

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, January 6, 2009, at 6.00 p.m. in regular session with the following officials present: Mayor Greg Mitchell, Council Members Donald Parker, Larry Watkins, Jerry Bounds, Leavern Guy and Interim City Manager Harvey Miller.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Donald Parker, followed by the Pledge of Allegiance led by Mayor Greg Mitchell.

**MOTION WAS MADE TO APPROVE THE CITY OF PICAYUNE MINUTES DATED
DECEMBER 16, 2008**

Motion was made by Council Member Watkins, seconded by Council Member Parker for approval of the minutes dated December 16, 2008.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE TRAVEL REQUEST FROM POLICE DEPT

Motion was made by Council Member Watkins, seconded by Council Member Parker to approve request for travel for Lane Pittman, Daniel Davis, and Emile Mistretta to Pell City, AL on January 14, 2009 to January 16, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO APPROVE DOCKET

Motion was made by Council Member Watkins, seconded by Council Member Bounds to approve the docket for January 06, 2009 in the amount of \$407673.71.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST TO ABANDON ALLEY LOCATED AT 507 AND 514 EAST 3RD ST

Motion was made by Council Member Bounds, seconded by Council Member Watkins to table the request to abandon an alley located at 507 and 514 East 3rd St. until the involved parties can meet with one another along with Chad Frierson to come to an agreement at which time they can come back before the Mayor and Council.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER GUY STEPPED OUT OF THE MEETING

MOTION TO APPOINT MELVIN HICKS AS CHAIR PERSON OF PLANNING COMMISSION

Motion was made by Council Member Parker to appoint Melvin Hicks as Chair Person of Planning Commission.

The motion died for lack of a second.

COUNCIL MEMBER BOUNDS SUGGESTED CHECKING THE PLANNING COMMISSION ORDINANCE TO SEE IF IT IS NECESSARY FOR MAYOR AND COUNCIL TO APPOINT CHAIRS OR IF IT CAN BE DONE BY PLANNING COMMISSION ALONE.

AT THIS TIME COUNCIL MEMBER GUY RE-ENTERED THE MEETING

MOTION TO CONSIDER FEDERAL AID STREETS WITHIN THE CITY OF PICAYUNE TO BE INCLUDED IN THE STIP PLAN TO BE SUBMITTED TO MDOT

Motion was made by Council Member Bounds, seconded by Council Member Watkins to approve streets to be included in the STIP Plan to be submitted to MDOT.

FEDERAL AID ROUTES

1. HWY 43 N
2. HWY 43 S/MEMORIAL BLVD
3. EAST CANAL
4. WEST CANAL
5. PALESTINE ROAD
6. UNION SCHOOL ROAD
7. JACKSON LANDING ROAD — *stripe*
8. BEECH STEEET — JACKSON LANDING ROAD TO GOODYEAR BLVD
9. MARTIN LUTHER KING
10. BRUCE STREET — ~~Curved road to stripe~~
in beach
11. MAIN STREET - BRUCE STREET TO 3rd AVENUE
12. CROSBY STREET
13. KIRKWOOD STREET
14. LAUREL STREET
15. 3rd AVENUE — LAUREL TO MAIN
16. 5th AVENUE — KIRKWOOD TO LAUREL
17. 5th STREET — HWY 11 TO NORTH JACKSON AVENUE
18. NORTH JACKSON AVENUE — 5th STREET TO EAST CANAL
19. MITCHELL STREET — HWY 11 TO CURRAN
20. 4th STREET — HWY 11 TO CURRAN
21. SOUTH BLANKS — EAST CANAL TO MEMORIAL BLVD
22. GOODYEAR BLVD — BEECH STREET TO HWY 11
23. 2nd STREET — HWY 11 TO CURRAN

- 7. *stripe + overlay*
- 10. *overlay + stripe*
- 9. *Curving + Drainage*
- 11. *Stripe*

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO MOVE APPROVAL OF RFQ COMMITTEE'S RECOMMENDATION TO ACCEPT THE RFQ PROPOSAL FROM SIEMENS BUILDING TECHNOLOGIES, INC TO EXECUTIVE SESSION

Motion was made by Council Member Guy, seconded by Council Member Parker to move approval of RFQ Committee's recommendation to accept the RFQ Proposal from Siemens Building Technologies, Inc to Executive Session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO SUBMIT APPLICATION TO THE MS DEPARTMENT OF PUBLIC SAFETY FOR FY 2008 JUSTICE ASSISTANCE GRANT FUNDS FOR A DIGITAL MOTOR CAMERA FOR A POLICE DEPARTMENT MOTORCYCLE

Motion was made by Council Member Parker, seconded by Council Member Bounds to authorize submission of an application to the MS Department of Public Safety for FY 2008 Justice Assistance Grant Funds for a Digital Motor Camera for a Police Department Motorcycle and the 10% cash match of \$500.00.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO CONSIDER A CONTRACT BY AND BETWEEN THE CITY OF PICAYUNE AND NECAISE BROTHERS CONSTRUCTION COMPANY, INC.,

Motion was made by Council Member Watkins, seconded by Council Member Guy to approve a contract by and between the City of Picayune and Necaise Brother's Construction Company, Inc., for services required to perform Sanitary Sewer Evaluation Survey in the amount of \$212,240.69 and authorize Mayor to sign related contract documents.

SECTION 00510

CONSTRUCTION CONTRACT

This Contract made and entered into this _____ day of _____, 20____ by and between _____, party of the first part, hereinafter called the CONTRACTOR, and Mayor and City Council of the City of Picayune, Mississippi, through its governing body and authorized representative, party of the second part, hereinafter called the OWNER.

WITNESSETH THAT THE PARTIES HERETO do mutually agree as follows:

1. The CONTRACTOR shall, in good and workmanlike manner and at his own cost and expenses, furnish all labor, materials, plans, and equipment necessary to construct the

**Sanitary Sewer Evaluation Survey
Wastewater Infrastructure Improvements
U.S. EPA, Region 4, Wastewater Project: XP-97477403-1**

2. It is expressly understood and agreed by the parties hereto that the Table of Contents, Notice to Bidders, Instructions to Bidders, Proposal, Construction Contract, Performance Bond, Payment Bond, General Provisions, Special Conditions, Specifications, and other items attached hereto, the accompanying drawings in explanation of all details and changes which may be furnished to the CONTRACTOR as provided herein, are each and all, by reference hereto, incorporated herein and together with this Construction Contract constitute the Contract.
3. The CONTRACTOR agrees to execute a Performance Bond and a Payment Bond in the form prescribed, in an amount equal to not less than one hundred percent (100%) of the Contract Price, with a surety or sureties satisfactory to the OWNER.
4. The CONTRACTOR shall begin work under this Contract within ten (10) calendar days of the date set in the Notice to Proceed, and he shall faithfully execute and fully complete all work hereunder within **150 consecutive calendar days** from and after the date set in said Notice to Proceed.
5. The Contract Price set forth under Paragraph 6 below shall represent the total of all sums due the CONTRACTOR for work installed under this Contract. No verbal or written order of the OWNER or ARCHITECT/ENGINEER or any of their employees shall modify or act as a waiver of the Contract Price, and the Contract Price shall not be modified in any fashion except by execution by the parties hereto of a Contract Amendment recommended by the Architect/Engineer, approved by the OWNER, and prepared in a form acceptable to the OWNER. The execution of an approved Contract Amendment by the parties hereto shall automatically modify the Contract Price in accordance with such executed Contract Amendment, after which the amended Contract Price shall govern until further amended by additional Contract Amendment(s).

6. In consideration of the faithful performance by the CONTRACTOR of all terms, conditions, and covenants of the Contract to the satisfaction of the OWNER, the OWNER shall pay and the CONTRACTOR shall receive the lump sums and/or unit prices stipulated in the Contractor's Proposal in the total amount of:

and _____ Dollars
Cents (\$ _____),

which total sum shall be known as the Contract Price, as full compensation for all work furnished and installed by the CONTRACTOR under this Contract, except that the Contract Price shall be subject to increase or decrease in accordance with Contract Amendments as provided for under Paragraph 5 above. Payments for said work shall be due and payable as set forth under Paragraph 7 below.

7. The OWNER shall make payment for work performed by the CONTRACTOR, as follows:

On the first day of each month, or as soon thereafter as practicable, the CONTRACTOR shall prepare and submit to the ARCHITECT/ENGINEER for approval a duly certified estimate of the work performed during the preceding calendar month, and the value thereof. The estimate shall include all labor and materials incorporated in the work, and all materials suitably stored at the site of the work. Upon ARCHITECT/ENGINEER'S approval of the estimate, and not later than the fifteenth day of each calendar month, the OWNER shall pay to the CONTRACTOR ninety percent (90%) of the value of the estimate.

- a. Withholding of not more than 10 percent of the payment claimed until Work is 50 percent complete;
- b. When Work is 50 percent complete, reduction of the withholding to 5 percent of the dollar value of all Work satisfactorily completed to date provided that the CONTRACTOR is making satisfactory progress and there is no specific cause for greater withholding.
- c. When the Work is 50 percent complete, a 5 percent retainage shall be held until work is substantially complete;
- d. When the Work is substantially complete (operational or beneficial occupancy), the withheld amount shall be further reduced below 5 percent to only that amount necessary to assure completion.
- e. The OWNER may reinstate up to 10 percent withholding if the OWNER determines, at its discretion, that the CONTRACTOR is not making satisfactory progress or there is other specific cause for such withholding.

Final payment shall be made to the CONTRACTOR by the OWNER within thirty (30) days after:

- a. The completion of the project;
- b. The approval by the ARCHITECT/ENGINEER of all performed under the contract;
- c. The acceptance of the work by the OWNER;
- d. Compliance by the CONTRACTOR with the terms and conditions of Paragraph 8 below; and
- e. The preparation by the CONTRACTOR and approval by the ARCHITECT/ENGINEER of a final estimate of the cost of the completed work.

Final payment to the CONTRACTOR shall equal the approved final estimate of cost less the aggregate of all previous payments to the CONTRACTOR, and less all liquidated damages assessed in accordance with the terms of this Contract.

Monthly or final payments to the CONTRACTOR delayed by the OWNER for more than 30 days after ARCHITECT/ENGINEER'S approval thereof shall accrue interest payable to the CONTRACTOR at the rate of 8 percent per annum.

- 8. Upon completion by the CONTRACTOR of all work covered by the Contract and prior to final payment to the CONTRACTOR for the work performed, the CONTRACTOR shall deliver to the OWNER in the forms attached hereto:
 - a. Releases of all liens and of rights to claim any liens, from all Subcontractors and material suppliers furnishing labor and/or materials for the project; and
 - b. An affidavit by the CONTRACTOR to the effect that payment has been made for all labor used on or for the construction of the project.

- 9. Neither the inspection of the ARCHITECT/ENGINEER or OWNER or any of their employees, nor any decision, interpretation, order, measurements, or certificate by the ARCHITECT/ENGINEER or OWNER, nor any order by the OWNER for payment of money, nor any payment for or acceptance of the whole or any part of the work by the ARCHITECT/ENGINEER or OWNER, nor any extension of time, nor any possession taken by the OWNER or its employees, shall operate as a waiver of any provision of this Contract, or of any power herein reserved to the OWNER, or of any right to damages herein provided, nor shall any waiver of any breach of the Contract be held to be a waiver of any subsequent breach. Any remedy provided in this Contract shall be taken and construed as cumulative; that is, in addition to all other suits, actions, or legal proceedings, the OWNER shall also be entitled as of rights to writ of injunction against any breach of any of the provisions of the Contract.

IN WITNESS THEREOF, the parties hereto have caused these presents to be executed and have hereto set their hands on the day and year first above written.

APPROVED AS TO FORM:

WITNESSES:

Contractor

Signature

Title

WITNESSES:

CITY OF PICAYUNE
Owner

Signature

Title

(In the event the Contractor is a Corporation, his Corporate Seal shall be affixed.)

00510-3

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE REQUEST FOR CASH #6 FOR THE 2006 KATRINA SUPPLEMENTAL CDBG NEW FIRE STATION PROJECT

Motion was made by Council Member Parker, seconded by Council Member Guy to approve request for cash #6 for \$124,925.00 for the 2006 Katrina Supplemental CDBG New Fire Station Project and authorize Mayor to sign the request and subsequent payment of accompanying invoices.

CITY OF PICAYUNE

2006 KATRINA SUPPLEMENTAL
CDBG COMMUNITY REVITALIZATION
REQUISITION FORM

(Fire Station)

REQUISITION NUMBER: 6

CDBG PROJECT NUMBER: R-103-297-01-KCR

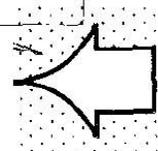
DATE: Jan. 6, 2009

CDBG BANK ACCOUNT NO: _____

PAYABLE TO:	AMOUNT:
ReflecTech, Inc.	\$ 124,925.00 (CDBG)

APPROVED:

BY: _____
MAYOR



HERE

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE REQUEST FOR CASH #4 FOR THE CDBG KATRINA ECONOMIC DEVELOPMENT AVON/AGT PROJECT

Motion was made by Council Member Guy, seconded by Council Member Bounds to approve request for Cash #4 for \$8,500 for the CDBG Katrina Economic Development AVON/AGT project.

City of Picayune Katrina ED
(Avon Engineers/Fab. Inc.)

CDBG REQUISITION FORM

REQUISITION NUMBER: 4

CDBG PROJECT NUMBER: R-103-297-01-KED

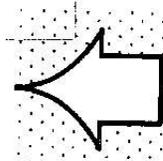
DATE: Jan. 6, 2009

CDBG BANK ACCOUNTS NO: _____

PAYABLE TO:	AMOUNT:
Sample & Associates, Inc.	\$ 8,500.00 (CDBG)

APPROVED:

BY: _____
Mayor



The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND AGENDA TO ADD CIRCLE DRIVE TO STIP PLAN TO BE SUBMITTED TO MDOT

Motion was made by Council Member Bounds seconded by Council Member Watkins to amend the agenda to add Circle Drive to STIP Plan to be submitted to MDOT.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ADD CIRCLE DRIVE TO MDOT'S OFFICIAL HIGHWAY MAP SUBJECT TO MDOT APPROVAL

Motion was made by Council Member Watkins, seconded by Council Member Parker to approve adding Circle Drive to MDOT's official highway map subject to MDOT approval.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND AGENDA TO HOLD PUBLIC HEARING ON LISTED PROPERTIES

Motion was made by Council Member Watkins, seconded by Council Member Guy to amend agenda to hold public hearing on listed properties.

417 S Curran Ave
2404 Laura Drive
700 Laird Street
2700 Victoria Drive
2704 Victoria Drive

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO GIVE MR. TAYLOR OF 2704 VICTORIA DRIVE AN ADDITIONAL 30 DAYS TO REMOVE A DUMP TRUCK FROM HIS PROPERTY

Motion was made by Council Member Guy, seconded by Council Member Parker to give Mr. Taylor of 2704 Victoria Drive an additional 30 days to remove a dump truck from his property.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO DECLARE PROPERTIES LISTED AS PUBLIC NUISANCES

Motion was made by Council Member Watkins, seconded by Council Member Parker to declare the following properties a Public Nuisance and giving 30 days to clean said property. If said property is not cleaned within the 30 days it will be turned over to the City of Picayune to clean with charges for cleanup placed as a lien against the property.

417 S Curran Ave
2404 Laura Drive
700 Laird Street
2700 Victoria Drive
2704 Victoria Drive

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACCEPT DONATION TO FIRE DEPARTMENT

Motion was made by Council Member Bounds seconded by Council Member Parker to accept donation check to Fire Department from Fred's in the amount of \$ 349.00.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Bounds to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Bounds to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO RE- ENTER EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Bounds to enter executive session to discuss the following:

- A. Possible sale of land
- B. Contractual Matter with Siemens

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Bounds to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER TURNAGE ENTERED THE MEETING

POSSIBLE SALE OF LAND TO PEARL RIVER UTILITY AUTHORITY

Motion was made by Council Member Bounds seconded by Council Member Watkins to sale land located at the former Arizona Chemical to Pearl River Utility Authority for use of a Mechanical Sewage Treatment Facility at the appraised and agreed upon price of \$70,000 and authorize Mayor to sign related documents.



APPRAISAL OF REAL PROPERTY

LOCATED AT:

Neal Road
Picayune, MS 39466

FOR:

Pearl River County Utility Authority
P.O. Box 699
Picayune, MS 39466

AS OF:

12/2/08

BY:

Cecil R. Johnson, G.A. 205
93 Fred Johnson Rd.
Carriere, MS 39426

Table of Contents

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
Property Address	Neal Road		
City	Picayune	County	Pearl River
Lender	Pearl River County Utility Authority		State MS Zip Code 39466

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ADDENDA

- Appraisal Assumptions
- Limiting Conditions
- Appraisers Certification
- Survey of Subject Property
- Restrictive Use Agreed Order
- Legal Description and Restrictions for Entire Parcel Purchased By City from Arizona Chemical, Including Subject License

Cecil R. Johnson
93 Fred Johnson Road
State Certified General Appraiser, G.A. 205
(601) 798-7908

Pearl River County Utility Authority
P.O. Box 699
Picayune, MS 39466

Re: Property: Neal Road
Picayune, MS 39466
Borrower: City of Picayune
File No.: S2-1-01

In accordance with your request, we have appraised the above referenced property. The report of that appraisal is attached.

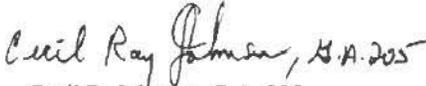
The purpose of this appraisal is to estimate the market value of the property described in this appraisal report as unencumbered fee simple title of ownership.

This report is based on a physical analysis of the site and improvements, a locational analysis of the neighborhood and city, and an economic analysis of the market for properties such as the subject. The appraisal was developed and the report was prepared in accordance with the Uniform Standards of Professional Appraisal Practice.

The value conclusions reported are as of the effective date stated in the body of the report and contingent upon the certification and limiting conditions attached.

It has been a pleasure to assist you. Please do not hesitate to contact me or any of my staff if we can be of additional service to you.

Sincerely,


Cecil R. Johnson, G.A. 205

SUMMARY OF SALIENT FEATURES

SUBJECT INFORMATION	Subject Address	Neal Road
	Legal Description	See Attached
	City	Picayune
	County	Pearl River
	State	MS
	Zip Code	39466
	Census Tract	9504
	Map Reference	617-209
SALES PRICE	Sale Price	\$
	Date of Sale	
CLIENT	Borrower	City of Picayune
	Lender	Pearl River County Utility Authority
DESCRIPTION OF IMPROVEMENTS	Size (Square Feet)	23.23 Acres
	Price per Square Foot	\$
	Location	Urban
	Age	
	Condition	
	Total Rooms	
	Bedrooms	
Baths		
APPRAISER	Appraiser	Cecil R. Johnson, G.A. 205
	Date of Appraised Value	12/2/2008
VALUE	Final Estimate of Value	\$ 70,000

CECIL RAY JOHNSON, APPRAISER

Borrower	City of Picayune	File No. 617PRCUA/C
Property Address	Neal Road	
City	Picayune	County Pearl River State MS Zip Code 39466
Lender	Pearl River County Utility Authority	

APPRAISAL AND REPORT IDENTIFICATION

This Appraisal Report is one of the following types:

- Self Contained (A written report prepared under Standards Rule 2-2(a), pursuant to the Scope of Work, as disclosed elsewhere in this report.)
- Summary (A written report prepared under Standards Rule 2-2(b), pursuant to the Scope of Work, as disclosed elsewhere in this report.)
- Restricted Use (A written report prepared under Standards Rule 2-2(c), pursuant to the Scope of Work, as disclosed elsewhere in this report, restricted to the stated intended use by the specified client or intended user.)

Comments on Standards Rule 2-3

I certify that, to the best of my knowledge and belief:

- The statements of fact contained in this report are true and correct.
- The reported analyses, opinions, and conclusions are limited only by the reported assumptions and limiting conditions and are my personal, impartial, and unbiased professional analyses, opinions, and conclusions.
- I have no (or the specified) present or prospective interest in the property that is the subject of this report and no (or the specified) personal interest with respect to the parties involved.
- I have no bias with respect to the property that is the subject of this report or the parties involved with this assignment.
- My engagement in this assignment was not contingent upon developing or reporting predetermined results.
- My compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal.
- My analyses, opinions and conclusions were developed and this report has been prepared, in conformity with the Uniform Standards of Professional Appraisal Practice.
- I have (or have not) made a personal inspection of the property that is the subject of this report.
- No one provided significant real property appraisal assistance to the person signing this certification. (If there are exceptions, the name of each individual providing significant real property appraisal assistance is stated elsewhere in this report.)

Comments on Appraisal and Report Identification

Note any USPAP related issues requiring disclosure and any State mandated requirements:

APPRAISER:

Signature: Cecil Ray Johnson, G.A. #205
 Name: Cecil R. Johnson, G.A. 205
 Date Signed: 12/11/08
 State Certification #: G.A. #205
 or State License #: _____
 State: MS
 Expiration Date of Certification or License: 2/28/2010
 Inspection of Subject:
 None Interior Exterior
 Date of Inspection 12/2/08

Co-Appraiser:

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____
 Inspection of Subject:
 None Interior Exterior
 Date of Inspection _____



Subject front



Subject Back



Additional Front View

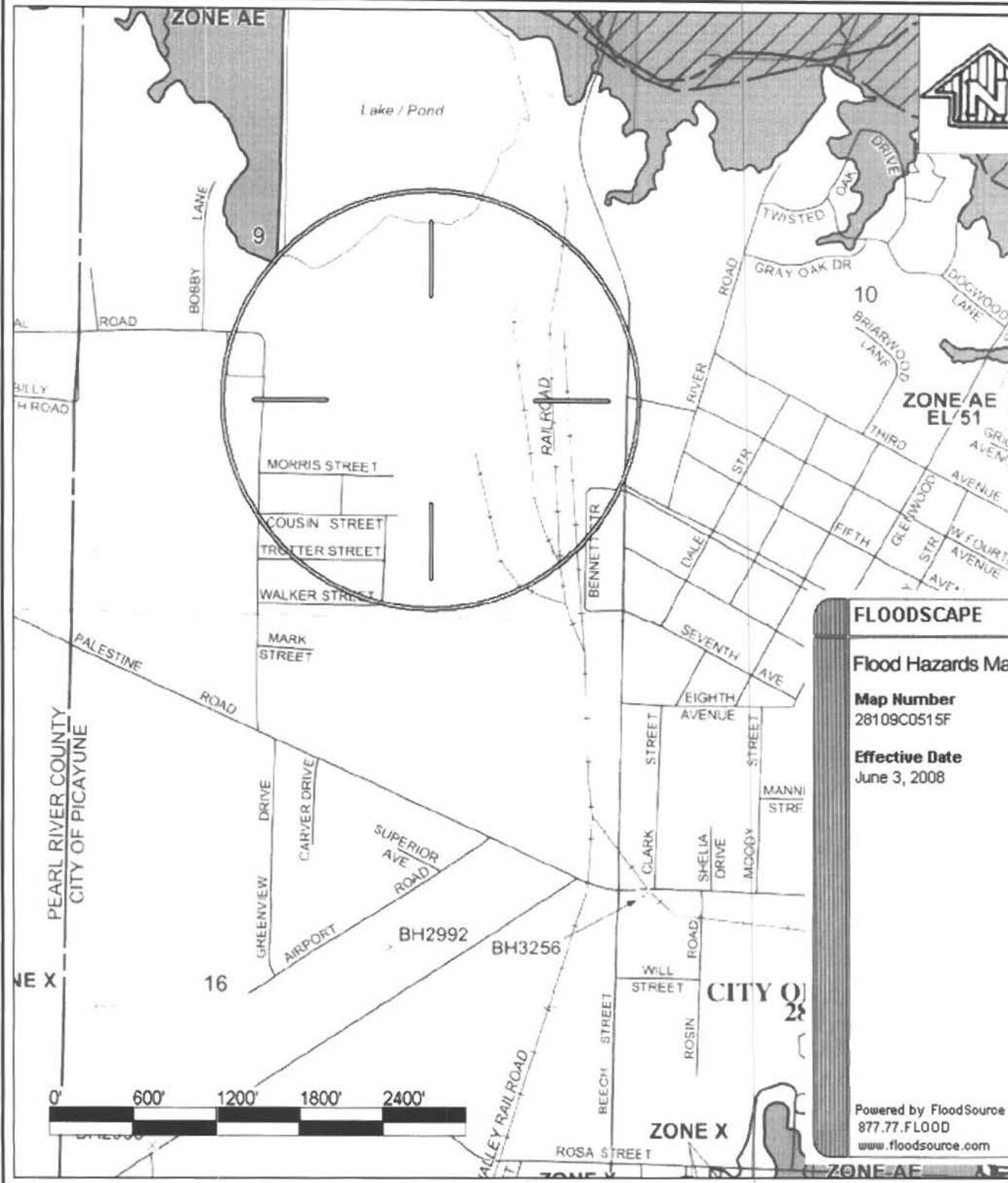


Subject Street



InterFlood  by a la mode
www.interflood.com • 1-800-252-6633

Prepared for:
Cecil R. Johnson Appraisal
Neal Road
Picayune, MS 39466



Hurricane Statement

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
Property Address	Neal Road		
City	Picayune	County	Pearl River
Lender	Pearl River County Utility Authority		State MS Zip Code 39466

HURRICANE STATEMENT

THE SUBJECT PROPERTY IS LOCATED IN AN AREA AFFECTED BY HURRICANE KATRINA, THE WORST NATURAL DISASTER IN OUR NATION'S HISTORY. THE REAL ESTATE MARKET HAS CHANGED OVERNIGHT IN THOSE AREAS WORST AFFECTED, AS WELL AS, ADJOINING AREAS. THE MARKET IMPACT OF THIS DEVASTATING STORM HAS BEEN CHAOTIC WITH MUCH UNCERTAINTY.

THIS DISASTER HAS DRASTICALLY IMPACTED SUPPLY AND DEMAND CAUSING THEM TO SUDDENLY BE OUT OF BALANCE. THE FUNDAMENTAL APPRAISAL PRINCIPLES, WHICH INCLUDE SUPPLY AND DEMAND, ANTICIPATION, CHANGE, SUBSTITUTION, CONTRIBUTION, EXTERNALITIES, AND BALANCE HAVE BEEN APPLIED TO DETERMINE AN OPINION OF VALUE. GATHERING AND ANALYZING DATA IS CHALLENGING FOR APPRAISERS. THE APPRAISER HAS RESEARCHED AND ANALYZED ALL REASONABLY AVAILABLE DATA TO ARRIVE AT AN OPINION OF VALUE. IN SOME CASES, THE APPRAISER IS FORCED TO RELY ON LIMITED DATA. THE UNCERTAINTY OF THE MARKET IS PROBLEMATIC, AS ADDITIONAL DATA BECOMES AVAILABLE, THE VALUE CONCLUSION OF THIS REPORT MAY BE AFFECTED. THE SUSTAINABILITY OF A VALUE CONCLUSION IS ALSO UNKNOWN.

BECAUSE OF THESE EVENTS THE FORECAST FOR THE LONG-TERM IS DIFFICULT TO DETERMINE. HOWEVER THE AREA IS EXPECTED TO REBOUND WITH MANY NEW OPPORTUNITIES FOR GROWTH.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
Property Address	Neal Road		
City	Picayune	County	Pearl River
Lender	Pearl River County Utility Authority		
		State	MS Zip Code 39466

OWNERSHIP RIGHTS APPRAISED:

Subject property has been valued as though owned in a fee simple ownership. A fee simple ownership is defined as the absolute ownership unencumbered by any other interest or estate; subject only to the limitations on eminent domain, escheat, police power, and taxation.

Definition taken from the dictionary of Real Estate Appraisers.

LOCATION AND ZONING:

Urban in location, I-2 Heavy Industrial with Restrictions

LEGAL DESCRIPTION:

See Addenda Section of Report

PURPOSE OF APPRAISAL:

The purpose of this appraisal is to estimate the present market value of subject property as an unencumbered fee simple interest. The effective date of this appraisal is 12/2/08.

INTENDED USER AND USE OF THIS APPRAISAL:

The report is intended to be used by the Pearl River County Utility Authority for valuation purposes.

MARKET VALUE DEFINITION:

Market Value is defined as the most probable price which a property should bring in a competitive and open market under conditions requisite to a fair sale, buyer, and sellers, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition are the consumption of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- *Buyer and Seller are typically motivated.
- *Both parties are well informed or well advised and acting in what they consider their own best interest.
- *A reasonable time is allowed for exposure in the open market.
- *Payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto.
- *The price represents the normal consideration for the property sold unaffected by special or creative financing or sale concessions granted by anyone associated with the sale.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

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		State	MS
		Zip Code	39466

HIGHEST AND BEST USE:

The definition of Highest and Best Use:

- 1) The reasonable and probable use that supports the highest present value of vacant land or improved property, as defined, as of the date of the appraisal.
- 2) The reasonably probable and legal use of land or sites as though vacant, found to be physically possible, appropriate, supported, financially feasible, and that results in the highest present land value.
- 3) The most profitable use.

Implied in these definitions is that the determination of Highest and Best Use takes into account the contribution of a specific use to the community and community development goals as well as the benefits of that use to individual property owners. Hence, in certain situations the Highest and Best Use of land may be for parks, green belts, preservation, conservation, wildlife habitat, and the like.

Land or site value is typically estimated as if the site were vacant and available to be put to its Highest and Best Use. The Highest and Best Use of the improved property (land and buildings together) may not necessarily be the same Highest and Best Use of the vacant site alone. If the two do not correspond, the structure is an inappropriate improvement of the land judged in the current market.

In estimating the Highest and Best Use, the Appraisers go through essentially four stages of analysis:

- 1) Physically Possible Use: To what uses is it physically possible to put the site in question?
- 2) Legally Permissible Use: What uses are permitted by zoning and deed restriction on the site in question?
- 3) Financially Feasible Use: Which possible and permissible uses will produce any net return to the owner of the site?
- 4) Maximally Productive Use: Among the feasible uses, which use will produce the highest net return of the present site worth?

This definition is taken from the **DICTIONARY OF REAL ESTATE APPRAISAL** published by the American Institute of Real Estate Appraisers.

Physically Possible Uses:

Subject property is large enough for commercial or industrial use.

Legally Permissible Uses:

Subject is zoned I-2, Heavy Industrial with Restrictions

Financially Feasible Uses:

Any use that would have a positive return on investment.

Maximally Productive Uses:

Productive use for subject property would be commercial/industrial.

Conclusion: Highest and Best Use:

Commercial/Industrial allowed by restrictions would be the highest and best use.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
Property Address	Neal Road		
City	Picayune	County	Pearl River
Lender	Pearl River County Utility Authority		
		State	MS Zip Code 39466

SALES HISTORY:

Subject property is part of a 234.2 acre tract of land with improvements that was purchased by the City of Picayune on 6/22/06 for \$700,000 per City of Picayune Accounting Department.

NEIGHBORHOOD DESCRIPTION:

Subject property is located inside Picayune city limits within the Picayune municipal school district. This area consists of single family dwellings and commercial/industrial property. Main sources of employment include: Picayune, Poplarville, Gulf Coast, Stennis Space Center, & commutes to Louisiana.

PEARL RIVER COUNTRY DEMOGRAPHICS:

- Population: 65,000 +/-.
- Business and Industry: Stennis Space Center, located in Hancock County, is the largest employer of county residents in the area with Pearl River Community College/Schools & Pearl River County.
- Education:
 - Junior Colleges: Pearl River Community College and Gulf Coast Community College
 - 4 Year Colleges: University of Southern Mississippi (Hattiesburg & Gulf Coast)
- Government: Pearl River County has a five-member board of supervisors.
- Medical: Highland Hospital at Picayune, Pearl River County Hospital at Poplarville, Forrest General & Wesley at Hattiesburg, Northshore & Slidell Memorial at Slidell, La.
- Law Enforcement & Fire: Pearl River County Sheriffs Department and Volunteer Fire Departments.
- Utilities: Coast Electric and Mississippi Power Company
- Highways: Hwy 53, Hwy 26, Hwy 43, Hwy 11, Hwy 13, & Interstate 59.
- Parks and Recreation: Mcleod Park, Buccaneer State Park, & Paul B. Johnson

DESCRIPTION OF SITE & IMPROVEMENTS:

Subject property consists of 23.23 +/- of semi-cleared land. Topography of subject is generally level. Subject is accessed from Neal Road and has 1/4 mile road frontage on this road. Subject is located near Picayune's sewer treatment lagoon. Subject is also located near .38 acres that was used for an asbestos burial location. Restrictions have been placed on what can/cannot be built near this site. The details of this asbestos burial location are located in the addenda section of this report. These are the only environmental issues this appraiser is aware of. This appraisal is performed under the assumption that no other environmental issues exist. This appraiser is not qualified to detect environmental problems. A professional analysis is recommended.

Tax Parcel # for subject property is part of 617-209-004-01-001 , . Taxes for subject property = \$00.00

MARKETING TIME:

Marketing time for subject would be 6-12 months.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

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		State	MS
		Zip Code	39466

VALUATION METHOD DEFINED:

COMPARATIVE SALES APPROACH:

Based on the subjective concept of value in exchange, the Comparative Sales Approach to value provides for the comparison of similar properties sold in the recent past with the property under appraisal. The market evidence gained from the sales is analyzed as to similarity applied to the subject of appraisal. Value indications derived from this approach are considered particularly significant because the reactions of buyers and sellers in the open market are reflected. Steps in the Comparative Sales Approach include the following:

- *Discovering and analyzing pertinent data.
- *Selecting appropriate units of comparison.
- *Making reasonable adjustments based on the market.
- *Applying the data to the subject of appraisal.

The following pages contain the comparable sales used to estimate value of subject property. The information in these comparables has been confirmed with parties involved. They will be adjusted in relation to Time, Location, Size, & Topography.

Definitions, Data, & Market AnalysisFile No. **617PRCUA/CITY**

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Property Address	Neal Road		
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Comparable Sale #1**Location:** Neal Road, Picayune, MS**Date:** 5/31/06**Grantor:** Calvin Jackson Estate**Grantee:** Alvin Masters**Size:** 9.5 acres**Total Price:** \$48,685**Improvements:** None**Utilities:** City**Topography:** Generally Level**Sources:** MLS# 18171**Financing:** Conventional**Improvement Value:** \$ 0**Bare Land Value:** \$5,125 per acre**Comments:**

This comparable is located across the street from subject property. It is zoned R-3 Residential and has no improvements. Comparable is located inside Picayune city limits within the Picayune Municipal School District.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
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Comparable Sale #2

Location: Corner of Carroll and Adcox, Picayune, MS
Date: 12/8/06
Grantor: Byran Burch
Grantee: Guisseppi Inc.
Size: 45 acres
Total Price: \$148,000
Improvements: None
Utilities: None
Topography: Generally Level, Creek, & Pond
Sources: MLS# 17327
Financing: Cash
Improvement Value: \$ 0
Bare Land Value: \$3,289 per acre

Comments:

Comparable property was located 2 miles northeast of subject property. This comparable has creek frontage, a pond, frontage on Carroll Street. It is located inside Picayune City Limits within the Picayune Municipal School District.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

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	State	MS	Zip Code 39466

Comparable Sale #3

Location: Jackson Landing/Union School Road, Picayune, MS
Date: 11/8/05
Grantor: D. W. Merrill
Grantee: Wood Oaks, LLC.
Size: 10.18 acres
Total Price: \$137,500
Improvements: None
Utilities: City
Topography: Generally Level
Sources: MLS # 16502
Financing: Cash
Improvement Value: \$ 0
Bare Land Value: \$13,507 per acre
Comments:

Comparable property is located 1 mile south of subject property. This comparable had been recently annexed into city limits and zoned residential. It is located in the Picayune Municipal School District. It has road frontage on Union School Road and Jackson Landing Road.

