

EFFLUENT CONTRACT FOR IRRIGATION

This Agreement is made and entered into this 17th day of January, 2017, between the Broken Arrow Municipal Authority, hereinafter referred to as the "Supplier" and, ISCC Managing Group, LLC d/b/a The Club at Indian Springs, hereinafter referred to as the "User."

WITNESSETH:

WHEREAS, the Authority is a public trust of which the City of Broken Arrow (hereinafter "Supplier") is its sole beneficiary; and

WHEREAS, the Supplier owns, maintains, and operates a wastewater treatment facility and the facility produces a treated effluent which is non-potable water that is of a quality suitable for irrigation purposes; and

WHEREAS, such treated effluent is a resource which can be safely used for irrigation purposes; and

WHEREAS, the User desires to reuse this reclaimed water for irrigation and related purposes as a means of effluent disposal; and

WHEREAS, User owns and controls the land upon which effluent from the Supplier can be beneficially used for irrigation purpose; and

WHEREAS, the close proximity of the User to the Supplier's wastewater treatment plant makes utilization of these reclaimed waters feasible; and

WHEREAS, User has constructed the lines and has installed the required materials and equipment from its land to the wastewater treatment plant; and

WHEREAS, the Supplier owns and controls the land from the User's land to the wastewater treatment plant and has granted the User an access easement for construction, installation and maintenance of the required lines, materials and equipment; and

WHEREAS, User desires to utilize the effluent from the Supplier pursuant to the terms and conditions set forth herein;

WHEREAS, the use of the effluent falls within the City's green plan, is a good use of resource and coupled with the consideration contained is therefore in accordance with the health, safety and welfare of the citizens of Broken Arrow.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the User and Supplier do hereby agree as follows:

1. Definitions

- (a) "Bypass" means the intentional and unintentional diversion of a waste stream from any portion of a wastewater treatment system or a water reuse system.
- (b) "Cell" means an individual basin of a lagoon system.
- (c) "ODEQ" means the Oklahoma Department of Environmental Quality.
- (d) "Discharge" means any intentional or unintentional release by leaking, pumping, pouring, emitting, emptying, dumping, escaping, seeping, overflowing, leaching or other means of release of wastewater or reclaimed water into any waters of the state or into or on any location where they may enter the waters of the state.
- (e) "End-of-pipe" means the terminal points in all reclaimed water users' distribution systems.
- (f) "Lagoon" means a soil or lined basin, either below or above ground level, that is designed, maintained and operated to store, recycle and/or treat wastewater.
- (g) "Operator" means the individual who is properly certified by ODEQ and who is responsible for the maintenance and operation of a water reuse system.
- (h) "MOR" means Monthly Operation Report.
- (i) "Person" means any individual, company, corporation, government agency, municipality, or any other entity.
- (j) "Reclaimed water" means wastewater that has gone through various treatment processes to meet specific water quality criteria with the intent of being used in a beneficial manner.
- (k) "Supplier" means a person or entity that treats and provides reclaimed water pursuant to a permit issued by ODEQ.
- (l) "User" means a person or entity that uses reclaimed water. In those instances in which the Supplier and the User are the same entity, the entity is a Supplier.
- (m) "Treatment works" means any plant, disposal field, lagoon, incinerator or other facility used to treat, stabilize, hold or reclaim wastewater.
- (n) "Water reuse system" means a treatment and distribution system designed to treat and supply reclaimed water.
- (o) "Wetted perimeter" means the area where a land application device distributes reclaimed water.

2. Operations and Maintenance

- (a) The User shall be classified as a Category 3 User of reclaimed water and shall use reclaimed water only for the purposes permitted under federal, state and local laws and pursuant to the Oklahoma Administrative Code. The User shall be responsible for all maintenance costs of the effluent pumping system located on Supplier property that supplies effluent to the User. The effluent pumping system includes all piping, and associated appurtenances. The User hereby expressly indemnifies and holds harmless the Supplier for any damages to the effluent delivery systems incurred as a result of the Supplier's operation. If the Supplier's effluent gravity flow system is insufficient to effectively meet its needs and the requirements of ODEQ, then the User shall install its own effluent pumping system, which the User shall be responsible for maintaining and repairing at the User's expense.

- (b) The User shall be responsible for the operation and maintenance of its entire force main system located on and off of Supplier property. The Supplier has previously provided to the User, a utility easement for access into and upon the Supplier's property for operation and maintenance of its force main system.
- (c) The user shall operate all reclaimed water distribution systems in compliance with all applicable ODEQ regulations. Specifically, the Oklahoma Administrative Code sections governing use are attached hereto as "Exhibit A" and specifically incorporated by reference.

