



McAlester City Council

NOTICE OF MEETING

Regular Meeting Agenda

Monday, January 12, 2010 – 6:00 pm
McAlester City Hall – Council Chambers
28 E. Washington

Kevin E. Priddle.....	Mayor
Chris B. Fiedler	Ward One
Donnie Condit.....	Ward Two
John Browne	Ward Three
Haven Wilkinson	Ward Four
Buddy Garvin	Vice-Mayor, Ward Five
Sam Mason	Ward Six
Peter J. Stasiak	Acting City Manager
William J. Ervin	City Attorney
Cora M. Middleton	City Clerk

This agenda has been posted at the McAlester City Hall, distributed to the appropriate news media, and posted on the City website: www.cityofmcAlester.com within the required time frame.

The Mayor and City Council request that all cell phones and pagers be turned off or set to vibrate. Members of the audience are requested to step outside the Council Chambers to respond to a page or to conduct a phone conversation.

The McAlester City Hall is wheelchair accessible. Sign interpretation or other special assistance for disabled attendees must be requested 48 hours in advance by contacting the City Clerk's Office at 918.423.9300, Extension 4956.

CALL TO ORDER

Announce the presence of a Quorum.

INVOCATION & PLEDGE OF ALLEGIANCE

- Jack Hawkins, Central Christian Church

ROLL CALL

CITIZENS COMMENTS ON NON-AGENDA ITEMS

Residents may address Council regarding an item that is not listed on the Agenda. Residents must provide their name and address. Council requests that comments be limited to five (5) minutes.

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. Approval of the Minutes from the December 21, 2009, Rescheduled Regular Meeting of the McAlester City Council. (Cora Middleton, City Clerk)

- B. Approval of the Minutes from the December 28, 2009, Special Meeting of the McAlester City Council.** *(Cora Middleton, City Clerk)*
- C. Approval of the Minutes from the December 30, 2009, Special Meeting of the McAlester City Council.** *(Cora Middleton, City Clerk)*
- D. Approval of Claims for December 22, 2009 through December 12, 2009.** *(Gayla Duke, Chief Financial Officer)*
- E. Concur with Mayor's appointment of J. Michael Matkin to the Planning Commission Committee for a term that expires May 2010 (Filling the unexpired term of Ralph Nepveus).** *(Kevin E. Priddle, Mayor)*
- F. Concur with Mayor's appointment of J. Michael Matkin to the Board of Adjustment Committee for a term that expires March 2012.** *(Kevin E. Priddle, Mayor)*

ITEMS REMOVED FROM CONSENT AGENDA

PUBLIC HEARING

All persons interested in any ordinance listed under Scheduled Business shall have an opportunity to be heard in accordance with Article 2, Section 2.12(b) of the City Charter.

- An Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. *(Correcting language)*
- An Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. *(Amending Budget)*
- An Ordinance amending Chapter 106 of the McAlester Code of Ordinances, by adding Section 106-77, Establishing Raw Water Sales, providing for a severability clause; and declaring an emergency.

SCHEDULED BUSINESS

- 1. Stormwater Program Update and Presentation to Mayor and City Council.** *(Meshek & Associates, Brandon Claybourn, PE, CFM, Project Manager)*

Executive Summary

This item involves a presentation and update on the City Stormwater Program.

- 2. Consider, and act upon, an Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.** *(Gayla Duke, Chief Financial Officer)*

Executive Summary

This agenda item involves a motion, which corrects wording in the original ordinance which adopted the FY 09-10 approved budget.

3. **Consider, and act upon, an Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (Gayla Duke, Chief Financial Officer)**

- Exhibits A-1 through A-4.

Executive Summary

This item involves a motion to approve the budget amendment ordinance.

4. **Consider, and act upon, approving a contract with a new credit card processing company called ETS. (Gayla Duke, Chief Financial Officer)**

Executive Summary

This item involves a motion to approve and execute the ETS Merchant Application and Agreement.

5. **Consider, and act upon approving an additional contract and documentation for Intermedix, the billing and collection provider for the ambulance services. Said contract provide for electronic check processing. . (Gayla Duke, Chief Financial Officer)**

Executive Summary

This item involves an approval to execute the contracts and documentation for Intermedix.

6. **Consider, and act upon, a Letter of Intent and Approval to Proceed with Audit for Performance Contracting Program for the City's water meter system upgrade with Siemens Industry, Inc. (David Medley, Utilities Director)**

Executive Summary

This item involves a motion to approve and authorize the Mayor to sign the Letter of Intent and proceed with Audit for Performance Contracting Program for the City's water meter system upgrade.

7. **Consider, and act upon, Change Order No. 3 for the 14th St. & Village Blvd. Utility Extensions Project with Bravo Construction, Inc. of Wilburton, Ok. (David Medley, Utilities Director)**

Executive Summary

This item involves a motion to authorize a change order #3 for the 14th St. & Village Blvd. Utility Extensions Project.

8. **Consider, and act upon, an Ordinance amending Chapter 106 of the McAlester Code of Ordinances, by adding Section 106-77, is establishing raw water sales, providing for a severability clause; and declaring an emergency. (David Medley, Utilities Director)**

Executive Summary

This item involves approving an ordinance amending Chapter 106 of the McAlester Code of Ordinances, by adding Section 106-77, establishing raw water sales.

9. **Report on City of McAlester's Solid Waste Collection, Removal and Disposal. (John C. Modzelewski, PE, Engineering/Public Works Director)**

Executive Summary

This item involves a report on City of McAlester's Solid Waste Collection, Removal and Disposal.

10. **Consider, and act upon, partnering with KiBois and the City of McAlester for a cardboard recycling program. ((Peter J. Stasiak, Acting City Manager)**

Executive Summary

This item involves authorizing the Mayor to sign an MOU between KiBois and the City of McAlester on a cardboard recycling program.

NEW BUSINESS

Any matter not known or which could not have been reasonably foreseen prior to the time of posting the Agenda in accordance with Sec. 311.9, Title 25, Oklahoma State Statutes.

CITY MANAGER'S REPORT**REMARKS AND INQUIRIES BY CITY COUNCIL**RECESS COUNCIL MEETING**CONVENE AS McALESTER AIRPORT AUTHORITY**

Majority of a Quorum required for approval

- Approval of the Minutes from the December 21, 2009, Regular Meeting of the McAlester Airport Authority. (Cora Middleton, City Clerk)
- Confirm action taken on City Council Agenda Item D regarding claims ending January 12, 2009. (Gayla Duke, Chief Financial Officer)
- Confirm action taken on City Council Agenda Item 2 amending Original Ordinance No. 2327 which adopted 09-10 Budget; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (Gayla Duke, Chief Financial Officer)

ADJOURN MAU.**CONVENE AS MCALESTER PUBLIC WORKS AUTHORITY**

Majority of a Quorum required for approval

- Approval of the Minutes from the December 21, 2009, Regular Meeting of the McAlester Public Works Authority. (Cora Middleton, City Clerk)
- Confirm action taken on City Council Agenda Item D regarding claims ending December 21, 2009. (Gayla Duke, Chief Financial Officer)
- Confirm action taken on City Council Agenda Item 2 amending Original Ordinance No. 2327 which adopted 09-10 Budget; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (Gayla Duke, Chief Financial Officer)
- Confirm action taken on City Council Agenda Item 3 amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (Gayla Duke, Chief Financial Officer)

- **Confirm action taken on City Council Agenda Item 6 a Letter of Intent and Approval to Proceed with Audit for Performance Contracting Program for the City's water meter system upgrade with Siemens Industry, Inc. (David Medley, Utilities Director)**
- **Confirm action taken on City Council Agenda Item 7 Change Order No. 3 for the 14th St. & Village Blvd. Utility Extensions Project with Bravo Construction, Inc. of Wilburton, Ok. (David Medley, Utilities Director)**
- **Confirm action taken on City Council Agenda Item 8 an Ordinance amending Chapter 106 of the McAlester Code of Ordinances, by adding Section 106-77, establishing raw water sales, providing for a severability clause; and declaring an emergency. (David Medley, Utilities Director)**
- **Confirm action taken on City Council Agenda Item 10 partnering with KiBois and the City of McAlester for a cardboard recycling program. ((Peter J. Stasiak, Acting City Manager)**

ADJOURN MPWA.

ADJOURNMENT

CERTIFICATION

I certify that this Notice of Meeting was posted on this _____ day of _____ 2009 at _____ a.m./ p.m. as required by law in accordance with Section 303 of the Oklahoma Statutes and that the appropriate news media was contacted. As a courtesy, this agenda is also posted on the City of McAlester website: www.cityofmcalester.com.

Cora M. Middleton, City Clerk

Council Chambers
Municipal Building
December 21, 2009

The McAlester City Council met in Rescheduled regular session on Monday, December 21, 2009, at 6:00 P.M. after proper notice and agenda was posted, December 18, 2009, at 3:50 P.M.

CALL TO ORDER

Mayor Priddle called the meeting to order.

INVOCATION & PLEDGE OF ALLEGIANCE

- **Robert Tate, First Indian Baptist Church**

ROLL CALL

Council Roll Call was as follows:

Present: Chris Fiedler, John Browne, Haven Wilkinson, Buddy Garvin, Sam Mason & Mayor Priddle

Absent: Donnie Condit

Presiding: Kevin E. Priddle, Mayor

Staff Present: Peter J. Stasiak, Acting City Manager/Planning and Community Development Director; Gayla Duke, Chief Financial Officer; John Modzelewski, Public Works Director/City Engineer; William J. Ervin, City Attorney and Cora Middleton, City Clerk

Mayor Priddle recognized Fireman Jeff Nave for twenty-five (25) years of service to the City and presented him with a certificate from the Oklahoma Municipal League.

CITIZENS' COMMENTS ON NON-AGENDA ITEMS

Louis Smitherman addressed the Council to inform them of the events scheduled for the Martin Luther King, Jr. Birthday Celebration. He explained that there would be a service at Grand Avenue Methodist Church on Friday, January 18, 2010 and a dinner at the McAlester High School on Saturday, January 19, 2010. Mr. Smitherman asked if the Mayor could present a proclamation and sit for a picture for the newspaper. He then invited the Council to both events.

CONSENT AGENDA

All matters listed under the Consent Agenda are considered to be routine by the City Council and will be enacted by one motion. There will not be separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- A. Approval of the Minutes from the December 1, 2009, Special Meeting of the McAlester City Council. (Cora Middleton, City Clerk)**

- B. Approval of the Minutes from the December 8, 2009, Regular Meeting of the McAlester City Council.** *(Cora Middleton, City Clerk)*
- C. Approval of the Minutes from the December 11, 2009, Special Meeting of the McAlester City Council.** *(Cora Middleton, City Clerk)*
- D. Approval of Claims for December 9, 2009 through December 21, 2009.** *(Gayla Duke, Chief Financial Officer)* In the following amounts: General Fund - \$137,344.65; Nutrition - \$896.25; SE expo Ctr/Tourism Fund - \$5,990.21; E-911 - \$26,457.71; Economic Development - \$137,299.77 and Gifts & Contributions - \$5,236.01.

Mayor Priddle stated that the City Manager had requested item "D" be removed for individual consideration.

Councilman Browne moved for approval of the Consent Agenda items "A through C". The motion was seconded by Councilman Condit. There was no discussion and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried.

ITEMS REMOVED FROM CONSENT AGENDA

- D. Approval of Claims for December 9, 2009 through December 21, 2009.** *(Gayla Duke, Chief Financial Officer)* In the following amounts: General Fund - \$137,344.65; Nutrition - \$896.25; SE expo Ctr/Tourism Fund - \$5,990.21; E-911 - \$26,457.71; Economic Development - \$137,299.77 and Gifts & Contributions - \$5,236.01.

Councilman Browne moved for approval of Claims for December 9, 2009 through December 21, 2009. The motion was seconded by Councilman Fiedler.

Before the vote, Mr. Stasiak explained that the payment to MEDS on page 16 had been miscalculated. He stated that the original payment had been calculated at \$12,693.45 but should have been for \$12,627.89. He added that the original check would be voided.

Councilman Browne inquired about the payment on page eight (8) to FAO USACE, Tulsa District. Mr. Stasiak commented that he would look into the payment and report back to the Council.

Councilman Mason explained the payment was for a water storage contract with the Corp of Engineers. He added that the City had never used it but they had been informed if they let it go it could be hard to get back.

Mayor Priddle restated that motion as the approval of Claims for December 9, 2009 through December 21, 2009 with the modification of the MEDS payment in the amount of \$65.56.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

Councilman Fiedler moved to open the Public Hearing to consider the two (2) Ordinances on the agenda. The motion was seconded by Councilman Browne. There was no discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried and the Public Hearing was opened at 6:11 P.M.

PUBLIC HEARING

All persons interested in any ordinance listed under Scheduled Business shall have an opportunity to be heard in accordance with Article 2, Section 2.12(b) of the City Charter.

- An Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.
- An Ordinance to null, vacate and close the platted alleyway between lots 4 and 5 in Block 172, City of McAlester, formerly South McAlester, Pittsburg County, State of Oklahoma, located between Jackson Avenue and Harrison Avenue; alleyway runs East/West between "B" Street and "A" Street; granting ownership to said property to the abutting property owners retaining a 20' utility easement in the alley.

There were no comments or remarks on either Ordinance from the Council or citizens. Vice-Mayor Garvin moved to close the Public Hearing. The motion was seconded by Councilman Fiedler. There was no discussion and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Fiedler, Browne & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried and the Public Hearing was closed at 6:13 P.M.

SCHEDULED BUSINESS

1. **City of McAlester's Treasury Report and Financial Information.** *(Gayla Duke, Chief Financial Officer)*

Executive Summary

This item involves a financial report and presentation from Chief Financial Officer.

Vice-Mayor Garvin moved to open the presentation and discussion of the City of McAlester's Treasury Report and Financial Information. The motion was seconded by Councilman Wilkinson.

Before the vote, Ms. Duke reviewed the balances of the various accounts with the Council stating that the total as of November 30, 2009 was \$12,750,539.00. She then explained that the funds were correctly collateralized. Mayor Priddle asked that in the future the interest rates of the CD's be furnished with this information.

There was a brief discussion between Ms. Duke, Councilman Fiedler and Acting City Manager Stasiak regarding the Lowe's payment. There was no vote taken on this item.

2. **Consider, and act upon, an Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency. (Gayla Duke, Chief Financial Officer)**

Executive Summary

This agenda item involves Ordinance No. 2327 which established the budget for fiscal year 2009-2010.

ORDINANCE NO. 2340

AN ORDINANCE OF THE CITY OF McALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2327 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2009-2010; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

Councilman Wilkinson moved to approve **ORDINANCE NO. 2340**, seconded by Councilman Fiedler.

Before the vote, Ms. Duke distributed an amended exhibit to the Council explaining the correction. She continued explaining that the contributions from the "help a neighbor" program would be transferred to the gifts and contributions account for correct accounting. She then explained the budget adjustments that had been submitted by various departments and that those adjustments would reduce the respective departments working budgets.

There was a short discussion between the Mayor, Councilman Browne and Ms. Duke regarding the amount of funding in the Emergency Fund.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Mason, Fiedler, Browne, Wilkinson, Garvin & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

Councilman Fiedler moved to approve the EMERGENCY CLAUSE, seconded by Vice-Mayor Garvin. There was no discussion, and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried.

3. Consider and act upon a resolution setting the election dates for Wards 2, 4 & 6.
(Cora Middleton, City Clerk)

Executive Summary

This agenda item involves a resolution setting the election dates for Wards, 2, 4 & 6.

Councilman Wilkinson moved to approve RESOLUTION NO. 09-15, setting the 2010 election dates for Wards 2, 4 and 6. The motion was seconded by Councilman Browne.

Before the vote, Mayor Priddle commented that this Resolution by law had to be presented to the County Election Board prior to the filing of any candidates and at least sixty (60) days before the Primary election.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Fiedler, Browne & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried.

(Previously Tabled)

4. Consider, and act upon, authorizing the Mayor to sign a Memorandum of Understanding (MOU) for Emergency Management Services with Pittsburg County, Oklahoma. *(Peter J. Stasiak, Acting City Manager)*

Executive Summary

This item involves authorizing the Mayor to sign a MOU for Emergency Management Services with Pittsburg County, Oklahoma.

Councilman Browne moved to authorize the Mayor to sign a Memorandum of Understanding (MOU) for Emergency Management Services with Pittsburg County, Oklahoma. The motion was seconded by Councilman Fiedler.

Before the vote, Mr. Stasiak asked if Trent Myers would address the Council concerning the MOU and the services that Emergency Management provided the City of McAlester.

Mr. Myers commented that Emergency Management was like law enforcement. They're not important until you needed them. He explained that the phone was answered twenty-four (24) hours a day, seven (7) days a week and all calls were returned. He stated that incorporated cities were required by the State to have Emergency Management, either by furnishing the service themselves or contracting with the county and in the 1980's the City of McAlester had decided to contract with Pittsburg County. He added that during times of disaster the local representative could declare a disaster before the City and they would apply for grants to help citizens of both

the county and city. Mr. Myers explained how the Emergency Management office was funded and the various activities that they perform.

There was a brief discussion among the Council, Mr. Myers and Mr. Stasiak concerning storm shelters or safe rooms in public buildings, the date on the MOU and some of the language in the MOU. Mr. Ervin commented that the language could be changed at the next renewal.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

5. **Consider, and act upon, Resolution of the City of McAlester for fiscal year 2009 re-affirming the cities commitment to facilitate and administer funds from the Oklahoma Department of Commerce, Community Development Block Grant -- Economic Development Infrastructure Financing (CDBG-EDIF).** *(Peter J. Stasiak, Acting City Manager)*

Executive Summary

This item involves a resolution re-affirming the Cities commitment to facilitate and administer funds from ODOC.

Councilman Fiedler moved to approve a Resolution of the City of McAlester for fiscal year 2009 re-affirming the cities commitment to facilitate and administer funds from the Oklahoma Department of Commerce, Community Development Block Grant – Economic Development Infrastructure Financing (CDBG-EDIF). The motion was seconded by Councilman Browne.

Before the vote, Mr. Stasiak stated that on June 23, 2009 the Council had approved a preliminary resolution affirming the City's commitment and this was to reaffirm and update the Council on changes in the project. He explained that the amount had been reduced from a four (4) million dollar project to a \$2,065,100.00 project. He continued commenting that when completed this would bring one hundred twenty-five jobs (125) with an average annual income of thirty-five (35) to thirty-six (36) thousand dollars. Mr. Stasiak stated that Mehlberger Brawley would be the engineering consultant for the project and he then reviewed the requirements for the project and the various attachments.

There was discussion among the Council and Mr. Stasiak regarding what the construction bond proceeds could be spent on, the effect of the 125 jobs, if a local company might be able to help in the production process and if other companies might come into the area because of this project.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Fiedler & Mayor Priddle

NAY: Councilman Mason

Mayor Priddle declared the motion carried.

6. Consider, and act upon, recommendation of Planning and Zoning Committee to annex property adjacent to City. (Peter J. Stasiak, Acting City Manager)

Executive Summary

This item involves a motion to authorize the City of McAlester to proceed with the annexation of additional lands adjacent to the City.

Councilman Fiedler moved to approve the recommendation of Planning and Zoning Committee to annex property adjacent to City. The motion was seconded by Vice-Mayor Garvin.

Before the vote, Mr. Stasiak explained that he had been working with the Planning Committee and the Committee had come up with a number of recommendations for annexation for the City as they see it grow. He commented that this annexation if approved would square up the area. He stated that he was asking the Council for permission to proceed as there were many steps that had to be completed before actual annexation could occur.

There was a brief discussion among the Council, Mr. Stasiak and the City Attorney regarding the length of time this process would take and when it come back before the Council.

There was no other discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

7. Consider, and act upon, recommendation of Planning and Zoning Committee to annex property adjacent to City. (Peter J. Stasiak, Acting City Manager)

Executive Summary

This item involves a motion to authorize the City of McAlester to proceed with the annexation of additional lands adjacent to the City.

Councilman Mason moved to approve a recommendation of Planning and Zoning Committee to annex property adjacent to City. The motion was seconded by Councilman Wilkinson. There was no discussion, and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Fiedler, Browne & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

8. Consider, and act upon, an Ordinance to close an alleyway between "A" Street and "B" Street in Block 172 of the City of McAlester. (Peter J. Stasiak, Acting City Manager)

Executive Summary

This item involves approving an ordinance to close alleyway between "A" and "B" Street in Block 172 of the City of McAlester.

ORDINANCE NO. 2341

AN ORDINANCE TO NULL, VACATE, AND CLOSE THE PLATTED ALLEYWAY BETWEEN LOTS 4 AND 5, IN BLOCK 172, CITY OF MCALESTER, FORMERLY SOUTH MCALESTER, PITTSBURG COUNTY, STATE OF OKLAHOMA, LOCATED BETWEEN JACKSON AVENUE AND HARRISON AVENUE; ALLEYWAY RUNS EAST/WEST BETWEEN "B" STREET AND "A" STREET; GRANTING OWNERSHIP TO SAID PROPERTY TO THE ABUTTING PROPERTY OWNERS; RETAINING A 20' UTILITY EASEMENT IN THE ALLEY.

Councilman Fiedler moved for approval of **ORDINANCE NO. 2341**, seconded by Councilman Wilkinson.

Before the vote, Acting City Manager Stasiak stated that this would complete the closure of this alleyway between "A" Street and "B" Street and that the Planning Committee had voted unanimously on this recommendation.

There was no other discussion, and the vote was taken as follows:

AYE: Councilman Garvin, Mason, Fiedler, Browne, Wilkinson & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried.

9. Consider, and act upon, authorizing the Mayor to sign an Agreement with Iron Mountain for secure shredding services. (Cora Middleton, City Clerk).

Executive Summary

This item involves authorizing the Mayor to sign an Agreement with Iron Mountain.

Councilman Fiedler moved to authorize the Mayor to sign an Agreement with Iron Mountain for secure shredding services. The motion was seconded by Vice-Mayor Garvin.

Before the vote, Ms. Middleton explained that this service would help the City comply with the Red Flag Identity Theft Regulations that were currently in place and it would help to with the storage space problem by allowing the City to securely destroy documents that had met the retention requirement of the State. She added that all shredded materials would be recycled and not be added to the municipality's landfill. Ms. Middleton stated that if this was approved and signed before the December 31, 2009 the City would receive two (2) months of service free.

Mr. Ervin stated that he had reviewed and he suggested approval subject to recommended changes.

There was no other discussion, and the vote was taken as follows:

AYE: Councilman Mason, Fiedler, Browne, Wilkinson, Garvin & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried.

- 10. Consider, and act upon, a Resolution of the City of McAlester for direct settlement fund proceeds, obtained in Case Number C-2007-498; City of McAlester vs. Western Surety, ET AL., in the District Court of Pittsburg County State of Oklahoma. ((Peter J. Stasiak, Acting City Manager))**

Executive Summary

This item involves a resolution of the City of McAlester for the direct settlement fund proceeds with Western Surety.

Councilman Wilkinson moved to approve a Resolution of the City of McAlester for direct settlement fund proceeds, obtained in Case Number C-2007-498; City of McAlester vs. Western Surety, ET AL., in the District Court of Pittsburg County State of Oklahoma. The motion was seconded by Vice-Mayor Garvin.

Before the vote, Mr. Stasiak explained that this was in regard to the mediation that he and the City Attorney had attended two (2) weeks ago. He then requested that this item be withdrawn until the next meeting to allow him time to gather all information regarding expenses related to this case.

Councilman Mason commented that a budget amendment should be considered at the time that this item was brought back before the Council. Mr. Ervin stated that comment was correct.

Mayor Priddle moved to table this item until the next meeting. The motion was seconded by Councilman Browne. There was no discussion, and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

- 11. Consider, and act upon, amending contracts for OIL, MEDS, and Pride in McAlester. ((Peter J. Stasiak, Acting City Manager))**

Executive Summary

This item involves a motion to approve decreasing fund for MEDS, OIL, and PIM and amending contracts.

Councilman Browne moved to amend the contracts for OIL, MEDS Pride of McAlester in McAlester. The motion was seconded by Councilman Fiedler.

Before the vote, Mr. Stasiak explained that these were the addendums that had been discussed at a prior meeting. He explained that there had been a miscalculation on the MEDS addendum and distributed the corrected document to the Council. He then reviewed the addendums highlighting the decreases in each of the groups' agreements which were as follows:

OIL decrease of \$2,400.00

Pride in McAlester decrease of \$6,000.00

MEDS decrease of \$39,850.00

There was no other discussion, and the vote was taken as follows:

AYE: Councilman Wilkinson, Garvin, Mason, Fiedler, Browne & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

12. Consider, and act upon, authorizing expenditure of approximately \$80,000 to repair a portion of the Sandy Creek canal wall. (*John C. Modzelewski, PE, Engineering/Public Works Director.*)

Executive Summary

This item involves a motion to authorize expenditure of \$80,000 to repair a portion of the Sandy Creek canal wall.

Councilman Browne moved to authorize an expenditure of approximately \$80,000 to repair a portion of the Sandy Creek canal wall. The motion was seconded by Councilman Fiedler.

Before the vote, Mr. Modzelewski explained that a recent flash flood had severely damaged a section of the Sandy Creek canal wall at Puterbaugh Park. The damage included the collapse of 126.5 linear feet of concrete canal wall. He stated that this project would include the repair of the 126.5 linear feet of vertical wall and footing. He added that the site was currently fenced to provide safety in the vicinity of the collapse. Mr. Modzelewski commented that the project would be advertised after funding was in place for the repairs.

There was a brief discussion among the Council, Mr. Modzelewski and Mr. Stasiak regarding the pipe that ran through the canal, previous problems with sink holes, if there would be any funding from the state or federal emergency agencies and contacting Henry Roe with the Federal Mine Corporation to check for mines in the area.

There was no further discussion, and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried.

William Murchoch addressed the Council to express his appreciation for their work running the City. He then expressed his concerns about MEDS, their activities and practices.

NEW BUSINESS

None

CITY MANAGER'S REPORT

Mr. Stasiak reported that there had been one fee waived in the month of November in the amount of \$50.00 for a bond fire at the McAlester High School. The dozer had arrived at the landfill and the compactor would be delivered before the end of the year if the transporter could obtain the necessary permits. He added that several City employees had built a float and participated in the

recent Christmas Parade. He explained that they donated their time and much of the materials for the float and he wanted to commend them for their work.

REMARKS AND INQUIRIES BY CITY COUNCIL

Each of the Councilmen wished everyone a Merry Christmas and a Happy New Year.

Councilman Fiedler urged everyone to be careful he reminded the audience that the \$10,000.00 drawing was tomorrow night and he thanked the Staff and all of the City employees for their work.

Councilman Browne recognized the work that had been done by MEDS and he asked about the street repairs on "A" Street.

Mr. Modzelewski commented that they were waiting on the railroad to complete their repairs and hopefully all of the work would be done by next week.

Councilman Wilkinson reminded everyone to watch for children because they were out of school on Christmas break.

Vice-Mayor Garvin urged everyone to be safe and commented that it had been a pleasure working with the Council this year and added that the City was very fortunate to have the Mayor. He added that Mayor Priddle was always involved in the happenings in the City.

Councilman Mason urged everyone to remember what Christmas was all about.

Mayor Priddle remarked on how the Council had moved forward but there was still a lot of work to be done. He added that it was great to live in McAlester.

RECESS COUNCIL MEETING

Mayor Priddle asked for a motion to recess the Regular Meeting to convene the Authorities. Councilman Browne moved to recess the Regular Meeting and convene the Authorities. The motion was seconded by Councilman Fiedler and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried, and the Regular Meeting was recessed at 7:44 P.M.

RECONVENE COUNCIL MEETING

The Regular Meeting was reconvened at 7:47 P.M.

ADJOURNMENT

There being no further business to come before the Council, Vice-Mayor Garvin moved for the meeting to be adjourned, seconded by Councilman Wilkinson. The vote was taken as follows:

AYE: Councilman Garvin, Mason, Fiedler, Browne, Wilkinson & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried, and the meeting was adjourned at 7:47 P.M.

Kevin E. Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

Council Conference Room
Municipal Building
December 28, 2009

The McAlester City Council met in Special session on Monday, December 28, 2009, at 5:30 P.M. after proper notice and agenda was posted, December 22, 2009, at 5:25 P.M.

CALL TO ORDER

Mayor Priddle called the meeting to order.

ROLL CALL

Council Roll Call was as follows:

Present: Chris Fiedler, John Browne, Haven Wilkinson, Buddy Garvin, Sam Mason & Mayor Priddle

Absent: Donnie Condit

Presiding: Kevin E. Priddle, Mayor

Staff Present: Pete Stasiak, Acting City Manager; Gayla Duke, Chief Financial Officer; John Modzelewski, Public Works Director/City Engineer; William J. Ervin, City Attorney and Cora Middleton, City Clerk

Mayor Priddle commented that Councilman Condit would not be present for this meeting and he asked the City Attorney if it was legal for the Council to meet in an Executive Session to discuss the item on the agenda.

Mr. Ervin stated that pursuant to Title 25, Section 307.b.2 it was legal for the Council to meet in an Executive Session. He reminded Mayor Priddle that any action in connection to the Executive Session had to be addressed in open meeting.

Vice-Mayor Garvin moved to recess the Special Meeting for an Executive Session to discuss negotiations concerning employees and representatives of employee groups: IAFF, in accordance with Title 25, Sec. 307.B.2. The motion was seconded by Councilman Browne. There was no discussion and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried and the Special meeting was recessed at 5:31 P.M.

EXECUTIVE SESSION

Recess into Executive Session in compliance with Section Title 25 Section 307 (B), et.seq. Oklahoma Statutes, to wit:

- **Section 307 (B) (2) – Discuss negotiations concerning employees and representatives of employee groups: IAFF**

RECONVENE INTO OPEN SESSION

Take any action as a result from Executive Session.

The Special Meeting was reconvened at 7:15 P.M. Mayor Priddle reported that the Council had recessed the Special Meeting for an Executive Session to discuss negotiations concerning employees and representatives of employee groups: IAFF, in accordance with Title 25, Sec. 307.B.2. Only that matter was discussed, no action was taken and the Council returned to open session at 7:15 P.M., and this constituted the Minutes of the Executive Session.

Mayor Priddle commented that a Special Meeting would be called for Wednesday, December 30, 2009 at 7:30 P.M. where the Council would continue their discussion of the negotiations concerning the IAFF contract. He then instructed the City Clerk to post the Special Meeting as required by state statute. Mayor Priddle reported that former Mayor Bradley Million had passed away and his funeral would be Wednesday at All Saints Episcopal Church.

ADJOURNMENT

There being no further discussion among the Council, Councilman Wilkinson moved for adjournment. The motion was seconded by Vice-Mayor Garvin. There was no discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried and the meeting was adjourned at 7:17 P.M.

Kevin E. Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

Council Conference Room
Municipal Building
December 30, 2009

The McAlester City Council met in Special session on Wednesday, December 30, 2009, at 7:30 P.M. after proper notice and agenda was posted, December 29, 2009, at 8:10 A.M.

CALL TO ORDER

Mayor Priddle called the meeting to order.

ROLL CALL

Council Roll Call was as follows:

Present: Chris Fiedler, John Browne, Haven Wilkinson, Buddy Garvin, Sam Mason & Mayor Priddle
Absent: Donnie Condit
Presiding: Kevin E. Priddle, Mayor

Staff Present: Pete Stasiak, Acting City Manager; Gayla Duke, Chief Financial Officer; John Modzelewski, Public Works Director/City Engineer; William J. Ervin, City Attorney and Cora Middleton, City Clerk

Councilman Mason moved to recess the Special Meeting for an Executive Session to discuss negotiations concerning employees and representatives of employee groups: IAFF, in accordance with Title 25, Sec. 307.B.2. The motion was seconded by Councilman Browne. There was no discussion and the vote was taken as follows:

AYE: Councilman Fiedler, Browne, Wilkinson, Garvin, Mason & Mayor Priddle
NAY: None

Mayor Priddle declared the motion carried and the Special meeting was recessed at 7:31 P.M.

EXECUTIVE SESSION

Recess into Executive Session in compliance with Section Title 25 Section 307 (B), et.seq. Oklahoma Statutes, to wit:

- **Section 307 (B) (2) – Discuss negotiations concerning employees and representatives of employee groups: IAFF**

RECONVENE INTO OPEN SESSION

Take any action as a result from Executive Session.

The Special Meeting was reconvened at 8:11 P.M. Mayor Priddle reported that the Council had recessed the Special Meeting for an Executive Session to discuss negotiations concerning employees and representatives of employee groups: IAFF, in accordance with Title 25, Sec.

307.B.2. Only that matter was discussed, no action was taken and the Council returned to open session at 8:11 P.M., and this constituted the Minutes of the Executive Session.

ADJOURNMENT

There being no further discussion among the Council, Councilman Browne moved for adjournment. The motion was seconded by Councilman Fiedler. There was no discussion, and the vote was taken as follows:

AYE: Councilman Browne, Wilkinson, Garvin, Mason, Fiedler & Mayor Priddle

NAY: None

Mayor Priddle declared the motion carried and the meeting was adjourned at 8:12 P.M.

Kevin E. Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

**CLAIMS FROM DECEMBER 22, 2009
THRU
JANUARY 12, 2010**

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-A00267	AIRGAS					
		I-106973075	01 -5542202	OPERATING SUP MONTHLY RENTAL ON BO	048983	42.13
01-A00362	ALLEGIANCE COMMUNICATIO					
		I-12/25/09	01 -5320202	OPERATING EXP CABLE SERVICES	048984	116.74
01-A00426	ALTEC INDUSTRIES					
		I-5716869A	01 -5862203	REPAIRS & MAI CYLINDER FOR BUCKET TRUCK	048985	3,994.51
		I-5716869B	01 -5862203	REPAIRS & MAI REPAIR TO BUCKET TRU	048985	554.72
01-A00751	ATWOODS					
		I-3389639	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	56.85
		I-3390655	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	23.65
		I-3398544	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	30.32
		I-3398735	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	51.97
		I-3399055	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	71.29
		I-3407082	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	69.92
		I-3407543	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	25.94
		I-3408115	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	32.64
		I-3412019	01 -5548316	REPAIRS & MAI ANTI-FREEZE & MISC I	048988	9.98
		I-3417732	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	44.56
		I-3418502	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	048988	192.50
01-A00770	AUTO PARTS CO					
		I-852156	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	96.86
		I-852277	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	102.08
		I-852340	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	164.16
		I-852413	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	17.24
		I-852472	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	85.62
		I-852505	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	9.82
		I-852559	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	94.37
		I-852561	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	82.35
		I-852575	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	101.98
		I-852664	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	62.82
		I-852665	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	37.21
		I-852682	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	27.94
		I-852695	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	30.48
		I-852697	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048990	149.90
		I-852717	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	46.69
		I-852768	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	166.55
		I-852769	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	105.92
		I-853227	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	74.83
		I-853275	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	35.97
		I-853276	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	194.90
		I-853349	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	36.92
		I-853384	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	24.42
		I-853414	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	263.36
		I-853418	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	38.65
		I-853419	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	95.95

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-A00770	AUTO PARTS CO		continued			
		I-853430	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	75.80
		I-853556	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	25.30
		I-853564	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	95.37
		I-853605	01 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	141.65
01-B00343	B & S SUPPLY, INC.					
		I-59705	01 -5862203	REPAIRS & MAI NUTS, BOLTS, SCREWS,	048994	476.25
01-C00320	CENTERPOINT ENERGY ARKL					
		I-09-27033	01 -5215314	GAS UTILITY 1600 E COLLEGE AVE C	048910	269.81
01-C00664	CONSTRUCTION INDUSTRIES					
		I-09-27123	01 -5652330	DUES & SUBSCR LICENSE RENEWAL	049000	35.00
		I-09-27123	01 -5652330	DUES & SUBSCR ELECTRICAL JOURNEYMA	049000	75.00
01-C00840	CRAWFORD & ASSOCIATES					
		I-4702	01 -5215302	CONSULTANTS CONSULTING SERVICES	049002	555.00
01-C00847	CRYSTAL DATA					
		I-180283	01 -5321202	OPERATING SUP FAX TONER	049003	78.07
01-C00205	DAYLIGHT DONUTS					
		I-2503-31	01 -5210202	OPERATING SUP EMPLOYEE MTG 12/28/0	049006	115.92
01-D00600	DONNA M. CREWS					
		I-09-27128	01 -5544308	CONTRACT LABO BASKETBALL SCOREKEEP	049009	16.00
01-E00219	ENGLISH JANITORIAL					
		I-17980	01 -5542202	OPERATING SUP FLOOR WAX-MONROE COM	049012	231.14
01-E00266	ERVIN & ERVIN ATTORNEYS					
		I-JAN 2009	01 -5214302	CONSULTANTS ATTORNEY FEES	049013	2,500.00
01-F00015	FLEETCOR TECHNOLOGIES					
		I-NP21864081	01 -5862205	PETROLEUM PRO OCT FUEL FOR GEN	049014	15,488.40
		I-NP22434092	01 -5862205	PETROLEUM PRO GEN FUEL FOR NOV	049014	14,201.55
01-F00170	FIRST NATIONAL BANK					
		I-011210-#133	01 -5215510	LEASE PAYMENT LEASE #133	049016	5,185.00
01-F00310	FRONTIER INTNL. TRUCKS,					
		I-782130	01 -5862203	REPAIRS & MAI OIL COOLER FOR S-22	049017	555.67
01-G00010	G & C RENTAL CENTER, IN					
		I-0998	01 -5547203	REPAIRS & MAI TRACHOE RENTAL	049018	538.00
		I-2283	01 -5547203	REPAIRS & MAI TRACHOE RENTAL	049018	63.75
		I-2465	01 -5547203	REPAIRS & MAI TRACHOE RENTAL	049018	267.50

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-600130	GALL'S, AN ARAMARK CO.,					
		I-510287594	01 -5431207	CLOTHING ALLO CLOTHING	049020	8.99
		I-510309230	01 -5431207	CLOTHING ALLO CLOTHING	049020	210.26
		I-510317210	01 -5431207	CLOTHING ALLO CLOTHING PURCHASES	049020	299.17
01-600490	GRISOM IMPLEMENT INC					
		I-121169	01 -5544203	REPAIRS & MAI BLADES & BELTS FOR M	049022	81.16
01-100061	IKON OFFICE SOLUTIONS,					
		I-5013197890	01 -5321308	CONTRACTED SE BASE CHARGE METER RE	049024	11.04
		I-5013197890	01 -5321308	CONTRACTED SE BASE CHARGE METER RE	049024	55.55
01-100110	IMPRESS OFFICE SUPPLY					
		I-029510	01 -5862202	OPERATING SUP OFFICE SUPPLIES	049025	73.68
		I-029624	01 -5862202	OPERATING SUP OFFICE SUPPLIES	049025	33.58
		I-029648	01 -5542202	OPERATING SUP OFFICE SUPPLIES	049025	291.75
		I-029665	01 -5321202	OPERATING SUP MISC SUPPLIES	049025	15.79
		I-029690	01 -5321202	OPERATING SUP MISC SUPPLIES	049025	8.60
		I-029700	01 -5542202	OPERATING SUP OFFICE SUPPLIES	049025	59.95
		I-029707	01 -5211202	OPERATING SUP OFFICE SUPPLIES	049025	23.43
		I-029721	01 -5211202	OPERATING SUP OFFICE SUPPLIES	049025	14.40
		I-029743	01 -5321202	OPERATING SUP MISC SUPPLIES	049025	125.59
01-J00340	JIM WOOD REFRIGERATION					
		I-09-11239	01 -5548203	REPAIRS & MAI DUCT CLEANING	049026	250.50
		I-09-11317	01 -5548203	REPAIRS & MAI BLOWER MOTOR & CAPAC	049026	203.23
01-100380	LOCKE SUPPLY CO.					
		I-11847654-00	01 -5548203	REPAIRS & MAI MATERIALS - BUILDING MAINT	049028	28.01
01-L00383	LOCKE ELECTRICAL SUPPLY					
		I-11806716-00	01 -5548204	SMALL TOOLS CRIMPERS FOR REPAIRS	049029	217.66
01-L00428	LOWE'S CREDIT SERVICES					
		I-01023	01 -5548203	REPAIRS & MAI BUILDING & MAINT SUPPLIES	049030	25.94
		I-01163	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	049030	7.56
		I-01912..	01 -5548203	REPAIRS & MAI BUILDING & MAINT SUPPLIES	049030	142.48
		I-01995	01 -5548203	REPAIRS & MAI BUILDING & MAINT SUPPLIES	049030	19.09
		I-09194	01 -5542203	REPAIRS & MAI MISC REPAIR & MAINT	049030	121.42
		I-85011	01 -5653213	SAFETY SUPPLI BLINDS FOR SAFETY OF	049030	182.00
01-L00456	LUKER HEAT & AIR					
		I-2061	01 -5544203	REPAIRS & MAI REPAIR HEATER @ SEC	049031	370.00
01-M00089	MARK EMMONS PHOTOGRAPHY					
		I-09-26979	01 -5101319	MISCELLANEOUS PHOTO OF MAYOR FOR C	049032	24.95
01-M00480	MILLER GLASS					
		I-9374	01 -5548203	REPAIRS & MAI AUTOMATIC DOOR OPENS	049035	390.00

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-M00480	MILLER GLASS		continued			
		I-9381	01 -5548316	REPAIRS & MAI STEEL DOOR-FIRE DEPT	049035	707.00
		I-9433	01 -5321316	REPAIRS & MAI BACK GLASS UNIT 16	049035	230.00
01-M00001	MC ALESTER AUTO PARTS,					
		I-01225955	01 -5862203	REPAIRS & MAI SEAT FOR POLICE UNIT	049036	170.00
01-M00020	MC CLAIMS LUMBER CO.					
		I-001122213	01 -5865218	STREET REPAIR FORMING MATERIALS	049037	59.90
		I-1125870	01 -5865218	STREET REPAIR REBAR, PLYWOOD, FORMING	049037	3,292.08
01-M00206	MCALISTER WELDING SUPPL					
		I-562031	01 -5862203	REPAIRS & MAI OXYGEN	049038	54.00
		I-562031	01 -5862203	REPAIRS & MAT CO2 #50	049038	48.00
		I-562031	01 -5862203	REPAIRS & MAT ACT #145	049038	38.00
01-M00226	MC DONALDS RESTURANT					
		I-10.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	8.78
		I-47.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	8.78
		I-52.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	13.17
		I-63.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	14.36
		I-72.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	4.39
		I-99.	01 -5321202	OPERATING SUP PRISONER MEALS	049039	4.39
01-N00040	NAT'L. ASSOC. OF FIRE					
		I-5366	01 -5431330	DUES & SUBSCR YEARLY MEMBERSHIP DU	049040	45.00
01-N00100	NAT'L. REC. & PARK ASSO					
		I-09-26728	01 -5542203	REPAIRS & MAT YEARLY MEMBERSHIP DU	049041	140.00
01-N00246	NEXSTEP					
		I-6304	01 -5542202	OPERATING SUP GRAFFITI REMOVER	049042	344.60
01-N00250	MCALISTER NEWS CAPITAL					
		I-01571166	01 -5542330	DUES & SUBSCR AD - SKATEPARK EQUIP	049043	37.30
		I-01571357	01 -5212317	ADVERTISING & COUNCIL PUBLICATIONS	049043	49.05
		I-01571358	01 -5212317	ADVERTISING & COUNCIL PUBLICATIONS	049043	12.90
		I-09-27116	01 -5210330	DUES & SUBSCR 1 YR SUBSCRIPTION	049043	102.00
		I-09-27151	01 -5431330	DUES & SUBSCR YEARLY SUBSCRIPTION	049043	102.00
01-N00270	NIX CHEVROLET					
		I-115852	01 -5862203	REPAIRS & MAI DIAGNOSTIC TEST PK-2	049044	33.13
		I-116174	01 -5862203	REPAIRS & MAI DIAGNOSTIC TEST PK-2	049044	33.13
		I-116192	01 -5862203	REPAIRS & MAI DIAGNOSTIC TEST PK-2	049044	46.08
01-000422	OTC - CENTRAL PROCESSIN					
		I-09-27170	01 -5215106	WORKMAN'S COM WORKERS COMP TAXES	049049	1,267.93
01-000592	ORTIVUS, INC					

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-000592	ORTIVUS, INC		continued			
		I-INV030330	01 -5431202	OPERATING SUP MONTHLY SERVICE FEE	049050	285.00
01-000595	OSBI					
		I-09-003046-S	01 -5321308	CONTRACTED SE QRTY SOFTWARE SUPPOR	049051	2,383.34
01-P00042	PACIFIC TELEMANAGEMENT					
		I-160947	01 -5215315	TELEPHONE UTIL PAY PHONE @ STIPE CENTER	048913	75.00
01-P00133	PATROL TECHNOLOGY					
		I-21834	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	38.00
		I-22701	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	178.50
		I-23179	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	90.00
		I-23243	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	52.75
		I-23244	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	253.00
		I-24380	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	115.00
		I-24381	01 -5431207	CLOTHING ALLO UNIFORM ORDERS	049052	100.50
01-P00560	PUBLIC SERVICE/AEP					
		I-09-27056	01 -5215313	ELECTRIC UTIL 301 W JEFFERSON	048914	35.63
		I-09-27056	01 -5215313	ELECTRIC UTIL 1699 E CARL ALBERT	048914	21.23
		I-09-27056	01 -5215313	ELECTRIC UTIL GENERAL	048914	7,370.01
		I-09-27056	01 -5215313	ELECTRIC UTIL LIBRARY	048914	1,178.15
		I-09-27056	01 -5215313	ELECTRIC UTIL ST. LIGHTS	048914	9,065.35
		I-09-27056	01 -5215313	ELECTRIC UTIL 333 E CARL ALBERT	048914	42.23
		I-09-27056	01 -5215313	ELECTRIC UTIL 302 E FILLMORE	048914	61.68
		I-09-27056	01 -5215313	ELECTRIC UTIL 303 W SPRINGER	048914	11.09
01-Q00011	BOATMAN'S QUALITY HEAT					
		I-504	01 -5548203	REPAIRS & MAI LABOR & REFRIGERANT	049057	453.00
01-Q00017	QUALITY JANITORIAL SUPP					
		I-003055	01 -5542202	OPERATING SUP JANITORIAL SUPPLIES	049058	452.56
01-R00090	RAM INC					
		I-15654	01 -5862205	PETROLEUM PRO FUEL FOR SHOP	049059	3,990.00
		I-15654	01 -5862205	PETROLEUM PRO FUEL FOR SHOP	049059	4,080.00
01-R00300	RICHARD RUSHING					
		I-09-27126	01 -5544308	CONTRACT LABO BASKETBALL REF FEES	049060	80.00
01-S00150	SEARS COMMERCIAL ONE					
		I-9645	01 -5862203	REPAIRS & MAI TOOL ALLOWANCE	049062	383.91
01-S00726	STAPLES BUSINESS ADVANT					
		I-3129043766	01 -5431202	OPERATING SUP OFFICE SUPPLIES	049067	79.98
		I-8013997280	01 -5225401	COMPUTER TECH COMPUTER HARDWARE	049067	18.78
		I-8014220559	01 -5225401	COMPUTER TECH ADOBE ACROBAT PRO UP	049067	159.99
		I-8014220559	01 -5225401	COMPUTER TECH COMPUTER HARDWARE	049067	56.97