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

Borrower	City of Picayune		
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Land Value Adjustment Grid

Comparable Sale #	1	2	3	
Sale Date	5/31/06	12/8/06	11/8/05	
Acres	9.5	45	10.18	
Price per Acre(less improvements)	\$5,125	\$3,289	\$13,507	
Adjustments %				
Financing	0.00%	0.00%	0.00%	
Conditions of Sale	0.00%	0.00%	0.00%	
Time/Market	0.00%	0.00%	0.00%	
Size Adjustments (Acreage)	-5%	15%	-5%	
Location Adjustments	0.00%	0.00%	-30%	
Topography Adjustments	-10%	20%	-20%	
Improvements	0.00%	0.00%	0.00%	
External	-25%	-25%	-25%	(City Sewer Lagoon & Asbestos Dump
Net Adjustments	-40%	10%	-80%	
Adjusted Price Per Acre	\$3,075	\$3,618	\$2,701	

Definitions, Data, & Market AnalysisFile No. **617PRCUA/CITY**

Borrower	City of Picayune		
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Reconciliation of ComparablesComparable #1

This comparable was given a superior adjustment for being smaller in size, having better topography and not having any negative external influence (sewer lagoon & buried asbestos).

Comparable #2

This comparable was given an inferior topography adjustment due to having mostly low lying topography. It was given an inferior adjustment for being larger in size than subject. It was given a superior adjustment for not having any negative external influence (sewer lagoon & buried asbestos).

Comparable #3

This comparable was given a superior adjustment for being smaller in size, having better topography, not having any negative external influence (sewer lagoon & buried asbestos), and being located in an area suitable for residential development with road frontage on two streets.

Final Reconciliation

The adjusted comparable land values produce a range in value from a low of \$2,701 to a high of \$3,618 per acre. Land value for subject will be valued \$3,000 per acre. Thus: 23.23 acres @ \$3,000 = \$69,690.

Estimated Value = 70,000 (rounded)

Definitions, Data, & Market Analysis

File No. **617PRCUA/CITY**

Borrower	City of Picayune						
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Addenda

APPRAISAL ASSUMPTIONS

This appraisal report has been made with the following assumptions:

1. No responsibility is assumed for the legal description or for matters including legal or title considerations. Title to the property is assumed to be marketable unless otherwise stated.
2. The property is appraised free and clear of any or all liens or encumbrances unless otherwise stated.
3. Responsible ownership and competent property management are assumed.
4. The information furnished by others is believed to be reliable. However, no warranty is given for its accuracy.
5. All engineering is assumed to be correct. The plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
6. It is assumed that there are no hidden or unapparent conditions of the property, subsoil, or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
7. It is assumed that there is full compliance with all applicable federal, state, local environmental regulations and laws unless a noncompliance is stated, defined and given consideration in the appraisal report.
8. It is assumed that all applicable zoning/use regulations and restrictions have been complied with, unless it has been otherwise stated, defined, and considered in the appraisal report.
9. It is assumed that all required licenses, certificate of occupancy, consents, or other legislative or administrative authority from any local, state, or national government or private entity or organization has been or can be obtained or renewed for any use on which the value estimate contained in this report is based.
10. It is assumed that the utilization of the land and/or improvements are within the boundaries or property lines of the property described and that there is no encroachment or trespass unless noted in the report.
11. Marketing Time – Local brokers and real estate people indicate a normal marketing time for the subject would be between 6 & 12 months. Marketing time is an estimate of the amount of time it takes to sell a property interest at the estimated market value during the period after the effective date of the appraisal. This estimate is not intended to be a prediction of a date of sale. It is inappropriate to assume that the value as of the effective date of an appraisal remains stable during a marketing period. Additionally, the appraiser(s) have considered market factors external to this appraisal report and have concluded that a reasonable marketing time is 6-18 months.
12. Exposure Time – Exposure time is the estimated length of time the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale. The sale is considered to be at market value on the effective date of the appraisal; a retrospective estimate based upon an analysis of past events assuming a competitive and open market.
Exposure Time is different for various types of real estate and under various market conditions. Exposure time is always presumed to occur prior to the effective date of

the appraisal and is substantiated by related facts in the appraisal report: i.e., supply and demand conditions, as of the effective date; the use of current cost information; the analysis of historical sales information; and the analysis of future income expectancy.

In applying the market value definition of this appraisal, a reasonable exposure time of 6-18 months has been estimated. In arriving at this estimate we have considered: the local economy; supply and demand; information from comparable sales data; and interviews with market participants.

LIMITING CONDITIONS

This appraisal has been made with the following limiting conditions:

1. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
2. Possession of the report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser of the appraiser, and in any event only with property written qualification and only in its entirety.
3. The appraiser herein by reason of this appraisal is not required to give further consultation, testimony, or be in attendance in court with reference to the property in question unless arrangements have been previously made.
4. Neither all nor any part of the contents of this report will be disseminated to the public through advertising, public relations, news sales, or other media without the prior written consent and approval of the appraiser.
5. This appraisal/inspection is not a home or building inspection, structural inspection, or pest inspection. By preparing this report, the appraiser is not acting as a home/building inspector, structural engineer, or pest inspector. In performing the limited inspection of this property, areas that were readily accessible were visually observed and the review is superficial only. This inspection is not technically exhaustive and does not offer warranties or guarantees of any kind. It is advised to have the structure inspected by a qualified inspector that offers such warranties or guarantees if there is any concern regarding adverse or negative conditions.

1. I have researched the subject market area and have selected a minimum of three recent sales of properties most similar and proximate to the subject property for consideration in the sales comparison analysis and have made a dollar adjustment when appropriate to reflect the market reaction to those items of significant variation. If a significant item in a comparable property is superior to, or more favorable than, the subject property, I have made a negative adjustment to the adjusted sales price of the comparable and, if a significant item in a comparable property is inferior to, or less favorable than the subject property, I have made a positive adjustment to increase the adjusted sales price of the comparable.
2. I have taken into consideration the factors that have an impact on value in my development of the estimate of market value in the appraisal report. I have knowingly withheld any significant information from the appraisal report and I believe, to the best of my knowledge, that all statements and information in the appraisal report are true and correct.
3. I stated in the appraisal report only my own personal, unbiased, and professional analysis, opinions, and conclusions, which are subject only to the conditions and limiting conditions specified in this form.
4. I have no present or prospective interest in the property that is the subject to this report, and I have no present or prospective personal interest or bias with respect to the participants in the transaction. I did not base, either partially or completely, my analysis and/or the estimate of market value in the appraisal report on the race, color, religion, sex, handicap, familial status, or national origin of either the prospective owners or occupants of the subject property or of the prospective owners or occupants of the properties in the vicinity of the subject property.
5. I have no present or contemplated future interest in the subject property, and neither my current or future employment nor my compensation for performing the appraisal is contingent on the appraised value of the property.
6. I was not required to report a predetermined value or direction in value that favors the cause of the client or any related party, the amount of the value estimated, the attainment of a specific result, or the occurrence of a subsequent event in order to receive my compensation and/or employment for performing the appraisal. I did not base the appraisal report on a requested minimum valuation, a specific valuation, or the need to approve a specific mortgage loan.
7. I performed this appraisal in conformity with the Uniform Standards of Professional Appraisal Practice that were adopted and promulgated by the Appraisal Standards Board of The Appraisal Foundation and that were in place as of the effective date of this appraisal, with the exception of the departure provision of the Uniform Standards, which does not apply. I acknowledge that an estimate of a reasonable time for exposure in the open market is a condition in the definition of market value and the estimate I developed is consistent with the marketing time noted in the neighborhood section of this report, unless I have otherwise stated in the reconciliation section.
8. I have personally inspected the interior and exterior areas of the subject property and the exterior of all properties listed as comparables in the appraisal report. I further certify that I have noted any apparent or known adverse conditions in the subject improvements, on the subject site, or on any site within the immediate vicinity of the subject property of which I am aware and have made adjustments for these adverse conditions in my analysis of the property value to the extent I had market evidence to support them. I have also commented about the effect of the adverse conditions on the marketability of the subject property.
9. I personally prepared all conclusions and opinions about the real estate that were set forth in the appraisal report. If I relied on significant professional assistance from any individual or individuals in the performance of the appraisal or the preparation of the appraisal report, I have named such individual(s) and disclosed the specific tasks performed by them in the reconciliation section of this appraisal report. I certify that any individual so named is qualified to perform the tasks. I have not authorized anyone to make a change to any item in the report; therefore, if an unauthorized change is made to the appraisal report, I will have no responsibility for it.

SUPERVISORY APPRAISER'S CERTIFICATION: If a supervisory appraiser signed the appraisal report, he or she certifies and agrees to directly supervise the appraiser who prepared the appraisal report, have reviewed the appraisal report, agree with the statements and conclusions of the appraiser, agree to be bound by the appraiser's certifications numbered 4 through 7 above, and am taking full responsibility for the appraisal and the appraisal report.

ADDRESS OF PROPERTY APPRAISED: Neal Road, Picayune, MS 39466

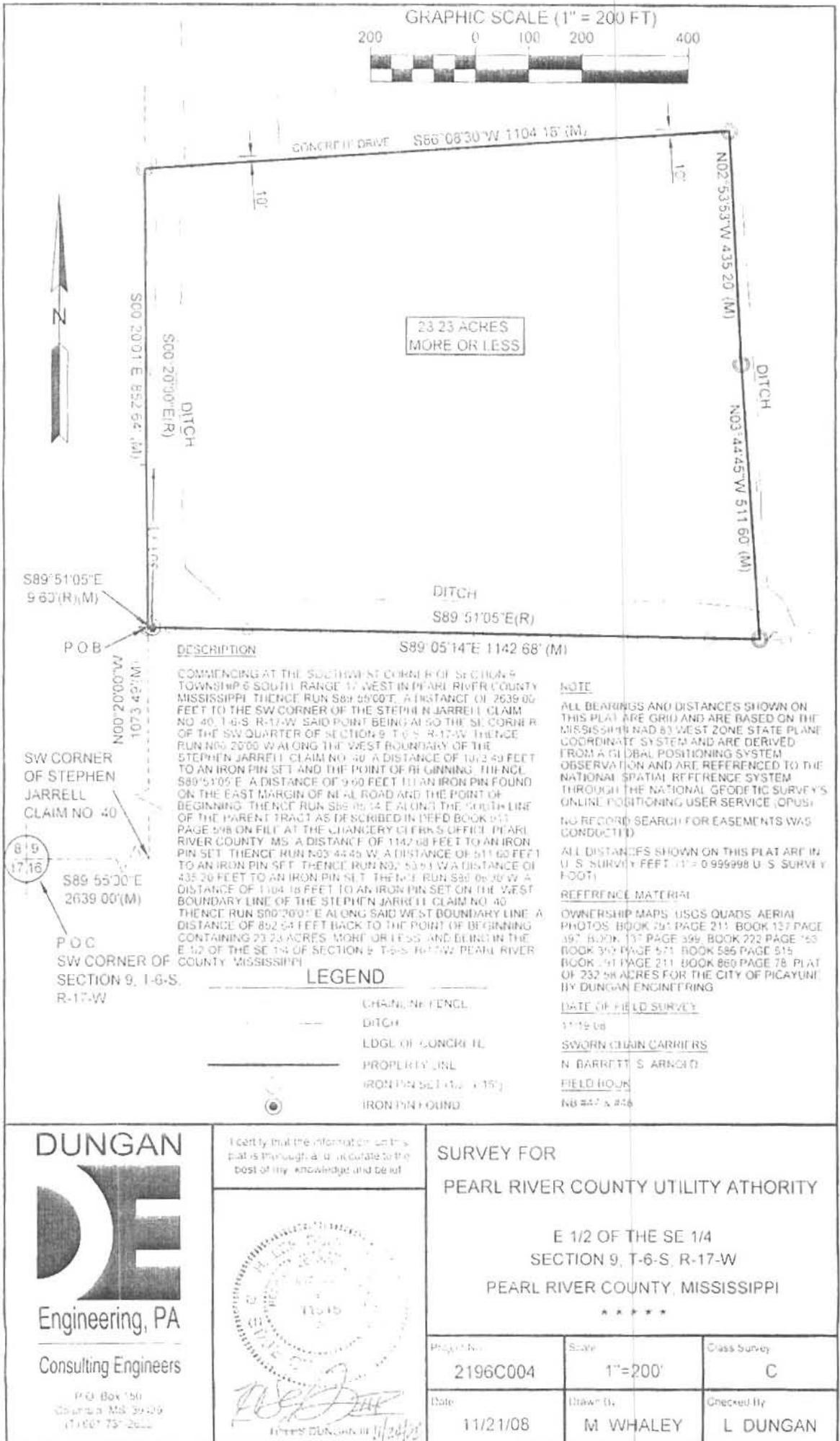
APPRAISER:

Signature: Cecil Ray Johnson, G.A. 205
 Name: Cecil R. Johnson, G.A. 205
 Date Signed: 12/11/08
 State Certification #: G.A. #205
 or State License #: _____
 State: MS
 Expiration Date of Certification or License: 2/28/2010

SUPERVISORY APPRAISER (only if required):

Signature: _____
 Name: _____
 Date Signed: _____
 State Certification #: _____
 or State License #: _____
 State: _____
 Expiration Date of Certification or License: _____

Did Did Not Inspect Property



BEFORE THE MISSISSIPPI COMMISSION
ON ENVIRONMENTAL QUALITY

MISSISSIPPI COMMISSION ON
ENVIRONMENTAL QUALITY

COMPLAINANT

Order No. 5167 0

VS.

CITY OF PICAYUNE
815 North Beech Street
Picayune, Mississippi 39466

RESPONDENT

RESTRICTIVE USE AGREED ORDER

COME NOW the Mississippi Commission on Environmental Quality (Commission) and the City of Picayune (Respondent) in the above captioned cause agree as follows:

1. The purpose of this Restrictive Use Agreed Order is to restrict the use and activities on the Site described below to insure protection of human health and the environment.
2. The Respondent has an interest in a tract of land located in Picayune, MS, known as the "Arizona Chemical Restricted Area" and hereafter referred to as the "Site." Attachment I is a survey plat depicting the boundaries of the Site. A legal description of the Site follows:

"COMMENCING AT THE SOUTHWEST CORNER OF THE STEPHEN JARRELL CLAIM #40, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE SOUTHWEST ¼ OF SECTION 9, IN T6S, R17W, PEARL RIVER COUNTY, MISSISSIPPI AND RUN N 0° 20' W FOR 1073.49' TO A ¼" IRON PIPE; THENCE RUN NORTH 900.24'; THENCE RUN EAST 231.41' TO AN "X" IN CONCRETE AND THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING RUN N 3° 01' 22" W FOR 150.33' TO A ½" REBAR; THENCE RUN N 85° 17' 31" W FOR 108.46' TO A ½" REBAR; THENCE RUN S 3° 51' 48" E FOR 150.26' TO A ½" REBAR; THENCE RUN S 85° 17' 31" W FOR 110.66' BACK TO THE POINT OF BEGINNING, CONTAINING 0.38 ACRES MORE OR LESS AND BEING SITUATED IN THE STEPHEN JARRELL CLAIM #40 IN T6s, R17W, PEARL RIVER COUNTY, MISSISSIPPI."

3. The Site contains an asbestos burial location recognized by the Mississippi Department of Environmental Quality (MDEQ).

STATE OF MISSISSIPPI

HALEY BARBOUR

GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

CHARLES H. CHISOLM, EXECUTIVE DIRECTOR

July 28, 2006

Mayor Greg Mitchell
City of Picayune
815 North Beech Street
Picayune, Mississippi 39466

RE: Restrictive Use Agreed Order
Arizona Chemical Picayune Facility
Picayune, Pearl River County, Mississippi

Dear Mayor Mitchell:

The Mississippi Department of Environmental Quality (MDEQ) has approved by Order No. 5167-06, a Restrictive Use Agreed Order for the former Arizona Chemical Facility located in Picayune, MS. Your copy of the original Restrictive Use Agreed Order is enclosed with this letter. As discussed with Nathan Farmer, you shall file a certified copy of the Notice of Land Use Restrictions in the office of the Chancery Clerk in Pearl River County. The Chancery Clerk shall record and enter the Notice of Land Use Restrictions and Restrictive Use Agreed Order in the land records in accordance with Section 89-5-33 and collect the fees provided in Section 25-7-9. Any subsequent deed or other instrument conveying an interest in the property shall state in the deed or instrument that the property is subject restrictions, unless the notice is canceled by MDEQ. Once filed, please provide MDEQ with the proof of filing as required in the Restrictive Use Agreed Order. If you have any questions or comments concerning this matter, please contact me at (601) 961-5731.

Sincerely,



William McKercher
Office of Pollution Control

Enclosure

cc: Michael T. Slack, P.E. – MDEQ
Nathan Farmer, City Attorney – Picayune, MS
Glade Woods – Partners for Pearl River County

K:\Common\Brownfields\Wmckercher\Arizona Chemical\RE Picayune Signed RUAO.doc

OFFICE OF POLLUTION CONTROL

POST OFFICE BOX 10385 • JACKSON, MISSISSIPPI 39289-0385 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • www.deq.state.ms

AN EQUAL OPPORTUNITY EMPLOYER

Restrictive Use Agreed Order
City of Picayune
Page 2 of 4

4. The staff of the Commission has evaluated this Restrictive Use Agreed Order and believes once the requirements of it have been completed that (1) the Site will be protective of the public health and the environment and (2) no further corrective action will be required at this time.
5. The following is a description of all restrictions and requirements for the Site:
 - (a) There shall be no excavating, drilling or other activities that could create exposure to the asbestos containing media without prior approval from MDEQ.
 - (b) The fencing surrounding the perimeter of the Site shall be properly maintained and repaired in event of damage;
 - (c) A sign of a size, shape, construction, and layout approved by MDEQ, shall be posted at the physical location of the Site and shall read as follows:

STOP – CALL BEFORE YOU DIG
(601) 961-5171
Request to Speak with Someone in Assessment Remediation Branch
Arizona Chemical Restricted Area
 - (d) All required institutional controls shall be implemented;
 - (e) Beginning on October 31, 2006, and annually thereafter, Respondent shall submit certification in a form required by MDEQ that all the requirements listed in #5 (a) through (d) have been maintained. The annual certification must include a list of all surface owners and leaseholders of the Site.
6. The Respondent shall restrict the entire facility to non-residential use. Property uses would also exclude schools, parks, day care facilities, or similar facilities where children are present unless otherwise approved by MDEQ.
7. Respondent shall retain responsibility for the requirements listed in #5 above, until the Commission approves the transfer of those responsibilities to another party (e.g., the prospective purchaser) by entering into an Agreed Order with the other party.
8. Prior to any change in use of the Site or any portion of the Site, written notice shall be given to and approval obtained from the MDEQ.
9. Written notice must be provided to MDEQ 30 days prior to any property transaction involving the Site. Any conveyance must contain as covenants the requirements listed in #5 and 6 with a statement that the covenants run with the land and continue into perpetuity unless otherwise ordered by the Commission.

Restrictive Use Agreed Order
City of Picayune
Page 3 of 4

10. Within fifteen (15) days after execution of this Restrictive Use Agreed Order, Respondent shall file the Restrictive Use Notice, as approved by MDEQ, in the office of the Chancery Clerk of the County in which the Site is located for recording onto the land deed records in the appropriate sectional index.
11. Within forty-five (45) days after execution of this Restrictive Use Agreed Order, the Respondent is required to submit to MDEQ certification signed by the Chancery Clerk of the County in which the Site is located that the requirements under paragraph 10 of this Restrictive Use Agreed Order have been completed.
12. Nothing in this Restrictive Use Agreed Order shall be construed to convey or determine any interest in property.
13. Nothing in this Restrictive Use Agreed Order shall be construed to be an allocation of costs or an indemnification by the State, MDEQ, or the Commission.
14. Nothing in this Restrictive Use Agreed Order shall limit the rights of the MDEQ or the Commission in the event Respondent fails to comply with this Restrictive Use Agreed Order. The Restrictive Use Agreed Order shall be strictly construed to apply to those matters expressly resolved herein.
15. Nothing contained in this Restrictive Use Agreed Order shall limit the rights of Complainant to take enforcement or other actions against Respondent for violations not addressed herein and for future violations of environmental laws, rules, and regulations.
16. This Restrictive Use Agreed Order does not resolve any issues regarding liability and/or penalties for any violation of any federal and/or state order, permit, law, rule and/or regulation. The Commission specifically reserves any such action.
17. Respondent understands and acknowledges that it is entitled to an evidentiary hearing before the Commission pursuant to Section 49-17-31 (Rev. 2003), and that it has made an informed waiver of that right.

Restrictive Use Agreed Order
City of Picayune
Page 4 of 4

So ORDERED and AGREED, this the 27th day of July, 2006.

Charles H. Chisolm

Charles H. Chisolm
Executive Director
Mississippi Commission on
Environmental Quality

AGREED, this the 21st day of July, 2006.

BY: Greg Mitchell
Greg Mitchell

TITLE: Mayor - City of Picayune

BY: Linda Caston
Linda Caston

TITLE: City Clerk - City of Picayune

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Greg Mitchell and Linda Caston who first being duly sworn, did state upon their oath and acknowledged to me that they are the Mayor and City Clerk of the City of Picayune and are authorized by that Municipality to sign this Agreement.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 21st day of July, 2006.

Diana Miller
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Apr 12, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

BOOK 911 PAGE 599

WITNESS the signature of the Grantor, this 22 day of June, 2006.

ATTEST:

ARIZONA CHEMICAL COMPANY
A Delaware corporation

Joseph W. Segers
Joseph W. Segers
Secretary

By: Gerald C. Marterer
Name: Gerald C. Marterer
Title: President

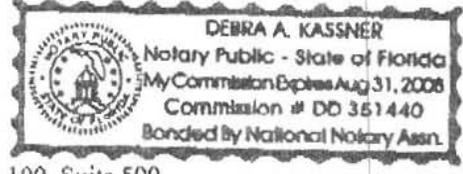
STATE OF FLORIDA

COUNTY OF Duval

Personally appeared before me, the undersigned authority in and for said county and state on this the 22 day of June, 2006, within my jurisdiction, the within named Gerald C. Marterer, who acknowledged that he is the President of ARIZONA CHEMICAL COMPANY, a Delaware corporation, and that for and on behalf of said corporation and as its act and deed he executed and delivered the above and foregoing instrument, after first having been duly authorized by said corporation to do so.

Debra A. Kassner
Notary Public

My commission expires: 8/31/2008



ADDRESSES:

Grantor: 4600 Touchton Road, Building 100, Suite 500
Jacksonville, FL 32246

Grantee: 4600 Touchton Road, Building 100, Suite 500
Jacksonville, FL 32246

PREPARED BY:

Kathleen M. Willemin, Esq.
International Paper Company
3 Paragon Drive
Montvale, NJ 07645
Telephone: (201) 307-4715

BOOK 23 1 2 100 1 2 100

EXHIBIT A
to
SPECIAL WARRANTY DEED

Tract #1

A part of the West Half (W ½) of the Stephen Jarrell Claim No. 40 and a part of the East Half (E ½) of Section 9, all in Township 6 South, Range 17 West in the County of Pearl River, State of Mississippi, and more particularly described as follows, to-wit:

Commencing at the Northwest corner of Section 16, Township 6 South, Range 17 West in Pearl River County, Mississippi;

THENCE South 89 degrees, 55 minutes, East 2639.0 feet to the Southwest corner of the Stephen Jarrell Claim No. 40, Township 6 South, Range 17 West, said point being, also the Southeast corner of the Southwest Quarter (SW ¼) of Section 9, Township 6 South, Range 17 West;

THENCE North 00 degrees 20 minutes West along the West boundary of the Stephen Jarrell Claim No. 40 for a distance of 1,073.49 feet to the point of beginning;

THENCE South 89 degrees 51 minutes 05 seconds East along an existing fence for a distance of 2006.65 feet to an iron pin;

THENCE South 03 degrees 56 minutes 52 seconds East 145.61 feet to an iron pin;

THENCE North 83 degrees 21 minutes 25 seconds East along a fence for a distance of 110.0 feet to a fence corner;

THENCE North 03 degrees 56 minutes 52 seconds West along a fence for a distance of 480.93 feet to a fence corner;

THENCE North 80 degrees 26 minutes 04 seconds East 492.69 feet, more or less, to the West margin of Mississippi State Highway No. 43, also identified as the Pacayune-Bogalusa Highway and Beech Road;

THENCE North 00 degrees 26 minutes 02 seconds West along the West margin of Mississippi Highway No. 43 for a distance of 728.19 feet to the P.C. of a curve to the left having a radius of 690.89 feet;

THENCE Northwesterly along the arc of said curve for a distance of 273.73 feet to the P.T. of said curve;

THENCE North 26 degrees 40 minutes 44 seconds West along the West margin of said Mississippi Highway No. 43 for a distance of 400.11 feet to a concrete right of way marker;

THENCE North 27 degrees 57 minutes 51 seconds West along the West margin of said Mississippi Highway No. 43 for a distance of 323.76 feet to a concrete right of way marker, said point also being the P.C. of a curve to the right, having a radius of 898.51 feet;

THENCE Northeasterly along having arc of said curve for a distance of 633.81 feet to the P.T. of said curve;

THENCE North 17 degrees 16 minutes 56 seconds East along the West margin of said Mississippi Highway No. 43 for a distance of 1535.27 feet to the East boundary of the West half of the said Stephen Jarrell Claim No. 40;

DEC-10-2008 13:44 FROM: TOMMY BRELAND REALTY 6017950064

TO: 16017987908

P. 4/8

BOOK 91 PAGE 601

THENCE North 00 degrees 20 minutes West along the East boundary of the West half of the said Stephen Jarrell Claim No. 40 for a distance of 185.29 feet to the Northeast corner of the West half of the said Stephen Jarrell Claim No. 40;

THENCE South 89 degrees 38 minutes 28 seconds West along the North boundary of said Stephen Jarrell Claim No. 40 for a distance of 2640.0 feet to the Northwest corner of said claim;

THENCE South 00 degrees 20 minutes East along the West boundary of said claim for a distance of 4237.33 feet to the point of beginning, containing 234.88 acres, more or less.

EXHIBIT B
PERMITTED EXCEPTIONS

(i) Rights, if any, relating to the construction and maintenance in connection with any public utility of wires, poles, pipes, conduits and appurtenances thereto, on, under or across the Premises;

(ii) The current year's taxes, assessments, water rates and other governmental charges of any kind or nature imposed on or levied against or on account of the Premises, which are not yet due and payable but are liens on the Premises;

(iii) Restrictions on Grantee's ability to build upon or use the Premises imposed by any current or future development standards, building or zoning ordinances or any other law or regulation of any governmental authority;

(iv) Any state of facts which an accurate survey or an inspection of the Premises would reveal, including, but not limited to, the location of boundary lines, improvements and encroachments, if any;

(v) All outstanding easements, servitudes, rights-of-way, flowage rights, restrictions, licenses, leases, reservations, covenants and all other rights in third parties of record or acquired through prescription or adverse possession;

(vi) Standard title insurance exceptions in the State of Mississippi;

(vii) All claims of governmental authorities in and to any portion of the Premises lying in the bed of any streams, creeks or waterways or other submerged lands or land now or formerly subject to the ebb and flow of tidal waters or any claims of riparian rights;

(viii) Any and all restrictions on use of the Premises due to environmental protection laws, including, without limitation, wetlands protection laws, rules, regulations and orders;

(ix) All railroad side track agreements; and

(x) Mechanics', materialmen's, warehousemen's and similar liens attaching by operation of law, incurred in the ordinary course of business and securing payments not yet delinquent or payments that are being contested in good faith; and

(xi) Such other matters as set forth in owner's policy of title insurance no. V522066 issued by Mississippi Valley Title Insurance Company

INDEXING INSTRUCTIONS:

Section 9 Township 6 South Range 17 West

DEC-10-2008 13:45 FROM:TOMMY BRELAND REALTY 6017950054

TO:16017987908

P.6

STATE OF MISSISSIPPI

BOOK 911 PAGE 603

COUNTY OF PEARL RIVER

Mississippi Department of Environmental Quality

NOTICE OF LAND USE RESTRICTIONS

A Restrictive Use Agreed Order has been developed with regard to property located in Picayune, MS, as shown in the attached survey plat. This property, hereafter referred to as the "Site," is situated in Section 9, Township 6 S, Range 17 W, Pearl River County, Mississippi, and being more particularly described by metes and bounds as follows, to-wit:

"COMMENCING AT THE SOUTHWEST CORNER OF THE STEPHEN JARRELL CLAIM #40, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 9, IN T6S, R17W, PEARL RIVER COUNTY, MISSISSIPPI AND RUN N 0° 20' W FOR 1073.49' TO A 3/4" IRON PIPE; THENCE RUN NORTH 900.24'; THENCE RUN EAST 231.41' TO AN "X" IN CONCRETE AND THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING RUN N 3° 01' 22" W FOR 150.33' TO A 1/2" REBAR; THENCE RUN N 85° 17' 31" W FOR 108.46' TO A 1/2" REBAR; THENCE RUN S 3° 51' 48" E FOR 150.26' TO A 1/2" REBAR; THENCE RUN S 85° 17' 31" W FOR 110.66' BACK TO THE POINT OF BEGINNING, CONTAINING 0.38 ACRES MORE OR LESS AND BEING SITUATED IN THE STEPHEN JARRELL CLAIM #40 IN T6s, R17W, PEARL RIVER COUNTY, MISSISSIPPI."

The Restricted Use Area of the Site is an asbestos burial location recognized by the Mississippi Department of Environmental Quality (MDEQ). In order to protect public health and the environment, certain restrictions must be placed on the use of the Restricted Areas of the Site. The entire facility is restricted to non-residential use. Property uses would also exclude schools, parks, day care facilities, or similar facilities where children are present unless otherwise approved by MDEQ.

The following is a listing of all restrictions for the Restricted Areas of the Site:

- 1. There shall be no excavating, drilling or other activities within the Site without approval from MDEQ;
2. The fencing surrounding the perimeter of the Site shall be properly maintained and repaired in event of damage;

Prior to executing any deed or other instrument conveying an interest in the Restricted Areas of the Site, the following conditions must be met:

- 1. Any conveyance of the Restricted Areas of the property must contain as covenants the restrictions listed above with a statement that the covenants run with the land and continue into perpetuity unless otherwise ordered by the Mississippi Commission on Environmental Quality;
2. Written notice must be provided to MDEQ at least 30 days prior to any property transaction involving the Site; and
3. Prior to any change in use of the Site or any portion of the Site, written notice shall be given to the MDEQ.

This Notice may be executed in counterparts.

The parties that have a legal or equitable surface interest in the Site follow:

- 1. City of Picayune

DEC-10-2008 13:45 FROM: TOMMY BRELAND REALTY 6017950064

TO: 16017987908

P. 7

STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER

BOOK 98 101 101 101

AGREED, this the 21st day of July, 2006.

BY: [Signature]
Greg Mitchell

TITLE: Mayor - City of Picayune

BY: [Signature]
Linda Caston

TITLE: City Clerk - City of Picayune

PERSONALLY appeared before me, the undersigned authority in and for the jurisdiction aforesaid, the within named Greg Mitchell and Linda Caston who first being duly sworn, did state upon their oath and acknowledged to me that they are the Mayor and City Clerk of the City of Picayune and are authorized by that Municipality to sign this Agreement.

SWORN TO AND SUBSCRIBED BEFORE ME, this the 21st day of July, 2006.

[Signature]
NOTARY PUBLIC

MY COMMISSION EXPIRES:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE
MY COMMISSION EXPIRES: Apr. 12, 2009
BONDED THRU NOTARY PUBLIC UNDERWRITERS

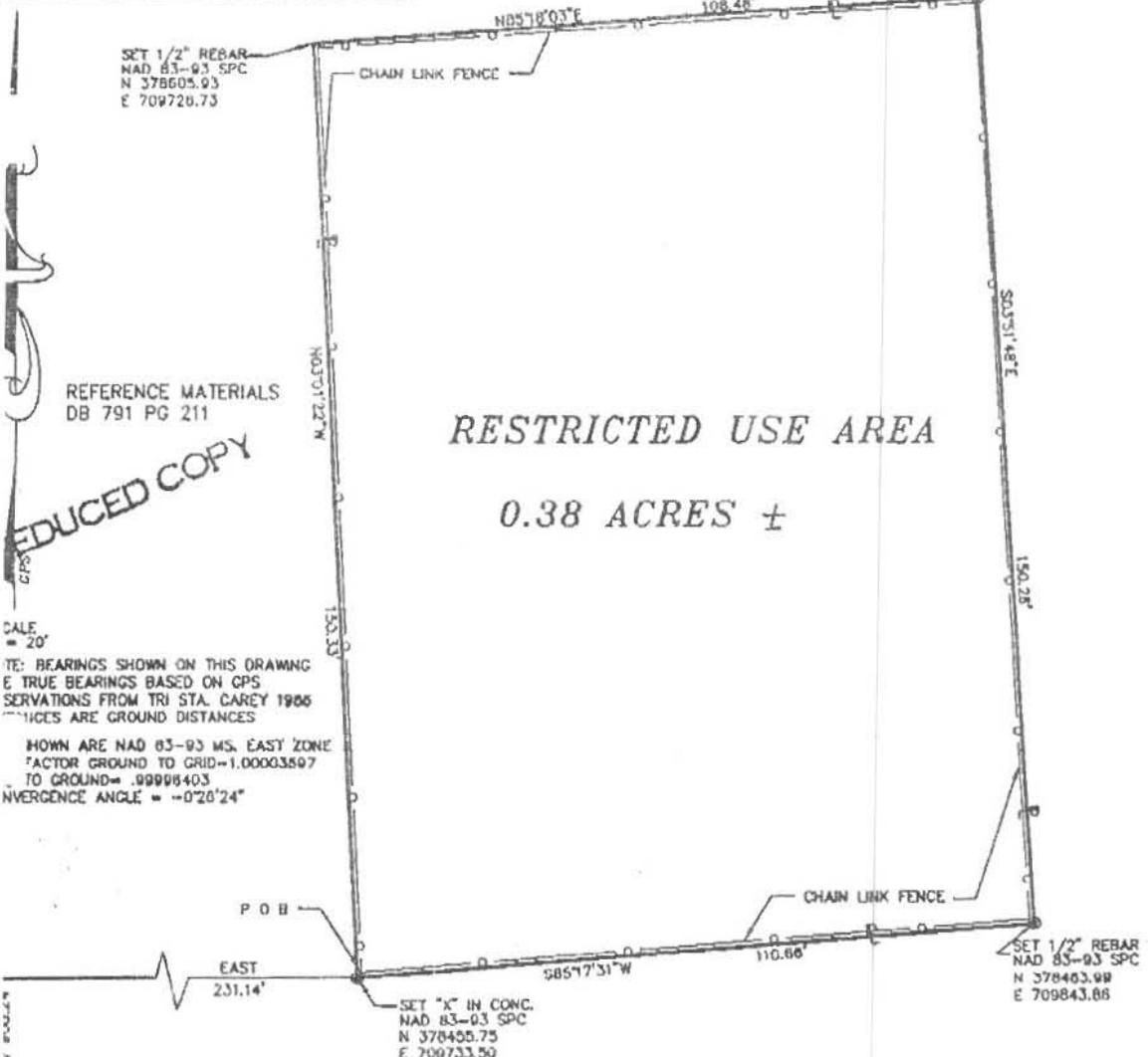


DEC-10-2008 12:45 FROM: TONIE BREKING REALTY 001750964 TO: IPI 017908 P. 0 3

INTERNATIONAL PAPER COMPANY
 RESTRICTED USE AREA
 ARIZONA CHEMICAL FACILITY
 PICAYUNE, PEARL RIVER COUNTY, MS.

