

October 2, 2017



VIA E-MAIL
(citymanager@clintonok.gov)

David Berrong, Mayor
City of Clinton, Oklahoma
P.O. Box 1177
Clinton, Oklahoma 73601

**Re: ODOT Utility Relocation
Agreement for Professional Services**

Dear Mayor:

Thank you for considering Shafer, Kline & Warren, Inc. (SKW) to provide professional services in conjunction with ODOT Utility Relocation, hereafter called the "Project". A detailed description of our proposed services on the project is provided in the attached Basic Services Summary.

Our compensation for completing the services listed in the Basic Services Summary will be a lump sum fee of \$25,845, which includes the cost of reimbursable expenses.

You will be invoiced monthly, based on the project progress that has occurred. All invoices are due and payable on receipt and will be considered past due if payment is not received within 21 days. Once project invoices are past due, an interest charge will accrue to your account at the rate of one and one half percent (1½%) per month, and we will retain the right to cease work on the project until satisfactory arrangements are made to settle the account.

City of Clinton, Oklahoma agree(s) to provide all necessary information for the performance of our services within a reasonable time after it is requested and that SKW will be given timely access to the project site, as necessary, to complete the proposed professional services.

The following individuals are designated as primary project representatives for Town of Foss, Oklahoma and SKW. These individuals shall be the primary point of contact and shall receive all correspondence or notices.

Shafer, Kline & Warren, Inc.
Jason I. Coltrane, P.E.
5800 E. Skelly Drive
Tulsa, Oklahoma 74135
Phone: (918) 499-6000
Fax: (918) 499-6003
E-mail: Jason.Coltrane@skw-inc.com

City of Clinton, Oklahoma
Mark Skiles, City Manager
P.O. Box 1177
Clinton, Oklahoma 73601
Phone: (580) 789-0842 (Mobile)
Fax: (580) 323-0346
E-mail: citymanager@clintonok.gov

This agreement, along with the attached Basic Services Summary, Hourly Rate Schedule and Terms and Conditions (2 pages), represent the entire understanding between us in respect to this project. The Terms

SURVEYING | ENGINEERING | CONSTRUCTION

SHAFER, KLINE & WARREN

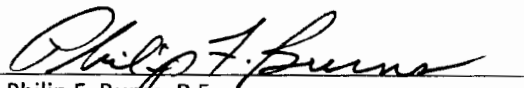
5800 East Skelly Drive, Suite 200, Tulsa, OK 74135 Office 918.499.6000 Fax 918.499.6003

www.skw-inc.com

and Conditions detail many provisions affecting this agreement, including some which limit SKW's liability regarding the project. The Terms and Conditions should be read and understood before entering into this agreement. If, after your review, you are not in agreement with any provision contained in the Terms and Conditions, please contact us so that we may address your concern. Otherwise, if these documents satisfactorily set forth your understanding of our agreement, please sign the enclosed copy of this agreement in the space provided below and return it to us. SKW will schedule and begin our services after receipt of your signed acceptance of this proposal and will perform these services with reasonable diligence and expediency consistent with sound professional practice. This proposal is open for acceptance until December 2, 2017.

We appreciate this opportunity to provide you this proposal for our services and look forward to working with you on this project. If questions should arise after you review this proposal, please call the number listed above.

SHAFER, KLINE & WARREN, INC.

By: 
Philip F. Burns, P.E.
Managing Director, Water Resources - North

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CITY OF CLINTON, OKLAHOMA

By: _____
David Berrong

Accepted this ____ day of _____, 2017.

Title: Mayor

BASIC SERVICES SUMMARY

Attached to and made a part of the Agreement for Professional Services dated October 2, 2017, by and between Town of Clinton, Oklahoma and Shafer, Kline & Warren, Inc., in respect to ODOT Utility Relocation, the "Project" described therein.

SCOPE OF BASIC SERVICES

For the compensation outlined in this Agreement, SKW will perform the following professional services. Services not detailed within the Scope of Basic Services are specifically excluded from the scope of SKW's work and SKW assumes no responsibility to perform any services not specifically listed.