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-T00010	T. H. ROGERS LUMBER CO.					
		I-404721	01 -5548203	REPAIRS & MAI BUILDING & ELECTRICAL SUP	049068	7.90
01-T00458	TONYA M BARNES					
		I-09-27127	01 -5544308	CONTRACT LABO BASKETBALL SCOREKEEP	049069	16.00
01-T00510	TRAFFIC SIGNALS, INC.					
		I-11364	01 -5863203	REPAIR & MAIN LS-200 LOAD SWITCH	049070	380.00
		I-11364	01 -5863203	REPAIR & MAIN FL-200 FLASHERS	049070	190.00
		I-11364	01 -5863203	REPAIR & MAIN 150W TS LAMPS	049070	372.00
		I-11364	01 -5863203	REPAIR & MAIN 69W TS LAMPS	049070	144.00
01-T00540	TREATS SOLUTIONS INC					
		I-019134	01 -5542202	OPERATING SUP JANITORIAL SUPPLIES	049071	505.04
01-T00570	TRIAD SERVICE CENTER					
		I-10102195	01 -5865218	STREET REPAIR MUD CHAINS	049072	339.00
01-T00572	TRIAD TRANSPORT INC					
		I-1214547-00	01 -5548316	REPAIRS & MAI DUMPSTER FOR LF	049073	248.00
01-U00020	US CELLULAR					
		I-NOV 09	01 -5215315	TELEPHONE UTI CELL PHONE BILLS	048916	2,949.97
01-U00119	UNITED FUEL & ENERGY					
		I-0064459	01 -5862205	PETROLEUM PRO 4 DRUMS HYD FLUID	049075	1,487.20
		I-0064459	01 -5862205	PETROLEUM PRO 1 DRUM GEAR LUB	049075	501.05
01-U00130	UNITED SAFETY & CLAIMS					
		I-09-27155	01 -5215106	WORKMAN'S COM MEDICAL BILLS 12/9 -	049078	7,868.65
01-W00040	WALMART COMMUNITY BRC					
		I-011302	01 -5431202	OPERATING SUP 49.42	049080	122.82
		I-014970	01 -5431202	OPERATING SUP 49.42	049080	4.58
		I-01619	01 -5542202	OPERATING SUP OPERATING SUPPLIES	049080	21.32
		I-028889	01 -5431202	OPERATING SUP 49.42	049080	74.88
		I-030421	01 -5431202	OPERATING SUP 49.42	049080	7.77
		I-03576	01 -5210202	OPERATING SUP EMPLOYEE MTG	049080	41.36
		I-05377	01 -5542202	OPERATING SUP OPERATING SUPPLIES	049080	45.45
		I-05494	01 -5320202	OPERATING EXP MISC SUPPLIES	049080	4.96
		I-08269	01 -5542202	OPERATING SUP OPERATING SUPPLIES	049080	23.16
		I-09502	01 -5542202	OPERATING SUP OPERATING SUPPLIES	049081	135.61
01-W00073	WARREN CLINIC					
		I-176792	01 -5431305	PHYSICALS YEARLY PHYSICALS	049082	506.00
		I-201747	01 -5431305	PHYSICALS YEARLY PHYSICALS	049082	475.00
		I-217798	01 -5431305	PHYSICALS YEARLY PHYSICALS	049082	506.00
		I-220467	01 -5431305	PHYSICALS YEARLY PHYSICALS	049082	506.00
		I-277301	01 -5431305	PHYSICALS YEARLY PHYSICALS	049082	506.00

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 01 GENERAL FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-W00073	WARREN CLINIC		continued			
	I-A107242.	01 -5431305	PHYSICALS	YEARLY PHYSICALS	049082	506.00
	I-A130575.	01 -5431305	PHYSICALS	YEARLY PHYSICALS	049082	506.00
01-W00250	WHEELER METALS					
	I-475826	01 -5542316	REPAIRS & MAI METAL & PIPE - REP G		049083	1,395.10
01-W00270	WHITE ELECTRICAL SUPPLY					
	I-S1148940.001	01 -5542203	REPAIRS & MAI MISC ELECTRICAL ITEM		049084	46.27
	I-S1152111.001	01 -5542203	REPAIRS & MAI MISC ELECTRICAL ITEM		049084	134.42
	I-S1153756.002	01 -5542203	REPAIRS & MAI MISC ELECTRICAL ITEM		049084	16.24
	I-S1163503.001	01 -5548203	REPAIRS & MAI SUPPLIES - BUILDING MAINT		049084	155.90
			FUND	01 GENERAL FUND	TOTAL:	110,177.94

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 02 MPWA

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-A00103 ACCURATE LABS & MINING						
		I-9E25034	02 -5974304	LAB TESTING STAGE 2 TESTING ON T	048982	2,720.00
		I-9K17028	02 -5974304	LAB TESTING STAGE 1 TESTING ON H	048982	1,360.00
		I-9K17030	02 -5974304	LAB TESTING STAGE 1 TESTING ON H	048982	1,360.00
		I-9L14037	02 -5974304	LAB TESTING STAGE 1 TESTING ON H	048982	1,370.00
01-A00610 AMERICAN WATERWORK SUPP						
		I-122841	02 -5975211	WATER METERS 3/4 X 2 1/2 METER CO	048986	448.00
01-A00747 AT&T						
		I-09-27057	02 -5267315	TELEPHONE UTI MPWA	048909	2,350.20
		I-09-27057	02 -5267315	TELEPHONE UTI DATA LINE	048909	53.80
01-A00751 ATWOODS						
		I-3370074	02 -5866207	CLOTHING ALLO CLOTHING ALLOWANCE	048988	7.99
		I-3395930	02 -5974203	REPAIRS & MAI MISC SUPPLIES FOR PL	048988	65.98
		I-3413901	02 -5974203	REPAIRS & MAI MISC SUPPLIES FOR PL	048988	51.71
01-A00759 AT & T						
		I-09-27107	02 -5267323	DAMAGES REPAIR PHONE LINE	048989	2,437.51
01-A00770 AUTO PARTS CO						
		I-853280	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048991	193.79
		I-853587	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	105.17
		I-853596	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	78.55
		I-853639	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	179.47
		I-853641	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	64.90
		I-853710	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	26.59
		I-853739	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	7.94
		I-853751	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	62.03
		I-853794	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	95.92
		I-853827	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	89.95
		I-853895	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048992	230.97
		I-853987	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	42.27
		I-854006	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	39.71
		I-854049	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	40.33
		I-854066	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	51.24
		I-854126	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	24.25
		I-854182	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	116.45
		I-854192	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	37.81
		I-854231	02 -5862203	REPAIRS & MAI SMALL AUTO PARTS	048993	15.95
01-B00150 BEALES GOODYEAR TIRES						
		I-MC-169133	02 -5862203	REPAIRS & MAI REAR TIRES-SANITATIO	048995	3,294.90
01-B00180 BEMAC SUPPLY						
		I-S1489955.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	122.33
		I-S1490457.001	02 -5973203	REPAIRS & MAI SUPPLIES FOR BOTH PL	048996	154.14
		I-S1490912.001	02 -5973203	REPAIRS & MAI SUPPLIES FOR BOTH PL	048996	174.39

PACKET: 04806 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 02 MPWA

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-B00180	BEMAC SUPPLY	continued				
		I-S1491243.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	32.98
		I-S1491412.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	187.06
		I-S1491690.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	7.02
		I-S1495841.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	143.08
		I-S1496604.001	02 -5973203	REPAIRS & MAI SUPPLIES FOR BOTH PL	048996	18.28
		I-S1496883.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	85.56
		I-S1496991.001	02 -5975316	REPAIRS & MAI SUPPLIES-WATER/SEWER	048996	5.99
01-B00206	BERTREM PRODUCTS, INC.					
		I-23794	02 -5974203	REPAIRS & MAI 3 ACTUATORS	048998	6,969.00
01-C00669	CONTINENTAL RESEARCH CO					
		I-325715-CRC-1	02 -5973203	REPAIRS & MAI HAND SANITIZER	049001	186.50
01-C00840	CRAWFORD & ASSOCIATES					
		I-4702	02 -5267302	CONSULTANTS CONSULTING SERVICES	049002	955.00
01-C00880	CULLIGAN WATER COND INC					
		I-09-27092	02 -5974316	REPAIRS & MAI REPAIR & RECONDITION	049004	196.94
01-F00015	FLEETCOR TECHNOLOGIES					
		I-NP21864082	02 -5862205	PETROLEUM PRO OCT FUEL FOR MPWA	049014	9,118.74
		I-NP22434093	02 -5862205	PETROLEUM PRO MPWA FUEL FOR NOV	049014	2,601.26
01-F00251	FORT COBB FUEL AUTHORIT					
		I-DEC 09	02 -5267314	GAS UTILITY GAS FOR HEREFORD	048911	155.18
01-F00310	FRONTIER INTNL. TRUCKS,					
		I-167537	02 -5862203	REPAIRS & MAI TRANSMISSION FOR SW-2	049017	6,216.00
01-G00032	GE ANALYTICAL INSTRUMEN					
		I-CD970108005	02 -5974304	LAB TESTING FREIGHT	049019	150.38
01-G00462	GREEN COUNTRY TESTING,					
		I-T37614	02 -5973304	LAB TESTING SLUDGE TESTS-WATER P	049021	1,459.00
01-H00040	HACH CHEMICAL					
		I-6468086	02 -5974203	REPAIRS & MAI PARTS - TURBIDITY ME	049023	534.41
		I-6470141	02 -5974203	REPAIRS & MAI PARTS - TURBIDITY ME	049023	50.00
		I-6500962	02 -5974203	REPAIRS & MAI PARTS - TURBIDITY ME	049023	259.80
01-I03110	IMPRESS OFFICE SUPPLY					
		I-029732	02 -5871292	OPERATING SUP P.E. SEAL & MISC INK	049025	78.99
01-K00210	KIAMICHI ELECTRIC COOP.					
		I-DEC 09	02 -5267313	ELECTRIC UTIL ELECTRIC FOR HEREFOR	048912	258.64
01-L00428	LOWE'S CREDIT SERVICES					

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 02 MPWA

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-100428	LOWE'S CREDIT SERVICES	continued				
		I-01825	02 -5975202	OPERATING SUP SUPPLIES	049030	69.16
		I-02577	02 -5975202	OPERATING SUP SUPPLIES	049030	13.94
		I-07896	02 -5975202	OPERATING SUP SUPPLIES	049030	109.76
		I-08222	02 -5974203	REPAIRS & MAI INSTALLATION & HEATERS	049030	146.99
		I-09532	02 -5974203	REPAIRS & MAI INSTALLATION & HEATERS	049030	134.81
		I-09666	02 -5974203	REPAIRS & MAI INSTALLATION & HEATERS	049030	72.57
		I-09702	02 -5975202	OPERATING SUP SUPPLIES	049030	22.43
		I-09845	02 -5975202	OPERATING SUP SUPPLIES	049030	30.96
01-N00250	MCALESTER NEWS CAPITAL					
		I-01570900	02 -5974317	ADVERTISING & AD FOR CONSENT ORDER	049043	61.39
01-000075	O'REILLY AUTO PARTS					
		I-0230-196501	02 -5973203	REPAIRS & MAI MAINTENANCE SUPPLIES	049046	42.48
01-000275	OKLA DEPT OF COMMERCE					
		I-011210-#8908	02 -5267521	CDBG LOAN #89 CDBG - EDIF #8908	049047	1,145.83
01-000422	OTC - CENTRAL PROCESSIN					
		I-09-27170	02 -5267106	WORKMAN'S COM WORKERS COMP TAXES	049049	1,267.92
01-P00310	PITNEY BOWES					
		I-462934	02 -5216202	OPERATING SUP E-Z SEAL 5 GAL CURBT	049054	92.74
01-P00560	PUBLIC SERVICE/AEP					
		I-09-27056	02 -5267313	ELECTRIC UTIL MPWA	048914	24,110.39
01-R00090	RAM INC					
		I-15645	02 -5862205	PETROLEUM PRO DIESEL FOR LANDFILL	049059	3,670.44
		I-15676	02 -5862203	REPAIRS & MAI 500 GAL DIESEL FOR S	049059	1,019.25
01-R00600	RURAL WATER DISTRICT #1					
		I-NOV 09	02 -5267316	WATER UTILITY WATER @ LANDFILL	048915	234.96
01-S00205	SEQUOYAH ENGINEERING, I					
		I-S14851109.3	02 -5973302	CONSULTANTS (PRETREATMENT TESTING	049063	2,409.00
01-S00234	SHARE CORPORATION					
		I-726426	02 -5973203	REPAIRS & MAI WELDING RODS	049064	155.00
01-S00530	SOUTHWEST CHEMICAL SERV					
		I-87725	02 -5974206	CHEMICALS ALUMINUM SULFATE	049066	3,628.68
		I-87737	02 -5974206	CHEMICALS 2 TOTES POLYMER	049066	4,944.00
		I-87738	02 -5974206	CHEMICALS 1 TON COPPER SULFATE	049066	3,800.00
01-S00726	STAPLES BUSINESS ADVANT					
		I-8014220559	02 -5972202	OPERATING SUP OFFICE SUPPLIES	049067	68.34
		I-8014220559	02 -5974316	REPAIRS & MAI SUPPLIES	049067	320.91

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 02 MPWA

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
01-000119	UNITED FUEL & ENERGY					
	I-0064459	02 -5862205	PETROLEUM PRO 2 DRUMS ANTIFREEZE		049075	416.90
	I-0064459	02 -5862205	PETROLEUM PRO 2 DRUMS ROTELLA 15W4		049075	1,173.70
01-000126	UNITED LAB.					
	I-38153	02 -5862205	PETROLEUM PRO GREASE FOR ALL VEHIC		049076	768.00
01-000128	UNITED PACKAGING & SHIP					
	I-70839	02 -5974316	REPAIRS & MAI SAMPLES SENT OVERNIG		049077	237.06
	I-71706	02 -5974316	REPAIRS & MAI SAMPLES SENT OVERNIG		049077	248.87
	I-72235	02 -5974304	LAB TESTING OPEN PO - SHIP SAMPLES		049077	44.95
	I-72570	02 -5974304	LAB TESTING OPEN PO - SHIP SAMPLES		049077	73.61
	I-72977	02 -5974304	LAB TESTING OPEN PO - SHIP SAMPLES		049077	37.88
	I-73298	02 -5974316	REPAIRS & MAI SAMPLES SENT OVERNIG		049077	247.28
01-000130	UNITED SAFETY & CLAIMS					
	I-09-27155	02 -5267106	WORKMAN'S COM MEDICAL BILLS 12/9 -		049078	7,868.64
	I-7612	02 -5267106	WORKMAN'S COM SERVICE FEE		049079	1,233.75
01-000270	WHITE ELECTRICAL SUPPLY					
	I-S1147070.001	02 -5973316	REPAIRS & MAI ELECT SUPPLIES - MAINT		049084	56.36
01-000465	WORTH HYDROCHEM OF OKLA					
	I-2991INV	02 -5974316	REPAIRS & MAI SERVICING FILTER CON		049085	2,149.60
FUND 02 MPWA						TOTAL: 114,874.60

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 05 PARKING AUTHORITY

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
31-200560	PUBLIC SERVICE/AEP					
		1-09-27056	05 -5216313	ELECTRIC UTIL PARKING AUTH	048914	143.18
				FUND 05 PARKING AUTHORITY	TOTAL:	143.18

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 08 NUTRITION

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

01-000213	DEBBIE COMPTON					
		I-09-27157	08 -5549308	CONTRACT SERV REIMBURSEMENT OF MIL	049007	117.70
		I-09-27158	08 -5549308	CONTRACT SERV CONTRACT MEAL DELIVE	049008	135.00
01-000207	EMMA F. BELLIS					
		I-09-27159	08 -5549308	CONTRACT SERV CONTRACT MEAL DELIVE	049010	135.00
		I-09-27160	08 -5549308	CONTRACT SERV REIMBURSEMENT OF MIL	049011	99.00
01-000339	MIKE CARR					
		I-09-27161	08 -5549308	CONTRACT SERV REIMBURSEMENT OF MIL	049034	123.75
			FUND	08 NUTRITION	TOTAL:	610.45

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FUND : 09 LANDFILL RES./SUB-TITLE D

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT

01-S00132	SCS ENGINEERS					
		1-0143521	09 -5864327	SUB TITLE D E PROFESSIONAL SERVICE	049061	2,671.25
		1-0145264	09 -5864327	SUB TITLE D E PROFESSIONAL SERVICE	049061	9,337.80
				FUND 09 LANDFILL RES./SUB-TITLE DTOTAL:		12,009.05

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PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 14 POLICE GRANT FUND

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
01-P00521	PROTECTIVE PRODUCTS INT					
		1-09-26731	14 -9321451	POLICE EQUIPM BODY ARMOR LEVEL III	049056	780.00
			FUND	14 POLICE GRANT FUND	TOTAL:	780.00

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
01-B00192	BEN E. KEITH					
		I-01038462	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	048997	1,120.05
01-D00006	D & D ELEVATOR INC					
		I-11433	28 -5654316	REPAIRS & MAI MONTHLY MAINTENANCE	049005	200.00
01-L00075	LAKE EUGAULA ASSOC INC					
		I-12/17/09	28 -5654317	ADVERTISING & AD IN 2010 GUIDE	049027	500.00
01-P00210	PEPSI COLA					
		I-148018	28 -5654210	CONCESSION SU BAG-N-BOX - SAVANNA	049053	200.00
01-P00510	PRO-KIL, INC					
		I-53960	28 -5654316	REPAIRS & MAI PEST CONTROL 2ND QTR	049055	365.00
01-W00040	WALMART COMMUNITY BRC					
		I-009266	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	049080	74.68
		I-011515	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	049080	93.72
		I-012659	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	049080	25.22
		I-016313	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	049080	53.18
		I-019329	28 -5654210	CONCESSION SU CONCESSION SUPPLIES	049080	23.76
FUND 28 SE EXPO CTR/TOURISM FUND TOTAL:						2,655.61

PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 29 E-911

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
01-A00747	AT&T					
		I-09-27057	29 -5324315	TELEPHONE UTI E911	048909	130.90
		I-09-27057	29 -5324315	TELEPHONE UTI E911 MONTHLY EQUIP	048909	2,964.11
		I-09-27057	29 -5324315	TELEPHONE UTI T1 CIRCUT CHG	048909	1,290.04
01-M00328	MICROTEL INN & SUITES					
		I-09-26966	29 -5324331	EMPLOYEE TRAV GPS/911 MAPPING TRAI	049033	147.20
01-T00589	TOTAL RADIO					
		T-72048	29 -5324401	CAPITAL OUTLA BASE RADIO	049074	119,955.00
			FUND	29 E-911	TOTAL:	124,487.25

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FUND : 30 ECONOMIC DEVELOPMENT

VENDOR	NAME	ITEM #	G/I:	ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-B00473	BRAVO CONSTRUCTION INC.	I-2010Q1051052	30	-5211403	ECONOMIC DEVE UTILITY EXTENSION	048999	68,442.76
01-N00347	MEHLBURGER BRAWLEY, INC	I-MC-09-04-04	30	-5211403	ECONOMIC DEVE SEWER EXT PROJECT	049045	2,144.27
01-O00275	OKLA DEPT OF COMMERCE	I-JAN 09	30	-5211510	CDBG / EDIF D CDBG - EDIF CONT. #12248	049048	282.50
			FUND	30	ECONOMIC DEVELOPMENT	TOTAL:	70,869.53

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PACKET: 04808 CLAIMS FOR 1/12/2010

VENDOR SET: 01

FUND : 32 GIFTS & CONTRIBUTIONS

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
=====						
01-A00640	ANTLERS TRUSS					
		1-912290054	32 -5215404	CAPITAL OUTLA NEW TRUSSES	048987	1,250.00
				FUND 32 GIFTS & CONTRIBUTIONS	TOTAL:	1,250.00
					REPORT GRAND TOTAL:	441,459.31

** G/L ACCOUNT TOTALS **

YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====		=====GROUP BUDGET=====	
				ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG	ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG
2009-2010	01 -5101319	MISCELLANEOUS	24.95	4,000	3,260.73		
	01 -5210202	OPERATING SUPPLIES	157.28	5,000	2,597.05		
	01 -5210330	DUES & SUBSCRIPTIONS	102.00	2,200	1,927.86		
	01 -5211202	OPERATING SUPPLIES	37.83	5,200	1,196.71		
	01 -5212317	ADVERTISING & PRINTING	61.95	5,000	4,750.00		
	01 -5214302	CONSULTANTS	2,500.00	110,000	57,598.43		
	01 -5215106	WORKMAN'S COMP	9,136.58	325,000	160,830.78		
	01 -5215302	CONSULTANTS	555.00	3,500	13,050.00-	Y	
	01 -5215313	ELECTRIC UTILITY	17,785.37	360,000	221,833.23		
	01 -5215314	GAS UTILITY	269.81	15,000	13,908.76		
	01 -5215315	TELEPHONE UTILITY	3,024.97	72,000	33,922.64		
	01 -5215510	LEASE PAYMENT	5,185.00	81,981	50,871.00		
	01 -5225401	COMPUTER TECHNOLOGY	235.74	45,000	23,910.47		
	01 -5320202	OPERATING EXPENSE	121.70	4,500	2,721.87		
	01 -5321202	OPERATING SUPPLIES	281.92	15,500	8,998.76		
	01 -5321308	CONTRACTED SERVICES	2,149.93	22,150	12,237.17		
	01 -5321316	REPAIRS & MAINTENANCE	230.00	12,000	10,325.55		
	01 -5431202	OPERATING SUPPLIES	575.03	30,000	14,357.83		
	01 -5431207	CLOTHING ALLOWANCE	1,346.17	16,400	22.35		
	01 -5431305	PHYSICALS	3,511.00	10,000	120.00		
	01 -5431330	DUES & SUBSCRIPTIONS	147.00	10,920	5,917.00		
	01 -5542202	OPERATING SUPPLIES	2,152.71	48,000	34,982.92		
	01 -5542203	REPAIRS & MAINT SUPPLIES	1,065.55	26,000	4,724.28		
	01 -5542316	REPAIRS & MAINTENANCE	1,395.10	18,000	8,213.67		
	01 -5542330	DUES & SUBSCRIPTIONS	37.30	600	34.86		
	01 -5544203	REPAIRS & MAINTENANCE SUPP	451.16	2,000	454.32		
	01 -5544308	CONTRACT LABOR	112.00	16,500	11,128.00		
	01 -5547203	REPAIRS & MAINT SUPPLIES	869.25	11,000	7,128.54		
	01 -5548203	REPAIRS & MAINTENANCE SUPP	1,676.05	50,000	25,914.41		
	01 -5548204	SMALL TOOLS	217.66	3,500	1,083.51		
	01 -5548316	REPAIRS & MAINTENANCE	964.98	19,300	11,514.07		
	01 -5652330	DUES & SUBSCRIPTIONS	110.00	3,000	2,595.63		
	01 -5653213	SAFETY SUPPLIES	182.00	8,500	3,626.74		
	01 -5862202	OPERATING SUPPLIES	107.26	1,500	281.36		
	01 -5862203	REPAIRS & MAINT SUPPLIES	8,872.51	215,000	114,212.74		
	01 -5862205	PETROLEUM PRODUCTS	39,748.20	272,500	130,138.02		
	01 -5863203	REPAIR & MAINT SUPPLIES	1,086.00	40,000	15,994.75		
	01 -5865218	STREET REPAIRS & MAINTENAN	3,690.98	200,000	1,505.19		
	02 -5216202	OPERATING SUPPLIES	92.74	20,000	10,866.09		
	02 -5267106	WORKMAN'S COMP	10,370.31	225,000	106,357.17		
	02 -5267302	CONSULTANTS	555.00	2,395	13,108.46-	Y	
	02 -5267313	ELECTRIC UTILITY	24,369.03	575,000	386,270.45		
	02 -5267314	GAS UTILITY	155.18	6,500	5,877.79		
	02 -5267315	TELEPHONE UTILITY	2,404.00	40,000	15,799.21		
	02 -5267316	WATER UTILITY	234.96	2,400	100.00		

** G/L ACCOUNT TOTALS **

YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====			=====GROUP BUDGET=====		
				ANNUAL	BUDGET	OVER	ANNUAL	BUDGET	OVER
				BUDGET	AVAILABLE	BUDG	BUDGET	AVAILABLE	BUDG
02	-5267323	DAMAGES	2,437.51	0	10,064.59	- Y			
02	-5267521	CDBG LOAN #8908	1,145.83	13,749	5,729.15				
02	-5862203	REPAIRS & MAINT SUPPLIES	12,035.44	215,000	88,798.40				
02	-5862205	PETROLEUM PRODUCTS	23,749.04	272,500	171,060.72				
02	-5866207	CLOTHING ALLOWANCE	7.99	4,000	1,846.44				
02	-5871202	OPERATING SUPPLIES	78.99	6,000	4,963.86				
02	-5972202	OPERATING SUPPLIES	68.34	3,500	1,892.85				
02	-5973203	REPAIRS & MAINT SUPPLIES	730.79	57,500	24,873.19				
02	-5973302	CONSULTANTS (IND. PRETREAT	2,409.00	32,500	29,811.00				
02	-5973304	LAB TESTING	1,459.00	27,300	14,882.44				
02	-5973316	REPAIRS & MAINTENANCE	56.36	56,500	46,053.93				
02	-5974203	REPAIRS & MAINT SUPPLIES	8,285.27	40,000	1,091.45				
02	-5974206	CHEMICALS	12,372.68	380,000	155,224.13				
02	-5974304	LAB TESTING	7,116.82	35,000	3,411.66				
02	-5974316	REPAIRS & MAINTENANCE	3,400.66	45,000	5,963.36				
02	-5974317	ADVERTISING & PRINTING	61.39	2,000	1,449.11				
02	-5975202	OPERATING SUPPLIES	246.25	34,000	16,789.96				
02	-5975211	WATER METERS	448.00	25,000	22,122.00				
02	-5975316	REPAIRS & MAINTENANCE	584.02	10,000	3,873.59				
03	-5876313	ELECTRIC UTILITY	501.70	12,600	8,064.39				
03	-5876316	REPAIRS & MAINTENANCE	590.00	6,691	484.16				
03	-5876511	FNB LOAN #119817 PAYMENTS	2,510.00	30,120	12,550.00				
05	-5218313	ELECTRIC UTILITY	143.18	3,000	2,448.94				
08	-5549308	CONTRACT SERVICES	610.45	14,800	5,989.50				
09	-5864327	SUB TITLE D EXPENSE	12,009.05	152,928	101,652.00				
14	-5321451	POLICE EQUIPMENT	780.00	13,500	6,720.00				
28	-5654210	CONCESSION SUPPLIES	1,590.61	25,000	13,042.17				
28	-5654316	REPAIRS & MAINTENANCE	565.00	14,400	2,723.21				
28	-5654317	ADVERTISING & PRINTING	500.00	7,500	4,001.00				
29	-5324315	TELEPHONE UTILITY	4,385.05	34,000	14,686.76				
29	-5324331	EMPLOYEE TRAVEL & TRAININ	147.20	5,000	4,346.21				
29	-5324401	CAPITAL OUTLAY	119,955.00	330,500	158,572.78				
30	-5211403	ECONOMIC DEVELOPMENT PROJE	70,587.03	561,007	273,509.36				
30	-5211510	CDBG / EDIF DURALINE LOAN	282.50	3,390	0.00				
32	-5215404	CAPITAL OUTLAY - PARKS	1,250.00	90,000	53,603.00				

** 2009-2010 YEAR TOTALS ** 441,459.31

NO ERRORS

** END OF REPORT **

PACKET: 04808 CLAIMS FOR 1/12/2010

ENDOR SFT: 01

REPORT TOTALS

FUND DISTRIBUTION

FUND NO#	FUND NAME	AMOUNT
01	GENERAL FUND	110,177.94CR
02	MPWA	114,874.60CR
03	AIRPORT AUTHORITY	3,601.70CR
05	PARKING AUTHORITY	143.18CR
08	NUTRITION	610.45CR
09	LANDFILL RES./SJS-TITLE D	12,009.05CR
14	POLICE GRANT FUND	780.00CR
28	SE EXPO CTR/TOURISM FUND	2,655.61CR
29	E-911	124,487.25CR
30	ECONOMIC DEVELOPMENT	70,869.53CR
32	GIFTS & CONTRIBUTIONS	1,250.00CR
** TOTALS **		441,459.31CR

--- TYPE OF CHECK TOTALS ---

	NUMBER	GROSS BALANCE	PAYMENT DISCOUNT	OUTSTANDING
HAND CHECKS		0.00	0.00	0.00
		0.00	0.00	
DRAFTS		0.00	0.00	0.00
		0.00	0.00	
REG-CHECKS	8	441,459.31	441,459.31CR	0.00
		441,459.31	0.00	
EFT		0.00	0.00	0.00
		0.00	0.00	
NON-CHECKS		0.00	0.00	0.00
		0.00	0.00	
ALL CHECKS	8	441,459.31	441,459.31CR	0.00
		441,459.31	0.00	

ERRORS:

0

WARNINGS:

0

1/06/2010 11:53 AM

DIRECT PAYABLES DEPARTMENT PAYMENT REGISTER

PAGE: 1

VENDOR SET: 01

ITEMS PRINTED: PAID, UNPAID

PACKET: 04814 Direct Payables

FUND : 01 GENERAL FUND

DEPARTMENT: 215 INTERDEPARTMENTAL

BANK: ALL

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-600776	STATE OF OKLAHOMA	I-201001061053	01 -5215301	FILING FEES - 07 - 08 AUDIT	049086	20.00
DEPARTMENT 215 INTERDEPARTMENTAL TOTAL:						20.00
FUND 01 GENERAL FUND TOTAL:						20.00

1/06/2010 11:53 AM

DIRECT PAYABLES DEPARTMENT PAYMENT REGISTER

PAGE: 2

VENDOR SET: 01

ITEMS PRINTED: PAID, UNPAID

PACKET: 04814 Direct Payables

FUND : 02 MPWA

DEPARTMENT: 267 INTERDEPARTMENTAL

BANK: ALL

VENDOR	NAME	ITEM #	G/L ACCOUNT NAME	DESCRIPTION	CHECK#	AMOUNT
01-500776	STATE OF OKLAHOMA	I-201001061053	02 -5267301	FILING FEES - 07 - 08 AUDIT	049086	20.00
DEPARTMENT 267 INTERDEPARTMENTAL TOTAL:						20.00
FUND 02 MPWA TOTAL:						20.00
REPORT GRA TOTAL:						40.00

** G/L ACCOUNT TOTALS **

YEAR	ACCOUNT	NAME	AMOUNT	=====LINE ITEM=====		=====GROUP BUDGET=====	
				ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG	ANNUAL BUDGET	BUDGET OVER AVAILABLE BUDG
2009-2010	01 -5215301	AUDITING	20.00	37,605	19,960.00		
	02 -5267301	ACDITING	20.00	37,605	19,960.01		
** 2009-2010 YEAR TOTALS			40.00				

** DEPARTMENT TOTALS **

ACCT	NAME	AMOUNT
01 -215	INTERDEPARTMENTAL	20.00

01 TOTAL	GENERAL FUND	20.00
02 -267	INTERDEPARTMENTAL	20.00

02 TOTAL	MPWA	20.00

** TOTAL **		40.00

NO ERRORS

** END OF REPORT **

J. Michael Matkin

3027 S. Peaceable Rd, McAlester, OK 74501

Home: (918) 302-0652

Cell: (360) 820-3289

jmichaelmatkin@gmail.com

Experience Summary

- Founded and developed a non-profit organization dedicated to exploring issues related to the intersection of public theology and public policy.
- Strong network builder with a background in urban development and downtown revitalization in a progressive community.
- Experienced in writing for the mass market while working under short deadlines. Especially adept at making complex subjects accessible without oversimplifying them.

Professional Experience

Executive Director – The Brendan Center, Bellingham, WA

5/2004 –
8/2007

- Responsible for fundraising and grant writing.
- Position required cultivating constructive long-term relationships with city officials, the faith community, the business community, and the public.
- Planned and conducted public events (seminars, workshops, etc.) and roundtable discussions involving a broad cross-section of the community.
- Cultivated the emergence of The Whatcom Dream (an organization teaching life-skills and financial skills to low-income city residents) and Three Trees Coffeehouse (a nonprofit coffeehouse located in downtown Bellingham).
- Maintained a daily blog for three years dealing with issues of spirituality and public theology.

Teaching Assistant – Regent College, Vancouver, BC

9/2001 –
6/2002

- Research assistant for a scholar widely recognized as an expert on the development and growth of Christianity internationally in the 19th and 20th centuries.
- Assisted students in history courses to define and develop research projects.
- Taught a series of weekly tutorials in conjunction with a general survey course.

Personal Assistant – Hillcrest Chapel, Bellingham, WA

1/1999 –
6/2000

- Supported the senior pastor of a community church numbering 2500 in attendance with four services on Sunday and a pastoral staff of fifteen.
- Coordinated communication with pastoral staff and service teams, managed sermon materials and technical requirements, and served as personal secretary when necessary.

Published Works

Author, *The Complete Idiot's Guide to Early Christianity*

2008

Author, *The Complete Idiot's Guide to the Gnostic Gospels*

2005

Education

M.CS, History, Regent College, Vancouver, British Columbia

Thesis pending

B.A., History, University of Tulsa, Tulsa, Oklahoma

1998

Community Involvement

- Vestry member at All Saints Episcopal Church
- Member of the Friends of the Library Committee for the New Library
- Active member of Pride In McAlester



McAlester City Council

AGENDA REPORT

Meeting Date: January 12, 2009
Department: Cliff Pitner, Engr. Inspector
Prepared By: Cliff Pitner
Date Prepared: 12/18/09

Item Number: 1
Account Code: _____
Budgeted Amount: _____
Exhibits: None

Subject

Stormwater Program Update and Presentation to Mayor and City Council. *(Meshek & Associates, Brandon Claybourn, PE, CFM, Project Manager).*

Recommendation

Discussion

Approved By

	Initial	Date
Department Head	JCM	1/05/10
City Manager	PJS <i>PJS</i>	1/05/10



McAlester City Council

AGENDA REPORT

Meeting Date:	January 12, 2010	Item Number:	2
Department:	Finance	Account Code:	
Prepared By:	Gayla Duke	Budgeted Amount:	
Date Prepared:	January 5, 2010	Exhibits:	One

Subject

Consider, and act upon, an Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.

Recommendation

Motion to approve the ordinance which corrects wording in the original ordinance which adopted the FY 09-10 approved budget.

Discussion

Need to make a date correction in the first paragraph and need to correct Section 3 which allows budget transfers within a fund, rather than department.

Approved By

	Initial	Date
Department Head	GDD	01/05/10
City Manager	PJS <i>PJS</i>	01/05/10

ORDINANCE NO. __

**AN ORDINANCE AMENDING ORDINANCE 2327, ADOPTING
THE BUDGET OF THE CITY OF McALESTER, OKLAHOMA
FOR THE FISCAL YEAR 2009-2010.**

WHEREAS, the City of McAlester, Oklahoma completed and placed on file with the City Clerk a proposed budget and estimate of the amount of moneys required to meet the public expenses, bond retirement and interest, reserve funds and expenses of the City for the fiscal year ~~2008-2009~~ 2009-2010; and

WHEREAS, a notice was published that the City Council for the City would meet on June 9, 2008, at the hour of 6:00 p.m., in City Council Chambers at City Hall of the City of McAlester for the purpose of giving citizens within the limits of said city an opportunity to be heard in a public hearing upon said budget; and

WHEREAS, the City did adopt a new City Charter, which was signed by the Governor of the State of Oklahoma on July 9, 2008; and

WHEREAS, Article 5, Section 5.06 (1) of the City Charter requires that the budget to be adopted by ordinance; and

WHEREAS, this Ordinance is meant to adopt the budget for fiscal year 2009-2010 in ordinance form in accordance with the City Charter.

**BE IT ORDAINED BY THE COUNCIL OF THE CITY OF McALESTER,
OKLAHOMA AS FOLLOWS:**

Section 1. The budget of the City of McAlester, Oklahoma for the fiscal year 2009-2010 is hereby adopted at the fund level, which budget has total resources available in the amount of \$62,807,027 and total fund/departmental appropriations in the amount of \$38,447,702.

Section 2. Estimated resources, including fund balances for each separate fund of the City of McAlester, for the fiscal year 2009-2010 are set forth in summary in the attached exhibit, and are hereby appropriated for expenditure at the fund level during the fiscal year 2009-2010.

Section 3. The City Council does hereby authorize the City Manager to transfer any unexpended and unencumbered appropriations, at any time throughout FY 2009-2010, within a department fund, subject to a dollar limitation of \$25,000.00 and notification to the City Council and the Audit and Finance Advisory Committee, in writing.

Section 4. The City Clerk is directed to transmit a copy of this budget ordinance hereby adopted to the State Auditor and Inspector's Office.

Section 5. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. The City of McAlester hereby declares that it would have passed this Ordinance, and each section, subsection, sentence, clause, or phrase thereof irrespective of the fact of any one or more sections, subsections, sentences, clauses or phrases be declared unconstitutional or invalid.

Section 6. That an emergency is hereby declared to exist, and for the preservation of the public peace, health and safety, by reason whereof it is necessary that all acts take effect immediately and be in full force and effect from, and after the passage and approval.

PASSED and the EMERGENCY CLAUSE ruled on separately this 12th day of January, 2010.

CITY OF McALESTER, OKLAHOMA,
A Municipal Corporation

By: _____
Kevin E. Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

Approved as to form and legality this 12th day of January, 2010.

William J. Ervin, City Attorney



McAlester City Council

AGENDA REPORT

Meeting Date:	January 12, 2010	Item Number:	3
Department:	Finance	Account Code:	
Prepared By:	Gayla Duke	Budgeted Amount:	
Date Prepared:	January 5, 2010	Exhibits:	Four

Subject

Consider, and act upon, an Ordinance amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.

Recommendation

Motion to approve the budget amendment ordinance.

Discussion

The budget amendment ordinance is necessary to cover proposed revenue and expenditures not included in the budget for this fiscal year. ALL BUDGET AMENDMENTS SHOWN BELOW ARE TO FUND THE WATER TREATMENT PLANT IMPROVEMENTS.

Exhibit A-1: **MPWA Fund.** Need to transfer fund balance and prior budgeted capital improvements to General Fund to be able to apply expenditures to outstanding debt.

Exhibit A-2: **General Fund.** Appropriate transfer from MPWA to apply against outstanding debt and transfer funds to CIP Fund for project expenditures.

Exhibit A-3: **CIP Fund:** Appropriate transfers and establish budget for Water Treatment Plant Improvements.

Exhibit A-4: **MPWA Fund:** Appropriate 2002 Revenue Bond Construction account proceeds and EPA Grant appropriate for additional budget to complete Water Treatment Plant Improvements.

Approved By

	Initial	Date
Department Head	GDD	01/05/10
City Manager	PJS <i>PJS</i>	01/05/10

CITY OF MCALESTER
FY 09-10 Budget Amendments

BA#					Revenue	Expense
001	7/28/09	01	Gen. Fund	Various, court fees to CIP	4,500.00	4,500.00
004	8/11/09	01	Gen. Fund	Parks Donations	20,000.00	90,000.00
009	9/8/09	01	Gen. Fund	Elevator Contract	-	4,800.00
010	9/8/09	01	Gen. Fund	Fair Donations	5,000.00	5,000.00
015	9/22/09	01	Gen. Fund	Replace AC unit	-	36,851.00
016	10/13/09	01	Gen. Fund	Transfer funds for Fire Grant	-	-
020	10/13/09	01	Gen. Fund	Street repairs - "A" Street	28,000.00	28,000.00
021	10/13/09	01	Gen. Fund	Street repairs - "D" Street	13,500.00	13,500.00
025	11/10/09	01	Gen. Fund	Tft to new fund - gifts/contributions	(20,000.00)	(127,957.00)
026	11/24/09	01	Gen. Fund	Tfr to Fund 32, Airport, from #30	21,826.00	55,283.00
034	12/21/09	01	Gen. Fund	Budget Reductions	-	(105,616.00)
035	12/21/09	01	Gen. Fund	Budget Reductions	-	(105,493.00)
036	12/21/09	01	Gen. Fund	Budget Reductions	-	(63,064.00)
037	12/21/09	01	Gen. Fund	Budget Reductions & Tfr Gifts/Con	(150.00)	(67,952.00)
042	1/12/09	01	Gen. Fund	Water Treatment Plant Improve.	640,892.00	540,892.00
					713,568.00	308,744.00
008	9/8/09	02	MPWA	Moving Expense	-	3,000.00
019	10/13/09	02	MPWA	Emergency street repairs - gen	-	41,500.00
029	12/21/09	02	MPWA	Civil Em Mgmt & Tfr to G & C	4,828.50	5,426.50
038	12/21/09	02	MPWA	Budget Reductions	-	(69,790.00)
039	12/21/09	02	MPWA	Budget Reductions	-	(81,881.00)
041	1/12/09	02	MPWA	Water Treatment Plant Improve.	-	541,792.00
044	1/12/09	02	MPWA	Water Treatment Plant Improve.	431,908.00	431,908.00
					436,736.50	871,955.50
011	9/8/09	03	Airport Authority	Fuel Tanks	-	10,000.00
028	11/24/09	03	Airport Authority	Fuel Lines	-	4,000.00
					-	14,000.00
040	12/21/09	08	Nutrition	Budget Reductions	(24,788.00)	(24,788.00)
014	9/22/09	14	Police Grants	Grant split with county	40,595.00	40,595.00
005	8/11/09	16	State Forfeiture	Appropriate supplies from forfeit.	-	50,000.00
002	7/28/09	19	Fire Imp. Grant	Truck from grant	22,000.00	22,000.00
017	10/13/09	19	Fire Imp. Grant	Add'l needed for truck	172.00	172.00
					22,172.00	22,172.00
012	9/8/09	28	Expo	Elevator Contract	-	2,400.00
013	9/22/09	28	Expo	Insurance	-	6,470.00
032	12/21/09	28	Expo	Budget Reductions	-	(34,937.00)
					-	(26,067.00)
003	7/28/09	30	Econ Dev.	Sewer project & Econ Dev.	230,747.00	280,096.00
007	8/11/09	30	Econ Dev.	Sewer Change Order	20,630.00	20,630.00
018	10/13/09	30	Econ Dev.	Reimbursement Revenue rec'd	9,630.00	9,630.00
027	11/24/09	30	Econ Dev.	Transfer funds to General Fund	-	21,826.00
033	12/21/09	30	Econ Dev.	Budget Reductions	-	(42,391.00)
					261,007.00	289,791.00

CITY OF MCALESTER
FY 09-10 Budget Amendments

BA#					<u>Revenue</u>	<u>Expense</u>
024	11/10/09	32	Gifts & Contributions	New Fund	127,957.00	127,957.00
030	12/21/09	32	Gifts & Contributions	Transfer from Gen Fund & MPWA	(2,440.85)	(2,440.85)
					125,516.15	125,516.15
023	11/10/09	33	CDBG Grant	Appropriate grant & match	181,260.00	181,260.00
031	12/21/09	38	Dedicated Sales Tax	Correct Budget - not appr by vote	(2,208,000.00)	(2,208,000.00)
022	11/10/09	41	CIP Fund	Tfr grant match	-	90,630.00
043	1/12/09	41	CIP Fund	Water Treatment Plant Improve.	640,892.00	640,892.00
					640,892.00	731,522.00
006	8/11/09	42	Federal Forfeiture	Appropriate supplies from forfeit.	-	8,000.00

* = Wash, in-fund transfer

Fund Number	Account Number	Department	Description	Estimated Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
02	3001		Fund Balance		(\$41,792.00)	
02	5974401	Water Treatment	Capital Outlay	112,000.00	(99,100.00)	12,900.00
02	5267622	Interdepartmental	Transfers - General Fund	1,763,366.00	99,100.00	1,862,366.00
			Total		(\$41,792.00)	

[illegible]

Original Budget - Revenues ***	\$3,054,405
Amendments	4,829
Current Budget - Revenues	\$3,059,234
Original Budget - Expenditures	\$3,168,936
Amendments	440,047
Current Budget - Expenditures	\$3,608,983

Approved by the City Council this
January 12, 2010

Transfer funds to General Fund to be applied to outstanding debt then transferred to CIP fund in order to fund Water Treatment Plant improvements.

On Clock _____ Posted By _____ Date _____ BA# _____ Pkt.# _____

Fund Number	Account Number	Department	Description	Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
01	4-0-721		Transfer from MPWA	1,763,266.00	640,892.00	2,404,158.00
			Total		640,892.00	

[illegible]

Original Budget - Revenues ***	\$ 14,324,388
Amendments	713,568
Current Budget - Revenues	\$ 15,037,956
Original Budget - Expenditures	\$ 14,486,432
Amendments	308,744
Current Budget - Expenditures	\$ 14,795,176

A0910-042

Fund Number	Account Number	Department	Description	Estimated Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
02	4-0-330		Grant Revenue	25,000.00	291,000.00	316,000.00
02	4-0-722		Transfer from Bond Proceeds Project Account		140,908.00	140,908.00
			Total		431,908.00	

[illegible]

Original Budget - Revenues ***	\$8,054,405
Amendments	436,737
Current Budget - Revenues	\$8,491,142
Original Budget - Expenditures	\$8,168,936
Amendments	871,955
Current Budget - Expenditures	\$9,040,891

Approved by the City Council this
January 12, 2010

Transfer funds to General Fund to be applied to outstanding debt then transferred to CIP fund in order to fund Water Treatment Plant improvements.

City Clerk

Posted By _____ Date _____ BA# _____ Pkt# _____

ORDINANCE NO. __

AN ORDINANCE OF THE CITY OF McALESTER, OKLAHOMA, AMENDING ORDINANCE NO. 2327 WHICH ESTABLISHED THE BUDGET FOR FISCAL YEAR 2009-2010; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

WHEREAS, the City Council heretofore adopted Ordinance No. 2327 setting forth the Budget for Fiscal Year 2009-2010 beginning July 1, 2009 and ending June 30, 2010; and

WHEREAS, the City Departments and Divisions routinely review their budget appropriations to determine if any changes are necessary; and

WHEREAS, based upon said review the City staff now recommends that certain amendments to the Budget be considered by the City Council; and

WHEREAS, the City Council has the authority to make amendments to the City Budget under Article 5, Section 5.07 (b) of the new City Charter as well as State law; and

WHEREAS, the City Council has determined that the proposed amendment to the FY 2009-2010 Budget, with the revenues and expenditures therein contained, is in the best interest of the City; and therefore, desires to adopt the same by formal action.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF McALESTER, OKLAHOMA:

SECTION 1: The proposed amendment to the FY 2009-2010 Budget of the City of McAlester, Oklahoma, as heretofore adopted by Ordinance, as summarized in Exhibits A1 through A4, which are attached hereto and fully incorporated herein by reference, be, and the same hereby are, completely adopted and approved as an amendment to the said FY 2009-2010 Budget.

SECTION 2: All portions of the existing FY 2009-2010 Budget, Ordinance No. 2327 except as specifically herein amended, shall remain in full force and effect, and not be otherwise affected by the adoption of the amendatory ordinance.

SECTION 3: That all other ordinances in conflict herewith are hereby repealed to the extent of any such conflict or inconsistency and all other ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4: Should any paragraph, sentence, subdivision, clause, phrase, or section of this ordinance be adjudged or held to be unconstitutional, illegal or invalid, the

same shall not affect the validity of this ordinance as a whole or any part or provision thereof, other than the part or parts as declared to be invalid, illegal, or unconstitutional.

SECTION 5: That an emergency is hereby declared to exist, and for the provision of the public peace, health and safety, by reason whereof it is necessary that all acts take effect immediately and be in full force and effect from, and after the passage and approval.

PASSED and the EMERGENCY CLAUSE ruled on separately this 12th day of January, 2010.

**CITY OF MCALESTER, OKLAHOMA
A Municipal Corporation**

By _____
Kevin E. Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

Approved as to form and legality this 12th day of January, 2010.

William J. Ervin, City Attorney



McAlester City Council

AGENDA REPORT

Meeting Date:	January 12, 2010	Item Number:	4
Department:	Finance		
Prepared By:	Gayla Duke	Account Code:	
Date Prepared:	January 5, 2010	Budgeted Amount:	
		Exhibits:	Three

Subject

Consider, and act upon approving a contract with a new credit card processing company called ETS.

Recommendation

Motion to approve and execute the ETS Merchant Application and Agreement.

Discussion

This contract will save the city approximately \$5,048 a year, depending on volumes of payments posted to credit cards. The provider was providing additional incentives which are included in the total above, if the application was completed by year end, 2009. They have extended this incentive for the City of McAlester until January 15, 2010.

We have attached the agreement, e-mail correspondence with ETS, and a comparison for the months of January 2009 and March 2009. The City will need to purchase four Mag Stripe Readers at a cost of \$85 each for a total of \$340, but with the cost savings they will easily pay for their selves.

ETS will interface with our accounting software and will also be able to be used once we are able to implement on-line bill paying for both utilities and court.

Approved By

	Initial	Date
Department Head	GDD	01/05/10
City Manager	PJS <i>PJS</i>	01/05/10

Gayla Duke

From: Sean Lynch [slynch@etsms.com]
Sent: Wednesday, December 30, 2009 8:49 AM
To: Gayla Duke
Subject: ETS Application
Attachments: City of McAlester.pdf
<<City of McAlester.pdf>>
Hi Gayla,

The End of Year Incentive has been extended for the City of McAlester until January 15th. Application with you as the main contact and Kevin Priddle as the signer. — ★

Instructions for Signing the Agreement

Please have Kevin sign on the following pages of the Merchant Agreement next to the "X"'s and **provide his cell number**. In the event of any fraudulent activity we need to be able to reach him.

