



5637 N. Classen Blvd. • Oklahoma City, OK 73118
(405) 842-9200 • (405) 842-9213 Fax

Via Email: robrazier@muskogeeso.org; cwaltman@muskogeeso.org
If no email, Via Fax: 918-687-9658

February 18, 2020

Muskogee County Jail
Attn: Rob Frazier / Carrie Waltman

Re: Replacement Agreement for Gas Sales Agreement (Contract #8458)

Thank you for choosing Clearwater Enterprises, L.L.C. as your natural gas supplier. On October 1, 2019, we were notified by Oneok Gas Transportation, L.L.C. (OGT) that nomination changes would be implemented for Oklahoma Natural Gas (ONG) customers. In the letter, we were told that OGT would be requiring deliveries into ONG based on five different regional delivery points. Starting April 1, 2020, new nomination requirements will begin for the R-900 regional area. I have attached copies of the three letters pertaining to the new ONG/OGT requirements.

During the time between the first notification and the last, we had our legal team review our contract to determine if we could cover the upcoming changes being implemented by OGT and/or ONG. Therefore, due to the OGT/ONG changes, we would like to renew our services and offer you a Replacement Agreement to extend the terms of your arrangement with Clearwater. This letter shall serve as the required forty-five (45) day notice that we will not extend the existing Agreement (Contract #8458) past February 29, 2020.

Enclosed is one (1) unexecuted original of the above referenced Replacement Agreement which covers March 1, 2020 through February 28, 2022. Should you require duplicate originals to be sent via mail, please let me know. Also enclosed is an updated Cost Savings Analysis that shows savings through .

Please return one partially executed original to the undersigned by February 29, 2020. Once fully executed, we will provide you with a copy for your files. If we do not receive a signed Agreement by February 29, 2020, we will operate under the provisions of the Replacement Agreement as of March 1, 2020.

We appreciate this opportunity to do business with you. If you have any questions, please contact me at (405) 842-9200 x201.

Sincerely,

Regina Fort

Regina Fort
Vice President of Retail Sales
rfort@clearwaterenterprises.net

GAS SALES AGREEMENT

CONTRACT No. G.S. 20194

THIS AGREEMENT ("Agreement") is made and entered into effective the 1st day of March, 2020 ("Contract Effective Date") between Clearwater Enterprises, L.L.C. ("Clearwater"), hereinafter referred to as "Seller", and Muskogee County Jail, hereinafter referred to as "Buyer". Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive from Seller, natural gas pursuant to the terms and conditions hereinafter set forth. Seller and Buyer may be referred to sometimes individually as "Party" or collectively as "Parties".

- (1) **Transaction Confirmation:** At any time Seller may offer to sell to Buyer and/or Buyer may offer to purchase from Seller a specific quantity of gas under this Agreement by transmitting to the other a Transaction Confirmation, in the form attached hereto as Exhibit A, setting out the details of the proposed transaction. Subject to Section 3, Buyer has no obligation to purchase gas and Seller has no obligation to sell gas under this Agreement, except as set forth in a Transaction Confirmation duly executed by both Parties.
- (2) **Quantity:** Subject to the provisions of Section 3 hereof, Seller agrees to sell, and Buyer agrees to purchase all its gas requirements in the quantities of gas set forth in the applicable Transaction Confirmation ("Fixed Quantity" and/or "Quantity"). The Parties will cooperate in the nomination and confirmation of the actual quantities to be delivered by Seller and received by Buyer, pursuant to the procedures and requirements of the Local Distribution Company's approved transportation tariff and any applicable procedures and requirements of the third-party pipeline(s) upstream of such Local Distribution Company's facilities.
- (3) **Nature of Obligation:** During the term of this Agreement, Buyer agrees to purchase all of its monthly usage exclusively from Seller. Seller agrees to exercise its commercially reasonable efforts to supply all of Buyer's monthly usage. If Seller is unable or unwilling to supply Buyer with all of its monthly usage, Buyer shall have as its sole remedy the option to terminate this Agreement upon forty-five (45) day notice to Seller.
- (4) **Price:** The price per MMBtu for the gas sold and purchased hereunder will be the Price as set out in the Transaction Confirmation. Such Price will be inclusive of any production, severance, and all other applicable taxes attributable to the gas prior to its delivery at the Delivery Point(s). Such price will not be inclusive of, and Buyer shall be responsible for, any transportation fees, riders, taxes or any other costs or charges incurred for services at or after the Delivery Point(s), including as assessed by the Local Distribution Company or any third-party pipeline upstream of and transporting the gas to the Local Distribution Company. Additionally, Seller shall not be responsible or liable for, but Buyer shall be responsible for, any costs including, but not limited to, imbalances, penalties, or cash-out charges, which are the result of measurement corrections or in connection with the balancing of actual receipts over and under nominated and confirmed quantities at or after the Delivery Point(s), including as assessed by the Local Distribution Company or any third-party pipeline upstream of and transporting the gas to the Local Distribution Company. Notwithstanding the above, Seller shall be responsible for any balancing fees or penalties charged to Buyer's account by the Local Distribution Company or the third-party pipeline transporting the gas to the Local Distribution Company that are caused by Seller's gross negligence or willful misconduct.

