS

EXHIBIT B
MUNICIPALITY'S DISCHARGE PERMITS

EXHIBIT C
DESCRIPTION OF FACILITIES

Water plant at – Rt 2, Box 12, Foss, OK 73647

Wastewater plant at – 2200 E. Commerce, Clinton, OK 73601

Pump Stations:

- Neptune
- Canyons West
- Foss
- West High Side

Ground Water Source Location – Dixon Well Site

Dead end hydrant schedule – See table below

90 DAY FIRE HYDRANT FLUSHING SCHEDULE			
MONTH:		**YEAR:**	
DATE	LOCATION	RUN TIME in Minutes	Cl2Level (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:

$$AAF\ AF_0 \times [P_i / P_o]$$

where:

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

AF_0 = Annual Fee (Base Compensation) for the Agreement Year just ended

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

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

PUBLIC NOTICE OF A REGULAR MEETING
OF THE CITY COUNCIL
TUESDAY, MAY 19, 2015 AT 5:30 PM
CLINTON CITY HALL

AGENDA

Source listing: 05/19/15 Meetings
Original source: https://agendas.clintonok.gov/archive/2015/051915/launch.htm
Original authority agenda: https://agendas.clintonok.gov/archive/2015/051915/council.htm
Original authority agenda: https://agendas.clintonok.gov/archive/2015/051915/publicwork.htm

1. Call to Order

2. Opening Prayer /Pledge Greg Hill, First Church of God

3. Consent Agenda

    A. Consider Approval of Minutes of May 5, 2015
    Consider approval of minutes of Public Hearing May 5, 2015

4. Action Items:

    A. Consider continuance of condemnation for property in the 200 Block of West Modelle - Owner: Juan Barrientos

    B. Consider continuance of condemnation for property at 516 North 8 th - Owner: Alma Rosa Galvan

    C. Consider Ordinance No. 757A regarding Clinton Cemetery rules and regulations

    D. Consider and take action on Assignment Affidavit for Community Intervention Center

5. Council Report

6. City Manager’s Report

7. Audience Participation

8. Adjournment

Filed this 15th day of May, 2015. Posted on the bulletin board in the lobby of the Clinton City Hall on May 15, 2015 at 1:30 p.m.

_____

Not recorded

MINUTES OF THE CLINTON CITY COUNCIL
MAY 5, 2015

Minutes of the regular meeting of the Mayor and City Council of the City of Clinton, Oklahoma, Custer County, held in the City Council Room, City Hall on Tuesday, May 5, 2015 at 5:30 p.m. A notice of this meeting with agenda was posted on the bulletin board in the lobby of Clinton City Hall on Friday, May 1, 2015.

Mayor Seth Adams called the meeting to order with the following present:

MAYOR: Seth Adams
COUNCIL: Don Rodolph, Jason Hulin, Lucas Martinez, Wheeler Lowry
CITY MANAGER: Mark Skiles
CITY CLERK: Lisa Anders
CITY TREASURER: Debra Blanchard
DEPUTY CLERK: Shona Stermer
CITY ATTORNEY: Ryan Meacham
NEWS MEDIA: Gerald Green and Mike Smith
OTHERS: Kris Wermy, Gene McCullough, Donald Webb, Joyce Kinney, Julie Menge, Keaton Modi, Matt Jett, Karissa King, Conan Wilson, Wade Anders and others.

Gerald Green opened the meeting with prayer and Councilman Wheeler Lowry led the Pledge of Allegiance.

AGENDA ITEM NO. 3: CONSENT AGENDA

A. Minutes of Regular Meeting of April 21, 2015
B. Consider Claims

Motion was made by Councilman Hulin and second by Councilman Lowry that Consent Agenda Item No. 3 (a) be approved.

Mayor put the motion to a roll call vote:

Aye: Hulin, Lowry, Martinez, Rodolph, Adams
Nay: None

Mayor declared the motion carried.

AGENDA ITEM NO. 4 ACTION ITEMS

4A. CONSIDER ORDINANCE 957 REGARDING REZONING OF PROPERTY OWNED BY JUAN MARTINEZ

City Manager Mark Skiles explained that the public hearing held earlier was for discussion regarding the rezoning. The Planning and Zoning Board submitted a recommendation to rezone the property to C-3 Tourist Commercial District. Ordinance 957 contains an emergency clause regarding the rezoning.

Motion was made by Councilman Hulin and seconded by Councilman Martinez to approve Ordinance No. 957 regarding rezoning the property at 451 South 40th to C-3 Tourist Commercial District.

Mayor put the motion to a roll call vote:

Aye: Hulin, Martinez, Lowry, Rodolph, Adams
Nay: None

Mayor declared the motion carried.

Motion was made by Councilman Hulin and seconded by Councilman Martinez to approve the emergency clause for Ordinance No. 957.

Mayor put the motion to a roll call vote:

Aye: Hulin, Martinez, Lowry, Rodolph, Adams
Nay: None

Mayor declared the motion carried.

4B. CONSIDER RESOLTUION 850 REGARDING ESTABLISHING THE DATES FOR THE MUNICIPAL ELECTION

City Manager Mark Skiles explained that the resolution establishes the filing period and election dates are per the approval of the charter change in the April 7, 2015 election.

Motion was made by Councilman Hulin and seconded by Councilman Lowry to approve Resolution 850 regarding establishing the dates for the 2015 municipal elections.

Mayor put the motion to a roll call vote:

Aye: Hulin, Lowry, Rodolph, Martinez, Adams
Nay: None

Mayor declared the motion carried.

4C. CONSIDER ELECTION OF TWO TRUSTEES TO THE OKLAHOMA MUNICIPAL ASSURANCE GROUP BOARD

City Manager Mark Skiles explained that two trustees on the Oklahoma Municipal Assurance Group Board will be completing their terms. The City of Clinton is eligible to vote for the trustees of the board.

Motion was made by Councilman Rodolph and seconded by Councilman Hulin to reappoint Patti Shelite and Craig Stephenson as trustees to the Oklahoma Municipal Assurance Group Board.

Mayor put the motion to a roll call vote:

Aye: Rodolph, Hulin, Lowry, Martinez, Adams
Nay: None

Mayor declared the motion carried.

AGENDA ITEM NO 5.COUNCIL REPORT

Councilman Hulin asked that the City look into options for cleaning up/demolition of the property at 516 and 520 North 15th. He said he had been told the property is Indian Tribal Land but he said it is in poor condition.

City Manager Mark Skiles said ownership would be determined and options would be reviewed.

AGENDA ITEM NO. 6: MANAGER'S REPORT

City Manager Skiles reported that over the weekend soccer and baseball tournaments were held at Acme Brick Park. He said vehicles were parked all over the park and traffic was congested at 28th and Modelle intersection.

It was reported at 84 teams ranging from 4 year old to 13 year old were involved in the soccer tournament and 27 baseballs teams were involved in the baseball tournament.

AGENDA ITEM NO. 7 : AUDIENCE PARTICIPATION

None

AGENDA ITEM NO. 8: ADJOURNMENT

Moved by Councilman Hulin and seconded by Councilman Lowry to adjourn the meeting.

Mayor put the motion to a roll call vote:

Aye: Hulin, Lowry, Rodolph, Martinez, Adams
Nay: None

Mayor declared the meeting adjourned at 6:00 p.m.

PUBLIC HEARING
TUESDAY, MAY 5, 2015
CITY HALL
5:30 P.M.

Minutes of a Public Hearing held in the Clinton City Council Room, City Hall on Tuesday, May 5, 2015 at 5:30 P.M. A notice of this meeting was posted on the bulletin board in the lobby of the Clinton City Hall on April 16, 2015.

The public hearing was held to discuss the rezoning of property located in Lot 3, Block 1, Riverview Industrial Subdivision owned by Juan Martinez. The property is at 451 South 40th and is currently zoned I-3 Heavy Industrial District and requested to rezone to C-3 Tourist Commercial District. City Manager Mark Skiles said the request had been presented to the Planning and Zoning Board. Mr. Martinez plans the operation of an indoor soccer facility.

No comments were received.

The public hearing was adjourned.

Those present included:

Chairman Seth Adams
Councilmembers: Don Rodolph
Lucas Martinez
Wheeler Lowry
Jason Hulin
City Manager Mark Skiles
City Clerk Lisa Anders
Treasurer Debra Blanchard
Gerald Green
Kris Wermy
Gene McCullough
Donald Webb
Julie Menge
Conan Wilson
Shona Stermer
Matt Jett
Keaton Modi
Joyce Kenney

ORDINANCE NO. 757A

AN ORDINANCE TO AMEND CEMETERY RULES AND REGULATIONS

WHEREAS, the City of Clinton is the owner of the Clinton Cemetery.

WHEREAS, the City has adopted new rules and regulations for its cemetery.