- **Design, Bidding, and Construction Administration Services** \$25,845

SKW will provide design and preparation of plans and technical specs for a waterline utility relocation for ODOT State Job No 30331, located near a bridge over the Washita River. Project will include relocation of approximately 1,000 LF of 6" HDPE pipe, with a creek bore and all associated appurtenances. (\$15,245 Lump Sum)

SKW will provide bidding services, including preparation of bid documents, advertisement for bids, answering bidder questions, and evaluating bids. (\$4,940 Lump Sum)

SKW will provide construction administration services, including preparation of contract documents, review of submittals contractor pay applications, as-built drawings, and contract closeout. (\$5,660 Lump Sum)

ADDITIONAL SERVICES

If agreed to by the client and SKW, we will provide Additional Services related to the Project. Additional Services are those not included as part of the Basic Scope of Services and shall be paid for by the Client in addition to payment for Basic Services, in accordance with SKW's prevailing fee schedule, in effect at the time that such services are rendered, or as otherwise agreed to by the client and SKW.

- **Field Services** - SKW will provide services, including a 2-man field crew, to complete surveys for control and topo, and boundary and utilities. (\$12,861 Lump Sum)

Easement preparation – SKW will prepare Ownership exhibits at a cost of \$550 per exhibit.

Construction Staking (\$3,544 Lump Sum)

EXCLUDED SERVICES

In addition to the Basic Services outlined above, SKW has offered and recommended certain other services which are deemed necessary or advisable for the Project. The client has declined to include such services in this Agreement and has decided to obtain those services from another source or to forgo those services. The following recommended services are therefore excluded from this Agreement:

Items not included in this proposal are SWPPP preparation, construction observation, geotechnical services, environmental services, or any other item not specified in the scope of services.

HOURLY RATE SCHEDULE



Project or Construction Manager		Engineer, Surveyor, GIS Consultant, Specialist, Landscape Architect, Designer, Planner or Programmer	
PM 10	\$ 190.00	A 8	\$ 170.00
PM 9	180.00	A7	160.00
PM 8	170.00	A6	150.00
PM 7	160.00	A5	140.00
PM 6	155.00	A4	130.00
PM 5	140.00	A3	120.00
PM 4	130.00	A2	110.00
PM 3	120.00	A1	100.00
PM 2	110.00	A0	90.00
PM 1	100.00		

Construction Observer or Engineering /
Survey / Corrosion / Data - Technician

T7	\$ 120.00
T6	110.00
T5	100.00
T4	90.00
T3	80.00
T2	70.00
T1	60.00
T0	50.00

Survey Crew

3 SC	\$ 165.00
2 SC	145.00
1 SC	100.00

Survey Truck Mileage

TMILE Federal rate plus \$0.30/mile

Per Diem

PERD Based on Federal Guidelines Per
Location or Agreed to Rate
(average is currently \$140/day)

Passenger Car, Truck Mileage

PMILE Based on Federal Guidelines

Expenses

EXPENSES Cost + 10% unless
otherwise noted

Effective: January 1, 2017

Shafer, Kline & Warren Inc. (SKW) Standard Terms and Conditions

Assignment. Neither party to this Agreement shall transfer, sublet or assign any rights or duties under or interest in this Agreement (including but not limited to monies that are due or monies that may be due) without the prior written consent of the other party. Subcontracting to subconsultants normally contemplated by SKW shall not be considered an assignment for purposes of this Agreement. "Agreement" means the attached Agreement for Professional Services, the attached Basic Services Summary, any approved Professional Services Change Order(s) and these Standard Terms and Conditions.

Betterment. If a required item or component of the Client's project should be omitted from SKW's construction documents, SKW shall not be responsible for paying the cost required to add such item or component to the extent that such item or component would have been required and included in the original construction documents. In no event will SKW be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Client's project.

