



## *Agenda Commentary*

**Item Title/ Subject:** Raw Water Agreement with Town of Canute

**Staff Source:** City Manager, Steve Hewitt

**Date:** Feb 28, 2014

**Background/Subject Information:**

Council/PWA had explored a finish water agreement with Canute in the past and the Council pulled away from that agreement to explore our own wells and water treatment plant.

Canute has some additional water rights and willing to provide the City of Clinton that Raw water, which we would send to our Clinton Lake Treatment Facility.

Investigation of the wells is ready. If PWA agrees to contract, staff will complete and verify quantity life and quality of the water. Both these are critical due to the cost of the contractual water.

**Recommendation:**

Staff recommends.

Due to our situation, this could be an additional short term relief and protection. (Pending quality/quantity investigation)

**Price/Cost:** see contract

## **RAW WATER PURCHASE CONTRACT**

This contract is made and entered into the \_\_\_\_\_ day of \_\_\_\_\_, 2013 by and between the Town of Canute and the Canute Public Works Authority (Canute), a municipal corporation and Authority organized and existing under and by virtue of the laws of the State of Oklahoma, and the City of Clinton and the Clinton Public Works Authority (Clinton) a municipal corporation and Authority organized and existing under and by virtue of the laws of the State of Oklahoma.

Whereas, Canute has acquired water rights in and around its municipal limits;

Whereas, Clinton is in need of additional water and has an interest in the acquisition of additional water rights;

Now Therefore, the Town of Canute and the Canute Public Works Authority and the City of Clinton and the Clinton Public Works Authority (The Parties) hereby agree as follows:

Canute has acquired water rights in and around its municipality, including but not limited to tracts in Township 8 and 9, Range 20, W.I.M, and Township 10 and 11, Range 19 W.I.M., all in Washita County, Oklahoma

The Parties agree that, as a condition precedent to the investment, by Clinton, in infrastructure capable of compliance with this contract, The Parties must determine the volumetric flow of Canute's available water rights.

Canute agrees to operate the interconnection facilities including the groundwater well up to the point of distribution at the wellhead.

Clinton agrees to provide water supply facilities, namely:

- (i) Interconnection facilities including but not limited to wells, pumping station and transmission lines connecting Canute's groundwater wells at each wellhead

Clinton agrees to purchase, from Canute, raw water extracted by Canute from the above described tracts

### **I. Investigation**

(A) The engineers, attorneys, agents, operators and employees of Clinton may go onto any of the above described tracts to inspect, make surveys, or perform tests, including the drilling of test wells, to determine the condition, value, and usability of the property, with reference to the proposed location of improvements, facilities, equipment, or appliances and for the purposes of investigating the conditions relating to the quality and quantity of the water. The cost of restoration shall be borne by Clinton.

(B) Clinton employees or agents acting under this authority who enter the subject property shall observe any and all posted rules and regulations and shall be cognizant of safety, internal security, and fire protection. Further, all employees or agents shall present proper credentials upon request by the property owner.

(C) During the investigation phase, Canute will obtain all necessary permits, licenses,

inspections, and zoning approvals from ODEQ for the construction of wells capable of producing up to 1.5 million gallons of water per day.

(D) All investigations or inspections shall be conducted at reasonable times. All costs of investigation or inspections shall be borne by Clinton.

## **II. Water Production.**

(A) Provided that sufficient water amounts are located, as determined by Clinton, Canute agrees to supply to Clinton and Clinton agrees to purchase and take from Canute under and in accordance with terms of this agreement, a supply of water through a metered connection. Canute shall supply available water at the interconnection facilities between the wellhead and Clinton's transmission lines.

(B) Quantity of Water To Be Furnished. Canute agrees to supply to Clinton for use by its customers, such quantities of raw groundwater as are capable of being produced, up to 1.5 million gallons of water per day.

(C) Quality of Water To Be Furnished: Canute agrees that if the quality of the water produced from the subject wells should be of a quality that cannot be treated at the Clinton Lake Treatment Plant or directly blended with water from Foss Lake, to produce potable water, Clinton shall have the right to cease production and initiate the provisions of subparagraph II(F) below.