BOOK 511 PAGE 605

LOCATION MAP
 VICINITY MAP



FD 3/4" IP ON THE WEST LINE OF THE STEPHEN JARRELL CLAIM NO. 40

SW COR OF THE STEPHEN JARRELL CLAIM NO. 40 T8S, R17W, PEARL RIVER COUNTY, MS. ALSO BEING THE SE COR OF THE SW 1/4 OF SEC 9 ALL IN T8S, R17W, PEARL RIVER CO., MS.

DESCRIPTION:
 COMMENCING AT THE SOUTHWEST CORNER OF THE STEPHEN JARRELL CLAIM #40, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF THE SOUTHWEST 1/4 OF SECTION 9, IN T8S, R17W, PEARL RIVER COUNTY, MISSISSIPPI AND RUN N0°20'W FOR 1073.48' TO A 1/2" IRON PIPE; THENCE RUN NORTH 800.24'; THENCE RUN EAST 231.41' TO AN "X" IN CONCRETE AND THE POINT OF BEGINNING. FROM THE POINT OF BEGINNING RUN N3°01'22"W FOR 150.33' TO A 1/2" REBAR; THENCE RUN N85°18'03"E FOR 108.48' TO A 1/2" REBAR; THENCE RUN S3°51'48"E FOR 130.26' TO A 1/2" REBAR; THENCE RUN S85°17'31"W FOR 110.66' BACK TO THE POINT OF BEGINNING, CONTAINING 0.38 ACRES MORE OR LESS AND BEING SITUATED IN THE STEPHEN JARRELL CLAIM #40 IN T8S, R17W, PEARL RIVER COUNTY, MISSISSIPPI.

LEGEND AS PER SURVEY AS PER RECORD ROAD PROPERTY LINE CENTERLINE FENCE POWER LINE		CERTIFICATED THIS IS TO CERTIFY THAT I HAVE CALLED A SURVEY TO BE MADE ON THE PROPERTY LINES SHOWN ON THIS PLAT, AND THAT SAID SURVEY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. <i>D. Ray Willet</i> D. RAY WILLET PROFESSIONAL LAND SURVEYOR NO. 13-01820 STATE OF MISSISSIPPI		INTERNATIONAL PAPER COMPANY COPYRIGHT © FLYNT & ASSOCIATES, PLLC 1996. ALL RIGHTS RESERVED. COPIES OF THIS PLAT BEYOND AN ORIGINAL SCHEME IN THE HAND ARE HEREBY DENIED AND NOT VALID. REPRODUCTION AND/OR ALTERATION BY ANY MEANS IN WHOLE OR IN PART WITHOUT PRIOR WRITTEN PERMISSION OF FLYNT & ASSOCIATES, PLLC IS PROHIBITED.		FLYNT & ASSOCIATES, PLLC PROFESSIONAL SURVEYORS 611 SOUTH MAIN STREET PETA, MISSISSIPPI 39468 PHONE: (601) 583-1818	
DATE: _____ DESCRIPTION: _____ REV. BY: _____ CHK. BY: _____		SURVEY CLASSIFICATION: A, B, C, D (with X in A)		NOTE: ALL BEARINGS SHOWN ON THIS PLAT WERE DERIVED FROM A		SOUTH OBSERVATION: U P S (with X in U P S) RECORD BEARING	
REVISIONS: _____		DRAWN BY: RANDY ALTMAN		CHECKED BY: MICHAEL AND JACK		PLOTTED BY: RAY WILLET	

STATE OF MISSISSIPPI
MISSISSIPPI REAL ESTATE APPRAISER
LICENSE AND CERTIFICATION BOARD

THIS IS TO CERTIFY THAT
ANDY K. JOHNSON
HAS BEEN GRANTED A LICENSE AS A
STATE CERTIFIED RESIDENTIAL
REAL ESTATE APPRAISER
FOR THE PERIOD 12/17/2007 - 12/31/2009
Andy K. Johnson
VOID UNLESS SIGNED BY LICENSEE

LICENSE NO.

RA-836

STATE OF MISSISSIPPI
MISSISSIPPI REAL ESTATE APPRAISER
LICENSE AND CERTIFICATION BOARD

THIS IS TO CERTIFY THAT
CECIL (PETE) RAY JOHNSON
HAS BEEN GRANTED A LICENSE AS A
STATE CERTIFIED GENERAL
REAL ESTATE APPRAISER
FOR THE PERIOD 2/28/2008 - 2/28/2010
Cecil (Pete) Ray Johnson
VOID UNLESS SIGNED BY LICENSEE

LICENSE NO.

GA-205

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Watkins, Turnage and Bounds

VOTING NAY: Council Members Guy and Parker

ABSENT AND NOT VOTING: None

ABSTAINING AND NOT VOTING: None

The motion was declared carried

PRIOR TO THE VOTE COUNCIL MEMBERS GUY AND PARKER EXPRESSED THEIR CONCERS OF THE PROXIMITY OF A TREATMENT PLANT TO NEIGHBORHOODS AND POSSIBLE HEALTH HAZARDS

CONTRACTUAL MATTER WITH SIEMENS BUILDING TECHNOLOGIES, INC

Motion was made by Council Member Guy, seconded by Council Member Bounds to approve RFQ Committee's recommendation to accept the RFQ Proposal from Siemens Building Technologies, Inc.

PERFORMANCE CONTRACTING AGREEMENT

between

and

Siemens Building Technologies, Inc.

TABLE OF ARTICLES

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

PERFORMANCE CONTRACTING AGREEMENT

Number: _____

**Article 1
AGREEMENT**

This **AGREEMENT**, is made this _____ day of _____, by and between Siemens Building Technologies, Inc., ("SIEMENS") and the party identified below as the **CLIENT**.

The CLIENT:

DESIGNATED REPRESENTATIVE:
PHONE: _____ **FAX:** _____

Siemens Building Technologies, Inc.
1000 Deerfield Parkway
Buffalo Grove, Illinois 60018

With offices at:

DESIGNATED REPRESENTATIVE:
PHONE: _____ **FAX:** _____

For services in connection with the following project:

Project

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement shall consist of this document which includes the following thirteen articles and indicated Exhibits ("Contract Documents") which are acknowledged by the CLIENT and SIEMENS and incorporated herein by this reference:

Articles

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

Exhibits

- Exhibit A Scope of Work and Services
- Exhibit B Payment Schedule(s)
- Exhibit C Performance Assurance

This Agreement, when accepted in writing by an authorized representative of the CLIENT and by an authorized representative of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties. The above documents constitute the entire Agreement between the CLIENT and SIEMENS relative to the project scope as stated in Exhibit A and supersede all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same. This Agreement 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 to SIEMENS the Contract Sum in such manner as agreed in Exhibit B and in accordance with the payment terms and conditions established by the Contract Documents.

Agreed for

(Signature) by: _____

Print Name and Title: _____

Agreed for **Siemens Building Technologies, 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 of the Contract Documents comprising this Agreement, have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Contract Documents:

"Acceptance" means the CLIENT has signed the Certificate of Substantial Completion.

"Acceptance Date" means the date on which the CLIENT signs the Certificate of Substantial Completion.

"Accumulated Realized Savings" means the sum of the actual savings achieved from the Effective Contract Date of this Agreement through the end of the current Annual Period, derived from the sum of the Measured & Verified Savings plus the Stipulated Savings.

"Accumulated Guaranteed Savings" means the sum of the Guaranteed Measured & Verified Savings plus the Stipulated Savings from the Guarantee Date of the Agreement through the end of the current Annual Period.

"Annual Guaranteed Savings" are the Measured & Verified Savings and the Stipulated Savings that occur in any Annual Period of the Guarantee Term.

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

"Baseline" means a period of time or multiple periods of time that have occurred prior to project commencement, which has been agreed upon and is set forth in Exhibit C. The energy usage, operating practices, and facility and equipment in place during such time period represents the basis against which all future energy and operating usage will be compared in order to determine the Accumulated Realized Savings.

"BTU" a unit of thermal energy defined as a British Thermal Unit.

"Certificate of Substantial Completion" means documentation executed by the CLIENT agreeing that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement and such Work is accepted by the CLIENT.

"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 Substantial Completion Date.

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

"Contracted Baseline" means the future annual period or multiple annual periods post-FIM implementation agreed upon and stated in Exhibit C that define the energy usage, operating practices, and facility and equipment in place post-FIM implementation and represents the basis on which the Guaranteed Savings are calculated.

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

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

"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.

PERFORMANCE CONTRACTING AGREEMENT

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

"Escalation Factor" means an annual escalation percentage to be applied to the previous year's Energy Savings, Operational Savings and Technical Support Program, beginning and occurring on dates outlined in Performance Assurance, Exhibit C.

"Facility" or "Facilities" means the building(s) or structure(s) where Work will be installed or implemented. It shall have the same meaning as the term "Site".

"Facility Improvement Measures" or "FIMs" means the methods, techniques, application of know-how, installation 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 Facilities, including without limitation the ECMs, OIMs, TIMs, USMs, WCMs, SCMs and any other, non-conservation-related activities, means or methods.

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

"Guaranteed Measured & Verified Savings" means the Measured & Verified Savings guaranteed to be achieved as described in the Performance Assurance, Exhibit C.

"Guaranteed Savings" means the amount of savings that this Agreement anticipates will be achieved at the Facilities defined in this Agreement, calculated as the aggregate of the Measured & Verified Savings and the Stipulated Savings amounts identified in the Performance Assurance, Exhibit C, but shall not exceed the aggregate of the Contract Sum, the Performance Assurance TSP Payments, and the CLIENT'S cost of financing the Work.

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

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

"Maintenance Services TSP" means the Services performed under a Technical Support Program as stated in the Scope of Work and Services, Exhibit A.

"Material Change" means an event causing a _____ % deviation in the Contracted Baseline

"Measured and Verified Savings" means those savings that can be measured and verified by the methodology as set forth in Performance Assurance, Exhibit C.

"Operational Improvement Measure" or "OIM" means the programs, practices, methodologies, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities, or as instituted by the CLIENT hereunder, for the purpose of improving the efficiency of operations activities, operational costs and/or operational results as described in the Scope of Work and Services Exhibit A.

"Parties" means the CLIENT and SIEMENS.

"Performance Assurance" is the process of ascertaining that the FIMs defined in Scope of Work and Services, Exhibit A are performing at the guaranteed values that are defined in Performance Assurance, Exhibit C.

"Performance Assurance TSP" means the Services performed to monitor and report the performance relative to the guarantees defined in Performance Assurance, Exhibit C.

"Performance Guarantee" means the result of the Performance Assurance process as set forth in Exhibit C hereof.

PERFORMANCE CONTRACTING AGREEMENT

"Performance Guarantee Period" means the entire period from the Guarantee Date of this Agreement until the termination or expiration of this Agreement as set forth herein.

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

"Realized Annual 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.

"Savings Excess" means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is zero or greater, the Guarantee Savings in Performance Assurance, Exhibit C, has been fulfilled.

"Savings Shortfall" means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is less than zero the Guarantee Savings in Performance Assurance, Exhibit C, has not been fulfilled.

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

"Site" shall have the same meaning as Facilities.

"Stipulated Savings" are the savings that have been mutually agreed upon and are stipulated to by SIEMENS and the CLIENT prior to or upon implementation of the FIMs. The Stipulated Savings cannot be changed unless agreed upon by the Parties or as set forth herein. The Stipulated Savings for each Annual Period, with the corresponding Escalation Factor if applicable, are set forth in Performance Assurance, Exhibit C.

"Substantial Completion" or **"Substantially Complete"** means the first to occur of the following: (i) the Work, or 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, that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise to employ the Work or the FIMs associated therewith for their intended purposes; or (ii) temporary, qualified or final certificates of occupancy, if required, have been issued with respect to such portions of the Work by the appropriate public authority.

"Technical Support Program" or **"TSP"** is a plan detailing the tasks, material, and responsibilities provided by SIEMENS to the CLIENT during a specified time period defined in the Scope of Work and Services, Exhibit A, and/or described in the Performance Assurance, Exhibit C.

"Term" is a stipulated period of time starting on the Effective Contract Date of this Agreement and ending at the termination or expiration of this Agreement as set forth herein.

"Technology Improvement Measure" or **"TIM"** means the application of new technology methods, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities for the purpose of improving the efficiency of operations activities, operational costs and/or utility costs as described in the Scope of Work and Services, Exhibit A.

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

"Total Guaranteed Savings" are the amount of savings identified to be achievable based on calculations and adjustments as set forth in Performance Assurance, Exhibit C. Total Guaranteed Savings includes all savings that SIEMENS has guaranteed for each Annual Period of the Term and may also include Construction Period Savings if specified in Performance Assurance, Exhibit C.

"Utility Services Measure" or **"USM"** means the application of utility services methods and technology as described in the Scope of Work and Services, Exhibit A.

"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.

PERFORMANCE CONTRACTING AGREEMENT

"Water Conservation Measure" or "WCM" means the equipment, devices, materials, programs, practices, methodology and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of Facility's water consumption, as described in Scope of Work and Services, Exhibit A.

"Waste Conservation Measure" or "SCM" means the equipment, devices, materials, programs, practices, methodology and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of operations, activities, operational costs and/or operations results, as described in Scope of Work and Services, Exhibit A.

Article 3

General

- 3.1 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and provide the Work and Services as set forth in Exhibit A hereof and in accordance with the terms and conditions of this Agreement.
- 3.2 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 venture, 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.
- 3.3 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power and 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 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 this 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 Service are to be performed.
- 3.4 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and 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; and
 - (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.

Article 4

Performance Guarantee

- 4.1 SIEMENS guarantees that the Guaranteed Savings generated from the Guarantee Date to the last date of the Performance Guarantee Period will be no less than the Total Guaranteed Savings shown in Performance Assurance, Exhibit C. The measurement and verification calculation methodology for determining the Measured & Verified Savings is set forth in Performance Assurance, Exhibit C.
- 4.1.1 **General.** Except as otherwise provided, energy savings will be calculated for each month of each Annual Savings 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 computed by a software application which is specified in Exhibit C. 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 of Exhibit C. 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 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 applied to utility, energy or other costs which are to be applied are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data which is set forth in Exhibit C is an 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 both the Annual Realized Savings and the Accumulated Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline defined in Exhibit C will represent the new operation 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 during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within 30 days of any:
- Material Change to operating schedules, strategies, equipment and conditions in the Facility from those described in the Contracted Baseline data.
 - Any other Material Changes in or at the Facility that may increase or decrease energy usage, including without limitation: changes in operations, business conducted, occupancy, hours of operation, and energy consuming equipment and malfunctions, failures and related changes in energy consuming equipment; and
 - Any damage to, or destruction of, the FIM Work that may result in a Material Change.
- 4.5 SIEMENS agrees to respond and advise the CLIENT within 30 days of the receipt of a notice of a Material Change that SIEMENS will:
- Continue the Performance Assurance without adjustments;
 - Require an adjustment to the Performance Assurance as a result of the Material Change; or,
 - Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate the Performance Assurance and terminate the Performance Guarantee.
- 4.6 Failure of the CLIENT to notify SIEMENS of a Material Change shall void the Performance Guarantee and Performance Assurance where a commercially reasonable adjustment is unavailable and where a Savings Shortfall cannot be prevented.
- 4.7 Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each annual period as follows unless otherwise agreed:
- Within thirty (30) days of the Guarantee Date the Construction Savings shall be reconciled and added to the Accumulated Realized Savings;
 - At each annual reconciliation, the Realized Annual Savings shall be applied to the Accumulated Realized Savings.
 - Should the Accumulated Realized Savings be greater than the Accumulated Guaranteed Savings, a Savings Excess shall be recorded.
 - Should the Accumulated Realized Savings be less than the Accumulated Guaranteed Savings, a Savings Shortfall shall be recorded.
 - A Savings Shortfall shall be paid by SIEMENS within thirty (30) days following the CLIENT'S acceptance of reconciliation and the amount paid shall be then added to calculate the Accumulated Realized Savings.
 - If SIEMENS can correct a shortfall through an operational improvement at no material 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. The amount of such Savings Shortfall shall be added to calculate the Accumulated Realized Savings.
- 4.8 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT enter into and maintain, during the entire term of the Performance Guarantee Period, the Performance Assurance TSP. If the CLIENT

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- fails to enter into, breaches, cancels or otherwise causes the termination of the Performance Assurance TSP the Performance Guarantee shall terminate immediately and be void and of no force or effect. The services to be provided under the Performance Assurance TSP are defined in Exhibit A.
- 4.9 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 SIEMENS for the aggregate of the Contract Sum, Performance Assurance TSP Payments; and, the CLIENT'S cost of financing the Work.
- 4.10 The Performance Assurance TSP is the technical service to be provided by SIEMENS to the CLIENT during the Performance Guarantee Period, commencing on the Guarantee Date. Performance Assurance TSP is defined in the Glossary and described more fully in Exhibit A.
- (a) The CLIENT represents that all existing equipment (equipment that is not installed by SIEMENS under this Agreement) deemed necessary to achieve the Performance Guarantee is in satisfactory working condition. Prior to the beginning of the Guarantee Period SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT.
- (b) If the existing equipment or Equipment installed by SIEMENS 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.
- 4.11 SIEMENS will have no liability or obligation to continue providing Performance Assurance TSP Services or 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 prevent a Savings Shortfall;
- (b) Provide access to any Site where Work is to be performed as required by the Contract Documents;
- (c) Service and maintain all equipment involved with the FIMs defined in the Scope of Work and Services, Exhibit A, in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
- (d) Provide SIEMENS with accurate Facility operating information, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period, as soon as such information becomes reasonably available to the CLIENT.
- 4.12 Should the CLIENT decide to discontinue the guarantee before the end of the contract period, 30 days notice will be given and the CLIENT will select one of the following:
- (a) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will re-invest the avoided cost in building improvements and services that improve the overall building(s) performance which are implemented by SIEMENS.
- (b) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will pay to SIEMENS _____ % of the remaining value left in the TSP Annual Period.
- 4.13 Unless expressly contrary to law, any disputes concerning the calculation of the Realized Annual Savings, Accumulated Realized Savings, or changes to the Contracted Baseline under this Performance Guarantee, 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 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, 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 working hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Site available in order for Work to proceed in an efficient manner.

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- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment beyond the Scope set forth in this Agreement. Any CLIENT request to change the Scope or the nature of the Work must be in the form of a mutually agreed upon change order, effective only when executed by the Parties.
- 5.4 All Deliverables shall become the CLIENT'S property upon full payment to SIEMENS. SIEMENS may retain full copies of such Deliverables. All Instruments shall remain SIEMENS' property. 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. All Deliverables and Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. The CLIENT shall not transfer any Deliverables or copies of Instruments to other parties 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 Site shall not relieve others of their responsibility to the CLIENT or to others.
- 5.6 SIEMENS warrants that:
- Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date that 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.
 - Labor for all Work, excluding TSP Services, is warranted to be free from defects in workmanship for one year after the Works are performed. TSP services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.
- 5.7 Warranty Limitation:
- 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) subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per SIEMENS' or the manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have, 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.
 - 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, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
 - 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

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DISCLAIMED. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT ANY EQUIPMENT PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. 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.

- 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 otherwise specifically stated herein, or
 - (b) CLIENT, 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 FOR 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 with the Work and Services 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 Site 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 Site where the Work is to be performed as may be reasonably requested by SIEMENS;
 - (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, notify SIEMENS promptly of all known or suspected Hazardous Materials at the Site, of any contamination of the Site 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 Site where the Work is to be performed;
 - (j) Furnish to SIEMENS any contingency plans, safety programs and other policies, plans or programs related to any Site 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 and 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

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- 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;
- (l) Promptly notify SIEMENS of any unusual or materially changed operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or 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 project Site. 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, the work of any other person or entity, or Site 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 Site. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Site, 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, conditions may change or circumstances outside SIEMENS' reasonable control (including changes of law) 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 conditions or circumstances 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 and 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 Unless otherwise agreed in writing, SIEMENS shall be compensated for any extra work requested by the CLIENT at SIEMENS' then prevailing rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the Work or Services. The Contract Sum provides for, and is in consideration

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of, only the Work and Services specifically included under the Scope of Work and Services, Exhibit A. All other work services, including but not limited to the following, shall be separately billed or surcharged on a time and material basis:

- (a) Emergency services performed at the CLIENT'S request, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at the CLIENT'S request at times other than during SIEMENS normal work hours; and
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.
- 8.2 Unless otherwise agreed in writing, SIEMENS may invoice the CLIENT on a monthly or other progress-billing basis. 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 disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due and 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 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 attorneys' and witnesses' fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed in writing, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services, and the CLIENT shall pay such amounts or reimburse SIEMENS for any amounts it pays. If the CLIENT claims that 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.

Article 9

Acceptance

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 or Final Completion to the CLIENT. If the described portion of the Work as performed is Substantially Complete as defined herein, the CLIENT will accept that Work by signing the Certificate of Substantial or Final Completion and returning it to SIEMENS. If the Work is not Substantially Complete, then the CLIENT Representative shall notify SIEMENS within five (5) business days of any discrepancies and SIEMENS shall correct the Work to conform to the description of the Work set forth herein and resubmit the Certificate of Substantial or Final Completion to the CLIENT if SIEMENS agrees with the notice of discrepancies or, if SIEMENS disagrees with the notice, shall notify the CLIENT of its disagreement and such disagreement shall be resolved under the terms of this Agreement. If the CLIENT Representative does not deliver written notice to SIEMENS within five (5) business days of receiving the Certificate of Substantial or Final Completion, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial or Final Completion. Any disputes concerning the completion or Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm 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 hereto. 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:
- (a) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.

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- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits 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 maintain, at its own expense, property insurance written on a builder's "all-risk" or equivalent policy form in the amount of the initial Contract Sum, 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 with 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 coverage 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 a 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 Site, and a portion 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 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 Risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Site, and the CLIENT shall be responsible for protecting and insuring them against theft and damage. However, until SIEMENS is paid in full, SIEMENS shall retain title for security purposes only and the right to repossess materials and Equipment.
- 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

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shall be solely to the extent the Damages are caused by or arise directly from consultants' or agents' negligent acts or omissions or willful misconduct in connection of the Work. SIEMENS' obligations under this indemnity shall not extend to Damages attributable to the negligence of the CLIENT or its agents, contractors or employees. control the defense and settlement of any claim for which SIEMENS has an obligation UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THIS AGREEMENT.

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 or components) intended purpose, constitutes an infringement of any United States patent or copyright. SIEMENS will provide Notice and given authority, information, and assistance in a timely manner in any such proceeding. SIEMENS will pay the damages and costs awarded in any such suit or proceeding. SIEMENS will not be responsible for any settlement of such suit or proceeding without the CLIENT's consent. In case the Work, or any part thereof, as a result of any suit or proceeding is found to constitute infringement or its use by the CLIENT is enjoined, SIEMENS will, at its option, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace the Work with 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 defend or settle any suit or proceeding brought against the CLIENT if the Work is supplied according to the CLIENT'S design or instructions wherein compliance with the Work does not deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors combined by the CLIENT or its contractors with items not furnished hereunder; (iii) an instruction, modification, or combination a suit is brought against the CLIENT. If the Work, design, instruction, modification or combination, a suit or proceeding is brought against the CLIENT expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner as if SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a).
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF SIEMENS TO THE CLIENT AS TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT INFRINGEMENT AND THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS FOR PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute the entire liabilities of the Parties under the Agreement with respect to the intellectual property.

10.6 The parties acknowledge that the price for which SIEMENS has agreed to perform the Work under this Agreement was calculated based upon the foregoing allocations of risk, and that each party 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, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination at which Work is performed and any soil or groundwater at the Site by petroleum or hydrocarbons (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances regulated under RCRA, CERCLA or any other federal, state or local environmental laws, rules, standards or ordinances (collectively called "Hazardous Materials"), including with-

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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. 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 OF PROFITS, 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.

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 an 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 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, 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. In addition, if by reason of said 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 the 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 upon 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 kind at which Work is performed and any soil or groundwater at the Site 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 sm

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detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, a refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that there are no Hazardous Materials or Oil, present at the CLIENT'S locations 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 Site where SIEMENS is to perform Work or of contamination of the Site 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 present, potentially present or likely to become present at the Site and provided a copy of any Site 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 or not 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 Site 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 and 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.

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. 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 Unless contrary to applicable law and with the exception of disputes arising under Article 4, 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. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. Where allowed by applicable law, the prevailing Party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

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- 12.5 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work and the termination of this Agreement.
- 12.6 SIEMENS' performance of the Work is expressly conditioned on the CLIENT 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 to SIEMENS by the CLIENT relating to the Work, even if signed by SIEMENS, unless SIEMENS signs a written statement expressly indicating 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 in effect 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 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 Performance Assurance, Exhibit C.

Article 13**Maintenance Services Technical Support Program**

- 13.1 The scope of services provided by SIEMENS for the Maintenance Services Technical Support Program (MSTSP) is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSTSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSTSP 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 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 operating condition at the CLIENT'S sole expense. Any services provided by SIEMENS in the course of such restoration shall 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, unavailability 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 MSTSP and adjust the MSTSP 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 MSTSP and release SIEMENS from any further obligations with respect to the MSTSP.
- 13.6 If the MSTSP scope of Services defined in this Agreement provides for equipment maintenance, repairs and 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 cost improvement compared to the original. Exchanged components become the property of SIEMENS, except for Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

PERFORMANCE CONTRACTING AGREEMENT

FOR SIEMENS' INTERNAL PURPOSES ONLY

(PLEASE REMOVE THIS PAGE FROM THE CONTRACT AS IT IS INSTRUCTIONAL ONLY)

The previous 17 pages represent the basic Terms and Conditions of the Performance Contract. This document is locked. Changes can only be accepted by Legal. If less than 10 modifications are required to address customer concerns a special Exhibit called "Addendum No. 1" should be created and referenced on Page 3. If more than 10 modifications are required then Legal may decide to add "Custom" to the footer indicating that this contract contains more than 10 changes from the standard version. Where an Addendum No. 1 is created, the Addendum should note the Article number and associated subsections that are being modified and then fully outline the changes or new text that is required. For example, as used in to modify the previous PCA where an incorrect reference existed in section 4.7:

1. Section 4.7 is modified as follows:

"Performance Guarantee Period savings reconciliation as identified in Section 4.4 4.1 will be performed at the end of each annual period...."

Please do not forget to fill in the blanks in the following areas:

1. The Agreement page requires information to be inserted indicating the date, contacts, etc.
2. Glossary, definition of Material Change. Please insert a percentage in an amount where you believe such percentage will adversely affect our performance under the guarantee.
3. 4.12 (b). Please include the amount of the percentage in this section that you have valued as the amount necessary to compensate us for the remainder of the Annual Period's TSP.
4. 12.9. Please insert the amount from Exhibit B Article 1.1.

To complete the Performance Contract it is necessary to also prepare and attach to these Terms and Conditions:

Exhibit A: Scope of Work and Services
Exhibit B: Payment Schedules
Exhibit C: Performance Assurance

These Exhibits are not locked. While a general template is outlined in each Exhibit it will be necessary for each project to have these Exhibits specifically modified to outline the details that are specifically applicable to the current project. Inapplicable items in the current general template can be removed. When removing an Article, the Article number should be left with "Reserved" as its text. This is necessary as the Terms and Conditions reference specific articles in the Exhibits. If an Article were totally eliminated the number sequencing would be changed making the references incorrect.

The Exhibits must clearly outline the complete contractual obligations between the parties.

To print the document without this last page, under page range/pages in the Print Menu type: 1-17 and click OK or discard this page as it is independently numbered and does not form part of the Terms and Conditions.

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 1: Scope of FIM Work

- 1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide a turnkey solution for the Client's water metering system utilizing the Sensus Flexnet Advanced Metering Infrastructure (AMI) System. Within this simple architecture there are a few key components:
- Endpoints- Power Sources (meters)
 - Tower Gateway Base Stations (TGB)
 - Regional Network Interface (RNI) hardware and software

This turnkey solution includes:

- Download of billing account data from the billing system
- Installation of meter endpoints
- Programming of meter endpoints
- Installation of all boosters, repeaters, concentrators and system software
- Upload of all critical billing account data back into the billing system
- Commissioning/verification of the system.

SIEMENS will include added inventory of the dominant meter sizes for replacements and reactivations. The necessary auxiliary equipment such as curb stops, lids, nuts, boxes, bolts & gaskets will be provided as required. SIEMENS will also provide training and administrative support prior to project completion to ensure a functional system.

- 1.2 *Specific Elements:* The Work shall include the following:
 1.2.1 The following meter quantities will be installed during the implementation phase of this project:

Meter Size	Replace	Retrofit	Total
3/4"			
1"			
1.5"			
2"			
3" Turbine			
3" Compound			
4" Turbine			
4" Compound			
6" Turbine			
6" Compound			
8" Turbine			
8" Compound			
Total			

- 1.2.2 Necessary curb stops, lids, boxes, nuts, bolts, & gaskets, flange fasteners, etc.
 1.2.3 Installation of X, XXX Meters
 1.2.4 Installation of ****Insert Product Specifics Here****

Exhibit A - Scope of Work and Services

XXXXX Water Authority

- 1.3 *Technical Specifications:* The Work shall be performed in accordance with the following specifications, which are specifically incorporated herein and made part hereof:
 - 1.3.1 Sensus specifications as presented in Attachment C of the Proposal.
 - 1.3.2 Design documents, as required, are to be developed in accordance with applicable codes, standards, and State law. Detailed design development will occur during the design phase of the project.

- 1.4 CLIENT's Responsibility:
 - 1.4.1 Weekly progress and scheduling meetings
 - 1.4.2 Route scheduling, addresses and installed meter inventories
 - 1.4.3 Customer database of accounts
 - 1.4.4 Customer notification
 - 1.4.5 Space for contractor trailer, laydown area and equipment/material storage.
 - 1.4.6 Provide support for hard to find meter locations and system isolation assistance when needed
 - 1.4.7 Provide a designated representative to interface with Siemens on all issues related to the project
 - 1.4.8 As routes are completed, customer agrees to complete their inspections and sign offs according to the Siemens route acceptance and sign off procedures
 - 1.4.9 Ongoing replacement of meters with AMI compatible meter/registers
 - 1.4.10 Monthly number of water meter accounts throughout term
 - 1.4.11 Monthly records of billed water, billed cost, meter size, meter number and rate schedule of customers throughout term
 - 1.4.12 Annual listing of meters randomized for meter testing
 - 1.4.13 Monthly purchased/pumped, sold and/or distributed water volumes from the water plant records throughout term

Article 2: FIM Work Implementation Period

- 2.1 Commencement of Work:
 - 2.1.1 SIEMENS shall commence the Work within XX calendar days from the Effective Contract Date, and shall perform the Work diligently and shall complete the Work no later than 365 calendar days from the day of commencement.

- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements are as follows:

- 2.3
 - Contract Signed - 13 November 2007
 - Notice to Proceed - 01 December 2007
 - Account Database to SIEMENS - 01 December 2007
 - Initial Meter Order - 15 December 2007
 - Schedule for first 50% of meters to City - 15 January 2008
 - 10% Complete - 01 February 2008
 - 40% complete - 01 March 2008
 - 80% complete - 01 April 2008
 - 95% complete - 01 May 2008
 - 100% complete - 30 May 2008

Weekly progress and scheduling meetings will be held to update the city staff

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 3: Scope of Performance Assurance Technical Support Program

- 3.1 Perform the testing and analysis as described in the M&V Plan of Exhibit C
- 3.2 One Annual M&V report each year
- 3.3 One Annual review of M&V report with CLIENT's staff
- 3.4 One Annual update presentation to CLIENT's City Council

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 4: Scope of Maintenance Services Technical Support Program

- 4.1 Perform the pulling, replacement, testing and analysis as described in the M&V Plan of Exhibit C
- 4.2 Automated Meter Read software maintenance and updates as available
- 4.3 Return of tested meters (rebuilt as required) to CLIENT's inventory

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

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

SIEMENS:

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

Exhibit B – Payment Schedules
XXXXX Water Authority

Article 1: Payment for Scope of FIM Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of FIM Work, the CLIENT shall pay to SIEMENS the Contract Sum of \$ XXXXXXX (plus applicable taxes).
- 1.2 **Escrow:** The CLIENT has agreed to deposit the Contract Sum in an Escrow Account at a financial institution satisfactory to both the CLIENT and SIEMENS. All interest income and 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 following Payment Schedule in Table 2.1 below. The CLIENT shall be responsible for submitting the necessary documentation to the Escrow Agent for timely withdraws 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 30 days from the execution of this Agreement, this Agreement shall be null and void. This 30 day funding period may be extended as mutually agreed upon in writing by both parties. In the event that the Agreement becomes null and void as described in this paragraph and CLIENT has authorized SIEMENS to proceed with Work, CLIENT shall be obligated to reimburse SIEMENS: (i) for the Work performed to date; or (ii) as specified in CLIENT's authorization to proceed with Work.
- 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 Agreement, Article 8.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Month 1 - DEA cost			
Month 2 – Equipment			
Month 3 - Equipment/Installation			
Month 4 – Installation			
Month 5 - Installation completion			
Month 6 - Punchlist/Retainage			
PROJECT TOTAL:			

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

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

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

Exhibit C – Performance Assurance
XXXX Water Authority

Article 1: Summary of Articles and Total Guaranteed Savings

The following Articles and Table are attached and made part of this Exhibit C:

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

Table 1.1

Year	Billable Usage Increase (kgal)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

1.1 The Total System Benefits as reflected in Table 1.2 represent the predicted billable usage increase that can be extracted from the unbilled water that the new meters will track as is detailed in Table 1.1 when the unbilled water is converted to a dollar figure based on the formulas herein. The table is provided to show the total system benefits on an annual basis for the term of the Agreement, which is 15 years. Nothing herein should be construed as to guarantee the actual billable usage increase dollars as derived from the tracking of the previously unbilled water usage. Variables such as decreases in water rates or reduction in overall consumption by the residents of the City, or weather conditions may adversely affect the billable usage increase dollars that are realized by the CLIENT despite having realized the level of water metering as guaranteed by SIEMENS. SIEMENS GUARANTEES THE PREVIOUSLY UNBILLED WATER WILL BE METERED. SIEMENS DOES NOT GUARANTEE THAT THE PREVIOUSLY UNBILLED WATER WILL ACTUALLY EQUATE TO THE DOLLAR SET FORTH IN TABLE 1.2 AS SIEMENS CANNOT PREDICT OR CONTROL WATER RATES.