Billing and Payment. Invoices submitted by SKW are due upon presentation and shall be considered PAST DUE if not paid within thirty (30) calendar days of the invoice date. If payment is not received by SKW within thirty (30) calendar days of the invoice date, invoices shall bear interest at one-and-one-half (1.5) percent (or the maximum allowable by law, whichever is less) of the PAST DUE amount per month, which shall be calculated from the invoice due date. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal. If SKW incurs any costs in order to collect overdue sums from the Client, the Client agrees that all such collection costs incurred shall immediately become due and payable to SKW. Collection costs shall include, without limitation, legal fees, collection agency fees and expenses, court costs, collection bonds and reasonable SKW staff costs at standard billing rates for SKW's time spent in efforts to collect. This obligation of the Client to pay collection costs shall survive the term of this Agreement or any earlier termination by either party.

Certificate of Merit. The Client shall make no claim for professional negligence and/or errors or omissions, either directly or by way of a cross complaint against SKW unless the Client has first provided SKW with a written certification executed by an independent consultant practicing in the same discipline as SKW and licensed in the State of Kansas. This certification shall: a) contain the name and license number of the certifier; b) specify the acts or omissions that the certifier contends are not in conformance with the standard of care for a consultant performing professional services under similar circumstances; and c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to SKW not less than thirty (30) calendar days prior to the filing of any civil litigation. This Certificate of Merit clause will take precedence over any existing state law in force at the time of the claim.

Certifications. SKW shall not be required to sign any certifications or documents, no matter by whom requested, that would result in SKW's having to certify, guarantee or warrant the existence of conditions whose existence SKW cannot ascertain and, within the scope of SKW's Basic Services, as outlined in this Agreement, have not been and could not be ascertained. Client agrees not to make resolution of any dispute with SKW or payment of any amount due to SKW in any way contingent upon SKW's signing any such certification.

Changed Conditions. If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to SKW are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, SKW may call for renegotiation of appropriate portions of this Agreement. SKW shall notify the Client of the changed conditions necessitating renegotiation, and SKW and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement in accordance with the Termination provision hereof.

Consequential Damages. Notwithstanding any other provision of the Agreement, and to the fullest extent permitted by law, neither party, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages incurred due to the fault of the other party, regardless of the nature of this fault or whether it was committed by the Client or SKW, their employees, agents, subconsultants, or subcontractors. Consequential damages include, but are not limited to loss of use, loss of income, loss of profit, loss of business and/or loss of reputation.

Construction Means and Safety. If this Agreement provides for any construction phase services by SKW, it is understood it is the Client's contractor(s), not SKW, who is responsible for the construction of the Project, and that SKW is not responsible for the acts or omissions of any contractor, subcontractor, or material supplier; for safety precautions, programs, or enforcement; or for construction means, methods, techniques, sequences, and procedures used by anyone working on the Project.

Corporate Protection. It is intended by the parties to this Agreement that SKW's services shall not subject SKW's individual employees, officers, or directors to any personal legal exposure. Therefore, and notwithstanding anything to the contrary contained herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against SKW, a Kansas corporation, and not against any of SKW's individual employees, officers or directors.

Covenant Not To Sue. Because there are inherent differences in recalling or preserving information after an engagement is completed. Client and SKW mutually agree and covenant that, notwithstanding any statute of limitation in

effect and applicable to the contrary, neither party will file any claim based on this Agreement and/or the services provided under this Agreement more than 12 months after the last day SKW performs services under this Agreement. Client and SKW agree that this covenant not to sue applies to any claim either party may have, including but not limited to claims based in contract, common law, or warranty, and applies to claims which may not be known to exist until more than 12 months after the last day SKW performs services under this Agreement.

Dispute Resolution. In the event of a dispute arising out of or relating to this Agreement or the services rendered hereunder, the Client and SKW agree to attempt to resolve such disputes as follows. First, the parties agree to attempt to resolve any dispute through direct negotiations between the appropriate representatives of each party. Second, if such negotiations are not fully successful, the parties agree to attempt to resolve any remaining dispute by formal nonbinding mediation conducted in accordance with rules and procedures to be agreed upon by the parties. If any dispute or issue remains unresolved after the above steps, only then may either party initiate civil litigation.

