

November 19, 2014

To: Mayor Bemrich and City Council
From: David Fierke, City Manager
**Subject: CJ Water and Sewer Agreement
Amendments**



ACTION: For Vote Monday November 24, 2014

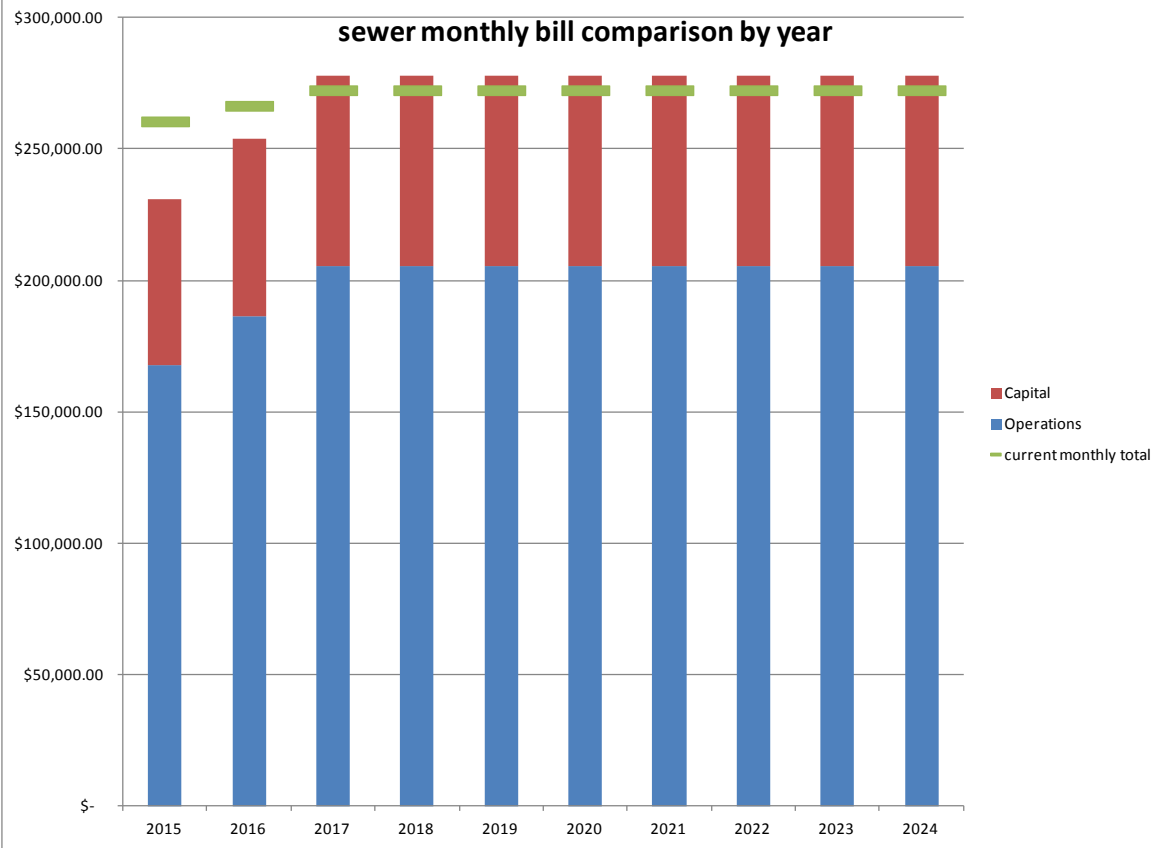
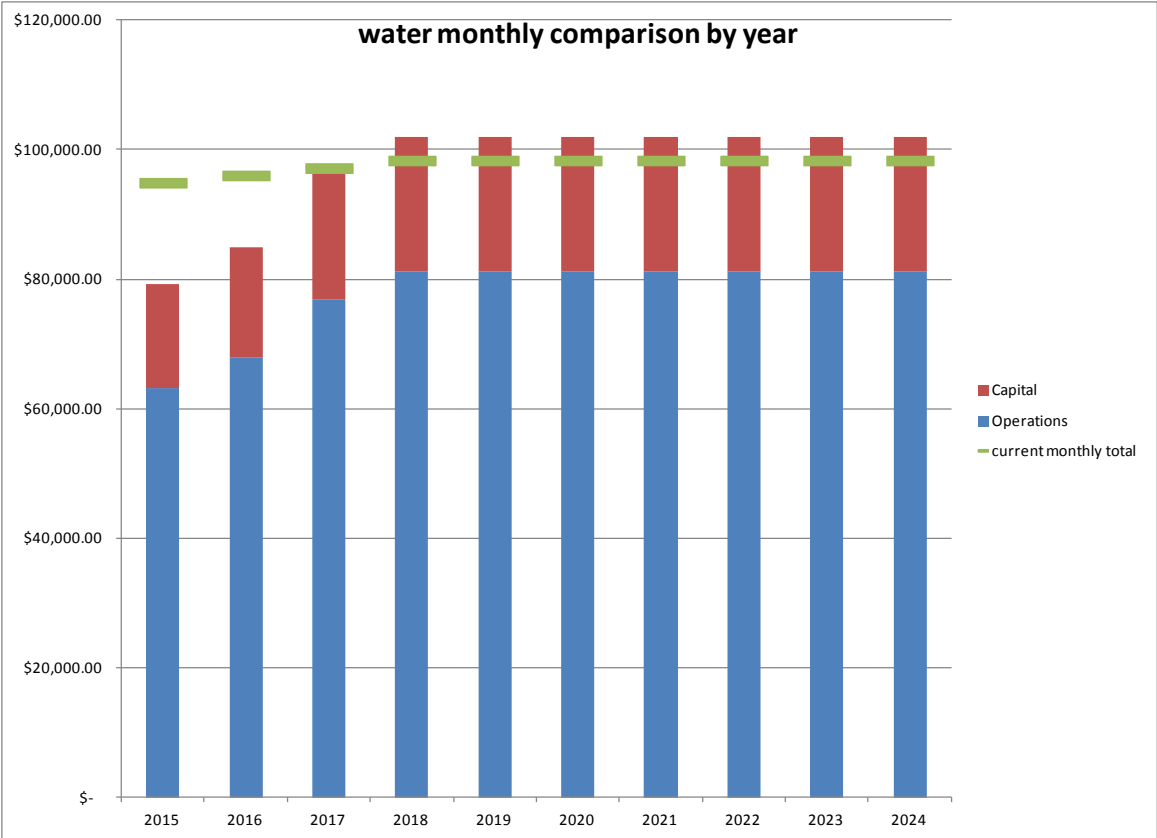
Brief History