(D) Canute and Clinton shall each notify and keep the other informed of the name of the individual(s) in charge of operations of their respective systems.

(E) Each Party shall be permitted to provide emergency service to others when necessary and where possible. Each Party shall promptly advise the other Party of the need and nature of the emergency service provided and the probable duration.

(F) Both Parties agree and acknowledge that subsection 4(B) of Canute's Water Purchase Agreement with the Edward S. Greteman Revocable Living Trust, dated September 17, 1996 and the Dolores Greteman Revocable Living Trust, dated September 17, 1996 (Greteman Agreement), contains an acceleration clause for monthly minimum payments (\$3,000.00/mo); upon the commencement of production of water. The Parties further agree and acknowledge that this provision is only applicable if water begins being produced and continues in production. If water is never produced, for sale to Clinton, no monthly minimum will ever be triggered. Further, if the water ceases to be produced in amounts which exceed the required monthly minimum amount (Underproduction), Clinton will continue to pay the minimum purchase amount according to the following procedures:

(1) If prior to the 2 year Release date, provided for in Paragraph 5 of the Greteman Agreement, Clinton will pay \$2,310.00 per month of the minimum purchase amount and Canute will pay \$690.00 per month of the minimum purchase amount;

(2) If after the 2 year Release date, provided for in Paragraph 5 of the Greteman Agreement, Clinton may require that the water production from the wells be immediately reduced to a volume equal to or less than \$1,999.00 in cost, and the contract shall be terminated under the provisions of Paragraph 5 of the Greteman Agreement, in the following month.

(G) All water produced during any Underproduction, shall continue to be solely owned by Clinton, in consideration of the \$2,310.00 paid each month.

### **III. Facilities, Equipment Installation and Operation.**

(A) Clinton will provide such transmission mains, pumping stations (including the groundwater wells, reservoirs, and appurtenances necessary to transmit groundwater from Canute's wellhead to Clinton's receiving point,

(B) Clinton will be responsible for:

(1) the operation and maintenance of the well and interconnection facilities, at the point of discharge from the wellhead to distribution.

(2) The direct cost of operating and maintaining the interconnection facilities, transmission lines, and pumping station, including power

(C) Canute will be responsible for:

(a) the operation of the groundwater well.

(D) Clinton shall provide any and all devices reasonably necessary for the purpose of controlling, measuring, transmitting and recording flows of the supply of water furnished, and for the transmitting and recording of pressures, reservoir levels and other required operational information.

(E) Canute will obtain all necessary permits, licenses, inspections, zoning, approvals and right-of-ways for the construction of the infrastructure on surface of the subject water rights described above for production of water from the subject wells. All acquisition and damages amounts are subject to the final approval of Clinton.

(F) Clinton will, at its own expense, operate, maintain, replace and improve the system facilities as it deems necessary for delivery of groundwater to Clinton when and as required under this contract during the term of this contract, including any extension of it.

(G) Clinton agrees that Canute, at its own expense, may connect to the interconnection any pumping station for the purpose of supplying water to Canute's distribution system provided the Clinton supply is not impaired.

### **IV. Delivery.**

(A) Canute shall deliver groundwater at such time as Clinton shall have completed the construction of the wells, interconnection facilities and the full transmission system or, at the option of Clinton at such earlier time as one or more customers of Clinton's facilities are capable of receiving groundwater.

(B) The Parties shall each notify the other as promptly as practicable of all emergencies, failures, malfunctions or other conditions in their respective system which may directly or indirectly affect the other party's system.

### **V. Reporting Requirements.**

(A) Canute shall submit on a monthly basis, by the 10th day of each month, a report showing the amount of groundwater delivered to Clinton under this contract for the previous month.

### **VI. Measurement.**

(A) The quantity of groundwater furnished to Clinton under this contract will be measured on the discharge piping of each pump and on the discharge header leaving the interconnection facilities of each pumping station. The unit of measurement shall be cubic feet of water, United States Standard Liquid Measure.