3. Consideration for use of effluent.

In consideration for the use of the effluent, the User agrees to make its facilities available for two golfing events as follows:

- (a) The User shall provide its golf course on a Monday during the Spring (months of March through June) of each year, as agreed upon by both parties, to the Supplier at no cost. The Supplier will use the course to host an event in which the proceeds will be used to fund a capital project designated by the City Manager.
- (b) The User shall provide its golf course on a Monday during the Fall (months of September through November) of each year, as agreed upon by both parties, to the Supplier at no cost. The Supplier will use the course to host an event in which the proceeds will be used to fund events that will promote City employee morale as designated by the City Manager.

4. Term of the Agreement

The Supplier shall provide and the User shall accept and utilize effluent produced by the Supplier from its wastewater treatment facility, and this agreement shall be effective for a term of five (5) years from the date of execution of this contract. The term of the Agreement may be renewed as agreed upon in writing by both the parties. That the User shall provide all required information for renewal of this agreement and the issuance of a permit, including but not limited to, a signed User Agreement, a completed application and survey of distribution system form, Supplier Inspection form, Flushing Plan, Operation and Maintenance Manual and a Monthly Operational Report. That the User and Supplier shall coordinate with each other regarding these requirements and each shall provide the other with all needed information to submit these materials to ODEQ.

5. Use of Effluent: User's Irrigation System and Main

- (a) The User shall utilize the effluent delivered by the Supplier for golf course irrigation and ornamental watering purposes or other purposes in any manner determined by the User except that use of the effluent shall be consistent with all local, state, and federal regulations and in such a manner as not to require a federal or state wastewater discharge permit. In the event that a state or federal permit is required in the future for this discharge, the User

agrees to either pay all associated costs or to cease pumping reclaimed water and release the Supplier from its commitments set forth in this Agreement.

- (b) User has all equipment, including pump(s), piping and flow meter to transport and deliver effluent from the Lynn Lane Wastewater Treatment Plant to the receiving location.
- (c) The User shall be solely responsible for the operation and maintenance of the User's irrigation system located within the boundaries of the Supplier's property and shall be solely responsible for all operation and maintenance of all effluent delivery systems including portions of the force main located upon the User's property.
- (d) User shall allow the Supplier reasonable access to all sites to determine whether the user is operating its facilities in compliance with the applicable ODEQ regulations, and/or performing all required monitoring and analysis.
- (e) User shall ensure that reclaimed water shall not be used on golf courses unless irrigation takes place when the public is not allowed to access the sites being irrigated and shall ensure that no human contact is made with the reclaimed water being utilized.
- (f) The Supplier shall retain the right to shut off the effluent pumping system at any time it deems necessary for testing and other related matters as required by its permit issued by ODEQ and required by federal, state and local laws. In such event(s), the Supplier will use its best efforts to resume operation of the system as soon as reasonably possible.

6. Water Quality

- (a) Effluent provided under this Agreement shall be treated to levels acceptable to meet applicable local, state and federal requirements for the wastewater treatment facility. The Supplier shall check the water quality for Biochemical Oxygen Demand, Total Suspended Solids, Fecal Coliform, Ammonia Nitrogen, Dissolved Oxygen, Ph, and any additional criteria as may be added in the future as required by permits. If additional tests are required of the Supplier by the local, state, or federal regulatory agencies solely because of the irrigation activity, User agrees to pay for additional tests. In the event of water quality deterioration, the Supplier will inform the User as soon as practicable and irrigation with effluent shall be discontinued until quality is restored to acceptable levels, as determined by the Supplier. The User may use other irrigation water during any such periods effluent is either unavailable or is of insufficient quality.
- (b) The effluent provided to the User shall require treatment in the form of chlorination and dechlorination. As determined by permit, the Supplier is required to chlorinate and dechlorinate the treatment plant effluent.