The City and CJ Bio America entered into 20 year water and sewer agreements in 2012. Both agreements had a specific minimum usage amount, otherwise known as a “take or pay” provision. The key purpose for the take or pay provisions for 20 years was to guarantee a sufficient revenue source for the City to pay-off the debt secured to build capacity improvements to both the water and sewer system to meet CJ’s needs. CJ has requested a revision to both agreements. The Company wants the minimums to be reduced in the initial three years, and then increased to make up the difference from the original agreement within the first ten years of the contract. Additionally, the contract structure does not translate well into actual utility billing process.

Analysis of Issue

The City can accommodate CJ’s request without burdening the other rate payers by changing the debt service schedule with the Iowa Finance Authority who holds the debt related to the CJ system improvements. IFA’s revolving loan program is incredibly flexible compared to public bonds. The amendments are written so that the reduced minimums are made up by year 10 of the contract.

The charts following illustrate the change. The green dashes represent the total minimum amount CJ is required to pay monthly under the current agreement. The blue and red stacked bars represent the operations (blue) and capital (red) minimums CJ is required to pay monthly under the new agreement. You can see that the new contracts have lower minimums in the initial years, but higher minimum after. Following ten years, the minimums return to the original contract. It is also worth noting that these charts only show rate increases currently approved by council. However, under CJ’s new agreement, and the existing one as well, CJ is required to pay the then current rates as set by council for the operational costs.



Billing Process – The original agreements refer to a daily minimum take or pay amount. As we started billing CJ we realized that the daily minimum doesn't translate well into a monthly billing cycle, because the meter reads are not perfectly paced apart. The new agreements convert the daily minimum use into a monthly minimum charge.

Budget Impact

The operational budgets of both funds will not be impacted, because debt service will be modified to accommodate the request.

Strategic Plan Impact

The top priority of the City's strategic plan is to "provide utilities/infrastructure that encourages and supports growth." Under that priority, the City is to support the full development of the Ag Park through adequate facility planning and implementation. Approving the agreement is consistent with the plan.

Staff Conclusions / Recommendations

Staff recommends the approval of the attached agreement amendments.

Alternatives

The only alternative would be to not approve this agreement and continue with current agreement structure.

Implementation and Accountability

Once the amendments are approved, staff will recalculate CJ's bill retroactive to July 1, 2015, and we will credit their account the difference. Staff will also adjust the debt service schedule with the Iowa Finance Authority.