Governing Law and Exclusive Forum. The laws of the State of Oklahoma will govern the validity of this Agreement, its interpretation and performance, regardless of choice of law rules. Any litigation arising from this Agreement must be brought in the District Court of Tulsa County, Oklahoma.

Limitation of Liability. To the fullest extent permitted by law, Client agrees that the total liability, in the aggregate, of SKW and SKW's officers, directors, stockholders, employees, agents and subconsultants, to the Client, its subsidiary and/or affiliated companies and their respective officers, directors, employees, agents and anyone claiming by, through, or under Client, for any and all injuries, claims, losses, expenses, damages whatsoever arising out of, resulting from or in any way relating to SKW's services, as outlined in the Basic Services Summary of this Agreement or any Additional Services approved under this Agreement, from any cause or causes, shall be limited to the total amount of compensation received by SKW under this Agreement.

If this Agreement does not provide for any on-site construction phase services, such as construction staking and/or construction observation, the Client acknowledges there is an increased risk of construction disputes and a lessened assurance that the Project will be constructed in conformance with the construction documents. Therefore, if the Client elects to undertake construction without retaining SKW for any on-site construction phase services, the limits of SKW's liability related to services outlined in the Basic Services Summary of this Agreement, or any Additional Services approved under this Agreement, shall be limited to 50% of the total amount of compensation received by SKW under this Agreement.

Non-Solicitation. SKW and the Client each agree not to directly employ or solicit for employment any employee of the other party or to otherwise encourage any change of employment for the entirety of this Agreement and for one year

after the expiration of this Agreement or any addendums. If either party elects to break this non-solicitation provision, said party agrees to pay \$50,000 to the party of original employ.

Opinions of Probable Cost. In providing any opinions of probable construction cost, the Client understands that SKW has no control over the cost or availability of labor, equipment or materials, or over market conditions or any contractor's method of pricing, and that SKW's opinions of probable construction costs are made on the basis of SKW's professional judgment and experience. SKW makes no warranty, express or implied, that the bids or the negotiated cost of the Work will not vary from SKW's opinion of probable construction cost.

Ownership and Reuse of Documents. All reports, drawings, specifications, electronic computer files (of any format), field data, notes and other documents and instruments prepared by SKW as instruments of services shall remain the property of SKW who shall retain all common law, statutory and other reserved rights, including, without limitation, the copyrights thereto. SKW grants Client a license to use signed and sealed hard copies of instruments of services for the purpose of constructing, occupying, and maintaining elements of the project depicted therein. Reuse or modification of any such instruments, without SKW's written permission, shall be at Client's sole risk and Client agrees to indemnify and hold SKW harmless from all claims, damages, and expenses, including attorney's fees, arising out of such reuse by Client or by others acting through Client. Upon request of the Client, SKW will grant a license, to the Client or to other parties whom the Client approves, to use instruments of service which consist of electronic computer files. Before granting this license and transferring any electronic data, the receiving party will be required to execute a separate agreement with SKW which releases SKW of all liability related to the use and/or reuse of electronic instruments of service by others.