Exhibit C – Performance Assurance
XXXX Water Authority

Table 1.2

Year	Billable Usage Increase (\$)	Operational Savings (\$)	Total System Benefits (\$)
Construction			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
Total			

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

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

SIEMENS:

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

Exhibit C – Performance Assurance
XXXX Water Authority

Article 2: Guaranteed Savings Types

- 2.1 Guarantee Types. There are four guarantee options to measure and verify savings or system benefits: Option A - Measured Capacity, Option B - Measured Consumption, Option C - Main Meter Comparison, and Option D - Stipulated.
- (a) Option A - Measured Capacity. This approach is intended for Facility Improvement Measures where a one-time measurement for specific equipment or systems instantaneous baseline energy use, and a one-time measurement for specific equipment or systems instantaneous post-implementation (Post) energy use can be measured. Baseline and Post energy consumption is calculated by multiplying the measured end use instantaneous capacity (i.e. – kW, Gal/hr, BTU/hr) by stipulated hours of operation for each mode of operation (i.e. – hours, week, month). The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C. The work sequence required for data collection, evaluation, and reporting will be defined in the Measurement and Verification article of this Exhibit A.
 - (b) Option B - Measured Consumption. This approach is intended for Facility Improvement Measures where continuous periodic measurements for specific equipment or systems baseline energy use, and continuous periodic measurements for that equipment or systems post-implementation (Post) energy use can be measured. The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C. Periodic inspections and consumption measurements of the equipment or systems will be necessary to verify the on-going efficient operation of the equipment and saving attainment. The predetermined schedule for data collection, evaluation, and reporting will be defined in the Performance Assurance Technical Support Program article of this Exhibit A.
 - (c) Option C - Main Meter Comparison. This approach is intended for measurements of the whole-facility or specific meter baseline energy use, and measurements of whole-facility or specific meter post-implementation (Post) energy use can be measured. The methodology to establish baseline and Post parameter identification, modeling approach and baseline or model adjustments will be defined in the Measurement and Verification article of this Exhibit C. Periodic inspections of baseline energy usage, operating practices, and facility and equipment, and meter measurements of the will be necessary to verify the on-going efficient operation of the equipment, systems, practices and facility, and saving attainment. The predetermined schedule for data collection, evaluation, and reporting will be defined in the Performance Assurance Technical Support Program article of this Exhibit A.

Exhibit C – Performance Assurance
XXXX Water Authority

(d) Option D - Stipulated. This approach is intended for Facility Improvement Measures where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the savings stipulated will be achieved upon completion of the Facility Improvement Measures Work and that no further measurements or calculations will need to be performed. The methodology and calculations to establish savings value will be defined in the Measurement and Verification article of this Exhibit C.

2.2 Calculations related to the billable usage increase dollars and kgals are presented in the calculation section 4.2.

Table 2.2 - Source of Billable Usage Increases

*Year 1 Billable Usage Increase – refer to section 4.2 for details

2.3 Table 2.3 identifies the source of Operational Savings defined by the CLIENT. These savings shall not be measured or monitored during the guarantee term. Neither the CLIENT nor SIEMENS will have any right to object to use of such amounts as the Stipulated Savings in the calculation of Annual Realized Savings.

Table 2.3 - Source of Operational Savings

*Year 1 Billable Usage Increase – refer to section 4.2 for details

Exhibit C – Performance Assurance
XXXX Water Authority

Article 3: Guarantee Term Responsibilities of the CLIENT.

This Article details the individual agreed to responsibilities of SIEMENS and the CLIENT, in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative 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, as soon as such information becomes available to the CLIENT.
 - (a) Annually provide monthly number of water meter accounts
 - (b) Annually provide monthly database records of billing information including but not limited to metering dates, billing date, billed water, billed cost, meter size, meter number and address within local, state and federal privacy limitations. This information shall only be used for the sole purposes of this contract.
 - (c) Annually provide copies of all water and sewer rate schedules used for billing during the previous 12 month period if changed from the previous year.
 - (d) Annually provide monthly purchased, pumped, and/or distributed water volumes from the water plant records
- 3.3 CLIENT will provide SIEMENS with copies of utility bills within 30 days of receipt by CLIENT or provide access to utility vendor information.
 - (a) Number of water meter accounts by size
 - (b) Summary billing information on the amount of water sold by meter size
 - (c) Water volume purchased, pumped and distributed from the water plant records
- 3.4 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 CLIENT will provide and coordinate utility meter upgrades for interface with SIEMENS metering and data collection for all repair, replacement, reactivation and new accounts. All charges related for these upgrades are the responsibility of the CLIENT beyond the inventory provided by SIEMENS within the annual service program.
- 3.6 CLIENT will annually facilitate and coordinate utility meter testing including providing a listing of all meters installed in the system, providing access, notification and scheduling of meter replacements as deemed necessary by the CLIENT.

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XXXX Water Authority

Article 4: Baseline Development

- 4.1 The following data of this article outlines the operating characteristics that are required to be implemented under the FIM Work. This specific configuration of operating practices is the Contracted Baseline.
- 4.2 Parameters to be maintained during the Performance Guarantee Period are:
- (a) Water quality at or above average quality over the most recent 12 month period;
 - (b) Source of water supply at or above average quality water over the most recent 12 month period from previous source of water supply used;
 - (c) Water distribution integrity at or above Baseline maintenance levels; and,
 - (d) Meter/AMR system compatibility with the new system.
- 4.3 The meter performance baseline used for ongoing comparison of future meter test results is as follows:
- (a) Baseline year (full 12 months) – Month Year to Month Year
 - (b) Specific meter accounts included in the baseline are attached in Attachment 1.
 - (c) The baseline meter testing data are included as Attachment 2.
 - (d) Details of annual water consumed for a consecutive 12 month period of each tested meter account, and a grand total of water consumed by these accounts is included in Attachment 3. Additionally included is a tally of the total number of meter accounts by meter size in the baseline survey list. These baseline accounts remain fixed throughout the guarantee period and are the basis for comparison throughout the entire guarantee period.
 - (e) The water district's water and sewer billing rate schedules in force at the beginning of the SBT installation period are used for project development revenue calculations and are documented in Attachment 4 (Ordinance 51.030 through 51.035). This will be the basis used for any financial calculations henceforth, not a water billing rate schedule from any other year.
 - (f) Total population (people) in the water service area at the beginning of this guarantee period is between XX, XXXX based on census estimates for July 2007 as stated on City-Data.com.
- 4.4 The baseline 12 month year is chosen using the most recent 12 months of continuous data available for each account through the existing utility billing system.
- 4.5 Baseline number of meters and sizes is documented as part of the baseline. This is to assure that variances in installed meter counts and associated meter sizes are not inconsistent with the baseline. SIEMENS does not assume responsibility for loss of water consumption within the water district due to declines in installed capability to supply water.
- 4.6 Baseline period population (people) is documented as part of the baseline. This is to assure that variances in population increases or declines are not considered

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in the baseline. SIEMENS does not assume responsibility for loss of water consumption within the water district due to population declines.

- 4.7 Meter testing was performed on a representative sampling of meters to provide the pre-measurement system average level of accuracy for all meters. The meters were tested to AWWA standards and the sampling approach provides a high confidence level that the meters are indeed inefficient with compared to new meter accuracies.

The CLIENT provided a complete account download of historical data for each metered account including monthly consumption, meter size, meter installation data, meter serial number, billed charges, account number, account ID, etc. Using this information and a database of manufacturers' data the following charts were generated for the current meter population to determine the percentage of size and age ranges across the entire meter population.

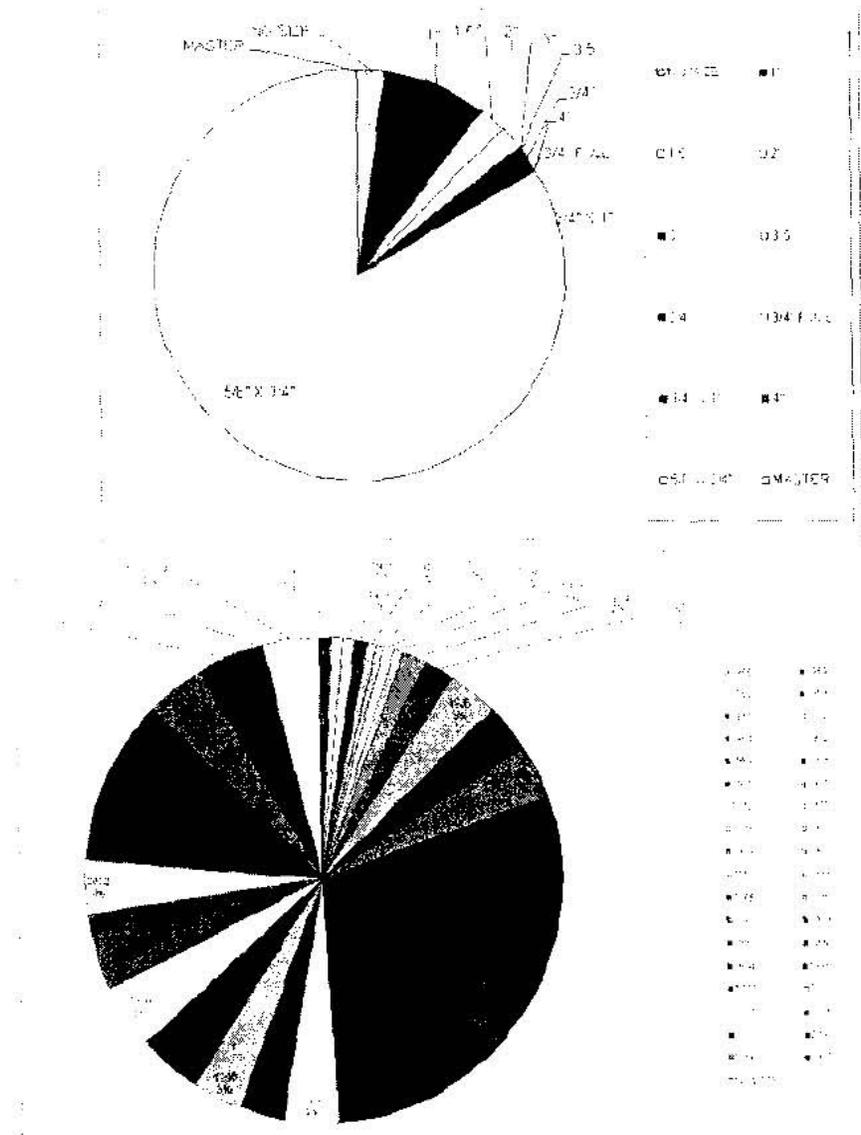


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Based on AWWA guidelines for meter sampling and testing a random sample of the meters were selected, removed from service, delivered to a third-party testing facility with the results presented in Attachment 2. The accuracy tests are to be based on AWWA standards for testing residential water meters per AWWA Manual M6. For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter efficiency by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follow:

$$\begin{aligned} & (15\% \times \text{Measured Efficiency @ High flow}) \\ & + (70\% \times \text{Measured Efficiency @ Medium flow}) \\ & + (15\% \times \text{Measured Efficiency @ Low flow}) \\ & \text{Average Weighted Efficiency of the Meter*} \end{aligned}$$

(*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, "Meter Testing")

- 4.8 The calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee.

Billable Usage Increases or unbilled water usage is calculated as follows:

$$\text{Unbilled Water} = \text{Water Sold} \times (1 - \text{Baseline Accuracy/Post-Installation Accuracy})$$

The new meter accuracy is guaranteed for the first five years of operation with average water flows by the meter manufacturer. After year five it is assumed that the meter efficiency will de-rate for the remainder of its service life. This is the same for the existing meters and the new meters to be installed as part of this project. The following tables show the estimated efficiencies of the meters throughout the term of this project.

Table 4.8a Existing Meter Accuracy over Project Term

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XXXX Water Authority

Table 4.8b Proposed Meter Accuracy over Project Term

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XXXX Water Authority

5 Article 5: Baseline Data

- 5.1 The annual period(s) selected as the Baseline period starts on Month Year and ends on Month Year. Table 5.1 outlines the utility consumption that occurred during this Baseline period. This Baseline consumption will be used as the reference that future years utility usage in order to determine the Guaranteed Savings. Note that the Sewer is based on Water metering, and therefore is not shown as a distinct measurement.

As mentioned in section 4.8, the calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. The following table shows the results of the baseline analysis and shows the amount of recaptured water for the system associated with the given meter sizes and classifications.

Table 5.1 Baseline Consumption

- This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee.
- 5.2 The operating practices during the Baseline period determine the utility consumption shown in Table 5.1. The following data of this article outline 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 FIM Work and implementing specific configuration of operating practices defined as the Contracted Baseline in Article 4 of this Exhibit C.
- 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

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XXXX Water Authority

maintain the current level of facility compliance relative to applicable codes unless specifically outlined to the contrary below.

5.4 The following attachments are included in the contracted baseline:

- Attachment 1: Meter Account List
- Attachment 2: Baseline Meter Testing Data
- Attachment 3: Baseline Consumption Data by Meter Size
- Attachment 4: City Ordinance

Article 6: Utility Rate Structures and Escalation Rates

6.1 The Total System Benefits as reflected in Table 1.2 represent the predicted billable usage increase that can be extracted from the unbilled water that the new meters will track as is detailed in Table 1.1 when the unbilled water is converted to a dollar figure based on the formulas herein. The table is provided to show the total system benefits on an annual basis for the term of the Agreement, which is 15 years. Nothing herein should be construed as to guarantee the actual billable usage increase dollars as derived from the tracking of the previously unbilled water usage. Variables such as decreases in water rates or reduction in overall consumption by the residents of the City, or weather conditions may adversely affect the billable usage increase dollars that are realized by the CLIENT despite having realized the level of water metering as guaranteed by SIEMENS. SIEMENS GUARANTEES THE PREVIOUSLY UNBILLED WATER WILL BE METERED. SIEMENS DOES NOT GUARANTEE THAT THE PREVIOUSLY UNBILLED WATER WILL ACTUALLY EQUATE TO THE DOLLAR SET FORTH IN TABLE 1.2 AS SIEMENS CANNOT PREDICT OR CONTROL WATER RATES.

However, in order to predict the billable usage increase in dollars the City was consulted to determine the mutually agreed upon annual rate increase to be used in these calculations. These numbers are based on the historical increases imposed by the City as well as the planned future increases. Based on information provided by City staff, a rate study performed in Month Year called for a ___ increase in Month Year and then ___ for Year through Year. However, only ___ was incorporated in Year. In order to track the historical increases for the City, we have incorporated a ___ annual increase for the term of the project. Using the baseline rate structure included in Attachment 4, the following table was generated showing the rate structures used in the calculations for the project term.

Table 4.10 Rate Structure Increases over Project Term

In year 1 of the project term the ___ increase is claimed for the complete metered consumption by the baseline meters. For years ___ through ___ the ___ increase was applied to the billable usage increase in order to allow the City to capture and excess savings for other infrastructure improvements needed.

Article 7: Contracted Baseline Data

The following information outlines are applicable for this contract:

- 7.1 Measurement and Verification (M&V) methods provided under this Article –
Overview
- 7.2 Option A - Measured Capacity
- 7.3 Option B - Measured Consumption
- 7.4 Option C - Main Meter Comparison
- 7.5 Option D - Stipulated

7.1 Measurement and Verification (M&V) methods - General Overview

- (a) The purpose of the Measurement and Verification (M&V) article is to identify the methods, measurements, procedures and tools that will be used to verify the savings for each FIM. Savings were 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 4.
- (b) The actual guaranteed savings and system benefits associated with this contract are outlined in this Exhibit C, Article 1 - Table 1.1 and Article 2 – Table 2.1 of this contract.
- (c) The M&V option for this FIM is Option A, Measured Capacity

7.2 Option A - Measured Capacity

The underlying premise of our guarantee and of our M&V process is that we expect a new, positive displacement, residential water meter to mechanically wear in response to two primary factors: the amount of cumulative water and age. The meters with greater amounts of cumulative water measured at any given time are likely to be less accurate than meters with lower accumulated reading meters due to increased wear accompanying the increased amount of measured water. Secondly, age is also a contributing factor in meter accuracy. In the M&V phase, the bulk of the meters will be the same age. Thus targeting high cumulative flow meters is justified in addition to a sampling approach for the total population of meters.

Meter testing will be performed on a sampling of meters annually to provide assurance that the meters are maintaining the desired level of accuracy. Refer to the guaranteed accuracy tables, Table 4.8a and Table 4.8b. The meter information will be tested to AWWA standards and the sampling approach provides a high confidence level that the meters are maintaining the desired accuracies.

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Annually, throughout the term of the contract, the CLIENT will provide a randomized composite listing of current meters in electronic format. SIEMENS will pull, replace and test these meters both randomly for accuracy and randomly within a target group of high cumulative flow meters. If the average of the meters tested within any year is above the guaranteed accuracy, the meter accuracy will be deemed acceptable for the year.

The accuracy tests are to be based on AWWA standards for testing residential water meters per AWWA Manual M6. The formulation for that testing is as follow:

For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter efficiency by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follow:

$$\begin{aligned} & (15\% \times \text{Measured Efficiency @ High flow}) \\ & + (70\% \times \text{Measured Efficiency @ Medium flow}) \\ & + (15\% \times \text{Measured Efficiency @ Low flow}) \\ & \text{Average Weighted Efficiency of the Meter*} \end{aligned}$$

(*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, "Meter Testing")

The tested meters will be subsequently returned to the water authority for use as future maintenance replacements, reactivations or for new customer accounts if the tested condition is within acceptable meter performance parameters as determined by SIEMENS. Otherwise the tested meters will be returned to the manufacturer for repair under warranty and then returned to the CLIENT's inventory.

The targeted meters are chosen based on a sort of the meter's cumulative water (water measured over its lifetime). All of the meters within 10% of their warrantee cumulative flow as shown in specification and warranty documents provided with this contract will be identified and a sample of these meters will be tested in addition to the random sample as identified in the table below up to a confidence and precision target of 80%/20%. The sampling guidelines of Table 7.2a will be used to select the appropriate number of meters to be tested.

The sample size for the random testing is selected to correspond to an 80% confidence level and a 20% precision level as a starting point. The specific selection of these meters is performed by a random number generator that arbitrarily selects accounts from the baseline meter account list.

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Table 7.2a Sampling Guidelines	
Confidence	80%
Precision	20%
Population	Number of Samples
1	1
2	2
3	3
4	3
5-6	4
7-9	5
10-13	6
14-19	7
20-29	8
30-49	9
50-110	10
>110	11

The total count of meters to be tested is the algebraic sum of the targeted sample and the random sample.

As mentioned previously, the calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee. This calculated amount of reclaimed water is compared to the amount of reclaimed water guaranteed. If the calculated amount is higher than the guarantee, then the guarantee is deemed acceptable for that year.

In the event that the average tested meter accuracy is below the guaranteed accuracy, the sample size will be incrementally increased at the discretion of SIEMENS until the meter accuracies average above the guaranteed accuracy. At any point during the testing process, SIEMENS determines that the sampling will not prove the guaranteed accuracy; SIEMENS may discontinue the testing and implement register replacements on all remaining meters or accept the financial responsibility as calculated on the annual reconciliation of the M&V report. The revenue calculation is based upon the dollar rate schedule contained in the baseline data listed above.

Any sewerage revenue associated with the reclaimed water calculated will be included in any revenue reconciliation and are considered part of the savings guarantee. This approach ensures the water authority that the projected performance projected will be maintained throughout the term of the contract.

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Annually SIEMENS will present these M&V results to the water authority staff, and then jointly present the results to the board or council.

Population, installed meters and the interaction of the two are the key indicators that the capability of the water system to sell water is maintained.

$$\text{Population} = \text{XX}, \text{XXX}$$

If the population increases, it is reasonable to assume that the water consumption may increase. Alternately, if the population decreases, it is reasonable to assume the district water consumption may decrease at no fault of SIEMENS.

$$\text{Installed meters} = \text{X}, \text{XXX}$$

If the number of installed meters increases, it is reasonable to assume that the water consumption may increase. Alternately, if the population decreases, it is reasonable to assume the district water consumption may decrease at no fault of SIEMENS.

The amount of annual rainfall can affect the overall consumption by the residents, by changing the amount of irrigation required to keep their lawns healthy. For the baseline period the amount of precipitation was:

$$\text{Annual Precipitation} = \text{X}, \text{XXX}$$

The average rainfall for this location is approximately XXXX inches, based on data provided by the National Oceanic and Atmospheric Administration (NOAA). If the rainfall increases, there should be less usage for irrigation; conversely if it is a particularly dry year, there should be an increase in irrigation to compensate at no fault of SIEMENS.

The population and the number of installed meters are key indicators of the capability of the system to provide water. However, if one drops and the other increases, a method to evaluate whether the system's capability has increased or decreased may be required. SIEMENS will use the following table to evaluate whether the system has effectively increased or decreased.

The basis of the calculation is that meter size is an indication of flow area. If the flow area is greater, then it is reasonable to assume that more flow can be provided than through smaller meters.

Table 7.2b Post-Installation to Base year Meter Size Calculation Example						
Meter Size	Base year # of Meters	Base year Calculation	Base year size ² x # of meters	Post-Installation Year # of meters	Post-Installation Calculation	Post-Installation size ² x # of meters
0.75	8,445	$3/4^2 \times 8,445 =$	4,750.31	AAA	$(5/8)^2 \times \text{AAA}$	0.39 x AAA
1.00	1,001	$1^2 \times 1,001 =$	1,001.00	BBB	$1^2 \times \text{BBB}$	1 x BBB
1.50	199	$1.5^2 \times 199 =$	447.75	CCC	$(1.5)^2 \times \text{CCC}$	2.25 x CCC
2.00	244	$2^2 \times 244 =$	976.00	DDD	$2^2 \times \text{DDD}$	4 x DDD

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3.00	19	3 ² x 19=	171.00	EEE	3 ² x EEE	9 x EEE
4.00	8	4 ² x 8=	128.00	FFF	4 ² x FFF	16 x FFF
6.00	4	6 ² x 4=	144.00	GGG	6 ² x GGG	36 x GGG
8.00	1	8 ² x 1=	64.00	HHH	8 ² x HHH	8 ² x HHH
Totals	9,921		7,682.06	Sum(AAA.HHH)		SUM

If SUM > 7682.06 then the system capability is assumed greater or equal to the base year.

The potential for sufficient increased revenues of the city from water and sewer charges will be confirmed to meet or exceed the baseline revenues by verifying that the meter size calculation as presented in Table 7.2b for any current year is greater than or equal to the base year. If any of these factors are not maintained, the absolute value of the water sold cannot be tied to efficiency improvements. If any of these key indicators are not maintained for a year in the M&V period, the baseline volume of water will prevail and the predicted revenue and savings will be stipulated to have occurred. If the meter size calculation shows a lower potential for water sales than the base year, the projected savings will be stipulated to have occurred.

7.3 Option B - Measured Consumption

7.3.1 N/A

7.4 Option C - Main Meter Comparison

7.4.1 N/A

7.5 Option D – Stipulated

7.5.1 The operational savings for this project were developed through many conversations with City staff. The reported operational savings used in the calculations for this project are stipulated for each year of the project term and were mutually agreed upon by the CLIENT and SIEMENS. The meter reading savings are agreed to occur by the reduction in effort associated with the baseline manual meter reading and the reduction in overall staff required to perform the monthly meter reading tasks.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy, Turnage and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: None

ABSTAINING AND NOT VOTING: None

The motion was declared carried

MOTION TO RECESS

Motion was made by Council Member Watkins seconded by Council Member Guy to recess until Tuesday, January 20, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Turnage, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: None

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, February 3, 2009, at 6.00 p.m. in regular session with the following officials present: Mayor Pro Tem Leavern Guy, Council Members Donald Parker, Larry Watkins, Anna Turnage and Interim City Manager Harvey Miller.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by J. P. Burns, followed by the Pledge of Allegiance led by Mayor Pro Tem Leavern Guy.

**MOTION WAS MADE TO APPROVE THE CITY OF PICAYUNE MINUTES DATED
JANUARY 20, 2009**

Motion was made by Council Member Watkins, seconded by Council Member Turnage for approval of the minutes dated January 20, 2009.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO APPROVE DOCKET

Motion was made by Council Member Turnage, seconded by Council Member Watkins to approve the docket for February 03, 2009 in the amount of \$451,519.54.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM PICAYUNE INDUSTRIES TO PROCLAIM THE MONTH OF MARCH AS INTELLECTUAL DISABILITIES/DEVELOPMENTAL DISABILITIES AWARENESS MONTH AND MARCH 27, 2009 AS INTELLECTUAL DISABILITIES/DEVELOPMENTAL DISABILITIES DAY IN OUR CITY

Motion was made by Council Member Turnage, seconded by Council Member Parker to proclaim the month of March as Intellectual Disabilities/Developmental Disabilities month and March 27, 2009 as Intellectual Disabilities/Developmental Disabilities Day in our city. Also approved request that Cottonwood and Forest streets be blocked from 10:00 am until 2:00 pm in order to have room to accommodate guests for crawfish cook off and other entertainment.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM NATIONAL MULTIPLE SCLEROSIS SOCIETY TO HOLD ANNUAL MS WALK FUNDRAISER

Motion was made by Council Member Turnage, seconded by Council Member Parker to approve request from National Multiple Sclerosis Society to hold annual MS Walk fundraiser and to use Jack Read Park and Goodyear Blvd. walking track on Saturday, April 25, 2009 from 9:00 am to 1:00 pm.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME JAMEYE MARTIN OF REBUILDING PEARL RIVER COUNTY TOGETHER ADDRESSED THE COUNCIL CONCERNING FAMILIES STILL IN FEMA HOUSING

CONSIDER REQUEST FOR PAYMENT OF FINAL INVOICE TO KANDUIT CONSTRUCTION FOR WORK PERFORMED AT THE INTERMODAL CENTER

Motion was made by Council Member Turnage, seconded by Council Member Parker to authorize payment of final invoice to Kanduit Construction for work performed at the Intermodal Center.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, and Parker

VOTING NAY: Council Member Watkins

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion did not carry

CONSIDER REQUEST TO PARTICIPATE IN THE "GREAT AMERICAN CLEAN-UP MISSISSIPPI" ON MARCH 14, 2009

Motion was made by Council Member Parker, seconded by Council Member Turnage to approve request to participate in the "Great American Clean-up Mississippi" on March 14, 2009 and appoint Daryl Smith as City of Picayune contact.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND AGENDA TO ADD FOUR MORE ITEMS TO BE CONSIDERED UNDER GRANT ADMINISTRATION

Motion was made by Council Member Parker, seconded by Council Member Turnage to add four more items to be considered under Grant Administration; consider soliciting for hurricane shutter installation, request for cash #3 for CDBG Katrina Community Revitalization Downtown Improvements Grant, request for cash #5 for 2006 Katrina Supplemental CDBG Planning Grant, and request for cash #7 for 2006 Katrina Supplemental CDBG Community Revitalization.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO MOVE ITEM #1 UNDER GRANT ADMINISTRATION TO EXECUTIVE SESSION

Motion was made by Council Member Parker, seconded by Council Member Watkins to move item #1 under grant administration, consider submitting an application

to FAA for the construction of Helicopter Pad and Drainage Improvements, to item # 5 under Executive Session as contractual matter.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO MOVE ITEM #2 UNDER GRANT ADMINISTRATION TO THE END OF AGENDA

Motion was made by Council Member Parker, seconded by Council Member Watkins to move item #2 under Grant Administration, consider accepting bids for the construction of Helicopter Pad and Drainage Improvements, to the end of agenda.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

CONSIDER REQUEST TO ADVERTISE FOR BIDS FOR DEBRIS REMOVAL IN VAUGHN'S BRANCH, DOWN'S BRANCH, HARVEY BRANCH, MONROE BRANCH-EAST CANAL, MONROE BRANCH-FIFTH STREET AND SYCAMORE BRANCH-HWY 43 NORTH

Motion was made by Council Member Watkins, seconded by Council Member Turnage to advertise for bids for debris removal in Vaughn's Branch, Down's Branch, Harvey Branch, Monroe Branch-East Canal, Monroe Branch-Fifth Street and Sycamore Branch-Hwy 43 N.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO CONSIDER USING CDBG PROGRAM INCOME TO PURCHASE MATERIALS FOR DRAINAGE IMPROVEMENTS IN ELIGIBLE CDBG AREAS

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve using CDBG Program Income to purchase materials for drainage improvements in eligible CDBG areas described as Davis, Jarrell, Weems, and Burley Streets.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AUTHORIZE COMMUNITY DEVELOPMENT TO ADVERTISE FOR BIDS FOR HURRICANE SHUTTER INSTALLATION AT PICAYUNE NEW CITY HALL, FIRE STATIONS 1, 2 & 3, AND THE CRIMINAL JUSTICE CENTER

Motion was made by Council Member Watkins, seconded by Council Member Turnage to authorize Community Development advertise for bids for Hurricane Shutter Installation at Picayune New City Hall, Fire Stations 1, 2 & 3, and the Criminal Justice Center.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE REQUEST FOR CASH #3 FOR CDBG KATRINA COMMUNITY REVITALIZATION DOWNTOWN IMPROVEMENTS GRANT

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize request for cash # 3 for CDBG Katrina Community Revitalization Downtown Improvements Grant in the amount of \$ 23,919.49 and authorize Mayor to sign all related documents and subsequent payment of accompanying invoices.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE REQUEST FOR CASH #5 FOR 2006 KATRINA SUPPLEMENTAL CDBG PLANNING GRANT

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize request for cash #5 for 2006 Katrina Supplemental CDBG Planning Grant in the amount of \$40,306.17 and authorize Mayor to sign all related documents and the subsequent payment of accompanying invoices.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE REQUEST FOR CASH #7 FOR 2006 KATRINA SUPPLEMENTAL CDBG COMMUNITY REVITALIZATION IN THE AMOUNT OF \$105,876.80

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize request for cash #7 for 2006 Katrina Supplemental CDBG Community Revitalization in the amount of \$105,876.80 and authorize Mayor to sign all related documents and the subsequent payment of accompanying invoices.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE AMENDMENT TO ZONING ORDINANCE #489 TO INCREASE BUILDING HEIGHT WITH CONDITIONS AS RECOMMENDED BY THE FIRE AND BUILDING DEPARTMENTS AND SET PUBLIC HEARING DATE

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve amendment to Zoning Ordinance #489 to increase building height from three (3) stories and/or forty (40) feet to five (5) stories and/or sixty (60) feet with the following conditions as recommended by the Fire and Building Departments; construction must be approved by both the Fire and Building Departments, the City of Picayune will adopt the 2006 International Building Code and the building must be built within the approval radius of location of the fire department 75' ladder truck (ladder district). Public hearing is set of February 17, 2009.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE CONTRACT OF LOW BID TO HUEY STOCKSTILL, INC., FOR FRIENDSHIP PARK PARKING LOT REPAIRS/IMPROVEMENTS

Motion was made by Council Member Parker, seconded by Council Member Turnage to approve contract of low bid \$99,398.50 to Huey Stockstill, Inc. for Friendship Park parking lot repairs/improvements and authorize Mayor to sign contract documents.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT DONATIONS FOR PICAYUNE POLICE DEPARTMENT'S SUMMER YOUTH CAMP

Motion was made by Council Member Turnage, seconded by Council Member Watkins to accept donations for Picayune Police Department's Summer Youth Camp from Larry & Sandra Barker (\$50), Barbara Davis & Martha Dossett (\$50), and Trinity Methodist Church (\$288).

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE POLICE DEPARTMENT TO HOLD BOOT DRIVE FOR POLICE MEMORIAL/PAY IT FORWARD FUND

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize Police Department to hold boot drive for Police Memorial/Pay it Forward Fund on Saturday March 07, 2009.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST TO TERMINATE GROUND LEASE BETWEEN CITY OF PICAYUNE AND G9, LLC AND APPROVE NEW LEASE BETWEEN CITY OF PICAYUNE AND G4, LLC

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve request to terminate grounds lease agreement dated June 8, 2006 between City of Picayune and G9, LLC and approve new lease attached between City of Picayune and G4, LLC for Site F containing 0.258 acres at Picayune Municipal Airport.

STATE OF MISSISSIPPI)
)
COUNTY OF PEARL RIVER)

GROUND LEASE AGREEMENT

THIS LEASE AGREEMENT made and entered into this, the 3rd day of February , 2009, by and between the City of Picayune (hereinafter referred to as "Landlord") and G4, LLC, (hereinafter referred to as "Tenant").

In consideration of the terms, covenants and conditions of this Ground Lease, the Parties hereto covenant and agree as follows, to-wit:

1. PREMISES:

Landlord hereby leases to the Tenant that certain area situated on the property of the Picayune Municipal Airport, as shown on the drawing attached hereto and made a part hereof as Exhibit "A."

When the term "Lease premises" is used in this Lease, it shall refer to the area identified only. Under the terms of this Lease, Landlord also grants to Tenant nonexclusive right to use the parking facilities located in front of the building known as the Picayune Municipal Airport terminal building. Landlord also grants nonexclusive right of ingress and egress to the said Lease Premises described herein above, which ingress and egress shall be restricted to the route designated and approved by Landlord.

2. TERM:

The term of this Lease shall be for 15 years, commencing on February 3, 2009, and ending on February 3, 2024. This Paragraph is subject to Paragraph No. 9 relating to the termination or cancellation of this lease agreement.

3. RENEWAL OPTION:

At the expiration of the term of this Lease, the Tenant shall have the option to renew this Lease for two (2) additional periods of fifteen (15) years, with said options to be exercised by providing Landlord with written notice no later than sixty (60) days prior to the end of the initial term of this lease. No later than sixty (60) days prior to the commencement of each renewal period the Landlord shall have the right to determine whether the rent charged by the Landlord should be increased. If the Landlord does increase the rental to be charged, then notice of it shall be given unto the Tenant in writing. This Paragraph is subject to

Paragraph No. 9. Relating to the termination or cancellation of this lease agreement.

4. RENT

Tenant agrees to pay, without demand, the minimum yearly lease price of \$0.15 per square foot per year for the initial fifteen- (15) year rental period. Rental for any renewal(s) exercised by the Tenant shall be charged as set forth in Paragraph 3. above. The area to be leased by Tenant is comprised of square feet. That said yearly rent is due and payable in full, without demand, at the time of the signing of this ground lease agreement for the first year and on the first day of each and every subsequent year thereafter. The yearly lease price and/or a portion thereof per square foot may, at the election of the Landlord may be adjusted by a known factor including, but not necessarily limited to the United States Department of Commerce Consumer Price Index. The Tenant shall be given advance written notice of the Landlord's intent to adjust said lease price no later than thirty (30) days preceding the next council meeting of the Landlord upon which said adjustment has been placed as an agenda item. That unless agreed to between both parties, the minimum yearly lease payment shall be no less than \$0.15 per square foot per year. Said rental payments shall be payable by mail or by delivery unto the Picayune Municipal Airport office at 148 Runway Road, Picayune MS 39466.

5. ALTERATIONS, IMPROVEMENTS AND INSTALLATION BY TENANT

Tenant shall make no alternations or improvements to the demise premises without the prior written consent of the Landlord. All alterations, changes and improvements built, constructed, or placed on the demise premises by Tenant shall, unless otherwise provided by written agreement between the Tenant and Landlord, become the property of the Landlord and will remain on the demise premises at the expiration or sooner of this ground lease agreement. That all plans and specifications for said improvements must be first approved by the Landlord in writing. That Tenant shall comply with all applicable federal, state and local construction codes. In the event that the Landlord and Tenant do agree to the removal of any property and/or improvements, then in that event, Tenant shall repair all damage caused by such removal and shall restore such property to good condition subject to ordinary wear and tear.

6. COMPLIANCE WITH LAWS:

Tenant acknowledges that no trade or occupation or other activity shall be conducted on the Lease premises, or use made thereof which is or will be unlawful, improper, noisy or offensive, or contrary to any law of any municipal ordinance in force in the city in which the premises are situated. Tenant shall at

all times remain in compliance with the Minimum Standards and/or Regulations adopted by the City of Picayune and/or the Picayune Airport Commission, and any other applicable federal, state or local agencies. Tenant also agrees to conform to any and all laws of the State, County, or City. This Lease shall be governed and interpreted in accordance with the laws of the State of Mississippi.

7. UTILITIES AND SANITARY FACILITIES

The Landlord shall provide water and sewer utility service to the Tenant within approximately six (6) months from approval of this agreement or upon the conclusion of all construction of any improvement whichever is later. Tenant shall be responsible for the payment of all utilities, garbage disposal service as well as any and all other fees for the safe and proper operation of the demised premises.

