

From: cityofsheldahl@huxcomm.net
Sent: Friday, October 11, 2024 8:06 PM
To: cityofslater@huxcomm.net
Subject: Fwd: City of Sheldahl WW Loan and Grant Assistance - Service Contract Requirements

Sorry I was not able to get this over to you during your business day. I was not in the office today

----- Original Message -----

Subject:City of Sheldahl WW Loan and Grant Assistance - Service Contract Requirements
Date:2024-10-11 11:04 am
From:"Fischer, Dee - RD, IA" <dee.fischer@usda.gov>
To:Rachel Wicks <cityofsheldahl@huxcomm.net>

Good Morning Rachel -

The City of Sheldahl's USDA financing package to cover the cost of the city's wastewater connection fee to the City of Slater includes loan financing of \$444,000 and grant assistance of \$643,000. Because the financing package includes grant assistance, the City of Sheldahl's USDA loan is required to have our maximum term of 40 years.

[Agency Regulation 1780.62\(d\) requires the utility service contracts cover the period of time which is at least equal to the repayment period of the loan.](#) For this reason, the Contract for Wastewater Treatment Services with the City of Sheldahl must have a term of 40 years.

We also understand during the 40-year term of the service contract, conditions addressing the need, operating and maintenance conditions, and other factors of each city's sewer utility may change. Any amendments to the service contract will require USDA concurrence prior the City of Sheldahl signing the amendment to the contact.

Per our phone conversion, the City of Sheldahl can make extra payments on the loan at any time. This may include setting up the monthly payment for a scheduled increased amount or periodic extra payments as determined by the city.

Please let me know if you need any additional information.

Dee Fischer

Area Director – Community Programs

Rural Development

United States Department of Agriculture

511 W. 7th Street | Atlantic, IA 50022

Direct: 712.254.4360 | Cell: 712.268.4707 | Office: 712.243.2107

www.rd.usda.gov

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SECOND AMENDED AND RESTATED WASTEWATER TREATMENT AGREEMENT

CITY OF SLATER, IOWA RESOLUTION NO. _____

CITY OF SHELDAHL, IOWA RESOLUTION NO. _____

THIS AGREEMENT for the sale and purchase of wastewater treatment services is entered into as of the first day of September, 2024, between the City of Slater, an Iowa municipal corporation located in Story County, Iowa, (hereinafter referred to as the "Seller") and the City of Sheldahl, an Iowa municipal corporation located in Boone, Polk, and Story Counties, Iowa, (hereinafter referred to as the "Purchaser"), PROVIDES AS FOLLOWS:

RECITALS:

WHEREAS, the Purchaser is organized and established under the provisions of Section 372.4 of the Iowa Code for the purpose among other things of providing wastewater collection and treatment systems to serve users within the City of Sheldahl and adjacent areas; and,

WHEREAS, the Seller owns and operates a wastewater collection and treatment system with a capacity currently capable of providing the present customers of the Seller's system and the estimated number of sewer users to be served by the Purchaser as noted herein and as agreed to below; and,

WHEREAS, the Seller approved the Wastewater Treatment Agreement on March 6, 2006, and the Purchaser approved the Wastewater Treatment Agreement on March 29, 2006, and the parties have requested the consent and approval of the United States Department of Agriculture and the Iowa Department of Natural Resources, which have proposed modifications to said agreement; and

WHEREAS, the Seller and Purchaser approved the First Amended and Restated Waste Water treatment Agreement on May 1, 2006 amending the initial Waste Water Treatment Agreement; and

WHEREAS, the Seller and the Purchaser now, by this instrument, desire to amend and re- state the Wastewater Treatment Agreement and do hereby substitute this Second Amended and Restated Wastewater Treatment Agreement for the First Amended and Restated Waste Water treatment Agreement approved May 1, 2006; and,

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth:

1. THE SELLER AGREES:

1.1. Wastewater Amount: The Seller will furnish to the Purchaser at the point of connection hereinafter specified, during the term of this agreement or any renewal or extension thereof, capacity in the Seller's wastewater treatment facilities and adequate treatment meeting applicable standards of the Iowa Department of Natural Resources and United States Environmental Protection Agency of all domestic strength wastes contributed by the Purchaser

of such quantities and characteristics as follows:

1.1.1. Average Dry Weather Flow of 33,000 gallons per day, as defined in Chapter 14.4.5.1.a – IDNR Wastewater Facilities Design Standards.

1.1.2. Average Wet Weather Flow of 39,000 gallons per day, as defined in Chapter 14.4.5.1.b – IDNR Wastewater Facilities Design Standards.

1.1.3. Design Flow of 34,800 gallons per day, as defined in Chapter 18C.4.1.2.a – IDNR Wastewater Facilities Design Standards.

1.1.4. Maximum Wet Weather Flow of 40,000 gallons per day, as defined in Chapter 14.4.5.1.c. – IDNR Wastewater Facilities Design Standards.

1.1.5. Peak Hourly Wet Weather Flow of 133,000 gallons per day (92.3 gallon per minute), as defined in Chapter 14.4.5.1.d – IDNR Wastewater Facilities Design Standards.

1.1.6. Domestic Population Equivalent load from not more than 400 persons, based on a waste carbonaceous BOD (5-day) load of not more than 0.17 pounds per day per capita, a waste total suspended solids load of not more than 0.20 pounds per day per capita, and a waste total kjeldahl nitrogen load of not more than 0.04 pounds per day per capita.

1.1.7. At Average Dry Weather Flow conditions, the waste strength shall be limited to the following: influent CBOD₅ (five-day Carbonaceous Biochemical Oxygen Demand) not exceeding 300 mg/l, influent TSS (Total Suspended Solids) not exceeding 350 mg/l, and influent pH of between 6.0 and 9.0 standard units.

1.1.8. No discharge of septic tank wastes or holding tank wastes, and no discharge of septage wastes will be allowed into the Seller's treatment system through the Purchaser's conveyance system.

1.1.9. Other wastewater constituents including grease and oils at concentrations below that deemed to be detrimental to the treatment process, endangering of public health, or that directly or indirectly cause the treatment system to fail to meet compliance with applicable regulatory limits.

1.1.10. Purchaser's flow discharge into the Seller's collection sewer system shall not cause or result in the presence of odors noticeable more than 5 feet away from the discharge point at any time.

1.2. Point of Connection: The Seller's acceptance of such wastewater for treatment will be at the existing sanitary manhole on the 18-inch interceptor sewer located approximately 30-feet north of the plant site north fence and located approximately 70-feet east of the Southside lift station. Purchaser shall be solely responsible to construct, operate, and maintain its own collection system, pumping station, odor control facilities, and force main to discharge at the point of connection.

1.3. Billing Procedure: The Seller will furnish the Purchaser not later than the last day of each month with an itemized statement of the charges for wastewater accepted by the Seller for treatment by it during the preceding month.

1.4. Condemnation, etc.: The Seller will not seek to condemn or otherwise involuntarily take any part of the Purchaser's sewer system.

1.5. Pre-existing Conditions: The Seller shall be solely responsible for the remediation of any existing wastewater treatment system deficiencies or liabilities in existence at the Seller's facilities as identified by Iowa DNR before the effective date of this agreement.

1.6. Emergency Conditions: Emergency failures of the sanitary sewer system or treatment facilities due to main line breaks or sudden deterioration in spite of reasonable maintenance, equipment failure, power failure, flood, fire, wind, earthquake, or other catastrophe shall excuse the Seller from the provision of continuous service for such reasonable period of time as may be necessary to restore service.