Page 2

-MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE BOX - **Sign and Date**
~~-PERSONAL GUARANTY BOX - DO NOT SIGN - NOT REQUIRED~~
-BANK DISCLOSURE Box - **Sign and Date**

Page 3

~~-CORPORATE RESOLUTION -DO NOT SIGN - NOT REQUIRED~~

Please fax pages 1 and 2 back to me along with:

- **A copy of a voided check of where funds are to be deposited**
- **A copy of Kevin's drivers license**
- ~~A copy of a CAFR or Annual Report (To include only these sections -- Listing of City Administrators, Auditor's Letter, and Basic Annual Financial Report (Assets/Liabilities))~~ I downloaded from your website.

After account approval an ETS rep will contact you and Incode with the set up information for Incode, schedule EMoney training, and run a test transaction. You are then processing with ETS.

Please give me a call with any questions.

Regards,

Sean Lynch
Relationship Manager
10 Pidgeon Hill Drive Suite 200
Sterling, VA 20165
Direct Line: 800.834.7790 x 222
Fax: 703.421.9158
slynch@etsms.com
www.etsms.com

CONFIDENTIALITY NOTICE This e-mail message and any attachments are only for the use of the

01/05/2010

From: Sean Lynch [mailto:slynch@etsms.com]
Sent: Monday, December 14, 2009 9:38 AM
To: Gayla Duke
Subject: FW: ETS

Good morning Gayla,

The End of Year Incentive as mentioned reduces the ETS mark up by 25% and \$.03/transaction. The original pricing of Interchange Plus .20 basis points and \$.15/transaction saved \$619 for the month compared (1.09). The End of Year Incentive (Interchange Plus .15 basis points and \$.12/transaction) saves another \$80 for the month or \$960 annually.

Total month savings for 1.09 with End of Year Incentive saves \$700 or \$8,400 annually.

To secure the End of Year Incentive I only need the application and paperwork back by 12.31. ** was for a two month comparison.*
You can start processing with ETS at your discretion and incur no fees until you start.

I need 5-minutes to gather the information to create an application for you. Please let me know when convenient for you.

Regards,

Sean
800.834.7790 x 222



101 Crossways Park West Woodbury, NY 11797
Merchant Services Division • Tel (800) 328-9155

Merchant Application and Agreement

Merchant #: 394750512478

MCC: 4900

MERCHANT NAME (DBA or Trade Name)

CITY OF MCALESTER

CORPORATE/LEGAL NAME (if Different)

LOCATION ADDRESS

28 E WASHINGTON AVE

CORPORATE ADDRESS (if Different)

28 E WASHINGTON AVE

CITY

MCALESTER

State

OK

Zip

74501

CITY

MCALESTER

State

OK

Zip

74501

Location Phone

(918) 423-9300

Location Fax

(918) 421-4971

Corporate Phone

(918) 423-9300

Corporate Fax

(918) 421-4971

CONTACT NAME

GAYLA DUKE

CONTACT EMAIL ADDRESS

GAYLA.DUKE@CITYOFMCALESTER.COM

CONTACT PHONE

(918) 423-9300

FEDERAL TAX ID#

73-6005314

DOES THIS LOCATION CURRENTLY TAKE VISA/MASTERCARD?

☐ No

☒ Yes (if yes please provide)

HAVE MERCHANT OR OWNERS/PRINCIPALS EVER BEEN TERMINATED FROM ACCEPTING BANKCARDS IN THIS BUSINESS OR ANY OTHER BUSINESSES?

☒ No

☐ Yes (if yes please explain)

PRINCIPLES

Principle #1 Name:

First: KEVIN

Middle Init:

Last: PRIDDLE

SSN:

% Ownership:

Title: MAYOR

Home Address:

City:

State:

Zip:

Date of Birth:

Home Phone: (918) 916-5212

DL# / State:

Email Address: KEVIN.PRIDDLE@CITYOFMCALESTER.COM

Principle #2 Name:

First:

Middle Init:

Last:

SSN:

% Ownership:

Title:

Home Address:

City:

State:

Zip:

Date of Birth:

Home Phone:

DL# / State:

Email Address:

TYPE OF BUSINESS

☐ Individual/Sole Proprietorship

☐ Partnership

☐ Corporation

☐ LLC State:

☐ Non-Profit (Must Provide 503-C)

☐ Private

☐ Publicly Traded

☒ Government

☐ Board Run/Operated

Length of time in business: 103 Years Months

NATURE OF BUSINESS

☒ Retail

☐ Retail w/Tip

☐ Mail/Phone Order

☐ Internet

☐ Restaurant

☐ Fast Food

☐ Lodging

☐ QSR

☐ Convenience

☐ Public Sector

☐ Petroleum

☐ Utility

☐ Other:

Seasonal Sales: ☐ Yes ☒ No If so, please list high volume months

Method of Acceptance: (Totals to equal 100%)

* Merchants processing less than 75% swipe transactions must complete the MOTO Questionnaire (over)

Credit Cards Swiped: 90 % MOTO 5 %

Annual VMC Volume \$ 240,000.00 Ave. Ticket: \$ 125.00

Key Entered: 5 % Internet: % (URL:)

High Ticket: \$ 300.00

Product or Service being Offered:

UTILITIES - ELECTRIC, GAS, WATER, SANITARY

Merchant Name to appear on Statement:

☒ DBA Name

☐ Legal Name

Other:

MERCHANT SOFTWARE/SERVICER:

NAME: EMONEY

VERSION: 4.7

☐ No

☒ Yes (if yes, please provide:)

DOES MERCHANT USE A FULFILLMENT HOUSE TO FULFILL PRODUCT:

☒ No

☐ Yes (if yes, please provide:)

NAME:

PHONE NUMBER:

HAVE MERCHANT OR OWNERS/PRINCIPALS EVER FILED BUSINESS BANKRUPTCY and/or PERSONAL BANKRUPTCY

☒ No

☐ Yes (if yes, please provide:)

Explanation:

BANK ACCOUNT INFORMATION: ☐ Checking Account ☐ Savings Account Bank Name:

Attach voided check for the operating account where funds are to be deposited

Transit # (ABA Routing):

Account # (DDA):

Contact:

Phone #:

DRAFT ACCOUNT INFORMATION: Bank Name:

Transit # (ABA Routing):

Account # (DDA):

Contact:

Phone #:

* By providing the above referenced information, you are authorizing Bank to initiate ACH debit and credit transactions to said account

SCHEDULE A: VISA/MASTERCARD DISCOUNT RATES & FEES:

**Based on anticipated qualification level indicated above, fees will vary for transactions not qualifying at the level indicated

*** Fees, Dues and Assessments for Visa and MasterCard are included

CARD FEES:			OTHER FEES:		
	Credit:	P/I			
VISA CPS Retail	1.79 %	\$0.22	Application Fee	0.00	ECP Net Fee \$0.00
MC Merit 3	1.83 %	\$0.22	Monthly Minimum Fee	\$25.00	Chargeback Fee \$15.00
INTERCHANGE (COST) PLUS:			Equipment Reprogramming Fee	\$0.00	Internet Setup Fee \$0.00
VISA BPS	0.15 %	\$0.12	Training Fee	\$0.00	Internet Monthly Fee \$0.00
MC BPS	0.15 %	\$0.12	Statement Fee	\$7.50	T & E Auth Fee
PIN Based Debit (COST) Plus:			ACH Fee	\$0.00	AMEX \$0.22
			EMoney Setup Fee	\$0.00	Discover \$0.22
			EMoney User Fee	\$0.00	Diners \$0.22
	0.30 %	\$0.12	EMoney Monthly Fee	\$0.00	

You have the option of accepting MasterCard credit cards, Visa credit cards, MasterCard signature debit cards (MasterMoney Cards) or Visa signature debit cards (Check Cards). You may elect to accept any or all of these card types for payment. If you do not specifically indicate otherwise, your application will be processed to accept ALL MasterCard and Visa card types.

Elected Visa or MC card types NOT to accept:

Site Inspection:

Merchant:

☒ Owns

☐ Rents

☐ Lease

Landlord:

Building Type:

☐ Shopping Cntr.

☐ Office Building

☐ Industrial Building

☐ Residence

Area Zoned

☒ Commercial

☐ Industrial

☐ Residential

Square Footage

☐ 0-500

☐ 501-2500

☐ 2501-5000

☒ 5001-10000+

Based upon your review, does Merchant have the appropriate facilities, equipment, inventory, personnel and license or permit to operate their business? ☐ No ☒ Yes

Comments:

* By signing below, inspector is certifying he/she has visited the location and information provided is true & correct

Inspector Name: SEAN LYNCH

Inspector Date:

Signature:

MO/TO QUESTIONNAIRE: COMPLETE THIS SECTION IF PROCESSING LESS THAN 75% SWIPE:

What percentage of sales are to: Businesses Consumer _____ % Individual Consumer _____ %

Method of Marketing: ☐ Newspaper/magazine ☐ Television/Radio ☐ Internet ☐ Direct Mail, Brochure and/or Catalog ☐ Outbound Telemarketing Sales ☐ Other: _____

Percentage of products sold via: Telephone Orders _____ % Mail Fax Orders _____ % Internet Orders _____ % Other: _____ %

Who processes the order? ☐ Merchant ☐ Fulfillment Center ☐ Other: _____

Who enters credit card information into the processing system? ☐ Merchant ☐ Fulfillment Center ☐ Consumer ☐ Other: _____

If credit card payment information taken over the Internet, is payment channel encrypted by SSL or better? ☐ No ☐ Yes

If Merchant is an e-commerce Merchant, is a Merchant Certificate utilized? ☐ No ☐ Yes if yes please provide the following:

Merchant Certificate Number _____ Certificate Issuer _____ Exp. Date: _____ Is Certificate ☐ Individual ☐ Shared

Do you own the product/inventory? ☐ No ☐ Yes Is the product stored at your business location? ☐ No ☐ Yes If no, where is it stored? _____

After charge authorization, how long until product ships? _____ days Who ships the product _____

Product shipped by: ☐ Merchant ☐ Other _____ Delivery receipt requested? ☐ Yes ☐ No

MERCHANT APPLICATION AND AGREEMENT ACCEPTANCE

"By executing this Merchant Application on behalf of the merchant described above ("Merchant"), the undersigned individual(s) represent(s), warrant(s), and acknowledges(s) that: (i) All information contained in this Merchant Application ("Application") is true, correct and complete as of the date of this Application; (ii) If the Merchant is a corporation, limited liability company, or partnership, the individual(s) executing this Application have the requisite legal power and authority to complete and submit this Application on behalf of the Merchant and to make and provide the acknowledgements, authorizations and agreements set forth herein on behalf of the Merchant and individually; (iii) The information contained in this Application is provided for the purpose of obtaining, or maintaining, a merchant account for the Merchant with the Sponsor Bank ("BANK") and BANK shall rely on the information provided herein in its approval process and in setting the applicable Discount Rate, Approved Average Ticket, and Approved Monthly Bankcard Volume; (iv) BANK is authorized to investigate, either through its own agents or through credit bureaus/agencies, the credit of the Merchant and each person listed on this Application; (v) BANK will determine all rates, fees and charges and notify Merchant of the approved fees and by Merchant's submission and acceptance of Merchant's first settled transaction. Merchant agrees to pay such approved fees; (vi) The Merchant Agreement shall not take effect until Merchant has been approved by BANK and a merchant number has been issued to merchant; and (vii) The undersigned has received, read, understood, the Merchant Agreement, which is incorporated herein by reference thereto, and agrees on behalf of the merchant to be bound by the terms of such Merchant Agreement. The merchant on whose behalf this Application is being submitted acknowledges that if this Application is being submitted to Merrick Bank as the Sponsor Bank, ETS CORPORATION shall may also be a party to this Merchant Agreement. In such case, Merchant acknowledges that ETS CORPORATION shall rely on the representations and warranties set forth in this Application for Merchant Agreement and unless otherwise specified or prohibited by Association or applicable law, ETS CORPORATION shall have all the rights of BANK under this Application and Agreement.

MERCHANT:

Principal #1: X
Print Name: KEVIN PRIDDLE Date: _____

Principal #2: X
Print Name: _____ Date: _____

BANK:

By: _____ Date: _____
Name and Title _____

ETS CORPORATION:
By: _____ Date: _____
Name and Title HADI AKKAD - VP

CONTINUING PERSONAL GUARANTY PROVISION - PERSONAL GUARANTOR

By signing below, each individual or entity ("Guarantor") jointly and severally (if there is more than one Guarantor) and unconditionally guarantees to ETS CORPORATION and BANK the prompt payment and full and complete performance of all obligations of the Merchant identified above under the Merchant Agreement, as amended from time to time, including, without limitation, all promises and covenants of the Merchant, and all amounts payable by the Merchant under the Merchant Agreement, including, without limitation, charges, interest, costs and other expenses, such as attorney's fees and court costs. This means, among other things, that ETS CORPORATION or BANK can demand performance or payment from any Guarantor if the Merchant fails to perform any obligation or pay what the Merchant owes under the Agreement. Each Guarantor agrees that his or her liability under this guaranty will not be limited or canceled because: (1) the Merchant Agreement cannot be enforced against the Merchant for any reason, including, without limitation, bankruptcy proceedings; (2) either ETS CORPORATION or BANK agrees to changes or modifications to the Merchant Agreement, with or without notice to Guarantor; (3) ETS CORPORATION or BANK releases any other Guarantor or the Merchant from any obligation under the Merchant Agreement; (4) any law, regulation, or order of any public authority affects the rights of either ETS CORPORATION, Merchant, or BANK under the Merchant Agreement; and/or (5) anything else happens that may affect the rights of either ETS CORPORATION or BANK against the Merchant or any other Guarantor. Each Guarantor further agrees that: (a) ETS CORPORATION and BANK each may delay enforcing any of its rights under this guaranty without losing such rights and hereby waives any applicable Statute of Limitations; (b) ETS CORPORATION and BANK each can demand payment from such Guarantor without first seeking payment from the Merchant or any other Guarantor or from any security held by the BANK; and (c) such Guarantor will pay all court costs, attorney's fees, and collection costs incurred by either ETS CORPORATION or the BANK in connection with the enforcement of the Merchant Agreement or this Guaranty, whether or not there is a lawsuit, and such additional fees and costs as may be directed by a court. If the Merchant is a corporation or limited liability company, this Guaranty must be executed by a principal or affiliate of Merchant.

Principal #1: X
Print Name: KEVIN PRIDDLE Date: _____

Principal #2: X
Print Name: _____ Date: _____

BANK DISCLOSURE

Member Bank Information: Merrick Bank, 101 Crossway Park West, Woodbury, NY 11797 • Phone (800) 328-9155

Important Bank Responsibilities:

1. Merrick Bank is the only entity approved to extend acceptance of Visa products directly to a Merchant.
2. Merrick Bank is responsible for educating Merchants on pertinent Visa Operating Regulations with which Merchants must comply.
3. Merrick Bank is responsible for all funds held in reserve that are derived from settlement.
4. Merrick Bank is responsible for and must provide settlement funds to the Merchant.
5. Merrick Bank must be a principal (signer) to the Merchant Agreement.

Merchant Information: Refer to Merchant Application**Important Merchant Responsibilities:**

1. Ensure compliance with cardholder data security and storage requirements.
2. Review and understand the terms of the Merchant Agreement.
3. Maintain fraud and chargebacks below thresholds.
4. Comply with Visa Operating Regulations.

The responsibilities listed above do not supersede terms of the Merchant Agreement and are provided to ensure the Merchant understands some important obligations of each party and that the Visa Member - Merrick Bank - is the ultimate authority should the Merchant have any problems.

Principal #1: X
Print Name: KEVIN PRIDDLE Date: _____

Principal #2: X
Print Name: _____ Date: _____

CORPORATE RESOLUTION:

1. _____, the duly elected, qualified and acting _____ of _____, a _____ (the "Company"), do hereby certify as follows:

Corporate Secretary**

Office Title

Legal Corporate Name of Co.

Incorporation Status

The following resolutions were duly adopted by the board of directors/managing member(s)/general partner(s) (circle one) of the Company: WHEREAS, the Company desires to enter into a Merchant Agreement (the "Merchant Agreement") with Merrick Bank Corporation, a Utah industrial loan corporation ("Bank") and ETS CORPORATION, a Virginia company ("ETS CORPORATION"), a copy of which Merchant Agreement is attached hereto as Exhibit "A"; WHEREAS, pursuant to the terms of the Merchant Agreement, Bank and ETS CORPORATION will provide certain credit card financing and processing for VISA and/or MASTERCARD credit card purchases made by the Company's customers; WHEREAS, pursuant to the terms of the Merchant Agreement, (a) the Company may be required to establish a Reserve Account (as defined in the Merchant Agreement) and (b) Bank may require the Company to direct certain funds relating to credit card purchases to such Reserve Account; WHEREAS, pursuant to the terms of the Merchant Agreement, Bank may require the Company to execute instruments evidencing Bank's security interest in the Operating Account (as defined in the Merchant Agreement) and Reserve Account; and WHEREAS, pursuant to the terms of the Merchant Agreement, the Company is required to comply with strict requirements concerning the processing of credit card transactions and the sale of the Company's products. NOW, THEREFORE, BE IT RESOLVED, that the Merchant Agreement by and among the Company, Bank and ETS CORPORATION, pursuant to which Bank and ETS CORPORATION shall act as the Company's exclusive provider of VISA and/or MASTERCARD credit card financing and processing services, is hereby approved and adopted in the form attached to these resolutions, together with such additions, changes or modifications as may be deemed necessary, advisable or appropriate by the officer(s) executing or causing the same to be completed; and RESOLVED FURTHER, that in connection with the Merchant Agreement, the appropriate officer(s) of the Company is/are hereby authorized to establish (a) an Operating Account into which funds from credit card sales by the Company will be directed, and (b) if necessary, a Reserve Account into which funds from credit card sales by the Company may be directed by Bank in accordance with the provisions of the Merchant Agreement; RESOLVED FURTHER, that the Company hereby grants Bank a security interest in the funds held by the Company in the Operating Account and Reserve Account, and the appropriate officer(s) of the Company is/are hereby authorized to execute all documents reasonably required by Bank to perfect such security interests; RESOLVED FURTHER, that the appropriate officer(s) of the Company is/are hereby authorized to enter into such additional agreements, and take such additional actions as may be reasonably required by Bank or ETS CORPORATION in connection with the Merchant Agreement; and RESOLVED FURTHER, that the Secretary/managing member/general partner (circle one) of the Company is hereby authorized to deliver to Bank and ETS CORPORATION a Certificate (i) identifying the officers of the Company, (ii) verifying the signatures of such officers, and (iii) certifying a copy of these resolutions, and Bank and ETS CORPORATION are hereby authorized to rely on such Certificate until formally advised by a like certificate of any changes therein, and is hereby authorized to rely on any such additional certificates.

2. Each person listed below (an "Officer") (i) holds the office in the Company indicated opposite his or her name on the date hereof, (ii) the signature appearing opposite his or her name is the genuine signature of each such officer, (iii) each such Officer, acting individually, is authorized to execute and deliver the Merchant Agreement and each of the agreements and documents contemplated by the Merchant Agreement (collectively, the "Transaction Documents") on behalf of the Company, and (iv) each such Officer, acting individually, is authorized to perform the Company's obligations under the Transaction Documents on behalf of the Company:

3. NAME

OFFICER

SIGNATURE

X

IN WITNESS WHEREOF, I have executed this Certificate this _____ day of _____, 20____.

Sign:

X

Name: TITLE: Corporate Secretary** or Print Officer Title

TERMS AND CONDITIONS

In consideration of the mutual covenants herein, Bank, ETS CORPORATION and Merchant have agreed as follows

ARTICLE I - DEFINITIONS

- 1.01 "Account" means a commercial checking account maintained by Merchant as set forth in Section 5.16 for the crediting of collected funds and the debiting of fees and charges pursuant to the terms of this Agreement.
- 1.02 "ACH" means the Automated Clearing House paperless entry system controlled by the Federal Reserve.
- 1.03 "Agreement" means these terms and conditions and any supplementary documents indicated herein.
- 1.04 "Authorization" means a computerized function or a direct phone call to a designated number to examine individual Transactions to obtain approval from the Card Issuer to charge the Card for the amount of the sale.
- 1.05 "Card" means (i) a valid credit card in the form issued under license from Visa U.S.A., Inc. Visa International, Inc. or MasterCard International, Inc. ("Bank Card"); or (ii) any other valid credit card accepted by Merchant by agreement with Bank and ETS CORPORATION.
- 1.06 "Card Association" means Visa U.S.A., Inc., Visa International, Inc., MasterCard International, Inc. or any other Card Issuers that provide Cards that are accepted by Merchant by agreement with Bank and ETS CORPORATION.
- 1.07 "Card Issuer" means the financial institution or company which has provided a Card to a Cardholder.
- 1.08 "Card Not Present (CNP)" means that an Imprint of the Card is not obtained at the point-of-sale.
- 1.09 "Cardholder" means the person whose name is embossed upon the face of the Card.
- 1.10 "Chargeback" means the procedure by which a Sales Draft (or disputed portion thereof) is returned to Bank by a Card Issuer because such item does not comply with the applicable Card plan's operating regulations.
- 1.11 "Credit Voucher" means a document executed by a Merchant evidencing any refund or price adjustment relating to Cards to be credited to a Cardholder account.
- 1.12 "Imprint" means (i) an impression on a Sales Draft manually obtained from a Card through the use of an imprinter, or (ii) the electronic equivalent obtained by swiping a Card through a terminal and electronically capturing Card Data and printing a Sales Draft.
- 1.13 "Mid or Non-Qualifying Transaction" means any sale Transaction that fails to qualify for lowest interchange rate assigned by the applicable Card Association for the standard card industry code of Merchant and which may be charged fees as set forth in Schedule A.
- 1.14 "Sales Draft" means the paper form, whether electronically or manually imprinted, evidencing a sale Transaction.
- 1.15 "Transaction" means any sale of products or services, or credit for such, from a Merchant for which the customer makes payment through the use of any Card and which is presented to Bank for collection.
- 1.16 "Voice Authorization" means a direct phone call to a designated number to obtain credit approval on a Transaction from the Card Issuer, whether by voice or voice-activated systems.

ARTICLE II - CARD ACCEPTANCE

2.01 Honoring Cards

(a) Merchant will accept all valid Cards when properly presented by Cardholders in payment for goods or services, subject to Visa rules requiring Merchant to elect whether it will accept credit only, debit only or both debit and credit Cards. Merchant's election is set forth in the Application. (b) Merchant shall not establish minimum or maximum amounts for Card sales as a condition for accepting any Card. (c) Merchant shall not require any Cardholder to pay as a surcharge any part of any discount or charge imposed upon Merchant by this Agreement, whether through any increase in price or otherwise require a customer presenting a Card to pay any charge or price as a condition of sale that is not also required from a customer paying cash. However, Merchant may not, by this term, be prevented from offering discounts to customers for cash purchases. (d) Merchant shall not engage in a Card Transaction (other than a mail order, telephone order, ecommerce or preauthorized sale to the extent permitted under this Agreement) if the person seeking to charge the purchase to his or her Card account does not present the Card to permit Merchant to compare the signature on the Card to the signature on the Sales Draft and obtain an Imprint or otherwise use the physical Card to complete the Transaction.

2.02 Advertising

(a) Merchant agrees to prominently display the promotional materials provided by Bank and ETS CORPORATION in its place(s) of business. Use of promotional materials and use of any trade name, trademark, service mark or logo type ("Marks") associated with Card(s) shall be limited to informing the public that Card(s) will be accepted at Merchant's place(s) of business. Merchants' use of promotional materials and Marks is subject to the direction of Bank and ETS CORPORATION. (b) Merchant may use promotional materials and Marks during the term of this Agreement and shall immediately cease use and return any inventory to Bank or ETS CORPORATION upon any termination thereof. (c) Merchant shall not use any promotional materials or Marks associated with Visa or MasterCard in any way which suggests or implies that either endorses any goods or services other than Bank Card services.

2.03 Card Acceptance. When accepting a Card, Merchant will follow the steps provided by Bank and ETS CORPORATION for accepting Cards and will:

(a) Determine in good faith and to the best of its ability that the Card is valid on its face; (b) Obtain Authorization from the Card Issuer to charge the Cardholder's account; (c) Unless the Sales Draft is electronically generated or is the result of a mail, phone or preauthorized order, (i) obtain an Imprint of the Card including embossed data from the merchant imprinter plate; and (ii) obtain the Cardholder's signature on the Sales Draft and compare that signature to the signature on the Card; (d) Enter a description of the goods or services sold and the price thereof (including any applicable taxes); (e) Deliver a true and completed copy of the Sales Draft to the Cardholder at the time of delivery of the goods or performance of the services, or, if the Sales Draft is prepared by a point-of-sale terminal, at the time of the sale; (f) Offer the Sales Draft to Bank for purchase according to Bank's procedures and the terms of this Agreement; and (g) Make an Imprint of the Card, if the Transaction is not based upon a mail, phone or pre-authorized order.

2.04 Authorization

(a) Merchant will obtain an Authorization for all Card sales. If Merchant cannot, for any reason, obtain an electronic Authorization through the use of a terminal, Merchant will request a Voice Authorization from Bank's designated authorization center and will legibly print the authorization number on the Sales Draft. (b) Merchant shall not obtain or attempt to obtain authorization from Bank's authorization center unless Merchant intends to submit to Bank a Transaction for the authorized amount if Authorization for the Transaction is given. (c)

Merchant shall not divide a single Transaction between two or more Sales Drafts on a single Card to avoid Authorization limits that may be set by the Card Issuer. (d) Merchant acknowledges that an Authorization provides only that the Cardholder account has sufficient credit available to cover the amount of the current sale and that an Authorization (i) is not a guarantee that the Transaction will not be subject to dispute or Chargeback or (ii) does not warranty the identity of the Cardholder. (e) Merchant shall not attempt to obtain an authorization by successively decreasing the sale amount. (f) Bank or ETS CORPORATION reserves the right to refuse to purchase or process any Sales Draft presented by Merchant (i) unless a proper authorization or approval code has been recorded on the Sales Draft; (ii) if Bank or ETS CORPORATION determines that the Sales Draft is or is likely to become uncollectible from the Cardholder to which the transaction would otherwise be charged; or (iii) if Bank or ETS CORPORATION has reason to believe that the Sales Draft was prepared in violation of any provision of this Agreement.

2.05 Retention and Retrieval of Cards

(a) Merchant shall use its best efforts, by reasonable and peaceful means, to retain or recover a Card (i) when receiving such instructions when making a request for Authorization or (ii) if Merchant has reasonable grounds to believe the Card is counterfeit, fraudulent or stolen. (b) The obligation of Merchant imposed by this section to retain or recover a Card does not authorize a breach of the peace or any injury to persons or property, and Merchant will hold Bank and ETS CORPORATION harmless from any claim arising from any injury to person or property or other breach of the peace in connection with the retention or recovery of a Card.

2.06 Personal Information of Cardholder. Merchant as a condition of sale may not impose a requirement on Cardholders to provide any personal information as a condition for honoring Cards unless such information is required to provide delivery of goods or services or Merchant has reason to believe the identity of the person presenting the Card may be different than that of the Cardholder.

2.07 Multiple Transaction Records: Partial Consideration

Merchant shall not prepare more than one Sales Draft for a single sale or for a single item but shall include all items of goods and services purchased in a single Transaction in the total amount on a single Sales Draft except under the following circumstances: (i) For purchases in separate departments of a multiple department store; (ii) For partial payment, installment payment, delayed delivery or an advance deposit; or (iii) For delayed or amended charges governed by rules for travel and entertainment merchants and Transactions.

2.08 Telephone Orders, Mail Orders, eCommerce, Preauthorized Orders and Installment Orders

(a) Unless Merchant has been approved by Bank to accept mail, phone or ecommerce orders, Merchant warrants that it is a walk-in trade business, located in a retail business place where the public moves in and out freely in order to purchase merchandise or obtain services. If Merchant is found to be accepting Card Transactions without Bank's authorization, which are placed by telephone, generated through telephone solicitation, mail order or other means that does not create a Sales Draft that bears the Card imprint and Cardholder's signature, this Agreement will be immediately terminated and the value of all Sales Drafts collected from the first day of processing may be charged back to Merchant and all funds therefrom shall be held pursuant to Section 4. (b) Unless approved by Bank, this Agreement does not contemplate regular acceptance of Cards for sales accepted by telephone, mail or ecommerce nor through preauthorized orders. If an occasional Card Transaction is made by mail, phone or preauthorized order, the Sales Draft may be completed without the Cardholder's signature or an Imprint, but in such case Merchant shall create a Sales Slip containing Cardholder data, an Authorization number, the sale amount and the letters "MO", "TO" or "PO", as appropriate. Receiving an Authorization shall not relieve the Merchant of liability for Chargeback on any Transaction for which the Merchant did not obtain an Imprint or the Cardholder's signature.

2.09 Lodging and Vehicle Rental Transactions

(a) Merchant must estimate and obtain Authorization for the amount of the Transaction based upon the Cardholder's intended length of stay or rental. Additional Authorization must be obtained and recorded for charges actually incurred in excess of the estimated amount. (b) Regardless of the terms and conditions of any written preauthorization form, the Sales Draft amount for any lodging or vehicle rental Transaction shall include only that portion of the sale, including any applicable taxes, evidencing a bona fide rental of real or personal property by Merchant to the Cardholder and shall not include any consequential charges. Nothing contained herein is intended to restrict Merchant from enforcing the terms and conditions of its preauthorization form through means other than a Card Transaction.

2.10 Returns and Adjustments; Credit Vouchers

(a) Merchant's policy for the exchange or return of goods sold and the adjustment for services rendered shall be established and posted in accordance with operating regulations of the applicable Card Association's regulations. Merchant agrees to disclose, if applicable, to a Cardholder before a Card sale is made, that if merchandise is returned: (i) no refund, or less than a full refund, will be given; (ii) returned merchandise will only be exchanged for similar merchandise of comparable value; (iii) only a credit toward purchases will be given; or (iv) special conditions or circumstances apply to the sale (e.g., late delivery, delivery charges, or other non-credit terms). (b) If Merchant does not make these disclosures, a full refund in the form of a credit to the cardholder's Card account must be given. Disclosures must be made on all copies of Sales Drafts or invoices in letters approximately 1/4" high in close proximity to the space provided for the Cardholder's signature or on an invoice issued at the time of the sale or on an invoice being presented for the Cardholder's signature. (c) Any change in Merchant's return or cancellation policy must be submitted in writing to Bank and ETS CORPORATION not less than fourteen (14) days prior to the change. Bank or ETS CORPORATION reserves the rights to refuse to process any Sales Draft made subject to a revised return or cancellation policy of which Bank and ETS CORPORATION have not been notified as required herein.

2.11 Cash Payments Merchant shall not receive any payments from a Cardholder for charges included in any Transaction resulting from the use of any Card nor receive any payment from a Cardholder to prepare and present a Transaction for the purpose of effecting a deposit to the Cardholder's Card account.

2.12 Cash Advances; Scrip Purchases Merchant shall not deposit any Transaction for the purpose of obtaining or providing a cash advance either on Merchant's Card or the Card of any other party and shall not accept any Card at a scrip terminal. Merchant agrees that either such action shall be grounds for immediate termination.

2.13 Duplicate Transactions Merchant shall not deposit duplicate Transactions. Merchant shall be debited for any adjustments for duplicate Transactions and shall be liable for any Chargebacks which may result therefrom.

2.14 Deposit of Fraudulent Transactions Merchant shall not accept or deposit any fraudulent Transaction and may not under any circumstances present for processing or credit, directly or indirectly, a Transaction which originated with any other merchant or any other source other than Transactions arising from bona fide purchases from Merchant for the goods and services for which Merchant has been approved under this Agreement. If Merchant deposits any prohibited Transaction, Merchant may be immediately terminated, and Bank may hold funds and/or demand an Escrow pursuant to Sections 4.02 and 5.06; further, Merchant may be subject to the Visa and MasterCard reporting requirements set forth in Section 4.02 (c). Merchant understands and agrees that it is responsible for its employees' action, whether negligent or fraudulent, while in its employ.

2.15 Collection of Pre-existing Debt Merchant shall not prepare and present to Bank for purchase any Transaction representing the refinancing of an existing obligation of a Cardholder including, but not limited to, obligations (i) previously owed to Merchant, (ii) arising from the dishonor of a Cardholder's personal check, Chargeback, and/or (iii) representing the collection of any other pre-existing indebtedness, including collection of delinquent accounts on behalf of third parties.

2.16 Release of Cardholder Account Information Merchant will not, under any circumstances, release, sell or otherwise disclose any Cardholder's account number or any information relating to any Cardholder's account number or any Sales Drafts or Credit Vouchers which may have been imprinted with any Card to any person other than Bank, ETS CORPORATION or the applicable Card Association and, except as expressly authorized in writing by the Cardholder, or as required by law. Further, Merchant agrees to store any material containing Cardholder account information in a secure manner or destroy such information at the proper time in a fashion which renders the data unreadable. Merchant agrees to also notify Bank and ETS CORPORATION of any existing third party involved in the payment process that may have access to cardholder data and obtain approval from the Bank and ETS CORPORATION prior to entering into any third party arrangement whereby such third party would have access to cardholder data.

2.17 Compliance with Card Association Rules Merchant shall comply with and conduct its Card activities in accordance with all applicable Card Association rules and regulations. Failure to comply with such rules and regulations, may result in Merchant being terminated for cause and listed on the Terminated Merchant File. With respect to MasterCard or Visa USA, Merchant shall not (i) accept cardholder payments for previous Cards charges incurred at the Merchant location; (ii) establish a minimum or maximum transaction amount as a condition for honoring a Card; (iii) require a cardholder to complete a postcard or similar device that includes the cardholder's account number, card expiration date, signature, or any other card account data in plain view when mailed; (iv) add any surcharge to transactions; (v) add any tax to transactions, unless applicable law expressly requires that Merchant be permitted to impose a tax (any tax amount, if allowed, must be included in the transaction amount and not collected separately); (vi) enter into interchange any transaction receipt for a transaction that was previously charged back to Bank and subsequently returned to Merchant, irrespective of cardholder approval (Merchant may pursue payment from the customer outside the Card Association system); (vii) request or use an account number of any purpose other than as payment for its goods or services; (viii) disburse funds in the form of travelers cheques, if the sole purpose is to allow the cardholder to make a cash purchase of goods or services from Merchant; (ix) disburse funds in the form of cash, unless: Merchant is a Lodging or Cruise Line Merchant disbursing cash to a Cardholder; Merchant is dispensing funds in the form of travelers cheques, Cards, or foreign currency; or Merchant is participating in the Card Association Cash Back Service; (x) accept a Card for the purchase or scrip; (xi) accept a Card for manual cash disbursement; (xii) accept a Card to collect or refinance existing debt that has been deemed uncollectible by the Merchant providing the associated goods or services; or (xiii) enter into Interchange a Transaction that represents collection of a dishonored check.

2.18 Merchant's Business (a) Merchant shall provide Bank with immediate notice of its intent to (i) transfer or sell any substantial part of its total assets, or liquidate; (ii) change the basic nature of its business, including selling any products or services not related to its current business; (iii) change ownership or transfer control of its business; (iv) enter into any joint venture, partnership or similar business arrangement whereby any person or entity not a party to this Agreement assumes any interest in Merchant's business; (v) alter in any way Merchant's approved monthly volume and average ticket; or (vi) changes its return policies or to another fulfillment house different from those identified in Merchant Application. (b) Merchant shall provide Bank and ETS CORPORATION with prompt written notice if it becomes subject to any voluntary or involuntary bankruptcy or insolvency petition or proceeding. (c) Failure to provide notice as required above may be deemed a material breach and shall be sufficient grounds for termination of Merchant and for exercise by Bank and/or ETS CORPORATION of all their rights and remedies provided by this Agreement. In the event any of the changes listed above should occur, Bank and ETS CORPORATION shall have the option to re-negotiate the terms of this Agreement or provide immediate notice of termination. (d) With notice and during Merchant's normal business hours, Bank or ETS CORPORATION's duly authorized representatives may visit Merchant's business premises and may examine only that part of Merchant's books and records that pertain to the acceptance of Cards and transactions processed.

2.19 Warranties of Merchant Merchant hereby provides the following warranties to Bank and ETS CORPORATION:

(a) All information contained in Merchant's application for processing services or any other documents delivered to Bank and /or ETS CORPORATION in connection therewith is true and complete and properly reflects Merchant's business, financial condition and principal partners, owners or officers. (b) Merchant has the power to execute, deliver and perform this Agreement, and this Agreement is duly authorized, and will not violate any provisions of law, or conflict with any other agreement to which Merchant is subject. (c) Merchant has all licenses, if any, required to conduct its business and is qualified to do business in every jurisdiction where it is required to do so. (d) There is no action, suit or proceeding at law or in equity now pending or to Merchant's knowledge, threatened by or against or affecting Merchant which would substantially impair its right to carry on its business as now conducted or adversely affect its financial condition or operations. (e) Each Sales Draft presented to Bank for collection is genuine and is not the result of any fraudulent or prohibited Transaction or is not being deposited on behalf of any business other than Merchant as authorized by this Agreement. Further, Merchant warrants that each Sales Draft is the result of a bona fide Card Transaction for the purchase of goods or services from Merchant by the Cardholder in the total amount stated on the Sales Draft. (g) Merchant has performed or will perform all of its obligations to the Cardholder in connection with the Card Transaction evidenced thereby. (h) Merchant has complied with Bank's procedures for accepting Cards, and the Card Transaction itself shall not involve any element of credit for any other purposes other than as set forth in this Agreement, and shall not be subject to any defense, dispute, offset or counterclaim which may be raised by any Cardholder under the Card Associations' rules, the Consumer Credit Protection Act (15 USC 1601) or other relevant state or federal statutes or regulations. (i) Merchant warrants that any Credit Voucher which it issues represents a bona fide refund or adjustment on a Card sale by Merchant with respect to which a Sales Draft has been accepted by Bank.

ARTICLE III - PRESENTMENT, PAYMENT, CHARGEBACK

3.01 Acceptance Bank shall accept from Merchant all Sales Drafts deposited by Merchant under the terms of this Agreement and shall present the same to the appropriate Card Issuers for collection against Cardholder accounts. Merchant is required to transmit Sales Drafts and Credit Vouchers to Bank or its processing vendor on the same of next business immediately following the day that such Sales Drafts and Credit Vouchers have been originated. All presentment and assignment of Sales Drafts, collection therefore and re-assignment or rejection of such Sales Drafts are subject to the terms of this Agreement and regulations of the Card Associations. Bank shall only provisionally credit the value of collected Sales Drafts to Merchant's Account and reserves the right to adjust amounts collected to reflect the value of Chargebacks (actual and anticipated), fees, penalties, late submission charges, Reserve deposits, negative Sales Draft batch deposits and items for which Bank did not receive final payment.

- 3.02 **Endorsement.** The presentation of Sales Drafts to Bank for collection and payment is Merchant's agreement to sell and assign all its right, title and interest in each Sales Draft completed in conformity with Bank's acceptance procedures and shall constitute an endorsement by Merchant to Bank of such Sales Drafts. Merchant hereby authorizes Bank to supply such endorsement on Merchant's behalf.
- 3.03 **Prohibited Payments.** Bank shall have the sole right to receive payment of any Sales Draft presented by Merchant and paid by Bank unless and until there is a Chargeback. Unless specifically unauthorized in writing by Bank, Merchant shall not make or attempt to make any collections on any Sales Draft, including Chargebacks, and shall hold in trust for Bank and shall promptly deliver in kind to Bank any payment Merchant receives, in whole or in part, of the amount of any accepted Transaction, together with the Cardholder's name and account number and any correspondence accompanying the payment.
- 3.04 **Chargebacks.** (a) Merchant agrees to accept for chargeback any sale for which: (i) The Cardholder disputes the validity of the sale according to prevailing Card Association regulations. (ii) An Issuer or Bank determines that Merchant has any way failed to comply with Card Association regulations or Bank's procedures in accepting a Card and presenting the resulting Sales Draft to Bank for purchase. (b) Section 2.03 notwithstanding, Merchant acknowledges that Bank shall have full recourse to charge back the amount of a Card sale for which the Cardholder disputes that he/she authorized the charge if (i) the Imprint of the Card or (ii) the signature of the Cardholder was not obtained by Merchant. (c) Merchant shall not initiate a sale Transaction in an attempt to collect a Chargeback. (d) Merchant agrees to pay the current published fees for each Chargeback as listed on Schedule A.

ARTICLE IV - TERMINATION AND EFFECT OF TERMINATION

4.01 **Term; Termination.**

(a) This Agreement shall become effective upon acceptance by Bank and shall continue until party has provided written notice of cancellation/termination given no less than thirty (30) days prior to termination of services. Bank or ETS CORPORATION may terminate this Agreement immediately without prior notice if (i) either party has reason to believe that fraudulent Card Transactions or other activity prohibited by this Agreement is occurring at any Merchant location; (ii) such action is taken to prevent loss to Bank, ETS CORPORATION or Card Issuers; or (iii) Merchant appears on any Card Association's security reporting. All rights and obligations of the parties existing hereunder as of the effective time of termination shall survive the termination hereof. (b) If any case or proceeding is commenced by or against Merchant under any federal or state law dealing with insolvency, bankruptcy, receivership or other debt relief, this Agreement shall simultaneously therewith automatically terminate, and any amounts due to Bank or ETS CORPORATION shall accelerate and become immediately due and payable, without the necessity of any notice, declaration or other act whatsoever by either Bank or ETS CORPORATION. Notwithstanding such termination, Bank, at its sole discretion, may determine that Consent to Merchant's subsequent assumption of this Agreement is in Bank's and ETS CORPORATION's best interests. In such event, the assumption will be made under terms and conditions that are acceptable to Bank, including the provision for adequate security, and comply with the applicable federal or state laws governing such assumption.

Effect of Termination.

(a) **Suspension of Payment.** In the event of termination regardless of cause, merchant expressly authorizes Bank to withhold and discontinue the disbursement for all Cards and other payment transactions of Merchant in the process of being collected and deposited. (b) **Reserve Account.** Collected funds will be placed in a non-interest bearing account at Bank (the "Reserve Account") until Merchant pays any equipment cancellation fees and any outstanding charges, losses or amounts and for chargebacks for which Merchant has provided indemnification under this Agreement. Further, Bank reserves the right to require Merchant to deposit additional amounts based upon Merchant's processing history and/or anticipated risk of loss to Bank into the Reserve Account. Bank and ETS CORPORATION shall be granted a continuing security interest in the Reserve Account. The Reserve Account shall be maintained a minimum of one hundred and eighty (180) days after the termination date and for any reasonable period thereafter during which Cardholder disputes may remain valid under the Card Associations' regulations. The provisions of this Agreement relating to the debiting and crediting of the Account shall be applied to the Reserve Account and shall survive termination of this Agreement until Bank terminates the Reserve Account. Any balance remaining after Chargeback rights have expired and all other expenses, losses and damages have been paid will be disbursed to Merchant. (c) If Merchant is terminated for cause, Merchant acknowledges that Bank may be required to report Merchant's business name and the names and other identification of its principals to the Merchant Alert to Control High Risk Merchants (MATCH file) maintained by Visa and MasterCard. **Merchant expressly agrees and consents to such reporting in the event Merchant is terminated for any of the reasons requiring listing on the MATCH file.** Furthermore, Merchant waives and shall hold harmless Bank and ETS CORPORATION from any claims which Merchant may raise as a result of such reporting. (d) Upon termination for any reason, Merchant will immediately cease requesting Authorizations. In the event Merchant obtains any Authorization after termination, Merchant expressly acknowledges and agrees that the fact that any Authorization was requested or obtained shall not operate to reinstate this Agreement. (e) Following termination, Merchant shall upon request provide Bank with all original and electronic copies of Sales Drafts and Credit Vouchers that have been retained by Merchant as of the date of termination.

ARTICLE V - MISCELLANEOUS

- 5.01 **Account Monitoring.** Merchant acknowledges that ETS CORPORATION and/or Bank will monitor Merchant's daily deposit activity. Merchant agrees that Bank may upon reasonable grounds suspend the disbursement of Merchant's funds for any reasonable period of time required to investigate suspicious or unusual deposit activity. ETS CORPORATION and/or Bank will make good faith efforts to notify Merchant promptly. ETS CORPORATION and/or Bank shall have no liability for any losses, either direct or indirect, which Merchant may attribute to any suspension of funds disbursement.
- 5.02 **Forms.** Merchant shall use only such forms or modes of transmission of Sales Drafts and Credit Vouchers as are provided or approved in advance by Bank or ETS CORPORATION, and Merchant shall not use such forms other than in connection with Card Transactions.
- 5.03 **Records.** In addition to any records routinely furnished to Bank or ETS CORPORATION pursuant to this Agreement, Merchant shall preserve a copy of the actual paper Sales Drafts and Credit Vouchers and any written authorization of the Cardholder for at least two (2) years after the date Merchant presents the Transaction to Bank.
- 5.04 **Requests for Copies.** Immediately upon receipt of any request by Bank or ETS CORPORATION, Merchant shall provide either the actual paper Sales Draft or a legible copy thereof (in size comparable to the actual Sales Draft) and any other documentary evidence available to Merchant and reasonably requested by Bank or ETS CORPORATION to meet Bank's obligations under law (including its obligations under the Fair Credit Billing Act) or otherwise to respond to questions concerning Cardholder accounts.
- 5.05 **Compliance with Law.** Merchant shall comply with all laws applicable to Merchant, Merchant's business and any Card Transaction, including without limitation all state and federal consumer credit and consumer protection statutes and regulations.
- 5.06 **Fees and Charges.** Merchant shall pay to Bank the fees and charges set forth on Schedule A including any additional charges applied to transactions that fail to meet Card Association requirements for the lowest interchange levels. Merchant's Account will be debited through ACH or withheld from daily payments to Merchant for such amounts and for any other fees, charges or adjustments incurred by Merchant and associated with processing services. Bank and ETS CORPORATION shall have the right to change fees, including adding fees for additional services utilized by Merchant, upon thirty (30) days written notice.
- 5.07 **Security.** Merchant agrees that all of its obligations under this Agreement shall be secured to Bank and ETS CORPORATION by all deposit accounts maintained by Merchant with Bank, including deposits made by Merchant as collateral or funds withheld by Bank or ETS CORPORATION as the result of routine security monitoring, and by all other personal property that serves as collateral for any other indebtedness arising out of Merchant's business and owed by Merchant to Bank or ETS CORPORATION. Merchant agrees that if Bank determines that the proceeds of Merchant's future Card sales are unlikely to cover anticipated Chargebacks, credits, fees and adjustments, as reasonably determined by Bank or ETS CORPORATION (whether because this Agreement has been terminated or for any other reason), Bank may fully or partially prohibit withdrawal by Merchant of funds from Merchant's deposit accounts maintained with financial institutions other than Bank, pending a determination from time to time by Bank and ETS CORPORATION to exercise their respective rights as a secured party against such accounts in partial or full payment of Merchant's obligations to Bank and ETS CORPORATION.
- 5.08 **Modifications to Agreement.** This Agreement is subject to amendment to conform with Card Association regulations, as amended from time to time. From time to time Bank and ETS CORPORATION may amend any provision or provisions of this Agreement, including, without limitation, those relating to the discount rate or to other fees and charges payable by Merchant by mailing written notice to Merchant of the amendment at least thirty (30) days prior to the effective date of the amendments, and the amendment shall become effective unless Bank or ETS CORPORATION receives Merchant's notice of termination of this Agreement before such effective date. Amendments required due to changes in either Card Association's rules and regulations or any law or judicial decision may become effective on such shorter period of time as Bank may specify if necessary to comply with the applicable rule, regulation, law or decision.
- 5.09 ETS CORPORATION MAKES NO WARRANTIES REGARDING THE USE, OPERATION OR PERFORMANCE OR NON-PERFORMANCE OF SOFTWARE AND SYSTEMS UTILIZED FOR THIS AGREEMENT, WHETHER EXPRESS OR IMPLIED, AND ETS CORPORATION EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE
- 5.10 **Supplementary Documents.** Reference to "this Agreement" includes any valid schedules, appendices and amendments thereto.