8. ASSIGNMENTS OR SUBLEASE

Tenant shall not assign the rights hereunder unto any third parties nor sub-lease, sub-let, or rent the subject real property and any improvements constructed or located thereon to any third party without prior written approval and consent of the Landlord, which will not unreasonably withheld.

9. TERMINATION OF LEASE

This lease agreement may be terminated by either the Landlord or the Tenant hereto upon thirty-(30) days written notice. In the event of termination as set forth above, the Tenant shall remove any and all property as provided for in Paragraph 5. above within the thirty-(30) day notice period.

10. DAMAGE OR DESTRUCTION:

In the event of flooding or other natural disaster to the Lease premises, Landlord may, at its option, terminate this Lease. Landlord shall in no way be responsible for any damage or destruction to the building or any other personal property of Tenant, which may be situated on said Leased Premises. Tenant, at its sole expense, shall keep and maintain in good condition and repair all the premises, improvements and personal property hereby leased including driveways and approaches. Tenant shall give the lease premises reasonable care and maintenance and shall be responsible for any damage over the normal wear expected. Landlord reserves the right to charge the Tenant for damage to the property as a result of negligence, carelessness, or misuse.

11. HAZARDOUS SUBSTANCES:

Tenant shall not cause or permit any Hazardous Substances to be brought upon, kept or used in, on or about the Premises by Tenant, its agents, employees, contractors or invitees, and Tenant, by execution of this Lease, covenants, warrants and represents to Landlord that it will keep the lease premises free from any and all unlawful contamination with hazardous substances and that it will hold Landlord harmless and indemnify Landlord from any loss or damage with respect thereto and that Tenant shall be solely responsible for any and all costs and expenses incurred for remediation the event the same is required, and that violation of this provision shall mean immediate termination of this Lease, which said termination shall not relieve Tenant from its liability hereunder.

12. INSURANCE

In the event Tenant erects a structure or temporary building on the lease premises, Tenant shall be responsible for any insurance as to said building, its personal property, equipment, whether attached to the building or not, or to any leasehold interest which it may, at its election, desire to obtain. However, Tenant shall maintain a comprehensive general liability insurance policy with minimum coverage of \$1,000,000.00, and said policy shall name the City of Picayune as additional insured(s) and shall contain a provision that notice of cancellation of the policy will be provided to the additional insured at least thirty (30) days prior to cancellation. Tenant agrees to deposit with the City of the Airport Manager a certificate of such insurance upon commencement of the term of this Lease and to provide evidence that said insurance is still in effect thirty (30) days prior to the expiration of the term of this lease.

13. DEFAULT

In the event Tenant shall default in the payment of rent or other sum herein specified and such default shall continue for ten (10) days after written notice thereof; or if the Tenant shall default in the observance or performance of any other of the Tenant's covenants, agreements, or obligations hereunder and such default shall not be corrected within thirty (30) days after written notice thereof, then the Landlord shall have the right to take complete possession of the lease premises, including the building or structure situated thereon, to declare the term of this Lease ended, and remove any of Tenant's personal effects, without prejudice to any remedies which might be otherwise used for arrears of rent or other default. Tenant shall be responsible to pay all costs of collecting any unpaid rent or damages caused while on said premises, and further agrees to pay all costs, including a reasonable attorney's fee of one-third (1/3) of any amounts due and owing but not less than \$2,500.00, if placed in the hands of an attorney for collection. Further, the Landlord will dispose of articles left behind after the agreement is terminated and the Tenant has moved from the premises. Additionally, in the event Landlord shall take possession of the leased premises,

Landlord shall not be liable for any damage or destruction to Tenant's property located on the leased premises.

14. RIGHT OF ENTRY:

The Landlord may enter the premises at any time necessary to inspect the premises. In case either party has give notice of termination of this Lease Agreement, the Landlord may show the premises to any prospective Tenant.

15. LANDLORD'S LIEN:

Tenant hereby expressly gives the Landlord a Landlord's lien on all of Tenant's furniture, fixtures, and personal property for non-payment of any rent and the Tenant agrees that no furniture, fixtures, or personal property shall be removed from the premises until all rent and charges are fully paid.

16. ABANDONMENT:

If at any time during the term of this lease, Tenant abandons the demised premises or any part thereof, Landlord may, at its option, enter the demised premises by any means without being liable for any prosecution therefor, and without becoming liable to the Tenant for damages or for any payment of any kind whatever, and, at Landlord's option, hold Tenant liable for any difference between the rent that would have been payable under the terms of this Lease during the balance of the unexpired term(s), if this lease had continued in force, and the net rent for such period realized by the Landlord by means of re-letting the place. If Landlord's right of re-entry is exercised following abandonment of the premises by Tenant, then Landlord may consider any personal property belonging to Tenant and left on the premises to have also been abandoned, in which case Landlord may dispose of all such personal property in any manner lessor shall deem proper and is hereby relieved of all liability for doing so. Tenant will not be considered to have abandoned the demised premises or any part thereof, unless Tenant has failed to pay the yearly rent and Landlord has given Tenant thirty days written notice that if the failure to pay rent is not cured, then the Lease premises will be deemed abandoned.

17. INDEMNIFICATION:

Landlord shall not be liable for any loss, injury, death or damage to persons or property which at any time may be suffered or sustained by Tenant or by any person whosoever may at any time be using or occupying or visiting the demised premises or be in, on or about the same, whether such loss, injury, death or damage shall be caused by or any way result from or arise out of any act, omission, or negligence of Tenant, Landlord, or any occupant, visitor or user of

any portion of the premises, or which shall result from or be caused by any other matter or thing whether of the same kind as or of a different kind that the matters or things above set forth, and Lessee shall indemnify Landlord against all claims, liability, loss, or damage, whatsoever on account of any such loss, injury, death or damage caused by or happening in connection with, Tenant's use and occupancy of the premises or any buildings, structures, equipment or appliances located on or to be located thereon, or by reason of any other casualty, whether due to Tenant's negligence or otherwise. Tenant hereby waives any and all claims against Landlord for damages to the building and improvements that are now on or hereafter placed or built on the premises and to the property of the Tenant in, on, or about the premises, and for any injuries to persons or property in or about the premises, from any cause arising at any time.

18. SURRENDER OF PREMISES:

At the expiration of the lease term, Tenant shall quit and surrender the premises in as good state and condition as they were in at the commencement of this lease, reasonable use and wear thereof and damages by the elements excepted.

19. EFFECT OF HOLDING OVER:

Any holding over after the expiration of the term of this lease, with the consent of the Landlord, shall be construed as a tenancy from month to month, at the same monthly rental as required to be paid by Tenant for the period immediately prior to the expiration of the term hereof, and shall otherwise be on the terms and conditions herein specified, so far as applicable.

20. SPLIT SUCCESSORS, HEIRS AND ASSIGNS:

The terms and conditions herein contained shall apply and bind the heirs, successors, executors, administrators, and assigns of all of the parties hereto, and all of the parties hereto shall be jointly and severally liable hereunder.

21. NOTICES:

Notices required by this Lease shall be in writing, served personally or sent by United States registered or certified mail or air courier, postage or charge prepaid, addressed to the Landlord or Tenant, to the appropriate address below:

22. ENTIRE AGREEMENT:

This Lease is the entire agreement of the parties hereto with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party or to any employee, officer or agent of any party shall be

valid, unless subsequently agreed to in writing between the parties.

23. FORUM SELECTION PROVISION:

Any and all disputes regarding the negotiation, performance, termination, cancellation, abandonment and/or interpretation of this lease agreement, together with any other dispute and/or claim which arises between the Parties or their successors to this lease shall be resolved in the Chancery Court of Pearl River County Mississippi, which shall have the exclusive jurisdiction over the Parties, their successors and/or any claims which same may have against one another.

In Witness whereof, the parties have executed this Lease, in duplicate originals, at Picayune, Pearl River County, Mississippi on the day and year first above written.

LANDLORD: CITY OF PICAYUNE

TENANT: Tyron E. Gill, G4, LLC

Attest:

City Clerk

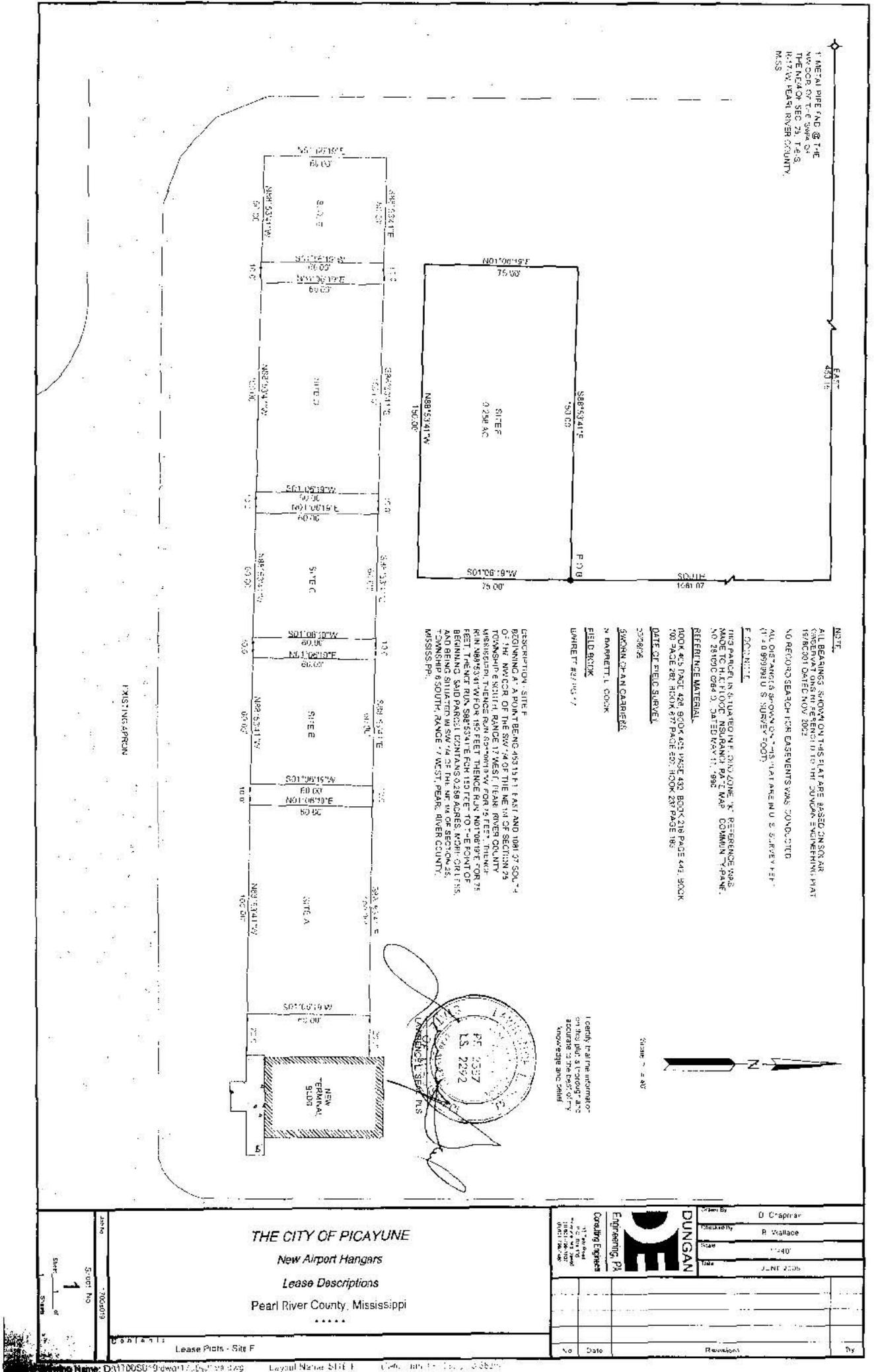
STATE OF MISSISSIPPI)
)
COUNTY OF PEARL RIVER)

PERSONALLY came and appeared before me, the undersigned authority in and for said County and State, on this ____ day of February, A.D., 2009, within my jurisdiction, the within named **Tyron E Gill**, who acknowledged to me that he is the Director, respectively, and that for and on behalf of said Limited Liability Company, and as its act and deed, they signed, executed and delivered the foregoing Ground Lease Agreement on the day, in the year, and for the purposes therein contained after first having been duly authorized by said corporation to do so.

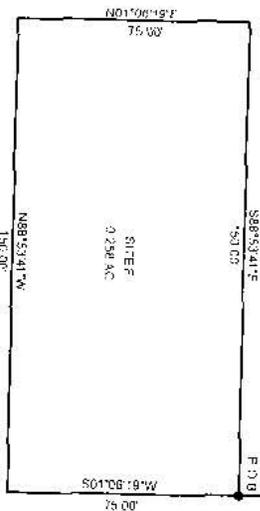
GIVEN under my hand and official seal of office, upon this, the ____ day of February, A.D., 2009.

Notary Public

My Commission Expires:

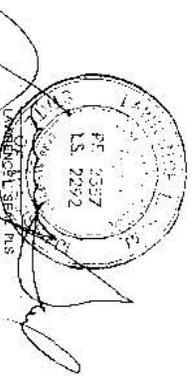


TERRI BEECHER & THE
 NUMBER OF THE PLAN IS
 THE NEARBY SECTION
 RELATIVE TO PEARL RIVER COUNTY
 MISSISSIPPI

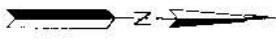


DESCRIPTION - SITE F
 BEGINNING AT A POINT BEING 451.11 FT EAST AND 104.37 SOUTH
 OF THE INTERSECTION OF THE SW 1/4 OF THE NE 1/4 OF SECTION 29
 TOWNSHIP 6 NORTH RANGE 17 WEST, PEARL RIVER COUNTY,
 MISSISSIPPI; THENCE RUN 65.709134 W FOR 95 FEET; THENCE
 RUN N89.53117 W FOR 150 FEET; THENCE RUN N01.06197 E FOR 75
 FEET; THENCE RUN S88.53117 E FOR 150 FEET; TO THE POINT OF
 BEGINNING; SAID PARCEL CONTAINS 0.258 ACRES, MORE OR LESS,
 AND BEING SITUATED IN SW 1/4 OF THE NE 1/4 OF SECTION 29,
 TOWNSHIP 6 SOUTH, RANGE 17 WEST, PEARL RIVER COUNTY,
 MISSISSIPPI.

NOTE:
 ALL BEARINGS AND DISTANCES LISTED ARE BASED ON SURFACE
 AND BEARING ONLY IN REFERENCE TO THE ORIGINAL ENGINEERING PLAN
 (ENCLOSURE DATED NOV 2002)
 NO RECORD SEARCH FOR EASEMENTS WAS CONDUCTED
 ALL DISTANCES SHOWN ON THIS PLAN ARE IN U.S. SURVEY FEET
 (1 INCH = 99.432 INCHES)
 F. COOK, INC.
 THE PARCEL IS SITUATED IN THE ZONE "R" REFERENCE MAP
 NO. 100-11-11000, TOWNSHIP 6 NORTH RANGE 17 WEST, PEARL RIVER COUNTY,
 MISSISSIPPI, DATE OF RECORD 11-11-98
 REFERENCE MATERIAL:
 BOOK 454 PAGE 454, BOOK 455 PAGE 454, BOOK 215 PAGE 448, BOOK
 100, PAGE 480, SECTION 27 PAGE 420, BOOK 215 PAGE 180
 DATE OF FIELD SURVEY:
 2/26/06
 SWORN OF AN OATH
 BY BARRETT L. COOK
 FIELD SKETCH
 BARRETT L. COOK 1/7



I certify that the information
 on this plan is true and
 accurate to the best of my
 knowledge and belief.



The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER BOUNDS ENTERED THE MEETING

ORDER TO RE-ENTER EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to enter executive session to discuss the following:

- A. Possible litigation
- B. Contractual Matter Industrial Park
- C. Possible Sale of Land
- D. Personnel Matter

E. Contractual Matter Airport

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

POSSIBLE LITIGATION

NO ACTION TAKEN-DISCUSSION ONLY

CONTRACTUAL MATTER INDUSTRIAL PARK

NO ACTION TAKEN-DISCUSSION ONLY

PERSONNEL MATTER

NO ACTION TAKEN-DISCUSSION ONLY

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, Bounds and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

POSSIBLE SALE OF LAND

Motion was made by Council Member Bounds, seconded by Council Member Turnage to sell property at Industrial Park described as 10.67 acres in Sec 22, T06S, R17W for average appraisal price of \$21,333 an acre to Reflectech.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, Bounds and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

CONTRACTUAL MATTER AIRPORT

Motion was made by Council Member Bounds, seconded by Council Member Turnage to approve submission of application to FAA for the construction of a Helicopter Pad and Drainage Improvements at the Picayune Municipal Airport and authorize Mayor to sign the same.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, Bounds and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT BIDS FOR THE CONSTRUCTION OF HELICOPTER PAD AND DRAINAGE IMPROVEMENTS AT THE PICAYUNE MUNICIPAL AIRPORT FUNDED IN PART BY FAA

Motion was made by Council Member Bounds, seconded by Council Member Watkins to accept bids for the construction of a Helicopter pad and drainage improvements at the Picayune Municipal Airport and award bid to Industrial Environmental Management, LLC in the amount of \$99,015.45 as the lowest and/or best bid due to the fact that the prior history of Kanduit Construction, Inc has evidenced a series of being irresponsible in the performance of other contracts with the City of Picayune; and further a failure to provide prompt service as required by the contracts between the City and Kanduit, Inc at the Municipal Airport and the Intermodal Center; authorize Mayor to sign contract and contract documents.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, Bounds and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO RECESS

Motion was made by Council Member Parker seconded by Council Member Watkins to recess until Tuesday, February 17, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Mayor Pro Tem Leavern Guy, Council Members Turnage, Watkins, Bounds and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Wednesday, February 11, 2009, at 4:00 p.m. in special called session with the following officials present: Mayor Pro Tem Leavern Guy, Council Members, Donald Parker, Larry Watkins, and Jerry Bounds, Interim City Manager Harvey Miller. Mayor Greg Mitchell and Council Member Anna Turnage were absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Council Member Donald Parker, followed by the Pledge of Allegiance led by Council Member Leavern Guy.

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Bounds, seconded by Council Member Parker to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

RETURN TO REGULAR SESSION

Motion was made by Council Member Parker, seconded by Council Member Watkins to return to regular session.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

ORDER TO ENTER EXECUTIVE SESSION

Motion was made by Council Member Bounds, seconded by Council Member Parker to enter executive session to discuss the following:

- A. Contractual matter concerning New Fire Station

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Parker, seconded by Council Member Watkins to return to regular session.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

MOTION TO TABLE CHANGE ORDER FOR NEW FIRE STATION

Motion was made by Council Member Watkins, seconded by Council Member Parker to table the request to approve Change Order No. 2 for New Fire Station to allow Chief Brown more time to gather information.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO RESCIND TOBACCO ORDINANCE NO. 863

Motion was made by Council Member Parker, seconded by Council Member Watkins to rescind Tobacco Ordinance No. 863 dated and approved October 21, 2008 in Minute Book 39, Pages 9-24 so that revisions can be made and Council wishes to see a new amendment within 30 to 45 days.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ADJOURN

Motion was made by Council Member Parker, seconded by Council Member Watkins to adjourn until Tuesday, February 17, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Council Members Guy, Parker, Bounds, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Mayor Greg Mitchell and Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, February 17, 2009, at 6.00 p.m. in regular session with the following officials present: Mayor Greg Mitchell, Council Members Leavern Guy, Donald Parker, Larry Watkins, Jerry Bounds, City Clerk Priscilla Daniel. Council Member Anna Turnage and Interim City Manager Harvey Miller were absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by J.P. Burns, followed by the Pledge of Allegiance led by Mayor Greg Mitchell.

**MOTION WAS MADE TO APPROVE THE CITY OF PICAYUNE MINUTES DATED
FEBRUARY 3, 2009**

Motion was made by Council Member Guy, seconded by Council Member Watkins for approval of the minutes dated February 3, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY PRIVILEGE LICENSE
REPORT**

Motion was made by Council Member Guy, seconded by Council Member Watkins to acknowledge receipt of monthly Privilege License Report for the month of January 2009.

REGULAR MEETING FEBRUARY 17, 2009

CITY OF PICAYUNE
PRIV LIC ISSUED

DATE: 01/01/2009

PAGE: 1

LICENSE	ACCT	BUSINESS	AMOUNT
8356	13	BABER'S INC.	22.60
8348	1043	CHANGE OF COLOR	22.00
8351	1730	MRS. BOUDREAUX'S GUMBO SHOPPE	45.00
8354	1732	RANDAL PICAYUNE INC # 33998	30.00
8353	1731	RANDAL PICAYUNE INC # 38440	30.00
8352	1635	SPARKLE CLEANING SERVICE	23.00
8347	237	SUNFLOWER #9073	118.65
8345	1729	THE LABORATORY	20.00
	8	TOTAL >>>	311.25

CITY OF PICAYUNE
NEW BUSINESS LISTING

DATE: 02/09/2009

PAGE: 1

ACCT	BUSINESS NAME	ORG DATE	LOCATION	APPLICANT	PROD SRV
1729	THE LABORATORY	01/05/2009	601 E CANAL ST	FREDERICK J BRUCE	TATOO FACILI
1730	MRS. BOUDREAUX'S GUMBO SHOPPE	01/14/2009	311 E CANAL ST	DEBRA HART	RESTAURANT
1731	RANDAL PICAYUNE INC # 38440	01/26/2009	235 FRONTAGE RD	PARESH PATEL	RESTAURANT
1732	RANDAL PICAYUNE INC # 33998	01/26/2009	790 MEMORIAL BVLD	PARESH PATEL	RESTAURANT
TOTAL >>	4				

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY PUBLIC RECORDS
REQUEST REPORT**

Motion was made by Council Member Guy, seconded by Council Member Watkins to acknowledge receipt of monthly Public Records Request Report for the month of January 2009.

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS JANUARY 2009				
DATE	PERSON REQUESTING	SUBJECT MATTER	DATE FILLED/ DENIED	ACTION
01/29/09	BRANDON DUKES	BACKGROUND CHECK	01/29/09	APPROVED
01/29/09	MARY DUKES	BACKGROUND CHECK	01/29/09	APPROVED
01/29/09	CARRIERE VOL FIRE DEPT	BACKGROUND CHECKS	01/29/09	APPROVED
01/29/09	U.S. PROBATION OFFICE	BACKGROUND CHECKS	01/29/09	APPROVED
01/29/09	JENNIFER R CRIBBS	BACKGROUND CHECK	01/29/09	APPROVED
01/29/09	MELISSA KING	INCIDENT REPORT 2009-01-0252	01/29/09	APPROVED
01/29/09	SIDNEY E GRAF	ACCIDENT REPORT # 2009-01-1571	01/29/09	APPROVED
01/28/09	NEEL SCHAFER, INC	INCIDENT REPORT 2009-01-0587	01/28/09	APPROVED
01/27/09	MS REGIONAL HOUSING AUTHORITY	BACKGROUND CHECK	01/27/09	APPROVED
01/27/09	TAMARA ROBINSON	ACCIDENT REPORT # 2009-12-2404	01/27/09	APPROVED
01/22/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-1255	01/22/09	APPROVED
01/27/09	KENNER POLICE DEPT	BACKGROUND CHECK	01/27/09	APPROVED
01/22/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-12-1885	01/22/09	APPROVED
01/22/09	LEXIS NEXIS	INCIDENT REPORT # 2008-12-0241	01/22/09	APPROVED
01/27/09	METROPOLITAN REPORTING	ACCIDENT REPORT # 2009-01-1571	01/27/09	APPROVED
01/27/09	LEXIS NEXIS	ACCIDENT REPORT # 2009-01-0168	01/27/09	APPROVED
01/27/09	LEXIS NEXIS	ACCIDENT REPORT # 2009-01-1470	01/27/09	APPROVED
01/27/09	MICHAEL HINGLE & ASSOCIATES,	ACCIDENT REPORT # 2008-12-1419	01/27/09	APPROVED
01/27/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-1589	01/27/09	APPROVED
01/27/09	SAFeway INSURANCE COMPANY	ACCIDENT REPORT # 2008-12-1327	01/27/09	APPROVED
01/26/09	AMIEE RIVET	INCIDENT REPORT # 2009-01-0977	01/26/07	APPROVED
01/26/09	KRISTEN PHILLIPS	INCIDENT REPORT # 2008-12-1963	01/26/09	APPROVED
01/26/09	REFLECTECH	INCIDENT REPORT # 2009-01-1659	01/26/09	APPROVED
01/26/09	DENNIS JONES	INCIDENT REPORT # 2008-12-0849	01/26/09	APPROVED
01/26/09	LEXIS NEXIS	ACCIDENT REPORT # 2009-01-1326	01/26/09	APPROVED
01/26/09	LISA SULLIVAN	INCIDENT REPORT # 2009-01-1589	01/26/09	APPROVED
01/22/09	KROLL	BACKGROUND CHECK	01/22/09	APPROVED
01/22/09	JOHNNY D HIGH	BACKGROUND CHECK	01/22/09	APPROVED
01/22/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/22/09	APPROVED
01/22/09	NATHANAEL L HOLLAND	BACKGROUND CHECK	01/22/09	APPROVED
01/22/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/22/09	APPROVED
01/21/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/21/09	APPROVED
01/21/09	BOBBY ROBERTS	INCIDENT REPORT # 2008-10-2757	01/21/09	APPROVED
01/21/09	FARM BUREAU	ACCIDENT REPORT # 2008-12-1327	01/21/09	APPROVED
01/13/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-11-2115	01/13/09	APPROVED
01/13/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-08-2144	01/13/09	APPROVED
01/13/09	METROPOLITAN REPORTING	ACCIDENT REPORT # 2008-08-2144	01/13/09	APPROVED
01/13/09	WMS, WMS, & MONTGOMERY	ACCIDENT REPORT # 2008-12-0375	01/13/09	APPROVED

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS JANUARY 2009				
<u>DATE</u>	<u>PERSON REQUESTING</u>	<u>SUBJECT MATTER</u>	<u>DATE FILLED/ DENIED</u>	<u>ACTION</u>
01/13/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-0425	01/13/09	APPROVED
01/13/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-0153	01/13/09	APPROVED
01/13/09	SAFEWAY INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-0138	01/13/09	APPROVED
01/13/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT # 2008-12-1610	01/13/09	APPROVED
01/13/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT # 2009-01-0401	01/13/09	APPROVED
01/14/09	FARM BUREAU	ACCIDENT REPORT # 2009-01-0144	01/14/09	APPROVED
01/20/09	OFFICE OF PERSONNEL	BACKGROUND CHECK	01/20/09	APPROVED
01/20/09	PAW PAW'S CAMPER CITY	INCIDENT REPORT # 2008-11-0399	01/20/09	APPROVED
01/20/09	SCOTT ADLER	INCIDENT REPORT # 2008-10-3029	01/20/09	APPROVED
01/20/09	NATIONWIDE INSURANCE COMPANY	ACCIDENT REPORT # 2009-01-0723	01/20/09	APPROVED
01/20/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-12-2398	01/20/09	APPROVED
01/20/09	WHITFIELD RENTALS	INCIDENT REPORT # 2009-01-1052	01/20/09	APPROVED
01/20/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2008-12-2562/2009-	01/20/09	APPROVED
01/20/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT # 2008-12-1083	01/20/09	APPROVED
01/20/09	TONY BOUNDS FOR MCDONALD &	ACCIDENT REPORT # 2006-01-2777	01/20/09	APPROVED
01/15/09	FBI	BACKGROUND CHECK	01/15/09	APPROVED
01/15/09	FBI	BACKGROUND CHECK	01/15/09	APPROVED
01/15/09	FBI	BACKGROUND CHECK	01/15/09	APPROVED
01/15/09	FBI	BACKGROUND CHECK	01/15/09	APPROVED
01/15/09	RESEARCH INFORMATION GROUP	CRASH REPORT 2008-12-0682	01/15/09	APPROVED
01/15/09	RESEARCH INFORMATION GROUP	CRASH REPORT 2008-09-2437	01/15/09	APPROVED
01/15/09	LANA BROWN	ACCIDENT REPRT 2008-12-1598	01/15/09	APPROVED
01/15/09	FBI	BACKGROUND CHECK	01/15/09	APPROVED
01/15/09	FBI	INCIDENT REPORT	01/15/09	APPROVED
01/15/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/15/09	APPROVED
01/14/09	SHERRY WINN	CRASH REPORT # 2009-01-1000	01/14/09	APPROVED
01/14/09	GARLAN LEE	CRASH REPORT # 2008-12-2395	01/14/09	APPROVED
01/14/09	FARM BUREAU	ACCIDENT REPORT # 2009-01-0401	01/14/09	APPROVED
01/13/09	MARY PRINCE	ACCIDENT REPORT # 2009-01-1000	01/13/09	APPROVED
01/13/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	DEPARTMENT OF JUVENILE JUSTICE	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	U.S. PROBATION OFFICE	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	FRANCISCO A LOPEZ	BACKGROUND CHECK	01/13/09	APPROVED
01/13/09	ANN WOODS HOPKINS	MALICIOUS MISCHIEF REPORT #2009-01-	01/13/09	APPROVED
01/13/09	KELVIN NGUYEN	ACCIDENT REPORT # 2008-10-1260	01/13/09	APPROVED
01/13/09	CARL LAFLEUR	ACCIDENT REPORT # 2009-01-0723	01/13/09	APPROVED

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS JANUARY 2009				
<u>DATE</u>	<u>PERSON REQUESTING</u>	<u>SUBJECT MATTER</u>	<u>DATE FILLED/ DENIED</u>	<u>ACTION</u>
01/13/09	DANIEL PEARSON	ACCIDENT REPORT # 2008-06-2263	01/13/09	APPROVED
01/12/09	WILBERT CUNNINGHAM	CRASH REPORT # 2008-12-1609	01/12/09	APPROVED
01/12/09	ROBERT HEBERT	ACCIDENT REPORT # 2008-12-0818	01/12/09	APPROVED
01/12/09	STATE FARM INSURANCE COMPANY	INCIDENT REPORT # 2008-12-0818	01/12/09	APPROVED
01/12/09	MORRIS BART, LTD.	ACCIDENT REPORT # 2008-12-1609	01/12/09	APPROVED
01/08/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT # 2008-12-2395	01/08/09	APPROVED
01/08/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-12-2398	01/08/09	APPROVED
01/08/09	STATE FARM INSURANCE COMPANY	INCIDENT REPORT # 2008-12-2395	01/08/09	APPROVED
01/07/09	G GERALD CRUTHIRD, PA	ACCIDENT REPORT # 2008-12-2398	01/07/09	APPROVED
01/12/09	HERBERT BURNS	ACCIDENT REPORT # 2009-010138	01/12/09	APPROVED
01/12/09	ROBERT HEBERT	ACCIDENT REPORT # 2008-12-0818	01/12/09	APPROVED
01/12/09	DENNIS JONES	ACCIDENT REPORT # 2008-12-0849	01/12/09	APPROVED
01/12/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT # 2009-01-0401	01/12/09	APPROVED
01/12/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT # 2009-01-0138	01/12/09	APPROVED
01/12/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-12-1707	01/12/09	APPROVED
01/12/09	KRISS HAYMES	ACCIDENT REPORT # 2008-12-1707	01/12/09	APPROVED
01/12/09	LEXIS NEXIS	ACCIDENT REPORT # 2008-12-1598	01/12/09	APPROVED
01/12/09	FARM BUREAU	ACCIDENT REPORT # 2008-12-1598	01/12/09	APPROVED
01/08/09	WENDY LEE	ACCIDENT REPORT # 2009-01-0046	01/08/09	APPROVED
01/08/09	FBI	INCIDENT REPORT # F-885-87	01/08/09	APPROVED
01/08/09	FBI	INCIDENT REPORT # F-386-88	01/08/09	APPROVED
01/08/09	NURSING MANAGEMENT INC	BACKGROUND CHECK	01/08/09	APPROVED
01/08/09	SIDNEY GRAF	ACCIDENT REPORT # 2008-12-2395	01/08/09	APPROVED
01/08/09	RICHARD CRAWFORD	ACCIDENT REPORT # 2006-10-0208	01/08/09	APPROVED
01/08/09	NICHOLSON ARMS APTS	BACKGROUND CHECK	01/08/09	APPROVED
01/08/09	CONVENIENT CARE	BACKGROUND CHECK	01/08/09	APPROVED
01/08/09	DAVID P ALLEY	ACCIDENT REPORT # 2008-07-1420	01/08/09	APPROVED
01/07/09	FLOYD ULMER	INCIDENT REPORT # 2008-12-0622	01/07/09	APPROVED
01/07/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/07/09	APPROVED
01/07/09	LUCY PRESTON	ACCIDENT REPORT # 2008-12-2140	01/07/09	APPROVED
01/06/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/06/09	APPROVED
01/06/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/06/09	APPROVED
01/06/09	FBI	INCIDENT REPORT # 2002-04-0258	01/06/09	APPROVED
01/06/09	FBI	INCIDENT REPORT # A-996-93	01/06/09	APPROVED
01/06/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/06/09	APPROVED
01/06/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/06/09	APPROVED
01/06/09	CONVENIENT CARE	BACKGROUND CHECK	01/06/09	APPROVED
01/06/09	AMANDA BURKETT	BACKGROUND CHECK	01/06/09	APPROVED

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS JANUARY 2009				
<u>DATE</u>	<u>PERSON REQUESTING</u>	<u>SUBJECT MATTER</u>	<u>DATE FILLED/ DENIED</u>	<u>ACTION</u>
01/06/09	BRENDA JACKSON	ACCIDENT REPORT # 2008-12-2562	01/06/09	APPROVED
01/05/09	KODIE HAAS	CRASH REPORT # 2008-12-2398	01/08/09	APPROVED
01/05/09	DODIE DODGE	ACCIDENT REPORT # 2008-12-1327	01/08/09	APPROVED
01/05/09	SAFEWAY INSURANCE COMPANY	ACCIDENT REPORT # 2008-12-0213	01/05/09	APPROVED
01/05/09	EVETTE JENKINS	CRASH REPORT # 2008-12-1327	01/05/09	APPROVED
01/05/09	ROBIN KOVAL	ACCIDENT REPORT # 2008-12-1885	01/05/09	APPROVED
01/08/09	DERRICK BLACKWELL	ACCIDENT REPORT # 2008-12-1318	01/08/09	APPROVED
01/05/09	FARM BUREAU	ACCIDENT REPORT # 2008-12-1965/2009-	01/05/09	APPROVED
01/05/09	THOMAS A TRAVIS	BACKGROUND CHECK	01/05/09	APPROVED
01/05/09	NURSING MANAGEMENT INC	BACKGROUND CHECK	01/05/09	APPROVED
01/05/09	NURSING MANAGEMENT INC	BACKGROUND CHECK	01/05/09	APPROVED
01/05/09	PEARL RIVER COUNTY SHERIFF'S	BACKGROUND CHECK	01/05/09	APPROVED
01/08/09	MICHELLE ADAMO	ACCIDENT REPORT # 2008-12-2140	01/08/09	APPROVED
01/05/09	ELMA BRIGGS	ACCIDENT REPJORT # 2008-12-1965	01/05/09	APPROVED
01/05/09	FBI	BACKGROUND CHECK	01/05/09	APPROVED
12/29/08	AARON LUNT	ACCIDENT REPORT # 2008-12-2398	12/29/08	APPROVED

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE PLANNING COMMISSION MINUTES

Motion was made by Council Member Guy, seconded by Council Member Watkins to approve the Planning Commission Minutes dated January 13, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACKNOWLEDGE PLANNING COMMISSION MINUTES

Motion was made by Council Member Guy, seconded by Council Member Watkins to acknowledge the Planning Commission Minutes dated February 10, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO APPROVE DOCKET

Motion was made by Council Member Watkins, seconded by Council Member Parker to approve the docket for February 17, 2009 in the amount of \$280,960.76.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: Council Member Guy

The motion was declared carried.

APPROVE 2009 SPRING STREET FAIR

Motion was made by Council Member Parker, seconded by Council Member Guy to approve request to hold 2009 Spring Street Fair April 4th and 5th with the same street closings as previous street fairs.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE SPRING STREET FAIR ATTRACTIONS

Motion was made by Council Member Watkins, seconded by Council Member Bounds to approve the following Spring Street Fair Attractions April 4th and 5th: (1) South Haugh-Inflatable fun jump and pony rides, (2) South Main-Rock Wall, Giant Slide and Train rides, (3) North Main-Euro Bungee.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE PAYMENT OF FINAL INVOICE TO KANDUIT CONSTRUCTION

Motion was made by Council Member Guy, seconded by Council Member Parker to approve payment of final invoice to Kanduit Construction for work performed at the Intermodal Center.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO RESCIND PREVIOUS MOTION TO APPROVE PAYMENT OF FINAL INVOICE TO KANDUIT CONSTRUCTION

Motion was made by Council Member Watkins, seconded by Council Member Bounds to rescind previous motion to approve payment of final invoice to Kanduit Construction for work performed at the Intermodal Center.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE PAYMENT OF FINAL INVOICE TO KANDUIT CONSTRUCTION

Motion was made by Council Member Parker, seconded by Council Member Watkins to table the request for payment of final invoice to Kanduit Construction for work performed at the Intermodal Center until March 03, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, and Bounds

VOTING NAY: Council Member Guy

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE TRAVEL TO WASHINGTON D.C.

Motion was made by Council Member Watkins, seconded by Council Member Guy to approve Mayor, Council, and Interim City Manager to travel to Washington D.C. February 25th thru 28th 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

REAPPOINT BRENDA BRELAND TO LIBRARY COMMISSION

Motion was made by Council Member Watkins, seconded by Council Member Parker to reappoint Brenda Breland to the Library Commission for another five year term to expire January 2014.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

REAPPOINT MEMBERS TO CONTRACTORS BOARD

Motion was made by Council Member Watkins, seconded by Council Member Bounds to reappoint the following members to the Contractors Board for a one year term to expire January 2010: Elgie Bennett, Tommy Anderson, James Kinchen, Aaron Russell, Jack Hack, Edwin Merwin and James Bouie.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

REAPPOINT MEMBERS TO VETERANS MEMORIAL COMMISSION

Motion was made by Council Member Guy, seconded by Council Member Watkins to reappoint Dianne Lee and Stephen Kellar to the Veterans Memorial Commission for another four year term expiring January 2013.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE ORDINANCE ESTABLISHING REQUIREMENT FOR USE OF FRIENDSHIP PARK RECREATIONAL FACILITY

Motion was made by Council Member Bounds, seconded by Council Member Watkins to table request to approve and Ordinance establishing requirements for the use of Friendship Park Recreational Facility until March 03, 2009 meeting.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY BUDGET REPORT

Motion was made by Council Member Guy, seconded by Council Member Parker to acknowledge receipt of monthly budget report for the month of January 2009

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST TO AMEND CURRENT POLICY ASSESSING LIENS FOR THE COST OF PROPERTY CLEAN UP

Motion was made by Council Member Guy, seconded by Council Member Watkins to table the request to amend current policy assessing liens against property tax rolls for the cost of property clean up.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACCEPT GRANT AGREEMENT BY AND BETWEEN THE CITY OF PICAYUNE AND MEMA FOR HAZARD MITIGATION GRANT FUNDS TO WIND RETROFIT CITY OF PICAYUNE SOUTH LOFTIN FIRE STATION

Motion was made by Council Member Parker, seconded by Council Member Guy to accept grant award in the amount of \$46,755.00 with a 6% match of \$2,338.00 to wind retrofit City of Picayune South Loftin Fire Station and authorize Mayor to sign agreement and all related documents.

HAZARD MITIGATION GRANT PROGRAM AGREEMENT

Under this Agreement, the interests and responsibilities of the Grantee, herein after referred to as the State, will be executed by the Mississippi Emergency Management Agency. The individual designated to represent the State is Thomas M. Womack, Governor's Authorized Representative (GAR). The Subgrantee to this Agreement is:

Picayune, City of

The interests and responsibilities of the Subgrantee will be executed by the Subgrantee's designated applicant's agent.

Pursuant to the Hazard Mitigation Grant **1604-279** funds in the amount of \$ **44,417.00** are hereby awarded to the Subgrantee under the following conditions. Total project cost is \$ **46,755.00** and reimbursement will be made on **94%** of the documented eligible cost not to exceed \$ **44,417.00**. The Subgrantee shall be responsible for the entire remaining **6%** percent cost share incurred under this agreement. Funding is to be used for the eligible cost for the completion of the scope of work as outlined in FEMA's approval letter (copy attached) of **January 23, 2009**.

The Subgrantee agrees that:

1. He/She has legal authority to apply for assistance on behalf of the Subgrantee.
2. The Subgrantee will provide all necessary financial and managerial resources to meet the terms and conditions of receiving federal and state disaster assistance.
3. The Subgrantee will use disaster assistance funds solely for the purposes for which these funds are provided and as approved by the Governor's Authorized Representative. Allowable costs shall be determined in accordance with the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 44 CFR § 206 and 44 CFR Part 13.
4. The payments for approved projects will be on an eligible cost reimbursement basis and subject to receipt and approval of invoices.
5. The Subgrantee is aware that limited funding available for mitigation requires cost sharing, and that the Subgrantee is required to provide the full non-federal share for such mitigation activities.

6. The Subgrantee will establish and maintain a proper accounting system to record expenditure of disaster assistance funds in accordance with generally accepted accounting standards or as directed by the Governor's Authorized Representative.
7. The local cost share funding will be available within the specified time.
8. The Subgrantee will give state and federal agencies designated by the Governor's Authorized Representative, access to and the right to examine all records and documents related to use of disaster assistance funds.
9. The Subgrantee will return to the state, within 15 days of such request by the Governor's Authorized Representative, any advance funds which are not supported by audit or other federal or state review of documentation maintained by the Subgrantee.
10. The Subgrantee will comply with all applicable codes and standards as pertains to this project and agrees to provide maintenance as appropriate.
11. The Subgrantee will comply with all applicable provisions of federal and state law and regulation in regard to procurement of goods and services.
12. The Subgrantee will comply with all federal and state statutes and regulations relating to non-discrimination. The Subgrantee will establish and maintain an active program of nondiscrimination in disaster assistance as outlined in implementing regulations. This program will encompass all Subgrantee actions pursuant to this Agreement.
13. The Subgrantee will comply with provisions of the Hatch Act limiting the political activities of public employees.
14. The Subgrantee will comply, as applicable, with provisions of the Davis Bacon Act relating to labor standards.
15. The Subgrantee will comply with the National Flood Insurance Program and the community's flood protection ordinance.
16. The Subgrantee will not enter into cost-plus-percentage-of-cost contracts for completion of Hazard Mitigation Grant projects.
17. The Subgrantee will not enter into any contract with any party that is debarred or suspended from participating in State or Federal assistance programs.
18. The Subgrantee will provide the Grantee copies of audit reports that include funds provided under this agreement.
19. The Subgrantee agrees that the disaster relief project contained in this Agreement will be completed by **January 23, 2010**. Completion dates may be extended upon justification by the Subgrantee and approval by the Governor's Authorized Representative.

20. There shall be no changes to this Agreement unless mutually agreed upon, in writing, by both parties to the Agreement.

If the Subgrantee violates any of the conditions of this Agreement, or applicable federal and state regulations; the State shall notify the Subgrantee that financial assistance for the project in which the violation occurred will be withheld until such violation has been corrected to the satisfaction of the State. In addition, the State may also withhold all or any portion of financial assistance which has been or is to be made available to the Subgrantee for other disaster relief projects under the Act, this or other agreements, and applicable federal and state regulations until adequate corrective action is taken.

The undersigned does hereby agree with all terms and conditions of this agreement.

Thomas M. "Mike" Womack
Governor's Authorized Representative

Subgrantee's Authorized Representative

Date

Date

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**APPROVE MODIFICATION #4 FROM MISSISSIPPI DEVELOPMENT AUTHORITY
DISASTER RECOVERY DIVISION RELATIVE TO CODE ENFORCEMENT GRANT
#R101-06-015-I**

Motion was made by Council Member Bounds, seconded by Council Member Watkins to approve modification to change the ending date of Code Enforcement Grant to June 30, 2010 and authorize Mayor to sign the same.

MISSISSIPPI DEVELOPMENT AUTHORITY MODIFICATION SIGNATURE SHEET Division of Community Services 501 North West Street • Post Office Box 24628 Jackson, Mississippi 39225-4628			
1. Recipient's Name, Address, and Telephone No. City of Picayune 815 N. Beech Street Picayune MS 39466 601-798-9770	2. Effective Date: 1/09/09		
	3. Contract Number: R101-06-015-I	Grant Number:	
	4. Modification Number 4		
	5. Grant Identifier: (Funding Source & Year) R101-06		
	6. Beginning and Ending Dates: July 3, 2008 thru June 30, 2010		
	7. Page 1 of 3		
	8. As a result of this modification, funds obligated are changed as follows:		
	KCDBG	Other: Federal	Other: Local/ Private
From	\$405,781		
TO	\$405,781		
Increase of:	\$0		
Decrease of:			
9. The above recipient is hereby modified as follows: Contract modification to extend date to June 30, 2010, add Contractual category, replace the Quarterly Matrix			
10. Except as hereby modified, all terms and conditions of the subcontract remain unchanged.			
11. Approved for Agency:		12. Approved for Recipient:	
 Signature _____ Date <u>2/6/09</u>	Signature _____ Date _____		
Name: Jon Mabry Title: Director, Disaster Recovery		Name: Greg Mitchell Title: Mayor	

BUDGET MODIFICATION WORKSHEET

Recipient: City of Picayune Contract Number: R101-06-015-I

NOTE: List KCDBG Funds where changes are made.

Activity	Current Budget	Amended Budget (1)	Change (+ -)
Salaries	\$281,387.37	\$281,387.37	\$0.00
Fringe Benefits	\$112,595.48	\$112,595.48	\$0.00
Travel	\$6,948.15	\$6,948.15	\$0.00
Training	\$4,850.00	\$4,850.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Commodities	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Fuel	\$0.00	\$0.00	\$0.00
	TOTAL	TOTAL	TOTAL
	\$405,781.00 (2)	\$405,781.00 (2)	\$0.00

Comments: _____

- (1) Add Activity lines as needed to cover expected expenditures
- (2) Final allocation for Code Inspector Grants

Name of Grant Recipient _____

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

**MOTION TO POSTPONE PUBLIC HEARING ON AMENDMENT TO ZONING
ORDINANCE #489 CONCERNING HEIGHT RESTRICTIONS UNTIL MARCH 3, 2009**

Motion was made by Council Member Guy, seconded by Council Member Parker to postpone Public Hearing on amendment to Zoning Ordinance #489 concerning height restrictions until March 3, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST TO NAME PRIVATE DRIVE CARY LANE

Motion was made by Council Member Guy, seconded by Council Member Bounds to accept Planning Commission recommendation to approve request from Gentry Davis to name the private drive, Cary Lane, off of Farrell Street.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE HOME OCCUPATIONAL LICENSE REQUEST FROM BRENDA ELLISOR

Motion was made by Council Member Bounds, seconded by Council Member Watkins to accept Planning Commission recommendation to approve request from Brenda Ellisor to operate an after school tutoring/home schooling facility from 511 N Main St.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE HOME OCCUPATIONAL LICENSE REQUEST FROM JUDITH CRAWFORD

Motion was made by Council Member Watkins, seconded by Council Member Bounds, to accept Planning Commission recommendation to approve request from Judith Crawford to operate a Residential and Commercial Cleaning Business Office from 203 Farrell St.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT PLANNING COMMISSION RECOMMENDATION FOR A SPECIAL CALLED PLANNING COMMISSION PUBLIC HEARING

Motion was made by Council Member Guy, seconded by Council Member Bounds to accept Planning Commission recommendation to hold a Public Hearing regarding the Comprehensive Plan to be held Monday, March 2, 2009 at 6:00 p.m.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM HOME DEPOT U.S.A., INC TO SUBDIVIDE PROPERTY

Motion was made by Council Member Guy, seconded by Council Member Parker to accept Planning Commission recommendation to approve request from Home Depot U.S.A., Inc to subdivide property located at 2000 Highway 43 South from one parcel into three lots.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST FROM MICHELLE DURR TO SUBDIVIDE PROPERTY

Motion was made by Council Member Bounds, seconded by Council Member Watkins to table request from Michelle Durr to subdivide property located at 502 East Canal St. from two lots into one lot.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST FROM JESSE L LEE JR TO SUBDIVIDE PROPERTY

Motion was made by Council Member Bounds, seconded by Council Member Watkins to table request from Jesse L. Lee Jr. to subdivide parcel 617-111-004-01-036-00 located on Maple Avenue from 2.34 acres into six lots.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO SET A DATE FOR A PUBLIC HEARING FOR PROPERTY CLEAN UP

Motion was made by Council Member Parker, seconded by Council Member Bounds set a public hearing for property clean up on Neal Rd parcels 617-209-003-01-034 and 617-209-003-01-003 for March 17, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE ACCEPTANCE OF VEHICLES DONATED FROM THE PICAYUNE SCHOOL DISTRICT

Motion was made by Council Member Watkins, seconded by Council Member Parker to table request to accept vehicle donations from the Picayune School District.

COST CENTER:		MOBILITY		ITEM NUMBER/DESCRIPTION		LOCATION	SERIAL NUMBER	BARCODE	F A Y	DATE ACQUIRED
70/	7014	8916000935	0000138	98 FORD CRVN VIC	SECURITY	2FALP7463TX101786	06129	Y	05/29/2000	
70/	7014	8916001050	0000182	98 FORD EXPLORER	SECURITY	1FY2U32E6MLA03004	05228	Y	05/14/2002	
INVENTORIED BY:										
DATE:										
*** END OF REPORT ***										
GRAND TOTAL										
CCTR 16 TOTAL										

MCAI ASSET INVENTORY SYSTEM
INVENTORY BY COST CENTER REPORT
PICAYUNE SCHOOL DISTRICT

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT DONATIONS FOR THE PICAYUNE POLICE MEMORIAL/PAY IT FORWARD FUND

Motion was made by Council Member Guy, seconded by Council Member Parker to accept donations totaling \$5,894.00 for the Picayune Police Memorial/Pay it Forward Fund.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT DONATIONS FOR THE PICAYUNE POLICE MEMORIAL/PAY IT FORWARD FUND

Motion was made by Council Member Guy, seconded by Council Member Parker to accept donations totaling \$3,741.85.00 for the Picayune Police Memorial/Pay it Forward Fund.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE CHANGE ORDER #2 FOR NEW FIRE STATION

Motion was made by Council Member Watkins, seconded by Council Member Parker to approve change order #2 for New Fire Station.

REGULAR MEETING FEBRUARY 17, 2009

CONTRACT CHANGE ORDER			
OWNER: <u>City of Picayune</u>			
CONTRACTOR: <u>ReflecTech, Inc.</u>			
DATE: <u>February 17, 2009</u>			
CHANGE ORDER NUMBER: <u>2</u>		CONTRACT NUMBER: <u>Picayune Fire Station</u>	
PROJECT NAME: <u>Picayune Fire Station</u>			
REASON FOR CHANGE: <u>Remove 2 curb inlets and associated concrete pipe, increase first floor ceiling height to allow more room for HVAC, additional insulation, additional data, cable and electrical outlets, change window size, and additional sidewalks.</u>			
YOU ARE HEREBY REQUESTED TO COMPLY WITH THE FOLLOWING CHANGES FROM THE CONTRACT PLANS, SPECIFICATIONS AND CONTRACT DOCUMENTS (USE ADDITIONAL SHEETS IF REQUIRED)			
ITEM NO.	DESCRIPTION OF CHANGE(S) (QUANTITIES, ETC.)	UNIT COST	TOTAL CONTRACT COST
1	Credit City Building Permit Fee	(\$4,000.00)	(\$4,000.00)
2	Remove 2 Curb Inlets and Concrete Pipe	(\$6,980.00)	(\$6,980.00)
3	Adjust Second Floor Height (Includes additional stairs, and increasing load bearing wall)	\$7,354.00	\$7,354.00
4	Add Ceiling Outlets in Truck Bay	\$2,100.00	\$2,100.00
5	Add 19 additional data and cable outlets in station.	\$2,660.00	\$2,660.00
6	Add additional insulation above sleeping quarters.	\$6,624.00	\$6,624.00
7	Change window size in reception office from 3-6 to 4-0.	\$225.00	\$225.00
8	Add additional sidewalk from Corridor 113 to existing sidewalk.	\$352.00	\$352.00
TOTAL CONTRACT CHANGE:			\$8,335.00
ORIGINAL CONTRACT AMOUNT:			\$ 1,697,400.00
CURRENT CONTRACT AMOUNT:			\$ 1,737,335.15
THIS CONTRACT CHANGE:			\$ 8,335.00
REVISED CONTRACT AMOUNT:			\$ 1,745,670.15
CURRENT CONTRACT COMPLETION DATE:			August 6, 2009
TIME EXTENSION REQUIRED BY CHANGE:			0 Days
REVISED CONTRACT COMPLETION DATE:			August 6, 2009
THIS DOCUMENT SHALL BE AN AMENDMENT TO THE CONTRACT AND ALL PROVISIONS OF THE CONTRACT WILL APPLY			

RECOMMENDED BY: _____ ENGINEER _____ DATE _____

ACCEPTED BY: _____ CONTRACTOR _____ DATE _____

APPROVED BY: _____ OWNER _____ DATE _____

APPROVED BY: _____ FUNDING AGENCY _____ DATE _____

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE APPLICATION FOR "FIRE SAFETY PREVENTION SAFETY" GRANT

Motion was made by Council Member Bounds, seconded by Council Member Guy to approve authorization to apply for "Fire Safety Prevention Safety" grant for the purpose of purchasing a fire safety trailer and authorize Chief Brown to sign electronically.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

COUNCILMAN BOUNDS EXITED THE MEETING AT THIS TIME

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Guy to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Guy, seconded by Council Member Parker to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO ENTER EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Guy to enter executive session to discuss the following:

- A. Contractual Matter with Butler Snow
- B. Possible sale of land

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Guy, seconded by Council Member Parker to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE BUTLER SNOW TO PROVIDE GOVERNMENTAL RELATIONS COUNSELING IN WASHINGTON D.C.

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize Butler Snow to provide Governmental Relations Counseling in Washington D.C. February 25th thru 28th 2009 and to pay up to \$5, 000.00 plus expenses incurred by the City Council for travel, meals, and lodging for the trip to Washington on said dates.

BUTLER | SNOW

February 2, 2009

VIA E-MAIL (Diane Miller (picstaffasst@bellsouth.net))

Mayor Greg Mitchell
City of Picayune
815 N. Beech Street
Picayune, Mississippi 39466

Re: City of Picayune
Governmental Relations Legal Counsel



Dear Mayor Mitchell:

On behalf of the firm, I want to thank the City of Picayune ("City") for considering Butler, Snow, O'Mara, Stevens & Cannada, PLLC to act as its counsel. We are honored to serve in this capacity.

Attached is our proposal from Butler Snow to provide Governmental Relations counseling in Washington D.C. on behalf of the City. We will serve as counsel to the City and will provide legal representation as directed by the City and its staff. We will bill the City for our services rendered on a flat rate basis, which shall not exceed \$20,000.00, unless authorized by the Board.

We will bill you for our services rendered in two invoices, the first for \$10,000 to be billed immediately upon execution of this agreement and the remaining amount to be billed on March 1, 2009. Bills are payable upon receipt, but in no event later than the last day of each month in which the statement is rendered. If there are ever any questions or comments regarding our monthly statements, please call me, and I will be glad to discuss them.

You have the right to discharge us, and we have the right to withdraw, for any reason at any time upon reasonable notice. If we elect to withdraw, you will take all steps necessary to free us of any obligation to perform further, including the execution of any documents necessary to complete our withdrawal.

In the event of our withdrawal or discharge, we will be entitled to retain any fees for services provided before the date of our withdrawal or discharge, as well as to compensation for the reasonable value of our services actually rendered. We also will be entitled to reimbursement of any costs and expenses paid or incurred on your behalf up to the effective date of withdrawal or discharge.

Post Office Box 22567
Jackson, MS 39225-2567

MICHAEL D. CAPLES
601.985.4412
michael.caples@butlersnow.com

210 East Capitol Street, 17th Floor
Jackson, MS 39201

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BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC

Mayor Greg Mitchell
February 2, 2009
Page 2

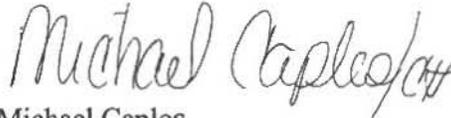
In the event any dispute arising out of or relating to this agreement cannot be resolved amicably between the parties, the parties shall endeavor first to resolve any such disputes by mediation under the Mediation Procedure of the CPR Institute for Dispute Resolution. Unless the parties agree otherwise, the mediator will be selected from the CPR Panels of Distinguished Neutrals. Any controversy or claim arising out of or relating to this contract or the breach, termination or validity thereof, which remains unresolved 45 days after appointment of a mediator, shall be finally resolved by arbitration by a sole arbitrator in accordance with the CPR Rules for Non-Administered Arbitration, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

I believe this letter and accompanying proposal accurately reflects our understanding as to both the scope and the terms and conditions of our representation. If you are in agreement with these terms, please have the Board approve it at the next meeting, sign at the bottom of this letter and return it to us as soon as possible. If it does not, please advise me in writing as soon as possible.

On behalf of the firm, I want to thank the City of Picayune again for selecting us to serve as its legal counsel.

Sincerely,

BUTLER, SNOW, O'MARA, STEVENS & CANNADA, PLLC



Michael Caples

MDC:cmh
Enclosure

I agree to the terms outlined above:

Greg Mitchell, Mayor
City of Picayune

CITY OF PICAYUNE PROPOSAL

I. Firm Information

Butler Snow is the largest Mississippi-based law firm in the state with almost 150 lawyers and four offices spanning the state from the Gulf Coast of Mississippi to the capitol city of Jackson and north to Hernando and then Memphis, Tennessee. Butler Snow's practice areas include the full range of business, governmental law and litigation services. Our team approach means we call on resources from across the firm to match legal experience with your needs. As a result, clients benefit from our strategic counsel, efficient execution and innovative solutions to complex challenges.

In an increasingly sophisticated business and government environment, clients are looking for law firms that have the experience and depth to handle significant matters. Our attorneys come from diverse legal, business and governmental backgrounds, bringing real-world experience and practical knowledge to each client they represent.

Chambers USA: America's Leading Lawyers for Business describes Butler Snow as having "enormous power and presence" with a team of attorneys who have achieved national prominence because of "sheer, unambiguous quality." According to Chambers, our clients refer to the firm as "well-known for being successful" and our attorneys as "real deal-makers." Chambers also noted the firm's ability to deliver to the client "the whole package – intelligence, presence and trial experience."

The attorneys of Butler, Snow, O'Mara, Stevens & Cannada, PLLC are ready to meet your legal needs in the area of governmental relations. When you choose Butler Snow, you choose a partner who supports your goals with service and results.

Governmental Relations Ability at the Federal Level

Butler Snow's lawyers have first-hand knowledge and experience with the federal legislative process due to their relationships and their experience working on Capitol Hill. Over the years, Nick Manley has developed strong relationships with key members of the legislative staffs of U.S. Senators Cochran and Wicker. Nick has had great success with obtaining federal appropriations for governmental clients. In particular, obtaining one of the largest federal appropriations for any Mississippi governmental entity in 2007.

Another Butler Snow attorney, Michael Caples has developed key relationships with key staff and governmental officials across the State of Mississippi and Washington D.C. Michael has been instrumental in assisting counties in Mississippi with their infrastructure and funding needs. Michael also has great expertise in environmental issues as they relate to governmental funding and oversight.

In any federal legislative effort, a bi-partisan approach is always preferable for achieving maximum results. In this regard, Chris Espy, a former legislative staff member to U.S. Representative Bennie Thompson, knows the landscape in our nation's Capitol and understands how to assist the City of Picayune with its special legislative needs. Recognized by The Best

Lawyers in America in the area of Government Relations, Tommie Cardin, Chair of the firm's Public Law and Finance Group, is available to provide coordination and direction for governmental relations efforts for the City of Picayune if needed. All in all, Butler Snow has a diverse, bi-partisan team of lawyers with the know-how to work within the halls of Congress for the City of Picayune.

II. Rates

Butler Snow proposes to bill the City of Picayune on a flat fee basis in the amount not to exceed \$20,000, without approval by the Board of Alderman for governmental relations services at the federal level. We anticipate that the bulk of the governmental relations work will be performed by Nick Manley and Michael Caples, and, as needed, we will utilize Chris Espy, an attorney in the firm's Jackson office.

III. Conclusion

Butler Snow has a team of lawyers with the knowledge and expertise to effectively represent the City of Picayune on its legislative needs in Washington, D.C. We look forward to having the opportunity to work with the City in achieving its federal legislative goals.

Jackson 3653470v.1

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE COMMUNITY DEVELOPMENT TO PROCEED IN ACCORDANCE WITH COUNCIL INSTRUCTION TO ABANDON AN UNDEVELOPED STREET

Motion was made by Council Member Watkins, seconded by Council Member Guy to authorize Community Development to proceed in accordance with Council instruction to abandon and undeveloped street near North Howard Avenue that runs from Baylous Street to Washington Street.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ADJOURN

Motion was made by Council Member Parker seconded by Council Member Watkins to adjourn until Tuesday, March 3, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Parker, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Turnage and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, March 3, 2009, at 6.00 p.m. in regular session with the following officials present: Mayor Greg Mitchell, Council Members Donald Parker, Larry Watkins, Jerry Bounds and Interim City Manager Harvey Miller. Council Members Leavern Guy Sr. and Anna Turnage were absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Bill Claybaugh, followed by the Pledge of Allegiance led by Mayor Greg Mitchell.

**MOTION WAS MADE TO APPROVE MINUTES OF THE CITY OF PICAYUNE
SPECIAL CALLED MEETING DATED FEBRUARY 11, 2009, AND REGULAR
MEETING DATED FEBRUARY 17, 2009**

Motion was made by Council Member Bounds, seconded by Council Member Watkins for approval of the minutes of the City of Picayune Special Called meeting dated February 11, 2009 and regular meeting dated February 17, 2009.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT DONATION OF FLOWERS FROM FIELD & FLOWER PLANT COMPANY

Motion was made by Council Member Bounds, seconded by Council Member Watkins to accept donation of flowers valued at \$873.60 from Joy Benton with Field & Flower Plant Company.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND THE AGENDA TO ADD TWO ITEMS UNDER CITY MANAGER AND ONE ITEM UNDER EXECUTIVE SESSION

Motion was made by Council Member Parker, seconded by Council Member Watkins to add a school board appointment and Boulevard Cruisers under City Manager and Contractual Matter with Southern Financial under Executive Session.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO APPROVE DOCKET

Motion was made by Council Member Watkins, seconded by Council Member Bounds to approve the docket for March 03, 2009 in the amount of \$545,204.48.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE PAYMENT OF FINAL INVOICE TO KANDUIT CONSTRUCTION FOR WORK PERFORMED AT THE INTERMODAL CENTER

Motion was made by Council Member Bounds, seconded by Council Member Parker to approve payment of final invoice to Kanduit Construction for work performed at the Intermodal Center.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE ORDINANCE # 864 ESTABLISHING REQUIREMENTS FOR THE USE OF FRIENDSHIP PARK RECREATIONAL FACILITY

Motion was made by Council Member Parker, seconded by Council Member Watkins to approve Ordinance # 864 establishing requirements for the use of Friendship Park Recreational Facility.

ORDINANCE NO. 864

AN ORDINANCE ESTABLISHING REQUIREMENTS FOR THE USE OF FRIENDSHIP PARK RECREATIONAL FACILITY

BE IT ORDAINED BY THE MAYOR AND THE COUNCIL OF THE CITY OF PICAYUNE, MISSISSIPPI:

SECTION 1.

**CITY OF PICAYUNE
PARKS & RECREATION DEPARTMENT
FACILITY USE AGREEMENT**

This Agreement, made the _____ day of _____ 20__ by and between the City of Picayune, Mississippi, a municipal corporation, hereinafter called "City," and _____, hereinafter called "User."

WITNESSETH:

In consideration of mutual agreements contained herein, the parties hereto agree as follows:

1. The User shall operate its youth sports program at the location described in Exhibit "A", hereinafter called "Facilities", beginning _____ and ending _____. During this time period the City may reserve designated dates for special programs, events, and/or maintenance under the jurisdiction of the Parks & Recreation Department. The User may exercise certain storage and access rights during the non-use period, with written approval from the City's Parks & Recreation Director, hereinafter called "Director" or his designee. Exhibit "A" is attached hereto and incorporated by reference as if set forth in words and figures herein.
2. The User shall affirm its existence as a non-profit corporation as evidenced by a certificate of existence issued by the Secretary of State of Mississippi pursuant to Section 79-11-121, Miss Code of 1972, as amended, a copy of which certificate has been given to the Director or his designee.
3. The User shall operate its youth sports program in accordance with its bylaws, policies and procedure, rules and regulations, all of which have heretofore been provided to the Director or his designee for approval or modification. If any changes in its governing methods are desired, the User shall submit said proposed changes to the Director or his designee for approval. User will conduct registration for its sports programs at the Parks & Recreation Administrative Offices during a mutually designated and agreed upon time period by Director and User.
4. The User shall provide the Director a copy of all rosters, registration forms, and schedules including tournaments or other events. Participant information shall include but not be limited to the name, address, and phone number. The User shall provide a copy of the name, address, and telephone number of all officials representing and acting on the behalf of the User during the Agreement period. All applicants to serve in a coaching capacity shall agree to a criminal background check facilitated by the City. The City will reserve the right to exclude any individual the privilege of coaching when there is a documented record of criminal or illegal activity in which the City deems to pose a potential threat or harm to the safety and well being of the programs participants. The City shall also have the right to deny the privilege of coaching if an individual has been documented as previously engaging in negative, confrontational behavior or behavior which is detrimental to the participant and purpose of the league.
5. It shall be the responsibility of the City to maintain all fields and playing surfaces. The User shall inspect and approve the condition of the Facilities before commencing play or allowing participant access. The User shall not attempt to perform any maintenance of fields or playing surfaces. User shall not be allowed to attempt to drain, dry, or cut playing surfaces, or a field unless approved by the City and a representative of the City is present to supervise any such activity. In reference to baseball fields, the User shall perform

minimal maintenance after each game by raking and tamping the pitcher's mound and home plate to prevent holes from being dug near the mound and home plate. User shall be responsible for picking up misplaced litter and placing it in trashcans. Erection by the User of any sign or banner shall require the prior written approval of the Director or his designee.

In the event the City's Director determines the field is damaged by the sports activities of User, the User shall pay sufficient funds, as determined by the City's Director, for proper field restoration and maintenance.

6. In the event of inclement weather, the Director or his designee has vested authority to make any game determination for the safety of participants and preservation of the Facility.
7. The User shall make no permanent physical improvements to the facilities without first obtaining the Director's or his designee's written consent. Any physical improvements made by the User shall be in compliance with all municipal building, plumbing, gas, and electrical codes and shall become the property of the City. The City shall provide locks for all facilities and locks shall not be changed by the User.
8. The User shall provide all equipment, uniforms, and personnel necessary to operate its program.
9. All revenue received by the User shall be used solely for the use and benefit of operating youth sports programs or making approved improvements of a facility in City parks. If the User desires at any time to collect admission fees, written approval from the Director or his designee shall be requested. The User will furnish an updated financial statement at the beginning of the Agreement period, and again at the end of the Agreement period. The User's bookkeeping records will be accessible to the Director at all times and be subject to audit by the City at any time.
10. If applicable, the User shall submit to the Director or his designee the name of an individual to act as Certification Officer for its youth sports program, who shall conduct certification clinics on an as needed basis and shall be responsible for having at least one certified person per team on the field at all practices and games. The Certification Officer shall maintain proof of certification of all active coaches and game officials to the Director or his designee prior to the start of activities of the User. All Coaches and officials used by User shall be 18 years of age and be insured. Any coach or official under the age of 18 must be approved by the City's Director in writing.
11. The User shall use the Facilities in a safe manner, shall not cause or permit damage or injury thereto, and shall comply with all applicable Federal, State, local laws, rules regulations, policies and procedures. The User shall be responsible for informing its coaches, officers, and other personnel of these laws, rules, regulations, policies, and procedures. Absent written consent of the City, the Facilities shall not be used for any purpose except those herein designated.
12. The Facilities shall remain the property of the City; therefore, the City may enter the facilities at any time during the period of this Agreement for inspection or supervision deemed necessary by the City. The City shall provide regular maintenance of Facilities such as concession stands, press boxes, dugouts, restrooms, irrigation systems, fencing, lighting system, backstops, bleachers, and trash pick-up at designated areas on a regular basis if applicable. The User shall provide daily routine cleaning of the area and ensure the proper placement of trash into designated areas/receptacles.
13. The User shall report all vandalism to the Director or his designee immediately upon its discovery. Thereafter, the User shall submit a written report of such vandalism. The User shall report any altercations, conflicts, or disputes, which may arise between parents, players, officials, coaches, or representatives of the User.
14. The User shall provide the Director or his designee with a certificate of insurance evidencing comprehensive liability coverage naming the City of Picayune as co-insured in combined limits not less than \$1,000,000 for bodily injury and property damage. The User expressly releases the City, its agents, officers and employees from any and all damage or injury to persons or property arising out of the performance of this Agreement and indemnifies the City against all damages, liabilities, expenses and losses incurred by the City as a result of the User's performance under this Agreement.
15. The Director or his designee shall serve as the liaison between the City and the User and, as such, shall interpret the requirements set forth in this Agreement and insure compliance therewith.
16. This Agreement may be terminated by either party upon giving thirty (30) days written notice to the other party. Notwithstanding termination by election of parties, the User's

violation of any term or condition of this Agreement shall place it in default, thereby allowing the City to terminate this Agreement immediately.

- 17. Failure of the City to insist upon strict performance of any term or condition of this Agreement shall not be deemed a waiver of any subsequent breach of such term or condition.
- 18. The User is in all respects an independent entity, not being a part of the City or associated therewith, except as a party to this Agreement.
- 19. Nothing contained herein shall be construed to be a waiver of governmental immunity by the City, its officers, and employees.
- 20. The User shall not assign or sublease, in whole or in part, any right or responsibility set forth herein and any facility outlined in this Agreement, with the exception of the operation of concessions. The User must receive the Director's or his designee's written consent prior to entering into any concession agreement with a Third party. Any Agreement that will assign or sublease the sale of concessions must be in writing and must be approved by the Director or his designee prior to taking effect. No alcoholic beverages will be sold or consumed at the Facility or in public spaces near the Facility by the User, participants, or any third party affiliate.
- 21. The User shall, at the end of this Agreement, provide the Director or his designee with a complete financial statement outlining the income and expenses of the User and any expenditure solely for the improvement of the Facilities covered by this Agreement.
- 22. The User shall comply with the Title VI of the Civil Rights Act of 1964 (P.L. 88-352) and all requirements imposed by or pursuant to that title, to the end that, in accordance with Title VI of the act and regulation, no person in the United States shall, on grounds of race, color, age, sex, religion, handicap, or national origin, be excluded from participation as a result of any use or activity by the User at the stated Facility.
- 23. Notices required or permitted to be sent to the parties hereof shall be deemed to have been given when sent as follows:
 City:
 Ryan Moreaux, Director
 Recreation Department
 City of Picayune
 815 North Beech Street
 Picayune, MS 39466

 User:
 NAME, TITLE
 ORGANIZATION
 ADDRESS
 CITY, ST, ZIP
- 24. This Agreement is executed by each party hereto after being duly authorized to do so.