WHEREAS, it has become necessary to amend the rules and regulations as adopted in 1992.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF CITY OF CLINTON, CUSTER COUNTY, OKLAHOMA:

I. Section 24 of Ordinance 757, Codified as 8-4-20 of the Clinton City Code of Ordinances, shall be amended to read as follows:

Section 24. MARKERS – PERMITS

A. Permanent and temporary memorials of cement, artificial stone, composition, wood, tin or iron shall not be permitted. All markers, monuments, mausoleums or vaults, which part or any part that shows above the surface, must be made of natural marble, granite, or bronze, and shall be of first grade material and carry a certificate of guarantee as to quality and workmanship. All concrete or part concrete burial vaults or so called individual mausoleums, all steel copper or bronze vaults, not being made of natural marble or granite shall be buried underground with at least eighteen inches (18") of earth covering them, except on lots now having said work.

B. One marker or monument shall be permitted for each space, and such marker or monument shall be placed at the head of the grave, except in the case of a government marker which may be placed at the foot of the grave, if a family or companion marker or monument is at the head of the grave. No individual marker or monument may be placed on a base with a width larger than five feet (5') unless the lot owner has adjacent spaces that are not intended for burial. No marker or monument shall be placed in the cemetery until a permit has been purchased from the City Clerk and the Cemetery Supervisor has noted on the space where the marker is to be placed. Charges for the placing of markers or monuments shall be set from time to time by the City Council.

C. Flat markers only may be placed in the area designated as "Veterans Area" and in those areas restricted to flat markers and so designated on the official Cemetery Map on file in the City Clerk's Office.

D. Any markers or monuments placed prior to burial or internment that interfere with the opening of a grave shall be moved by the City and returned to its original placement by the City. The owner of the lot shall be liable for the actual cost of moving the marker or monument as determined by the City. The City will not be held liable for any damage incurred in the removal and replacement process.

E. In the event that "Military Markers" are delivered to the City for placement on a lot, the City shall place or set mark only upon receipt of a marker placement fee as established by the City Council.

II. Emergency Clause. This ordinance shall take effect immediately upon adoption.

PASSED AND DULY ADOPTED by the Council of the City of Clinton, Oklahoma this ___ day of _____, 2015.

_____
MAYOR

ATTEST:

_____
CITY CLERK

(SEAL)

3812 N. Santa Fe, Suite 400
P.O. Box 268812
Oklahoma City, OK 73126-8812

Main # (405) 530-2800
FAX # (405) 530-2890

State of Oklahoma
Office of Juvenile Affairs

April 21, 2015

City of Clinton
PO Box 1177
Clinton, OK 73601-1177

Subject: FY2016 Assignment Affidavit for Community Intervention Centers

Dear CIC Contractor:

Enclosed is the FY2016 Assignment Affidavit for Community Intervention Centers. If you intend to subcontract the services of the Contract, attach a copy of the subcontract agreement. If you intend to also assign payment to the subcontractor, please complete the attached Assignment Affidavit and return as soon as possible to:

Tammy Conaughty
Office of Juvenile Affairs
Department of Financial Services
P. O. Box 268812
Oklahoma City, OK 73126-8812

If you have any questions, my direct line is (405) 530-2987.

Sincerely,

Tammy Conaughty
Contract and Acquisition Agent

CC: **Dennis Gober, Division Administrator**
Contracts File CRL2015-364

AFFIDAVIT OF ASSIGNMENT – FY2016

The City of Clinton, (hereinafter referred to as "City") has entered into a contract with the Office of Juvenile Affairs (hereinafter referred to as "OJA) for the contract period 7/1/2015 through 6/30/2016 to provide Community Intervention Centers (CIC) so that law enforcement has a place to take juveniles who are in their custody. Oklahoma Legislation 10A O.S. §2-7-305(D).1. has authorized and mandated OJA in its role as planner and coordinator of juvenile justice and delinquency prevention services to enter into agreements for the establishment and maintenance of CIC's. The City has entered into a contract with Multi-County Youth Service (hereinafter referred to as "Subcontractor") to develop and provide those services required by the agreement with OJA. Attach subcontract.

The City hereby assigns to the Subcontractor the authority to submit claims directly to OJA and receive payments directly from OJA for services provided as the agreement.

Subcontractor Information:

FEI #: 73-0780641

Name: Committee of Concern, Inc. dba Multi-County Youth Service

Mailing Address: P.O. Box 104

Clinton, OK 73601

Approved by the City Council of Clinton, Oklahoma, and dated this _____ day of _____, _____.

_____, Mayor

Subscribed and sworn before me this ____ day of _____, _____.
My Commission expires:_____

_____
NOTARY PUBLIC