Signed



David Fierke
City Manager

RESOLUTION NO. _____

A RESOLUTION AMENDING A WATER SERVICES AGREEMENT (BETWEEN THE CITY OF FORT DODGE, IOWA, AN IOWA MUNICIPAL CORPORATION (THE "CITY") AND CJ BIOAMERICA INC. (THE "COMPANY") AND CJ CHEILJEDANG CORPORATION (THE "PARENT"))

WHEREAS, the City and the Company previously authorized and executed a certain Water Services Agreement, dated March 12, 2012 (the "Original Agreement") which established the Company's use of the City's waterworks utility system (the "Water System") for the provision of water services to its now-completed manufacturing plant; and

WHEREAS, under the Original Agreement, the City agreed to sell water services to the Company in certain quantities and at certain rates as set forth in Sections 4 and 5 therein; and

WHEREAS, the City and the Company now desire to amend Sections 4 and 5 of the Original Agreement to clarify and better explain the intended terms and prices of water usage between the parties; and

WHEREAS, the Parent agreed to be jointly and severally liable with the Company under the Original Agreement; and

WHEREAS, this Amendment to Water Services Agreement has been prepared to set forth the updated understanding of the parties with respect to the Company's use and payments as a customer of the Water System;

NOW THEREFORE BE IT RESOLVED that the City Council approves the attached Amendment to Water Service Agreement between the City of Fort Dodge, CJ Cheiljedang Corporation (the "Company").

The above Resolution passed and adopted by the City Council of the City of Fort Dodge, Iowa this ____ day of November, 2014.

Ayes: _____

Nays: _____

Other: _____

CITY OF FORT DODGE

BY: _____

Matt Bemrich, Mayor

ATTEST:

Jeff Nemmers, City Clerk

AMENDMENT TO WATER SERVICES AGREEMENT

THIS AMENDMENT TO WATER SERVICES AGREEMENT (the "Agreement"), is made and entered into this ____ day of November, 2014 by and between the City of Fort Dodge, Iowa, an Iowa Municipal Corporation (the "City"), CJ BioAmerica Inc. (the "Company") and, solely for purposes of Section A.9 of the original Water Services Agreement, CJ Cheiljedang Corporation (the "Parent").

BACKGROUND RECITALS

WHEREAS, the City and the Company previously authorized and executed a certain Water Services Agreement, dated March 12, 2012 (the "Original Agreement") which established the Company's use of the City's waterworks utility system (the "Water System") for the provision of water services to its now-completed manufacturing plant; and

WHEREAS, under the Original Agreement, the City agreed to sell water services to the Company in certain quantities and at certain rates as set forth in Sections 4 and 5 therein; and

WHEREAS, the City and the Company now desire to amend Sections 4 and 5 of the Original Agreement to clarify and better explain the intended terms and prices of water usage between the parties; and

WHEREAS, the Parent agreed to be jointly and severally liable with the Company under the Original Agreement; and

WHEREAS, this Amendment to Water Services Agreement has been prepared to set forth the updated understanding of the parties with respect to the Company's use and payments as a customer of the Water System;

NOW THEREFORE, the parties agree and stipulate as follows:

Section A. Amendment of Section A.4 of Original Agreement. Section A.4 of the Original Agreement is hereby amended to read as follows:

4. Water Service Rates and Charges. The Company agrees to be billed and to pay for its use of the Water System at the rates (the "Water Rates") as follows:

a. For Fiscal Year July 1, 2014 through June 30, 2015 The Company agrees to pay a minimum monthly fee of \$63,256.58 representing the then current established water rate schedule multiplied by a minimum flow of 46,882,700 gallons per month.

(i) For 46,882,701 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.36 per thousand gallons.

(ii) For all amounts over 79,000,00 gallons of water used per month, the Water Rate shall be \$1.06 per thousand gallons.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$15,940.12 throughout the Term.

b. For Fiscal Year July 1, 2015 through June 30, 2016 The Company agrees to pay a minimum monthly fee of \$67,832.33 representing the then current established water rate schedule multiplied by a minimum flow of 50,492,000 gallons per month.

(i) For 50,492,001 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.37 per thousand gallons.

(ii) For all amounts over 79,000,000 gallons of water used per month, the Water Rate shall be \$1.08 per thousand gallons.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$17,167.28 throughout the Term.

c. For Fiscal Year July 1, 2016 through June 30, 2017 The Company agrees to pay a minimum monthly fee of \$76,958.57 representing the then current established water rate schedule multiplied by a minimum flow of 57,792,000 gallons per month.