5.11 Limitation of Liability; Indemnity.

(a) Bank's and ETS CORPORATION's liability, whether joint or several, with respect to any Card Transaction shall not exceed the amount of the Sales Draft in connection with that Transaction less any applicable fees and charges. Bank and ETS CORPORATION shall in no event be liable for any incidental or consequential damages whatsoever. (b) Neither ETS CORPORATION nor Bank shall be liable for any losses, claims, demands, penalties, actions, delays, costs or expense, including reasonable attorney's fees, of any kind unless Merchant provides written notice to ETS CORPORATION or Bank of the occurrence that gave rise to the alleged liability within thirty (30) days of the date Merchant knew or should have known of the occurrence. (c) Merchant hereby agrees to indemnify and hold Bank and ETS CORPORATION harmless from any claim relating to any Sales Draft paid for by Bank as may be made by anyone by way of defense, dispute, offset, counterclaim or affirmative action, or for any damages of or losses that either Bank or ETS CORPORATION may incur as a result of Merchant's breach of this Agreement. Further, Merchant shall reimburse Bank or ETS CORPORATION, as the case may be, for all expenses and costs, including attorney's fees, with regard thereto.

5.12 Waiver. Failure by Bank or ETS CORPORATION to enforce one or more of the provisions of this Agreement shall not constitute a waiver of the right to enforce the same or other provision in the future.

5.13 Notices. All notices and other communications required or permitted under this Agreement shall be deemed delivered when mailed first class mail, postage prepaid, addressed as follows:

- a) ETS Corporation 10 Pidgeon Hill Drive Sterling Virginia 20165
- b) Merrick Bank Corporation, 10705 South Jordan Gateway, Suite 200, South Jordan, UT 84095, Attn: Fred Horn
- c) If to Merchant, at the address provided as the billing address and to the contact listed on the Merchant Application.

5.14 Choice of Law; Jurisdiction. Any claim or cause of action arising out of this Agreement against Bank alone shall be initiated and maintained in the state courts located in Salt Lake County, Utah, in which case this Agreement shall be governed and construed under the laws of that state. Any other claim or cause of action, regardless of which party shall be the complainant, shall be initiated and maintained in the state courts located in Loudon County Virginia, in which case this Agreement shall be governed and under the laws of the State of Virginia.

5.15 Entire Agreement; Assign ability. This Agreement expresses the entire understanding of the parties with respect to the subject matter hereof and except as provided herein, may be modified by only in writing executed by all parties hereto. This Agreement may not be assigned, directly or by operation of law, without the prior written consent of Bank and ETS CORPORATION. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, personal representatives, successors and assigns.

5.15 Deposit Account. Merchant shall at all times maintain an Account at a bank that is a member of the Federal Reserve ACH System and shall provide Bank and ETS CORPORATION with proper authorization for debiting of the Account. All credits for collected funds and debits for fees, payments and Chargebacks and other amounts for which Merchant is liable under the terms of this Agreement shall be made to the Account. Merchant may not close or change the Account without written notice to Bank or ETS CORPORATION. Merchant will be solely liable for all fees and costs associated with the Account and for all overdrafts. Merchant hereby grants to Bank and ETS CORPORATION a security interest in the Account to the extent of any and all fees, payments and Chargebacks and other amounts due which may arise under this Agreement, and Merchant shall execute any document and obtain any consents or Waivers from the bank at which the Account is maintained as requested by Bank or ETS CORPORATION to protect their security interests therein.

Credit and Financial Inquiries; Additional Locations; Inspections

(a) Merchant authorizes Bank and ETS CORPORATION to make, at any time, any credit inquiries which either may consider necessary to accept or review acceptance of this Agreement or investigate Merchant's deposit or Card acceptance activities subsequent to acceptance of this Agreement. Such inquiries shall include, but are not limited to, a credit and/or criminal check of the business including its proprietor, partners, principal owners or shareholders or officers. If requested to do so by Bank or ETS CORPORATION, Merchant shall provide the written consent of any person for which an inquiry has been or is to be made if such person has not executed this Agreement and will provide any financial statements, income tax and business tax returns and other financial information as Bank or ETS CORPORATION may consider necessary to perform initial or periodic reviews of Merchant's financial stability and business practices. (b) Merchant may accept Cards only at locations approved by Bank. Additional locations may be added, subject to Bank's and ETS CORPORATION's approval. Any party to this Agreement may delete any location by providing notice as provided herein. (c) Merchant agrees to permit Bank or ETS CORPORATION, at any time and from time to time, to inspect locations to confirm that Merchant has or is adhering to the terms of this Agreement and is maintaining the proper facilities, equipment, inventory, records and license or permit (where necessary) to conduct its business. However, nothing in this paragraph shall be deemed to waive Merchant's obligation to comply in all respects with the terms of this Agreement. (d) Representatives of Bank or ETS CORPORATION may, during normal business hours, inspect, audit and make copies of Merchant's books, accounts, records and files pertaining to any Card Transaction.



Attn: Veronica Boatright
City of McAlester

May 12, 2009

Statement Analysis

Processing with ETS you will have Interchange Plus pricing with a twenty (.20) basis point spread on Visa and MasterCard, \$.25/transaction, and a \$7.50 statement fee.

Your current processor is grouping your transactions into categories, "Qualified, Mid Qualified and Non Qualified." This means that your transactions are being placed into one of three groups and you are being charged a higher than average rate for those grouped cards. With ETS you will never see "grouped" transactions. An ETS statement will show the exact interchange tier the transaction qualified at and the exact discount amount. For analysis we estimate an additional 40 and 70 basis points for what this processor is calling "Mid-Qualified, and Non-Qualified."

Your current processor is not providing you with any substantial Check Card rates. Processing a Visa Check Card with ETS will have a rate of 1.33% and a MasterCard Check Card will have a rate of 1.35%.

ETS

Utilities 1/09

VS

\$20,221.80 @ 1.84% = \$372.08

MC

\$3,779.78 @ 1.88% = \$71.06

Monthly Statement Fee

= \$7.50

Mid Qualified Surcharge

\$878.20 @ .40% = \$3.51

Non Qualified Surcharge

\$7,467.48 @ .70% = \$52.27

Check Card Rebate

\$430.46 @ (.51%) = (\$2.20)

Transaction Fee

\$.25 @ 206 = \$51.50

Total Fees

= \$555.72

vs. Current Processor
= \$637.58

ETS Savings

= \$81.86

Court Clerk 1/09

VS

\$22,225.00 @ 1.84% = \$408.94

MC

\$7,100.00 @ 1.88% = \$133.48

Monthly Statement Fee

= \$7.50

Mid Qualified Surcharge

\$1,070.00 @ .40% = \$4.28

Non Qualified Surcharge

\$4,423.00 @ .70% = \$30.96

Transaction Fee

\$.25 @ 188 = \$47.00

Total Fees = \$632.16 vs. Current Processor
= \$909.02

ETS Savings = \$276.86

Police Dept 1/09

VS
\$1,956.00 @ 1.84% = \$35.99

MC
\$169.00 @ 1.88% = \$3.18

Monthly Statement Fee
= \$7.50

Mid Qualified Surcharge
\$169.00 @ .40% = \$.68

Transaction Fee
\$.25 @ 7 = \$1.75

Total Fees = \$49.10 vs. Current Processor
= \$97.03

ETS Savings = \$47.93

Utilities 3/09

VS
\$19,661.72 @ 1.84% = \$361.78

MC
\$7,413.65 @ 1.88% = \$139.38

Monthly Statement Fee
= \$7.50

Mid Qualified Surcharge
\$723.42 @ .40% = \$2.89

Non Qualified Surcharge
\$10,418.05 @ .70% = \$72.93

Check Card Rebate
\$1,132.80 @ (.51%) = (\$5.78)

Transaction Fee
\$.25 @ 244 = \$61.00

Total Fees = \$639.70 vs. Current Processor
= \$742.33

ETS Savings = \$102.63

Court Clerk 3/09

VS
\$20,003.00 @ 1.84% = \$368.06

MC
\$5,565.00 @ 1.88% = \$104.62

Monthly Statement Fee
= \$7.50

Visa Inter Service Fee
= \$.18

Mid Qualified Surcharge
 \$1,566.00 @ .40% = \$6.26
Non Qualified Surcharge
 \$1,113.00 @ .70% = \$7.79
Check Card Rebate
 \$140.00 @ (.51%) = (\$.71)
Transaction Fee
 \$.25 @ 181 = \$45.25
Total Fees
 = \$538.95

vs. Current Processor
 = \$598.32

ETS Savings = \$59.37

Police Dept 3/09

VS
 \$2,214.00 @ 1.84% = \$40.74
 MC
 \$1,049.00 @ 1.88% = \$19.72
Monthly Statement Fee
 = \$7.50

Mid Qualified Surcharge
 \$680.00 @ .40% = \$2.72
Non Qualified Surcharge
 \$369.00 @ .70% = \$2.58
Transaction Fee
 \$.25 @ 13 = \$3.25
Total Fees
 = \$76.51

vs. Current Processor
 = \$127.15

ETS Savings = \$50.64



McAlester City Council

AGENDA REPORT

Meeting Date:	January 12, 2010	Item Number:	5
Department:	Finance	Account Code:	
Prepared By:	Gayla Duke	Budgeted Amount:	
Date Prepared:	January 5, 2010	Exhibits:	Six

Subject

Consider, and act upon approving an additional contract and documentation for Intermedix, the billing and collection provider for the ambulance services. Said contracts provide for electronic check processing.

Recommendation

Motion to approve and execute the contracts and documentation for Intermedix.

Discussion

The documentation required for electronic check processing were not included in the original contracts and information with the initial approval for Intermedix to provide billing and collection services for the ambulance service.

We have attached four instruments for completion and documentation as well as copies of e-mail correspondence.

Approved By

	Initial	Date
Department Head	GDD	01/05/10
City Manager	PJS <i>PJS</i>	01/05/10

12th

Gayla Duke

From: Gayla Duke
 Sent: Friday, December 18, 2009 5:26 PM
 To: Peter Stasiak
 Subject: FW: Intermedix - Boarding Docs.

Attachments: IPA ADP Customer.doc; Account Resolution v11.09 06c.pdf; IPA Form ONLY v1-26-07.pdf; USA Patriot Act v11 09.06 (Plain).pdf

Since the original contract with the billing service for ambulance runs was approved, would it be possible to put these additional forms on the agenda for extra business. That way we could get this approved and go forward???

One reason for the urgency is that there is more protection for the funds in processing if we could get them sent to us electronically. As you can see by the note below, they have also discussed raising the rates for the ambulance runs.

Thank you

Gayla Duke

Chief Financial Officer
 City of McAlester

PO Box 578, McAlester, OK 74502
 Phone: 918-423-9300 ext. 4961
 Fax 918-421-4971
gayla.duke@cityofmcAlester.com

From: Carol Janisch
 Sent: Friday, December 18, 2009 4:24 PM
 To: Gayla Duke
 Subject: FW: Intermedix - Boarding Docs.

Gayla

Would you please look at the attached documents? We need to get this electronic check posting set up with intermedix. Let me know what you think and if we should move forward.

Thank you
 Carol

From: Metzger, Janice [mailto:jmetzger@intermedix.com]
 Sent: Friday, December 18, 2009 3:13 PM
 To: Carol Janisch
 Subject: FW: Intermedix - Boarding Docs.

Carol, in response to your email, attached are the documents that must be completed to get you set up on iStream (electronic check posting). I apologize as this must have been overlooked in the enrollment process.

Adam (see below) is our representative and you can forward the completed documents directly to him. Once received it should be one-two days before we can start electronic deposits.

Regarding raising rates, can you suggest a day/time the week of the 28th for discussion? Once you get your increases decided/approved and send to us on your letterhead signed by an authorized representative of McAlester, it will take about a day to implement (unless you want a specific start date which we can also do).

Thanks and if I don't talk with you, have a wonderful/safe holiday.

Janice Metzger, C.P.A.
 Regional Vice-President
 adpi-Intermedix
 16340 Park Ten Place Dr. Suite 325
 Houston, TX 77084
 (713)559-4963
 Please consider the environment before printing this message

From: Adam Oixon [mailto:adixon@istreamimaging.com]
 Sent: Monday, February 25, 2008 12:13 PM
 To: Metzger, Janice
 Subject: Intermedix - Boarding Docs.

Janice,

The following documents need to be filled out and signed by each client of Intermedix:

- IPA ADP Customer
- Account Resolution
- IPA Form ONLY
- USA Patriot Act

12/28/2009

In addition, each client of Intermedix must provide:

- A copy of the company's Articles of Incorporation
- A copy of a Voided Check from each Checking Account of each client Intermedix will be depositing funds into
- A copy of the Signor's Driver's License

Please let me know if you have any questions.

Thanks,

Adam

--

Adam Dixon
Corporate Sales
iStream Imaging
(262) 432-1552

CONFIDENTIALITY NOTICE

This electronic mail and the information contained herein are intended for the named recipient only. It may contain confidential, proprieta

USA PATRIOT ACT Customer Identification

NOTICE

To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each individual or business who opens an account. What this means for you: when you open an account, we will ask for your name, address, date of birth, and other information that will allow us to identify you. We will also ask to see your driver's license and/or other identifying documents.

GOVERNMENT	SECTION I: <input type="checkbox"/> GOVERNMENT ENTITIES					
	NAME OF GOVERNMENT ENTITY: STREET ADDRESS: CITY: STATE: ZIP:			DOCUMENTATION NEEDED: <input type="checkbox"/> ARTICLES OF INCORPORATION <input type="checkbox"/> TAX DETERMINATION LETTER <input type="checkbox"/> THIRD PARTY VERIFICATION (Describe): 		
BUSINESS VERIFICATION	SECTION II: BUSINESS ENTITIES (Check One) <input type="checkbox"/> CORPORATION <input type="checkbox"/> LLC <input type="checkbox"/> NON PROFIT <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> LLP <input type="checkbox"/> OTHER					
	ALSO COMPLETE SECTION III FOR SOLE PROPRIETORS AND PARTNERSHIPS					
	BUSINESS NAME: STREET ADDRESS: CITY: STATE: ZIP:			TIN: DOCUMENTATION NEEDED: IF TIN APPLIED FOR BUT NOT YET RECEIVED <input type="checkbox"/> COPY OF TIN APPLICATION IF NON-US BUSINESS AND NO TIN (Identify and attach one or more) <input type="checkbox"/> GOVERNMENT ISSUED BUSINESS LICENSE* <input type="checkbox"/> GOVERNMENT ISSUED DOCUMENTATION OF EXISTENCE* <small>*Each must be valid, unexpired and indicate I.D. number, country of issuance and expiration date</small>		
	MAILING ADDRESS: (IF DIFFERENT) CITY: STATE: ZIP:					
	DOCUMENTATION NEEDED: (ATTACH ONE OR MORE) <input type="checkbox"/> FILED ARTICLES OF INCORPORATION/ORGANIZATION <input type="checkbox"/> GOVERNMENT ISSUED BUSINESS LICENSE <input type="checkbox"/> DOCUMENTATION OF ENTITY LEGAL STATUS <input type="checkbox"/> PARTNERSHIP DOCUMENTATION <input type="checkbox"/> NOTARIZED RESOLUTION					
	SECTION III: SOLE PROPRIETORS AND PARTNERSHIPS (Check One) <input type="checkbox"/> SOLE PROPRIETOR <input type="checkbox"/> PARTNERSHIP <small>(complete for each individual and attach additional forms if necessary.)</small>					
INDIVIDUAL VERIFICATION	NAME: 		DATE OF BIRTH: 		TIN: 	
	STREET ADDRESS: (Residence or business: if none, APO or FPO Box) CITY: STATE: ZIP:			DOCUMENTATION NEEDED: IF TIN APPLIED FOR BUT NOT YET RECEIVED <input type="checkbox"/> COPY OF TIN APPLICATION IF NON-US BUSINESS AND NO TIN (Identify and attach one or more) <input type="checkbox"/> PASSPORT** <input type="checkbox"/> ALIEN IDENTIFICATION CARD** <input type="checkbox"/> GOVERNMENT ISSUED DOCUMENTATION OF EXISTENCE* <input type="checkbox"/> FOREIGN GOVERNMENT ISSUED DOCUMENT INCLUDING PHOTOGRAPH** <small>*Each must be valid, unexpired and indicate I.D. number, country of issuance and expiration date</small>		
	MAILING ADDRESS: (IF DIFFERENT) CITY: STATE: ZIP:					
	FORM OF IDENTIFICATION: (Check One) <input type="checkbox"/> VALID DRIVER'S LICENSE <input type="checkbox"/> STATE ID <input type="checkbox"/> MILITARY ID			LICENSE / ID NUMBER: 		
	INDIVIDUAL MATCHES PICTURE ON LICENSE/ID: <input type="checkbox"/> YES <input type="checkbox"/> NO			PLACE OF ISSUANCE: DATE OF ISSUANCE: EXPIRATION DATE:		
	THE SIGNERS BELOW VERIFY THAT, TO THE BEST OF THEIR KNOWLEDGE, (i) ALL DOCUMENTS PROVIDED ARE VALID AND UNEXPIRED AND (ii) THE INFORMATION LISTED HEREIN IS TRUE, CORRECT AND WAS PERSONALLY OBSERVED ON THE DOCUMENTS (WHERE REQUIRED).					
	NAME AND TITLE: (PLEASE PRINT)		SIGNATURE:		DATE:	
	SALES REPRESENTATIVE NAME: (PLEASE PRINT)		SIGNATURE:		DATE:	

ITEM PROCESSING APPLICATION

FOR OFFICE USE ONLY													
COMPANY # C [] [] [] [] [] []						LOCATION # [] [] [] - [] - [] [] [] [] [] [] [] []						NAICS CODE: [] [] [] [] [] [] []	

☐ NEW COMPANY ☐ EXISTING COMPANY/NEW LOCATION C [] [] [] [] [] [][illegible]

LOCATION INFORMATION	CONTACT EMAIL		PHONE		FAX	
			()		()	
	LOCATION NAME		LOCATION CONTACT NAME			
	LOCATION ADDRESS		COUNTY		MAILING ADDRESS (IF ANY DIFFERENT FROM LOCATION ADDRESS)	
	CITY		STATE		ZIP	
	FEDERAL TAX ID		CONTACT E-MAIL		PHONE	
-----				()		
CURRENT OWNERSHIP (YEARS)		DATE BUSINESS ESTABLISHED		MERCHANDISE/SERVICE SOLD		
SEASONAL BUSINESS		TYPE OF OWNERSHIP:				
<input type="checkbox"/> YES <input type="checkbox"/> NO		<input type="checkbox"/> CORPORATION <input type="checkbox"/> GOVERNMENT <input type="checkbox"/> LLC <input type="checkbox"/> SOLE PROPRIETOR <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> NON-PROFIT <input type="checkbox"/> LLP				

OFFICERS	NAME TITLE % OWNERSHIP			NAME TITLE %OWNERSHIP		
	SOCIAL SECURITY NUMBER PHONE			SOCIAL SECURITY NUMBER PHONE		
	- - ()			- - ()		
	STREET ADDRESS			STREET ADDRESS		
	CITY	STATE	ZIP	CITY	STATE	ZIP

USERS	PRIMARY NAME	PHONE ()	EMAIL
	REQUESTED USERNAME	ABILITY TO ADD USERS? <input type="checkbox"/> YES <input type="checkbox"/> NO	IF YES, PROVIDE LAST 5 DIGITS OF SSN#
	NAME	PHONE ()	EMAIL

PLEASE ATTACH VOIDED CHECK OR BANK LETTER STATING DDA AND ABA ACCOUNT INFORMATION FOR EACH ACCOUNT				
BANK INFORMATION	LEVEL OF BILLING		<input type="checkbox"/> COMPANY	
	SETTLEMENT (DEPOSITS)		<input type="checkbox"/> LOCATION	
			ALL OTHER ITEMS (RETURNS, ADJUSTMENT, FEES) (If left blank, all transactions will Net settle under the Settlement (Deposits) account.)	
	ABA ROUTING NUMBER	DDA ACCOUNT NUMBER	ABA ROUTING NUMBER	DDA ACCOUNT NUMBER
	BANK NAME		ADDRESS	
PHONE ()	CITY		STATE	ZIP

FOR DISTRIBUTOR USE ONLY: CHANNEL NAME: CUSTOMER INITIALS _____

ITEM PROCESSING APPLICATION CONTINUED

FOR OFFICE USE ONLY:

COMPANY #

C ☐ ☐ ☐ ☐ ☐ ☐ ☐

TRANSACTION PRICING	ITEM FEE - An item is a deposit batch, a re-presented or scanned item		PER ITEM	SERVICE COSTS	ADDITIONAL USERS (TWO INCLUDED PER LOCATION)		\$ 5.95/USER	
	MONTHLY ACCOUNT MAINTENANCE (1ST LOCATION ONLY)	\$	/MONTH		SERVICE REPAIR PROGRAM (SHIPPING SEPARATE)	\$ 249	/MO/SCANNER /INCIDENT REPAIR W/O SRP	
	MONTHLY ACCOUNT MAINTENANCE (ADDITIONAL LOCATIONS)	\$	/MONTH		CUSTOMER SERVICE CALL	\$3.00	First 90 days of call activity is included in the package. After initial 90 days, 3 calls combined per month included in package.	
	RETURN ITEM		PER ITEM		TECHNICAL SUPPORT CALL	\$5.00		
ADJUSTMENTS	FLAT FEE		ADDITIONAL ITEM FEE	OTHER ITEMS	PAPER STATEMENT MAILED (OPTIONAL)			\$10.00 EACH MONTH
	DETAIL DEPOSIT	\$3.00 PER DEPOSIT up to 50 item adjustments	\$.03 CENTS for items adjustments 51+		PAPER REPORTS FAXED (OPTIONAL)	\$1.00 PER PAGE, \$10.00 MIN		
STORAGE RETRIEVAL	SUMMARY DEPOSIT		\$3.00 PER DEPOSIT up to 50 items		\$.03 CENTS for items 51+	<input type="checkbox"/> CUSTOM DATA FIELDS SUBAMOUNT & FIRST TWO FIELDS THIRD FIELD ADDITIONAL FIELDS NO CHARGE \$250 \$50		
	<input type="checkbox"/> NO STORAGE OPTION • 90 DAYS (FROM DATE OF IMAGE) FOR VIEWING ONLY • \$25 RETRIEVAL FEE PER ITEM AFTER 90 DAYS <input type="checkbox"/> ONLINE STORAGE (7 YEARS) • \$.0065/ ITEM SCANNED				<input type="checkbox"/> IMATCH 500 ITEMS \$ /MONTH 501+ ITEMS \$.03/ITEM <input type="checkbox"/> OTHER _____ <input type="checkbox"/> OTHER _____			
DEPOSIT ACTIVITY	MONTHLY # OF ITEMS				AVERAGE CHECK AMOUNT \$			
	MONTHLY # OF DEPOSITS				MONTHLY CHECK AMOUNT \$			
	CONSUMER ITEMS		%		AVERAGE DEPOSIT \$			
	BUSINESS ITEMS		%		MONTHLY # OF RETURNS			
RETURNS	RETURNS OPTIONS: (CHECK ALL THAT APPLY) <input type="checkbox"/> RETURN (CUSTOMER MANAGES ALL RETURNS - NO ITEMS MAILED TO CUSTOMER) <input type="checkbox"/> ALL RETURNED ITEMS MAILED BACK AFTER INITIAL PRESENTMENT <input type="checkbox"/> ALWAYS RESUBMIT ELIGIBLE ITEMS (ALL OTHER ITEMS RETURNED VIA MAIL)							
	SEND RETURNED ITEMS TO: <input type="checkbox"/> COMPANY <input type="checkbox"/> LOCATION <input type="checkbox"/> OTHER (PLEASE ATTACH INFORMATION) ATTN: _____							
VIRTUAL ENDORSEMENT	DEFAULT ENDORSEMENT WILL READ: "FOR DEPOSIT ONLY [COMPANY NAME ON APPLICATION]"							
	<input type="checkbox"/> LOCATION NAME ENDORSEMENT WILL READ: "FOR DEPOSIT ONLY [LOCATION NAME ON APPLICATION]"							
	<input type="checkbox"/> CUSTOMIZED ENDORSEMENT REQUESTED (3 LINES UP TO 25 CHARACTERS A LINE)							
	_____ _____ _____							
SIGNATURE	COMPANY ACCEPTANCE: The above business submitting this Application ("Company") hereby accepts and agrees to the terms and conditions of this Application, the Remote Deposit Agreement (RDA) and the Item Processing Agreement (IPA). Company represents and warrants to iStream Imaging, Inc. ("iStream") and Bank (defined in IPA) that (i) this Application, the RDA and the IPA have been reviewed and are understood in entirety, (ii) all of the information provided in and for the Application is true and correct, (iii) Bank and iStream are properly authorized to investigate the credit of Company and each person listed on the Application, and (iv) Company has authorized the undersigned to execute this Application, the RDA and the IPA. Company specifically understands that the RDA and the IPA shall only become effective upon acceptance of this Application by iStream and Bank and Company's subsequent receipt of a processing identification number from iStream.							
	I ACKNOWLEDGE RECEIPT OF A COPY OF THE ITEM PROCESSING AGREEMENT AND THE REMOTE DEPOSIT AGREEMENT.							
	NAME AND TITLE		SIGNATURE			DATE		
			X					
SIGNER'S EMAIL ADDRESS:								
I HEREBY VERIFY THAT THIS APPLICATION HAS BEEN REVIEWED AND EXECUTED BY COMPANY AND THAT I PHYSICALLY INSPECTED THE BUSINESS PREMISES OF THE COMPANY AT THIS ADDRESS AND THE INFORMATION STATED ABOVE IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.								
VERIFIED AND INSPECTED BY:								
PRINT NAME OF SALES REPRESENTATIVE		SIGNATURE			DATE			
		X						

ACCOUNT RESOLUTIONS

By the (circle one) Board of Directors / Managers / Members / Partners / Sole Proprietor of _____, a business organized in the state of _____ as a (indicate entity type) _____ ("Company") approving resolutions designating Kenney Bank and Trust as a depository with authorization to transfer funds:

RESOLVED, that Kenney Bank and Trust (Bank) is hereby designated as a depository in which the funds of this Company may, from time to time, subject to the rules and regulations of the Bank governing the Clearing Account, be deposited by any of its officers, managers, members, partners, sole proprietor, agents or employees, as applicable; and that any such officer, manager, member, partner, sole proprietor, agent or employee of the Company is hereby authorized on behalf of the Company and in its name to endorse for deposit with Bank into the Clearing Account any and all checks, drafts, or other instruments or orders for the payment of money payable to the Company, which endorsement may be in writing, by stamp, or otherwise, with or without designation or signature of the person so endorsing, it being understood that on all such items all prior endorsements are guaranteed by the Company or the individual(s) legally responsible for the entity, irrespective of the lack of an express guarantee in the endorsement of the Company.

FURTHER RESOLVED that Bank, in accordance with the provisions of the Item Processing Agreement entered into by and between Bank and Company, be and is hereby authorized and directed to transfer funds in the Clearing Account of the Company to the Designated Account as that term is defined in the Item Processing Agreement.

FURTHER RESOLVED that Bank be and is hereby authorized to comply with any process, summons, order, injunction, execution, levy, lien, or notice of any kind (hereafter called "Process") received by or served upon Bank, which in Bank's opinion affects this deposit account and Bank may, at its option and without liability, thereupon refuse to transfer sums from this account and may either hold the balance therein until Process is disposed of to Bank's satisfaction, or pay the balance over to the source of the Process.

FURTHER RESOLVED that the individual authorized to provide certifications for the Company is authorized and directed to certify to Bank the foregoing resolutions and that the provisions thereof are in conformity with the governance and organizational documents of the Company and that the foregoing resolutions and the authority thereby conferred shall remain in full force and effect until the Company officially notifies Bank to the contrary in writing and Bank may conclusively presume that such resolves are in effect.

I, the undersigned, do hereby certify that I am the duly qualified and appointed individual to act as the custodian of the records and company seal (if any) of the above named Company; that the foregoing is a true and correct copy of the resolutions duly agreed to and adopted in accordance with law and the governing organizational documents of the Company on _____, 20____, and that such resolutions, not being in conflict with the law or the governing organizational documents, are now in full force and effect.

Signed and Sealed this ____ day of _____, 20____.

AFFIX
COMPANY
SEAL (if any)

Signature of Individual with certification authority

The undersigned, as a director, manager, member, partner, or sole proprietor (as the case may be) of the above-named Company, affirms that the foregoing is a correct copy of resolutions agreed to and adopted for the Company.

Signature: _____

Print title: _____

ITEM PROCESSING AGREEMENT

This Item Processing Agreement ("Agreement") is made by and between Kenney Bank and Trust, an Illinois chartered bank located at Route 54 and Jordan Street, Kenney, IL 61749 ("Bank"), iStream Imaging®, Inc., located at 13555 Bishop's Court, Suite 102, Brookfield, WI 53005 ("iStream"), and the company authorizing this Agreement as identified on the respective Item Processing Application ("Company"), effective as of the date provided in Section 1., below. iStream and Bank may also be collectively referred to as "Providers".

Recitals:

- A. Whereas, Company desires to remotely deposit checks, other items and Automated Clearing House ("ACH") entries (individually or collectively, "Item(s)") through its contracted service provider Advanced Data Processing, Inc. ("ADP"), to be processed electronically and/or via the ACH system by Bank and iStream; and,
- B. Whereas, Bank and iStream desire to provide remote deposit capabilities to Company so that it may remotely deposit Items and/or initiate electronic debit entries through ADP;
- C. Now, Therefore, in consideration of the mutual promises and covenants and other valuable consideration, Company, Bank and iStream agree as follows:

Terms and Conditions

1. **Acceptance, Effective Date and Start of Services.** Upon receipt of Company's fully completed Item Processing Application ("Application"), Bank and iStream shall determine whether to accept the Application and provide the products and services requested by Company therein ("Services"). If Company's Application is accepted, Company will be notified through an electronic notice and will be assigned a processing identification number. The date on which Company receives the electronic acceptance notice will be the effective date of this Agreement ("Effective Date"). Bank shall also establish a remote deposit Clearing Account for Company through which all Accepted Files (defined in Section 4) shall be processed and settled. Thereafter, once ADP is authorized by Providers to submit Items, Company may begin to receive Services. By signing this Agreement, Company acknowledges receipt during the application process of the terms and conditions of the Remote Deposit Agreement for the Clearing Account which, along with the Application, are incorporated herein by reference and made a part of this Agreement. Any origination of ACH entries shall also require execution of the ACH Addendum to this Agreement.
2. **Receipt, Scanning and Transmission of Items.** Company shall undertake prudent measures designed to verify the identity of individuals issuing Items to Company. Company acknowledges and authorizes for Items to be scanned and transmitted on its behalf by ADP, which scanning shall capture the image of the front and back of each Item ("Image"). Company also acknowledges and authorizes that (i) Files of Item Images ("Image File") or batched ACH data or entries ("ACH File") (individually or collectively, a "File") transmitted by ADP on any given day need not be accepted by Providers if it exceeds any dollar limit established for Company by Providers; and, (ii) Files that are not transmitted by ADP in accordance with the Procedures or which are received after Bank's established cut-off time may be deemed by Providers to have been received on the business day following the business day on which the Files are actually received by Bank and iStream. Terms affecting the processing and funds availability of Items are as provided on the Deposit Report and elsewhere in this Agreement.
3. **Prohibited Deposits.** Company agrees that it will not transmit for deposit by ADP any Item that (i) is issued by Company or any affiliate and drawn on an account of Company or any affiliate, (ii) is in violation of the Laws or Rules (defined below), (iii) Company suspects or should know to be fraudulent or not authorized by the legal owner of the account on which the check is drawn, or (iv) is a foreign Item drawn on a financial institution that is located outside of the United States or Territories of the United States.
4. **Receipt and Deposit of Files.** Upon receipt of a transmitted File from ADP, the File will be reviewed by Bank and/or iStream. Images in a File must be of such quality that the information on the Item can clearly be read by sight review. If Bank or iStream notes an error in a File, it may either reject the entire File or correct the error. Following review, if Bank and iStream determine that a File appears to be (i) of appropriate Image quality, and (ii) created in compliance with the Procedures, Bank and iStream shall accept such File ("Accepted File") for deposit to Company's Clearing Account. Company, but not Bank or iStream, shall remain liable for any File or Item that (a) is not actually received by Bank and iStream, or (b) is intercepted or altered by an unauthorized third party. Providers shall have no obligation to accept a File and may reject any File without liability therefor. Bank or iStream shall solely determine the manner in which Items will be presented for payment to the drawee bank and shall solely select the clearing agents used to collect and present the Items. Selection of such clearing agents shall be considered to have been designated by Company and neither Bank nor iStream shall be liable for the negligence or delay of any clearing agent.
5. **Returned Items.** If Images of Items previously deposited by ADP for Company are dishonored and returned unpaid by the drawee bank, Company understands and agrees that the original Item will not be returned and Bank may charge back an Image of the Item to the Clearing Account or Company's Designated Account (defined below). Dishonored Items are the sole responsibility of Company. Company may request that Bank process returned Items according to Company's written instructions ("Special Instructions"). Changes to Special Instructions shall not become effective until acknowledged and accepted by Bank. Notwithstanding the foregoing, Bank has no obligation to re-present any returned Item and, where necessary under the circumstances, may choose to disregard the Special Instructions at any time and charge a returned Item back to the Clearing Account or Designated Account. Following initial presentment or any re-presentment of an Item under this Agreement, if such Item remains unpaid, Company shall be notified and neither Bank nor iStream shall have any further liability to Company for such re-presented Item. In no event will Bank re-present an Item in excess of the limit established or permitted by the Laws and Rules.
6. **Availability of Funds and Holds.** Remotely deposited Items are "non-local" items as defined in Federal Reserve Board Regulation CC. Despite this fact, Bank shall grant provisional credit to the Clearing Account for the total amount of an Accepted File in accordance with prudent business timeframes as permitted by law. Company authorizes Bank to place a hold on funds in the Clearing Account if, after performing risk management activities on Items in a File, Bank has concerns about or doubts the validity or collectibility of an Item.
7. **Retention and Destruction of Original Items.** Appropriate security measures shall be taken by ADP and Company to ensure that an original Item (i) can only be accessed by authorized personnel, (ii) will not be duplicated, (iii) will be scanned only one time, (iv) will not be otherwise deposited or negotiated in any form with another bank, credit union or other entity if it has been scanned and accepted for processing, and (v) is secured so that the information contained on the original Item is not improperly disclosed. Original Items must be securely stored for a period of at least fourteen (14) days after posting to the Clearing Account. Thereafter, retention and destruction of original Items and copies shall be determined by Company (or ADP if authorized by Company to do so) in compliance with the Laws and Rules. Company shall be solely liable for ensuring compliance with this Section.
8. **Fees and Other Charges.** Fees and other charges to be paid by Company for Services include (i) applicable fees for Services, forms or equipment in accordance with the Application, (ii) licensing and other third party fees and assessments that are passed through to Company, and (iii) any applicable additional ancillary and pass-through fees and assessments related to the Services, forms or equipment provided under this Agreement (collectively, "Fees"). Fees will be calculated by Providers and paid on Company's behalf by ADP. Company shall then be responsible for paying any amounts that it is invoiced by ADP for Services. Providers may revise the Fees from time to time. Company shall be liable for the payment of all taxes and other charges imposed by any governmental authority on the Services.
9. **Miscellaneous Issues.**
 - A. **Storage of Information.** iStream shall store and retain imaged documents from Accepted Files according to iStream's established methods and pursuant to the available storage options (if any) selected by Company. Company shall pay the applicable Fee listed in Pricing Schedule A for any such storage services received.
 - B. **Risk Parameters.** If any Item, File or business activity falls beyond any risk parameters established for Company by iStream or Bank, Company authorizes additional actions as Providers deem necessary, including, but not limited to, suspension of any Services provided under this Agreement or creation and maintenance of a Reserve Account in accordance with this Agreement.

C. System Capabilities. Company is solely responsible for the capacity and operational abilities of its computer system and internet connectivity. Company understands that if its computer system and internet connectivity do not comply with the minimum recommendations of iStream, Services might not perform in an optimal manner. D. Equipment Security and Maintenance. Company must comply with the minimum requirements for network security contained in the Procedures or shall not receive Services, including having the ability to access certain of Processor's back-office systems containing records relating to Company's Items that have been submitted for processing. This requirement includes using effective anti-virus programs, promptly installing security patches, protecting passwords and otherwise properly maintaining its computer equipment and system requirements necessary to receive Services. These are minimum requirements only, and Company will likely need to do more to comply with their responsibility to maintain their respective network security. Notwithstanding the foregoing and the provisions of the Procedures, Company shall always be ultimately liable on an ongoing basis for determining what measures are necessary to adequately secure their respective computer system and for maintaining the security of its computer system and the information stored on or sent from its computer system, whether an actual or potential compromise is known or unknown. Neither Bank nor iStream shall be liable to Company, in any manner whatsoever, for any type of errors, losses, damages or other claims due or related to any failure by Company to maintain their respective network security. To help maintain its network security, in addition to prudent day to day security procedures and periodic examinations by state and federal regulators, iStream shall perform an annual risk assessment and external third party security review. iStream and Bank shall at all times comply with any laws and regulations governing the public disclosure of such reviews.

E. Financial Information. Company authorizes (i) Bank and iStream to make any credit inquiries they consider necessary to review the acceptance and continuation of this Agreement, and (ii) credit reporting agency to provide information to the requesting party. If necessary to make credit inquiries as to a Company owner or affiliate, Company shall promptly obtain authorization for Bank and iStream to do so. Company will provide Bank and iStream with financial information as requested from time to time and, within 60 days after the end of each fiscal year, will furnish to Bank and iStream a financial statement of profit and loss and a balance sheet as of the end of the fiscal year.

F. Services From Others. ADP and other third parties may be providing services, special equipment or software to assist Company in processing Items, Files and other business transactions, including authorizations and settlements, or accounting functions hereunder (each, a "Third Party"). As to this Agreement, Company (i) agrees any Third Party is acting as Company's agent in the delivery of Items and Files to Bank and iStream, and (ii) agrees to assume full responsibility and liability for any failure of a Third Party to comply with the Laws, Rules or this Agreement. Bank and iStream will not be liable for any losses or additional costs incurred by Company as a result of any error by a Third Party or a malfunction of equipment provided by a Third Party.

G. Notice of Change. If changes occur to information in the Application, Company shall provide written notice to Bank and iStream not later than 5 business days prior to the change. If Bank or iStream request updated information from Company, such updated information shall be provided within 5 days of the request. Bank and iStream reserve the right to re-price or terminate Services to Company based on changes to the information provided in the Application.

10. Accounts.

A. Clearing Account. Company acknowledges that in order to receive Services, it shall establish a remote deposit Clearing Account at Bank ("Clearing Account") which shall be subject to the terms of the Remote Deposit Agreement. All Accepted Files shall be deposited into the Clearing Account for processing and settlement.

B. Designated Account. Company will establish and maintain one or more commercial demand deposit accounts to facilitate payment of available funds from the Clearing Account ("Designated Account"). If the Designated Account is established at a financial institution other than Bank, Company shall provide Bank with ever-current account information. If the Designated Account is changed, Company shall provide at least 10 days advance written notice to Bank and any Company obligations and authorizations as to the former Designated Account shall continue forward to the new Designated Account. Unless delays result due to the clearing agent, funds from Accepted Files shall be transferred in such a manner and timeframe that Company shall receive the transferred funds, in Bank's sole discretion, by the opening of the second business day following the business day on which Bank accepted the respective Files, or, at the time that the provisional credit in the Clearing Account becomes final. Bank is authorized to initiate debit/credit entries to the Designated Account, or any other account maintained by Company, in accordance with this Agreement. Company authorizes Bank to debit the Designated Account via ACH for any amounts Company owes or must repay to Bank or iStream under this Agreement. Company will indemnify and hold Bank and iStream harmless for any action Bank takes against the Designated Account. Company will also indemnify and hold harmless any other depository institution at which Company maintains its Designated Account for acting in accordance with any instruction from Bank regarding the Designated Account.

C. Reserve Account. Company or Bank shall establish and maintain for Company a non-interest bearing deposit account at Bank ("Reserve Account") initially or at any time in the future in an amount determined by Bank if Bank and iStream determine in good faith that a reserve is reasonably necessary to protect their interests. Bank may deposit to this account incoming funds from processed Items and amounts it would otherwise be obligated to pay Company and Bank will have sole control of the Reserve Account.

11. Security Interest; Recoupment and Set-Off.

A. Security Interest. This Agreement will constitute a security agreement under the Uniform Commercial Code. Company grants Bank a security interest in and lien upon: (i) all funds at any time in the Clearing Account, Designated Account or any Reserve Account, (ii) future File proceeds, and (iii) all Company's rights to other accounts or items relating to this Agreement including, without limitation, all rights to receive any payments or credits under this Agreement (collectively, the "Secured Assets"). Upon request of Bank, Company will execute one or more financing statements or other documents to evidence this security interest. Company represents and warrants that no other person or entity has or will be granted a security interest in the Secured Assets without Bank's prior written consent. These security interests and liens will secure all of Company's obligations under this Agreement and other agreements referenced herein. This security interest may be exercised by Bank without notice or demand of any kind by making an immediate withdrawal or freezing the secured assets in the Clearing Account, Designated Account, Reserve Account, or any other applicable account. Bank will have all rights afforded under the Uniform Commercial Code, any other applicable law and in equity.

B. Recoupment and Set Off. Bank and iStream shall each have the rights of recoupment and set-off as specified in this Agreement and they are authorized by Company to offset any outstanding or uncollected amounts owed by Company or ADP (as to Services received by Company) under this or any other agreement from: (i) any amounts in the Designated Account and Reserve Account, (ii) any amounts that Bank or iStream would otherwise be obligated to deposit into the Clearing Account or Designated Account, and (iii) any other amounts Bank or iStream may owe Company under this Agreement or any other agreement.

12. Indemnification, Limitation of Liability.

A. Indemnification by Company. In addition to other indemnification and liability provisions elsewhere in this Agreement, Company will be liable for, hold harmless, and will indemnify Providers, and their employees and agents from and against all claims of any sort by third parties or others arising out of this Agreement, including all losses and expenses incurred by each of Bank and iStream due to the failure of Company to report required changes, the transmission of incorrect data or Files relating to Company, the failure to prevent a breach in Company's computer systems or in information stored on or sent from such system(s), whether the item or event causing the breach was known or unknown, or failure to maintain compliance with the Laws and Rules. Notwithstanding anything to the contrary herein, Company agrees to indemnify Bank and iStream for the amount of any returns or other losses that are incurred by Bank or iStream that relate to Items Company or ADP submits for processing.

B. Limitation of Liability. Neither Bank nor iStream shall be liable for any claims, acts, omissions or delays of any third party that relate to this Agreement. The liability, if any, of Bank and iStream hereunder for any claims, costs, damages, losses and expenses for which either may be legally liable, whether arising in negligence or other tort, contract, or otherwise, will not exceed in the aggregate the amount of Fees incurred by Company for Services over the previous 3 month period, calculated from the date the liability accrued. In performing Services, Bank and iStream shall be liable only for their gross negligence in performing those Services. In no event will Bank, iStream, or their agents, officers, directors or employees be liable for any punitive, special, consequential or indirect losses or damages.

C. Performance. Bank and iStream will be responsible for performing only those Services expressly provided for in this Agreement which are the responsibility of Bank and iStream to perform. Bank and iStream make no other warranty, express or implied, regarding the Services, and nothing contained in the Agreement will constitute such a warranty. BANK AND ISTREAM DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In conjunction with Section 12.B., neither Bank nor iStream will be liable for any damages or other losses, or failure

or delay in their performance of this Agreement if such damages, losses, failure or delay arises out of (i) any third party patent claims, (ii) any losses or damages resulting from a breach in the security of Company's or any Third Party's network security by whatever means, or (iii) causes beyond their control and without their fault or negligence.

13. Warranties of Company.

Company represents and warrants the following to Bank and iStream: (i) Company shall only deposit through ADP those Items that are authorized by this Agreement and the Remote Deposit Agreement, (ii) Company will not create duplicate Images of Items, transmit a duplicate Image or File, and deposit or otherwise negotiate the original Item from which an Image was created, (iii) No subsequent transferee, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, will be asked to pay the original Item from which an Image was created or duplication made (whether paper or electronic), (iv) No subsequent transferees of an Item, including but not limited to Bank, a collecting or returning bank, drawer, drawee, payee or endorser, shall sustain a loss as the result of the fact that an Image of an Item was presented for payment or returned instead of the original Item, (v) All information contained in the Application or any other document submitted to Bank and iStream is true, complete and properly reflects the business, financial condition, and principal partners, owners, or officers of Company throughout the term of this Agreement, (vi) Company is not engaged or affiliated with any businesses, products or methods of selling other than those set forth on the Application, except as any such change has been noticed to Bank and iStream in compliance with Section 9.G., (vii) Company and the person signing this Agreement have the power to execute and perform obligations of Company under this Agreement and this Agreement will not violate any law, or conflict with any other agreement to which Company is subject, (viii) There is no action, suit or proceeding pending or to Company's knowledge threatened which if decided adversely would impair Company's ability to carry on its business substantially as now conducted or which would adversely affect Company's financial condition or operations, (ix) All Items and business transactions of Company are bona fide and Company conducts its business and submits Items and Files through ADP in compliance with the Laws and Rules. Files and Items submitted to iStream or Bank do not contain computer viruses or other harmful, intrusive, or invasive codes and Company maintains its computer system in compliance with the Procedures, and (x) Company agrees to indemnify and hold Bank and iStream harmless from and against any and all claims, losses, liability, costs, and expenses (including, without limitation, reasonable attorneys' fees) arising from the breach of any of Company's warranties, representations or obligations under this Agreement.

14. Term and Termination.

A. **Term.** This Agreement will remain in effect for a period of 3 years from the Effective Date ("Initial Term") and will automatically renew for successive 3 year terms (each a "Renewal Term"), unless another term period is agreed among Company, Bank and iStream, or unless terminated as set forth below.

B. **Termination.**

1. **Without Cause.** The Agreement may be terminated by either party to be effective at the end of the Initial Term or any Renewal Term by giving written notice of intent not to renew to the other party at least 90 days before the end of the then-current term. This Agreement may be terminated by Bank or iStream at any time upon 30 days prior notice to Company. This Agreement shall also immediately terminate upon termination of Provider's agreement with ADP relating to this Agreement or in the event Company is no longer doing business with ADP. If this Agreement is terminated by Company other than as permitted in this Section 14.B., the provisions of Section 14.E.2. shall apply.

2. **With Cause.** The party not in default may terminate this Agreement immediately upon the occurrence of an Event of Default (defined below). Notice of termination may be given orally or in writing, at the discretion of Bank and iStream. Termination will be effective on the date specified in such notice and, except for a termination by Company due to an Event of Default by Bank or iStream, the provisions of Section 14.E.2. shall apply.

C. **Events of Default.** The following will each individually constitute an Event of Default:

1. **Exceeding Risk Parameters.** The occurrence of any Item or File activity that falls beyond any risk parameters established by Bank and iStream.

2. **Nonpayment.** Company or ADP fail to pay any amount owed to Bank and/or iStream.

3. **Adverse Financial Condition.** Company's financial condition changes adversely.

4. **Garnishment.** Company's deposit accounts with Bank, the Designated Account, the Clearing Account or any of Company's property or other accounts in the possession of Bank is garnished or attached.

5. **Asset Assignment.** Company assigns its assets generally for the benefit of creditors.

6. **Bankruptcy.** A proceeding is commenced by or against Company under any bankruptcy, insolvency or similar law seeking an order to adjudicate Company as bankrupt or insolvent or other relief with respect to Company or its debts, or seeking appointment of a receiver or similar official for Company or for any substantial part of Company's assets.

7. **Breach.** A party fails to perform a material obligation of this Agreement, and such failure continues for a period of 15 days after the breaching party receives written notice of the breach.

8. **False Representation.** Any representation and warranty by Company is or becomes false or misleading in any material respect as of the date made or at any time during the term of this Agreement.

9. **Fraud.** A reasonable determination by Bank or iStream that fraud is occurring, including any attempt by Company or ADP to obtain duplicate payments on a single Item.

10. **Laws and Rules.** Company's violation of the Laws or Rules.

D. **Action upon an Event of Default.** Upon the occurrence of an Event of Default by Company, Bank and iStream may take one or more of the following actions: (i) suspend Services to Company and terminate this Agreement as provided in Section 14.B.2., (ii) create a Reserve Account, or (iii) implement any other reasonable action deemed necessary by Bank and iStream to protect their interests.