- (5) **Term:** This Agreement shall remain in force and effect unless and until terminated by either Party upon forty-five (45) days' prior written notice; provided, however such termination shall not be effective as to any then duly executed Transaction Confirmation until the expiration of such Transaction Confirmation's designated term. The obligations to make payment for gas previously received and to balance to zero actual receipts over and under nominated and confirmed quantities, under a Transaction Confirmation, if any, shall survive the termination of this Agreement and the applicable Transaction Confirmation.
- (6) **Delivery Point(s)/Point(s) of Sale:** Seller will deliver gas at the Delivery Point(s) identified within the Transaction Confirmation. All such Delivery Point(s) shall be considered the Point(s) of Sale between Buyer and Seller, and risk of loss for the gas delivered hereunder shall transfer from Seller to Buyer at the Delivery Point(s).
- (7) **Transportation:** The Local Distribution Company serving Buyer's applicable Facility site will be specified in the Transaction Confirmation. Seller will have no responsibility for, and Buyer will be responsible for all transportation of gas at or after the Delivery Point(s).
- (8) **Measurement, Metering, Quality:** Gas delivered by Seller at the Delivery Point(s) pursuant to this Agreement and any Transaction Confirmation will meet the quality specifications set out in the Local Distribution Company's tariff. Except as expressly provided in this Section 8 and Section 9, Seller disclaims any other warranty, express or implied, including any warranty of fitness for any particular purpose. The Parties acknowledge and agree that measurement and testing will be performed by the operator of the applicable Delivery Point according to the Local Distribution Company's most recent tariff requirements. Buyer will cooperate in good faith with any reasonable request of Seller to exercise Buyer's rights under the Local Distribution Company's tariff regarding measurement and testing at the Delivery Point(s).
- (9) **Title:** Seller warrants its right to sell the gas delivered hereunder to Buyer. Title shall pass from Seller to Buyer at the Delivery Point(s).
- (10) **Billing and Payment:** Seller agrees to provide Buyer a monthly invoice for the total quantity of gas delivered to Buyer at the Delivery Point(s). Buyer agrees to make payment to Seller of the total invoice amount on or before the 25th day of the month, except for any amount disputed in good faith. With regard to any amount disputed in good faith, Buyer will provide sufficient detail to support adjustments requested by Buyer to the invoice amount. Buyer and Seller will work together to resolve any disputed amount in a timely manner, but Buyer shall remain obligated to remit payment for undisputed amounts as provided herein. Any undisputed amounts due Seller and not paid when due shall bear interest from the due date at the lesser of (i) one and one-half percent per month from the date due until the date of payment; or (ii) the maximum applicable lawful interest rate. All invoices, statements and adjustments shall be considered final and correct as between the Parties unless disputed in writing within two (2) years from the date of such invoices, statements, or adjustments.
- (11) **Seller's Credit Terms and Right to Set-Off:** Seller's obligation to deliver gas hereunder is conditioned upon Buyer's compliance with Seller's credit policies and requirements. If the financial responsibility of Buyer is at any time unsatisfactory to Seller for any reason, then Buyer shall, within five (5) business days of Seller's written notification, provide Seller with security as deemed satisfactory by Seller for Buyer's performance hereunder. Buyer's failure to abide by the provisions of this Section shall be considered a breach hereof, and in such event, payment for all natural gas delivered hereunder shall be due and paid