2. THE PURCHASER AGREES:

2.1. Metering Equipment: The Purchaser shall furnish, install, operate, and maintain at its own expense at the point at which wastewater is pumped to the Seller's wastewater collection system, pipeline mounted, flanged body magnetic flow measurement equipment and required devices of standard type for properly indicating the flow rate and continuously recording the flow rate, and totalization of the daily volume of wastewater delivered to the Seller. Purchaser shall provide a 7-day flow chart recorder (minimum 10-inch circular chart) with daily flow totalizer stamping features. Purchaser shall maintain the flow metering and related equipment in proper calibration. The metering accuracy of the magnetic flow meter shall be within plus or minus 0.50 % of the actual flow over the entire pump operating flow range.

2.1.1. At least once every 365 days, Purchaser shall obtain field calibration and check-out of equipment by a manufacturer certified testing service and provide the written results to the Seller at least 30-days before average dry weather flow data collection period begins. Field calibration shall include electronics check-out and volumetric test by pump down of the wet well and determination of the volume removed over a measured time period. Additional technical service shall be requested by the Seller, if Seller finds the equipment malfunctioning or suspects malfunction based on irregular trends in the flow data. Metering equipment registering not more than three percent (3.0%) above or below the test results shall be deemed to be accurate and in calibration.

2.1.2. The previous readings of any metering equipment disclosed by test to be inaccurate shall be corrected. If any metering equipment fails to register for any period, the amount of wastewater treated during such period shall be deemed to be the amount of wastewater treated in the corresponding period in the year immediately prior to the failure or the preceding 30-day period whichever is higher, unless the Seller and the Purchaser shall mutually agree upon a different amount.

2.1.3. The metering equipment shall be checked at least once each week for proper operation by the Purchaser. The Seller shall have access keys to all locked

enclosures housing the flow metering and chart recording equipment. The Purchaser shall provide the Seller the recording charts and daily totalizer flow values on a monthly basis, within seven days after the end of the month. Appropriate officials and employees of the Seller shall have at all reasonable times access to the metering equipment for the purpose of verifying the readings.

2.2. Seller's Access to Purchaser's Facilities: The Seller reserves the right of access to sample Purchaser's wastewater flow at the Purchaser's pump station or at any points in the sewer collection system as Seller deems appropriate.

2.3. Odor Control Facilities: The Purchaser shall furnish, install, operate, and maintain at its own expense pipeline odor control facilities to prevent odor release at the pipeline discharge point into the Seller's wastewater collection system and at all air release valve facilities in the pipeline right-of-way areas within the Seller's City Limits or adjacent to the Seller's City Limits.

2.4. Sewer Use Ordinance: The Purchaser shall maintain and enforce an Iowa DNR approved sewer use ordinance to control the use of its sewers for domestic and commercial use only and implement a program of clearwater flow elimination and control from Purchaser's private service user connections and municipal sanitary sewer system so that none of the Purchaser's average wet weather design flow, maximum daily wet weather design flow, or peak hourly wet weather flow values are exceeded.

2.5. Fees for Wastewater Treatment: The Purchaser shall pay the Seller, not later than the 15th day of each month, for the wastewater delivered to the Seller at a rate determined to be one twelfth (1/12th) of Purchaser's proportionate share of identified annual wastewater treatment costs for the Seller's facilities established on the annual anniversary date of this agreement, calculated as follows:

2.5.1. The Purchaser's proportionate share of wastewater treatment costs as determined using the population equivalent unit flow equation derived in Appendix No. 1.

2.5.2. Identified Annual Wastewater Treatment Costs (excludes all costs associated with operation and maintenance of Seller's sewer collection and transmission system upstream of the Purchaser's discharge to the Seller's sewer system):

2.5.2.1. Operating & Maintenance (O & M) Labor = Operator hours x Labor rate including benefits.

2.5.2.2. Transportation to and from treatment site.

2.5.2.3. Training and licensing of certified wastewater treatment operators.

2.5.2.4. Review of Purchaser's flow data, and administrative costs for Purchaser's monthly account billing and collection for one account. All legal, accounting, and engineering costs that the Seller incurs to administer the treatment service and determine the monthly cost for the Purchaser shall be directly billed to and payable by the Purchaser.

2.5.2.5. Electrical utility and telephone charges for operation of wastewater treatment plant (WWTP).

2.5.2.6. Sampling costs and laboratory testing for monitoring of treatment facilities, and Purchaser's influent waste testing as may be required by the Seller.

2.5.2.7. Treatment facilities site maintenance.

2.5.2.8. Repairs and maintenance of treatment equipment and facilities; non-capital expenditures necessary to maintain continued operation of the treatment facilities, including equipment rentals.

2.5.2.9. Funding of an excess operations & maintenance cost fund to cover unexpected costs, non-routine O & M costs, and funding of an equipment replacement fund.

2.5.3. For the first year of this agreement or fraction hereof, the Purchaser will pay the Seller at a rate of **\$1,016.45** per month of treatment service (as calculated in Appendix No. 1) to compensate the Seller for the Purchaser's proportionate share of the identified annual wastewater treatment costs.

2.5.4. On the first anniversary date of February 1st annually coinciding with the development of fiscal year budgets for both parties, the identified annual wastewater treatment costs will be determined by the Seller for the second year of Purchaser's service according to the methods described in this section and as shown using the methodology in Appendix No. 1. An annual rate will then be established for the fiscal year and divided into twelve equal monthly payments for the following year. The Seller shall verify to the Purchaser that the Seller has fully funded its share of the annual wastewater budget for the year completed on the anniversary date.

2.5.5. On the second anniversary date, the annual wastewater treatment costs for the third year of operation will be determined. The Purchaser's annual rates will again be calculated for the following year. The Seller shall verify to the Purchaser that the Seller has fully funded its share of the annual wastewater budget for the year completed on the anniversary date.

2.5.6. Thereafter, if both Seller and Purchaser agree, a more simplified rate structure can be developed. If both parties cannot agree, the average dry weather flow capacity allocation and revisions to the Flow based Population Equivalent will continue on each anniversary date as described in Appendix No. **1**

2.6. Capacity/Capital Improvements: The Purchaser will compensate the Seller for a proportionate share of the necessary capital improvements to the wastewater treatment facilities as needed to increase capacities to accommodate Purchaser treatment capacity usage. Additionally, the Purchaser will compensate the Seller for a proportionate share of the necessary capital improvements (defined as improvements costing \$500.00 or more) to the wastewater treatment facilities as deemed necessary by the Seller to repair, replace, or upgrade wastewater treatment equipment and facilities during the term of this agreement for those improvements that

immediately and proportionally benefit the Purchaser. All expenditures for capital improvements to be shared with the Purchaser must be reviewed with the Purchaser, but are not subject to Purchaser's approval before implementation since time is of the essence. Compensation to Seller for necessary capital improvements will be due from the Purchaser as payments by the Seller are made for said improvements.

2.6.1. The Purchaser's proportionate share of necessary capital improvements =
(Purchaser allocated population equivalent + Total WWTP design population equivalent)
x capital improvement costs. These terms shall be as defined in Appendix No. I. 1

2.7. Existing Facilities: The Purchaser will compensate the Seller for the value of the Waste-water Amount (allocated capacity of the wastewater treatment facilities) as defined in existence as of the effective date of this agreement. This one (1) time non-refundable payment shall be in the amount of \$184,230.00 and shall be due at the time of Purchaser's connection to the Seller's facility. Any remaining treatment flow and organic capacity that may be not proclaimed in this contract or permitted by DNR for use by the Seller at this time shall remain the Seller's sole possession for the entire term of this contract. The Seller may if it so chooses allow the Purchaser to buy additional Wastewater Amounts above that specified in this agreement, if a mutual additional purchase price can be agreed upon by both the Seller and Purchaser.