CITY OF PICAYUNE, MISSISSIPPI

BY: _____

ATTEST:

City Clerk

(Seal)

ORGANIZATION NAME

BY: _____
Contact Name, Title

ATTEST:

ORGANIZATION WITNESS

(Seal)

SECTION 2.

**Picayune Parks and Recreation Department
Tournament Rental Policy**

DEPOSITS AND FEES

- **A seventy-five dollar (\$75) deposit per field is required within one (1) week of making reservation. If the deposit is not received within one (1) week the initial reservation will be canceled with no notice given to the reserving party. A completed Softball Tournament Reservation Request form must be submitted for approval with the deposit. Upon approval a confirmation letter will be mailed to the reserving party. The Parks and Recreation Department reserves the right to deny any reservation request. The deposit will be applied to the field rental fee.**
- **Full refund of deposit will be issued if canceled thirty (30) days prior to the reserved date. If tournament is canceled 29 days or less prior to the event, no deposit will be refunded.**
- **The three hundred dollar (\$300) for bases, litter, and light key are due by 2 PM on the Friday before the tournament begins. The bases and light key will be given to the reserving party at this time. Bases and light key are due back to the Parks and Recreation Offices the Monday following the tournament. If the bases and light key are not returned by the Monday following the tournament, the reserving party will not receive the entire \$300 deposit. The deposit will be prorated at a rate of \$75/day. Therefore, if bases and light key are returned on Tuesday, the amount of deposit returned will be \$225. If returned on Wednesday, the deposit returned will be \$150, and \$75 if returned on Thursday. No deposit will be returned to the reserving party after Thursday.**
- **The remaining field rental fee (\$100/per field) must be paid by 2 PM on the Friday before the tournament begins.**

RULES AND REGULATIONS

- **All umpires used to officiate the adult tournaments must be 18 years or older and registered with whatever association the tournament is sanctioned. The reserving party is responsible for all payments due for umpiring services at the appropriate fees.**
- **The reserving party will not have access to the press box located at each field including the scoreboard and the Public Address system unless the services of the City of Picayune. Official Scorekeepers may be obtained by contacting the City of Picayune recreation director.**
- **The fields will be prepared prior to tournament begins, but will not be worked during the tournament, unless the tournament qualifies for co-sponsored support. The Parks and Recreation Department reserves the right to terminate the tournament at any time due to weather to avoid destruction of property.**
- **Upon completion of the tournament, a City representative will inspect the fields and surrounding area to verify trash has been picked up and placed in proper receptacles, there is no property damage, and the fields are in the same condition as when the tournament began. Normal wear and tear on the fields is expected. Any property damage may result in criminal charges against the reserving party. Failure to adequately clean the facility will result in the City of Lubbock Parks and Recreation Department retaining the Litter Deposit.**
- **A copy of the completed tournament bracket fees must be turned into the Parks and Recreation Department or the appropriate representative on the Monday following the tournament.**
- **The concession stands located in the press boxes are not available for use. The reserving party may offer concessions upon approval of the Parks and Recreation Department. Any proposed concessions must be submitted on the Concession Request form and returned with the Tournament Reservation Request form. Concessions are subject to a 20% commission from gross sales. All Concession facilities and their operations must meet applicable federal, state, and local laws, ordinances, statutes, and rules. Failure to comply with applicable federal, state and local laws, ordinances, statutes**

and rules may result in sanctions to be determined by the City of Picayune including up to the termination the agreed upon event.

- Possession or consumption of alcoholic beverages on City of Picayune Parks and Recreation property is prohibited,
- Smoking is prohibited inside any city facility and within twenty (20) feet of an entrance into a facility
- It is the responsibility of the reserving party to administer and make sure all park rules and regulations are followed.
- Reserving party must be at least 21 years of age.
- The City of Picayune disclaims any responsibility for the operations of the activities of the reserving party. The City's involvement is limited solely to those specific tasks identified in this agreement. Any internal complaint between participants, spectators, or officials, or between teams of the event, shall be resolved internally without recourse to the City of Picayune Parks and Recreation Department.
- The relationship between the City of Picayune and reserving party is at all times solely that of a licensor and a licensee, and may not be deemed, in any event, a partnership or a joint venture.
- The reserving party shall hold harmless, defend, release and indemnify the City against any suits, liabilities, claims, demands or damages, including, but not limited to, personal injuries and attorney's fees, arising from reserving party's use of the Property and exercise of the license under this Agreement. The indemnity and release provided herein shall survive the termination or voidance of this agreement.
- The reserving party must provide the recreation department with a certificate of insurance evidencing comprehensive liability coverage of no less than \$1,000,000 for bodily injury and property damage.
- These rules will govern all individuals, groups, or organizations. No exceptions will be granted

Accepted by: _____

Date: _____

Signature: _____

Address: _____

Phone: _____

SECTION 3:

GAZEBO RESERVATION FORM

Name _____ Organization _____

Address _____

Phone: (CELL) _____ (HOME) _____

Date(s) Requested: _____ Hours Needed From: _____ To: _____

FEE: \$ 25.00/ two hours minimum, \$10.00 for each additional hour

RULES FOR USE:

1. **This playground is for children 12 and under ONLY. You must be 18 years or older to schedule events at this playground for your child.**
2. **Should it rain on the day of your event, an alternate date will NOT be provided for the same fee. NO REFUNDS**
3. **The rental fee reserves sole use for the gazebo ONLY. It does not give you sole use of the playground. Other parties or individuals will still have access to the playground**
4. **Please call the City of Picayune Police Department should you have problems with other users.**

I understand that any violation of these rules may result in my removal from the facility and may result in my being restricted from any further use of the facility.

I understand that the city is not responsible for injuries caused by equipment not owned by them such as fun jumpers.

Signature of Applicant

Date

OFFICIAL USE ONLY	
TOTAL FEE PAID:	\$ _____
DATES RESERVED: _____	

SECTION 4. Severability, Conflict and Effective Date

Should any section, clause, paragraph, provision, or part of this ordinance for any reason be held invalid or unconstitutional by any Court of Competent jurisdiction, this act shall not affect the validity of any section, clause, paragraph, provision, or part of this ordinance. All provisions of this ordinance shall be considered separate provisions and completely severable from all portions.

Conflict in any case where a provision of this ordinance is found to be in conflict with the provisions of any other ordinance or code of the City of Picayune, Mississippi, existing on the effective date of this ordinance, the provisions of this ordinance shall take precedence.

The foregoing Ordinance, after having been first reduced to writing, was introduced by Council Member _____, seconded by Council Member _____, and was adopted by the following roll call vote:

Voting Yea:

Voting Nay:

The motion was declared carried.

The ordinance was thereupon declared carried and adopted

This the ____ day of February, 2009.

City Clerk

Greg Mitchell, Mayor

CITY OF PICAYUNE
Parks and Recreation Department

Rules and Regulations Pertaining to Conduct in Parks & Playgrounds

I. GENERAL RULES

Rather than attempting to outline all of the many activities and uses which can be undertaken in the Park, most of the GENERAL RULES focus on prohibiting those actions and activities which are detrimental to the operations and grounds or which would prevent reasonable enjoyment of the Park by others.

1. All individuals and groups when entering the Park grounds shall comply with all laws of the United States of America, the State of Mississippi, the City of Picayune, and all of the rules and regulations governing Friendship Park.
2. No individuals or groups will be permitted to sell any food, drinks or novelties within the confines of the Park, unless approved in writing by Park Management in accordance with its contractual arrangements with various concessionaires.
3. There shall be no discharging of firearms, or other noisemaking devices whatsoever in the Park.
4. It is prohibited to injure, molest or kill any bird or animal in the Park.
5. It is unlawful to bring any pet or animal inside the Park.
6. Smoking is prohibited in any city park or recreation area.
7. It is prohibited to climb or get upon any tree, statue, fountain, fence, gateway, or railing within the Park, or to use any structure within the Park for other than the purpose for which it is intended, and in accordance with the regulations applying thereto.
8. It is prohibited to deface, injure, move or remove any sign, notice or label placed by Park Management within the Park, to write upon, deface, defile or otherwise injure any building, fence, fountain, seat, statue, gateway, wall, or other structure within the Park.
9. It is prohibited to lie down upon, or to sleep upon, or overturn or damage any seat, bench, bridge, railing, or trash receptacle within the Park.
10. No boisterous, indecent, or vulgar language will be tolerated, nor shall any public nuisance be permitted.
11. Visitors are prohibited from cutting any flowers, destroying, removing or defacing any plants, grass, trees or shrubbery, or any other property in the Park.
12. It is prohibited to bring in any ice chest or cooler inside the park, unless permission is granted in writing by the Park Director.
13. It is prohibited for any person to engage in formal organized games of golf, tennis, baseball, softball, football, soccer, or other events without having obtained the required permit and/or contract with the City Parks and Recreation Department.
14. It is prohibited for any player to enter or to encroach upon, tennis courts, softball, baseball, football, or soccer fields, within the Park during the progress of any game, unless he or she is a participant in or connected with such game or is a Park employee on duty.
15. It shall be unlawful for any person to sell, offer or solicit any goods or merchandise.

16. Tennis courts shall be used for tennis only. It is strictly prohibited to use tennis courts for any activity or sport other than tennis.
17. It is prohibited to hit or throw a baseball, softball, or any other object into a fence, building, or any other city structure.
18. It is prohibited to drive or propel any motor vehicle at a greater speed than that posted in Park areas, or to drive or propel any vehicle except in established driveways and in the direction indicated by signs, or to park any vehicle excepting areas provided and indicated.
19. It is prohibited to drop, throw, scatter, or leave upon any part of the Park any type of litter, except into receptacles provided for such purpose.
20. It is prohibited to leave any abandoned vehicle within the confines of the Park.
21. No athletic games will be played when, in the discretion of the Park Director, weather conditions have rendered the fields or tennis courts wet and muddy enough to result in damage to the playing area and/or the lighting facilities which illuminate said areas.
22. It is prohibited to have an open fire in the Park. Fires in Barbecue pits or grills are allowed; however caution should be taken in disposing of hot coals. It is prohibited to dump coals on any tree roots.
23. It is prohibited to unlock, cut, or break any lock inside the park without specific permission from the Park Director.
24. It is strictly prohibited to turn on any field lights without specific permission from the Park Director.
25. It is strictly prohibited to possess or consume alcoholic beverages.
26. It is prohibited to possess or use glass containers.

***Persons violating the above rules shall be subject to arrest, and, upon conviction, shall be subject to an appropriate fine or prison sentence.**

II. Closing Hours

Parks are open from 7:00 AM to 10:00 PM, unless otherwise posted. In the event of an emergency, or for a good cause, a city official may close any park or recreation facility.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AMEND CURRENT POLICY ASSESSING A LIEN FOR THE COST OF CLEANING PROPERTIES TO HAVE ALL LIENS ASSESSED AGAINST PROPERTY TAX ROLLS

Motion was made by Council Member Bounds, seconded by Council Member Watkins to amend current policy assessing a lien for the cost of cleaning properties to have all liens assessed against property tax rolls which is to include all prior properties assessed and any future properties assessed.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE ORDINANCE # 865 AS AMENDMENT TO ZONING ORDINANCE # 489 CONCERNING HEIGHT RESTRICTIONS

After holding a public hearing a motion was made by Council Member Bounds, seconded by Council Member Watkins to approve ordinance # 865 as amendment to Zoning Ordinance # 489 concerning height restrictions.

ORDINANCE NUMBER 865

OF THE

CITY OF PICAYUNE, MISSISSIPPI

AN ORDINANCE AMENDING THE HEIGHT REQUIREMENTS (1) SET OUT IN ORDINANCE NO. 489, A-1 GENERAL AGRICULTURE DISTRICT SECTION 801.4(C); C-1 NEIGHBORHOOD COMMERCIAL DISTRICT SECTION 806.2(U); C-2 DOWNTOWN COMMERCIAL SECTION 807.3-APPENDIX "A"; C-3 HIGHWAY COMMERCIAL DISTRICT SECTION 808.3-APPENDIX "A"; (3) SET OUT IN ORDINANCE 540 C-1 NEIGHBORHOOD COMMERCIAL DISTRICT SECTION 806.2 (V); AND, (4) SET OUT IN ORDINANCE NO. 722 OFFICE PROFESSIONAL SECTION 812.4(d).

WHEREAS in the City of Picayune, there are presently various height requirements set for in the Zoning Districts set for as follows, to-wit:

1. ORDINANCE NO. 489:
 - A. A-1 GENERAL AGRICULTURAL DISTRICT SECTION 801.4(c);
 - B. C-1 NEIGHBORHOOD COMMERCIAL DISTRICT SECTION 806.2(U);
 - C. C-2 DOWNTOWN COMMERCIAL SECTION 807.3-APPENDIX "A";
 - D. C-3 HIGHWAY COMMERCIAL DISTRICT SECTION 808.3-APPENDIX "A";
 - E. APPENDIX "A".
2. ORDINANCE NO. 540
 - A. C-1 NEIGHBORHOOD COMMERCIAL DISTRICT SECTION 806.2 (V).
3. ORDINANCE NO. 722
 - A. OFFICE PROFESSIONAL SECTION 812.4(D)

WHEREAS, it is necessary to amend the above described Zoning Ordinances with regards to the height requirements set out therein.

NOW THEREFORE, BE IT Ordained by the Mayor and City Council of the City of Picayune, that the height requirements of the hereinbefore described Ordinances be amended to read as follows, to-wit:

SECTION - ONE

1. That the maximum building height in stories and feet set out in Section 801.4(c) of the A-1 General Agriculture District and Appendix "A" shall be amended to allow a maximum height requirement of 60 feet and a maximum number of stories of 5 for a principal use, except that no building shall be erected which cannot be adequately served by existing City of Picayune fire-fighting equipment, and all building plans, more than one story in height, shall be reviewed and certified by both the Building Inspector and the Fire Chief that the structure is capable of being served by existing fire-fighting equipment and/or is adequately protected by sprinkling systems.

2. That the maximum building height in stories and feet set out in Ordinance No. 489, Section 806.2(u) and Ordinance 540, Section 806.2(v) of the C-1 Neighborhood Commercial District and Appendix "A" shall be amended to allow a maximum height requirement of 35 feet and a maximum number of stories of 2.5 for a principal use, except that no building shall be erected which cannot be adequately served by existing City of Picayune fire-fighting equipment, and all building plans, more than one story in height, shall be reviewed and certified by both the Building Inspector and the Fire Chief that the structure is capable of being served by existing fire-fighting equipment and/or is adequately protected by sprinkling systems.
3. That the maximum building height in stories and feet set out in Section 807.3 of the C-2 Downtown Commercial District and Appendix "A" shall be amended to allow a maximum height requirement of 60 feet and a maximum number of stories of 5 for a principal use, except that no building shall be erected which cannot be adequately served by existing City of Picayune fire-fighting equipment, and all building plans, more than one story in height, shall be reviewed and certified by both the Building Inspector and the Fire Chief that the structure is capable of being served by existing fire-fighting equipment and/or is adequately protected by sprinkling systems.
4. That the maximum building height in stories and feet set out in Section 808.3 of the C-3 Highway Commercial District and Appendix "A" shall be amended to allow a maximum height requirement of 60 feet and a maximum number of stories of 5 for a principal use, except that no building shall be erected which cannot be adequately served by existing City of Picayune fire-fighting equipment, and all building plans, more than one story in height, shall be reviewed and certified by both the Building Inspector and the Fire Chief that the structure is capable of being served by existing fire-fighting equipment and/or is adequately protected by sprinkling systems.
5. That the maximum building height in stories and feet set out in Section 809.4 of the I-1 Light Industrial District and Appendix "A" shall be amended to allow a
6. That the maximum building height in stories and feet set out in Ordinance No. 722, Section 814(d) of the Office Professional District shall be amended to allow a maximum height requirement of 60 feet and a maximum number of stories of 5 for a principal use, except that no building shall be erected which cannot be adequately served by existing City of Picayune fire-fighting equipment, and all building plans, more than one story in height, shall be reviewed and certified by both the Building Inspector and the Fire Chief that the structure is capable of being served by existing fire-fighting equipment and/or is adequately protected by sprinkling systems.

SECTION - TWO

SEVERABILITY, CONFLICT AND EFFECTIVE DATE

Should any section, clause, paragraph, provision, or part of this Ordinance for any reason be held invalid or unconstitutional by any Court of competent jurisdiction, this act shall not affect the validity or any other section, clause, paragraph, provision, or part of this ordinance. All provision of this Ordinance shall be considered separate provision, and completely severable from all other portions.

Conflict in any case where a provision of this ordinance is found to be in conflict with the provision of any other ordinance or code of the City of Picayune, Mississippi, existing on the effective date of this Ordinance, the provisions of this Ordinance shall take precedence.

This Ordinance shall become effective thirty (30) days after its adoption and publication by the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi.

The foregoing Ordinance, having first been reduced to writing, was moved upon by Council member _____, seconded by Council member _____, and voted upon as follows:

VOTING YEA:

VOTING NAY:

NOT VOTING:

NOT PRESENT:

The motion having received the affirmative vote of the majority of the members present, the Mayor declared the motion carried and the Ordinance passed, approved, and adopted on this the _____ day of _____, 2009.

GREG MITCHELL, Mayor

ATTEST:

City Clerk

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST FROM MICHELLE DURR TO SUBDIVIDE PROPERTY LOCATED AT 502 EAST CANAL STREET FROM TWO LOTS INTO ONE

Motion was made by Council Member Bounds, seconded by Council Member Watkins to table request from Michelle Durr to subdivide property located at 502 East Canal Street from two lots into one.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM JESSE L LEE JR. TO SUBDIVIDE PROPERTY LOCATED ON MAPLE AVE

Motion was made by Council Member Watkins, seconded by Council Member Bounds to approve request from Jesse L Lee Jr. to subdivide parcel 617-111-004-01-036-00 located on Maple Avenue from 2.34 acres into six lots.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

BEFORE THE VOTE WAS TAKEN, JUDY STOCKSTILL EXPRESSED CONCERNS OF STREETS, DRAINAGE, PRIVACY AND LITTER

NO ACTION TAKEN REQUEST FOR CAROL FITZWILLIAM TO TRAVEL TO DAYTONA BEACH, FL DUE TO THE EXPO SHOW BEING CANCELLED

APPOINT PATTY STEWART TO SCHOOL BOARD FOR FIVE YEAR TERM TO REPLACE GINNY DODD

Motion was made by Council Member Watkins, seconded by Council Member Bounds to appoint Patty Stewart to School Board for a five year term expiring March 2014 to replace Ginny Dodd.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM BLVD CRUISERS TO HOLD A CRUISE-IN THE 4TH SATURDAY OF EACH MONTH BEGINNING MARCH 28TH FROM 6PM TILL 9PM ON WEST CANAL STREET

Motion was made by Council Member Bounds, seconded by Council Member Parker to approve request from Blvd Cruisers to close West Canal Street from the Main Street Red-Light to Ruby Street, March 28th from 6pm till 9pm and the 4th Saturday of each month thereafter to hold a Cruise-In.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST TO ADVERTISE FOR SEMI ANNUAL BIDS

Motion was made by Council Member Parker, seconded by Council Member Watkins to approve request to advertise for semi annual bids from April 1, 2009 to September 30, 2009.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE PAY REQUEST #1 FOR PHASE II OF MEMORIAL BLVD

Motion was made by Council Member Parker, seconded by Council Member Watkins to approve pay request #1 for Phase II of Memorial Blvd in the amount of \$298,157.00.

CONSTRUCTION
CG CAD-001
REV 11-02

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
CONTRACTORS ESTIMATE - RECAP SHEET

P.O. No. 3941

SPPD-9601(005)
104798/801

Huey Stockstill, Inc.

Vendor Number V0000083480

County PEARL RIVER

Invoice Number

Project No. SPPD-9601(005)/104798801000

Contract No. 39466

Sheet No. 1 of 8

In Account With CITY OF PICAYUNE, 815 N. BEECH STREET, PICAYUNE, MS

Contract Number: OG00000387 Surety HARTFORD ACCIDENT AND INDEMNITY COMPANY

Est. No. 1 (Progress - EXXX) Period January 5, 2009 Thru January 30, 2009 Document No.:

Line Item	OCA	User Code 1	Object	Project Number/Detail Code	User Code 2	Current Period	Previous Estimate	Total Allowed to Date
Total Participating Cost								
001	080100	221	3510	104798801000	1	310,740	0	310,740
Total Non-Participating Cost								
002						0		0
Retainage at 0.00 %								
004	080100	221	3530	104798801000	1	0	0	0
Total All Work Due								
006						310,740	0	310,740
Liquidated Damages								
010	080100	221	3520	104798801000	1	0	0	0
Fuel & Mat'l. Adjustment								
011	080100	221	3510	104798801000	1	0	0	0
Testing by MDOT								
012	072880	734	6500			0	0	0
Total Net Work Due for Project: 014								
						310,740	0	310,740
Quantities Checked								
Original Signed: <i>[Signature]</i>								
JEFFREY L. LBE, P.E. Project Engineer								
LPA Official: <i>[Signature]</i>								
Chief Engineer By: <i>[Signature]</i>								
Original Signed: <i>[Signature]</i>								
B.B. House, P.E., P.E. Contract Administration Engineer								
Contract Completion Date 08/02/2009								
Total Units/Days Allowed 210.0								
Contract % Complete								
Contract % of Elapsed Time								
						20.82	0.00	20.82
						12.38	0.00	12.38
% Matching Funds								
						-12,583	0	-12,583
Deduction for LPA								
						298,157	0	298,157
TOTAL Net Amount Owed to LPA								

The sole purpose of the Contract Administration Engineer's signature is to acknowledge that the LPA has submitted all certification required for payment. AMOUNT OF PAYMENT FOR PROGRESS ESTIMATES SHOULD BE TO THE NEAREST DOLLAR (\$000) FINAL ESTIMATES SHOULD BE ROUNDED TO THE NEAREST CENTS (\$0.00)

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT GRANT AGREEMENT BY AND BETWEEN THE CITY OF PICAYUNE AND FAA FOR CONSTRUCTION OF HELIPADS AND DRAINAGE IMPROVEMENTS AT THE PICAYUNE MUNICIPAL AIRPORT.

Motion was made by Council Member Watkins, seconded by Council Member Parker to accept grant agreement by and between the City of Picayune and FAA for construction of helipads and drainage improvements at the Picayune Municipal Airport in the amount of \$ 119,921.00 and authorize Mayor to sign the agreement and all related documents effective February 18, 2009.



GRANT AGREEMENT

Date of Offer: February 12, 2009

Project Number 3-28-0060-015-2009

RECIPIENT: CITY OF PICAYUNE, MISSISSIPPI (Herein Called Sponsor)

PICAYUNE MUNICIPAL AIRPORT

OFFER

THE FEDERAL AVIATION ADMINISTRATION, FOR AND ON BEHALF OF THE UNITED STATES, HEREBY OFFERS AND AGREES to pay, as the United States' share, 95 percent of the allowable costs incurred in accomplishing the project consisting of the following:

Construct helipad and improve airport drainage

as more particularly described in the Project Application dated February 5, 2009.

The maximum obligation of the United States payable under this Offer shall be \$119,921.00 for airport development.

This offer is made in accordance with and for the purpose of carrying out the applicable provisions of the Federal Aviation Act of 1958, as amended, codified at Title 49 of the United States Code. Acceptance and execution of this offer shall comprise a Grant Agreement, as provided by Title 49 of the United States Code, constituting the contractual obligations and rights of the United States and the Sponsor.

UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION

Manager, Airports District Office, Jackson, MS

ACCEPTANCE

The Sponsor agrees to accomplish the project in compliance with the terms and conditions contained herein and in the document "Terms and Conditions of Accepting Airport Improvement Program Grants" dated March 29, 2005.

Executed this 18 day of February, 20 09

CITY OF PICAYUNE, MISSISSIPPI

(Seal) 

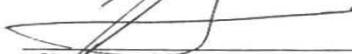
Attest
City Clerk
Title

Signature of Sponsor's Designated Official Representative
Mayor
Title

CERTIFICATE OF SPONSOR'S ATTORNEY

I, Nathan S. Farrier, acting as Attorney for the Sponsor do hereby certify:

That in my opinion the Sponsor is empowered to enter into the foregoing Grant Agreement under the laws of the State of Mississippi. Further, I have examined the foregoing Grant Agreement, and the actions taken by said Sponsor relating thereto, and find that the acceptance thereof by said Sponsor and Sponsor's official representative has been duly authorized and that the execution thereof is in all respects due and proper and in accordance with the laws of the said State and the applicable provisions of the Federal Aviation Act of 1958, as amended, codified at Title 49 of the United States Code. In addition, for grants involving projects to be carried out on property not owned by the Sponsor, there are no legal impediments that will prevent full performance by the Sponsor. Further, it is my opinion that the said Grant Agreement constitutes a legal and binding obligation of the Sponsor in accordance with the terms thereof.



Signature of Sponsor's Attorney

02/18/2009

Date (Date must be on or later than execution date above)

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT DONATION OF REAL PROPERTY FROM LLP MORTGAGE

Motion was made by Council Member Parker, seconded by Council Member Watkins to accept donation of real property from LLP Mortgage located on Carroll St. parcel 617-111-004-02-015-001 and authorize the city attorney to prepare deed for transfer of the same.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR CASH #8 TO THE MDA FOR 2006 KATRINA SUPPLEMENTAL CDBG COMMUNITY REVITALIZATION GRANT

Motion was made by Council Member Watkins, seconded by Council Member Parker to approve request for cash #8 in the amount of \$180,423.00 to the MDA for 2006 Katrina Supplemental CDBG Community Revitalization Grant and authorize Mayor to sign the said request and payment of accompanying invoices.

CITY OF PICAYUNE
2006 KATRINA SUPPLEMENTAL
CDBG COMMUNITY REVITALIZATION
REQUISITION FORM

REQUISITION NUMBER: 8 CDBG PROJECT NUMBER: R-103-297-01-KCR
DATE: 3/3/09 CDBG BANK ACCOUNT NO: _____

PAYABLE TO:	AMOUNT:
ReflecTech, Inc.	\$171,927.00 (CDBG)
Huey Stockstill, Inc.	\$ 8,496.00 (CDBG)

APPROVED:

BY: _____
MAYOR

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR CASH #6 TO THE MDA FOR 2006 KATRINA SUPPLEMENTAL CDBG PLANNING GRANT

Motion was made by Council Member Parker, seconded by Council Member Watkins to approve request for cash #6 in the amount of \$22,331.50 to the MDA for 2006 Katrina Supplemental CDBG Planning Grant and authorize Mayor to sign the said request and payment of the accompanying invoices.

02/28/2009 10:29 FAX

CITY OF PICAYUNE
2006 KATRINA SUPPLEMENTAL
CDBG PLANNING GRANT
REQUISITION FORM

REQUISITION NUMBER: 6 CDBG PROJECT NUMBER: R-103-297-01-KP
DATE: 3/3/09 CDBG BANK ACCOUNT NO: _____

PAYABLE TO:	AMOUNT:
Neel-Schaffer	\$18,331.50 (CDBG)
Sample & Associates, Inc.	\$ 4,000.00 (CDBG)

APPROVED:

BY: _____
MAYOR

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND THE AGENDA TO ADD ITEM #6 UNDER GRANT ADMINISTRATION CONCERNING SUMMER YOUTH CORP GRANT

Motion was made by Council Member Parker, seconded by Council Member Watkins to amend the agenda to add item #6 under Grant Administration concerning Urban Youth Corp Grant.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE SUBMITTING AN APPLICATION TO MDOT FOR THE 2009 TRANSPORTATION ENHANCEMENT URBAN YOUTH CORPS PROGRAM

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize submission of application to MDOT for the 2009 Transportation Enhancement Urban Youth Corps Program the maximum amount being \$35,000.00 with a 20% City Match, and Mayor to sign the same.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR LT. CHAD DORN AND LT. RAY CARLISLE TO TRAVEL TO ST CHARLES PARISH LA SHERIFF'S OFFICE MARCH 23 AND 24, 2009

Motion was made by Council Member Bounds, seconded by Council Member Watkins to approve request for Lt. Chad Dorn and Lt. Ray Carlisle to travel to St. Charles Parish LA Sheriff's Office March 23, and 24, 2009 for Certified Instructor Training on Monadnock Expandable Baton.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR CAPTAIN THERESA MILAR TO TRAVEL TO OXFORD MS

Motion was made by Council Member Bounds, seconded by Council Member Parker to approve request for Captain Theresa Milar to travel to Oxford, MS to attend the 2nd annual MML Youth Summit as a chaperone for High School Security Council Members.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND AGENDA TO ADD ITEM #1 UNDER FIRE DEPARTMENT

Motion was made by Council Member Parker, seconded by Council Member Bounds to add item #1 under Fire Department concerning donations of surplus trucks.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE INTER AGENCY TRANSFER OF FIRE DEPARTMENT SURPLUS TRUCKS

Motion was made by Council Member Watkins, seconded by Council Member Parker to transfer title of two surplus trucks described as 1994 Ford F-350 Rescue Truck VIN # 1FDLF478REA37371 and 1979 American LaFrance VIN # CE6463, to Southeast Lamar County Rock Hill VFD.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO AMEND AGENDA TO ADD ITEM #2 UNDER FIRE DEPARTMENT

Motion was made by Council Member Watkins, seconded by Council Member Parker to add item #2 under Fire Department concerning Intergovernmental Agreement for the enhancing of public safety.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE RESOLUTION AND INTERGOVERNMENTAL AGREEMENT FOR THE ENHANCING OF PUBLIC SAFETY INTEROPERABLE COMMUNICATIONS BETWEEN PUBLIC SAFETY AGENCIES

Motion was made by Council Member Watkins, seconded by Council Member Parker to authorize Resolution and Intergovernmental Agreement between City of Picayune, City of Poplarville and Pearl River County for the enhancing public safety interoperable communications between public safety agencies and applying for Public Safety Interoperable Communication Grant funding with the Mississippi Wireless Communication Commission and authorize Mayor's

signature.

JOINT RESOLUTION

WHEREAS, the Mayor and Board of Aldermen of the City of Poplarville, Mississippi ("Poplarville"), the Mayor and City Council of the City of Picayune, Mississippi ("Picayune") and the Board of Supervisors of Pearl River County, Mississippi ("County") each have certain responsibilities for the safety of the public; and

WHEREAS, the governing boards of the City of Poplarville, City of Picayune and of the County desire to enter into an Intergovernmental Agreement for the enhancing public safety interoperable communications between public safety agencies and applying for Public Safety Interoperable Communication Grant funding with the Mississippi Wireless Communication Commission; and

NOW THEREFORE, BE IT RESOLVED that under the provisions of Miss. Code Ann. 1972, §§17-13-1 et. seq. including specifically §17-13-7, 19-3-41, 21-17-5, that Anthony Hales, President of the Pearl River County Board of Supervisors, Billy Spiers, Mayor of the City of Poplarville, Mississippi, and Greg Mitchell, Mayor of the City of Picayune, Mississippi, are each hereby authorized, empowered and directed on behalf of their respective Boards to execute the attached Intergovernmental Agreement and that upon adoption by the Pearl River County Board of Supervisors and by the Mayor and Board of Aldermen of the City of Poplarville, and the Mayor and City Council of the City of Picayune, Mississippi, that a copy of this Resolution and the Intergovernmental Agreement be forwarded to the Attorney General of the State of Mississippi for approval, and thereafter a copy of the same be forwarded to the Chancery Clerk of Pearl River County, Mississippi, the Secretary of State of Mississippi and the State Department of Audit, all in accordance with §17-13-1 et seq.

SO RESOLVED, this, the 23 day of February, 2009.

PEARL RIVER COUNTY, MISSISSIPPI
BOARD OF SUPERVISORS

BY: Anthony Hales
Anthony Hales, President

SO RESOLVED, this, the 3rd day of ~~February~~ ^{March}, 2009.

CITY OF POPLARVILLE, MISSISSIPPI

BY: Billy Spiers
Mayor

SO RESOLVED, this, the ____ day of February, 2009.

CITY OF PICAYUNE, MISSISSIPPI

BY: _____
Mayor

ATTEST:

David Earl Johnson, Chancery Clerk

CLERK'S CERTIFICATE

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of that certain Resolution which was duly approved and adopted by the Mayor and Board of Supervisors of Pearl River County, Mississippi, in regular meeting assembled on this, the 3rd day of ~~February~~, 2009, as the same appears of record in the official minutes of record in my office. *March*

This, the 3rd day of *March*, 2009.



CITY CLERK
POPLARVILLE, MISSISSIPPI

CLERK'S CERTIFICATE

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of that certain Resolution which was duly approved and adopted by the Mayor and Board of Supervisors of Pearl River County, Mississippi, in regular meeting assembled on this, the ____ day of February, 2009, as the same appears of record in the official minutes of record in my office.

This, the ____ day of February, 2009.

CITY CLERK
PICAYUNE, MISSISSIPPI

CLERK'S CERTIFICATE

I, the undersigned, do hereby certify that the above and foregoing is a true and correct copy of that certain Resolution which was duly approved and adopted by the Mayor and Board of Supervisors of Pearl River County, Mississippi, in regular meeting assembled on this, the ____ day of February, 2009, as the same appears of record in the official minutes of record in my office.

This, the ____ day of February, 2009.

CHANCERY CLERK
PEARL RIVER COUNTY, MISSISSIPPI

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Bounds, seconded by Council Member Parker to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Bounds, seconded by Council Member Parker to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO RE-ENTER EXECUTIVE SESSION

Motion was made by Council Member Bounds, seconded by Council Member Parker to enter executive session to discuss the following:

- A. Contractual matter with CRI Web Design
- B. Contractual matter with Kanduit Construction, Inc
- C. Possible Sale of Land
- D. Contractual Matter with Attorney
- E. Compromise of disputed claims
- F. Contractual matter with debt collections

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Bounds, seconded by Council Member Watkins to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AUTHORIZE CITY CLERK TO TERMINATE CONTRACT WITH SOUTHERN FINANCIAL SERVICES

Motion was made by Council Member Parker, seconded by Council Member Bounds to authorize City Clerk to terminate Contract with Southern Financial Services.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

NO OTHER ACTIONS TAKEN-DISCUSSION ONLY

MOTION TO RECESS

Motion was made by Council Member Bounds seconded by Council Member Parker to recess until Tuesday, March 17, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell, Council Members Bounds, Watkins, and Parker

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Turnage

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, March 17, 2009, at 6.00 p.m. in regular session with the following officials present: Mayor Greg Mitchell, Council Members Leavern Guy, Larry Watkins, Jerry Bounds, Anna Turnage, Interim City Manager Harvey Miller and City Clerk Priscilla Daniel. Council Member Donald Parker was absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Larry Watkins, followed by the Pledge of Allegiance led by Mayor Greg Mitchell.