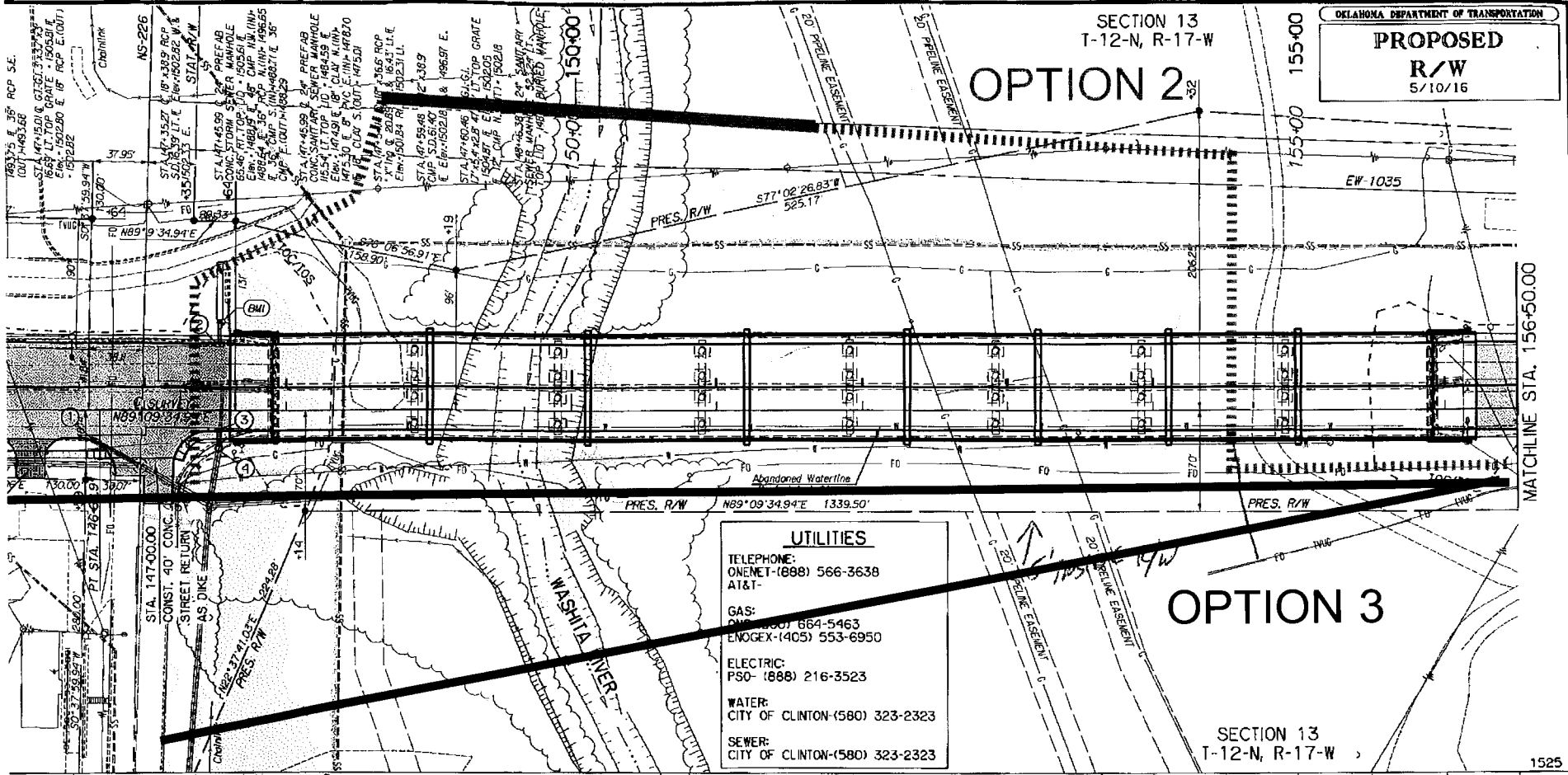
Termination. Client or SKW may terminate this Agreement with seven (7) days prior written notice to the other party for convenience or cause. SKW shall have no liability whatsoever to the Client for any costs or damages as a result of suspension caused by any breach of this Agreement by the Client. If this Agreement is terminated by either Client or SKW, Client shall pay SKW within thirty (30) day of termination for all services rendered and all costs incurred to the date of termination.

Work in Progress. It is agreed and understood that any work performed by SKW shall not be deemed complete, nor may it be relied upon as complete, until delivery of the signed and sealed product. Prior to final completion, any information generated by SKW, regardless of format (including survey stakes and monuments in the field) shall all be considered as preliminary and subject to revision. SKW cannot guarantee the suitability of this information for any party's purposes (including selection of contractors or programming of construction costs) and shall have no liability or responsibility whatsoever for the use of such preliminary information by the Client or others.

PROPOSED
R/W
5/10/16

SECTION 13
T-12-N, R-17-W

OPTION 2



UTILITIES

TELEPHONE:
ONENET-(888) 566-3638
AT&T-

GAS:
ONE-800-664-5463
ENOGEX-(405) 553-6950

ELECTRIC:
PSO-(888) 216-3523

WATER:
CITY OF CLINTON-(580) 323-2323

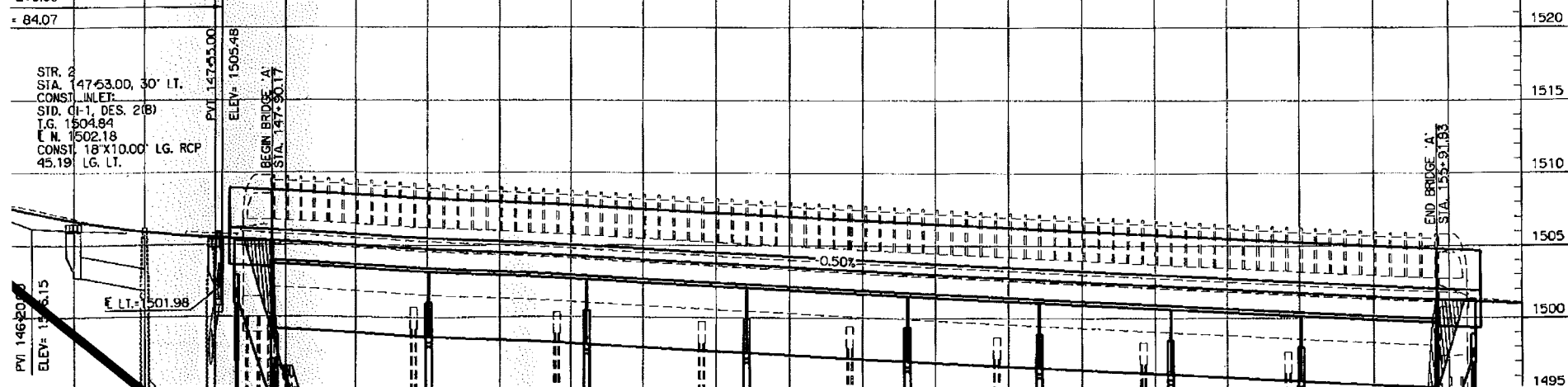
SEWER:
CITY OF CLINTON-(580) 323-2323

OPTION 3

SECTION 13
T-12-N, R-17-W

REMOVE EXISTING BRIDGE: APPROXIMATE C SURVEY STA. 151+91.15, 803' LONG X 70' WIDE, EIGHT SPAN (4-100' CONT.; 4-100' CONT.) I-BEAM BRIDGE WITH CONCRETE DECK SLAB, STEEL TRAFFIC RAILS, CONCRETE ABUTMENTS ON R.C. PILES AND CONCRETE PIERS ON SPREAD FOOTINGS.

800' LONG, EIGHT SPAN (4-110' AND 4-90') P.C. BEAM BRIDGE WITH 0° SKEW, 60' CLEAR ROADWAY, 5'-8" SIDEWALKS AND MODIFIED TEXAS T1P TRAFFIC RAILS AT CRL STA. 151+91.00



STR. 2
STA. 147+53.00, 30' LT.
CONST. INLET:
STD. (I-1, DES. 2(B))
I.G. 1504.84
N. 1502.18
CONST. 18'X10.00' LG. RCP
45.19 LG. LT.

PVI 147+53.00
ELEV. = 1505.48

BEGIN BRIDGE 'A'
STA. 147+50.17

END BRIDGE 'A'
STA. 152+91.83

E LT. = 501.98

0.50%