3. IT IS FURTHER MUTUALLY AGREED BY THE PARTIES:

3.1. Conditions Precedent: The terms and conditions of this agreement and the duties and obligations of the parties to fulfill the same shall not take effect until the following conditions have been satisfied:

3.1.1. Obtaining necessary consents to this agreement from the United States of America (U.S.D.A./Rural Development).

3.1.2. Obtaining necessary consents to this agreement from the Iowa Department of Natural Resources for completion of the Seller's SRF Loan.

3.1.3. Approval of the Iowa Department of Natural Resources for the Purchaser's sanitary sewer system and any and all other necessary governmental approvals; and,

3.1.4. Receipt by the Purchaser from the United States of America (acting by and through USDA/Rural Development) on or before December 30, 2004 of sufficient grant funds and sufficient loan funds to make this project feasible, in the sole discretion of the Purchaser.

3.1.5. If, for any reason, any of the foregoing conditions are not met without fault of either party, this agreement shall be rendered null and void and of no further force and effect, and neither party shall have any claim against the other for any expenses incurred or damages sustained as a result of negotiations and efforts attempted in order to complete the objectives of this agreement.

3.2. Term of Contract: This contract shall extend for a term of forty (40) years ending on January 1, 2065, and may be renewed or extended for such term, or terms, as may be agreed

thereafter,

from the date of Purchaser's initial discharge to the system

upon by the Seller and Purchaser. This Contract may be terminated by the Purchaser by proper written notice, provided that a grace period of at least six months is provided ahead of the actual termination date specified. The Seller may not terminate this agreement without consent of the Purchaser, however a suspension of service can be implemented for Purchaser's failure to pay for capital improvements or treatment service fees that are more than sixty (60) days past due. Actual termination of this Agreement will in either case be dependent upon an alternative method of treatment being immediately available to Purchaser to allow disposal of wastewater in compliance with federal and state rules and regulations.

3.3. Connection and Delivery of Service: There is no connection fee in relation to this Agreement after the initial fee for capacity purchase is made. Thirty (30) days prior to the estimated date of construction completion of the Purchaser's sewer system, the Purchaser will notify the Seller in writing the date for the initial delivery of wastewater for treatment.

3.4. Modifications to the Contract: The parties acknowledge that the actual rates may change from time to time in response to changing operation and maintenance costs or capital improvement costs. Such changes will be at the option of the Seller except that at the option of the Purchaser the changed rates will be adjusted as they apply to the Purchaser whenever such rates do not reflect actual operating costs as described below. Except as indicated under foregoing Paragraph B.6, the Purchaser shall not directly or indirectly be obligated to participate financially in relation to any capital improvements to the Seller's system which do not proportionally benefit the Purchaser as well; and, any such contributions or rate changes shall be proportionate to Purchaser's design population equivalent percentage of the total WWTP design population equivalent.

*Unclear
w/
Reference
in Original*

3.4.1. The Purchaser reserves the right to review the Seller's records relating to average dry weather flow and operating costs attributed to the Seller's wastewater treatment system.

3.4.2. At the end of the fiscal year, any unrealized annual budget expenditures shall be proportionally funded by both parties and be held in the Excess Operation & Maintenance and Equipment Replacement Fund available for use in future years.

3.5. Responsibilities of Parties: Construction, operation, and maintenance of the Purchaser's systems up to the point of connection with the Seller's system shall be and remain solely the responsibility of the Purchaser and ownership thereof shall at all times remain with the Purchaser, its successors or assigns. Ownership and control of the wastewater treatment facilities of the Seller and future capital improvements shall remain solely with the Seller, along with full responsibility for its operation and maintenance. The Seller will continue to operate the waste treatment facilities in an appropriate manner and as directed by State and Federal regulatory agencies. The Seller will bear the full responsibility of meeting effluent requirements with exception given to the sharing of costs of capital improvements required to maintain compliance with existing or future regulations as more fully addressed previously in Paragraph 8.6 of this agreement.

*Water
= to
original
[Not New
Edit]*

3.5.1. The Seller is sole owner of its wastewater collection system and the wastewater treatment facilities.

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Cross-
Reference
in Original*

3.5.2. The Purchaser is sole owner of its wastewater collection system up to the connection point at the Seller's sewer system.

3.6. Harmful Wastes: The Seller and the Purchaser shall each be solely responsible for its respective wastewater quality as received into the Seller's treatment system. If the wastewater of the Purchaser as received into the Seller's treatment system is found to have characteristics such as extreme pH, corrosive effect on Seller's facilities, toxic agents or other ingredients which are found to damage the Seller's sewer system, equipment, or structures or upset or inhibit the sewage treatment process at the treatment plant, or if the wastewater of the Purchaser is found to be solely responsible for the creation of noticeable odors, at the location of any public facilities or residences existing at the time of the creation of this agreement, and conversely, if the wastewater of the Seller is found to be responsible for any of the previously described damage or odors, corrective measures, as mutually agreed, shall be taken by the responsible party either the Purchaser or by the Seller as the case may be to overcome the problem.

3.6.1. Purchaser shall be liable to pay Seller for costs of actual damage caused by discharge of Seller's harmful wastes into the Purchaser's facilities.

3.7. Volume Measurement: As shown above, payments from the Purchaser under this Agreement are based on the respective design capacity needs of the Purchaser and Seller. Verification of Purchaser wastewater flow volumes entering the Seller's wastewater treatment facility, in addition to information provided by the Purchaser, may be observed or determined periodically by the Seller at their sole expense using the Purchaser's installed pipeline flow metering facilities.

3.8. Arbitration: The parties agree that any controversy or claim arising out of this agreement or the breach thereof, shall be settled by arbitration and judgment on the award rendered by a panel of arbitrators as follows: (1) The "Construction Industry Arbitration Rules and Mediation Procedures" of the American Arbitration Association shall apply. (2) There shall be a panel of three arbitrators, each of whom, by virtue of previous education, training, or work experience, would qualify in a judicial proceeding as an expert witness on the substance of the matter in dispute. (3) Each party shall be entitled to appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator. (4) The arbitrators must apply the applicable substantive law. (5) The place of arbitration shall be in Story County, Iowa. (6) The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. (7) The arbitrators shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, transcription services, witness fees, and attorneys' fees. (8) The award of the arbitrators shall be accompanied by a reasoned opinion. (9) Judgment may be entered in the District Court of Iowa in accordance with chapter 679A of the Code of Iowa.

3.9. Special Relief: The parties agree that a breach or anticipatory breach by either party of the duties imposed by this agreement may cause serious or irreparable harm to the other. Either party may seek and have from a court of competent jurisdiction an order of injunction or mandamus bond. Unless such order is confirming the order of a panel of arbitrators, such order

shall be deemed temporary until arbitration of the dispute is completed.

3.10. Regulatory Agencies: This contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State of Iowa, and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

3.11. Miscellaneous: The construction of the sanitary sewer system by the Purchaser is being financed in part by a loan made or insured by the United States of America acting through the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, by the State Director of such agency or subunit thereof.

3.12. Pledge of Security. The interest of the City of Sheldahl under this Second Amended and Restated Wastewater Treatment Agreement may be pledged to the United States of America acting through USDA Rural Development or its successor agencies, as security for any loan to the City of Sheldahl made or insured by the United States of America.

Corrected from original

3.13. Successor to the Purchaser: In the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the Purchaser hereunder.

3.14. Lender Approval Required: This Agreement is subject to the written approvals of the lenders of the parties. Each party shall promptly obtain such written approval and provide the other party with a copy thereof.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in multiple counterparts, each of which shall be deemed to be an original.

CITY OF SLATER, IOWA APPROVAL: In accordance with Iowa Code Section 380.5, the undersigned approves the foregoing as enacted on _____ 2024, by the City Council.

By: _____
Taylor Christensen, Mayor

Attested and Sealed with the seal of the City of Slater, Iowa on the date aforesaid by:



By: _____
Jennifer Davies, City Clerk

CITY OF SHELDAHL, IOWA APPROVAL: In accordance with Iowa Code Section 380.5, the undersigned approves the foregoing as enacted on _____, 2024, by the City Council.

By: _____
Todd, Anderson, Mayor

Attested and Sealed with the seal of the City of Sheldahl, Iowa on the date aforesaid by:
↑

By: _____
Rachel Wicks, City Clerk

ACKNOWLEDGMENTS

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on _____, 2024 by Taylor Christensen and Jennifer Davies as Mayor and Clerk of the City of Slater, Iowa.

NOTARY PUBLIC

STATE OF IOWA, COUNTY OF POLK, SS.: This instrument was acknowledged before me on _____, 2024 by Todd Anderson and Rachel Wicks as Mayor and Clerk of the City of Sheldahl, Iowa.

NOTARY PUBLIC

CONSENTS

THIS CONTRACT IS APPROVED on behalf of USDA Rural Development this _____ day of _____, 2024.

USDA RURAL DEVELOPMENT

By: _____
Program Director Rural Utilities & Community Facilities

THIS CONTRACT IS APPROVED on behalf of State of Iowa Department of Natural Resources on this _____ day of _____, 2024.

IOWA DEPARTMENT OF NATURAL RESOURCES

By: _____

APPENDIX NO. 1

Attachment to Wastewater Treatment Agreement **Seller and Purchaser**

Determination of Proportionate Share of Monthly Wastewater Treatment Costs for Purchaser

During January of each year, the Seller will review the daily flow data and flow recorder charts from the Purchaser's flow metering system and also review the flow records at the Seller's wastewater treatment plant influent flow meter.

A minimum 60-day long period will be selected during dry weather conditions over the months of October, November, or December will be selected to evaluate the population equivalent flow distribution between the parties served by the WWTP.

For the selected 60-day period, the average dry weather flow shall be determined. The average flow divided by the "allowable flow per capita" shall determine the Flow based Population Equivalent for the Purchaser and the Seller to be used for the next fiscal year period. By example, the calculation basis is illustrated as follows for the first year:

The agreement allows the Purchaser to discharge average dry weather flow as:

$$33,000 \text{ gpd divided by } 400 \text{ population equivalent} = 82.5 \text{ gpd / population equivalent}$$

Therefore, **the Purchaser's Flow based Population Equivalent shall be = 82.5 gpcpd** for the term of this agreement. *- Bold*

For the first year, the Purchaser's average dry weather flow contribution is limited to

$$82.5 \text{ gpd/population equivalent} \times 336 \text{ people} = 27,720 \text{ gpd}$$

The Seller's Flow based Population Equivalent was determined using flow meter data from dry weather periods during November and December 2003 and January 2004 as follows:

$$175,040 \text{ gpd divided by } 1306 \text{ people} = 134 \text{ gpd / population equivalent}$$

Based on the Seller's flow records and water metered sales, the Seller's Flow data includes:

$$63 \text{ gpd/capita domestic usage consists of residential, commercial, and governmental and } 71 \text{ gpd/capita infiltration/inflow for a total of } 134 \text{ gpd / population equivalent}$$

For purposes of this agreement, the Seller reserves the remaining capacity and adjusts its flow allocation to 136 gpd / population equivalent. *- Bold*

Therefore, **the Seller's Flow based Population Equivalent shall be = 136.0 gpcpd** for the term of this agreement.

month

The Flow based Population Equivalent approach is intended to fairly allocate the annual costs of wastewater treatment based on the population of each party that was served during the preceding 12-month period. The majority of O & M costs for the aerated lagoon are related to the waste load of BOD, suspended solids, and ammonia-nitrogen; these parameters in dry weather flow conditions are solely related to the population served. The amount of flow that each party contributes, if within the permitted total flow limit, is not a factor in the determination of O & M costs.

new edit

The First Year Flows will be based on population as determined by the most recent census.

Therefore, based on average dry weather flows, the first-year flow allocation shall be as follows:

$$\text{Seller's share} = 1306 / (336 + 1306) = 79.5 \%$$

$$\text{Purchaser's share} = 336 / (336 + 1306) = 20.5 \%$$

Tab →

The O & M cost distribution to each party shall be directly proportionate to the average dry weather flow allocation as follows:

$$\text{Seller's share} = 79.5 \% \times \$59,500 = \$47,302.50$$

$$\text{Purchaser's share} = 20.5 \% \times \$59,500 = \$12,197.50$$

$$\text{Purchaser's monthly wastewater treatment cost} = \$12,197.50 / 12 = \$1016.45$$

Budgeted Annual Wastewater Treatment Costs For The First Year

Bold

ITEM	ESTIMATED ANNUAL COST
LABOR & BENEFITS	\$20,000
INSURANCE	500
TELEPHONE	600
LAB TESTING	3,600
ELECTRICAL POWER	23,800
SUPPLIES	500
REPAIRS	500
EQUIPMENT REPLACEMENT & EXCESS O & M COST FUND	10,000
TOTAL BUDGET	\$59,500

Second & Successive Years O & M Cost Allocation Methods

Bold

The O & M Treatment Cost Distribution to each party shall be directly proportionate to the average dry weather flow allocation. Annual changes in the average dry weather flow

distribution in the Seller and the Purchaser shall suggest an increase or decrease in the population equivalent in each party. The Cost Allocation methodology shall be as follows:

Definitions:

Bold A = Purchaser's ADW shall be determined from previous flow records

B = Purchaser's Flow based Population Equivalent = Purchaser's ADW / 82.5 gpcpd

C = Seller's ADW = Total plant flow metered ADW - Purchaser's ADW

D = Seller's Flow based Population Equivalent = Seller's ADW / 136 gpcpd

Cost Allocation Calculation:

Bold Seller's share of Treatment O & M = $(D / (D + B)) \times (\text{Annual O \& M for Proposed Year})$

Bold Purchaser's share of Treatment O & M = $(B / (D + B)) \times (\text{Annual O \& M for Proposed Year})$

Return \hookrightarrow The Sum of the Seller's and Purchaser's shares shall equal the Total Budgeted Annual O & M

The Seller shall be the sole factor in determination of the "budgeted" dollar amount of Annual O & M for the Proposed Year to be used in the calculations above.

**FIRST AMENDED AND RESTATED
WASTEWATER TREATMENT AGREEMENT**

CITY OF SLATER, IOWA RESOLUTION NO. _____

CITY OF SHELDAHL, IOWA RESOLUTION NO. 2006 - 04

THIS AGREEMENT for the sale and purchase of wastewater treatment services is entered into as of the first day of May, 2006, between the City of Slater, an Iowa municipal corporation located in Story County, Iowa, (hereinafter referred to as the "Seller") and the City of Sheldahl, an Iowa municipal corporation located in Boone, Polk, and Story Counties, Iowa, (hereinafter referred to as the "Purchaser"), **PROVIDES AS FOLLOWS:**

1. RECITALS:

- 1.1. Whereas, the Purchaser is organized and established under the provisions of Section 372.4 of the Iowa Code for the purpose among other things of providing wastewater collection and treatment systems to serve users within the City of Sheldahl and adjacent areas; and,
- 1.2. Whereas, the Seller owns and operates a wastewater collection and treatment system with a capacity currently capable of providing the present customers of the Seller's system and the estimated number of sewer users to be served by the Purchaser as noted herein and as agreed to below; and,
- 1.3. Whereas, the Seller approved the Wastewater Treatment Agreement on March 6, 2006, and the Purchaser approved the Wastewater Treatment Agreement on March 29, 2006, and the parties have requested the consent and approval of the United States Department of Agriculture and the Iowa Department of Natural Resources, which have proposed modifications to said agreement; and
- 1.4. Whereas, the Seller and the Purchaser now, by this instrument, desire to amend and restate the Wastewater Treatment Agreement and do hereby substitute this First Amended and Restated Wastewater Treatment Agreement for the agreement approved in March 2006; and,

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth:

2. THE SELLER AGREES:

- 2.1. **Wastewater Amount:** The Seller will furnish to the Purchaser at the point of connection hereinafter specified, during the term of this agreement or any renewal or extension thereof, capacity in the Seller's wastewater treatment facilities and adequate treatment meeting applicable standards of the Iowa Department of Natural Resources and United States Environmental Protection Agency of all domestic strength wastes contributed by the Purchaser of such quantities and characteristics as follows:
 - 2.1.1. Average Dry Weather Flow of 33,000 gallons per day, as defined in Chapter 14.4.5.1.a – IDNR Wastewater Facilities Design Standards.
 - 2.1.2. Average Wet Weather Flow of 39,000 gallons per day, as defined in Chapter 14.4.5.1.b – IDNR Wastewater Facilities Design Standards.
 - 2.1.3. Design Flow of 34,800 gallons per day, as defined in Chapter 18C.4.1.2.a – IDNR Wastewater Facilities Design Standards.
 - 2.1.4. Maximum Wet Weather Flow of 40,000 gallons per day, as defined in Chapter 14.4.5.1.c – IDNR Wastewater Facilities Design Standards.

- 2.1.5. Peak Hourly Wet Weather Flow of 133,000 gallons per day (92.3 gallon per minute), as defined in Chapter 14.4.5.1.d – IDNR Wastewater Facilities Design Standards.
- 2.1.6. Domestic Population Equivalent load from not more than 400 persons, based on a waste carbonaceous BOD (5-day) load of not more than 0.17 pounds per day per capita, a waste total suspended solids load of not more than 0.20 pounds per day per capita, and a waste total kjeldahl nitrogen load of not more than 0.04 pounds per day per capita.
- 2.1.7. At Average Dry Weather Flow conditions, the waste strength shall be limited to the following: influent CBOD₅ (five day Carbonaceous Biochemical Oxygen Demand) not exceeding 300 mg/l, influent TSS (Total Suspended Solids) not exceeding 350 mg/l, and influent pH of between 6.0 and 9.0 standard units.
- 2.1.8. No discharge of septic tank wastes or holding tank wastes, and no discharge of septage wastes will be allowed into the Seller's treatment system through the Purchaser's conveyance system.
- 2.1.9. Other wastewater constituents including grease and oils at concentrations below that deemed to be detrimental to the treatment process, endangering of public health, or that directly or indirectly cause the treatment system to fail to meet compliance with applicable regulatory limits.
- 2.1.10. Purchaser's flow discharge into the Seller's collection sewer system shall not cause or result in the presence of odors noticeable more than 5 feet away from the discharge point at any time.
- 2.2. **Point of Connection:** The Seller's acceptance of such wastewater for treatment will be at the existing sanitary manhole on the 18-inch interceptor sewer located approximately 30-feet north of the plant site north fence and located approximately 70-feet east of the Southside lift station. Purchaser shall be solely responsible to construct, operate, and maintain its own collection system, pumping station, odor control facilities, and force main to discharge at the point of connection.
- 2.3. **Billing Procedure:** The Seller will furnish the Purchaser not later than the last day of each month with an itemized statement of the charges for wastewater accepted by the Seller for treatment by it during the preceding month.
- 2.4. **Condemnation, etc.:** The Seller will not seek to condemn or otherwise involuntarily take any part of the Purchaser's sewer system.
- 2.5. **Pre-existing Conditions:** The Seller shall be solely responsible for the remediation of any existing wastewater treatment system deficiencies or liabilities in existence at the Seller's facilities as identified by Iowa DNR before the effective date of this agreement.
- 2.6. **Emergency Conditions:** Emergency failures of the sanitary sewer system or treatment facilities due to main line breaks or sudden deterioration in spite of reasonable maintenance, equipment failure, power failure, flood, fire, wind, earthquake, or other catastrophe shall excuse the Seller from the provision of continuous service for such reasonable period of time as may be necessary to restore service.

3. THE PURCHASER AGREES:

- 3.1. **Metering Equipment:** The Purchaser shall furnish, install, operate, and maintain at its own expense at the point at which wastewater is pumped to the Seller's wastewater collection system, pipeline mounted, flanged body magnetic flow measurement equipment and required devices of standard type for properly indicating the flow rate and continuously recording the flow rate, and totalization of the daily volume of wastewater deliv-

ered to the Seller. Purchaser shall provide a 7-day flow chart recorder (minimum 10-inch circular chart) with daily flow totalizer stamping features. Purchaser shall maintain the flow metering and related equipment in proper calibration. The metering accuracy of the magnetic flow meter shall be within plus or minus 0.50 % of the actual flow over the entire pump operating flow range.

- 3.1.1. At least once every 365 days, Purchaser shall obtain field calibration and check-out of equipment by a manufacturer certified testing service and provide the written results to the Seller at least 30-days before average dry weather flow data collection period begins. Field calibration shall include electronics check-out and volumetric test by pump down of the wet well and determination of the volume removed over a measured time period. Additional technical service shall be requested by the Seller, if Seller finds the equipment malfunctioning or suspects malfunction based on irregular trends in the flow data. Metering equipment registering not more than three percent (3.0 %) above or below the test results shall be deemed to be accurate and in calibration.
- 3.1.2. The previous readings of any metering equipment disclosed by test to be inaccurate shall be corrected. If any metering equipment fails to register for any period, the amount of wastewater treated during such period shall be deemed to be the amount of wastewater treated in the corresponding period in the year immediately prior to the failure or the preceding 30-day period whichever is higher, unless the Seller and the Purchaser shall mutually agree upon a different amount.
- 3.1.3. The metering equipment shall be checked at least once each week for proper operation by the Purchaser. The Seller shall have access keys to all locked enclosures housing the flow metering and chart recording equipment. The Purchaser shall provide the Seller the recording charts and daily totalizer flow values on a monthly basis, within seven days after the end of the month. Appropriate officials and employees of the Seller shall have at all reasonable times access to the metering equipment for the purpose of verifying the readings.
- 3.2. **Seller's Access to Purchaser's Facilities:** The Seller reserves the right of access to sample Purchaser's wastewater flow at the Purchaser's pump station or at any points in the sewer collection system as Seller deems appropriate.
- 3.3. **Odor Control Facilities:** The Purchaser shall furnish, install, operate, and maintain at its own expense pipeline odor control facilities to prevent odor release at the pipeline discharge point into the Seller's wastewater collection system and at all air release valve facilities in the pipeline right-of-way areas within the Seller's City Limits or adjacent to the Seller's City Limits.
- 3.4. **Sewer Use Ordinance:** The Purchaser shall maintain and enforce an Iowa DNR approved sewer use ordinance to control the use of its sewers for domestic and commercial use only and implement a program of clearwater flow elimination and control from Purchaser's private service user connections and municipal sanitary sewer system so that none of the Purchaser's average wet weather design flow, maximum daily wet weather design flow, or peak hourly wet weather flow values are exceeded.
- 3.5. **Fees for Wastewater Treatment:** The Purchaser shall pay the Seller, not later than the 15th day of each month, for the wastewater delivered to the Seller at a rate determined to be one twelfth (1/12th) of Purchaser's proportionate share of identified annual wastewater treatment costs for the Seller's facilities established on the annual anniversary date of this agreement, calculated as follows:

- 3.5.1. The Purchaser's proportionate share of wastewater treatment costs as determined using the population equivalent unit flow equation derived in Appendix No. 1.
- 3.5.2. Identified Annual Wastewater Treatment Costs (excludes all costs associated with operation and maintenance of Seller's sewer collection and transmission system upstream of the Purchaser's discharge to the Seller's sewer system):
- 3.5.2.1. Operating & Maintenance (O & M) Labor = Operator hours x Labor rate including benefits.
 - 3.5.2.2. Transportation to and from treatment site.
 - 3.5.2.3. Training and licensing of certified wastewater treatment operators.
 - 3.5.2.4. Review of Purchaser's flow data, and administrative costs for Purchaser's monthly account billing and collection for one account. All legal, accounting, and engineering costs that the Seller incurs to administer the treatment service and determine the monthly cost for the Purchaser shall be directly billed to and payable by the Purchaser.
 - 3.5.2.5. Electrical utility and telephone charges for operation of wastewater treatment plant (WWTP).
 - 3.5.2.6. Sampling costs and laboratory testing for monitoring of treatment facilities, and Purchaser's influent waste testing as may be required by the Seller.
 - 3.5.2.7. Treatment facilities site maintenance.
 - 3.5.2.8. Repairs and maintenance of treatment equipment and facilities; non-capital expenditures necessary to maintain continued operation of the treatment facilities, including equipment rentals.
 - 3.5.2.9. Funding of an excess operations & maintenance cost fund to cover unexpected costs, non-routine O & M costs, and funding of an equipment replacement fund.
- 3.5.3. For the first year of this agreement or fraction hereof, the Purchaser will pay the Seller at a rate of **\$1,016.45** per month of treatment service (as calculated in Appendix No. 1) to compensate the Seller for the Purchaser's proportionate share of the identified annual wastewater treatment costs.
- 3.5.4. On the first anniversary date of February 1st annually coinciding with the development of fiscal year budgets for both parties, the identified annual wastewater treatment costs will be determined by the Seller for the second year of Purchaser's service according to the methods described in this section and as shown using the methodology in Appendix No. 1. An annual rate will then be established for the fiscal year and divided into twelve equal monthly payments for the following year. The Seller shall verify to the Purchaser that the Seller has fully funded its share of the annual wastewater budget for the year completed on the anniversary date.
- 3.5.5. On the second anniversary date, the annual wastewater treatment costs for the third year of operation will be determined. The Purchaser's annual rates will again be calculated for the following year. The Seller shall verify to the Purchaser that the Seller has fully funded its share of the annual wastewater budget for the year completed on the anniversary date.

- 3.5.6. Thereafter, if both Seller and Purchaser agree, a more simplified rate structure can be developed. If both parties cannot agree, the average dry weather flow capacity allocation and revisions to the Flow based Population Equivalent will continue on each anniversary date as described in Appendix No. 1.
- 3.6. **Capacity/Capital Improvements:** The Purchaser will compensate the Seller for a proportionate share of the necessary capital improvements to the wastewater treatment facilities as needed to increase capacities to accommodate Purchaser treatment capacity usage. Additionally, the Purchaser will compensate the Seller for a proportionate share of the necessary capital improvements (defined as improvements costing \$500.00 or more) to the wastewater treatment facilities as deemed necessary by the Seller to repair, replace, or upgrade wastewater treatment equipment and facilities during the term of this agreement for those improvements that immediately and proportionally benefit the Purchaser. All expenditures for capital improvements to be shared with the Purchaser must be reviewed with the Purchaser, but are not subject to Purchaser's approval before implementation since time is of the essence. Compensation to Seller for necessary capital improvements will be due from the Purchaser as payments by the Seller are made for said improvements.
- 3.6.1. The Purchaser's proportionate share of necessary capital improvements = (Purchaser allocated population equivalent ÷ Total WWTP design population equivalent) x capital improvement costs. These terms shall be as defined in Appendix No. 1.
- 3.7. **Existing Facilities:** The Purchaser will compensate the Seller for the value of the Wastewater Amount (allocated capacity of the wastewater treatment facilities) as defined in existence as of the effective date of this agreement. This one (1) time non-refundable payment shall be in the amount of \$184,230.00 and shall be due at the time of Purchaser's connection to the Seller's facility. Any remaining treatment flow and organic capacity that may be not proclaimed in this contract or permitted by DNR for use by the Seller at this time shall remain the Seller's sole possession for the entire term of this contract. The Seller may if it so chooses allow the Purchaser to buy additional Wastewater Amounts above that specified in this agreement, if a mutual additional purchase price can be agreed upon by both the Seller and Purchaser.

4. IT IS FURTHER MUTUALLY AGREED BY THE PARTIES:

- 4.1. **Conditions Precedent:** The terms and conditions of this agreement and the duties and obligations of the parties to fulfill the same shall not take effect until the following conditions have been satisfied:
- 4.1.1. Obtaining necessary consents to this agreement from the United States of America (U.S.D.A./Rural Development).
- 4.1.2. Obtaining necessary consents to this agreement from the Iowa Department of Natural Resources for completion of the Seller's SRF Loan.
- 4.1.3. Approval of the Iowa Department of Natural Resources for the Purchaser's sanitary sewer system and any and all other necessary governmental approvals; and,
- 4.1.4. Receipt by the Purchaser from the United States of America (acting by and through USDA/Rural Development) on or before December 30, 2004 of sufficient grant funds and sufficient loan funds to make this project feasible, in the sole discretion of the Purchaser.
- 4.1.5. If, for any reason, any of the foregoing conditions are not met without fault of either party, this agreement shall be rendered null and void and of no further force and effect, and neither party shall have any claim against the other for any

expenses incurred or damages sustained as a result of negotiations and efforts attempted in order to complete the objectives of this agreement.

- 4.2. **Term of Contract:** This contract shall extend for a term of forty (40) years from the date of the Purchaser's initial discharge of wastewater to the system as shown by the first bill submitted by the Seller to the Purchaser and, thereafter, may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser. This Contract may be terminated by the Purchaser by proper written notice, provided that a grace period of at least six months is provided ahead of the actual termination date specified. The Seller may not terminate this agreement without consent of the Purchaser, however suspension of service can be implemented for Purchaser's failure to pay for capital improvements or treatment service fees that are more than sixty (60) days past due. Actual termination of this Agreement will in either case be dependent upon an alternative method of treatment being immediately available to Purchaser to allow disposal of wastewater in compliance with federal and state rules and regulations.
- 4.3. **Connection and Delivery of Service:** There is no connection fee in relation to this Agreement after the initial fee for capacity purchase is made. Thirty (30) days prior to the estimated date of construction completion of the Purchaser's sewer system, the Purchaser will notify the Seller in writing the date for the initial delivery of wastewater for treatment.
- 4.4. **Modifications to the Contract:** The parties acknowledge that the actual rates may change from time to time in response to changing operation and maintenance costs or capital improvement costs. Such changes will be at the option of the Seller except that at the option of the Purchaser the changed rates will be adjusted as they apply to the Purchaser whenever such rates do not reflect actual operating costs as described below. Except as indicated under foregoing Paragraph B.6, the Purchaser shall not directly or indirectly be obligated to participate financially in relation to any capital improvements to the Seller's system which do not proportionally benefit the Purchaser as well; and, any such contributions or rate changes shall be proportionate to Purchaser's design population equivalent percentage of the total WWTP design population equivalent.
- 4.4.1. The Purchaser reserves the right to review the Seller's records relating to average dry weather flow and operating costs attributed to the Seller's wastewater treatment system.
- 4.4.2. At the end of the fiscal year, any unrealized annual budget expenditures shall be proportionally funded by both parties and be held in the Excess Operation & Maintenance and Equipment Replacement Fund available for use in future years.
- 4.5. **Responsibilities of Parties:** Construction, operation, and maintenance of the Purchaser's systems up to the point of connection with the Seller's system shall be and remain solely the responsibility of the Purchaser and ownership thereof shall at all times remain with the Purchaser, its successors or assigns. Ownership and control of the wastewater treatment facilities of the Seller and future capital improvements shall remain solely with the Seller, along with full responsibility for its operation and maintenance. The Seller will continue to operate the waste treatment facilities in an appropriate manner and as directed by State and Federal regulatory agencies. The Seller will bear the full responsibility of meeting effluent requirements with exception given to the sharing of costs of capital improvements required to maintain compliance with existing or future regulations as more fully addressed previously in Paragraph B.6 of this agreement.
- 4.5.1. The Seller is sole owner of its wastewater collection system and the wastewater treatment facilities.

- 4.5.2. The Purchaser is sole owner of its wastewater collection system up to the connection point at the Seller's sewer system.
- 4.6. **Harmful Wastes:** The Seller and the Purchaser shall each be solely responsible for its respective wastewater quality as received into the Seller's treatment system. If the wastewater of the Purchaser as received into the Seller's treatment system is found to have characteristics such as extreme pH, corrosive effect on Seller's facilities, toxic agents or other ingredients which are found to damage the Seller's sewer system, equipment, or structures or upset or inhibit the sewage treatment process at the treatment plant, or if the wastewater of the Purchaser is found to be solely responsible for the creation of noticeable odors, at the location of any public facilities or residences existing at the time of the creation of this agreement, and conversely, if the wastewater of the Seller is found to be responsible for any of the previously described damage or odors, corrective measures, as mutually agreed, shall be taken by the responsible party either the Purchaser or by the Seller as the case may be to overcome the problem.
- 4.6.1. Purchaser shall be liable to pay Seller for costs of actual damage caused by discharge of Seller's harmful wastes into the Purchaser's facilities.
- 4.7. **Volume Measurement:** As shown above, payments from the Purchaser under this Agreement are based on the respective design capacity needs of the Purchaser and Seller. Verification of Purchaser wastewater flow volumes entering the Seller's wastewater treatment facility, in addition to information provided by the Purchaser, may be observed or determined periodically by the Seller at their sole expense using the Purchaser's installed pipeline flow metering facilities.
- 4.8. **Arbitration:** The parties agree that any controversy or claim arising out of this agreement or the breach thereof, shall be settled by arbitration and judgment on the award rendered by a panel of arbitrators as follows: (1) The "Construction Industry Arbitration Rules and Mediation Procedures" of the American Arbitration Association shall apply. (2) There shall be a panel of three arbitrators, each of whom, by virtue of previous education, training, or work experience, would qualify in a judicial proceeding as an expert witness on the substance of the matter in dispute. (3) Each party shall be entitled to appoint one arbitrator, and the two appointed arbitrators shall appoint a third arbitrator. (4) The arbitrators must apply the applicable substantive law. (5) The place of arbitration shall be in Story County, Iowa. (6) The arbitrators will have no authority to award punitive or other damages not measured by the prevailing party's actual damages, except as may be required by statute. (7) The arbitrators shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, transcription services, witness fees, and attorneys' fees. (8) The award of the arbitrators shall be accompanied by a reasoned opinion. (9) Judgment may be entered in the District Court of Iowa in accordance with chapter 679A of the Code of Iowa.
- 4.9. **Special Relief:** The parties agree that a breach or anticipatory breach by either party of the duties imposed by this agreement may cause serious or irreparable harm to the other. Either party may seek and have from a court of competent jurisdiction an order of injunction or mandamus bond. Unless such order is confirming the order of a panel of arbitrators, such order shall be deemed temporary until arbitration of the dispute is completed.
- 4.10. **Regulatory Agencies:** This contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State of Iowa, and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

- 4.11. **Miscellaneous:** The construction of the sanitary sewer system by the Purchaser is being financed in part by a loan made or insured by the United States of America acting through the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, by the State Director of such agency or subunit thereof.
- 4.12. **Pledge of Security.** The interest of the City of Sheldahl under this First Amended and Restated Wastewater Treatment Agreement may be pledged to the United States of America acting through USDA Rural Development or its successor agencies, as security for any loan to the City of Sheldahl made or insured by the United States of America.
- 4.13. **Successor to the Purchaser:** In the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the Purchaser hereunder.
- 4.14. **Lender Approval Required:** This Agreement is subject to the written approvals of the lenders of the parties. Each party shall promptly obtain such written approval and provide the other party with a copy thereof.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in multiple counterparts, each of which shall be deemed to be an original.

CITY OF SLATER, IOWA APPROVAL: In accordance with Iowa Code section 380.5, the undersigned approves the foregoing as enacted on May ____, 2006, by the City Council.

By: _____
RICHARD REWARTS, Mayor

Attested and Sealed with the seal of the City of Slater, Iowa on the date aforesaid by:

By: _____
GWENDOLYN IHLE, Clerk

CITY OF SHELDAHL, IOWA APPROVAL: In accordance with Iowa Code section 380.5, the undersigned approves the foregoing as enacted on May 2, 2006, by the City Council.

By: Frank L. Hampton
FRANK L. HAMPTON, Mayor

Attested and Sealed with the seal of the City of Sheldahl, Iowa on the date aforesaid by:

By: Britt Jones
BRITT JONES, Clerk

- 4.11. **Miscellaneous:** The construction of the sanitary sewer system by the Purchaser is being financed in part by a loan made or insured by the United States of America acting through the United States Department of Agriculture, and the provisions hereof pertaining to the undertakings of the Purchaser are conditioned upon the approval, in writing, by the State Director of such agency or subunit thereof.
- 4.12. **Pledge of Security.** The interest of the City of Sheldahl under this First Amended and Restated Wastewater Treatment Agreement may be pledged to the United States of America acting through USDA Rural Development or its successor agencies, as security for any loan to the City of Sheldahl made or insured by the United States of America.
- 4.13. **Successor to the Purchaser:** In the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the Purchaser hereunder.
- 4.14. **Lender Approval Required:** This Agreement is subject to the written approvals of the lenders of the parties. Each party shall promptly obtain such written approval and provide the other party with a copy thereof.

IN WITNESS WHEREOF, the parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in multiple counterparts, each of which shall be deemed to be an original.

CITY OF SLATER, IOWA APPROVAL: In accordance with Iowa Code section 380.5, the undersigned approves the foregoing as enacted on May 1 , 2006, by the City Council.