(B) Clinton shall provide mutually acceptable meters for measuring the supply of water on the discharge side of each pump, and mutually acceptable master meters for measuring the flow of water in the discharge headers from interconnection facilities pumping station. The master meters will be the primary devices used for the registration and billing of quantities of water supplied under this contract. All meters are to be adjacent to and readable in the interconnection facilities pumping station.

(C) Clinton's representative will regularly inspect the meters measuring the supply of water furnished and at the expense of Clinton will repair or replace any part of a meter which has a total registration greater than the industry standards, or which has been in service for a period greater than the industry standard or which is known or suspected to be registering incorrectly. Canute shall check the master meter for accuracy semiannually.

(D) The readings made for purposes of billing Clinton shall be made by Canute every calendar month. Weekly readings shall be transmitted Clinton.

(E) When it is determined that a measuring device registered incorrectly, an estimate of the amount of water furnished through the faulty device shall be prepared by Clinton and transmitted to Canute for the purpose of billing Clinton. The estimate shall be based upon the best available information, including summation of other available meter readings, the average of twelve preceding readings of the meter, exclusive of incorrect reading, and calibration of the master meter.

## **VII. Rates, Discounts and Billing.**

(A) The charges for groundwater furnished to Clinton under this contract shall be at the rate fixed for large quantities of water furnished through meters each wellhead, said rate being fixed as described below. These charges known as the "Basic Charge" shall not be subject to any subcharge, fee or tax.

(B) Canute shall bill Clinton at monthly intervals for all groundwater furnished to Clinton under this agreement. Clinton shall pay the water bill within 21 days.

(C) The Basic Charge shall be computed as follows:

(1) \$1.00 per 1,000 gallons of water taken, over the cost of acquisition. Acquisition costs is the cost Canute is required to pay under it's water purchase contracts with the landowners.

(2) Actual cost of electrical energy to run the well pumps servicing Clinton.

## **VIII. Terms and Standard Conditions.**

(A) This contract shall have a term of 40 years commencing on the date water is first delivered, subject, however, to the option of Clinton to renew the contract for a like term or lesser term of not less than 10 years. Written notice shall be submitted to Canute no less than six months prior to the expiration of the then active contract.

(B) No officer, official or agent of Canute or Clinton has the power to amend, modify or

alter this contract or waive any of its conditions as to bind Canute or Clinton by making any promise or representation not contained herein.

(C) This contract shall not be assigned or transferred, by either party without the consent of the other.

**IX. Force Majeure.**

(A) The term "Force Majeure" as used in the contract shall mean acts of God and any event or effect that cannot reasonably be anticipated or controlled.

(B) In any case by reason of "Force Majeure" Canute or Clinton is rendered unable wholly or in part to carry out its obligations under the contract, notice and full particulars of such "Force Majeure" are to be given in writing within a reasonable period of time by the party unable to carry out its obligations to the other party.

(C) The obligation of the party given such notice, so far as it is affected by "Force Majeure," shall be suspended during the continuance of the inability claimed, but no longer.

(D) Both Canute and Clinton may exercise their rights under this "Force Majeure" section with regard to all provisions of this contract.

**X. Contingency.**

This contract is contingent on Clinton's ability to finance the project and Clinton's ability to determine that the flow rates of groundwater on the subject properties are sufficient to produce water in the approximate quantities identified in the contract.

**XI. Termination of all Prior Agreements**

This agreement supersedes and terminates all prior existing agreements, whether oral or in writing, for the sale and purchase of raw water.

**XII. Service of Notice.**

All notices or communications provided for in this agreement shall be in writing and shall be delivered to Clinton or Canute either in person or by United States mail, via registered mail, return receipt requested, postage prepaid, addressed

to Clinton as follows: \_\_\_\_\_

to Canute as follows: \_\_\_\_\_

until and unless other addresses are specified by notice given in accordance with this agreement.

[Signatures and Attestations omitted]

[Exhibits omitted.]