(c) The testing frequency and limits for water reuse system shall be as follows:

- a. Chlorine disinfection shall be tested every twelve (12) hours and free available chlorine residual at the point of entry shall always be greater than 0.20 ppm or combined chlorine residual at the point of entry shall always be greater than 0.50 mg/l;
- b. Nitrogen/Phosphorous shall be tested one (1) time per month and shall have a limit of less than most stringent agronomic rate;
- c. BOD5 or CBOD5 shall be tested one (1) time per week and shall have a limit of less than 20 mg/l.
- d. Escherichia coli (E. coli) shall be tested three (3) times per week and during the months of May through September shall have a daily limit of 406/100 ml and a monthly geo. mean of 126/100 ml. During the months of October through April shall have a daily limit of 2030/100 ml and a monthly geo. mean of 630/100 ml. The approved methods of testing shall be any of the following SM9221 B.1 (LTB) 2006 and SM9221 F (EC MUG)-2006, SM 9223 B-2004, Colilert Quanti-Tray-2004, or Colilert-18 Quanti-Tray-2004.
- e. Suppliers shall complete a Monthly Operation Report (MOR) for each month. The Supplier shall be required to maintain MOR's on-site. User shall provide all laboratory data and any other information required to complete the operation report to the supplier no later than the 10th of each month.
- f. Supplier shall have at least one certified operator employed at all times for each water reuse system. Operators shall be certified pursuant to OAC 252:710.
- g. Suppliers shall report any chlorine residual or turbidity within twenty-four (24) hours from the time supplier becomes aware of a violation(s) by calling ODEQ. A written report describing the reason for the violation and the steps taken to correct the violation shall be submitted to ODEQ within five (5) days of discovery of the violation. User shall remit any and all information needed by the Supplier to complete the reporting requirement immediately upon demand by the Supplier.
- h. Attached hereto as "Exhibit B" is a chart reflecting the testing frequency and limits for Water Reuse Systems. That this chart is hereby incorporated by reference and shall be utilized by the parties herein.

7. Costs

- a. All costs of testing, analytics, training of user's employees, operation, maintenance, permit and application fees, flow meter calibration and annual renewal fees shall be paid by the user monthly and no later than 10 days after demand by supplier.

- b. Attached as “Exhibit C” is a summary of the estimated costs of testing, training and permitting. That in the event of an increase in costs, User agrees to pay all increased costs associated with its obligations under this contract.

8. Volume of Water

- (a) The User may use up to a monthly average of 1.5 million (1,500,000) gallons of effluent water per day, unless this use causes the Supplier to violate its loading limits in its NPDES Permit for the discharge of effluent. Should this use cause the Supplier to violate its loading limits, then the Supplier shall give reasonable notice to the User so that it may make other arrangements for its irrigation purposes. The Supplier shall provide more than up to 1.5 million gallons of effluent as long as the effluent is not leaving the User’s property and the loading limits are not being exceeded.
- (b) The Supplier agrees to make available to the User as much effluent as the delivery system is capable of delivering up to 1.5 million gallons a day except for periods of necessary downtime for maintenance, unavoidable disruptions, or acts of God or war, or a need by the Supplier necessitating the use of the reclaimed water.
- (c) During periods of heavy rainfall, flooding and high water, the Supplier may shut off the effluent delivery system to the User and by-pass the system so that the Supplier may effectively remove the high water into the Arkansas River as required by ODEQ. In such event(s), the Supplier will use its best efforts to resume operation of the system as soon as reasonably possible.
- (d) User shall maintain the flow measuring device at their sole cost and shall assure that it is in good working order and operating properly.

9. Cost of Materials and Construction

The User agrees to pay all costs for any and all permitting, design, materials, and construction for any improvements required to transport and use effluent from the Supplier’s treatment facility to the User’s irrigation system.

10. Delivery of Effluent

The User shall only irrigate the grounds during a time when the public is not allowed to access the site. It shall be the User’s responsibility to assure that excessive pumping that could lead to effluent running off the User’s property does not occur.

11. Inability to Deliver

The Supplier shall not be liable to the User for failure to deliver effluent or for damages caused by water quality. If and when situations occur where the Supplier cannot deliver effluent, the Supplier shall notify the User in a timely fashion. As soon as practical thereafter, the Supplier shall provide the User with information concerning the nature of the interruption and the

anticipated duration. The Supplier is required to do testing as required by permit on the effluent and may have to shut down the pumping system to accurately conduct its tests. The Supplier intends to work closely with the User in maintaining good level of effluent for the User to utilize on an ongoing basis. When the Supplier becomes aware of certain situations when the pumping system will be shut down for an extended period of time, the Supplier will notify the User. Supplier shall immediately stop supplying reclaimed water whenever the reclaimed water does not meet the requirements listed herein for chlorine residual and/or turbidity.

12. Disclaimer of Warranties

- (a) Express Warranties: The Supplier disclaims all express warranties except those, which specifically appear within this agreement.
- (b) Implied Warranties: The Supplier disclaims any implied warranties of merchantability of the effluent delivered under this contract for any purpose.