E. **Action upon Termination.**

1. **Accounts.** Company (a) must maintain in the Designated Account and any Reserve Account enough funds to cover all Items for which provisional credit was given by Bank, and all Fees and other amounts for which Company is liable, for a period of 180 days, and (b) authorizes Bank to charge such accounts, or any other account maintained under this Agreement, for all such amounts. All of Company's obligations regarding Items and Files will survive termination and Company will remain liable to Bank and iStream for all liabilities occurring beyond such 180 day period. If the amount in the Designated Account and any Reserve Account is not adequate, Company will pay, upon demand, any amount owing to Bank or iStream, as the case may be, together with all costs and expenses incurred to collect such amount.

2. **Early Termination.** For terminations to which this Section 14.E.2. applies, this Agreement may be terminated on a specified date prior to the end of the Initial Term or any Renewal Term ("Early Termination") and Company shall immediately pay the following amounts to iStream and Bank: (a) all Fees owed by Company for Services but not paid up to the Early Termination; (b) any current termination, deconversion, or change-over Fees established by iStream; and (c) all amounts that iStream and Bank would have been entitled to receive hereunder for the remainder of the then-current Initial Term or Renewal Term, if not for the Early Termination ("Unperformed Term"). The foregoing amounts include all fixed, monthly, or annual Fees hereunder, as well as any minimum required Fees ("Minimum Fees") applicable to the Unperformed Term; provided, however, that if no Minimum Fees are included in this Agreement, then the amount owed by Company under Section 14.E.2.(c) shall be calculated by multiplying the number of months remaining in the Unperformed Term by the average monthly Fees charged for Services received by Company during the six (6) months preceding Early Termination (or any such shorter time elapsed since the start of Services). Company agrees that the Early Termination charges set forth above are not a penalty, but rather are reasonable in light of the financial harm that Bank and iStream would incur due to an Early Termination of Company.

15. Compliance with Laws and Rules. Company agrees to comply with all applicable federal, state, and local laws, rules, regulations and Operating Circulars ("Laws") and with (i) all applicable rules and operating guidelines issued by the National Automated Clearing House Association (NACHA) or other clearing agent and (ii) any policies and procedures, including the Procedures, provided from time to time by Bank or iStream (collectively, the "Rules"). The Laws and Rules are incorporated into this Agreement by reference as if they were fully set forth herein. Company will be responsible for knowing the requirements of

the applicable Laws and Rules, and will assist Bank and iStream in complying with Laws and Rules applicable to any Item, File, or this Agreement. Company shall be liable for the amount of any fines and/or liabilities assessed against Bank for any violation of the Laws or Rules that are due to the acts or omissions of Company or any other Third Party providing services to Company that in any way relate to Services under this Agreement.

16. **Use of Trademarks; Confidentiality.** Company may not use the name or trademarks of Bank or iStream without the express written consent of the trademark owner and shall not indicate, directly, indirectly, that either Bank or iStream endorse, or are connected in any way with, Company. If Bank or iStream receive any protected or confidential healthcare or financial information from Company during the course of providing services under this Agreement, the receiving party shall not use or disclose such information other than as permitted by law or to maintain data bases for the provision of Services.

17. **General Provisions.**

A. **Entire Agreement; Governing Law.** This Agreement, the Application, and other agreements or documents referenced herein, constitute the entire agreement between the parties, and all prior or other agreements or representations, written or oral, are superseded by this Agreement. The laws of the State of Wisconsin shall govern this Agreement and proper venue for any dispute arising from this Agreement shall be in any state or federal court in Milwaukee or Waukesha County, Wisconsin.

B. **Assignability.** This Agreement may be assigned by Bank or iStream without the permission of Company. Company may assign this Agreement directly or by operation of law with the prior written consent of Bank and iStream.

C. **Notices.** Bank and iStream shall send written notices and communications to Company at the last address (electronic or regular mail) that Company provided to the other parties in writing. Company shall provide written notices and communications to iStream and Bank at the address then-currently specified in the Procedures. Any written notice under this Agreement will be deemed given upon the earlier of: (i) actual receipt indicated by confirmation receipt if by facsimile, United States mail, private courier, or electronic mail, or (ii) five days after being deposited in the United States mail, and addressed to the Company at the last address shown on the records of Bank and iStream; or to Bank and iStream as provided in the Procedures. If written notice is not otherwise required, Bank or iStream may provide a notice verbally to Company, effective upon receipt or as otherwise specified, if followed up with a written confirmation notice.

D. **Amendments; Changes to Fees.** Bank and iStream may propose amendments or additions to this Agreement. Company and/or ADP will be notified of any such proposed amendment or addition via a periodic statement or other form of written notice. Company will be deemed to have agreed to the change if Company continues to present Items or Files for processing after 2 days following the time at which notice is deemed given per Section 17.C. Notwithstanding the previous sentence, changes to Fees that may be assessed under this Agreement will be effective upon notice (by any method) to Company, unless a later effective date is provided.

E. **Bankruptcy.** Company will immediately notify Bank and iStream of any bankruptcy, receivership, insolvency or similar action initiated by or against Company or any of its principals. Company will include Bank and iStream on the list of creditors as filed with the Bankruptcy Court and failure to do so will be cause for immediate termination or any other action available to Bank or iStream under applicable Laws or Rules. As an executory contract to make a loan, or extend other debt financing or financial accommodations to or for the benefit of Company, this Agreement cannot be assumed or assigned under Company's bankruptcy.

F. **Employee Actions.** Company is solely responsible for its employees' actions while in Company's employ, including assuring Company's compliance with this Agreement.

G. **Survival.** All provisions that by their context are intended to survive termination of this Agreement will so survive, including all liability, indemnification and arbitration terms herein.

H. **Non-Waiver.** The failure of Bank or iStream to object to or to take any affirmative action with respect to any conduct by Company which is in violation, breach, or default of the terms hereof, shall not be construed as a waiver thereof, nor of any future breach or subsequent violation, breach or default.

18. **ARBITRATION OF DISPUTES.** Company, Bank and iStream agree that the transactions governed by this agreement involve "commerce" under the Federal Arbitration Act ("FAA"). Any controversy or claim between company and bank and/or istream, or between company and any of bank's and/or istream's officers, employees, agents or affiliated entities, that arises out of or is related to this agreement, or any service related to this agreement, irrespective of the legal theory, (collectively, any "claim"), will be settled by binding arbitration under the faa. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules. Company will not have the right to go to court or to have a jury trial, engage in pre-arbitration discovery except as provided in the rules, or have any claim arbitrated as a class action. The arbitrator's decision will be final and binding with limited rights to appeal.

IN WITNESS WHEREOF, by signing the Item Processing Application, Company accepts and agrees to be bound by the terms of this Agreement as of the Effective Date, under the condition that, as of the Effective Date, Company has received written notice from Bank or iStream that (i) Company's Application has been accepted and (ii) Company has been assigned a processing identification number. **If this condition is not fulfilled, this Agreement shall have no force or effect on Company, iStream and Bank.** Company agrees that receipt of such notice from iStream or Bank shall indicate for all purposes that iStream and Bank agree to be bound by the terms of this Agreement as of the Effective Date, without the need for the signatures of iStream and Bank as to this Agreement.

KENNEY BANK AND TRUST
Route 54 and Jordan Street, Kenney, IL 61749
REMOTE DEPOSIT AGREEMENT

For: Clearing Account

General Agreement. The terms of this Remote Deposit Agreement ("Agreement"), along with any other documents applicable to this clearing account ("Clearing Account"), govern the operation of this Clearing Account, unless varied or supplemented in writing. Unless it would be inconsistent to do so, words and phrases used in this Remote Deposit Agreement ("Agreement") should be construed so that the singular includes the plural and the plural includes the singular. The terms "Company", "you" and "your" refer to the depositor and the terms "Bank", "we", "us" and "our" refer to Kenney Bank and Trust. "Item" is any check, draft, or order for the payment of money, oral or written, in electronic or other form. "Business Day" is any day we are open for carrying on substantially all of our banking business other than Saturday, Sunday, or Federal Reserve Bank holiday. You understand and agree that this Clearing Account is being opened as part of and in conjunction with the Item processing services provided by Bank and iStream Imaging, Inc. ("iStream") pursuant to the Item Processing Agreement entered into by and between Company, iStream and Bank. Terms that are defined in the Item Processing Agreement shall have the same meaning in this Agreement. You understand that your Clearing Account is also governed by applicable federal and state law (except to the extent that this Agreement can and does vary such rules or laws).

General Rules. The following rules apply to your Clearing Account:

1. **Deposits.** Deposits shall be made to the Clearing Account by remote deposit in accordance with the Item Processing Agreement. All transactions received after our "daily cut-off time" on a Business Day we are open, or received on a day in which we are not open for business, will be treated and recorded as if initiated on the next banking day. We may refuse to accept particular checks or similar instruments as a deposit to your Clearing Account at our discretion. Company understands and agrees that Company will not deposit items that are issued by Company or Company's affiliates and Company will not deposit foreign items drawn on financial institutions that are located outside of the United States or United States Territories. Unless we agree in writing to the contrary, you agree that you will not deposit a substitute check if a bank has not made the warranties in section 5 of the Check Clearing for the 21st Century Act with respect to substitute checks (non-warranted substitute check). If you deposit a non-warranted substitute check, you agree to indemnify us against any loss from any source that we incur (including attorneys' fees and other costs) and hold us harmless, as the result of your depositing the non-warranted substitute check. You also agree to indemnify us and hold us harmless as the result of any loss that we incur if we convert the item that you deposit to a substitute check and the image of the original check is not an accurate representation of the original check because of the design of the check or the color of the ink used to print, complete the terms of or endorse the check. Deposits may be subject to a service charge.

When we receive your deposits, we may provisionally credit your Clearing Account for the amount declared on the deposit slip, subject to later verification by us. You must ensure that the amount declared on the deposit slip is correct, even if you did not prepare the deposit slip. If we later determine that the amount declared on the deposit slip is incorrect, we may adjust (debit or credit) your Clearing Account. However, if the error in completing the deposit slip was inadvertent and is less than our standard adjustment amount, we may not adjust your Clearing Account. We may change our standard adjustment amount from time to time without notice to you.

2. **Collection of Deposited Items.** In receiving items for deposit or collection, we act only as your agent and assume no responsibility beyond the exercise of ordinary care. All items, including "on us" items, are credited subject to final settlement in cash or credits. We shall have the right to forward items to correspondents including all Federal Reserve Banks and we shall not be liable for default or neglect of said correspondents for loss in transit, nor shall any correspondent be liable except for its own negligence. You specifically authorize us or our correspondents to utilize Federal Reserve Banks to handle such items in accordance with provisions of Regulation J (12 CFR Part 210), as revised or amended from time to time by the Federal Reserve Board. In the event we are subject to local clearinghouse rules, you specifically authorize us to handle such items in accordance with the rules and regulations of the clearinghouse. You agree to be bound by all other agreements entered into by us for the purpose of clearing, collecting, presenting or returning items.

All items presented for deposit must be in a format that can be processed in accordance with the requirements of the Item Processing Agreement and we may refuse to accept any check that does not meet this requirement. All endorsements on the reverse side of any check deposited into your Clearing Account must be placed on the left side of the check when looking at it from the front, and must be placed so as to not go beyond an area located 1 1/2 inches from the left edge of the check, when looking at it from the front. It is your responsibility to ensure that these requirements are met and you are responsible for any loss incurred by us for failure of an endorsement to meet this requirement.

If any item you deposit to your Clearing Account is returned unpaid, we have the right to debit your Clearing Account for the amount of such item. We may reprocess the item, but you do not require it. We may also process returned items in accordance with your special instructions accompanying your Application for Item processing services from iStream and Bank, or as such special instructions may be revised from time to time. We can process a copy, electronic entry, or other evidence of the returned item. You waive presentment, notice of dishonor and protest. You will, in any event, be liable to us for the amount of any check or similar instrument you deposit to your Clearing Account or receive cash that is returned unpaid, plus our costs and expenses associated with collection of all or any part of such amount from you, including reasonable attorney fees. In addition, we may charge back any deposited item at any time before final settlement for whatever reason. We may charge back any item to your Clearing Account on which there is a claim for breach of warranty even after final settlement of the item. A breach of warranty includes but is not limited to items that you have deposited that contain an alteration, a forged or missing endorsement, or items for which you do not have good title. We shall not be liable for any damages resulting from the exercise of these rights.

3. **Encoding.** If we accept items for deposit from you which you or your agent have encoded with MICR encoding, we may rely upon the accuracy and completeness of such encoding in processing the items for collection or payment. You shall be solely responsible for any encoding errors or defects, including without limitation, amount errors, and shall indemnify and hold us harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, settlements and expenses (including attorneys' fees) resulting directly or indirectly from such encoding.

4. **Right of setoff.** We may exercise the right of setoff, that is, the right under certain circumstances, to use funds in your Clearing Account to pay any debts you owe us now or in the future, either before or after any default. If the debt arises from a note, "any due and payable debt" includes the total amount of which we are entitled to demand payment under the terms of the note at the time we set off, including any balance due date for which we properly accelerate under the note. We may recover funds you owe us from any of your accounts with us. For accounts with more than one owner, we may treat any name on the account as the sole owner and agent of that account and we may exercise this right to pay individual debts of any owner. If you are the sole proprietor or general partner of a business, you agree that we have the right of setoff under this paragraph against the funds in any of your personal accounts for the debts of your business. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

5. **Legal Process.** We may accept and act on any legal process that we believe to be valid without any liability by us to you, whether served in person, by mail or by facsimile transmission at any of our offices. "Legal process" includes a subpoena, restraining order, injunction, writ of attachment or execution, levy, garnishment, tax withholding order, search warrant, forfeiture or other similar order relating to your Clearing Account. We may charge your Clearing Account a legal process fee for each order. You agree to pay our fees and expenses for research and copying of documents and all other expenses, including administrative expenses, we incur in responding to any legal process related to your Clearing Account. These may include attorneys' fees. We may deduct these fees and expenses from any of your accounts without prior notice to you. Any garnishment, attachment or other levy against any of your accounts is subject to our right of setoff and any security interest we have in any account. If a bankruptcy or similar proceeding is filed by or against any owner, we can place an administrative hold on part or all of the balance while we seek to have the automatic stay lifted.

6. **Authorized Individuals.** We are authorized to rely upon any document provided by you to us, which indicates the persons authorized to act on your behalf until the authority from any such person is withdrawn in writing. By using any service provided by us, you represent and warrant that the execution, delivery and performance by you of any agreement or acknowledgement covering such service have been duly authorized by necessary action and do not and will not violate any provision of law or your charter or by-laws, or result in the breach of or constitute a default under any other agreement or instrument by which you are bound or affected.

In order to induce us to honor any request, direction or instruction regarding your Clearing Account, or the services provided by us to you, including but not limited to services enumerated in this Agreement, you hereby agree to indemnify and hold us harmless from and against any and all claims, damages, demands, judgments, liabilities, losses, costs and expenses (including attorneys' fees) resulting directly or indirectly from our alleged acceptance or execution of any request, direction or instruction, on the part of any individual listed as a person authorized to act on your behalf in any document provided by you to us.

7. **Authority.** You will not grant anyone authority to conduct business with us on your behalf until we have reviewed the terms of authorization and have given you written acceptance. This includes authority such as power of attorney or other method. If you have not given us the proposed authorization for advance review, we may, in good faith, honor instructions from the person you authorized. You will not hold us responsible if someone you authorized to do business with us misapplies your money. You assume all risk of improper acts by such person. We can consider an authorization valid until we actually receive written revocation of it and have had reasonable time to review and act upon it. If we accept a grant of authority from you, we may revoke our acceptance of that authority at any time at our discretion.

8. **Disputed Authority.** If anyone claims ownership over funds, and we have a good faith doubt about whether to recognize the claim, we can hold some or all of the balance until the claim is resolved. We can interplead some or all of the balance into court or take other action to determine ownership.

9. **Transfers and Assignments.** You cannot assign or transfer an interest in your Clearing Account unless we agree in writing. Your successors and assigns are bound by this agreement. Any actual or purported assignment of the Clearing Account remains subject to our right of setoff.

10. **Withdrawal of Funds.** Company understands and agrees that this Clearing Account has been opened exclusively for the remote deposit of items by Company in accordance with the Item Processing Agreement (and this Agreement is a part thereof). As a clearing account, Company has no right to withdraw funds from this Clearing Account. Bank, in accordance with Company's board resolution, has the sole authority to withdraw funds from this Clearing Account. Bank shall transfer funds remotely deposited to the Clearing Account to the Designated Account in accordance with the provisions of the Item Processing Agreement.

11. **Non-Sufficient Funds.** When you do not have enough available funds in your Clearing Account to cover a debit, we consider the debit a non-sufficient funds item. You do not expect any notice of an overdraft beyond any normal periodic statement. If your Clearing Account balance is not sufficient to pay a debit, we charge you a fee.

Funds in your Clearing Account are not available if we determine that they are subject to a hold, dispute or legal process that prevents their withdrawal. If there is an overdraft, you agree that to repay the overdraft, we may deduct the amount from your Clearing Account, including any subsequent deposits and credits without regard to the source of the deposits or credits. You also agree to pay all collection costs and reasonable attorneys' fees.

12. **Closing Account.** We may close your Clearing Account at any time, with or without cause. You may only request that this Clearing Account be closed in conjunction with termination of the Item Processing Agreement. We may close it without notice to you if we reasonably believe it will prevent loss to us or you have violated this Agreement or the Item Processing Agreement. You will pay any fees and costs for closing the Clearing Account, as well as any outstanding items. Our rights and your obligations survive any closing of the Clearing Account or cancellation of this Agreement. At our discretion, we have the authority to pay a debit entry initiated by you after the closing of your Clearing Account.

13. **Wire Transfers and Automated Clearing House (ACH) Transactions.** This Agreement is subject to Article 4A of the Uniform Commercial Code - Funds Transfers as adopted by the state of Illinois. If we originate a wire transfer from your Clearing Account or you receive a wire transfer, you agree that Fedwire may be used. Federal Reserve Board Regulation J is the law that covers transactions made over Fedwire. You agree that we are not required to notify you of any incoming wire transfer or other electronic transfer of funds to the Account. You agree that any notice of such a transfer that we may give you shall not impose any duty on you to notify you of any other such transfer.

If you are a party to an Automated Clearing House (ACH) entry, you agree to be bound by the rules and regulations of the National Automated Clearing House Association (NACHA) Operating Rules, Rules of any local ACH, and the rules of any other system through which the entry is made.

Provisional Payment. Credit we give you with respect to an ACH credit entry is provisional until we receive the final settlement for that entry through a Federal Reserve Bank. If we do not receive final settlement, you agree that we are entitled to a refund of the amount credited to you in connection with the entry, and that we may exercise our option to reverse the credit or require that you reimburse us by way of direct payment.

Notice of Receipt. Under the operating rules of NACHA, which are applicable to ACH transactions involving your Clearing Account, we are not required to give next day notice of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.

14. **Statements.** We will provide you with a periodic statement showing the Clearing Account activity. Unless you have requested to receive such statement by regular mail or otherwise (which may incur an additional fee), we will send the Clearing Account statement to the electronic mail address in our records for you, and you are considered to have received the statements upon mailing, whether or not you actually receive them. If you have asked us to hold your statement, you are considered to have received the statement when we make it available for you to pick up. You must examine your Clearing Account statement immediately upon receipt of the statement or after it is otherwise made available to you. If you discover (or reasonably should have discovered) any unauthorized payments, alterations, errors, or items that are otherwise not properly payable, you must promptly notify us in writing of the relevant facts. If you fail to examine your statement and notify us, we will not be responsible for any loss suffered by you. The loss could be not only with respect to items on the statement but also includes other items forged or altered by the same wrongdoer. You agree that the time you have to examine your statement and report to us will depend on the circumstances, but that such time will not, in any circumstance, exceed a total of thirty (30) days from when the statement is first made available to you.

You further agree that if you fail to report any unauthorized withdrawals, items that are not otherwise properly payable, or errors in your Clearing Account within sixty (60) days of when we make the statement available, you cannot assert a claim against us on any item(s) in or described on that statement, and the loss will be entirely yours. This sixty (60) day limitation is without regard to whether we exercised ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section. If you do not receive a statement from us, it is your responsibility to advise us that you did not receive a statement. If you do not receive a statement from us because you have failed to claim it or have supplied us with an incorrect address, we may stop sending your statements until you specifically make written request that we resume sending your statements after you supply us with a proper address.

You shall not institute any legal proceeding or action against us for any claim which you may have regarding any such errors, discrepancies or irregularities, including, but not limited to those listed above unless a) you have given the written notice described above, and b) such legal proceeding or action has been commenced within one year after the date when such Statement or advice was mailed or made available to you.

15. **Notice.** The notice terms and requirements of the Item Processing Agreement will apply to notices under this Agreement. You will notify us immediately of any change in your name, address, electronic mail address, telephone number, facsimile number, or taxpayer identification number.

16. **Fees and Service Charges.** We have given you disclosures explaining applicable transaction limits and fees. You agree that our fees and charges need not be based upon the cost of providing the service or administering the event to which the fee or charge is associated, but may be based on other considerations such as the expense of providing account services, generally similar charges of other financial institutions with which we compete, revenues to the bank, and the deterrence of abuse of an account. You agree to pay us and are responsible for any fees and charges provided in any agreement for banking services connected with this Clearing Account. You agree that we may amend any fees applicable to this Clearing Account from time to time and you agree to be bound thereby. We may deduct fees and other amounts you owe us under this Agreement from any of your accounts with us at any time without prior notice of any deductions. If there are not enough funds in your accounts to cover the fees and other amounts you owe us, we may overdraw your accounts. You agree to pay us immediately all amounts you owe us.

17. **Expenses.** You will pay any expenses we incur in good faith related to this Agreement, such as fees on items sent for collection, and unreimbursed research and copying fees when someone requires records about our relationship, and attorneys' fees we incur in good faith because of concerns about the Clearing Account, whether or not litigation has begun, including such fees through trial and all appeals, plus court costs. You also agree to pay any expenses that we incur, including attorneys' fees in responding to any subpoena, writ, government agency or judicial order, search warrant, or other order, which we may be required to respond to regarding your Clearing Account or your relationship with us.

18. **Recording.** You give us permission to record your communications with us. If you authorize someone to do business with us on your behalf, such as by power of attorney, you will be responsible for obtaining their permission to our recording their communications with us.

19. **Credit Report.** You authorize us to obtain reports about you periodically from organizations such as consumer reporting agencies, check reporting services, and other credit reporting entities, and to provide them information. Late payments, missed payments, or other defaults on your Clearing Account may be reflected in your credit report.

20. **Amendments and Alterations.** Notice will be given to you if we change the terms of this Agreement at any time by mailing notice to your address shown on our records, by including a notice with or on your statement, by posting a notice of any such changes at our main office, or by whatever notice requirements that may be required by law. If you use the Clearing Account after the effective date of a change, that indicates your acceptance of the changes.

21. **Delisting.** If any of your shares or other equity interests are, or ever become, listed for trading on any securities exchange or the National Association of Securities Dealers Automated Quotation (NASDAQ) system, you will notify us immediately in writing upon their delisting or suspension of trading.

22. **No Waiver.** You understand and agree that no delay or failure on our part to exercise any right, remedy, power or privilege available to us under this Agreement shall affect or preclude our future exercise of that right, remedy, power or privilege.

23. **Our Rights.** You agree that our rights under this Agreement are cumulative, not exclusive. We may exercise any of them without giving up the right to exercise others. Where permissible by law, Bank has the right to delegate any of its responsibilities under this agreement to a third party of its choosing.

24. **Severability.** If any of the terms of this Agreement conflicts with applicable law and are declared to be invalid and unenforceable, those terms will be ineffective to the extent of the conflict and the applicable law will govern. The remaining provisions will remain unaffected.

25. **Force Majeure.** We shall not be liable for any loss or damage to you caused by our failure to provide any service or delay in providing such service resulting from an act of God, act of governmental authority, legal constraint, war, terrorism, fire, catastrophe, or electrical computer, mechanical or telecommunications failure, or failure of any agent or correspondent or any other cause beyond our control.

26. **Liability.** You agree that IN NO EVENT SHALL BANK BE LIABLE TO COMPANY OR ANY OTHER PARTY DEALING THROUGH OR WITH COMPANY FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF BANK HAS KNOWLEDGE OF THE EXISTENCE OF THE PARTICULAR CIRCUMSTANCES GIVING RISE TO CONSEQUENTIAL DAMAGES.

27. **Indemnification.** You will indemnify us against, and hold us harmless from, any and all losses, damages, costs, and attorney fees that we incur because of your failure to abide by any of the terms of this Agreement.

28. **ARBITRATION OF DISPUTES.** You and we agree that the transactions in your Clearing Account involve "commerce" under the Federal Arbitration Act ("FAA"). ANY CONTROVERSY OR CLAIM BETWEEN YOU AND US, OR BETWEEN YOU AND ANY OF OUR OFFICERS, EMPLOYEES, AGENTS OR AFFILIATED ENTITIES, THAT ARISES OUT OF OR IS RELATED TO YOUR ACCOUNT, OR ANY SERVICE RELATED TO YOUR ACCOUNT, OR ANY AGREEMENT RELATED TO YOUR ACCOUNT OR ANY SUCH SERVICE, WHETHER BASED ON CONTRACT OR IN TORT OR ANY OTHER LEGAL THEORY, INCLUDING CLAIMS OF FRAUD, SUPPRESSION, MISREPRESENTATION AND FRAUD IN THE INDUCEMENT (COLLECTIVELY, ANY "CLAIM"), WILL BE SETTLED BY BINDING ARBITRATION UNDER THE FAA. The arbitration will be administered by the American Arbitration Association under its Commercial Arbitration Rules ("the Arbitration Rules"). IF A CLAIM IS SUBMITTED TO ARBITRATION, (A) YOU WILL NOT HAVE THE RIGHT TO GO TO COURT OR TO HAVE A JURY TRIAL; (B) YOU WILL NOT HAVE THE RIGHT TO ENGAGE IN PRE-ARBITRATION DISCOVERY EXCEPT AS PROVIDED IN THE RULES; (C) YOU WILL NOT HAVE THE RIGHT TO HAVE ANY CLAIM ARBITRATED AS A CLASS ACTION UNDER THE RULES OR UNDER ANY OTHER RULES OF CIVIL PROCEDURE; (D) THE ARBITRATOR'S DECISION WILL BE FINAL AND BINDING WITH LIMITED RIGHTS TO APPEAL; (E) THIS AGREEMENT SUPERSEDES ANY PRIOR ALTERNATIVE DISPUTE RESOLUTION AND/OR ARBITRATION AGREEMENT THAT MAY EXIST BETWEEN YOU AND US. This agreement to arbitrate disputes will survive the closing of your Clearing Account and the termination of your deposit agreement with us.

29. **Applicable Laws, Jurisdiction, Venue and Regulations.** You understand this Agreement is governed by the laws of the state of Illinois and includes, but is not limited to the Uniform Commercial Code. Changes in these laws and regulations may modify the terms and conditions of your Clearing Account. We do not have to notify you of these changes, unless required to do so by law. You will not hold us liable for anything we do or decline to do based on a good faith belief that it is required by law or regulation. The courts of the state have jurisdiction of any dispute in connection with this agreement. You agree that venue will be proper in the courts in the county and city of our office where you signed or delivered this agreement.

RDA040606



McAlester City Council

AGENDA REPORT

Meeting Date: December 30, 2009
Department: Utilities
Prepared By: David Medley
Date Prepared: January 12, 2010

Item Number: 6
Account Code: _____
Budgeted Amount: N/A
Exhibits: Three

Subject

Consider, and act upon a Letter of Intent and Approval to Proceed with Audit for Performance Contracting Program for the City's water meter system upgrade with Siemens Industry, Inc.

Recommendation

Motion to approve and authorize the Mayor to sign the Letter of Intent and Approval to Proceed with Audit for Performance Contracting Program for the City's water meter system upgrade with Siemens Industry, Inc.

Discussion

Mr. Ron Roller of Siemens Industry has a presentation to detail the aspects and benefits of the Performance Contracting to audit and potentially eventually upgrade the City's water meter system. This audit will assess the annual savings by upgrading the metering system with new remote read water meters. Included in the attachments is the Letter of Intent, the City Attorney's comments on the legalities of a performance based contract and a typical "boiler plate" performance based contract. If the City executes the performance based contract then the cost of the audit can be incorporated into the contract.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	DRM	12/30/09
City Manager	PJS <i>PJS</i>	01/05/10



January 12, 2010

Siemens Industry, Inc.
Building Technologies division
Attention: Mr. Ron Roller
Energy & Environmental Solutions
12101 East 51st, Suite 103
Tulsa, OK 74146

Re: Letter of Intent and Approval to Proceed with Audit for Performance Contracting Program

Dear Mr. Roller:

The City of McAlester intends to contract with Siemens Industry, Inc. for the implementation of a Performance Contracting program designed to improve the City's infrastructure and operational efficiencies in accordance with Oklahoma Statute Title 62, Section 318.

The Program will focus on water conservation and operational efficiencies assessed through a detailed audit, which will evaluate the following measures:

1. Accuracy of water meters,
2. Feasibility of automatic meter-reading system, and
3. Water/waste-water conservation opportunities.

In order to accomplish the Audit, Siemens will provide the following services:

1. Remove existing water meters and install 100 new direct-read Sensus 5/8" water meters
2. Transport and test the 100 meters removed
3. Survey the large commercial meters (sizes vary from 1" and up)
4. Analyze meter-testing results and include a list of meter sizes and locations for those surveyed
5. Prepare a detailed Audit report complete with Program costs and savings.

While preparing the Audit, additional energy conservations measures may be identified by Siemens. These measures may be added, modified, delayed, or dropped, as agreed between the parties.

The objectives of the Program to be assessed in the Audit are as follows:

- Provide efficiency improvements
- Reduce operating costs & energy costs
- Replace or upgrade existing equipment
- Improve water meter accuracy
- Obtain a guarantee for the Program from Siemens

The City and Siemens will work to finalize the technical, legal and financial components of the Program. The City will prioritize any measures to be implemented, and Siemens will use the results of the Audit as the basis for drafting a Performance Contracting Agreement ("PCA"). The City will pursue financing for the Program, possibly with assistance from Siemens.

The City's execution of a Performance Contracting Agreement ("PCA") is contingent upon the PCA meeting the requirements of OK Statute Title 62, Section 318. If Siemens provides a PCA which complies with the Statute and the parties execute a PCA, then the costs associated with the Audit can be incorporated into the price of the PCA. However, if Siemens provides a PCA that complies with the Statute and the City does not execute a PCA with Siemens within 45 days of receipt, then the City agrees to pay Siemens \$50,000 for the Audit Services described herein.

Acknowledged and agreed:

For the City of McAlester:

For Siemens Industry, Inc.:

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____

Subscribed and sworn to before me
this ____ day of _____, 20__

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

Notary Public



January 12, 2010

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Building Technologies division
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Energy & Environmental Solutions
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Acknowledged and agreed:

For the City of McAlester:

For Siemens Industry, Inc.:

By: _____
Print: _____
Title: _____
Date: _____

By: _____
Print: _____
Title: _____
Date: _____

Subscribed and sworn to before me
this ____ day of _____, 20__

Subscribed and sworn to before me
this ____ day of _____, 20__

Notary Public

Notary Public

David Medley

From: Peter Stasiak
Sent: Monday, December 21, 2009 7:03 AM
To: Gayla Duke; David Medley
Subject: FW: Proposal for Performance-Based Contract Between City of McAlester and Siemen's Industry Inc. re: Utilities

Good Morning:

FYI

Pete

From: William Ervin [mailto:ervinlaw@sbcglobal.net]
Sent: Tuesday, December 15, 2009 4:41 PM
To: Peter Stasiak
Subject: Proposal for Performance-Based Contract Between City of McAlester and Siemen's Industry Inc. re: Utilities

Peter Stasiak
Acting City Manager
City of McAlester

Dear Pete:

I understood your question to be whether or not the \$500,000.00 debt limitation imposed by the City Charter would require a Public vote to approve a performance-based contract allowed by Title 62 Okl. Stat. Sec. 318 between the City of McAlester and Siemens for comprehensive renovations and cost management services for the water utility system of the City. Also, I believe you asked if this would be considered to be a capital improvement project.

In answer to your first question, I am assuming the cost of the proposal exceeds \$500,000.00. The Charter provision regarding debt limitation requiring popular vote can be found in Article 5, Financial Management, Sec. 5.11, Capital Program, (C) Debt Limitations, which provides in part, ".... any indebtedness or obligation by a municipal beneficiary trust in excess of \$500,000.00 must be approved by a majority of the qualified electors of the City of McAlester, ..." This limitation therefore applies only in instances of a debt created by the municipal beneficiary trust of the City such as the Airport Authority, the Public Works Authority, or the Hospital Authority. It would not apply to the City proper. Therefore, any contract, which creates a debt, which exceeds the debt limitation should be made by the City not any of its trusts.

Secondly, you asked if the proposal would constitute a capital improvement project. I believe it does. The Charter deals with capital improvements in Article 5, Sec. 5.11 and 5.12. It has no definition of what constitutes a capital improvement. However, Title 11 Okl. Stat. Sec. 17-110 of the Oklahoma Municipal Code does define a capital project, which should be appropriate for our purpose.

As I understand the proposal, it includes replacing all water meters in the City and ongoing monitoring and management services relating to the water utility of the City with performance-based outcome and guaranteed savings to the City. If the proposal was limited to provision of management services, it would not be a capital improvement project. However, if it requires sending money for "... items and articles, either new or replacements, not consumed with use by only diminished in value with

12/28/2009

prolonged use, including but not limited to water and sewage improvements, machinery, equipment" it is a capital improvement.

As a capital improvement, the proposal will be subject to the budgeting requirements of Sec. 5.04, et seq. and those relating to capital improvement projects in 5.11 and 5.12.

If this does not answer fully your questions, please let me know.

William J. Ervin Sr.
Ervin & Ervin
Attorneys at Law
P.O. Box 1449
McAlester, OK 74502

Tel: 918-423-4242
Fax: 918-423-4243
ervinlaw@sbcglobal.net

PERFORMANCE CONTRACTING AGREEMENT

between

[Insert CLIENT'S correct and entire legal name]

and

**Siemens Industry, Inc.,
Building Technologies Division**

TABLE OF ARTICLES

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work by SIEMENS
6. The CLIENT'S Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

PERFORMANCE CONTRACTING AGREEMENT

Number: _____

Article 1 AGREEMENT

THIS **PERFORMANCE CONTRACTING AGREEMENT** ("Agreement") is made this _____ day of _____, (the "Effective Contract Date", defined below), by and between Siemens Industry, Inc., Building Technologies Division ("SIEMENS") and the party identified below as the CLIENT.

The CLIENT:

DESIGNATED REPRESENTATIVE:
PHONE: _____ FAX: _____

Siemens Industry, Inc., Building Technologies Division
1000 Deerfield Parkway
Buffalo Grove, Illinois 60089

With offices at: [Insert branch address]

DESIGNATED REPRESENTATIVE:
PHONE: _____ FAX: _____

For Work and Services in connection with the following project (the "Project"):

[Insert name of Project here]

The CLIENT considered performing the following FIMs but at this time, has determined to exclude them from the Scope of Work and Services, Exhibit A:

[List FIMS not part of this project that were considered and may be performed via amendment at a later date]

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement consists of this document, which includes the following articles and exhibits which are acknowledged by the CLIENT and SIEMENS and incorporated into the Agreement by this reference:

Articles

1. Agreement
2. Glossary
3. General
4. Performance Guarantee
5. Work BY SIEMENS
6. The CLIENT'S Responsibilities
7. Changes and Delays
8. Compensation
9. Acceptance
10. Insurance and Allocation of Risk
11. Hazardous Material Provisions
12. Miscellaneous Provisions
13. Maintenance Services Program

Exhibits

- | | |
|-----------|----------------------------|
| Exhibit A | Scope of Work and Services |
| Exhibit B | Payment Schedule(s) |
| Exhibit C | Performance Assurance |
| Exhibit D | Addendum No. 1 |

This Agreement, when executed by an authorized representative of the CLIENT and authorized representatives of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties relative to the project scope stated in Exhibit A. This Agreement supersedes all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same, and may be modified only by a written instrument signed by both Parties.

COMPENSATION/TERMS OF PAYMENT:

As full consideration for the performance of the Work and Services set forth in Exhibit A, and for the Performance Assurance set forth in Exhibit C, the CLIENT shall pay SIEMENS in such manner and amounts as agreed to in Exhibit B.

Agreed for **[Insert CLIENT name]**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

Agreed for **Siemens Industry, Inc.**

(Signature) by: _____

Print Name and Title: _____

(Signature) by: _____

Print Name and Title: _____

PERFORMANCE CONTRACTING AGREEMENT

Article 2

Glossary

The following terms shall for all purposes have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Agreement:

"Acceptance" means the CLIENT has signed, or is deemed to have signed, a Certificate of Substantial Completion.

"Acceptance Date" means the date on which the CLIENT signs or is deemed to have signed a Certificate of Substantial Completion.

"Annual Performance Assurance Report" means the document prepared by SIEMENS and submitted to the CLIENT as part of the Performance Assurance Service Program, which identifies the Savings achieved for the applicable Annual Period.

"Annual Period" means a twelve (12) month period beginning on the Guarantee Date or on any anniversary date thereof.

"Annual Realized Savings" means the actual Savings achieved by the CLIENT during an Annual Period, calculated as the sum of the Measured & Verified Savings plus the Stipulated Savings.

"Baseline" means the measurements of Facility energy usage taken prior to the Effective Contract Date, and the Facility operating practices in effect prior to the Effective Contract Date, as set forth in the Performance Assurance, Exhibit C.

"Baseline Period" means the period of time from which data is provided to SIEMENS to derive the Baseline measurements. The Baseline Period is set forth in the Performance Assurance, Exhibit C.

"BTU" means a British Thermal Unit and is a unit of thermal energy.

"Capital Off-Set Savings" means a sub-category of Operational Savings where Savings will result in a cost effective upgrade to the Facility to address one or more of the following issues; potential future increased costs, comfort, code non-compliance, usage requirements, user needs and/or expectations.

"Certificate of Substantial Completion" means the document indicating that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement.

"CLIENT Representative" means the person identified to SIEMENS by the CLIENT as the person authorized to make decisions on behalf of the CLIENT as set forth in Section 6.1(a) hereof.

"Construction Period" means the period between the Effective Contract Date and the first day of the month following the date of Substantial Completion.

"Construction Period Savings" means the actual accumulated Measured & Verified Savings plus the Stipulated Savings achieved from the Effective Contract Date until the Guarantee Date.

"Contracted Baseline" means the post-FIM-implementation Facility operating profile based on parameters described in Exhibit C, which the CLIENT shall maintain throughout the Performance Guarantee Period and are relied upon by SIEMENS for the calculation of Guaranteed Savings as provided in the Performance Assurance, Exhibit C. The Contracted Baseline must also include stipulated hours of operation and plug-loads for all Facilities, and must include stipulated blended, or non-blended, utility rates.

"Deferred Maintenance" means a sub-category of Operational Savings where Savings results from a reduction of current or potential future repair and maintenance costs due to certain work being performed hereunder where such work had been previously postponed.

"Deliverable" means a report or drawing specifically prepared for and deliverable to the CLIENT.

"Effective Contract Date" is the date appearing at the top of this Agreement, unless specifically indicated otherwise.

PERFORMANCE CONTRACTING AGREEMENT

"Energy Conservation Measure" or "ECM" means the equipment, devices, materials and/or software as installed by SIEMENS at the Facilities, or as repaired or replaced by the CLIENT hereunder, for the purpose of improving the efficiency of utility consumption.

"Equipment" means the installed products to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

"Escalation Rate" means an annual percentage increase to be applied to the previous year's energy savings, operational savings and service pricing, beginning and occurring on dates outlined in the Performance Assurance, Exhibit C. A different Escalation Rate may be applied to differing Savings calculations and/or payment schedules depending on the percentage agreed upon by the Parties.

"Facility" or "Facilities" means the building(s) or structure(s) where Work will be installed or implemented.

"Facility Improvement Measures" or "FIMs" means the methods, techniques, application of know-how, installation of devices or otherwise, described in the Scope of Work and Services, Exhibit A, that are undertaken by SIEMENS as a result of this Agreement with the intent of generating net savings or efficiencies at or in connection with the operation of the Facilities, including one or multiple ECMs as well as any non-conservation-related activities, means or methods.

"FEMP" means the Federal Energy Management Program managed by the United States Department of Energy.

"FEMP Guidelines" means the FEMP M&V Guidelines v. 3.0 published by FEMP as *M&V Guidelines; Measurement and Verification for Federal Energy Management Projects*.

"Guarantee Date" means the first day of the month following the date on which the CLIENT executes the final Certificate of Substantial Completion, thus indicating that the Construction Period is complete.

"Guaranteed Annual Savings" are the Guaranteed Measured & Verified Savings plus the Stipulated Savings that SIEMENS guarantees will occur in an Annual Period of the Performance Guarantee Period.

"Guaranteed Measured & Verified Savings" means the Measured & Verified Savings that SIEMENS guarantees will be achieved, as described in the Performance Assurance, Exhibit C.

"Guaranteed Savings" means the amount of Savings that SIEMENS guarantees will be achieved at the Facility during the Performance Guarantee Period, as identified in the Performance Assurance, Exhibit C as subject to the limitation identified in Section 4.8.

"Hazardous Materials" refers to the definition found in Section 11.1.

"Instruments" means all reports, notes, calculations, data, drawings, estimates, specifications, manuals, documents, all computer programs, codes and computerized materials prepared by or for SIEMENS, excluding Deliverables.

"IPMVP" means the International Performance Measurement and Verification Protocol, Volume 1, EVO 10000-1.2007 as prepared by the Efficiency Valuation Organization.

"kW" and "kWh" means kilowatt and kilowatt hour, respectively.

"Maintenance Services Program" or "MSP" means the Services performed by SIEMENS to maintain the Equipment in good working order. The MSP may also contain Services unrelated to the maintenance of the Equipment. If applicable, the MSP is more fully described in the Scope of Work and Services, Exhibit A.

"Material Change" means a measurable deviation in the Contracted Baseline such that there is an adverse impact on the Annual Realized Savings which results or will result in a Savings Shortfall.

"Measured & Verified Savings" means those Savings that can be calculated and ascertained by the methodology set forth in the Performance Assurance, Exhibit C.

PERFORMANCE CONTRACTING AGREEMENT

"Oil" refers to the definition found in Section 11.1.

"Operational Savings" means Savings derived from reduced operational expenses, including but not limited to, Deferred Maintenance, or Capital Off-Set Savings. Operational Savings can only be expressed in monetary value and are Stipulated Savings.

"Parties" means the CLIENT and SIEMENS.

"Performance Assurance" is the process of ascertaining whether the FIMs are performing at the level necessary to achieve the Guaranteed Savings.

"Performance Assurance Services Program" or "PASP" means the Services required to monitor the operation of the FIMs so that SIEMENS can provide the Annual Performance Assurance Report detailing the Annual Realized Savings and, where applicable, the Accumulated Realized Savings, and comparing the same to the Annual Guaranteed Savings and, where applicable, the Guaranteed Accumulated Savings based upon the calculations agreed to by the Parties in the Performance Assurance, Exhibit C. The Services provided under the PASP are described in the Scope of Work and Services, Exhibit A.

"Performance Guarantee" means the guarantee that SIEMENS makes to the CLIENT which is reconciled and confirmed through the Performance Assurance process set forth in the Performance Assurance, Exhibit C.

"Performance Guarantee Period" means the timeframe from the Guarantee Date to the last day of the final Annual Period as described in Table 1.1 of the Performance Assurance, Exhibit C, or the period from the Guarantee Date until the termination of this Agreement, whichever occurs earlier.

"Permitted Users" means the CLIENT, its employees and agents.

"Savings" means the Parties' intended result from implementing all FIMs. Savings can be derived from reductions in energy or utility consumption, reductions in operating expenses, a changed utility rate classification or a combination thereof. The Savings that are achieved from reduced energy or utility consumption are converted to a dollar figure based upon the calculation in Article 4.1.1 and as detailed in the Performance Assurance, Exhibit C. When converted to a dollar figure, these Savings become energy cost savings. Operational Savings are only expressed in a dollar figure.

"Savings Shortfall" means the Annual Realized Savings less the Guaranteed Annual Savings for the Annual Period resulting in an amount less than zero.

"Services" means those services to be provided by SIEMENS as described in the Scope of Work and Services, Exhibit A.

"Stipulated Savings" are a sub-category of Guaranteed Savings that do not require post-FIM implementation measurement and verification because they are Operational Savings as agreed upon by the Parties based upon representations made to SIEMENS by the CLIENT. As such, Stipulated Savings are agreed upon in advance by the Parties and cannot be changed. The Stipulated Savings for each Annual Period, along with the corresponding Escalation Rate, if applicable, are set forth in the Performance Assurance, Exhibit C.

"Substantial Completion" or "Substantially Complete" means the Work, or any identifiable portion thereof, is sufficiently complete, in accordance with the provisions of this Agreement relating to the Scope of the Work and Services, Exhibit A, such that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise employ the Work or the FIMs for their intended purposes. To the extent that the Work requires multiple Acceptances, the Work's final Substantial Completion date shall determine the Guarantee Date.

"Therm" is a measure of energy equal to 100,000 BTUs.

"Total Guaranteed Savings" means the sum of the Savings that are guaranteed for all Annual Periods during the Performance Guarantee Period (inclusive of the Construction Period, if applicable). The Total Guaranteed Savings are reflected in Tables 1.1 and 1.2 in the Performance Assurance, Exhibit C.

"Work" means collective labor, Equipment and services comprising the FIMs to be performed by SIEMENS, as described in the Scope of Work and Services, Exhibit A.

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Article 3

General

- 3.1 The Parties hereto acknowledge and agree that this Agreement has been negotiated at arm's length and among the Parties equally sophisticated and knowledgeable as to the subject matter of this Agreement. Each party has conferred, or has had the opportunity to confer, with their respective legal counsel. Accordingly, in the event any claim is made relating to any conflict, omission, or ambiguity in this Agreement, no presumption, burden of proof, or persuasion shall be implied by virtue of the fact that this Agreement was drafted by or at the request of a particular party or its legal counsel.
- 3.2 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and to provide the Work and Services set forth in Exhibit A in accordance with the terms and conditions of this Agreement.
- 3.3 SIEMENS shall perform the Work as an independent contractor with exclusive control of the manner and means of performing the Work in accordance with the requirements of this Agreement. SIEMENS has no authority to act or make any agreements or representations on behalf of the CLIENT. This Agreement is not intended, and shall not be construed to create, between the CLIENT and SIEMENS, the relationship of principal and agent, joint-venturers, co-partners or any other such relationship, the existence of which is hereby expressly denied. No employee or agent of SIEMENS shall be, or shall be deemed to be, an employee or agent of the CLIENT.
- 3.4 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of SIEMENS' organizational documents, any applicable laws or regulations, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of SIEMENS, in accordance with its terms, and all requirements have been met and procedures have been followed by SIEMENS to ensure the enforceability of the Agreement;
 - (d) To SIEMENS' best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting SIEMENS that affects the validity or enforceability of this Agreement; and,
 - (e) It is duly authorized to do business in all locations where the Work and Services are to be performed.
- 3.5 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and/or statutory authority to enter into this Agreement, and that its execution hereof has been duly authorized and does not and will not constitute a breach or violation of any of the CLIENT'S organizational documents, any applicable laws or regulations, or any agreements with third parties;
 - (b) It has done and will continue to do all things necessary to preserve and keep in full force and effect its existence and the Agreement;
 - (c) This Agreement is the legal, valid and binding obligation of the CLIENT, in accordance with its terms, and all requirements have been met and procedures have been followed by the CLIENT to ensure the enforceability of the Agreement;
 - (d) To the CLIENT'S best knowledge, there is no pending or threatened, suit, action, litigation or proceeding against or affecting the CLIENT that affects the validity or enforceability of this Agreement; and,
 - (e) The CLIENT has consulted with its legal counsel and is relying on the advice of its counsel concerning all legal issues related to this Agreement, and is not relying on SIEMENS in this regard.

Article 4

Performance Guarantee

- 4.1 The Annual Realized Savings generated during each Annual Period will be no less than the Guaranteed Annual Savings as shown in Tables 1.1 and 1.2 of the Performance Assurance, Exhibit C, subject to the limits in Section 4.8. The measurement and verification calculation methodology for determining the Measured & Verified Savings is set forth in the Performance Assurance, Exhibit C.
- 4.1.1 General. Except as otherwise provided, energy savings will be calculated for each month of each Annual Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."

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- (a) Units of energy saved are calculated by 1) assuming the Contracted Baseline has been maintained per Section 4.3 below, and 2) subtracting the then current period measured units of energy consumed from the Baseline units of energy defined in Article 5 of Exhibit C.
 - (b) Costs of energy are defined in Article 6 of Exhibit C, Utility Rate Structures and Escalation Rates.
- 4.2 Any future escalation factors to be applied to utility, energy or other costs are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data set forth in Exhibit C is a full and accurate reflection of the existing Facility, equipment, operation, business use and energy usage, and that such Baseline data will be the basis on which all future energy use will be compared in order to determine the Annual Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline fully described in Exhibit C will represent the new operating and/or equipment profile of the Facility resulting from the FIM implementation. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT operates and maintains its Facilities within the Contracted Baseline parameters, as may be adjusted in accordance with the terms herein, during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within 30 days of CLIENT'S knowledge of any Material Change.
- 4.5 Within 30 days of notice of a Material Change, SIEMENS' discovery of a Material Change, and with prompt notice to CLIENT, SIEMENS will either:
 - (a) Require an adjustment to the Performance Assurance and the Performance Guarantee as a result of the Material Change; or,
 - (b) Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate both the Performance Assurance and the Performance Guarantee.
- 4.6 Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each Annual Period as follows:
 - (a) Within ninety (90) days of the Guarantee Date, the Construction Period Savings shall be reconciled and applied to the calculation of the first Annual Period's Annual Realized Savings.
 - (b) At the conclusion of each Annual Period, SIEMENS will calculate the Annual Realized Savings and compare the calculated amount to the applicable Guaranteed Annual Savings amount.
 - (c) Where the Annual Realized Savings are less than the Guaranteed Annual Savings, a Savings Shortfall shall be recorded for the applicable Annual Period.
 - (d) A Savings Shortfall shall be paid by SIEMENS within sixty (60) days following the CLIENT'S acceptance of the reconciliation and once paid SIEMENS shall have fulfilled its obligations under the Performance Guarantee for the applicable Annual Period.
- 4.6.1 As the mutual goal of the Parties is to maximize Savings, if SIEMENS can correct a Savings Shortfall through an operational improvement at no expense or material inconvenience to the CLIENT and with no future operational expenses, and the CLIENT declines to allow such operational improvement, then any future Savings Shortfall that the improvement would have corrected will be negated by deeming the value of the Savings Shortfall as Savings achieved and adding the amount of same to the Annual Realized Savings calculations for each Annual Period thereafter.
- 4.7 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period. If the CLIENT fails to maintain, breaches, cancels or otherwise causes the termination of the PASP then; (a) The Performance Guarantee shall terminate immediately and be void and of no force or effect; or, (b) Where termination of the Performance Guarantee would render the Agreement in violation of the applicable law, all Guaranteed Savings thereafter shall be determined to have been achieved and SIEMENS shall have been deemed to have met its Performance Guarantee obligations under this Agreement for each and every Annual Period thereafter without the obligation to provide the CLIENT, or any third-party as the case may be, with any further Annual Performance Assurance Reports.
- 4.8 The payments and credits based on Savings Shortfalls, if any, are the sole remedy of the CLIENT for this Performance Guarantee. ANY PAYMENTS MADE OR TO BE MADE TO THE CLIENT UNDER THE TERMS OF THIS PERFORMANCE GUARANTEE SHALL NOT EXCEED THE PAYMENTS ACTUALLY MADE BY CLIENT TO EITHER SIEMENS AND/OR A THIRD-PARTY (IN THE EVENT THAT THE CLIENT HAS FINANCED THE TRANSACTION) FOR THE AGGREGATE OF: THE PRICE, AS DEFINED IN EXHIBIT B, ARTICLE 1.1; THE PASP PAYMENTS; THE MSP PAYMENTS, IF ANY; AND, IF APPLICABLE, THE CLIENT'S COST OF FINANCING THE WORK. The

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CLIENT'S cost of financing the Work is the cost of financing calculated either: (a) On the date that the escrow account is funded in accordance with Exhibit B, Article 1.2; or, (b) On the Effective Contract Date if the escrow requirement is expressly waived by SIEMENS.

- 4.9 The CLIENT represents that all existing equipment that is not installed by SIEMENS under this Agreement but is deemed necessary to achieve the Performance Guarantee, is in satisfactory working condition. Prior to the beginning of the Performance Guarantee Period, SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT. To the extent that the deficiencies are not remedied by the CLIENT prior to the Guarantee Date, the adverse affect on the ability of the Project to attain the necessary Guaranteed Savings shall be factored into the Annual Performance Assurance Report and, if necessary, the Performance Guarantee shall be adjusted accordingly.
- 4.10 If the Equipment or the existing equipment is altered or moved by any person (including the CLIENT) other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT'S expense in order to determine if a Material Change has occurred.
- 4.11 SIEMENS will have no liability or obligation to continue providing PASP Services or any Guaranteed Savings under the Performance Guarantee in the event that the CLIENT fails to:
- (a) Authorize a re-acceptance test or re-commissioning that SIEMENS reasonably deems necessary in order to determine if a Material Change has occurred;
 - (b) Provide access to any Facility where Work is to be performed;
 - (c) Service and maintain all Equipment in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
 - (d) Provide SIEMENS with accurate Facility operating information as soon as such information becomes reasonably available to the CLIENT, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period.
- 4.12 Unless expressly contrary to law, should the CLIENT decide to discontinue the PASP before the end of the Performance Guarantee Period, the CLIENT will give SIEMENS thirty (30) days prior written notice and in such notice indicate that the CLIENT has selected one of the following:
- (a) The CLIENT will re-invest the avoided cost of cancellation of the PASP into Facility improvements and services that improve the overall Facility's performance and which improvements and services are implemented by SIEMENS; or,
 - (b) The CLIENT will pay to SIEMENS % of the remaining value left in the PASP Annual Period, as a liquidated damage and not as a penalty, to compensate SIEMENS for SIEMENS' up-front costs and expenses in preparing to perform the PASP as contracted for the Annual Period.
- 4.13 Unless expressly contrary to law, any disputes concerning the calculation of the Annual Realized Savings or changes to the Contracted Baseline that are not resolved by negotiation between the Parties within thirty (30) days of the notice of the dispute, will be resolved by a third-party professional engineering firm which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of such firm will be final and binding upon CLIENT and SIEMENS. SIEMENS and the CLIENT will each be responsible for half of the fees of such firm.

Article 5

Work by SIEMENS

- 5.1 SIEMENS will perform the Work expressly described in this Agreement and in any work release documents or change orders that are issued under this Agreement and signed by both Parties. The Work performed by SIEMENS shall be conducted in a workmanlike manner.
- 5.2 SIEMENS shall perform the Work during its normal hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Facility available so Work may proceed in an efficient manner.
- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment unless expressly made a part of the Work identified in the Scope of Work and Services, Exhibit A. Any CLIENT request to change the scope or the nature of the Work or Services must be in the form of a mutually agreed change order, effective only when executed by the Parties.

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- 5.4 All Deliverables shall become the CLIENT'S property upon receipt by CLIENT. SIEMENS may retain file copies of such Deliverables. All Instruments shall remain SIEMENS' property. All Deliverables and Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. To the extent specified in Exhibit A, Permitted Users shall have a right to make and retain copies of Instruments except uncompiled code, and to use all Instruments; provided, however, that the Instruments shall not be used or relied upon by any parties other than Permitted Users, and such use shall be limited to the particular project and location for which the Instruments were provided. The CLIENT shall not transfer any Deliverables or copies of Instruments to others or use them or permit them to be used for any extension of the Work or any other project or purpose without SIEMENS' express written consent. Any reuse of Deliverables or Instruments for other projects or locations without the written consent of SIEMENS, or use other than by Permitted Users, will be at Permitted Users' and such other user's sole risk and without liability to SIEMENS; and, unless expressly prohibited by law, the Permitted Users, jointly and severally, shall indemnify, defend and hold SIEMENS harmless from any claims, losses or damages arising from such unauthorized use.
- 5.5 SIEMENS shall be responsible for any portion of the Work performed by any subcontractor of SIEMENS. SIEMENS shall not have any responsibility, duty or authority to direct, supervise or oversee any contractor of the CLIENT or their work or to provide the means, methods or sequence of their work or to stop their work. SIEMENS' work and/or presence at the Facility shall not relieve others of their responsibility to the CLIENT or to others.
- 5.6 SIEMENS warrants that:
- (a) Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date the Equipment is installed, all Equipment manufactured by SIEMENS or bearing its nameplate will be free from defects in material and workmanship arising from normal use and service.
 - (b) Labor for all Work, excluding PASP or MSP Services, is warranted to be free from defects in workmanship for one year after the Work is performed. PASP Services and MSP Services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.
- 5.7 Warranty Limitation:
- (a) The limited warranties set forth in Section 5.6 will be void as to, and shall not apply to, any Equipment (i) repaired, altered or improperly installed by any person other than SIEMENS or its authorized representative; (ii) which the CLIENT or a third party subjects to unreasonable or improper use or storage, uses beyond rated conditions, operates other than per SIEMENS' or the manufacturer's instructions, or otherwise subjects to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have had, knowledge of any defect in the Equipment; or (iv) not manufactured, fabricated and assembled by SIEMENS or not bearing SIEMENS' nameplate. However, SIEMENS assigns to the CLIENT, without recourse, any and all assignable warranties available from any manufacturer, supplier, or subcontractor of such Equipment.
 - (b) Any claim under the limited warranty granted above must be made in writing to SIEMENS within thirty (30) days after discovery of the claimed defect unless discovered directly by SIEMENS. Such limited warranty only extends to the CLIENT and not to any subsequent owner of the Equipment. The CLIENT'S sole and exclusive remedy for any Equipment or Services not conforming with this limited warranty is limited to, at SIEMENS' option: (i) repair or replacement of defective components of covered Equipment; (ii) re-performance of the defective portion of the Services; or (iii) to the extent previously paid and itemized, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
 - (c) SIEMENS shall not be required to repair or replace more than the component(s) of the Equipment or the portion of the Work and Services actually found to be defective. SIEMENS' warranty liability shall not exceed the purchase price of such item. Repaired or replaced Equipment or Services will be warranted hereunder only for the remaining portion of the original warranty period.
- 5.8 THE EXPRESS LIMITED WARRANTIES PROVIDED ABOVE ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, STATUTORY, EXPRESS, OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED. THE LIMITED EXPRESS WARRANTIES AND REPRESENTATIONS SET FORTH IN THIS AGREEMENT MAY ONLY BE MODIFIED OR SUPPLEMENTED IN A WRITING EXECUTED BY A DULY AUTHORIZED SIGNATORY OF EACH PARTY.

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5.9 SIEMENS will not be responsible for the maintenance, repair or replacement of, or Services necessitated by reason of:

- (a) Non-maintainable, non-replaceable or obsolete parts of the Equipment, including but not limited to: ductwork, shell and tubes, heat exchangers, coils, unit cabinets, casings, refractory material, electrical wiring, water and pneumatic piping, structural supports, cooling tower fill, slats and basins, etc., unless covered by the warranty provisions herein or otherwise specifically stated herein; or
- (b) CLIENT'S or a third-party's negligence, abuse, misuse, improper or inadequate repairs or modifications, improper operation, lack of operator maintenance or skill, corrosion, erosion, improper or inadequate water treatment, electrolytic action, chemical action, failure to comply with manufacturer's operating and environmental requirements, Acts of God, or other reasons beyond SIEMENS' control. Unless expressly agreed in writing, SIEMENS is not responsible for the removal or reinstallation of replacement valves, dampers, or waterflow and tamper switches with respect to pipes and ductwork, including vent or drain system. SIEMENS ASSUMES NO RESPONSIBILITY FOR ANY SERVICE PERFORMED ON ANY EQUIPMENT OTHER THAN THAT PERFORMED BY SIEMENS OR ITS AGENTS.

Article 6

The CLIENT'S Responsibilities

6.1 The CLIENT, without cost to SIEMENS, shall:

- (a) Designate a contact person with authority to make decisions for the CLIENT regarding the Work and provide SIEMENS with information sufficient to contact such person in an emergency;
- (b) Coordinate the work of contractors under CLIENT'S sole control so as not to disrupt the Work and Services proceeding in an efficient manner;
- (c) Provide or arrange for 24 hour, 7 day per week access and make all reasonable provisions for SIEMENS to enter any Facility where Work is to be performed so that Work may proceed in an efficient manner;
- (d) Permit SIEMENS to control and/or operate all building controls, systems, apparatus, equipment and machinery necessary to perform the Work;
- (e) Furnish SIEMENS with blueprints, surveys, legal descriptions, waste management plans and all other available information pertinent to the Work and any Facility where the Work is to be performed as may be reasonably requested by SIEMENS. Such plans and blueprints, along with an executed copy of this Agreement, with its Exhibits, shall be kept and maintained in CLIENT'S files for a period of fifteen (15) years from the Effective Contract Date;
- (f) Furnish SIEMENS with all approvals, permits and consents from government authorities and others as may be required for performance of the Work, except for those SIEMENS has expressly agreed in writing to obtain;
- (g) In accordance with Article 11 hereof, promptly notify SIEMENS of all known or suspected Hazardous Materials at the Facility, of any contamination of the Facility by Oil or Hazardous Material, and of any other conditions requiring special care or which may reasonably be expected to affect the Work, and provide SIEMENS with any available documents describing the quantity, nature, location and extent of such materials, contamination or conditions;
- (h) Comply with all laws and provide any notices required to be given to any government authorities in connection with the Work, except such notices SIEMENS has expressly agreed in writing to give;
- (i) Provide SIEMENS with legally required materials and information (including but not limited to Material Safety Data Sheets) related to all Hazardous Materials located at any Facility where the Work is to be performed;
- (j) Furnish SIEMENS with any contingency plans, safety programs and other policies, plans or programs related to any Facility where the Work is to be performed;
- (k) Operate, service and maintain all Equipment according to the manufacturer's recommendations including those set forth in the manufacturer's operating manuals or instructions, as well as all requirements of applicable law or of authorities having jurisdiction. The CLIENT shall furnish all needed servicing and parts for said FIMs, which parts shall become part of the FIMs. Such Equipment shall be operated only in the specified operating environment, which shall be supplied by the CLIENT, including without limitation: (1) suitable electrical service, including clean, stable, properly conditioned power, to all Equipment; (2) telephone lines, capacity and connectivity as required by such Equipment; and (3) heat, light, air conditioning or other environmental controls, and other utilities in accordance with the specifications for the Equipment;

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- (l) Promptly notify SIEMENS of any unusual operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or any Services; and,
 - (m) If applicable, provide and pay for a dedicated voice grade dial-up phone line, or a mutually agreed communication method, and install a terminal block, or an equivalent communication mechanism, in a mutually agreed upon location. All on-line service Equipment (excluding the phone line) will remain the property of SIEMENS unless otherwise stated herein.
- 6.2 Unless contrary to law, the CLIENT acknowledges that the technical and pricing information contained in this Agreement is confidential and proprietary to SIEMENS and agrees not to disclose it or otherwise make it available to others without SIEMENS' express written consent.
- 6.3 The CLIENT acknowledges that it is now and shall at all times remain in control of the Facility. Except as expressly provided herein, SIEMENS shall not be responsible for the adequacy of the health or safety programs or precautions related to the CLIENT'S activities or operations, the CLIENT'S other contractor(s), the work of any other person or entity, or Facility conditions. SIEMENS shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of the CLIENT or others at the Facility. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Facility, in the event SIEMENS does address such issues by making observations, reports, suggestions or otherwise, the CLIENT shall not hold, or attempt to hold, SIEMENS liable or responsible on account thereof.

Article 7

Changes and Delays

- 7.1 As the Work is performed, existing laws or conditions may change, or circumstances outside SIEMENS' reasonable control may develop, which would require SIEMENS to expend additional costs, effort or time to complete the Work, in which case SIEMENS will notify the CLIENT and an equitable adjustment will be made to SIEMENS' compensation and the time for performance. In the event such changes require the Work to be suspended or terminated, SIEMENS shall be compensated for Work previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 7.2 Either party may request additions, deletions, modifications or changes to the Work. Any such requests shall only become effective upon execution of a written agreement by authorized representatives of both Parties.
- 7.3 SIEMENS may, in its sole discretion, substitute alternative parts, goods or equipment in the performance of the Work, provided that any such substitution shall be of an equal or better quality.
- 7.4 SIEMENS shall not be responsible for loss, delay, injury, damage or failure of performance that may be caused by circumstances beyond its control, including but not restricted to acts or omissions by the CLIENT or its employees, agents or contractors, Acts of God, war, civil commotion, acts or omissions of government authorities, fire, theft, corrosion, flood, water damage, lightning, freeze-ups, strikes, lockouts, differences with workmen, riots, explosions, quarantine restrictions, delays in transportation, or shortage of vehicles, fuel, labor or materials. In the event of such delay or failure, the time for performance shall be extended by a period equal to the time lost plus a reasonable recovery period and the compensation shall be equitably adjusted to compensate for additional costs SIEMENS incurs due to such delay. If any such delay exceeds sixty (60) days, SIEMENS may terminate this Agreement upon three (3) days notice to the CLIENT and the CLIENT shall promptly pay SIEMENS for the allocable portion of the Work completed, for any costs and expenses of termination, and for any loss or damage incurred with respect to materials, equipment, tools and machinery, including reasonable overhead and profit.

Article 8

Compensation

- 8.1 The aggregate amount paid by CLIENT provides for and is solely in consideration of the Scope of Work and Services described in Exhibit A, and is detailed in Exhibit B.
- 8.2 SIEMENS will invoice the CLIENT in accordance with the schedules set forth in Exhibit B. Unless otherwise agreed in writing, invoices are due and payable upon receipt by the CLIENT. If the CLIENT disagrees with any portion of an invoice, it shall notify SIEMENS in writing of the amount in dispute and the reason for its disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.

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- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due. In such event, SIEMENS shall be entitled to compensation for the Work or Services previously performed and for costs reasonably incurred in connection with the suspension or termination.
- 8.4 On amounts not paid within thirty (30) days of invoice date, the CLIENT shall pay interest from invoice date until payment is received at the lesser of 12% per annum or the maximum rate allowed by law. The CLIENT shall reimburse SIEMENS for SIEMENS' costs and expenses (including reasonable attorney and witness fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed herein, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services. The CLIENT shall pay such amounts or reimburse SIEMENS for any such amounts SIEMENS pays to the extent such charges are lawfully due and payable by CLIENT and have been paid or incurred by SIEMENS in furtherance thereof. If the CLIENT claims that the Work or Services is subject to a tax exemption or direct payment permit, it shall provide SIEMENS with a valid exemption certificate or permit and, unless specifically prohibited by law, shall indemnify, defend and hold SIEMENS harmless from any taxes, costs and penalties arising out of the use or acceptance of same.
- 8.6 All other work or services requested by the CLIENT, including but not limited to the following, shall be separately billed or surcharged on a time and materials basis:
- (a) Emergency services, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at times other than during SIEMENS' normal working hours, unless otherwise agreed to in Exhibit A; or
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.

Article 9

Acceptance

- 9.1 When SIEMENS believes that all, or an independent, definable phase or portion, of the Work is Substantially Complete, SIEMENS will submit a Certificate of Substantial Completion to the CLIENT which shall be subject to the following:
- (a) If the CLIENT concurs that the described portion of the Work as performed is Substantially Complete, the CLIENT will accept that Work by signing the Certificate of Substantial Completion and returning it to SIEMENS;
 - (b) If the CLIENT does not concur that the Work is Substantially Complete, then the CLIENT shall notify SIEMENS within five (5) business days of any discrepancies;
 - (c) To the extent SIEMENS does not dispute the discrepancies raised by the CLIENT, SIEMENS shall correct the Work to conform to the description of the Work set forth herein, and resubmit the Certificate of Substantial Completion to the CLIENT;
 - (d) If SIEMENS disagrees with the discrepancies raised by the CLIENT, SIEMENS shall notify the CLIENT of a dispute and such dispute shall be resolved in accordance with Section 9.3 herein;
 - (e) If the CLIENT Representative does not deliver written notice to SIEMENS within five (5) business days of receiving the Certificate of Substantial Completion, in the mutual interests of the Project proceeding in a timely manner, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial Completion.
- 9.2 To the extent that this Project requires multiple Certificates of Substantial Completion, the final Certificate of Substantial Completion shall determine the date on which the Construction Period is completed.
- 9.3 Any disputes concerning the Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm and which is reasonably acceptable to both SIEMENS and the CLIENT. The determination of this firm with respect to completion or Substantial Completion will be final and binding upon the Parties. SIEMENS and the CLIENT shall share equally the costs or fees for such firm in connection with such dispute resolution process.

Article 10

Insurance and Allocation of Risk

- 10.1 SIEMENS shall maintain, at SIEMENS' expense, the following insurances while performing the Work and shall add the CLIENT as an "Additional Insured" to each policy that is referenced in subsections (c) through and including (e) hereof:

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- (a) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.
- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits of liability shall be:
 - \$1,000,000 per occurrence
 - \$1,000,000 Disease Policy
 - \$1,000,000 Each Employee
- (c) SIEMENS shall carry, in the Occurrence Coverage Form, Comprehensive General Liability or Commercial General Liability, insurance covering SIEMENS' operations and providing insurance for bodily injury and property damage with limits of liability stated below and including coverage for:
 - Products and Completed Operations
 - Contractual Liability insuring the obligations assumed by SIEMENS in this Agreement
 - Broad Form Property Damage (including Completed Operations)
 - Explosion, Collapse and Underground Hazards
 - Personal Injury Liability:
 - Limits of liability shall be \$1,000,000 per occurrence/aggregate
- (d) SIEMENS shall carry Automobile Liability Insurance in the Occurrence Coverage Form covering all owned, hired and non-owned automobiles and trucks used by or on behalf of SIEMENS providing insurance for bodily injury liability and property damage liability for the limits of:
 - \$1,000,000 per occurrence/aggregate
- (e) SIEMENS shall carry Excess Liability Insurance in the Occurrence Coverage Form with limits of:
 - \$5,000,000 per occurrence/aggregate

10.2 The CLIENT will either maintain at its own expense, or self-insure for the equivalent risks, property insurance written on a builder's "all-risk" or equivalent policy form in an amount no less than the Price identified in Exhibit B, Article 1.1, plus the value of subsequent modifications and cost of materials supplied or installed by others, on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise provided in the Contract Documents or otherwise agreed in writing by SIEMENS, until final payment has been made to SIEMENS or no person or entity other than the CLIENT has an insurable interest in the property, whichever is later. The policy form shall include without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and start-up, rebuilding and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for SIEMENS' services and expenses required as result of such insured loss. If the insurance requires deductibles or retentions, the CLIENT shall pay costs not covered because of such deductibles or retentions. This insurance shall cover portions of the Work off the Facility, and also portions of the Work in transit. Partial occupancy or use shall not commence unless the insurance company providing this insurance has consented to such partial occupancy or use by endorsement for otherwise. The CLIENT shall purchase and maintain boiler and machinery insurance which shall specifically cover such insured objects during installation and until Acceptance by the CLIENT. The insurance required by this section shall include the interests of the CLIENT, SIEMENS, subcontractor and sub-subcontractor in the Work. SIEMENS shall be included as an additional insured on each such insurance coverage. The CLIENT and SIEMENS waive all rights against each other and any of their subcontractors, sub-subcontractors, agents and employees for damages caused by fire or other causes of loss to the extent covered by the insurance required by this section and for any other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by the CLIENT as fiduciary. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. Insurance certificates shall be furnished upon request.

10.3 Title and risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Facility, and the CLIENT shall be responsible for protecting them against theft and damage.

10.4 SIEMENS will indemnify the CLIENT from and against losses, claims, expenses and damages (including reasonable attorney's fees) for personal injury or physical damage to property (collectively "Damages"). Such indemnification shall be solely to the extent the Damages are caused by or arise directly from SIEMENS or its employees', consultants' or agents' negligent acts or omissions or willful misconduct in connection with SIEMENS' performance of the Work or

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Services. SIEMENS' obligations under this indemnity shall not extend to Damages arising out of or in any way attributable to the negligence of the CLIENT or its agents, contractors or employees. SIEMENS reserves the right to control the defense and settlement of any claim for which SIEMENS has an obligation to indemnify hereunder. UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT OR SIEMENS BE LIABLE UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING COMMERCIAL LOSS, LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS OR THE CLIENT HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT, UNLESS CONTRARY TO APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS, LOSSES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, AGENCY, WARRANTY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE LESSER OF \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THE CLIENT UNDER THIS AGREEMENT. The preceding limit shall not apply to the CLIENT'S remedy under the Performance Guarantee as such is limited by Section 4.8.

10.5 As to Patents and Copyrights:

- (a) SIEMENS will, at its own expense, defend or at its option settle any suit or proceeding brought against the CLIENT in so far as it is based on an allegation that any Work (including parts thereof), or use thereof for its intended purpose, constitutes an infringement of any United States patent or copyright, if SIEMENS is promptly provided notice and given authority, information, and assistance in a timely manner for the defense of said suit or proceeding. SIEMENS will pay the damages and costs awarded in any suit or proceeding so defended. SIEMENS will not be responsible for any settlement of such suit or proceeding made without its prior written consent. In case the Work, or any part thereof, as a result of any suit or proceeding so defended is held to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option and its own expense, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace it with substantially equivalent non-infringing Work; or (iii) modify the Work so it becomes non-infringing.
- (b) SIEMENS will have no duty or obligation to the CLIENT under Section 10.5(a) to the extent that the Work is: (i) supplied according to the CLIENT'S design or instructions, wherein compliance therewith has caused SIEMENS to deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors after delivery; or, (iii) combined by the CLIENT or its contractors with items not furnished hereunder, and by reason of said design, instruction, modification, or combination, a suit is brought against the CLIENT. If by reason of such design, instruction, modification or combination, a suit or proceeding is brought against SIEMENS, unless expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner and to the same extent that SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a) above.
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF THE PARTIES RELATING TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT AND OF ALL THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS INVOLVING PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute fulfillment of all liabilities of the Parties under the Agreement with respect to the intellectual property indemnification.

10.6 The Parties acknowledge that the price for which SIEMENS has agreed to perform the Work and obligations under this Agreement was calculated based upon the foregoing allocations of risk, and that each Party has expressly relied on and would not have entered into this Agreement but for such allocations of risk.

Article 11

Hazardous Materials Provisions

11.1 The Work does not include directly or indirectly performing or arranging for the detection, testing, handling, storage, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination of any Facility at which Work is performed and any soil or groundwater at the Facility by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances, including any substances regulated under RCRA, CERCLA or any other federal, state or local environmental laws, regulations, statutes, rules, standards or ordinances (collectively called "Hazardous Materials"), including without limitation: ionization smoke detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, and refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that, to the best of its

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knowledge following due inquiry, there are no Hazardous Materials or Oil present where the Work is to be performed. SIEMENS will notify the CLIENT immediately if it discovers or reasonably suspects the presence of any previously undisclosed Oil or Hazardous Material. All Services have been priced and agreed to by SIEMENS in reliance on the CLIENT'S representations as set forth in this Article. The discovery or reasonable suspicion of Hazardous Materials or hazardous conditions at a Facility where SIEMENS is to perform Work, or of contamination of the Facility by Oil or Hazardous Materials not previously disclosed pursuant to Section 11.2, shall entitle SIEMENS to suspend the Work immediately, subject to mutual agreement of terms and conditions applicable to any further Work, or to terminate the Work and to be paid for Work previously performed.

- 11.2 The CLIENT warrants that, prior to the execution of the Agreement, it notified SIEMENS in writing of any and all Oil or Hazardous Materials, to the best of its knowledge following due inquiry, known to be present, potentially present or likely to become present at the Facility and provided a copy of any Facility safety policies and information, including but not limited to lock-out and tag procedures, chemical hygiene plan, material safety data sheets, and other items covered or required to be disclosed or maintained by federal, state, or local laws, regulations or ordinances.
- 11.3 Regardless of whether Oil or Hazardous Material was disclosed pursuant to Section 11.2, the CLIENT shall be solely responsible for properly testing, abating, encapsulating, removing, disposing, remedying or neutralizing such Oil or Hazardous Materials, and for the costs thereof. Even if an appropriate change order has been entered into pursuant to Section 11.1, SIEMENS shall have the right to stop the Work until the Facility is free from Oil or Hazardous Materials. In such event, SIEMENS will receive an equitable extension of time to complete the Work, and compensation for delays caused by Oil or Hazardous Materials remediation. In no event shall SIEMENS be required or construed to take title, ownership or responsibility for such Oil or Hazardous Materials. The CLIENT shall sign any required waste manifests in conformance with all government regulations, listing the CLIENT as the generator of the waste. If someone other than the CLIENT is the generator of the waste, the CLIENT shall arrange for such other person to sign such manifests.
- 11.4 Except where expressly prohibited by law, for separate consideration of \$10 and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the CLIENT shall indemnify, defend and hold SIEMENS harmless from and against any damages, losses, costs, liabilities or expenses (including attorneys' fees) arising out of any Oil or Hazardous Materials or from the CLIENT'S breach of, or failure to perform its obligations under this Article.
- 11.5 For purposes of this Article 11, in the context of the phrase "to the best of its knowledge following due inquiry"; "knowledge" means actual awareness of the facts by the CLIENT'S directors, officers, employees or agents, or the presence of relevant information contained in the CLIENT'S books or records; and, "due inquiry" means inquiry of those persons under the CLIENT'S control who should have knowledge of the subject matter of such inquiry.

Article 12

Miscellaneous Provisions

- 12.1 Notices between the Parties shall be in writing and shall be hand-delivered or sent by certified mail, express courier, or acknowledged telefax properly addressed to the appropriate party. Any such notice shall be deemed to have been received when delivered in-person or when sent by telefax, or five (5) business days subsequent to deposit in the U.S. mails, or one (1) day after deposit with express courier.
- 12.2 Neither the CLIENT nor SIEMENS shall assign or transfer any rights or obligations under this Agreement, except that either party may assign this Agreement to its affiliates and SIEMENS may use subcontractors in the performance of the Work or Services. Nothing contained in this Agreement shall be construed to give any rights or benefits to anyone other than the CLIENT and SIEMENS without the express written consent of both Parties.
- 12.3 This Agreement shall be governed by and construed in accordance with the laws of the state or commonwealth within which the Facilities are located.
- 12.4 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work, the Services, and the termination of this Agreement.
- 12.5 Unless contrary to applicable law and with the exception of disputes arising under Article 4 or Article 9, all disputes not resolved by negotiation between the Parties shall be resolved in accordance with the Commercial Rules of the American Arbitration Association in effect at that time, except as modified herein. All disputes shall be decided by a single arbitrator. A decision shall be rendered by the arbitrator no later than nine months after the demand for arbitration is filed, and the arbitrator shall state in writing the factual and legal basis for the award. No discovery shall be permitted. The arbitrator shall issue a scheduling order that shall not be modified except by the mutual agreement of the Parties.

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The arbitrator shall have no authority to award, and shall not award, attorneys' fees. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter.

- 12.6 SIEMENS' performance of the Work and Services is expressly conditioned on the Parties assenting to all of the terms of this Agreement, notwithstanding any different or additional terms contained in any writing at any time submitted or to be submitted by a Party to the other Party relating to the Work or Services, even if signed by the Parties, unless the written statement expressly indicates that such terms supersede the terms of this Agreement
- 12.7 Any provision of this Agreement found to be invalid, unlawful or unenforceable by a court of law shall be ineffective to the extent of such invalidity, and deemed severed herefrom, without invalidating the remainder of this Agreement. All other provisions hereof shall remain in full force and effect.
- 12.8 The waiver by a party of any breach by the other party of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach hereof. No waiver shall operate or be effective unless made in writing and executed by the party to be bound thereby.
- 12.9 In the event that the applicable law or the CLIENT requires that SIEMENS procure a performance bond and/or a payment bond, SIEMENS shall provide a performance and payment bond in the amount of \$. The performance and payment bond will solely apply to the Work performed during the Construction Period and to the required statutory lien filing period thereafter. The performance and payment bond will not apply to any of the obligations included in the Performance Assurance, Exhibit C. Furthermore, the CLIENT'S funding source may be named as "Co-Obligee" on the performance bond if so requested by the CLIENT.

Article 13

Maintenance Services Program

- 13.1 If applicable, the scope of Services provided by SIEMENS for the Maintenance Services Program is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSP commencement or no later than the first scheduled inspection. Testing and inspection will not be deemed to be complete until all such equipment has been so tested and inspected.
- 13.3 If the equipment is altered or moved by any person, including the CLIENT, other than SIEMENS or a person authorized by SIEMENS, the CLIENT shall immediately notify SIEMENS in writing, and SIEMENS reserves the right to perform a reacceptance test on, or if necessary a re-commissioning of, the system at the CLIENT'S expense.
- 13.4 If SIEMENS reasonably determines as a result of such inspection and/or testing that any equipment requires repair or replacement, the CLIENT will be so notified and shall take corrective action within thirty (30) days, or such equipment shall be removed from coverage hereunder without further action by the Parties. SIEMENS is not liable or responsible for the continued testing, maintenance, repair, replacement or operating capabilities of any portion of the equipment until it has been inspected and/or tested and has been, if necessary, restored to an acceptable initial condition at the CLIENT'S sole expense. Any services provided by SIEMENS in the course of such restoration will be separately charged on a time and materials basis, and not included in fees paid hereunder. If individual items of equipment cannot, in SIEMENS' sole determination, be properly repaired or replaced due to age, obsolescence, lack of availability of refrigerant gas, halon gas, necessary parts, materials, compatibility or otherwise, or as a result of excessive wear or deterioration, SIEMENS may, within ten (10) days of such inspection, give written notice that it is withdrawing such items from coverage under the MSP and adjust the MSP payments due hereunder accordingly.
- 13.5 If the removal of equipment from coverage would compromise or impair the integrity of the Work, Services or compliance with law of any system, then SIEMENS will provide a written statement thereof for execution by the CLIENT. The CLIENT'S failure to execute such statement within ten (10) days will void the MSP and release SIEMENS from any further obligations with respect to the MSP.
- 13.6 If the MSP scope of Services provides for equipment maintenance, repairs and/or replacements of equipment by SIEMENS, those Services are limited to restoring the proper working condition of such equipment. SIEMENS will not be obligated to provide replacement equipment that represents significant capital improvement compared to the original. Exchanged components become the property of SIEMENS, except Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

Article 1: Scope of Work

- 1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide each and every item of cost and expense necessary for:
- 1.2 *Specific Elements:* The Work shall include the following:
 - 1.2.1
 - 1.2.2
 - 1.2.3
 - 1.2.4
- 1.3 *Technical Specifications, Drawings, and Exhibits:* The Work shall be performed in accordance with the following specifications, drawings and other attachments hereto, which are specifically incorporated herein and made part hereof:
 - 1.3.1
 - 1.3.2
- 1.4 CLIENT'S Responsibilities (in addition to those in Article 6 of the Agreement):
 - 1.4.1
- 1.5

Article 2: Work Implementation Period

- 2.1 Commencement of Work (select **one**):
 - 2.1.1 ☐ SIEMENS shall commence the Work on _____, 20__, and shall perform the Work diligently and shall complete the Work no later than _____, 20__;

or,
 - 2.1.1 ☐ SIEMENS shall commence the Work _____ calendar days from the Effective Contract Date, and shall perform the Work diligently and shall complete the Work no later than _____ calendar days from the day of commencement.
- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements are as follows:
- 2.3
- 2.4

Article 3: Scope of Services-Performance Assurance Services Program

3.1

3.2

Article 4: Scope of Services-Maintenance Services Program

(Please check one box only)

☐ CLIENT has elected to self-implement maintenance. Therefore SIEMENS shall not perform any on-going maintenance services, although the Parties may negotiate a separate agreement for such services at a later date. CLIENT agrees that it will maintain the equipment per manufacturer specifications and that it will operate the Equipment in accordance with the Contracted Baseline described in Article 7 of Exhibit C. If CLIENT fails to properly maintain or operate the Equipment, SIEMENS shall have the right to modify the Performance Guarantee pursuant to Article 4 of the Agreement.

☐ The follow consists of the Services to be performed by SIEMENS:

4.1

4.2

Exhibit A - Scope of Work and Services

[Insert CLIENT name here]

By signing below, this Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: [Insert CLIENT name]

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 1: Payment for Scope of Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of Work, the CLIENT shall pay to SIEMENS \$[Insert installation/construction price here] (plus taxes, if applicable).
- 1.2 **Escrow:** The CLIENT has agreed to deposit the Price into an Escrow Account at a financial institution satisfactory to both the CLIENT and SIEMENS. All expenses to establish the Escrow Account shall be the complete responsibility of the CLIENT and the CLIENT will receive all interest earnings from the Escrow Account. SIEMENS will submit periodic invoices to the CLIENT based on the Payment Schedule in Table B.1 below. The CLIENT shall be responsible for submitting the necessary documents to the Escrow Agent to allow for timely disbursements from the Escrow Account. The funding of the Escrow Account in an amount equal to or greater than the Price stated in Article 1.1 above shall be a condition precedent to SIEMENS obligation to perform or to continue the performance of the Work. If the Escrow Account is not funded within _____ days of the execution of this Agreement, this Agreement shall be null and void. This _____ day funding period may be extended as mutually agreed in writing by the Parties. In the event that the Agreement becomes null and void as described in this paragraph and CLIENT has previously authorized SIEMENS to proceed with the Work, the CLIENT shall be obligated to reimburse SIEMENS either: (i) for the Work performed to date; or (ii) for the Work specifically authorized by the CLIENT.
- 1.3 **Timely Payments:** The CLIENT agrees to pay SIEMENS per Table B.1 below. CLIENT agrees to pay all invoices submitted by SIEMENS per Article 8 of the Agreement.

Table B.1 – FIM Work Payment Schedule

[illegible]

Article 1 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: [Insert CLIENT name]

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 2: Payment for Performance Assurance Services Program (PASP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the amounts identified in Table B.2 plus taxes, if applicable, on the dates identified therein.
- 2.2 **Performance Assurance Services Program Term:** The term of the PASP shall commence on the Guarantee Date and shall extend for either: (a) the term of the Performance Guarantee Period where multi-year obligations are allowed; or (b) for twelve (12) month periods corresponding to the term of each Annual Period.
- 2.3 **Automatic Renewal:** Where the PASP term is limited to an Annual Period, the PASP shall automatically renew for successive Annual Periods beginning on the anniversary date of Guarantee Date. Either party may request to amend the PASP at the end of an Annual Period by giving the other party at least sixty (60) days prior written notice of such amendments and such amendment shall be mutually negotiated by the Parties and effective upon a written amendment signed by both Parties prior to commencement of the next Annual Period. Each automatic renewal shall be and remain subject to the terms and conditions of this Agreement. SIEMENS obligations under the Performance Guarantee are dependent upon and subject to the express condition that the CLIENT maintains the PASP during the entire Performance Guarantee Period.
- 2.4 **Termination:** See Section 4.7 of the Agreement.

Table B.2 – Performance Assurance Program Payment Schedule

Date	Amount - Annual Payments (\$)	Notes

Article 2 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: [Insert CLIENT name]

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 3: Payment for Maintenance Services Program (MSP)

- 3.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 4, the CLIENT shall pay to SIEMENS the amounts identified in Table B.3 plus taxes, if applicable, on the dates identified therein.
- 3.2 **Maintenance Services Program Term:** The initial or first term of the MSP shall commence on the Guarantee Date and shall have duration of [Insert number of months] months and shall extend thereafter for the term as identified in Table B.3 and in accordance with Section 3.3 below.
- 3.3 **Automatic Renewal:** Where multi-year obligations are disallowed, the Maintenance Services Program shall automatically renew for successive twelve (12) month periods beginning on the ending anniversary date of the initial or first term as set forth in Article 3.2 above, and each twelve (12) month period thereafter as identified in Table B.3. Either party may request not to renew or to amend the Maintenance Services Program at the end of the initial term or at the end of a renewal term by giving the other party at least sixty (60) days prior written notice of such amendments or intent not to renew. Each renewal shall be and remain subject to the terms and conditions of this Agreement.

Table B.3 – Maintenance Services Program Payment Schedule

Date	Annual Payments (\$)	Notes

Article 3 of Exhibit B is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: [Insert CLIENT name]

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

The following Articles and Tables are hereby included and made part of this Exhibit C:

Article 1: Summary of Articles and Total Guaranteed Savings

Article 1	Summary of Articles and Total Guaranteed Savings
Article 2	Guarantee Savings Types
Article 3	Guarantee Term Responsibilities of CLIENT
Article 4	Measurement and Verification Plan
Article 5	Baseline Data
Article 6	Utility Rate Structures and Escalation Rates
Article 7	Contracted Baseline Data
Appendix 1-	
Appendix 2-	

Table 1.1 – Total Guaranteed Savings (Units)

Performance Period	Electric Energy Saved (kWh)	Electric Power Saved (kW)	Natural Gas Saved (Therms)	No. 2 Fuel Oil Saved (Gallons)	Water Saved (Gallons)
Construction					
Annual Period 1					

Table 1.2 – Total Guaranteed Savings (Cost)

Performance Period	Energy/Utility Savings	Operational Savings	Total Savings
Construction			
Annual Period 1			
Annual Period 2			
Annual Period 3			
Annual Period 4			
Annual Period 5			
Annual Period 6			
Annual Period 7			
Annual Period 8			
Annual Period 9			
Annual Period 10			
TOTALS			

- 1.1 Table 1.1 shows the CLIENT'S guaranteed energy/utility unit Savings for Annual Period 1 of the Agreement. Table 1.2 shows the CLIENT'S guaranteed cost Savings that can be extrapolated from the guaranteed energy/utility unit Savings shown in Table 1.1 by multiplying the energy/utility Savings by the Baseline energy/utility rates including the stipulated Escalation Rates found in Article 6.
- 1.2 SIEMENS cannot and does not predict fluctuations in utility rates or the cost of energy. Therefore, the CLIENT and SIEMENS agree that the energy/utility cost Savings for each Annual Period will be calculated by multiplying the verified units of energy/utility Savings by the Annual Period's stipulated energy/utility rate and Escalation Rates and not the Annual Period's actual utility rate.

Exhibit C – Performance Assurance
[Insert CLIENT name here]

- 1.3 The determination of Energy/Utility Savings will follow current best practice, as defined in the IPMVP, or the FEMP Guidelines where required, unless otherwise agreed to by the Parties.

This Exhibit C comprising of Enter TOTAL number of pages including appendices pages is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT: **[Insert CLIENT name]**

Signature: _____
Printed Name: _____
Title: _____
Date: _____

SIEMENS: **Siemens Industry, Inc.**

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Signature: _____
Printed Name: _____
Title: _____
Date: _____

Article 2: Guaranteed Savings Options

- 2.1 Guarantee Savings Options for Energy/Utility Savings: Utilizing IPMVP, there are four guarantee savings options to measure and verify Energy/Utility Savings: Option A - Retrofit Isolation: Key Parameter Measurement; Option B - Retrofit Isolation: All Parameter Measurement; Option C - Whole Facility; and, Option D – Calibrated Simulation.

Option A - Retrofit Isolation: Key Parameter Measurement. Savings are determined by field measurement of the key performance parameter(s) which define the energy use of the FIM's affected system(s) and/or the success of the project. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the measured parameter, and the length of the reporting period. Parameters not selected for field measurement are estimated. Estimates can be based on historical data, manufacturer's specifications, or engineering judgment. Documentation of the source or justification of the estimated parameter is required. The plausible savings error arising from estimation rather than measurement is evaluated. The predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option B – Retrofit Isolation: All Parameter Measurement. Savings are determined by field measurement of the energy use of the FIM-affected system. Measurement frequency ranges from short-term to continuous, depending on the expected variations in the savings and the length of the reporting period. The predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option C - Whole Facility: Savings are determined by measuring energy use at the whole facility or sub-facility level. Continuous measurements of the entire facility's energy use are taken throughout the reporting period. The predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

Option D - Calibrated Simulation: Savings are determined through simulation of the energy use of the whole facility, or of a sub-facility. Simulation routines are demonstrated to adequately model actual energy performance measured in the facility. This Option usually requires considerable skill in calibrated simulation. The predetermined schedule for data collection, evaluation, and reporting is defined in Exhibit A, Article 3-Performance Assurance Services Program.

2.1.1. Operational Savings: Operational Savings are Stipulated Savings derived from data provided by the CLIENT to SIEMENS that supports the stipulated outcome. Section 2.3 below identifies each source of Operational Savings, the Stipulated Savings, and any applicable Escalation Rate to be applied. The Stipulated Savings applicable to all Annual Periods will be achieved upon completion of the FIM. No further measurement or verification will need to be performed.

2.2 Table 2.1 below summarizes the first Annual Period's Guaranteed Savings (See Article 1, Tables 1.1 and 1.2) utilizing the applicable Options as applied to the referenced FIMs valued pursuant to the agreed upon amounts identified in Article 6 hereof .

Table 2.1 – Savings for First Annual Period by Option

	Energy/Utility Saving \$					Operational Savings \$	
	Guarantee Type Options						
FIM	A Retrofit Isolation: Key Parameter Measurement	B Retrofit Isolation: All Parameter Measurement	C Whole Facility	D Calibrated Simulation	Total Energy/Utility Savings	Operational Savings Stipulated	Total Savings \$
Lighting							
Motors							
Boiler							
HVAC							
TOTALS							

2.3 Table 2.2 identifies the source of Operational Savings defined and quantified by the CLIENT. The Parties affirm that such amounts are Stipulated Savings for purposes of calculating Annual Realized Savings and acknowledge that the Guaranteed Savings identified herein have been based on CLIENT'S affirmation. OPERATIONAL SAVINGS SHALL NOT BE MEASURED OR MONITORED DURING THE PERFORMANCE GUARANTEE PERIOD.

Table 2.2 - Source of Operational Savings

Account/Vendor	Description	Annual Cost \$	# of Annual Periods Savings Are Applied	First Year Annual Savings Allowed

2.4 SIEMENS has explained to the CLIENT and the CLIENT has satisfied itself as to how Operational Savings are incorporated into the Annual Realized Savings.

2.5 The Escalation Rate applicable to the Operational Savings is _____.

BY SIGNING BELOW, THE PARTIES CONFIRM THAT THEY HAVE REVIEWED THE INCLUDED GUARANTEE SAVINGS OPTIONS AND THEIR APPLICATION TO BE USED IN CALCULATING SAVINGS UNDER THE AGREEMENT.

CLIENT: [Insert CLIENT name]

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SIEMENS: Siemens Industry, Inc.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

Article 3: Guarantee Term Responsibilities of the CLIENT

In addition to the CLIENT'S responsibilities under Article 6 of the Agreement, this Article details the responsibilities of the CLIENT in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative at each Facility to coordinate work and provide required data described below.
- 3.2 The CLIENT will provide SIEMENS with accurate facility operating information as defined below and in the Contracted Baseline article of this Exhibit C during each Annual Period, within thirty (30) days of any Material Change that may increase or decrease energy usage.
- 3.3 CLIENT will provide SIEMENS with copies of utility bills within thirty (30) days of receipt by CLIENT or provide access to utility vendor information.
- 3.4 If required for the Work, CLIENT will provide telephone/data remote access, through SIEMENS Insight® software package or otherwise, as SIEMENS reasonably requests. All charges related to telephone/data line installation, activation and communication services are the responsibility of the CLIENT.
- 3.5 If required for the Work, CLIENT will provide and coordinate utility meter upgrade for interface with SIEMENS metering and data collection. All charges related for these upgrades are the responsibility of the CLIENT.

Article 4: Measurement and Verification Plan

The following information is applicable to this Agreement:

- Article 4.1 General Overview
- Article 4.2 Option A - Retrofit Isolation: Key Parameter Measurement
- Article 4.3 Option B - Retrofit Isolation: All Parameter Measurement
- Article 4.4 Option C - Whole Facility
- Article 4.5 Option D - Calibrated Simulation
- Article 4.6 Other

4.1 General Overview –

The purpose of the Measurement and Verification (M&V) Plan is to identify the methods, measurements, procedures and tools that will be used to verify the Savings for each FIM which has Energy/Utility Savings. Savings are determined by comparing prior usage, consumption or efficiencies defined as the Baseline to the selected FIMs being implemented against the post FIM implementation usage, consumption or efficiencies. The Baseline usage, consumption or efficiencies is described in this Exhibit C, Article 5. The usage, consumption or efficiencies associated with the FIM implementation is defined as the Contracted Baseline, and are described in this Exhibit C, Article 7.

4.2 Option A - Retrofit Isolation: Key Parameter Measurement

4.2.1 [FIM Name or Type]

Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.2.2 [FIM Name or Type]

Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.2.3 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.2.4 [FIM Name or Type]

4.2.5 [FIM Name or Type]

4.3 **Option B - Retrofit Isolation: All Parameter Measurement**

4.3.1 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.3.2 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.3.3 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.3.4 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

Specifications on Measurement Tools

4.3.5 [FIM Name or Type]

4.3.6 [FIM Name or Type]

4.4 **Option C - Whole Facility**

4.4.1 General. Except as otherwise provided, energy Savings will be calculated for each month of each Annual Period as the product of (a) “units of energy saved” (kWh, Therms, GJ, etc.) multiplied by (b) “cost of energy”.

(a) Units of energy saved are computed by the “Metrix™” software application. “Metrix™” is an accounting software application copyrighted by Optimum Energy Products, Ltd. Units of energy saved are calculated by subtracting current period measured units of energy consumed from the adjusted Baseline units of energy defined in Article 5. Adjustments to the Baseline energy units are based on factors such as weather, occupancy, operating hours, etc., and changes to the Contracted Baseline conditions and operating practices as defined in Article 7).

(b) Costs of energy are defined in Article 6, Utility Rate Structures and Escalation Rates.

4.4.2 Sources of Data. For each month of the base year and each month of the term of the Agreement, data shall be obtained as follows:

- (a) Weather - weather data shall be obtained from the National Weather Service, NOAA or Accuweather for the nearest weather station to the Facility.
- (b) Energy Use -
 - 1. Electricity usage data shall be obtained from the electric utility bills. Since meters are not usually read on the same day each month, monthly usage shall be determined by apportioning billed usage assuming a constant daily usage between meter readings. Usage for most months will, therefore, be derived from two bills. Before the Effective Contract Date, the Parties will have agreed on which bill to consider predominant, i.e. to classify as the "month" by name only.
 - 2. Utility rates and costs used for Savings calculations are outlined in Exhibit C, Article 6, Utility Rate Structures.
 - 3. Natural gas, oil, purchased steam, water and other purchased utilities usage's shall be determined by the method described above for electricity.

4.4.3 Metrix™ Calculations. The Tuning Period's utility data and weather parameters will be entered into Metrix™ or calculated using a substantially similar algorithm. Metrix™ will adjust the Tuning Period Data based on weather and operational conditions during the Annual Period to estimate the energy and energy costs of the Facility had SIEMENS not performed the Work (the "Baseline").

SIEMENS will adjust energy Savings for variations in energy consumption due to

- (a) Local weather conditions.
- (c) Occupancy level changes, hours of operation,
- (d) Structural modifications, modifications to energy consuming equipment,
- (e) Damaged or malfunctioning equipment, and
- (f) Any variances from the proposed operating schedules, strategies and conditions upon which the calculated Savings are based on, and described in the Exhibit C, Article 7, "Contracted Baseline" that could affect energy usage.

There may be changes in the Facility's usage and operation for which a calculated adjustment is necessary. Either the CLIENT or SIEMENS may propose an adjustment procedure based upon acceptable engineering practices to account for any such changes.

The Baseline for each month of the Annual Period for each energy type (excluding kW demand adjustments) will be calculated as follows:

$$BL = B \times (T_i - T_{i-1}) + C_H \times HDD_{BH,i} + C_c \times CDD_{BC,i} + C_1 \times U_{1,i} + C_2 \times U_{2,i} + C_3 \times U_{3,i}$$

where:

BL	=	Baseline (Utility Units) Adjusted
B	=	Baseload consumption per unit time (Utility Units/day)
$T_i - T_{i-1}$	=	time interval between date T_i and T_{i-1} (days)
C_H, C_c	=	Coefficients for Heating and Cooling Degree-days (Utility units/deg-day)
$HDD_{BH,i}$	=	Time history of Heating degree-days (°F-day or °C-day)
$CDD_{BC,i}$	=	Time history of Cooling degree-days (°F-day or °C-day)

BH, BC = Heating and Cooling degree-day base temperatures (°F-day or °C-day)

C₁, C₂, C₃ = Coefficients for user variables 1,2,3 (e.g. occupancy/schedule, space utilization, added load)

U_{1,i}, U_{2,i}, U_{3,i} = Coefficients for user variables 1,2,3

The Baseline for each month of the Annual Period for each energy type for kW demand adjustments will be calculated as follows:

$$D_{Bi} = B + C_H \times HDD_{BH,i} + C_C \times CDD_{BC,i} + C_1 \times U_{1,i} + C_2 \times U_{2,i} + C_3 \times U_{3,i}$$

where:

B = Baseload consumption per unit time (Utility Units/day)

T_i - T_{i-1} = time interval between date T_i and T_{i-1} (days)

C_H, C_C = Coefficients for Heating and Cooling Degree-days (Utility units/deg-day)

HDD_{BH,i} = Time history of Heating degree-days (°F-day or °C-day)

CDD_{BC,i} = Time history of Cooling degree-days (°F-day or °C-day)

BH, BC = Heating and Cooling degree-day base temperatures (°F-day or °C-day)

C₁, C₂, C₃ = Coefficients for user variables 1,2,3 (e.g. occupancy/schedule, space utilization, added load)

U_{1,i}, U_{2,i}, U_{3,i} = Coefficients for user variables 1,2,3

Energy Unit Savings

Monthly energy Savings will be calculated as follows:

$$ES = BL - AU \text{ kWh} \quad \text{and} \quad DS = D_{Bi} - D_p \text{ kW}$$

where:

ES = monthly unit energy Savings

BL = Baseline (Adjusted)

AU = post retrofit monthly energy usage

D_{Bi} = adjusted demand

DS = kW demand Savings

D_p = post retrofit kW demand usage

Cost Savings

The energy costs avoided will be calculated as follows:

$$CS/\text{month} = \$(DS \times dr) + \$(ES \times uc) + Os$$

where:

Os = Other related Savings attributable to the conservation program

CS = monetary Savings/month

dr = The stipulated demand rate for the energy unit after the Escalation Rate is applied.

uc = The stipulated rate for unit of consumption calculated as follows:

For energy sources the cost of which decreases with increasing usage, the marginal unit cost from the month's bill. For electricity, this marginal cost shall be determined for energy (starting with the amount paid for the last kilowatt-hour

purchased including fuel adjustment cost) and demand (amount paid for the last kilowatt purchased) including, if applicable, the effect of demand on the energy cost.

For energy sources the cost of which does not decrease with increasing usage, the average unit cost of all deliveries received during the month.

If the Work results in a change of energy source (e.g. conversion from electric to gas heat), or where the level of usage changes enough to affect the marginal cost, or where utilities have changed rate structures, SIEMENS shall modify the calculations procedure to appropriately adjust for the change.

If a rate structure change eliminates a component of the bill previously charged for (e.g. kW, kVAR, transportation or Power Factor,) then the elimination of that charge will be calculated as a Savings and added to the monetary Savings.

4.4.4

4.4.5

4.5 **Option D – Calibrated Simulation**

4.5.1 [FIM Name or Type]

Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

4.5.2 [FIM Name or Type]

Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

4.5.3 [FIM Name or Type]

Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

4.5.4 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

4.5.5 [FIM Name or Type]
Description

Calculations

Calculations Variables Index

Measurement or Reference Tables

Responsibility for SIEMENS and CLIENT

4.5.6 [FIM Name or Type]

4.5.7 [FIM Name or Type]

4.6 Other

4.6.1 [FIM Name or Type]

Article 5: Baseline Data

- 5.1 The year(s) selected as the Baseline Period starts on _____ and ends on _____. Table 5.1 outlines the utility consumption that occurred during this Baseline Period. This Baseline Period's Facility utility consumption will be used as the reference for comparing the actual Facility utility consumption during the Performance Guarantee Period in order to determine the Actual Realized Savings.

Table 5.1 – Baseline Utility Consumption													
	Units	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Electric	kWh												
Electric	kW												
N. Gas	Therm												
Oil	Gal												
Water	kGal												
Sewer	kGal												
Other													

- 5.2 The operating practices during the Baseline Period determine the utility consumption shown in Table 5.1. This data indicates the operating characteristics that were in effect during the Baseline Period. The Guaranteed Savings provided under this Agreement are based on the efficiencies gained by implementing the Work and implementing the Contracted Baseline in Article 7 of this Exhibit C.

Table 5.2.x Summer/Winter Operating Hours

Day of Week	Occupied Run Hours	Unoccupied Run Hours		
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 5.2.x Summer/Winter Operating Temperatures

Day of Week	Occupied Minimum DEG	Occupied Maximum DEG	Unoccupied Minimum DEG	Unoccupied Maximum DEG
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 5.2.x Equipment Summer/Winter Operating Parameters

Day of Week	Occupied	Occupied	Unoccupied	Unoccupied
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 5.2.x Occupancy Summer/Winter

Day of Week	Day	Afternoon	Night	
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

5.3 Applicable codes - Federal, State (Provincial), County or Municipal codes or regulations are applicable to the use and operation of the Facility. SIEMENS will maintain the current level of Facility compliance relative to applicable codes unless specifically outlined to the contrary below. Unless specifically set forth in the Scope of Work and Services, Exhibit A, nothing herein should be construed as to require SIEMENS to provide additional work or services in the event that the current applicable code or regulation is modified.

5.3.1 Current code compliance (identify the applicable code citation):

- a.
- b.

5.3.2 Code changes:

5.4 Building Inventory - The following information summarizes the equipment inventory that existed in the Facility during the Baseline period.

5.5

5.6

Article 6: Utility Rate Structures and Escalation Rates

- 6.1 Utility costs used for Savings calculations will be based on the utility rates and rate escalation percentages provided in the tables below. The rate identified below is a stipulated rate, and is shown below for each utility. An escalation rate (noted below for each utility) applied per Annual Period will be applied to the below stipulated utility rates.

Table 6.1.1 Electricity

Tariff Number or Designation:

Utility Name:

Rate Structure: \$ per kWh
\$ per kW

Rate Escalation: % per Annual Period

Table 6.1.2 Natural gas

Tariff Number or Designation:

Utility Name:

Rate Structure: \$ per Therm

Rate Escalation: % per Annual Period

Table 6.1.3 Water

Tariff Number or Designation:

Utility Name:

Rate Structure: \$ per kgallon

Rate Escalation: % per Annual Period

Table 6.1.4 Sewer

Tariff Number or Designation:

Utility Name:

Rate Structure: \$ per kgallon

Rate Escalation: % per Annual Period

6.2

6.3

Article 7: Contracted Baseline Data

7.1 The following tables detail the Facility operating parameters that are required to be implemented on the Guarantee Date or on such time as agreed upon by the Parties. This specific configuration of Facility operating parameters is the Contracted Baseline and failure of the CLIENT to maintain the Contracted Baseline may result in a Material Change which may require a modification of the Performance Guarantee pursuant to Article 4 of the Agreement.

Table 7.1.x Summer/Winter Operating Hours

Day of Week	Occupied Run Hours	Unoccupied Run Hours		
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 7.1.x Summer/Winter Operating Temperatures

Day of Week	Occupied Minimum DEG	Occupied Maximum DEG	Unoccupied Minimum DEG	Unoccupied Maximum DEG
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 7.1.x Equipment Summer/Winter (from month to month) Operating Parameters

Day of Week	Occupied Minimum CFM/BTU/GPM (L/s/MJ/L/s)	Occupied Maximum CFM/BTU/GPM (L/s/MJ/L/s)	Unoccupied Minimum CFM/BTU/GPM (L/s/MJ/L/s)	Unoccupied Maximum CFM/BTU/GPM (L/s/MJ/L/s)
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

Table 7.2.x Occupancy Summer/Winter

Day of Week	Day	Afternoon	Night	
Monday				
Tuesday				
Wednesday				
Thursday				
Friday				
Saturday				
Sunday				
Holiday				

7.2

7.3

7.4



McAlester City Council

AGENDA REPORT

Meeting Date:	<u>January 12, 2010</u>	Item Number:	<u>7</u>
Department:	<u>Utilities</u>		
Prepared By:	<u>David Medley, P.E.</u>	Account Code:	<u>30-5211403</u>
Date Prepared:	<u>December 28, 2009</u>	Budgeted Amount:	<u>N/A</u>
		Exhibits:	<u>Three</u>

Subject

Consider, and act upon, Change Order No. 3 for the 14th St. & Village Blvd. Utility Extensions Project with Bravo Construction Inc. of Wilburton, Oklahoma.

Recommendation

Motion to approve Change Order No.3 to the 14th St. & Village Blvd. Utility Extensions to add an additional 34 days to the Contract time to allow time due to inclement weather conditions.

Discussion

This Change Order adjusts the Contract completion date to February 19, 2010. No additional project cost is associated with this Change Order.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	DRM	12/27/09
City Manager	PJS <i>PJS</i>	01/05/10



MEHLBURGER BRAWLEY

THE MERGING OF NRS, INC.
THE MEHLBURGER FIRM • BRAWLEY ENGINEERING CORP.

December 21, 2009

David Medley, Utilities Director
City of McAlester
P. O. Box 578
McAlester, OK 74502-0578

Re: Change Order No. Three (3)
14th Street & Village Boulevard Utility Extensions

Dear Mr. Medley:

Enclosed for your review and execution are four (4) copies of Change Order No. Three (3), which adds additional time to account for the unforeseen delays during the project.

Please place this item on the agenda for approval at your next meeting and upon approval please sign all four (4) copies. Please return three (3) copies to our office located at 719 S. George Nigh Expressway, McAlester, OK 74501 for distribution. Retain one (1) copy for your records.

Should you have any questions, please do not hesitate to contact our office at (918) 420-5500.

Sincerely,

Mehlburger Brawley, Inc.

Robert Vaughan, P.E.
Project Manager

RV/ss
Enclosures

Project No. MC-09-01

cc w/enclosure:

Kenneth Little, Construction Manager, Mehlburger Brawley, Inc.
Roger C. Ford, President, Mehlburger Brawley, Inc.

Change Order

No. Three (3)

Date of Issuance: December 22, 2009 Effective Date: December 22, 2009

Project: 14 th Street & Village Blvd Utility Extensions	Owner: City of McAlester	Owner's Contract No.:
Contract: 14 th Street & Village Blvd Utility Extensions		Date of Contract: July 1, 2009
Contractor: Bravo Construction Inc.		Engineer's Project No.: MC-09-01

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Add 34 days to contract for precipitation and weather related conditions that prohibit performance of work.

Attachments: (List documents supporting change): Contractors letters dated October 12, 2009 and December 7, 2009.

CHANGE IN CONTRACT PRICE:	CHANGE IN CONTRACT TIMES:
Original Contract Price: <u>\$228,068.19</u>	Original Contract Times: <input type="checkbox"/> Working days <input checked="" type="checkbox"/> Calendar days Substantial completion (days and date): <u>90 Days (October 26, 2009)</u>
Increase from previously approved Change Orders No. <u>One</u> to No. <u>Two</u> : <u>\$242,126.02</u>	Increase from previously approved Change Orders No. One to No. Two: Substantial completion (days): <u>82 Days</u>
Contract Price prior to this Change Order: <u>\$470,194.21</u>	Contract Times prior to this Change Order: Substantial completion (days): <u>172 Days</u>
Increase of this Change Order: <u>\$-0-</u>	Increase of this Change Order: Substantial completion (days) <u>34 Days</u>
Contract Price incorporating this Change Order: <u>\$470,194.21</u>	Contract Times with all approved Change Orders: Substantial completion (days and date): <u>206 Days (February 19, 2010)</u>

RECOMMENDED:

By:

Date:



ACCEPTED:

By:

Date:

Owner (Authorized Signature)

ACCEPTED:

By:

Date:

Contractor (Authorized Signature)

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: October 12, 2009

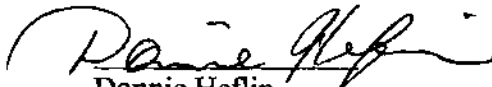
Dear: Mr. Vaughan:

According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

Bravo Construction Inc. is requesting 22 days of extension for the time period of July 27, 2009 to October 12, 2009. 11 days for days of 0.5" or more of rain and 11 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,



Donnie Heflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
OCT 14 2009

BY:

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: December 7, 2009

Dear: Mr. Vaughan:

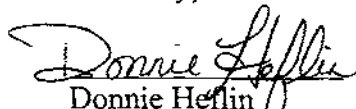
According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

12

Bravo Construction Inc. is requesting ~~23~~ 12 days of extension for the time period of October 12, 2009 to December 6, 2009. 6 days for days of 0.5" or more of rain and 6 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,


Donnie Hefflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
DEC 09 2009

BY:

MESONET CLIMATOLOGICAL DATA SUMMARY										October 2009		Time Zone: Midnight-Midnight CST									
(MCAL) McAlester										Nearest City: 4.0 S McAlester		County: Pittsburg									
Latitude: 34-52-56										Longitude: 95-46-51		Elevation: 755 feet									
DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES				
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN	
1	84	53	70.5	58.3	0	3	92	37	67	0.21	29.00	29.80	S	10.4	28.7	10.03	70.0	68.1	76	61	
2	73	42	55.9	39.0	7	0	95	21	61	0.00	29.15	29.95	NA	4.1	17.4	20.64	66.4	62.1	71	55	
3	74	40	57.7	46.2	8	0	98	32	71	0.11	29.13	29.93	NA	2.3	11.3	16.35	65.6	62.2	71	53	
4	58	55	56.1	53.8	9	0	96	88	92	0.31	29.11	29.92	E	6.6	23.0	4.55	65.7	61.9	64	60	
5	61	54	57.7	56.1	7	0	97	85	94	0.83	29.10	29.90	ESE	4.2	17.2	3.89	64.7	61.6	64	59	
6	69	50	62.5	58.7	6	0	97	67	88	1.03	29.08	29.88	N	7.4	26.8	5.48	65.6	64.1	67	61	
7	64	46	55.5	50.7	10	0	96	49	85	0.11	29.24	30.05	NA	2.9	12.1	6.27	63.7	60.4	64	56	
8	85	57	72.1	66.7	0	6	96	62	84	2.79	28.99	29.80	S	10.0	35.2	7.67	66.8	67.6	74	61	
9	57	48	50.3	47.0	12	0	96	79	89	1.21	29.19	30.00	N	10.0	24.6	2.54	61.3	59.8	67	55	
10	52	44	48.9	44.2	17	0	92	78	84	0.00	29.37	30.18	NA	2.9	12.6	3.68	59.6	55.6	58	54	
11	56	46	51.2	47.8	14	0	97	74	89	0.07	29.35	30.16	NA	3.5	13.3	5.14	60.0	56.9	60	54	
12	62	52	57.0	55.0	8	0	97	81	93	0.18	29.24	30.06	NA	3.0	9.7	5.51	61.4	60.0	64	57	
13	65	58	61.4	60.2	3	0	98	90	96	0.16	29.21	30.02	NA	3.2	10.7	3.49	63.3	62.6	65	60	
14	64	56	60.3	59.4	5	0	98	92	97	0.08	29.11	29.91	NA	3.7	13.7	3.94	64.3	63.6	66	62	
15	58	50	52.7	50.3	11	0	98	84	92	0.59	29.12	29.93	N	9.9	23.0	3.64	62.4	59.2	63	56	
16	64	42	52.0	44.2	12	0	97	48	77	0.00	29.38	30.19	NA	7.0	23.0	17.64	60.4	57.4	65	52	
17	59	37	47.7	41.2	17	0	99	51	80	0.00	29.56	30.38	NA	4.0	18.6	12.79	59.2	55.1	61	50	
18	65	34	50.6	41.0	16	0	99	45	73	0.00	29.48	30.30	NA	5.4	20.7	17.49	57.8	54.0	63	46	
19	74	52	61.8	49.8	2	0	80	49	66	0.00	29.24	30.05	S	9.9	27.7	16.89	59.8	57.7	66	51	
20	77	59	67.0	54.8	0	3	83	46	66	0.00	29.17	29.98	S	9.9	28.5	16.72	62.2	61.5	69	56	
21	69	62	64.6	58.2	0	0	96	72	80	0.72*	29.10	29.90	SE	7.7	25.4	4.51	63.2	62.1	65	60	
22	64	47	55.9	52.5	9	0	98	75	89	1.41*	28.94	29.75	WNW	8.4	24.1	5.00	63.3	61.3	65	56	
23	52	36	45.4	38.4	21	0	99	63	77	0.00	29.08	29.89	NA	9.0	22.4	5.58	57.7	53.1	56	49	
24	69	34	53.5	41.6	13	0	99	37	69	0.00	29.10	29.90	SSW	6.0	20.7	16.21	56.8	53.3	62	45	
25	66	57	60.6	52.8	4	0	96	61	76	0.42	29.07	29.88	S	7.6	27.6	3.90	59.1	56.7	59	53	
26	57	49	50.5	48.9	12	0	96	89	94	0.52*	29.25	30.06	N	9.2	26.8	1.73	58.6	55.4	59	53	
27	61	46	51.4	46.2	11	0	97	51	84	0.55*	29.02	29.82	SE	5.3	16.4	11.60	57.8	56.3	64	53	
28	66	47	59.2	50.9	8	0	90	57	75	0.00	28.93	29.73	SE	8.4	27.2	9.75	58.3	56.2	61	51	
29	76	51	65.3	60.7	1	0	95	71	85	0.67*	28.82	29.62	SSE	10.3	30.8	4.43	62.7	63.2	68	59	
30	60	42	51.3	37.3	14	0	85	33	62	0.00	29.06	29.86	WSW	9.0	26.2	14.16	59.9	56.3	62	51	
31	71	37	51.7	38.1	11	0	94	28	66	0.00	29.26	30.08	NA	4.1	17.9	15.59	57.2	53.7	63	47	
	66	48	56.7	50.0	<- Monthly Averages ->						29.16	29.96	NA	6.6	35.2	8.93	61.8	59.3	65	55	
Temperature - Highest: 85 Lowest: 34					Degree Days - Total HDD: 271 Total CDD: 13					Number of Days With: Tmax ≥ 90: 0 Rainfall ≥ 0.01 inch: 19 Tmax ≤ 32: 0 Rainfall ≥ 0.10 inch: 17 Tmin ≤ 32: 0 Avg Wind Speed ≥ 10 mph: 4 Tmin ≤ 0: 0 Max Wind Speed ≥ 30 mph: 2											
Rainfall: Monthly Total: 11.97 in. Greatest 24 Hr: 2.79 in.					Humidity - Highest: 99 Lowest: 21																

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

November 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN (in)	PRESSURE (in)		WIND SPEED (mph)			SOLAR (MJ/m2)	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG		STN	MSL	DIR	AVG	MAX		SOD	BARE	MAX	MIN
1	76	41	58.0	41.7	7	0	97	25	61	0.00	29.33	30.14	NA	4.4	16.5	15.51	58.2	55.7	64	49
2	76	42	58.9	44.5	6	0	97	27	64	0.00	29.39	30.20	NA	3.2	15.2	15.12	59.0	57.1	66	50
3	72	41	58.4	45.0	8	0	90	40	63	0.00	29.45	30.27	NNE	4.1	13.7	14.85	59.5	57.5	66	51
4	76	46	60.2	47.5	4	0	96	35	66	0.00	29.49	30.30	NA	3.8	13.7	14.41	60.1	58.4	67	52
5	74	44	59.3	46.2	6	0	93	39	65	0.00	29.50	30.32	NA	5.1	17.0	14.35	60.1	57.9	66	52
6	77	56	65.4	49.8	0	2	86	32	60	0.00	29.29	30.10	S	9.8	29.6	14.67	60.8	58.8	65	54
7	76	57	64.9	53.6	0	2	85	47	68	0.00	29.22	30.03	SSW	9.2	25.4	14.58	61.6	59.8	67	55
8	70	57	62.9	55.6	1	0	92	59	78	0.00	29.28	30.09	S	6.0	17.8	6.31	61.6	59.3	64	56
9	76	50	63.4	54.5	2	0	95	45	75	0.00	29.38	30.19	NA	3.4	12.7	9.26	62.9	61.9	69	58
10	73*	47*	58.9*	52.5*	5*	0*	98*	53*	81*	0.00*	29.44*	30.25*	NA	5.2*	18.1*	10.59*	61.9*	59.5*	67*	55*
11	69	47	57.2	49.8	7	0	98	46	78	0.00	29.43	30.24	NA	4.1	15.3	12.00	62.0	59.5	67	56
12	67	43	55.8	45.4	10	0	98	47	71	0.00	29.22	30.03	NA	5.1	19.5	10.99	60.2	56.4	62	52
13	70	53	60.8	49.3	4	0	76	56	66	0.00	29.00	29.80	S	9.6	27.7	8.53	59.8	56.0	61	52
14	74	57	64.6	55.4	0	0	87	53	73	0.00	29.02	29.83	S	6.3	22.7	9.75	62.1	60.0	66	56
15	66	52	58.9	56.8	6	0	97	86	93	0.17	29.10	29.91	S	6.3	25.5	1.83	62.3	59.8	62	57
16	52	40	43.5	37.4	19	0	98	65	80	0.01	29.27	30.08	NW	13.2	28.0	2.59	56.8	51.6	58	47
17	45	39	42.8	35.0	23	0	89	66	74	0.00	29.25	30.06	NW	9.5	25.9	2.41	52.6	46.9	48	46
18	59	36	46.8	33.6	17	0	92	32	62	0.00	29.21	30.02	NA	3.4	13.2	12.98	54.0	49.7	58	45
19	69	37	56.3	43.2	12	0	78	49	62	0.00	29.20	30.00	S	6.3	23.8	10.69	54.7	51.0	58	44
20	58	53	56.0	51.4	9	0	96	67	85	0.05	29.26	30.08	NA	3.1	13.0	1.86	57.6	54.7	57	53
21	64	44	53.6	43.9	11	0	97	27	74	0.01	29.22	30.03	NA	2.7	10.7	7.78	58.4	55.3	60	51
22	67	39	51.1	40.8	12	0	98	34	72	0.00	29.15	29.96	NA	3.0	16.0	12.38	56.4	52.4	60	47
23	63	41	53.4	48.4	13	0	98	64	84	0.09	29.14	29.95	NA	5.7	22.3	11.24	56.4	52.8	59	47
24	58	33	46.7	34.8	20	0	94	30	67	0.01	29.30	30.11	NW	8.3	26.1	12.41	55.7	51.3	56	45
25	65	28	45.3	28.1	19	0	94	18	58	0.00	29.36	30.18	NA	6.4	20.0	12.60	52.3	46.7	55	41
26	57	26	39.3	25.7	24	0	95	24	64	0.00	29.43	30.24	NA	3.7	16.4	12.84	51.0	44.9	53	39
27	71	36	53.6	31.8	11	0	79	21	47	0.00	29.25	30.06	SSW	6.5	19.9	12.39	51.6	46.9	55	41
28	68	48	57.8	44.1	7	0	77	43	61	0.00	29.09	29.90	S	9.4	26.5	11.79	54.3	50.8	58	45
29	61	40	50.8	47.2	14	0	94	73	88	0.30	29.13	29.94	N	10.0	25.4	1.28	55.9	52.4	56	47
30	53	29	40.7	32.1	24	0	97	36	75	0.01	29.36	30.17	NA	4.5	15.7	12.39	51.9	46.8	54	42
	67* 43* 54.8* 44.2*				<- Monthly Averages ->						29.27* 30.08*		NA 6.0* 29.6*			10.35*	57.7* 54.4* 61* 49*			
Temperature - Highest: 77* Lowest: 26*					Degree Days - Total HDD: 302* Total CDD: 4*					Number of Days With: Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 8* Tmax ≤ 32: 0* Rainfall ≥ 0.10 inch: 2* Tmin ≤ 32: 3* Avg Wind Speed ≥ 10 mph: 2* Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*										
Rainfall: Monthly Total: 0.65* in. Greatest 24 Hr: 0.30* in.					Humidity - Highest: 98* Lowest: 18*															

MESONET CLIMATOLOGICAL DATA SUMMARY										December 2009		Time Zone: Midnight-Midnight CST								
(MCAL) McAlester										Nearest City: 4.0 S McAlester		County: Pittsburg								
Latitude: 34-52-56										Longitude: 95-46-51		Elevation: 755 feet								
DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN (in)	PRESSURE (in)		WIND SPEED (mph)			SOLAR (MJ/m2)	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG		STN	MSL	DIR	AVG	MAX		SOD	BARE	MAX	MIN
1	55	28	41.2	31.1	24	0	97	25	72	0.11	29.11	29.91	NA	3.0	12.6	7.52	50.0	44.6	51	39
2	44	33	39.7	34.3	27	0	92	63	81	0.20	28.98	29.78	NNW	10.4	28.5	2.14	49.3	44.1	47	40
3	40	26	32.7	18.9	32	0	78	37	58	0.00	29.41	30.22	NNW	8.8	22.5	7.89	45.5	38.4	42	36
4	38	18	26.4	14.3	37	0	92	27	64	0.00	29.48	30.30	NA	3.0	12.9	11.33	43.6	37.4	43	35
5	45	17	33.8	16.4	34	0	91	32	51	0.00	29.30	30.11	S	7.4	25.0	12.03	42.6	36.8	42	35
6	42	35	38.1	30.9	27	0	98	45	77	0.01	29.20	30.01	SSE	6.8	22.2	1.67	43.4	37.9	40	35
7	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
9	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
11	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
12	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
13	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
14	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
15	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
16	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
17	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
18	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
19	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
21	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
22	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
26	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
27	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
28	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
29	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
30	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
31	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	44*	26*	35.3*	24.3*	<- Monthly Averages ->						29.25* 30.06*		NA	6.5*	28.5*	7.10*	45.7*	39.8*	44*	37*
Temperature - Highest: 55*							Degree Days - Total HDD: 180*					Number of Days With:								
Lowest: 17*							Total CDD: 0*													
Rainfall: Monthly Total: 0.32* in.							Humidity - Highest: 98*													
Greatest 24 Hr: 0.20* in.							Lowest: 25*													
													Tmax >= 90: 0*							
													Rainfall >= 0.01 inch: 3*							
													Tmax <= 32: 0*							
													Rainfall >= 0.10 inch: 2*							
													Tmin <= 32: 4*							
													Avg Wind Speed >= 10 mph: 1*							
													Tmin <= 0: 0*							
													Max Wind Speed >= 30 mph: 0*							

Change Order

No. Three (3)

Date of Issuance: December 22, 2009 Effective Date: December 22, 2009

Project: 14 th Street & Village Blvd Utility Extensions	Owner: City of McAlester	Owner's Contract No.:
Contract: 14 th Street & Village Blvd Utility Extensions		Date of Contract: July 1, 2009
Contractor: Bravo Construction Inc.		Engineer's Project No.: MC-09-01

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Add 34 days to contract for precipitation and weather related conditions that prohibit performance of work.

Attachments: (List documents supporting change): Contractors letters dated October 12, 2009 and December 7, 2009.

CHANGE IN CONTRACT PRICE:

Original Contract Price:
\$228,068.19

Increase from previously approved Change Orders
No. One to No. Two:
\$242,126.02

Contract Price prior to this Change Order:
\$470,194.21

Increase of this Change Order:
\$-0-

Contract Price incorporating this Change Order:
\$470,194.21

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days
Substantial completion (days and date): 90 Days (October 26, 2009)

Increase from previously approved Change Orders
No. One to No. Two:
Substantial completion (days): 82 Days

Contract Times prior to this Change Order:
Substantial completion (days): 172 Days

Increase of this Change Order:
Substantial completion (days) 34 Days

Contract Times with all approved Change Orders:
Substantial completion (days and date): 206 Days (February 19, 2010)

RECOMMENDED:

By: _____



Date: _____

ACCEPTED:

By: _____

Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: 12/16/09

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: October 12, 2009

Dear: Mr. Vaughan:

According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

Bravo Construction Inc. is requesting 22 days of extension for the time period of July 27, 2009 to October 12, 2009. 11 days for days of 0.5" or more of rain and 11 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,



Donnie Heflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
OCT 14 2009

BY:

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: December 7, 2009

Dear: Mr. Vaughan:

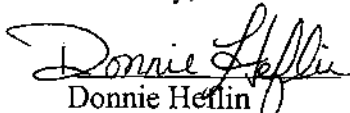
According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

12

Bravo Construction Inc. is requesting ~~28~~ days of extension for the time period of October 12, 2009 to December 6, 2009. 6 days for days of 0.5" or more of rain and 6 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,


Donnie Hefflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
DEC 09 2009

BY:

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

October 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN
1	84	53	70.5	58.3	0	3	92	37	67	0.21	29.00	29.80	S	10.4	28.7	10.03	70.0	68.1	76	61
2	73	42	55.9	39.0	7	0	95	21	61	0.00	29.15	29.95	NA	4.1	17.4	20.64	66.4	62.1	71	55
3	74	40	57.7	46.2	8	0	98	32	71	0.11	29.13	29.93	NA	2.3	11.3	16.35	65.6	62.2	71	53
4	58	55	56.1	53.8	9	0	96	88	92	0.31	29.11	29.92	E	6.6	23.0	4.55	65.7	61.9	64	60
5	61	54	57.7	56.1	7	0	97	85	94	0.83	29.10	29.90	ESE	4.2	17.2	3.89	64.7	61.6	64	59
6	69	50	62.5	58.7	6	0	97	67	88	1.03	29.08	29.88	N	7.4	26.8	5.48	65.6	64.1	67	61
7	64	46	55.5	50.7	10	0	96	49	85	0.11	29.24	30.05	NA	2.9	12.1	6.27	63.7	60.4	64	56
8	85	57	72.1	66.7	0	6	96	62	84	2.79	28.99	29.80	S	10.0	35.2	7.67	66.8	67.6	74	61
9	57	48	50.3	47.0	12	0	96	79	89	1.21	29.19	30.00	N	10.0	24.6	2.54	61.3	59.8	67	55
10	52	44	48.9	44.2	17	0	92	78	84	0.00	29.37	30.18	NA	2.9	12.6	3.68	59.6	55.6	58	54
11	56	46	51.2	47.8	14	0	97	74	89	0.07	29.35	30.16	NA	3.5	13.3	5.14	60.0	56.9	60	54
12	62	52	57.0	55.0	8	0	97	81	93	0.18	29.24	30.06	NA	3.0	9.7	5.51	61.4	60.0	64	57
13	65	58	61.4	60.2	3	0	98	90	96	0.16	29.21	30.02	NA	3.2	10.7	3.49	63.3	62.6	65	60
14	64	56	60.3	59.4	5	0	98	92	97	0.08	29.11	29.91	NA	3.7	13.7	3.94	64.3	63.6	66	62
15	58	50	52.7	50.3	11	0	98	84	92	0.59	29.12	29.93	N	9.9	23.0	3.64	62.4	59.2	63	56
16	64	42	52.0	44.2	12	0	97	48	77	0.00	29.38	30.19	NA	7.0	23.0	17.64	60.4	57.4	65	52
17	59	37	47.7	41.2	17	0	99	51	80	0.00	29.56	30.38	NA	4.0	18.6	12.79	59.2	55.1	61	50
18	65	34	50.6	41.0	16	0	99	45	73	0.00	29.48	30.30	NA	5.4	20.7	17.49	57.8	54.0	63	46
19	74	52	61.8	49.8	2	0	80	49	66	0.00	29.24	30.05	S	9.9	27.7	16.89	59.8	57.7	66	51
20	77	59	67.0	54.8	0	3	83	46	66	0.00	29.17	29.98	S	9.9	28.5	16.72	62.2	61.5	69	56
21	69	62	64.6	58.2	0	0	96	72	80	0.72	29.10	29.90	SE	7.7	25.4	4.51	63.2	62.1	65	60
22	64	47	55.9	52.5	9	0	98	75	89	1.41	28.94	29.75	WNW	8.4	24.1	5.00	63.3	61.3	65	56
23	52	36	45.4	38.4	21	0	99	63	77	0.00	29.08	29.89	NA	9.0	22.4	5.58	57.7	53.1	56	49
24	69	34	53.5	41.6	13	0	99	37	69	0.00	29.10	29.90	SSW	6.0	20.7	16.21	56.8	53.3	62	45
25	66	57	60.6	52.8	4	0	96	61	76	0.42	29.07	29.88	S	7.6	27.6	3.90	59.1	56.7	59	53
26	57	49	50.5	48.9	12	0	96	89	94	0.52	29.25	30.06	N	9.2	26.8	1.73	58.6	55.4	59	53
27	61	46	51.4	46.2	11	0	97	51	84	0.55	29.02	29.82	SE	5.3	16.4	11.60	57.8	56.3	64	53
28	66	47	59.2	50.9	8	0	90	57	75	0.00	28.93	29.73	SE	8.4	27.2	9.75	58.3	56.2	61	51
29	76	51	65.3	60.7	1	0	95	71	85	0.67	28.82	29.62	SSE	10.3	30.8	4.43	62.7	63.2	68	59
30	60	42	51.3	37.3	14	0	85	33	62	0.00	29.06	29.86	WSW	9.0	26.2	14.16	59.9	56.3	62	51
31	71	37	51.7	38.1	11	0	94	28	66	0.00	29.26	30.08	NA	4.1	17.9	15.59	57.2	53.7	63	47
66 48 56.7 50.0				<- Monthly Averages ->							29.16	29.96	NA	6.6	35.2	8.93	61.8	59.3	65	55
Temperature - Highest: 85 Lowest: 34							Degree Days - Total HDD: 271 Total CDD: 13					Number of Days With:								
Rainfall: Monthly Total: 11.97 in. Greatest 24 Hr: 2.79 in.							Humidity - Highest: 99 Lowest: 21					Tmax ≥ 90: 0 Rainfall ≥ 0.01 inch: 19 Tmax ≤ 32: 0 Rainfall ≥ 0.10 inch: 17 Tmin ≤ 32: 0 Avg Wind Speed ≥ 10 mph: 4 Tmin ≤ 0: 0 Max Wind Speed ≥ 30 mph: 2								

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

November 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES				
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN	
1	76	41	58.0	41.7	7	0	97	25	61	0.00	29.33	30.14	NA	4.4	16.5	15.51	58.2	55.7	64	49	
2	76	42	58.9	44.5	6	0	97	27	64	0.00	29.39	30.20	NA	3.2	15.2	15.12	59.0	57.1	66	50	
3	72	41	58.4	45.0	8	0	90	40	63	0.00	29.45	30.27	NNE	4.1	13.7	14.85	59.5	57.5	66	51	
4	76	46	60.2	47.5	4	0	96	35	66	0.00	29.49	30.30	NA	3.8	13.7	14.41	60.1	58.4	67	52	
5	74	44	59.3	46.2	6	0	93	39	65	0.00	29.50	30.32	NA	5.1	17.0	14.35	60.1	57.9	66	52	
6	77	56	65.4	49.8	0	2	86	32	60	0.00	29.29	30.10	S	9.8	29.6	14.67	60.8	58.8	65	54	
7	76	57	64.9	53.6	0	2	85	47	68	0.00	29.22	30.03	SSW	9.2	25.4	14.58	61.6	59.8	67	55	
8	70	57	62.9	55.6	1	0	92	59	78	0.00	29.28	30.09	S	6.0	17.8	6.31	61.6	59.3	64	56	
9	76	50	63.4	54.5	2	0	95	45	75	0.00	29.38	30.19	NA	3.4	12.7	9.26	62.9	61.9	69	58	
10	73*	47*	58.9*	52.5*	5*	0*	98*	53*	81*	0.00*	29.44*	30.25*	NA	5.2*	18.1*	10.59*	61.9*	59.5*	67*	55*	
11	69	47	57.2	49.8	7	0	98	46	78	0.00	29.43	30.24	NA	4.1	15.3	12.00	62.0	59.5	67	56	
12	67	43	55.8	45.4	10	0	98	47	71	0.00	29.22	30.03	NA	5.1	19.5	10.99	60.2	56.4	62	52	
13	70	53	60.8	49.3	4	0	76	56	66	0.00	29.00	29.80	S	9.6	27.7	8.53	59.8	56.0	61	52	
14	74	57	64.6	55.4	0	0	87	53	73	0.00	29.02	29.83	S	6.3	22.7	9.75	62.1	60.0	66	56	
15	66	52	58.9	56.8	6	0	97	86	93	0.17	29.10	29.91	S	6.3	25.5	1.83	62.3	59.8	62	57	
16	52	40	43.5	37.4	19	0	98	65	80	0.01	29.27	30.08	NW	13.2	28.0	2.59	56.8	51.6	58	47	
17	45	39	42.8	35.0	23	0	89	66	74	0.00	29.25	30.06	NW	9.5	25.9	2.41	52.6	46.9	48	46	
18	59	36	46.8	33.6	17	0	92	32	62	0.00	29.21	30.02	NA	3.4	13.2	12.98	54.0	49.7	58	45	
19	69	37	56.3	43.2	12	0	78	49	62	0.00	29.20	30.00	S	6.3	23.8	10.69	54.7	51.0	58	44	
20	58	53	56.0	51.4	9	0	96	67	85	0.05	29.26	30.08	NA	3.1	13.0	1.86	57.6	54.7	57	53	
21	64	44	53.6	43.9	11	0	97	27	74	0.01	29.22	30.03	NA	2.7	10.7	7.78	58.4	55.3	60	51	
22	67	39	51.1	40.8	12	0	98	34	72	0.00	29.15	29.96	NA	3.0	16.0	12.38	56.4	52.4	60	47	
23	63	41	53.4	48.4	13	0	98	64	84	0.09	29.14	29.95	NA	5.7	22.3	11.24	56.4	52.8	59	47	
24	58	33	46.7	34.8	20	0	94	30	67	0.01	29.30	30.11	NW	8.3	26.1	12.41	55.7	51.3	56	45	
25	65	28	45.3	28.1	19	0	94	18	58	0.00	29.36	30.18	NA	6.4	20.0	12.60	52.3	46.7	55	41	
26	57	26	39.3	25.7	24	0	95	24	64	0.00	29.43	30.24	NA	3.7	16.4	12.84	51.0	44.9	53	39	
27	71	36	53.6	31.8	11	0	79	21	47	0.00	29.25	30.06	SSW	6.5	19.9	12.39	51.6	46.9	55	41	
28	68	48	57.8	44.1	7	0	77	43	61	0.00	29.09	29.90	S	9.4	26.5	11.79	54.3	50.8	58	45	
29	61	40	50.8	47.2	14	0	94	73	88	0.30	29.13	29.94	N	10.0	25.4	1.28	55.9	52.4	56	47	
30	53	29	40.7	32.1	24	0	97	36	75	0.01	29.36	30.17	NA	4.5	15.7	12.39	51.9	46.8	54	42	
	67*	43*	54.8*	44.2*	<- Monthly Averages ->							29.27*	30.08*	NA	6.0*	29.6*	10.35*	57.7*	54.4*	61*	49*
Temperature - Highest: 77*							Degree Days - Total HDD: 302*					Number of Days With:									
Lowest: 26*							Total CDD: 4*					Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 8*									
												Tmax ≤ 32: 0* Rainfall ≥ 0.10 inch: 2*									
Rainfall: Monthly Total: 0.65* in.							Humidity - Highest: 98*					Tmin ≤ 32: 3* Avg Wind Speed ≥ 10 mph: 2*									
Greatest 24 Hr: 0.30* in.							Lowest: 18*					Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*									

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

December 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN
1	55	28	41.2	31.1	24	0	97	25	72	0.11	29.11	29.91	NA	3.0	12.6	7.52	50.0	44.6	51	39
2	44	33	39.7	34.3	27	0	92	63	81	0.20	28.98	29.78	NNW	10.4	28.5	2.14	49.3	44.1	47	40
3	40	26	32.7	18.9	32	0	78	37	58	0.00	29.41	30.22	NNW	8.8	22.5	7.89	45.5	38.4	42	36
4	38	18	26.4	14.3	37	0	92	27	64	0.00	29.48	30.30	NA	3.0	12.9	11.33	43.6	37.4	43	35
5	45	17	33.8	16.4	34	0	91	32	51	0.00	29.30	30.11	S	7.4	25.0	12.03	42.6	36.8	42	35
6	42	35	38.1	30.9	27	0	98	45	77	0.01	29.20	30.01	SSE	6.8	22.2	1.67	43.4	37.9	40	35
7	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
9	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
11	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
12	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
13	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
14	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
15	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
16	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
17	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
18	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
19	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
21	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
22	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
26	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
27	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
28	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
29	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
30	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
31	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	44*	26*	35.3*	24.3*	<- Monthly Averages ->						29.25*	30.06*	NA	6.5*	28.5*	7.10*	45.7*	39.8*	44*	37*
Temperature - Highest: 55*							Degree Days - Total HDD: 180*					Number of Days With: Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 3* Tmax ≤ 32: 0* Rainfall ≥ 0.10 inch: 2* Tmin ≤ 32: 4* Avg Wind Speed ≥ 10 mph: 1* Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*								
Lowest: 17*							Total CDD: 0*													
Rainfall: Monthly Total: 0.32* in.							Humidity - Highest: 98*													
Greatest 24 Hr: 0.20* in.							Lowest: 25*													

Change Order

No. Three (3)

Date of Issuance: December 22, 2009 Effective Date: December 22, 2009

Project: 14 th Street & Village Blvd Utility Extensions	Owner: City of McAlester	Owner's Contract No.:
Contract: 14 th Street & Village Blvd Utility Extensions		Date of Contract: July 1, 2009
Contractor: Bravo Construction Inc.		Engineer's Project No.: MC-09-01

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Add 34 days to contract for precipitation and weather related conditions that prohibit performance of work.

Attachments: (List documents supporting change): Contractors letters dated October 12, 2009 and December 7, 2009.

CHANGE IN CONTRACT PRICE:

Original Contract Price:
\$228,068.19

Increase from previously approved Change Orders
No. One to No. Two:
\$242,126.02

Contract Price prior to this Change Order:
\$470,194.21

Increase of this Change Order:
\$-0-

Contract Price incorporating this Change Order:
\$470,194.21

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days
Substantial completion (days and date): 90 Days (October 26, 2009)

Increase from previously approved Change Orders
No. One to No. Two:
Substantial completion (days): 82 Days

Contract Times prior to this Change Order:
Substantial completion (days): 172 Days

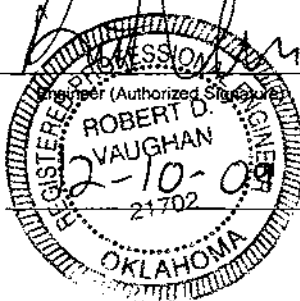
Increase of this Change Order:
Substantial completion (days): 34 Days

Contract Times with all approved Change Orders:
Substantial completion (days and date): 206 Days (February 19, 2010)

RECOMMENDED:

By: 

Date: 12-10-09



ACCEPTED:

By: _____

Date: _____

Owner (Authorized Signature)

ACCEPTED:

By: 

Date: 12/16/09

Contractor (Authorized Signature)

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: October 12, 2009

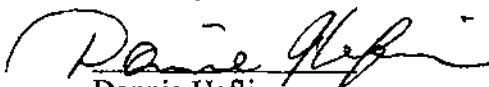
Dear: Mr. Vaughan:

According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

Bravo Construction Inc. is requesting 22 days of extension for the time period of July 27, 2009 to October 12, 2009. 11 days for days of 0.5" or more of rain and 11 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,



Donnie Heflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
OCT 14 2009

BY:

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: December 7, 2009

Dear: Mr. Vaughan:

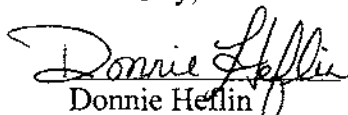
According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

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Bravo Construction Inc. is requesting ~~22~~ days of extension for the time period of October 12, 2009 to December 6, 2009. 6 days for days of 0.5" or more of rain and 6 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,


Donnie Helin
Job Superintendant
Bravo Construction Inc.