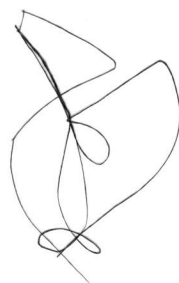
immediately, and Seller may, without waiving any rights or remedies it may have, withhold further deliveries until such payments or security is received, provided Buyer is afforded an opportunity to cure any default within three (3) business days' notice of any breach. Should Buyer fail to cure such default within such three (3) business day, then Seller shall have the right to terminate this Agreement and any Transaction Confirmation effective upon Seller's written notice to Buyer. Buyer's obligation to make payment hereunder for gas received, and with regard to balancing nominated and confirmed volumes versus actual deliveries, shall survive the termination of this Agreement and any Transaction Confirmation. Furthermore, if any payment due to Seller hereunder is not paid when due, Seller shall have the right, in addition to all other rights and remedies, to set-off any such unpaid balance due Seller against any amounts owed by Seller, or by the parent or any subsidiary of Seller, to Buyer under this or any separate agreement or transaction.

- (12) **Forward Contract:** If a Party to this Agreement is considering or becomes subject to U.S. Bankruptcy Code proceedings, it is understood and agreed to that the other Party is a "forward contract merchant" under Section 556 of the U.S. Bankruptcy Code, that this Agreement and each Transaction Confirmation constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and that the other Party and this Agreement and each Transaction Confirmation executed hereunder shall be afforded all the rights and protections to forward contract merchants and forward contracts under the U.S. Bankruptcy Code without limitation.
- (13) **Taxes:** Seller shall pay or cause to be paid all production, severance and all other applicable taxes attributable to the gas prior to its delivery at the Delivery Point(s). Buyer is responsible for and hereby agrees to pay or cause to be paid all applicable sales, use, and gross receipts taxes or charges arising at or after delivery at the Delivery Point. If Buyer is entitled to purchase natural gas free from any such taxes or charges, Buyer shall promptly furnish Seller with the necessary exemption certificate(s) covering each Delivery Point.
- (14) **Notices:** Except as herein otherwise provided, any notice, request, demand, statement, routine communication, invoice, or bill provided for under this Agreement or the Exhibits hereto shall be in writing and delivered to the Parties at the addresses or facsimile numbers identified on Exhibits "B" and "C" attached hereto. Notice shall be deemed given when physically delivered to the other Party in person, when transmitted to the other Party by confirmed facsimile transmission, three Business Days after deposited, postage prepaid, in the U.S. Mail, or upon confirmed delivery by a delivery service. Either Party may change its address or facsimile number by providing notice of same in accordance herewith. Notices under this Agreement and any Transaction Confirmation are to be made to the person(s) designated by each Party on Exhibits "B" and "C" until each Party designates other persons to receive such notices.
- (15) **Previous Agreements:** This Agreement and Transaction Confirmation(s) executed in connection herewith replace and supersede any prior discussions, negotiations, representations or agreements, whether oral or written, between Seller and Buyer, if any, with respect to the purchase of gas by Buyer from Seller for the Facility(ies) and dates of service listed on the applicable Transaction Confirmation.
- (16) **Force Majeure:** Except with regard to Buyer's obligation to make payment(s) due under Section 10, neither Party hereto shall be liable for any failure to perform any of its obligations hereunder due to causes beyond its reasonable control, the occurrence of which could not have been prevented by the exercise of due diligence, such as acts of God; acts of civil or military authority; fires; strikes; floods; epidemics; war or riot;

limitations, constraints, or failure of transportation service (including by the Local Distribution Company and/or any other third-party pipelines upstream of the Delivery Point(s)); and inability of Seller to obtain gas supply at a reasonable cost; provided, however, that neither Party shall be relieved of its obligations hereunder solely by reason of that Party's financial inability to perform. Refusal of either Party to accede to a demand of laborers or labor unions which, in its sole discretion, it considers unreasonable shall not deny that Party the benefits of this provision.

- (17) **Confidentiality:** During the term hereof and for a period of one (1) year after termination of this Agreement, Seller and Buyer agree to maintain the confidentiality of this Agreement and each Transaction Confirmation executed in connection herewith, and each of the terms and conditions hereof and thereof, and Seller and Buyer agree not to divulge same to any third party (other than the receiving Party's employees, lenders, counsel, accountants and other agents with a need to know) without the express prior written consent of the other Party, except to the extent required by law or exchange rule. However, Seller consents to allow Buyer to divulge the terms hereof and of the applicable Transaction Confirmation(s) to a prospective purchaser of the Facility designated in such Transaction Confirmation(s), and Buyer consents to allow Seller to divulge the terms hereof to a prospective purchaser of all or substantially all of Seller's assets or any rights under this Agreement.
- (18) **Waiver:** No waiver by either Buyer or Seller of one or more defaults by the other in the performance of any of the provisions of this Agreement or any Transaction Confirmation shall operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
- (19) **Severability:** If any provision in this Agreement or any Transaction Confirmation is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement.
- (20) **Governmental Regulation:** In the event any governmental authority prohibits any of the transactions described in this Agreement or any Transaction Confirmation, or otherwise conditions such transaction in a manner that is unacceptable in the reasonable judgment of the Party affected thereby, then the Parties shall negotiate in good faith alternative mutually acceptable terms giving effect to the maximum extent possible to the intentions of the Parties as expressed in this Agreement and the applicable Transaction Confirmation at the time of execution. If the Parties are unable to agree on mutually aggregable alternative terms by the date the governmental prohibition or condition takes effect, either Party may terminate this Agreement and the applicable Transaction Confirmation(s) effective upon written notice to the other Party.
- (21) **Supply Change.** If the Local Distribution Company, or any third-party pipeline upstream of and transporting the gas to the Local Distribution Company, limits, restricts, or otherwise modifies requirements for gas supply to the Delivery Point(s), including, without limitation, (i) the geographic source of such supply, (ii) the point of receipt into the Local Distribution Company's system to which such supply must be delivered, (iii) the point of receipt into such third-party pipeline's system to which such supply must be delivered, or (iv) the point of redelivery out of the such third-party pipeline's system through which such supply must be transported (a "Supply Change"), which Supply Change increases Seller's costs to perform hereunder, then Seller shall be entitled to recover such increased cost from Buyer, including without limitation by modifying the price to be paid by Buyer for gas hereunder.

- (22) **Indemnity:** Seller agrees to indemnify Buyer and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("Claims") from any and all persons arising from or out of title to the gas upon delivery hereunder, failure of Seller's gas to meet the quality specification set forth in Section 8 upon delivery hereunder, personal injury or property damages from gas prior to delivery at the Delivery Point(s) or other charges thereon that attach prior to the Delivery Point. Buyer agrees to indemnify Seller and save it harmless from all Claims from any and all persons arising from or out of obligations for payment due hereunder, personal injury or property damages from gas at and after delivery at the Delivery Point or other charges thereon that attach at or after the Delivery Point.
- (23) **Assignability:** This Agreement and any Transaction Confirmation shall inure to and be binding upon the successors and assigns of the Parties hereto; provided, that neither Party may assign this Agreement or any Transaction Confirmation and the rights and obligations hereunder or thereunder without first having obtained the written approval of the other Party, which approval shall not be unreasonably withheld. Seller reserves the right to review and approve the creditworthiness of any proposed assignee of Buyer. Upon any such assignment, transfer and assumption, the transferor shall remain principally liable for and shall not be relieved of or discharged from any obligations hereunder unless expressly waived by Seller.
- (24) **Applicable Law/Venue/Jury Waiver/Attorney's Fees:** This Agreement and each Transaction Confirmation shall be interpreted and enforced in accordance with the laws of the State of Oklahoma, without reference to its principles on conflict of laws. The Parties hereby submit to the personal jurisdiction of, and agree venue is proper in the state courts located in, Oklahoma County, Oklahoma, and the federal courts located in the Western District of Oklahoma. Any suit arising out of or related to this Agreement or any Transaction Confirmation shall be brought exclusively in such courts, and the Parties irrevocably consent and submit to the exclusive jurisdiction of such courts and waive any objection based on venue or forum non conveniens. Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any proceedings relating to this Agreement or any Transaction Confirmation. In any action brought to enforce or interpret this Agreement or any Transaction Confirmation, the prevailing Party shall be entitled to recover the reasonable attorney's fees, costs and disbursements by outside counsel.
- (25) **Authority:** Each Party to this Agreement and any Transaction Confirmation represents and warrants that it has full and complete authority to enter into and perform this Agreement and any Transaction Confirmation. Each person who executes this Agreement and any Transaction Confirmation on behalf of either Party represents and warrants that it has full and complete authority to do so and that such Party will be bound thereby.
- (26) **Entirety:** Each Transaction Confirmation is hereby incorporated into and made a part of this Agreement. The entire agreement between the Parties shall include those provisions contained in this Agreement and any effective Transaction Confirmation. However, the provisions of each respective Transaction Confirmation shall apply only to the terms and quantities set forth in such Transaction Confirmation; the provisions of this Agreement shall apply to all quantities in all Transaction Confirmations. In the event of a conflict between the terms of any Transaction Confirmation and this Agreement, the terms of the Transaction Confirmation shall take precedence.



(27) **Preparation:** This Agreement and any Transaction Confirmation were negotiated by both Parties hereto with advice of counsel to the extent deemed necessary by each Party, and were not prepared by any Party to the exclusion of the other, and, accordingly, shall not be construed against either Party by reason of its preparation.

(28) **Signatures:** In lieu of original signatures, the Parties agree that this Agreement and any Transaction Confirmation is valid and binding upon the execution and delivery of same via facsimile transmission or email.

As evidence of the Parties' agreement to the terms and conditions set forth above, this Agreement, effective as of the date first stated above, is hereby executed by an authorized representative of each Party on the dates shown below.

Seller
Clearwater Enterprises, L.L.C.

Buyer
Muskogee County Jail

By: _____
 Name: Jenny Thompson
 Title: Chief Operating Officer
 Date: _____

By: _____
 Name: _____
 Title: _____
 Date: _____



22nd day of Feb 2021



Chairman [Signature]
 Member [Signature]
 Member [Signature]
 Attest [Signature]
 County Clerk

**EXHIBIT A
TRANSACTION CONFIRMATION**

Clearwater Enterprises, L.L.C. ("Seller") and **Muskogee County Jail** ("Buyer") agree to the purchase and sale of natural gas pursuant to this Transaction Confirmation and the general terms and conditions contained in the Gas Sales Agreement dated March 1, 2020 between Buyer and Seller ("Agreement"):

Term: March 1, 2020 through February 28, 2022 and automatically renewed year to year thereafter unless either Party notifies the other Party in writing at least forty-five (45) days prior to the expiration of the stated term or the then current renewal period that this Transaction Confirmation shall not be renewed, subject to early termination under Sections 11 and 20 of the Agreement.

Facility: As listed on Schedule 1 attached hereto

Quantity: Full Facility Requirements, the monthly quantity of which is estimated on Schedule 1 attached hereto.

Nature of Quantity Obligation: Firm

Price: For all gas delivered by Seller the price Buyer shall pay Seller shall be calculated by adding \$0.40/MMBtu to the market price plus a monthly administrative fee of \$50.00/month per Facility (current market price is Inside FERC's Gas Market Report first of the month index posting for Enable Gas, East plus \$0.10/MMBtu). Buyer shall have the option to fix a price for a quantity of gas throughout the term of this Transaction Confirmation at a price which is mutually agreeable to the Parties hereto.

Delivery Point/Point(s) of Sale: Oklahoma Natural Gas Company distribution system receipt point for delivery to the Facility listed above.

Local Distribution Company: Oklahoma Natural Gas Company

EVIDENCE OF AGREEMENT: This Transaction Confirmation documents an oral agreement previously reached by representatives of the Parties. Therefore, although Clearwater Enterprises, L.L.C. would prefer that this Transaction Confirmation be signed and returned by facsimile transmission, or that written confirmation of this Transaction Confirmation be provided in some other manner, this Transaction Confirmation will be deemed accepted if Clearwater Enterprises, L.L.C. receives no objections within two (2) business days of Clearwater's execution date shown below.

Seller
Clearwater Enterprises, L.L.C.

By: _____
Name: Jenny Thompson
Title: Chief Operating Officer
Date: _____

Buyer
Muskogee County Jail

By: _____
Name: _____
Title: _____
Date: _____



22 day of Feb 2021
Chairman [Signature]
Member [Signature]
Member [Signature]
Attest: [Signature]
County Clerk

SCHEDULE 1 to TRANSACTION CONFIRMATION

Facility Listing and Estimated Monthly Usage

<u>Facility(ies)</u>														
ONG Contract #	Current ONG Regional Receipt Location	Account Name				ONG Account #	Address							
<u>Estimated Monthly Usage (MMBtus)</u>														
4138	R900	MUSKOGEE COUNTY JAIL				210449576		120 S 3rd St; Muskogee, OK 74401						
		Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual Volume
		516	451	369	282	185	210	189	180	177	256	390	557	3762

Estimated Monthly Usage is for informational purposes and based on historical consumption as represented by Buyer's Local Distribution Company or upon information supplied by Buyer.

EXHIBIT B
Seller Addresses and Contacts

This Exhibit B to the Gas Sales Agreement between **Clearwater Enterprises, L.L.C.** ("Seller") and **Muskogee County Jail** ("Buyer"), dated March 1, 2020, is for all purposes made a part of said Agreement.

Main Address:

Clearwater Enterprises, L.L.C.
Address: 5637 N. Classen Blvd.
Oklahoma City, OK 73118
Phone: (405) 842-9200 Fax: (405) 842-9213

Gas Supply Representative:

Attn: Regina Fort
Phone: (405) 842-9200 x201 Fax: (405) 842-9213
Email: rfort@clearwaterenterprises.net

Contractual Notices & Correspondence:

Attn: Jennifer Rodriguez
Address: Same as Main
Phone: (405) 842-9200 x217 Fax: (405) 842-9213
Email: jrodriguez@clearwaterenterprises.net

Invoices:

Attn: Jeff Geis
Address: Same as Main
Phone: (405) 842-9200 x208 Fax: (405) 418-0129
Email: jgeis@clearwaterenterprises.net

Payments:

Attn: Jeff Geis
Phone: (405) 842-9200 x208 Fax: (405) 418-0129
Email: jgeis@clearwaterenterprises.net

Payment by Wire:

Bank: International Bank of Commerce
1200 San Bernardo St.; Laredo, TX 78040
ABA: 114902528
Account No.: 1601012268
For the Account of: Clearwater Enterprises, L.L.C.
Reference: Oklahoma Account

Payment by ACH:

Bank: International Bank of Commerce
Oklahoma City, OK
ABA: 303072793
Account No.: 1601012268
For the Account of: Clearwater Enterprises, L.L.C.

Payment by Check:

Clearwater Enterprises, L.L.C.
Section# 3109
P.O. Box 659506
San Antonio, TX 78265-9506

EXHIBIT C
Buyer Addresses and Contacts

This Exhibit C to the Gas Sales Agreement between **Clearwater Enterprises, L.L.C.** ("Seller") and **Muskogee County Jail** ("Buyer"), dated March 1, 2020, is for all purposes made a part of said Agreement.

Buyer

Main Address:

Muskogee County Jail
Address: PO Box 2428
Muskogee, OK 74402
Phone: 918-687-0202
Fax: 918-687-9658

Marketing Representative:

Attn: Rob Frazier / Carrie Waltman
Phone: 918-687-0202
Fax: 918-687-9658
Email: robfrazier@muskogeeso.org; cwaltman@muskogeeso.org

Contractual Notices & Correspondence:

Attn: Rob Frazier / Carrie Waltman
Address: PO Box 2428
Muskogee, OK 74402
Phone: 918-687-0202
Fax: 918-687-9658
Email: robfrazier@muskogeeso.org; cwaltman@muskogeeso.org

Invoices and Payments:

Attn: Muskogee County Sheriff's Office, ATTN: Carrie Waltman
Address: 220 State Street
Muskogee, OK 74401
Phone: 918-687-0202 ext 3363
Fax: 918-687-9658
Email: cwaltman@muskogeeso.org