(i) For 57,792,001 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.38 per thousand gallons.

(ii) For all amounts over 79,000,000 gallons of water used per month, the Water Rate shall be \$1.10 per thousand gallons.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$19,649.28 throughout the Term.

d. For Fiscal Year July 1, 2017 through June 30, 2018 The Company agrees to pay a minimum monthly fee of \$81,190.54 representing the then current established water rate schedule multiplied by a minimum flow of 60,833,333 gallons per month.

(i) For 60,833,334 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.39 per thousand gallons.

(ii) For all amounts over 79,000,000 gallons of water used per month, the Water Rate shall be \$1.12 per thousand gallons.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$20,683.33 throughout the Term.

e. For Fiscal Years July 1, 2018 through June 30, 2024 The Company agrees to pay a minimum monthly fee established by the then current established

water rate schedule multiplied by a minimum flow of 60,833,333 gallons per month.

(i) For 60,833,334 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.39 per thousand gallons, or as adjusted by the City Council.

(ii) For all amounts over 79,000,000 gallons of water used per month, the Water Rate shall be \$1.12 per thousand gallons, or as adjusted by the City Council.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$ 20,683.33 throughout the Term.

f. For Fiscal Years July 1, 2024 through June 30, 2034 The Company agrees to pay a minimum monthly fee established by the then current established water rate schedule multiplied by a minimum flow of 58,100,000 gallons per month.

(i) For 58,100,001 to 79,000,000 gallons of water used per month the Water Rate shall be \$0.39 per thousand gallons or as adjusted by the City Council.

(ii) For all amounts over 79,000,000 gallons of water used per month, the Water Rate shall be \$1.12 per thousand gallons or as adjusted by the City Council.

(iii) To support capital investment and operations, the Company agrees to pay a monthly surcharge of \$19,754 each month throughout the Term.

g. The Company hereby acknowledges that the Water Rates for the Water System may be adjusted from time-to-time by the City through action of its City Council, pursuant to the provisions of Section 384.84 of the Code of Iowa.

h. The Company hereby agrees to make timely payment of accrued charges for the use of the Water System in accordance with the terms and conditions of the ordinary billing statements which shall be provided monthly by the City during the Term.

Section B. Deletion of Section A.5 of Original Agreement. Section A.5 of the Original Agreement is hereby deleted in its entirety. The parties hereby acknowledge and agree that the terms previously covered in Section A.5 of the Original Agreement are now covered by the amended Section A.4 as described above.

Section C. Renumbering of remaining Subsections of Section A of the Original Agreement. Subsections A.6, A.7, A.8 and A.9 of the Original Agreement are hereby

renumbered as Sections A.5, A.6, A.7 and A.8, respectively, following the deletion covered in Section B., above.

Section D. Parent Consent. By executing this Amendment to Water Services Agreement in the space provided below, the Parent agrees with and consents to be bound by the modified terms provided herein.

Section E. Implementation. This Amendment to Water Services Agreement shall be effective upon execution by the City and the Company. This document shall be attached to the Original Agreement and shall modify the Original Agreement as set forth herein. In case of any ambiguity or need for interpretation, the terms of the Original Agreement shall govern except as to Sections A.4 and A.5.

The City, the Company and the Parent have caused this Agreement to be signed in their names and on their behalf by their duly authorized officers, all as of the day and date written above.

CITY OF FORT DODGE, IOWA

By _____
Mayor

Attest:

City Clerk

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____ to me personally known, who being by me duly sworn, did say that they are the Mayor and City Clerk of the City of Fort Dodge, Iowa, respectively; that said instrument was signed and sealed on behalf of said municipal corporation by authority of its City Council; and that the said Mayor and City Clerk as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa

CJ BIOAMERICA INC.

By _____

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who being by me duly sworn, did say that they are the _____ of CJ BioAmerica Inc.; that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and that the said _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa

CJ CHEILJEDANG CORPORATION

By _____

STATE OF IOWA
CITY OF FORT DODGE ss:
COUNTY OF WEBSTER

On this ____ day of _____, 2014 before me, the undersigned, a Notary Public in and for said State, personally appeared _____, to me personally known, who being by me duly sworn, did say that they are the _____ of CJ Cheiljedang Corporation; that said instrument was signed and sealed on behalf of said Corporation by authority of its Board of Directors; and that the said _____ as such officers, acknowledged the execution of said instrument to be the voluntary act and deed of said corporation, by it and by them voluntarily executed.

Notary Public in and for said State of Iowa