By: 
RICHARD REWARTS, Mayor

Attested and Sealed with the seal of the City of Slater, Iowa on the date aforesaid by:

By: 
GWENDOLYN HILLE, Clerk

CITY OF SHELDAHL, IOWA APPROVAL: In accordance with Iowa Code section 380.5, the undersigned approves the foregoing as enacted on May , 2006, by the City Council.

By: _____
FRANK L. HAMPTON, Mayor

Attested and Sealed with the seal of the City of Sheldahl, Iowa on the date aforesaid by:

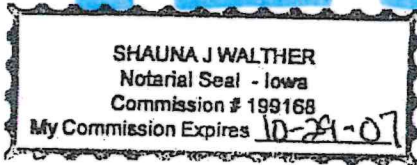
By: _____
BRITT JONES, Clerk

ACKNOWLEDGMENTS

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on May 2, 2006 by Richard Rewarts and Gwendolyn Ihle as mayor and clerk of the City of Slater, Iowa.

NOTARY PUBLIC

STATE OF IOWA, COUNTY OF POLK, SS.: This instrument was acknowledged before me on May 2, 2006 by Frank L. Hampton and Britt Jones as mayor and clerk of the City of Sheldahl, Iowa.



Shauna J. Walther
NOTARY PUBLIC

CONSENTS

THIS CONTRACT IS APPROVED on behalf of USDA Rural Development this _____ day of _____, 2006

USDA RURAL DEVELOPMENT

BY: _____
Dorman A. Otte, Program Director
Rural Utilities & Community Facilities

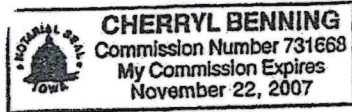
THIS CONTRACT IS APPROVED on behalf of State of Iowa Department of Natural Resources on this _____ of _____, 2006

IOWA DEPARTMENT OF NATURAL RESOURCES

BY: _____

ACKNOWLEDGMENTS

STATE OF IOWA, COUNTY OF STORY, SS.: This instrument was acknowledged before me on May _____, 2006 by Richard Rewarts and Gwendolyn Ihle as mayor and clerk of the City of Slater, Iowa.



Cherryl Benning

NOTARY PUBLIC

STATE OF IOWA, COUNTY OF POLK, SS.: This instrument was acknowledged before me on May _____, 2006 by Frank L. Hampton and Britt Jones as mayor and clerk of the City of Sheldahl, Iowa.

NOTARY PUBLIC

CONSENTS

THIS CONTRACT IS APPROVED on behalf of USDA Rural Development this _____ day of _____, 200__.

USDA RURAL DEVELOPMENT

BY: _____
Dorman A. Otte, Program Director
Rural Utilities & Community Facilities

THIS CONTRACT IS APPROVED on behalf of State of Iowa Department of Natural Resources on this _____ of _____, 200__.

IOWA DEPARTMENT OF NATURAL RESOURCES

BY: _____

APPENDIX NO. 1**Attachment to Wastewater Treatment Agreement
Seller and Purchaser****Determination of Proportionate Share of Monthly Wastewater Treatment Costs for Purchaser**

During January of each year, the Seller will review the daily flow data and flow recorder charts from the Purchaser's flow metering system and also review the flow records at the Seller's wastewater treatment plant influent flow meter.

A minimum 60-day long period will be selected during dry weather conditions over the months of October, November, or December will be selected to evaluate the population equivalent flow distribution between the parties served by the WWTP.

For the selected 60-day period, the average dry weather flow shall be determined. The average flow divided by the "allowable flow per capita" shall determine the Flow based Population Equivalent for the Purchaser and the Seller to be used for the next fiscal year period. By example, the calculation basis is illustrated as follows for the first year:

The agreement allows the Purchaser to discharge average dry weather flow as:

33,000 gpd divided by 400 population equivalent = 82.5 gpd / population equivalent

Therefore, the Purchaser's Flow based Population Equivalent shall be = 82.5 gpcpd for the term of this agreement.

For the first year, the Purchaser's average dry weather flow contribution is limited to

82.5 gpd/population equivalent x 336 people = 27,720 gpd

The Seller's Flow based Population Equivalent was determined using flow meter data from dry weather periods during November and December 2003 and January 2004 as follows:

175,040 gpd divided by 1306 people = 134 gpd / population equivalent

Based on the Seller's flow records and water metered sales, the Seller's Flow data includes:

63 gpd/capita domestic usage consists of residential, commercial, and governmental and 71 gpd/capita infiltration/inflow for a total of 134 gpd / population equivalent

For purposes of this agreement, the Seller reserves the remaining capacity and adjusts its flow allocation to 136 gpd / population equivalent.

Therefore, the Seller's Flow based Population Equivalent shall be = 136.0 gpcpd for the term of this agreement.

The Flow based Population Equivalent approach is intended to fairly allocate the annual costs of wastewater treatment based on the population of each party that was served during the preceding 12-month period. The majority of O & M costs for the aerated lagoon are related to the waste load of BOD, suspended solids, and ammonia-nitrogen, these parameters in dry weather flow conditions are solely related to the population served. The amount of flow that each party contributes, if within the permitted total flow limit, is not a factor in the determination of O & M costs.

The First Year Flows will be based on population as determined by the most recent census.

Therefore, based on average dry weather flows, the first year flow allocation shall be as follows:

Seller's share = $1306 / (336 + 1306) = 79.5 \%$

Purchaser's share = $336 / (336 + 1306) = 20.5 \%$

The O & M cost distribution to each party shall be directly proportionate to the average dry weather flow allocation as follows:

$$\text{Seller's share} = 79.5 \% \times \$59,500 = \$47,302.50$$

$$\text{Purchaser's share} = 20.5 \% \times \$59,500 = \$12,197.50$$

$$\text{Purchaser's monthly wastewater treatment cost} = \$12,197.50 / 12 = \$1016.45$$

Budgeted Annual Wastewater Treatment Costs For The First Year

ITEM	ESTIMATED ANNUAL COST
LABOR & BENEFITS	\$20,000
INSURANCE	500
TELEPHONE	600
LAB TESTING	3,600
ELECTRICAL POWER	23,800
SUPPLIES	500
REPAIRS	500
EQUIPMENT REPLACEMENT & EXCESS O & M COST FUND	10,000
TOTAL BUDGET	\$59,500

Second & Successive Years O & M Cost Allocation Methods

The O & M Treatment Cost Distribution to each party shall be directly proportionate to the average dry weather flow allocation. Annual changes in the average dry weather flow distribution in the Seller and the Purchaser shall suggest an increase or decrease in the population equivalent in each party. The Cost Allocation methodology shall be as follows:

Definitions:

A = Purchaser's ADW shall be determined from previous flow records

B = Purchaser's Flow based Population Equivalent = Purchaser's ADW / 82.5 gpcpd

C = Seller's ADW = Total plant flow metered ADW - Purchaser's ADW

D = Seller's Flow based Population Equivalent = Seller's ADW / 136 gpcpd

Cost Allocation Calculation:

Seller's share of Treatment O & M = $(D / (D + B)) \times (\text{Annual O \& M for Proposed Year})$

Purchaser's share of Treatment O & M = $(B / (D + B)) \times (\text{Annual O \& M for Proposed Year})$

The Sum of the Seller's and Purchaser's shares shall equal the Total Budgeted Annual O & M

The Seller shall be the sole factor in determination of the "budgeted" dollar amount of Annual O & M for the Proposed Year to be used in the calculations above.