13. Early Termination or Assignment

- (a) The User and the Supplier shall have the right to assign this contract at any time so long as both parties agree in full and in writing to the method of assignment. Said assignment, however, shall not be unreasonably withheld.
- (b) The User and the Supplier, after reasonable advance notice given to the other party, shall have the right to terminate this Agreement if performance is prevented by third-party litigation or by any other event beyond the control of the User or the Supplier.
- (c) The Supplier shall have the right to terminate this contract by giving thirty (30) days written notice to the User if the User is no longer operating on a continuous basis or if the User fails to provide the facility to the Supplier to hold two (2) golf tournaments by October 30th of each year, or if User fails to provide laboratory or other needed data, or fails to pay any fees associated with this contract.

14. Excuse from Performance by Government Acts

If, for any reason during the term of this Agreement, local, state, or federal government(s) or agencies shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission, and distribution systems, or the application and use of effluent, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof and a new Agreement shall be negotiated by the parties hereto in conformity with such permits, approvals, or requirements.

15. Indemnification

- (a) Providing that the Supplier's actions are within the purview of this contract, the User agrees to hold the Supplier harmless for any liability for damage to the User's property that may

be caused by the effluent. The User further agrees to hold the Supplier from any liability accruing to the User arising from reasonable actions of the Supplier, including its Trustees, employees, and agents, so long as said actions are within the purview of this contract. User agrees to maintain in force a minimum of one million dollars (\$1,000,000) liability insurance. Proof of insurance shall be provided to the City of Broken Arrow's Risk Manager at no cost to the Supplier.

- (b) The User shall save and hold harmless and indemnify the Supplier, its agents, representatives, and employees from all claims, costs, penalties, damages, and expenses (including attorney's fees) arising out of claims related to the User's construction, erection, location, operation, maintenance, repair, installation, replacement, relocation or removal of that part of the system controlled by the User for transmission of or irrigation with the effluent.
- (c) The Supplier agrees that it will assume any and all liability regarding the wastewater treatment facility in the same regard as to all Public Lands owned by the Supplier to the extent allowed by law and provided for in the Oklahoma Governmental Tort Claims Act, Title 51 O.S. 1991 § 151, *et seq.* This section does not constitute a waiver of tort immunity.

16. Tort Immunity

Nothing in this contract shall be construed as a waiver by the Supplier of its tort immunity as now or hereafter defined by Oklahoma laws.

17. Access

- (a) The Supplier shall have the right, at all reasonable times, and upon notification to enter upon the property of the User to review and inspect the facilities and operations of the User with respect to conditions agreed to herein. Notice shall be given at least twenty-four (24) hours prior to inspection in a non-emergency situation. The notification requirement set out above shall be waived should the entry upon the property of the User be necessitated because of an emergency situation caused by the effluent irrigation system arising out of this contract.
- (b) The User shall have the right at all reasonable times, with notification to the Supplier and the management of the wastewater treatment plant, to enter upon the property of the wastewater treatment plant to review and inspect that part of the facilities that concerns the operation of the effluent irrigation for the User with respect to the conditions agreed to herein.
- (c) When ODEQ performs a state inspection the User shall grant full access to the site where the reclaimed water is being used and shall provide a validly licensed operator with knowledge of the irrigation system. The User shall be required to have a licensed operator with a valid "Class D" license.
- (d)

18. Disclaimer of Third Party Beneficiaries

This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue upon, to, or for the benefit of any third party not a party to this contract.

19. Relocation of System

If the Supplier deems it reasonably necessary to move or relocate any part of the effluent delivery system, the Supplier will notify the User of such necessity. The User shall, at its sole expense, cause the necessary relocation to occur within 180 days or less as mutually agreed to by both parties.

20. Severability

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can be construed to be effective. To that end, this Agreement is declared to be severable.

21. Binding Upon Successors

This Agreement shall be binding upon and shall inure to the benefits of the successors or assigns of the parties herein.

22. Applicable Law

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Oklahoma.

23. Entire Agreement

This written Agreement constitutes the entire Agreement between the parties. Modification to and waivers of the provisions herein shall not be binding unless made in writing and signed by the parties hereto.

SIGNATURES ON THE NEXT PAGE

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the date above written.

Approved as to Form:

Broken Arrow Municipal Authority

Assistant City Attorney

Chairman

Attested:

Secretary (Seal)

ISCC MANAGING GROUP, LLC
d/b/a The Club at Indian Springs

By: _____

SUBSCRIBED and sworn to before me this _____ day of _____, 2017, by
_____ of ISCC Managing Group, LLC.

Notary Public

My commission no.
My Commission expires: