



Agenda Commentary

Item Title/ Subject: Severn Trent Agreement amendment.

Staff Source: City Manager, Steve Hewitt

Date: July 1st, 2012

History/Background Information:

The City has negotiated the needed changes for the maintenance agreement.

Item/Subject Summary:

These changes protect the City due to the cumbersome chemical formula. Simplified and better protected.

Price/Cost: Base contract only

Recommendation:

Staff recommends the approval of this amendment.

FIRST AMENDMENT
TO THE
WATER AND WASTEWATER OPERATION AND MAINTENANCE AGREEMENT
Between
SEVERN TRENT ENVIRONMENTAL SERVICES, INC.
and
THE CLINTON PUBLIC WORKS AUTHORITY

THIS FIRST AMENDMENT (the "First Amendment") is made on this ___ day of _____, 2012 by and between The Clinton Public Works Authority, 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"). The Municipality and Operator may be referred to as a "Party" or collectively as the "Parties".

WHEREAS, the Parties entered into a Water and Wastewater Operation and Maintenance Agreement (the "Agreement") effective July 01, 2010; and

WHEREAS, the Parties now desire to make certain changes to the Agreement pursuant to the terms of this First Amendment.

NOW, THEREFORE, in consideration of the mutual promises contained herein and subject to the terms and conditions herein stated, the Parties hereby agree to amend the Agreement as follows:

1. All capitalized terms contained in this First Amendment and not specifically defined herein, shall have the meaning provided to such terms in the Agreement.
2. The definition of "*Baseline Power Rate*" in Article 1 (Definitions) of the Agreement shall be deleted in its entirety.
3. The definition of "*Price Index Increase*" in Article 1 (Definitions) of the Agreement shall be deleted and restated in its entirety and instead shall read as follows:

"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.

4. Section 4.1 of the Agreement (General Scope of Services and Operator's

Responsibilities) shall be deleted in its entirety and instead shall read as follows:

Subject to the terms and conditions provided herein, the Operator shall provide labor, tools, and materials, including coordinating the purchasing of 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 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 preventive 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.

5. Section 7.3 of the Agreement (Utilities) shall be deleted and restated in its entirety and instead shall read as follows:

- (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 gas and telephone usage, including internet service, at the Facilities.

6. Subsections (a) and (b) of Section 8.1 of the Agreement (Base Compensation) shall be deleted and restated in their entirety and instead shall read as follows:

- (a) For the period beginning on the Commencement Date, the Municipality shall pay the Operator an annual fee (the "Base Compensation") in the amount of seven hundred thirty eight thousand seven hundred and eight dollars (\$738,708). The Base Compensation shall be payable in equal monthly installments of sixty one thousand five hundred and fifty nine dollars (\$61,559), 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 Compensation 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. Unless, as calculated in accordance with Exhibit D, the Base Compensation is to be reduced by twenty-five percent (25%) or more during any consecutive three (3) year period during the term of this Agreement, the Base Compensation shall not be reduced by virtue of this Section.

7. Subsection (k) of Section 8.4 of the Agreement (Other Costs and Expenses) shall be deleted in its entirety and instead shall read as follows:

All costs attributable to the consumption of electric power;

8. Subsection (r) of Section 8.4 of the Agreement (Other Costs and Expenses) shall be added to the Agreement and shall read as follows:

Chemicals.

9. The paragraph immediately following Subsection (r) of Section 8.4 of the Agreement (Other Costs and Expenses) shall be deleted and restated in its entirety and instead shall read as follows:

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.

10. Exhibit D to the Agreement (Compensation Formula) shall be deleted and restated in its entirety and instead shall read as attached to this First Amendment.

11. Except for the specific amendments to the Agreement as provided in this First Amendment, all other provisions contained in the Agreement are and shall remain in full force and effect.

IN WITNESS WHEREOF, the Client and the Operator have caused this First Amendment to the Agreement to be executed in their respective names by their duly authorized representatives on this ___ day of ___, 2012.

MUNICIPALITY

By: _____

Name:

Title:

SEVERN TRENT ENVIRONMENTAL SERVICES, INC.:

By: _____

Name:

Title:

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:

$$AAF = AF_0 \times [P_1 / P_0]$$

where:

- AAF = Annual Adjusted Fee (new Base Compensation) for the upcoming Agreement Year
- AF₀ = Annual Fee (Base Compensation) for the Agreement Year just ended
- P₁ = Price Index in effect as of February of the most recent Agreement Year
- P₀ = Price Index in effect as of the prior February. With respect to the first Adjustment Date, P₀ shall be the Price Index in effect as of the Commencement Date of the Agreement.