RECEIVED
DEC 09 2009

BY:

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

October 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES				
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN	
1	84	53	70.5	58.3	0	3	92	37	67	0.21	29.00	29.80	S	10.4	28.7	10.03	70.0	68.1	76	61	
2	73	42	55.9	39.0	7	0	95	21	61	0.00	29.15	29.95	NA	4.1	17.4	20.64	66.4	62.1	71	55	
3	74	40	57.7	46.2	8	0	98	32	71	0.11	29.13	29.93	NA	2.3	11.3	16.35	65.6	62.2	71	53	
4	58	55	56.1	53.8	9	0	96	88	92	0.31	29.11	29.92	E	6.6	23.0	4.55	65.7	61.9	64	60	
5	61	54	57.7	56.1	7	0	97	85	94	0.83	29.10	29.90	ESE	4.2	17.2	3.89	64.7	61.6	64	59	
6	69	50	62.5	58.7	6	0	97	67	88	1.03	29.08	29.88	N	7.4	26.8	5.48	65.6	64.1	67	61	
7	64	46	55.5	50.7	10	0	96	49	85	0.11	29.24	30.05	NA	2.9	12.1	6.27	63.7	60.4	64	56	
8	85	57	72.1	66.7	0	6	96	62	84	2.79	28.99	29.80	S	10.0	35.2	7.67	66.8	67.6	74	61	
9	57	48	50.3	47.0	12	0	96	79	89	1.21	29.19	30.00	N	10.0	24.6	2.54	61.3	59.8	67	55	
10	52	44	48.9	44.2	17	0	92	78	84	0.00	29.37	30.18	NA	2.9	12.6	3.68	59.6	55.6	58	54	
11	56	46	51.2	47.8	14	0	97	74	89	0.07	29.35	30.16	NA	3.5	13.3	5.14	60.0	56.9	60	54	
12	62	52	57.0	55.0	8	0	97	81	93	0.18	29.24	30.06	NA	3.0	9.7	5.51	61.4	60.0	64	57	
13	65	58	61.4	60.2	3	0	98	90	96	0.16	29.21	30.02	NA	3.2	10.7	3.49	63.3	62.6	65	60	
14	64	56	60.3	59.4	5	0	98	92	97	0.08	29.11	29.91	NA	3.7	13.7	3.94	64.3	63.6	66	62	
15	58	50	52.7	50.3	11	0	98	84	92	0.59	29.12	29.93	N	9.9	23.0	3.64	62.4	59.2	63	56	
16	64	42	52.0	44.2	12	0	97	48	77	0.00	29.38	30.19	NA	7.0	23.0	17.64	60.4	57.4	65	52	
17	59	37	47.7	41.2	17	0	99	51	80	0.00	29.56	30.38	NA	4.0	18.6	12.79	59.2	55.1	61	50	
18	65	34	50.6	41.0	16	0	99	45	73	0.00	29.48	30.30	NA	5.4	20.7	17.49	57.8	54.0	63	46	
19	74	52	61.8	49.8	2	0	80	49	66	0.00	29.24	30.05	S	9.9	27.7	16.89	59.8	57.7	66	51	
20	77	59	67.0	54.8	0	3	83	46	66	0.00	29.17	29.98	S	9.9	28.5	16.72	62.2	61.5	69	56	
21	69	62	64.6	58.2	0	0	96	72	80	0.72	29.10	29.90	SE	7.7	25.4	4.51	63.2	62.1	65	60	
22	64	47	55.9	52.5	9	0	98	75	89	1.41	28.94	29.75	WNW	8.4	24.1	5.00	63.3	61.3	65	56	
23	52	36	45.4	38.4	21	0	99	63	77	0.00	29.08	29.89	NA	9.0	22.4	5.58	57.7	53.1	56	49	
24	69	34	53.5	41.6	13	0	99	37	69	0.00	29.10	29.90	SSW	6.0	20.7	16.21	56.8	53.3	62	45	
25	66	57	60.6	52.8	4	0	96	61	76	0.42	29.07	29.88	S	7.6	27.6	3.90	59.1	56.7	59	53	
26	57	49	50.5	48.9	12	0	96	89	94	0.52	29.25	30.06	N	9.2	26.8	1.73	58.6	55.4	59	53	
27	61	46	51.4	46.2	11	0	97	51	84	0.55	29.02	29.82	SE	5.3	16.4	11.60	57.8	56.3	64	53	
28	66	47	59.2	50.9	8	0	90	57	75	0.00	28.93	29.73	SE	8.4	27.2	9.75	58.3	56.2	61	51	
29	76	51	65.3	60.7	1	0	95	71	85	0.67	28.82	29.62	SSE	10.3	30.8	4.43	62.7	63.2	68	59	
30	60	42	51.3	37.3	14	0	85	33	62	0.00	29.06	29.86	WSW	9.0	26.2	14.16	59.9	56.3	62	51	
31	71	37	51.7	38.1	11	0	94	28	66	0.00	29.26	30.08	NA	4.1	17.9	15.59	57.2	53.7	63	47	
	66	48	56.7	50.0	<- Monthly Averages ->						29.16	29.96	NA	6.6	35.2	8.93	61.8	59.3	65	55	
Temperature - Highest: 85 Lowest: 34							Degree Days - Total HDD: 271 Total CDD: 13					Number of Days With:									
Rainfall: Monthly Total: 11.97 in. Greatest 24 Hr: 2.79 in.							Humidity - Highest: 99 Lowest: 21					Tmax ≥ 90: 0 Rainfall ≥ 0.01 inch: 19									
												Tmax < 32: 0 Rainfall ≥ 0.10 inch: 17									
												Tmin ≤ 32: 0 Avg Wind Speed ≥ 10 mph: 4									
												Tmin < 0: 0 Max Wind Speed ≥ 30 mph: 2									

MESONET CLIMATOLOGICAL DATA SUMMARY (MCAL) McAlester Latitude: 34-52-56										November 2009 Nearest City: 4.0 S McAlester Longitude: 95-46-51				Time Zone: Midnight-Midnight CST County: Pittsburg Elevation: 755 feet							
DAY	TEMPERATURE (F) MAX MIN AVG DEWPT				DEG DAYS HDD CDD		HUMIDITY (%) MAX MIN AVG			RAIN (in)	PRESSURE (in) STN MSL		WIND SPEED (mph) DIR AVG MAX			SOLAR (MJ/m2)	4" SOIL TEMPERATURES SOD BARE MAX MIN				
1	76	41	58.0	41.7	7	0	97	25	61	0.00	29.33	30.14	NA	4.4	16.5	15.51	58.2	55.7	64	49	
2	76	42	58.9	44.5	6	0	97	27	64	0.00	29.39	30.20	NA	3.2	15.2	15.12	59.0	57.1	66	50	
3	72	41	58.4	45.0	8	0	90	40	63	0.00	29.45	30.27	NNE	4.1	13.7	14.85	59.5	57.5	66	51	
4	76	46	60.2	47.5	4	0	96	35	66	0.00	29.49	30.30	NA	3.8	13.7	14.41	60.1	58.4	67	52	
5	74	44	59.3	46.2	6	0	93	39	65	0.00	29.50	30.32	NA	5.1	17.0	14.35	60.1	57.9	66	52	
6	77	56	65.4	49.8	0	2	86	32	60	0.00	29.29	30.10	S	9.8	29.6	14.67	60.8	58.8	65	54	
7	76	57	64.9	53.6	0	2	85	47	68	0.00	29.22	30.03	SSW	9.2	25.4	14.58	61.6	59.8	67	55	
8	70	57	62.9	55.6	1	0	92	59	78	0.00	29.28	30.09	S	6.0	17.8	6.31	61.6	59.3	64	56	
9	76	50	63.4	54.5	2	0	95	45	75	0.00	29.38	30.19	NA	3.4	12.7	9.26	62.9	61.9	69	58	
10	73*	47*	58.9*	52.5*	5*	0*	98*	53*	81*	0.00*	29.44*	30.25*	NA	5.2*	18.1*	10.59*	61.9*	59.5*	67*	55*	
11	69	47	57.2	49.8	7	0	98	46	78	0.00	29.43	30.24	NA	4.1	15.3	12.00	62.0	59.5	67	56	
12	67	43	55.8	45.4	10	0	98	47	71	0.00	29.22	30.03	NA	5.1	19.5	10.99	60.2	56.4	62	52	
13	70	53	60.8	49.3	4	0	76	56	66	0.00	29.00	29.80	S	9.6	27.7	8.53	59.8	56.0	61	52	
14	74	57	64.6	55.4	0	0	87	53	73	0.00	29.02	29.83	S	6.3	22.7	9.75	62.1	60.0	66	56	
15	66	52	58.9	56.8	6	0	97	86	93	0.17	29.10	29.91	S	6.3	25.5	1.83	62.3	59.8	62	57	
16	52	40	43.5	37.4	19	0	98	65	80	0.01	29.27	30.08	NW	13.2	28.0	2.59	56.8	51.6	58	47	
17	45	39	42.8	35.0	23	0	89	66	74	0.00	29.25	30.06	NW	9.5	25.9	2.41	52.6	46.9	48	46	
18	59	36	46.8	33.6	17	0	92	32	62	0.00	29.21	30.02	NA	3.4	13.2	12.98	54.0	49.7	58	45	
19	69	37	56.3	43.2	12	0	78	49	62	0.00	29.20	30.00	S	6.3	23.8	10.69	54.7	51.0	58	44	
20	58	53	56.0	51.4	9	0	96	67	85	0.05	29.26	30.08	NA	3.1	13.0	1.86	57.6	54.7	57	53	
21	64	44	53.6	43.9	11	0	97	27	74	0.01	29.22	30.03	NA	2.7	10.7	7.78	58.4	55.3	60	51	
22	67	39	51.1	40.8	12	0	98	34	72	0.00	29.15	29.96	NA	3.0	16.0	12.38	56.4	52.4	60	47	
23	63	41	53.4	48.4	13	0	98	64	84	0.09	29.14	29.95	NA	5.7	22.3	11.24	56.4	52.8	59	47	
24	58	33	46.7	34.8	20	0	94	30	67	0.01	29.30	30.11	NW	8.3	26.1	12.41	55.7	51.3	56	45	
25	65	28	45.3	28.1	19	0	94	18	58	0.00	29.36	30.18	NA	6.4	20.0	12.60	52.3	46.7	55	41	
26	57	26	39.3	25.7	24	0	95	24	64	0.00	29.43	30.24	NA	3.7	16.4	12.84	51.0	44.9	53	39	
27	71	36	53.6	31.8	11	0	79	21	47	0.00	29.25	30.06	SSW	6.5	19.9	12.39	51.6	46.9	55	41	
28	68	48	57.8	44.1	7	0	77	43	61	0.00	29.09	29.90	S	9.4	26.5	11.79	54.3	50.8	58	45	
29	61	40	50.8	47.2	14	0	94	73	88	0.30	29.13	29.94	N	10.0	25.4	1.28	55.9	52.4	56	47	
30	53	29	40.7	32.1	24	0	97	36	75	0.01	29.36	30.17	NA	4.5	15.7	12.39	51.9	46.8	54	42	
	67*	43*	54.8*	44.2*	<- Monthly Averages ->							29.27*	30.08*	NA	6.0*	29.6*	10.35*	57.7*	54.4*	61*	49*
Temperature - Highest: 77*					Degree Days - Total HDD: 302*					Number of Days With:											
Lowest: 26*					Total CDD: 4*					Tmax >= 90: 0* Rainfall >= 0.01 inch: 8*											
										Tmax <= 32: 0* Rainfall >= 0.10 inch: 2*											
Rainfall: Monthly Total: 0.65* in.					Humidity - Highest: 98*					Tmin <= 32: 3* Avg Wind Speed >= 10 mph: 2*											
Greatest 24 Hr: 0.30* in.					Lowest: 18*					Tmin <= 0: 0* Max Wind Speed >= 30 mph: 0*											

MESONET CLIMATOLOGICAL DATA SUMMARY										December 2009		Time Zone: Midnight-Midnight CST								
(MCAL) McAlester										Nearest City: 4.0 S McAlester		County: Pittsburg								
Latitude: 34-52-56										Longitude: 95-46-51		Elevation: 755 feet								
DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN
1	55	28	41.2	31.1	24	0	97	25	72	0.11	29.11	29.91	NA	3.0	12.6	7.52	50.0	44.6	51	39
2	44	33	39.7	34.3	27	0	92	63	81	0.20	28.98	29.78	NNW	10.4	28.5	2.14	49.3	44.1	47	40
3	40	26	32.7	18.9	32	0	78	37	58	0.00	29.41	30.22	NNW	8.8	22.5	7.89	45.5	38.4	42	36
4	38	18	26.4	14.3	37	0	92	27	64	0.00	29.48	30.30	NA	3.0	12.9	11.33	43.6	37.4	43	35
5	45	17	33.8	16.4	34	0	91	32	51	0.00	29.30	30.11	S	7.4	25.0	12.03	42.6	36.8	42	35
6	42	35	38.1	30.9	27	0	98	45	77	0.01	29.20	30.01	SSE	6.8	22.2	1.67	43.4	37.9	40	35
7	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
9	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
11	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
12	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
13	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
14	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
15	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
16	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
17	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
18	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
19	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
21	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
22	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
26	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
27	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
28	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
29	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
30	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
31	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	44*	26*	35.3*	24.3*	<- Monthly Averages ->						29.25*	30.06*	NA	6.5*	28.5*	7.10*	45.7*	39.8*	44*	37*
Temperature - Highest: 55*							Degree Days - Total HDD: 180*					Number of Days With: Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 3* Tmax ≤ 32: 0* Rainfall ≥ 0.10 inch: 2* Tmin ≤ 32: 4* Avg Wind Speed ≥ 10 mph: 1* Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*								
Lowest: 17*							Total CDD: 0*													
Rainfall: Monthly Total: 0.32* in.							Humidity - Highest: 98*													
Greatest 24 Hr: 0.20* in.							Lowest: 25*													

Change Order

No. Three (3)

Date of Issuance: December 22, 2009 Effective Date: December 22, 2009

Project: 14 th Street & Village Blvd Utility Extensions	Owner: City of McAlester	Owner's Contract No.:
Contract: 14 th Street & Village Blvd Utility Extensions	Date of Contract: July 1, 2009	
Contractor: Bravo Construction Inc.	Engineer's Project No.: MC-09-01	

The Contract Documents are modified as follows upon execution of this Change Order:

Description:

Add 34 days to contract for precipitation and weather related conditions that prohibit performance of work.

Attachments: (List documents supporting change): Contractors letters dated October 12, 2009 and December 7, 2009.

CHANGE IN CONTRACT PRICE:

Original Contract Price:
\$228,068.19

Increase from previously approved Change Orders
No. One to No. Two:
\$242,126.02

Contract Price prior to this Change Order:
\$470,194.21

Increase of this Change Order:
\$-0-

Contract Price incorporating this Change Order:
\$470,194.21

CHANGE IN CONTRACT TIMES:

Original Contract Times: ☐ Working days ☒ Calendar days
Substantial completion (days and date): 90 Days (October 26, 2009)

Increase from previously approved Change Orders
No. One to No. Two:
Substantial completion (days): 82 Days

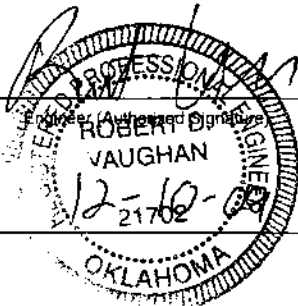
Contract Times prior to this Change Order:
Substantial completion (days): 172 Days

Increase of this Change Order:
Substantial completion (days) 34 Days

Contract Times with all approved Change Orders:
Substantial completion (days and date): 206 Days (February 19, 2010)

RECOMMENDED:

By: _____



Date: _____

ACCEPTED:

By: _____

Owner (Authorized Signature)

Date: _____

ACCEPTED:

By: _____

Contractor (Authorized Signature)

Date: 12/16/09

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: October 12, 2009

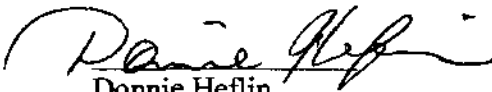
Dear: Mr. Vaughan:

According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

Bravo Construction Inc. is requesting 22 days of extension for the time period of July 27, 2009 to October 12, 2009. 11 days for days of 0.5" or more of rain and 11 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,


Donnie Heflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
OCT 14 2009

BY:

Bravo Construction Inc.
P.O. Box 874 Wilburton, OK 74578
918-465-4259

Mehlburger Brawley
Robert Vaughan, P.E.
719 S. George Nigh Expy
McAlester, OK 74501

Re: 14th Street & Village Blvd Utility Extension
McAlester, Oklahoma
Request for credit on rain days

Date: December 7, 2009

Dear: Mr. Vaughan:

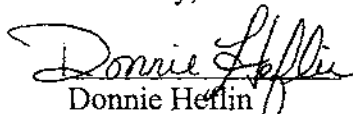
According to ODOT 1999 Standard Specifications 108.07.b.3,4 Extensions days will be granted if:

3. Days when 0.5" or more precipitation (Rain or snow equivalent) occurs- one full day allowed.
4. Days when weather related conditions exist to prohibit proper performance of work as specified- one full day allowed.

12

Bravo Construction Inc. is requesting ~~23~~ 12 days of extension for the time period of October 12, 2009 to December 6, 2009. 6 days for days of 0.5" or more of rain and 6 days in which weather related conditions prohibited proper performance of work as specified.

Sincerely,



Donnie Hefflin
Job Superintendant
Bravo Construction Inc.

RECEIVED
DEC 09 2009

BY:-----

(MCAL) McAlester
Latitude: 34-52-56

October 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN (in)	PRESSURE (in)		WIND SPEED (mph)			SOLAR (MJ/m2)	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG		STN	MSL	DIR	AVG	MAX		SOD	BARE	MAX	MIN
1	84	53	70.5	58.3	0	3	92	37	67	0.21	29.00	29.80	S	10.4	28.7	10.03	70.0	68.1	76	61
2	73	42	55.9	39.0	7	0	95	21	61	0.00	29.15	29.95	NA	4.1	17.4	20.64	66.4	62.1	71	55
3	74	40	57.7	46.2	8	0	98	32	71	0.11	29.13	29.93	NA	2.3	11.3	16.35	65.6	62.2	71	53
4	58	55	56.1	53.8	9	0	96	88	92	0.31	29.11	29.92	E	6.6	23.0	4.55	65.7	61.9	64	60
5	61	54	57.7	56.1	7	0	97	85	94	0.83	29.10	29.90	ESE	4.2	17.2	3.89	64.7	61.6	64	59
6	69	50	62.5	58.7	6	0	97	67	88	1.03	29.08	29.88	N	7.4	26.8	5.48	65.6	64.1	67	61
7	64	46	55.5	50.7	10	0	96	49	85	0.11	29.24	30.05	NA	2.9	12.1	6.27	63.7	60.4	64	56
8	85	57	72.1	66.7	0	6	96	62	84	2.79	28.99	29.80	S	10.0	35.2	7.67	66.8	67.6	74	61
9	57	48	50.3	47.0	12	0	96	79	89	1.21	29.19	30.00	N	10.0	24.6	2.54	61.3	59.8	67	55
10	52	44	48.9	44.2	17	0	92	78	84	0.00	29.37	30.18	NA	2.9	12.6	3.68	59.6	55.6	58	54
11	56	46	51.2	47.8	14	0	97	74	89	0.07	29.35	30.16	NA	3.5	13.3	5.14	60.0	56.9	60	54
12	62	52	57.0	55.0	8	0	97	81	93	0.18	29.24	30.06	NA	3.0	9.7	5.51	61.4	60.0	64	57
13	65	58	61.4	60.2	3	0	98	90	96	0.16	29.21	30.02	NA	3.2	10.7	3.49	63.3	62.6	65	60
14	64	56	60.3	59.4	5	0	98	92	97	0.08	29.11	29.91	NA	3.7	13.7	3.94	64.3	63.6	66	62
15	58	50	52.7	50.3	11	0	98	84	92	0.59	29.12	29.93	N	9.9	23.0	3.64	62.4	59.2	63	56
16	64	42	52.0	44.2	12	0	97	48	77	0.00	29.38	30.19	NA	7.0	23.0	17.64	60.4	57.4	65	52
17	59	37	47.7	41.2	17	0	99	51	80	0.00	29.56	30.38	NA	4.0	18.6	12.79	59.2	55.1	61	50
18	65	34	50.6	41.0	16	0	99	45	73	0.00	29.48	30.30	NA	5.4	20.7	17.49	57.8	54.0	63	46
19	74	52	61.8	49.8	2	0	80	49	66	0.00	29.24	30.05	S	9.9	27.7	16.89	59.8	57.7	66	51
20	77	59	67.0	54.8	0	3	83	46	66	0.00	29.17	29.98	S	9.9	28.5	16.72	62.2	61.5	69	56
21	69	62	64.6	58.2	0	0	96	72	80	0.72	29.10	29.90	SE	7.7	25.4	4.51	63.2	62.1	65	60
22	64	47	55.9	52.5	9	0	98	75	89	1.41	28.94	29.75	WNW	8.4	24.1	5.00	63.3	61.3	65	56
23	52	36	45.4	38.4	21	0	99	63	77	0.00	29.08	29.89	NA	9.0	22.4	5.58	57.7	53.1	56	49
24	69	34	53.5	41.6	13	0	99	37	69	0.00	29.10	29.90	SSW	6.0	20.7	16.21	56.8	53.3	62	45
25	66	57	60.6	52.8	4	0	96	61	76	0.42	29.07	29.88	S	7.6	27.6	3.90	59.1	56.7	59	53
26	57	49	50.5	48.9	12	0	96	89	94	0.52	29.25	30.06	N	9.2	26.8	1.73	58.6	55.4	59	53
27	61	46	51.4	46.2	11	0	97	51	84	0.55	29.02	29.82	SE	5.3	16.4	11.60	57.8	56.3	64	53
28	66	47	59.2	50.9	8	0	90	57	75	0.00	28.93	29.73	SE	8.4	27.2	9.75	58.3	56.2	61	51
29	76	51	65.3	60.7	1	0	95	71	85	0.67	28.82	29.62	SSE	10.3	30.8	4.43	62.7	63.2	68	59
30	60	42	51.3	37.3	14	0	85	33	62	0.00	29.06	29.86	WSW	9.0	26.2	14.16	59.9	56.3	62	51
31	71	37	51.7	38.1	11	0	94	28	66	0.00	29.26	30.08	NA	4.1	17.9	15.59	57.2	53.7	63	47

66	48	56.7	50.0	<- Monthly Averages ->	29.16	29.96	NA	6.6	35.2	8.93	61.8	59.3	65	55
----	----	------	------	------------------------	-------	-------	----	-----	------	------	------	------	----	----

Temperature - Highest: 85 Lowest: 34	Degree Days - Total HDD: 271 Total CDD: 13	Number of Days With: Tmax \geq 90: 0 Rainfall \geq 0.01 inch: 19 Tmax \leq 32: 0 Rainfall \geq 0.10 inch: 17 Tmin \geq 32: 0 Avg Wind Speed \geq 10 mph: 4 Tmin \leq 0: 0 Max Wind Speed \geq 30 mph: 2
Rainfall: Monthly Total: 11.97 in. Greatest 24 Hr: 2.79 in.	Humidity - Highest: 99 Lowest: 21	

MESONET CLIMATOLOGICAL DATA SUMMARY										November 2009		Time Zone: Midnight-Midnight CST								
(MCAL) McAlester										Nearest City: 4.0 S McAlester		County: Pittsburg								
Latitude: 34-52-56										Longitude: 95-46-51		Elevation: 755 feet								
DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN	PRESSURE (in)		WIND SPEED (mph)			SOLAR	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG	(in)	STN	MSL	DIR	AVG	MAX	(MJ/m2)	SOD	BARE	MAX	MIN
1	76	41	58.0	41.7	7	0	97	25	61	0.00	29.33	30.14	NA	4.4	16.5	15.51	58.2	55.7	64	49
2	76	42	58.9	44.5	6	0	97	27	64	0.00	29.39	30.20	NA	3.2	15.2	15.12	59.0	57.1	66	50
3	72	41	58.4	45.0	8	0	90	40	63	0.00	29.45	30.27	NNE	4.1	13.7	14.85	59.5	57.5	66	51
4	76	46	60.2	47.5	4	0	96	35	66	0.00	29.49	30.30	NA	3.8	13.7	14.41	60.1	58.4	67	52
5	74	44	59.3	46.2	6	0	93	39	65	0.00	29.50	30.32	NA	5.1	17.0	14.35	60.1	57.9	66	52
6	77	56	65.4	49.8	0	2	86	32	60	0.00	29.29	30.10	S	9.8	29.6	14.67	60.8	58.8	65	54
7	76	57	64.9	53.6	0	2	85	47	68	0.00	29.22	30.03	SSW	9.2	25.4	14.58	61.6	59.8	67	55
8	70	57	62.9	55.6	1	0	92	59	78	0.00	29.28	30.09	S	6.0	17.8	6.31	61.6	59.3	64	56
9	76	50	63.4	54.5	2	0	95	45	75	0.00	29.38	30.19	NA	3.4	12.7	9.26	62.9	61.9	69	58
10	73*	47*	58.9*	52.5*	5*	0*	98*	53*	81*	0.00*	29.44*	30.25*	NA	5.2*	18.1*	10.59*	61.9*	59.5*	67*	55*
11	69	47	57.2	49.8	7	0	98	46	78	0.00	29.43	30.24	NA	4.1	15.3	12.00	62.0	59.5	67	56
12	67	43	55.8	45.4	10	0	98	47	71	0.00	29.22	30.03	NA	5.1	19.5	10.99	60.2	56.4	62	52
13	70	53	60.8	49.3	4	0	76	56	66	0.00	29.00	29.80	S	9.6	27.7	8.53	59.8	56.0	61	52
14	74	57	64.6	55.4	0	0	87	53	73	0.00	29.02	29.83	S	6.3	22.7	9.75	62.1	60.0	66	56
15	66	52	58.9	56.8	6	0	97	86	93	0.17	29.10	29.91	S	6.3	25.5	1.83	62.3	59.8	62	57
16	52	40	43.5	37.4	19	0	98	65	80	0.01	29.27	30.08	NW	13.2	28.0	2.59	56.8	51.6	58	47
17	45	39	42.8	35.0	23	0	89	66	74	0.00	29.25	30.06	NW	9.5	25.9	2.41	52.6	46.9	48	46
18	59	36	46.8	33.6	17	0	92	32	62	0.00	29.21	30.02	NA	3.4	13.2	12.98	54.0	49.7	58	45
19	69	37	56.3	43.2	12	0	78	49	62	0.00	29.20	30.00	S	6.3	23.8	10.69	54.7	51.0	58	44
20	58	53	56.0	51.4	9	0	96	67	85	0.05	29.26	30.08	NA	3.1	13.0	1.86	57.6	54.7	57	53
21	64	44	53.6	43.9	11	0	97	27	74	0.01	29.22	30.03	NA	2.7	10.7	7.78	58.4	55.3	60	51
22	67	39	51.1	40.8	12	0	98	34	72	0.00	29.15	29.96	NA	3.0	16.0	12.38	56.4	52.4	60	47
23	63	41	53.4	48.4	13	0	98	64	84	0.09	29.14	29.95	NA	5.7	22.3	11.24	56.4	52.8	59	47
24	58	33	46.7	34.8	20	0	94	30	67	0.01	29.30	30.11	NW	8.3	26.1	12.41	55.7	51.3	56	45
25	65	28	45.3	28.1	19	0	94	18	58	0.00	29.36	30.18	NA	6.4	20.0	12.60	52.3	46.7	55	41
26	57	26	39.3	25.7	24	0	95	24	64	0.00	29.43	30.24	NA	3.7	16.4	12.84	51.0	44.9	53	39
27	71	36	53.6	31.8	11	0	79	21	47	0.00	29.25	30.06	SSW	6.5	19.9	12.39	51.6	46.9	55	41
28	68	48	57.8	44.1	7	0	77	43	61	0.00	29.09	29.90	S	9.4	26.5	11.79	54.3	50.8	58	45
29	61	40	50.8	47.2	14	0	94	73	88	0.30	29.13	29.94	N	10.0	25.4	1.28	55.9	52.4	56	47
30	53	29	40.7	32.1	24	0	97	36	75	0.01	29.36	30.17	NA	4.5	15.7	12.39	51.9	46.8	54	42
	67*	43*	54.8*	44.2*	<- Monthly Averages ->						29.27*	30.08*	NA	6.0*	29.6*	10.35*	57.7*	54.4*	61*	49*
Temperature - Highest: 77*							Degree Days - Total HDD: 302*					Number of Days With:								
Lowest: 26*							Total CDD: 4*					Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 8*								
Rainfall: Monthly Total: 0.65* in.							Humidity - Highest: 98*					Tmax ≤ 32: 0* Rainfall ≥ 0.10 inch: 2*								
Greatest 24 Hr: 0.30* in.							Lowest: 18*					Tmin ≤ 32: 3* Avg Wind Speed ≥ 10 mph: 2*								
												Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*								

MESONET CLIMATOLOGICAL DATA SUMMARY
(MCAL) McAlester
Latitude: 34-52-56

December 2009
Nearest City: 4.0 S McAlester
Longitude: 95-46-51

Time Zone: Midnight-Midnight CST
County: Pittsburg
Elevation: 755 feet

DAY	TEMPERATURE (F)				DEG DAYS		HUMIDITY (%)			RAIN (in)	PRESSURE (in)		WIND SPEED (mph)			SOLAR (MJ/m2)	4" SOIL TEMPERATURES			
	MAX	MIN	AVG	DEWPT	HDD	CDD	MAX	MIN	AVG		STN	MSL	DIR	AVG	MAX		SOD	BARE	MAX	MIN
1	55	28	41.2	31.1	24	0	97	25	72	0.11	29.11	29.91	NA	3.0	12.6	7.52	50.0	44.6	51	39
2	44	33	39.7	34.3	27	0	92	63	81	0.20	28.98	29.78	NNW	10.4	28.5	2.14	49.3	44.1	47	40
3	40	26	32.7	18.9	32	0	78	37	58	0.00	29.41	30.22	NNW	8.8	22.5	7.89	45.5	38.4	42	36
4	38	18	26.4	14.3	37	0	92	27	64	0.00	29.48	30.30	NA	3.0	12.9	11.33	43.6	37.4	43	35
5	45	17	33.8	16.4	34	0	91	32	51	0.00	29.30	30.11	S	7.4	25.0	12.03	42.6	36.8	42	35
6	42	35	38.1	30.9	27	0	98	45	77	0.01	29.20	30.01	SSE	6.8	22.2	1.67	43.4	37.9	40	35
7	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
8	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
9	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
10	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
11	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
12	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
13	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
14	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
15	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
16	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
17	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
18	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
19	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
20	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
21	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
22	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
23	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
24	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
25	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
26	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
27	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
28	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
29	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
30	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
31	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
	44*	26*	35.3*	24.3*	<- Monthly Averages ->						29.25*	30.06*	NA	6.5*	28.5*	7.10*	45.7*	39.8*	44*	37*
Temperature - Highest: 55*							Degree Days - Total HDD: 180*					Number of Days With: Tmax ≥ 90: 0* Rainfall ≥ 0.01 inch: 3* Tmax < 32: 0* Rainfall ≥ 0.10 inch: 2* Tmin < 32: 4* Avg Wind Speed ≥ 10 mph: 1* Tmin ≤ 0: 0* Max Wind Speed ≥ 30 mph: 0*								
Lowest: 17*							Total CDD: 0*													
Rainfall: Monthly Total: 0.32* in.							Humidity - Highest: 98*													
Greatest 24 Hr: 0.20* in.							Lowest: 25*													



McAlester City Council

AGENDA REPORT

Meeting Date: January 12, 2010
Department: Utilities
Prepared By: David Medley
Date Prepared: December 17, 2009

Item Number: 8
Account Code: _____
Budgeted Amount: N/A
Exhibits: Two

Subject

Consider, and act upon an Ordinance amending Chapter 106 of the McAlester Code of Ordinances, by adding Section 106-77, establishing raw water sales, providing for a severability clause: and declaring an emergency.

Recommendation

Motion to approve and authorize the Mayor to sign the Ordinance providing for raw water sales from any City owned water source.

Discussion

This ordinance will make provision for raw water sales from any City owned water source such as Lake McAlester, Lake Talawanda No. 1, Lake Talawanda No. 2, and Lake Eufaula. The City has been approached by several companies interested in obtaining raw water. This ordinance will make provision for the City to make these sales. Typically these companies utilize this water for gas or oil well operations and can be potentially a considerable source of revenue for the City. No cost for equipment or labor for the City would be associated with the raw water sales.

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	DRM	12/17/09
City Manager	PJS <i>[Signature]</i>	01/05/10

David Medley

From: William Ervin [ervinlaw@sbcglobal.net]
Sent: Monday, January 04, 2010 2:49 PM
To: David Medley; Peter Stasiak
Subject: Ordinance Regarding Sale of Raw Water to Purchasers and its Proposed Codification to the City Code of Ordinances

Dear David:

I have reviewed the proposed ordinance regarding sale of raw water to purchasers and its proposed codification to the City Code of Ordinances.

I find it legally sufficient as a legislative act of the City Council and its codification to be appropriate for the Code. The subject of the ordinance is legally permitted.

I would suggest for your consideration two items for inclusions:

1. I suggest the fixed price of \$0.25 per barrel is an unnecessary restriction on the City's ability to negotiate the price. I think this should be stated as a minimum of "shall not be less than \$0.25 per barrel" to set a base but not a ceiling on the price.
2. While unlikely, the need might occur that performance of this type of agreement would be made impossible due to water shortage. I would suggest the addition of an escape clause stating, "In the event of a shortage of water, or the supply of water available to the City is otherwise diminished in the City's determination to make performance of the sale impossible, such sale may be cancelled."

If the City Council adopts this ordinance, I would suggest a form water purchase contract be promulgated to embody the requirements of the ordinance for ready use. The contract should include a hold harmless requirement for the purchaser.

William J. Ervin Sr.
Ervin & Ervin
Attorneys at Law
P.O. Box 1449
McAlester, OK 74502

Tel: 918-423-4242
Fax: 918-423-4243
ervinlaw@sbcglobal.net

ORDINANCE NO. _____

AN ORDINANCE AMENDING CHAPTER 106 OF THE McALESTER CODE OF ORDINANCES, BY ADDING SECTION 106-77, ESTABLISHING RAW WATER SALES, PROVIDING FOR A SEVERABILITY CLAUSE; AND DECLARING AN EMERGENCY.

* * * * *

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF McALESTER, OKLAHAOMA, that:

Section 1:

DIVISION 2 is hereby amended by adding Section 106-77 to Chapter 106 of the McAlester Code of Ordinances, said Article to read as follows:

Sec 106-77 Raw Water Sales

- a) Raw water sales shall be allowed from any City owned water source as approved by the City Manager or his representative.
- b) The rate of the raw water furnished shall be a minimum of \$.25 per barrel with the City Manager or his representative having authority to negotiate a higher price. A barrel being established as 42 gallons. The minimum rate shall be increased 3% annually beginning January 1, 2011 and adjusted each January 1 of every year thereafter.
- c) All connections, piping, meters, and other accessories shall be furnished by the customer.
- d) Meters provided shall be adequate for the flow utilized and approved by the City Manager or his representative. Meters shall have been calibrated and certified within one year of date of use and shall be within plus or minus 2% accuracy. Certification shall be provided to the City Manager or his representative.
- e) All connections shall provide a backflow prevention device at the withdrawal location and an air gap at the discharge location. Each connection will be subject to the approval of the City Manager or his representative.
- f) All fuel, oil, or other potential contaminants of the water source shall have a containment system adequate to contain any potential spill. The containment system shall be subject to the approval of the City Manager or his representative.
- g) The customer shall be responsible for the raw water once removed from the City's water source and responsible for meeting all State and Federal regulations.

- h) The customer shall provide the City of McAlester Water Office all required billing information prior to installing water connection. Meter reading shall also be provided to the McAlester Water Office prior to installing connection to the raw water source and monthly meter readings shall also be provided. Payment for raw water useage shall meet the requirements of Section 106-75 of McAlester Code of Ordinances.
- i) In the event of a shortage of water, or the supply of water available to the City is otherwise diminished in the City's determination to make performance of the sale impossible, such sale may be cancelled.

Section 2:

EMERGENCY CLAUSE

That an emergency is hereby declared to exist for the preservation of the public peace, health and safety by reason whereof it is necessary that this take effect and be in full force from and after its passage and approval.

PASSED and the **EMERGENCY CLAUSE** ruled on separately this _____ day of January, 2010.

City of McAlester, Oklahoma
A Municipal Corporation

By _____
Kevin Priddle, Mayor

ATTEST:

Cora Middleton, City Clerk

Approved as to form and legality this _____ day of January, 2010

Ervin & Ervin, City Attorney

By _____



McAlester City Council

AGENDA REPORT

Meeting Date: January 12, 2010
Department: Public Works
Prepared By: John C. Modzelewski, PE
Date Prepared: January 4, 2010

Item Number: 9
Account Code: _____
Budgeted Amount: _____
Exhibits: None

Subject

Report on City of McAlester's Solid Waste Collection, Removal and Disposal.

Recommendation

Presentation of status of recent RFP for Solid Waste Collection, Removal and Disposal. Present timeline for once per week residential pickup of solid waste.

Discussion

Approved By

	<i>Initial</i>	<i>Date</i>
Department Head	JCM	01/04/10
City Manager	PJS <i>PJS</i>	01/05/10



McAlester City Council

AGENDA REPORT

Meeting Date: January 12, 2010
Acting City Manager for
Department: Councilman John Browne
Prepared By: Peter J. Stasiak
Date Prepared: January 4, 2010

Item Number: 10
Account Code: _____
Budgeted Amount: _____
Exhibits: 1

Subject

Discussion and possible action partnering with KIBOIS and the City of McAlester for a recycling cardboard program.

Recommendation

Motion to approve partnership between the KIBOIS and the City of McAlester for a recycling cardboard program.

Discussion

KiBois is responsible for the following areas:

- Provide a location at 609 E. Peoria, McAlester, Ok. - known as KiBois Area Rural Enterprises.
- Will provide an additional Cardboard bailer and will service and maintain their own equipment.
- Pour a concrete pad.
- Provide a cover for the pad.
- Responsible for Security of property.
- Provide 3-phases wiring.
- Secure hauling company to pickup at designated areas.
- KiBois to provide employees.
- Agree to pay 25% of the profit to the City of McAlester for providing the cardboard bailer.

City of McAlester is responsible for the following area:

- Provide one cardboard bailer it currently owns in working condition and deliver it to facility.
- Provide insurance on City bailer.
- The City will provide maintenance on City bailer at the City's discretion due to funding.

Approved By

Department Head

City Manager

Initial

Date

PJS

01/05/10

Memorandum of Understanding

Between the

City of McAlester (City)

and

Ki Bois Community Action Foundation, Inc. (Ki Bois)

Parties

This Memorandum of Understanding sets out the proposed partnership between City of McAlester and the Ki Bois Community Action Foundation, Inc. for the development of a Recycling Cardboard Program for the City of McAlester. The Parties hereby agree to work cooperatively within the framework of this Memorandum of Understanding ("MOU") to promote smart growth and a revitalized landscape within the City.

The purpose of this MOU is to specify the roles and responsibilities of the participating parties in order to promote legally prescribed effective information sharing, referral processes and data tracking associated with the implementation of the cardboard recycling program.

Background

Ki Bois community Action Foundation, Inc. KARE program provides developmentally disabled adults with an opportunity for employment. The program is designed to assist individuals with developmental disabilities in locating a job in their community. Serving Latimer, Haskell, LeFlore and Pittsburg counties,

Ki Bois Community Action works with local Industrial Authorities to locate new industries in the county to expand existing ones.

Ki Bois already have in place a successful cardboard recycling center in Poteau and Wilburton.

Ki Bois Operation Jobs was named "Vocational Agency of the Year" in 1999 by the Association for Persons in Supported Employment.

Purpose of Collaboration

1. To develop a cardboard recycling program for the City of McAlester and its industries/businesses.
2. Recognizing the need to conserve our valuable resources, save dwindling landfill space, and promote active conservation throughout the City of McAlester.
3. An underlying premise of this partnership is the urban environment that will be improved through this partnership.

4. The benefits will include job growth and improved quality of life for the City's residents as well as broader environmental benefits from improved land use management and the principles of sustainable development.
5. This memorandum represents a voluntary, good faith and transparent partnership between the City of McAlester and Ki Bois Community Action Foundation, Inc.
6. This agreement is meant to promote the concept of product stewardship, which asks industries/businesses to reduce the environmental impact of cardboard on the environment.

Obligations

City of McAlester agrees to:

1. The City of McAlester will provide the one Cardboard Bailer it currently owns in working condition and deliver it to 609 E. Peoria, McAlester, Ok 74501.
2. Will provide insurance on the City's Cardboard Bailer.
3. The City of McAlester will provide maintenance on City equipment at the City's discretion due to funding.

Ki Bois Community Action Foundation, Inc. agrees to:

1. Will provide an additional Cardboard Bailer and will service and maintain its own equipment.
2. Will provide a recycling location at 609 E. Peoria, McAlester, Ok 74501 known as Ki Bois Area Rural Enterprises.
3. Will pour a concrete pad at recycling location.
4. Will provide a cover for the pad at the recycling location.
5. Will be responsible for security of property at recycling location.
6. Will provide 3-phase wiring at the recycling location.
7. Will provide lighting at the recycling location.
8. Will secure a hauling company to pickup cardboard at the designated areas.
9. Will provide a job coach, who will provide proper training and assist the individual on the skills needed to perform his or her job. As the individual increases his or her knowledge, the job coach is gradually faded from the individual.

10. Provide employees and each individual placed will be paid for the job they perform by Ki Bois. All such persons shall be considered to be employees of Ki Bois. Nothing herein shall create an employment relationship with the City of McAlester and the City will not direct the manner in which work is performed.
11. Will agree to pay 25% of the profit to the City of McAlester for providing the cardboard bailer.

Contact Information

City of McAlester Contact:

Mr. Peter J. Stasiak
Acting City Manager
28 E. Washington Avenue
McAlester, Ok 74501
Phone: (918) 423-9300 ext. 4982
Fax: (918) 421-4970
Email: peter.stasiak@cityofmcalester.com

Ki Bois Community Action, Inc. Contact

Mr. R. Carroll Huggins
Executive Director/CEO
P.O. Box 727
Stigler, Ok 74462
Phone: (918) 967-3325 or (800) 299-4479
Fax: (918) 967-8660
Email: carroll.huggins@kibois.org

Term and Termination

This MOU shall be reviewed annually. It will become effective upon the signed approval of the City Council and party, and will remain in effect for a twelve-month period. Amendments to this MOU must be provided to the City Council and upon signing will become effective upon the signature of both parties.

Each party may terminate this MOU by giving a minimum of thirty - (30) days advance written notice to all parties.

Creates No Binding Obligation – Hold Harmless

Nothing contained in this Memorandum of Understanding is intended to create a legally binding obligation or rights on any signatory hereto or any third party not a signatory to this agreement. Notwithstanding any language used herein that may give rise to a contrary implication, this document creates no legal rights or obligation.

Each party shall defend, indemnify, and hold harmless the other party of its officers, agents, employees and representatives from any and all losses, liability, damages, claims, suits, action and administrative proceedings, and demand and all expenditures and cost relating to acts of

negligence or omissions of its officers agents or employees arising out of or incidental to the performance of any of the provisions of this MOU.

Execution of MOU

Once this Memorandum of Understanding has been approved by the City Council of the City of McAlester, it will be presented to Ki Bois Community Action Foundation, Inc. and to the City of McAlester Mayor for signature.

EXECUTED as a Memorandum of Understanding (MOU)

Signed for and on behalf of the
City of McAlester:

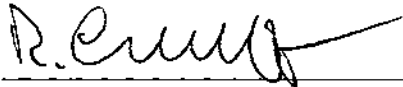
FOR THE CITY OF MCALESTER

MAYOR KEVIN E. PRIDDLE
CITY OF MCALESTER

DATE

Signed for and on behalf of the
KIBOIS Community Action Foundation, Inc.

FOR THE Ki Bois COMMUNITY ACTION FOUNDATION, INC.



R. CARROLL HUGGINS
EXECUTIVE DIRECTOR/CEO

1-5-10

DATE

APPROVED AS TO FORM AND LEGALITY:

CORA MIDDLETON
CITY CLERK
CITY OF MCALESTER

DATE

Council Chambers
Municipal Building
December 21, 2009

The McAlester Airport Authority met in a Rescheduled Regular session on Monday, December 21, 2009, at 6:00 P.M. after proper notice and agenda was posted December 18, 2009.

Present: Chris Fiedler, John Browne, Haven Wilkinson, Buddy Garvin, Sam Mason, William J. Ervin & Kevin E. Priddle
Absent: Donnie Condit
Presiding: Kevin E. Priddle, Chairman

A motion was made by Mr. Browne and seconded by Mr. Fiedler to approve the following:

- **Approval of the Minutes from the December 8, 2009, Regular Meeting of the McAlester Airport Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item D regarding claims ending December 21, 2009.** *(Gayla Duke, Chief Financial Officer)* In the amount of \$298.15.
- **Confirm action taken on City Council Agenda Item 1 City of McAlester's Treasury Report and Financial Information.** *(Gayla Duke, Chief Financial Officer)*
- **Confirm action taken on City Council Agenda Item 2 amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.** *(Gayla Duke, Chief Financial Officer)*
- **Confirm action taken on City Council Agenda Item 3 a resolution setting the election dates for Wards 2, 4 & 6.** *(Cora Middleton, City Clerk)*

There was no discussion, and the vote was taken as follows:

AYE: Trustees Browne, Wilkinson, Garvin, Mason, Fiedler & Chairman Priddle
NAY: None

Chairman Priddle declared the motion carried.

There being no further business to come before the Authority, Mr. Browne moved for the meeting to be adjourned, seconded by Mr. Fiedler. The vote was taken as follows:

AYE: Trustees Browne, Wilkinson, Garvin, Mason, Fiedler & Chairman Priddle
NAY: None

Chairman Priddle declared the motion carried.

Kevin Priddle, Chairman

ATTEST:

Cora Middleton, Secretary

Council Chambers
Municipal Building
December 21, 2009

The McAlester Public Works Authority met in a Rescheduled Regular session on Monday, December 21, 2009, at 6:00 P.M. after proper notice and agenda was posted December 18, 2009.

Present: Chris Fiedler, John Browne, Haven Wilkinson, Buddy Garvin, Sam Mason, William J. Ervin. Jr. & Kevin E. Priddle
Absent: Donnie Condit
Presiding: Kevin E. Priddle, Chairman

A motion was made by Mr. Garvin and seconded by Mr. Wilkinson to approve the following:

- **Approval of the Minutes from the December 8, 2009, Regular Meeting of the McAlester Public Works Authority.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item D regarding claims ending December 21, 2009.** *(Gayla Duke, Chief Financial Officer)* In the amount of \$127,912.75.
- **Confirm action taken on City Council Agenda Item 1 City of McAlester's Treasury Report and Financial Information.** *(Gayla Duke, Chief Financial Officer)*
- **Confirm action taken on City Council Agenda Item 2 amending Ordinance No. 2327 which established the budget for fiscal year 2009-2010; repealing all conflicting ordinances; providing for a severability clause; and declaring an emergency.** *(Gayla Duke, Chief Financial Officer)*
- **Confirm action taken on City Council Agenda Item 3 a resolution setting the election dates for Wards 2, 4 & 6.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item 4 authorizing the Mayor to sign a Memorandum of Understanding (MOU) for Emergency Management Services with Pittsburg County, Oklahoma.** *(Peter J. Stasiak, Acting City Manager)*
- **Confirm action taken on City Council Agenda Item 5 regarding a Resolution of the City of McAlester for fiscal year 2009 re-affirming the cities commitment to facilitate and administer funds from the Oklahoma Department of Commerce, Community Development Black Grant – Economic Development Infrastructure Financing (CDBG-EDIF).** *(Peter J. Stasiak, Acting City Manager)*

- **Confirm action taken on City Council Agenda Item 6 regarding a recommendation of the Planning and Zoning Committee to annex property adjacent to City.** *(Peter J. Stasiak, Acting City Manager)*
- **Confirm action taken on City Council Agenda Item 7 regarding a recommendation of the Planning and Zoning Committee to annex property adjacent to City.** *(Peter J. Stasiak, Acting City Manager)*
- **Confirm action taken on City Council Agenda Item 9 authorizing the Mayor to sign an Agreement with Iron Mountain for secure shredding services.** *(Cora Middleton, City Clerk)*
- **Confirm action taken on City Council Agenda Item 12 authorizing expenditure of \$80,000 to repair a portion of the Sandy Creek canal wall.** *(John C. Modzelewski, PE, Engineering/Public Works Director)*

There was no discussion, and the vote was taken as follows:

AYE: Trustees Browne, Wilkinson, Garvin, Mason, Fiedler & Chairman Priddle

NAY: None

Chairman Priddle declared the motion carried.

There being no further business to come before the Authority, Mr. Garvin moved for the meeting to be adjourned, seconded by Mr. Wilkinson. The vote was taken as follows:

AYE: Trustees Browne, Wilkinson, Garvin, Mason, Fiedler & Chairman Priddle

NAY: None

Chairman Priddle declared the motion carried.

Kevin Priddle, Chairman

ATTEST:

Cora Middleton, Secretary