AT THIS TIME INTERIM CITY MANAGER HARVEY MILLER RECOGNIZED LOUISE COCKERN AND DONALD KELLAR FOR SUCCESSFULLY COMPLETING THE PROCESS AND EXAMINATION TO BECOME AS FPM CERTIFIED FLOODPLAIN MANGAGER

MOTION WAS MADE TO APPROVE THE CITY OF PICAYUNE MINUTES DATED MARCH 3, 2009

Motion was made by Council Member Guy, seconded by Council Member Turnage for approval of the minutes dated March 3, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY PRIVILEGE LICENSE REPORT

Motion was made by Council Member Guy, seconded by Council Member Turnage to acknowledge receipt of monthly Privilege License Report for the month of February 2009.

RECESSED MEETING MARCH 17, 2009

CITY OF PICAYUNE
NEW BUSINESS LISTING

DATE: 03/09/2009

PAGE: 1

ACCT	BUSINESS NAME	ORG DATE	LOCATION	APPLICANT
1734	PRECISION MECHANICAL	02/02/2009	100 STREET A SUITE D	LARRY WILLIAM
1735	AFFORDABLE AUTO	02/23/2009	1415 PALESTINE RD	ANNA BALMOS
1736	BRENDA ELLISOR	02/23/2009	511 N MAIN ST	BRENDA ELLISO
1737	JUDITH M CRAWFORD	02/23/2009	203 FARRELL ST	JUDITH M CRAW
1738	ACCURATE DURABLE MEDICAL EQUI	02/23/2009	320 WEST CANAL ST	ROSLAND DRIVE
1739	BERLON'S	02/23/2009	121 C WEST CANAL ST	BERLON LEE

TOTAL >> 6

CITY OF PICAYUNE
PRIV LIC ISSUED

DATE: 02/01/2009

PAGE: 1

LICENSE	ACCT	BUSINESS	AMOUNT
	1738	ACCURATE DURABLE MEDICAL EQUI	.00
8370	1735	AFFORDABLE AUTO	20.00
	1739	BERLON'S	.00
8373	1736	BRENDA ELLISOR	20.00
8361	1678	C & P D STUDIOS	22.80
8369	502	FLOWERS BY GEORGIA	22.60
8360	1660	INNOVATIVE HEALTH SOLUTIONS, LLC	22.80
8374	1737	JUDITH M CRAWFORD	20.00
8367	1318	KEITH GUIDRY	20.00
8371	1327	LAWRENCE'S BARBER SHOP	22.60
8365	802	NEAL ROAD TIRE SERVICE	22.80
8357	1734	PRECISION MECHANICAL	20.00
8359	1661	SPENCE MEDICAL RESEARCH, LLC	34.20
	13	TOTAL >>>	247.80

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY PUBLIC RECORDS REQUEST REPORT

Motion was made by Council Member Guy, seconded by Council Member Turnage to acknowledge receipt of monthly Public Records Request Report for the month of February 2009.

CITY OF PICAYUNE REPORT OF PUBLIC RECORDS REQUESTS FEBRUARY 2009				
DATE	PERSON REQUESTING	SUBJECT MATTER	DATE FILLED/ DENIED	ACTION
02/26/09	LEXIS NEXIS	ACCIDENT REPORT 2008-11-1700	02/26/09	APPROVED
02/26/09	LEXIS NEXIS	ACCIDENT REPORT 2009-02-1848	02/26/09	APPROVED
02/26/09	LEXIS NEXIS	ACCIDENT REPORT 2009-02-1412	02/26/09	APPROVED
02/26/09	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT 2009-02-1412	02/26/09	APPROVED
02/26/09	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT 2009-02-1278	02/26/09	APPROVED
02/26/09	FARM BUREAU	ACCIDENT REPORT 2009-02-1203	02/26/09	APPROVED
02/26/09	LEXIS NEXIS	ACCIDENT REPORT 2008-12-2404	02/26/09	APPROVED
02/26/09	LEXIS NEXIS	ACCIDENT REPORT 2008-11-1700	02/26/09	APPROVED
02/26/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2008-10-0524	02/26/09	APPROVED
02/24/09	RANSOM PERKINS	ACCIDENT REPORT 2009-02-2066	02/24/09	APPROVED
02/18/09	LEXIS NEXIS	ACCIDENT REPORT 2009-02-1278	02/18/09	APPROVED
02/18/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2009-02-0285	02/18/09	APPROVED
02/18/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2009-02-0690	02/18/09	APPROVED
02/18/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2008-09-2291	02/18/09	APPROVED
02//26/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	DEPARTMENT FOR HUMAN SERVICES	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	DEPARTMENT FOR HUMAN SERVICES	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	NORTHSHORE LIVING CENTER	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	NURSING MANAGEMENT INC	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	ELMWOOD MANOR	BACKGROUND CHECK	02/26/09	APPROVED
02/26/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/26/09	APPROVED
02/25/09	HERMAN W STROCK	ACCIDENT REPORT 2009-02-1412	02/25/09	APPROVED
02/25/09	ERICA D SMITH	ACCIDENT REPORT 2009-02-1412	02/25/09	APPROVED
02/24/09	CHARLES S MARSH	ACCIDENT REPORT 2009-02-1278	02/24/09	APPROVED
02/24/09	RANSOM PERKINS	ACCIDENT REPORT 2009-02-2066	02/24/09	APPROVED
02/24/09	JONI M KELLAR	ACCIDENT REPORT 2009-02-1262	02/24/09	APPROVED
02/23/09	JULES REGGIO	ACCIDENT REPORT 2009-02-0756	02/23/09	APPROVED
02/23/09	TANJI MELANCON	ACCIDENT REPORT 2009-02-0285	02/23/09	APPROVED
02/19/09	STEPHEN F CHURCH	BACKGROUND CHECK	02/19/09	APPROVED
02/19/09	RONALD DEARMIN	ACCIDENT REPORT 2009-02-1635	02/19/09	APPROVED
02/19/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/19/09	APPROVED
02/12/09	STEPHEN J STASIK	BACKGROUND CHECK	02/12/09	APPROVED
02/18/09	JAMES LOWRY	ACCIDENT REPORT 2009-02-1848	02/18/09	APPROVED
02/17/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2009-02-0339	02/17/09	APPROVED
02/17/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT 2009-02-0690	02/17/09	APPROVED
02/17/09	METROPOLITAN REPORTING BUREAU	ACCIDENT REPORT 2008-12-1419	02/17/09	APPROVED
02/17/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT 2009-01-2673	02/17/09	APPROVED
02/17/09	LEXIS NEXIS	ACCIDENT REPORT 2009-01-2667	02/17/09	APPROVED
02/17/09	LEXIS NEXIS	ACCIDENT REPORT 2009-01-2295	02/17/09	APPROVED
02/17/09	SAFeway INSURANCE COMPANY	ACCIDENT REPORT 2009-01-2174	02/17/09	APPROVED
02/05/09	GROVER NELSON	INCIDENT REPORT 2009-01-2676	02/05/09	APPROVED
02/05/09	LEXIS NEXIS	ACCIDENT REPORT 2009-01-1832	02/05/09	APPROVED
02/05/09	SAFeway INSURANCE COMPANY	ACCIDENT REPORT 2009-01-2676	02/05/09	APPROVED
02/05/09	LEXIS NEXIS	ACCIDENT REPORT 2009-01-0252	02/05/09	APPROVED
02/18/09	FARM BUREAU	ACCIDENT REPORT 2009-02-1635	02/18/09	APPROVED
02/18/09	JULIAN MUNOZ	ACCIDENT REPORT 2009-02-0690	02/18/09	APPROVED
02/18/09	FARM BUREAU	ACCIDENT REPORT 2009-02-1635	02/18/09	APPROVED
02/12/09	PICAYUNE HOUSING AUTHORITY	BACKGROUND CHECK	02/12/09	APPROVED
02/12/09	PRC SHERIFF'S DEPARTMENT	BACKGROUND CHECK	02/12/09	APPROVED
02/18/09	PICAYUNE APARTMENTS	BACKGROUND CHECK	02/18/09	APPROVED
02/12/09	KAIREON R BRADLEY	BACKGROUND CHECK	02/12/09	APPROVED

RECESSED MEETING MARCH 17, 2009

02/18/09	SCOTT WATKINS	ACCIDENT REPORT 2009-02-1203	02/18/09	APPROVED
02/17/09	LATUNIA D JENKINS	ACCIDENT REPORT 2009-02-1295	02/17/09	APPROVED
02/17/09	ENTERPRISE RENT A CAR	ACCIDENT REPORT 2009-02-1295	02/17/09	APPROVED
02/12/09	TERRANCE WILSON	ACCIDENT REPORT 2009-03-1295	02/12/09	APPROVED
02/12/09	TONY BOUNDS/MCDONALD & PATCH LAW OFFICES	ACCIDENT REPORT 2008-10-1602	02/12/09	APPROVED
02/12/09	JASON BAKER	ACCIDENT REPORT 2009-01-1831	02/12/09	APPROVED
02/12/09	PICAYUNE HOUSING AUTHORITY	FINGERPRINTS	02/12/09	APPROVED
02/11/09	FBI	BACKGROUND CHECK	02/12/09	APPROVED
02/11/09	FBI	BACKGROUND CHECK	02/11/09	APPROVED
02/11/09	FBI	BACKGROUND CHECK	02/11/09	APPROVED
02/11/09	NICHOLSON ARMS APARTMENTS	BACKGROUND CHECK	02/11/09	APPROVED
02/11/09	NICHOLSON ARMS APARTMENTS	BACKGROUND CHECK	02/11/09	APPROVED
02/10/09	BRADLEY THOMAS MORROW	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	STEPHEN L MCDONALD JR	BACKGROUND CHECK	02/10/09	APPROVED
02/11/09	SAUNDRA STRONG WITH PHELPS DUNBAR LLP	BACKGROUND CHECK	02/11/09	APPROVED
02/11/09	JESSICA GALLADORA	INCIDENT REPORT 2009-02-1112	02/11/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	PRC SHERIFF'S DEPARTMENT	BACKGROUND CHECK	02/10/09	APPROVED
02/10/08	NURSING MANAGEMENT INC	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	WOODLAND VILLAGE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/10/09	APPROVED
02/10/09	JAMES EASLEY	INCIDENT REPORT 2009-01-2677	02/10/09	APPROVED
02/09/09	KENTA JANET	INCIDENT REPORT 2009-02-0947	02/09/09	APPROVED
02/09/09	ASHLEY BROCKHAUS	INCIDENT REPORT 2009-02-0571	02/09/09	APPROVED
02/09/09	FARM BUREAU	ACCIDENT REPORT 2009-01-2667	02/09/09	APPROVED
02/06/09	KEITH DOSSETT	INCIDENT REPORT 2009-01-1298	02/06/09	APPROVED
02/03/09	OBDULIA CUERVO	INCIDENT REPORT 2009-01-2352	02/03/09	APPROVED
02/04/09	BASHEBA K BURGE-MULLINS	ACCIDENT REPORT 2009-01-2295	02/04/09	APPROVED
01/22/09	LEXIS NEXIS	ACCIDENT REPORT 2008-12-0639	01/22/09	APPROVED
02/04/09	LEXIS NEXIS	ACCIDENT REPORT 2008-12-1268	02/04/09	APPROVED
02/04/09	LEXIS NEXIS	ACCIDENT REPORT 2009-01-1998	02/04/09	APPROVED
02/04/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT 2009-01-2352	02/04/09	APPROVED
02/04/09	STATE FARM INSURANCE COMPANY	ACCIDENT REPORT 2009-01-1617	02/04/09	APPROVED
02/03/09	CHRIS TOFT FOR MEGAN PURVIS	INCIDENT REPORT 2009-01-1905	02/03/09	APPROVED
02/03/09	US PROBATIONS OFFICE	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	DEKINA D WHITNEY	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	PATRICIA DURHAM	INCIDENT REPORT 2009-01-2352	02/03/09	APPROVED
02/03/09	ROBERT E LOCKLEAR	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	PICAYUNE APARTMENTS	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	PICAYUNE APARTMENTS	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	THE MISSISSIPPI LEGISLATURE	BACKGROUND CHECK	02/03/09	APPROVED
02/03/09	PROGRESSIVE INSURANCE	ACCIDENT REPORT 2009-01-2443	02/03/09	APPROVED
02/03/09	FARM BUREAU	ACCIDENT REPORT 2009-01-2443	02/03/09	APPROVED
02/03/09	WILLIAMS, WILLIAMS, & MONTGOMERY	ACCIDENT REPORT 2009-01-0168	02/03/09	APPROVED
02/03/09	PRC SHERIFF'S DEPARTMENT	FINGERPRINTS & INCIDENT REPORT 2001-08-2605	02/03/09	APPROVED
02/03/09	DEBRA G SILAS	ACCIDENT REPORT 2009-01-2174	02/03/09	APPROVED
01/26/09	KAYLA BERGERON	ACCIDENT REPORT 2009-01-1700	01/26/09	APPROVED

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ACCEPT CERTIFICATE OF ATTENDANCE FOR MICHEL COOPER

Motion was made by Council Member Guy, seconded by Council Member Turnage to accept Certificate of Attendance for Michel Cooper for attending Municipal Clerk Statewide Seminar.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO APPROVE PLANNING COMMISSION MINUTES

Motion was made by Council Member Guy, seconded by Council Member Turnage to approve the Planning Commission Minutes dated February 10, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ACKNOWLEDGE PLANNING COMMISSION MINUTES

Motion was made by Council Member Guy, seconded by Council Member Turnage to acknowledge the Planning Commission Minutes dated March 10, 2009.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO APPROVE DOCKET

Motion was made by Council Member Guy, seconded by Council Member Bounds to approve the docket for March 17, 2009 in the amount of \$325,815.41.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO MOVE THE ONE ITEM UNDER PUBLIC WORKS TO THE FOURTH ITEM UNDER PETITIONS AND COMMUNICATIONS

Motion was made by Council Member Turnage, seconded by Council Member Bounds to move item number one under Public Works to item number four under Petitions and Communications regarding Performance Contract Agreement with Siemen's Building Technologies, Inc.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE WALK FOR LIFE 2009 FUNDRAISER

Motion was made by Council Member Turnage, seconded by Council Member Bounds to approve request from Sav-A-Life of the Pearl River Area Pregnancy Support Services to hold annual "Walk for Life" 2009 fundraiser and to use Jack Read Park and Goodyear Blvd. walking track on Saturday May 9, 2009 from 8am to 11am. This motion also approves placement of "Walk for Life" banners at each entrance to the City, one on Memorial Blvd and one on Hwy 43 N from Friday afternoon May 8 thru Saturday May 9 at noon.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM NJROTC BOOSTER CLUB FOR PRC HIGH SCHOOL TO HOLD CAN SHAKE

Motion was made by Council Member Bounds, seconded by Council Member Guy to approve request from NJROTC Booster Club for PRC High School to hold a can shake on Hwy 11 between Goodyear Blvd. and Canal Streets on Saturday, March 28, 2009 from 8am to 4pm to raise money for the cadets to go to Washington D.C.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE FIRST BAPTIST CHURCH OF PICAYUNE TO HOLD RESURRECTION FUN 5K

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve request from FBC Picayune to hold the Resurrection Run 5K on Saturday March 28, 2003 beginning at 8am as well as using Jack Read Park for registration and award presentation.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME A PRESENTATION WAS GIVEN BY SIEMEN'S BUILDING TECHNOLOGY, INC. REGARDING THE POSSIBLE PERFORMANCE CONTRACT AGREEMENT. THERE WAS DISCUSSION ONLY. NO ACTION TAKEN. THE CONTRACT WILL BE CONSIDERED AT NEXT MEETING.

MOTION TO REQUEST THAT A PETITION SIGNED BY NEIGHBORHOOD RESIDENTS IN DISPUTE OF FURTHER COMMERCIALIZATION OF PROPERTY LOCATED AT 502 EAST CANAL ST BE SPREAD UPON THE MINUTES OF THIS MEETING

Motion was made by Council Member Guy, seconded by Council Member Turnage to spread the petition on the minutes of this meeting.

Feb 13, 2009

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We the undersigned oppose the further commercialization of lots 4 and 24 bounded by East Canal Street to the North and by Gray Street to the West.

Reasons for opposing:

1. Unknown use of building and hours of operation
2. Unauthorized work that has already been done has created drainage problems
3. Further compound an existing parking problem
4. Increased noise level
5. Further breakdown of a quiet residential neighborhood

<u>Name (Print)</u>	<u>Signature</u>	<u>Address</u>
1 Bill Edwards	<i>Bill Edwards</i>	111 Hedman Street Piscataway
2 Henry C. Porter	<i>Henry C. Porter</i>	117 So Gray Ave
3 Luvenia Porter	<i>Luvenia Porter</i>	117 So Gray Ave
4 MICHAEL STORR	<i>Michael Stor</i>	211 S. GRAY AVE
5 Kristen A. Watson	<i>Kristen A. Watson</i>	211 S. Gray Ave
6 Magdaine G. Pitre	<i>Magdaine G. Pitre</i>	210 S. Gray Ave
7 John C. Pitre	<i>John C. Pitre</i>	Property owner
8 MARTHA SAVAGE	<i>Martha Savage</i>	209 S. GRAY
9 Brian Walters	<i>Brian Walters</i>	202 S. GRAY

10 ~~Yel Rubin~~ 500. S. Ind. St. Pigeon

11 Anna Ruberz ANNA RUBCIC 500 E 2nd St

12 ~~Karen Hill~~ Karen Hill 619 Mitchell St

13 ~~Scott Hill~~ Scott Hill 619 Mitchell St

OLIVE CURTIS

14 Olive Curtis 602 Cecil St. Pigeon

15 Patricia C Burge
Patricia C Burge 708 Mitchell Street (owner)

16 Louis Burge 708 Mitchell Street (owner)

17 ~~John P Edwards~~
John P Edwards 125 S. Monroe Ave (owner)

W.H. DRENNAN

18 W.H. Drennan 121 S. Monroe Ave.

19 Susan Cole 116 S. Monroe Ave

20 Shirley Weeks 116 S. Monroe Ave

21 Zachery Tinney 124 S Green

MICHAEL REID

22 Michael Reid 131 Grace Dr

GARY VASILIAVSKAS

23 Day Vasilavskas 509 Mitchell St.
Christy Hannah

24 Christy Hannah 205 S. Gray Ave

25

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Page 2

10 JAN WALTERS *Jan Walters* 202 S GRAY AVE
Picayune MS 39466

11 Charles A. Johnson, Charles R. Johnson 201 S. Gray
Picayune MS 39466

12 Adam Hall *Adam Hall* 503 Cecile St., Pic., MS. 39466

13 Yupe Mitchell, Anthony Mitchell 204 South Gray Ave. Pic
MS 39466

14 Jeremy Mitchell 204 South Gray Ave Pic, MS 39466

15 Anthony Mitchell *Anthony Mitchell* 204 South gray Ave, Pic, MS, 39466

16 Courtney Hall *Courtney Hall* 503 Cecile St. Pic. MS
39466

17 Nikki Taylor *Nikki Taylor* 201 S. Gray Ave.
Pic MS 39466

18 Brandy Frisella *Brandy Frisella* 520 E. Canal St.
Picayune MS 39466

19 Kirk Frisella *Kirk Frisella* 520 East Canal St. Picayune, MS. 39466

MARTHA JOHNSON
20 Martha Johnston 522 E Canal St Picayune MS

Michelle Jinnis
21 Michelle Timney 1245 Green ave Picayune
39466

~~Harvey Smith~~
22 Harvey Smith 504 Mitchell St

~~Grady Smith~~
23 Grady Smith 219 S. GRAY Ave

Grady Smith
24 Grady Smith 219 S. GRAY AVE Picayune MS

- 25 ~~Kathy H. Watts~~ 421 Mitchell Street
KATHY H. WATTS
- 26 ~~GARY R. WATTS~~ 421 MITCHELL STREET
GARY R. WATTS
27. Robert M. Smith 420 Mitchell St.
P
28. Ute Calhoun UTE CALHOON 221 S. STEELE ST.
29. Amanda Calhoun Amanda Calhoun 221 S. STEELE ST.
30. Brandon J. Bourgeois Brandon J. Bourgeois 221 S. STEELE ST.
31. JOE ARGUS 220 S. STEELE AVE Joe Argus
32. JERRY HANNAH 205 S. GRAY AVE J. Hannah SR.
33. Lydia Schultz 504 Cecile St Lydia Schul
- 34 David Patch 211 S. STEELE David Pat
- 35 LARRY SIMMONS 515 SECOND ST Larry H. Sim
- 36 DOYCE LANDRUM 605 Cecile St.
Doyce Landrum
- 37 GARY LANDRUM Gary Landrum 605 Cecile St
- 38 JOHN WILKINS 603 Cecile St.
John Wilkins
- 39 Patrick Calhoun Patrick Calhoun 221 South Stee

55 Pamela Mitchell Donna Mitchell 209 S Monroe Ave. Picayune, MS

56 Charles Davis Charles Davis 410 1/2 Jete St. Picayune, MS

57 Sheryl Barnes Sheryl Barnes 700 Jett/E St. Picayune MS

58 L. Abbott Lynne Barnes 700 Collier St. Pic.

59 L. Abbott L. Abbott 120 S. Jett St. Pic.

60 Jon B. McCaskell Jon B. McCaskell 503 Bales Ave. Pic.

61 Harry Thompson Harry Thompson 306 Bales Ave. Picayune

62 Mark J. Barousse Mark J. Barousse 708 Mitchell St. Picayune MS.

63 Keri B. Barousse Keri B. Barousse 708 Mitchell St

64 Gerald E. DeBacker Gerald E. DeBacker 422 E 2nd St.

Pamela Mitchell PAMELA MITCHELL
221 SOUTH STEELE ST.

66 David Reeves David Reeves

Lynnae Gain Lynnae Gain 118 S Gray Ave

68 Troy Lawson Troy Lawson 801 Mitchell St

Paul S. Tippet Paul S. Tippet
69 Paul S. Tippet 507 Bales

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542577
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- 70 DAWN CECIL Dawn Cecil 420 Bales Ave
Picayune, MS
- 71 Jenell Lee Jenell Lee 401 Bales Ave
Picayune, MS
- 72 Alisa Lee-Golotte Alisa Lee-Golotte 401 Bales Ave
MS
- 73 Colan Miller Colan Miller 401 Bales Ave
Picayune MS
- 74 Tiffany Wilson Jeffrey Wilson 422 Second St
Picayune MS 39466
- 75 Dana Wilson Dana Wilson 422 Second St
Picayune MS 39466
- 76 Lessie Smith LESSIE SMITH 620 Mitchell St
Picayune MS 39466
Brenda Joseph
- 77 Brenda Joseph 423 Woodglen Cove
Picayune MS 39466
Stephanie Angeles (Rents Property)
- 78 Stephanie Angeles 724 Mitchell St
Picayune MS 39466
Stephanie Angeles (own Property)
- 79 Stephanie Angeles 304 Bales Ave
Picayune MS 39466
- 80 Wayne Heuman WAYNE HEUMAN 508 Bales Ave,
Picayune, MS
- 81 Linda A Grimes LINDA GRIMES 507 Stanley Ave
Picayune MS 39466

82 DIXIE E. McDONALD - Dixie E. McDonald 309 S. Monroe Ave

83 JAN McINTOSH Jan McIntosh 416 Wood Glen

85 Fredelyn Crowder Fredelyn Crowder 311 S. Monroe

86 DALE Johnston dale johnston 522 E. Canal

87 Jerry J. Knight Jerry J Knight 127 South St

8

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST FROM MICHELLE DURR TO RE-SUBDIVIDE PROPERTY LOCATED AT 502 EAST CANAL ST

Motion was made by Council Member Guy, seconded by Council Member Watkins to table request from Michelle Durr to re-subdivide property located at 502 East Canal St.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, Guy and Bounds

VOTING NAY: None

ABSENT AND NOT VOTING: Council Member Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME COUNCIL MEMBER BOUNDS EXITED THE MEETING

MOTION TO ACKNOWLEDGE RECEIPT OF MONTHLY BUDGET REPORT

Motion was made by Council Member Guy, seconded by Council Member Turnage to acknowledge receipt of monthly budget report for the month of February 2009

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE BUDGET AMENDMENT NO. 3

Motion was made by Council Member Guy, seconded by Council Member Turnage to approve Budget Amendment No. 3 as presented.

RECESSED MEETING MARCH 17, 2009

GENERAL FUND CITY OF PICAYUNE - GENERAL FUND Budget Amendment FOR THE YEAR ENDING 3/31/2009	APPROVED BUDGET 2009	REvised AMEND # 1 2009	REvised AMEND # 2 2009	REvised AMEND # 3 2009
RECEIPTS:				
INCOME & PERMITS	78,300	736,800	736,800	750,800
INTERGOVERNMENTAL RECEIPTS	4,932,756	5,035,754	5,035,754	4,932,756
CHARGES FROM SERVICES	0	0	0	0
FINES & FORFEITS	438,850	448,800	448,800	448,800
MISCELLANEOUS	9,750	9,200	9,200	9,750
TRANSFERS IN	354,456	354,396	354,396	354,456
INTEREST EARNINGS	286,600	285,600	285,600	286,600
PROCEEDS FROM TRANS	0	0	0	0
TOTAL FROM ALL SOURCES OTHER THAN TAXES	6,776,812	6,876,150	6,876,214	7,160,178
AMOUNT TO BE RAISED BY AD VALOREM TAX	2,036,433	2,036,433	2,036,433	2,036,433
TOTAL REVENUE	8,813,245	8,912,583	8,912,647	9,196,611
BEGINNING CASH	802,975	802,975	802,975	802,975
TOTAL FROM ALL SOURCES	9,616,220	9,715,558	9,715,622	10,000,586
EXPENDITURES:				
GENERAL GOVERNMENT				
PERSONNEL	1,244,800	1,244,800	1,244,800	1,244,800
SUPPLIES	12,600	51,850	51,850	12,600
OTHER SERVICES & CHARGES	686,370	687,770	687,770	686,370
CAPITAL OUTLAY	0	0	0	0
TOTALS	1,943,770	1,984,420	1,984,420	1,943,770
PUBLIC SAFETY - POLICE				
PERSONNEL	2,193,300	2,321,632	2,321,632	2,281,012
SUPPLIES	238,800	238,850	238,850	238,850
OTHER SERVICES & CHARGES	285,200	289,700	289,700	285,200
CAPITAL OUTLAY	0	0	0	44,432
TOTALS	2,717,300	2,849,982	2,849,982	2,850,394
PUBLIC SAFETY - FIRE				
PERSONNEL	1,071,400	1,071,400	1,071,400	1,071,400
SUPPLIES	82,750	41,750	41,750	82,750
OTHER SERVICES & CHARGES	67,742	60,342	60,342	67,742
CAPITAL OUTLAY	0	0	0	0
TOTALS	2,192,892	2,192,892	2,192,892	2,192,892
PUBLIC WORKS				
PERSONNEL	899,200	899,500	899,500	899,200
SUPPLIES	202,850	402,400	402,400	202,850
OTHER SERVICES & CHARGES	242,800	310,400	310,400	242,800
CAPITAL OUTLAY	0	0	0	0
TOTALS	1,412,850	1,612,300	1,612,300	1,344,850
RECREATION				
PERSONNEL	0	0	0	0
SUPPLIES	0	0	0	0
OTHER SERVICES & CHARGES	0	0	0	0
CAPITAL OUTLAY	0	0	0	0
TOTALS	0	0	0	0
COST OF LIVING RISKS	0	0	0	0
AID TO OTHER GOVERNMENTS	20,940	30,940	30,940	20,940
TRANSFERS TO OTHER FUNDS	282,000	281,160	281,160	281,160
TOTALS	302,940	312,100	312,100	302,100
TOTAL EXPENDITURES	6,675,102	6,761,774	6,761,774	6,761,774
ENDING CASH BALANCE	967,618	138,784	138,784	138,010
TOTAL EXPENDITURES & ENDING CASH BALANCE	7,642,720	6,900,558	6,900,558	6,899,784

Budget Amendment:

- 1. Increased Intergovernmental Revenues - A Land Court/Intelligence Grant
- Increased Police Personnel Budget - Local Court/Intelligence Grant
- Increased General Government Professional Services Budget - HR/INTC
- Increased Police Professional Services Budget - SPCA/Police/Pro
- Increased Intergovernmental Revenues - Code Enforcement Grants
- Increased General Government Professional Services Budget - Code Enforcement Grant
- Increased Police Professional Services Budget - SPCA/Police/Pro
- Increased General Government Professional Services Budget - Code
- Increased License and Permits Revenue - Planning/Zoning Applications
- Decreased Police Personnel Budget - HR/Commission Grant Expiring
- Increased General Government Supplies Budget - Court
- Increased Police Capital Outlay Budget - HR/Intelligence Project Grant
- Increased Intergovernmental Revenues - Youth Court Grant, Personnel Security Grant, Public Museum Standards, R & D Taxes
- Increased Public Works Personnel Budget - Youth Court Grant
- Increased Public Works Supplies Budget - Youth Court Grant
- Increased Taxes Revenue - 1/4 Mill Exp. 2009
- Increased Misc Revenue - National Crime Plittings
- Increased Taxes Revenue - Personal Auto Road and Bridge
- Increased Intergovernmental Revenues - Transportation/Police Program
- Increased General Government Personnel - Code Enforcement
- Increased General Government Supplies Budget - Court
- Increased General Government Professional Services Budget - Personnel/Crime Council
- Increased General Government Capital Outlay - Personnel
- Increased Public Works Capital Outlay - Transportation/Police Program
- Increased Police Capital Outlay - Court

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Bounds and Parker

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE REQUEST TO APPROVE MDOT ECONOMIC RECOVERY STIMULUS/STP PROJECTS

Motion was made by Council Member Guy, seconded by Council Member Turnage to table the request to approve MDOT Economic Recovery Stimulus/STP Projects.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO TABLE CONSIDERING PROPOSAL FROM NEEL SCHAFFER FOR PRELIMINARY ENGINEERING FOR THE MDOT ECONOMIC RECOVERY STIMULUS/STP CONSTRUCTION PROJECTS

Motion was made by Council Member Turnage, seconded by Council Member Watkins to table considering proposal from Neel Schaffer for Preliminary Engineering for the MDOT Economic Recovery Stimulus/STP Construction Projects.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AWARD LOWEST AND BEST BID TO BUSH CONSTRUCTION FOR DEBRIS REMOVAL FROM SIX DRAINAGE BRANCHES INSIDE THE CITY

Motion was made by Council Member Guy, seconded by Council Member Watkins to award the lowest and best bid to Bush Construction for debris removal from six drainage branches inside the city for the bid amount of \$ 57,922.45 and authorize Mayor to sign related documents.

Hartman Engineering, Inc.

Consulting Engineers

March 17, 2009

Ms. Barbara McGrew
Director of Grant Administration
City of Picayune
815 North Beech Street
Picayune, MS 39466

Subject: Drainage Branch Debris Removal
USDA - NRCS
HEI Project #21-019-11-10

Ms. McGrew,

On March 16, 2009, at 2 p.m. the bid opening proceeded as scheduled. Upon reviewing the bid submissions and their tabulations, Hartman Engineering Inc. (HEI) concurs that the lowest bidder is Bush Construction. The budget was for this project is \$68,000. The lowest bid is \$57,922.25. The point of contact for this company is David Dudd.

HEI is making the recommendation of award to Bush Construction, based on the bid provided at the time of the opening. Attached is the Bid Tabulation from the bid opening.

Should you have any questions or require additional information, please feel free to contact me.

Sincerely,



Rolland Mura, P.E.
Senior Project Manager

Enclosure

BID OPENING TABULATION
Bid Opening Tabulation
Drainage Branch Debris Removal
USDA - NRCS / CITY OF PICAYUNE

HARTMAN ENGINEERING, INC.
 BID DATE: MARCH, 16, 2009

only need Bid Bond

BIDDER	MS LICENSE NUMBER	TOTAL BID	BID PROPERLY SIGNED	ADDENDUM ACKNW.	5% BID BOND	POWER OF ATTORNEY	AFFIDAVIT	CORPORATE RESOLUTION
CCI	on package	\$ 61,275.00	✓	N/A	etc ✓	n/a	✓	✓
Kennis Steekhill, LLC	10904	\$ 78,036.00	✓	N/A	✓	✓	✓	n/a
Bush Construction	16742	\$ 57,922.25	✓	N/A	✓	✓	✓	✓
Cost 2	16931-ML	\$ 64,450.00	✓	N/A	✓	✓	✓	✓
HRL	13466	\$ 61,995.00	✓	N/A	✓	✓	✓	✓
MHC Construction LLC	12853	\$ 64,200.00	✓	N/A	✓ Bond	n/a	✓	n/a
				N/A				
				N/A				
				N/A				
				N/A				

HEI PROJECT NO. 21-019-04-30

The following roll call was made:
VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy
VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR PAYMENT NO. 1 FOR THE ENGINEERING SERVICE ON PHASE II OF MEMORIAL BLVD

Motion was made by Council Member Guy, seconded by Council Member Turnage to approve request for payment No. 1 for the Engineering Service in Phase II of Memorial Blvd in the amount of \$19,641.00 to Neel Schaffer.

Please pay, Neel-Schaffer, the \$19,641.00

ENGINEERING CAD-001 For LPA's

Vendor Number: V0000083480
 Project No. STPD-9601-00(005)LPA/104798-801000 County PEARL RIVER
 In Account With CITY OF PICAYUNE, 815 N. BEECH STREET, PICAYUNE, MS 39466
 Contract Number: CS00002308
 Est. No. 1 (Progress Estimate) Period October 1, 2008 THRU January 31, 2009 Document No.

**MISSISSIPPI DEPARTMENT OF TRANSPORTATION
 CONSTRUCTION ENGINEERING ESTIMATE - RECAP SHEET**

Line Item	OCA	User Code 1	Object	Project Number / Detail Code	User Code 2	Current Period	Previous Estimate	Total Allowed to Date
Total Participating Cost	001 080100	153	1612	104798801000	1	\$20,675	\$0	\$20,675
Total						\$20,675	\$0	\$20,675
Retainage at 5.00%	004 080100	153	3530	104798801000	1	-\$1,034	\$0	-\$1,034
Total All Work Due						\$19,641	\$0	\$19,641
Liquidated Damages	010 080100	153	3520	104798801000	1			
Testing Charges	012 072880	734	6500		1			
Total Net Work Due						\$19,641	\$0	\$19,641

Quantities Checked
 Original Signed *Jeffery Lee*
 JEFFERY LEE, P.E. Project Engineer
 LPA Official *Robert D. ...*

Approved By: _____
 Contract Administration Engineer - B.B. House, P.E.

% Matching Funds Deduction for LPA	001 080100 153 1612	104798801000	2	-\$795	\$0	11.34%	0.00%	11.34%
TOTAL Net Amount Owed to the LPA				\$18,846	\$0	12.86%	0.00%	12.86%

AMOUNT OF PAYMENT FOR PROGRESS ESTIMATES SHOULD BE TO THE NEAREST DOLLAR (\$000). FINAL ESTIMATES SHOULD BE ROUNDED TO THE NEAREST CENTS (\$0.00)

Contract % Complete: 11.34%
 Contract % of Elapsed Time: 12.86%

THE SOLE PURPOSE OF THE CONTRACT ADMINISTRATION ENGINEER'S SIGNATURE IS TO ACKNOWLEDGE THAT THE LPA HAS SUBMITTED THE CERTIFICATION AND OTHER DATA REQUIRED BY THE LPA MANUAL FOR PAYMENT

001-201-256.25 OK BVE 3/11/09 *A. Miller* 3-11-09

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FOR CASH NO.2 FOR CONSTRUCTION ON PHASE II OF MEMORIAL BLVD

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve request for Cash No. 2 for construction on Phase II of Memorial Blvd in the amount of \$ 107,737 to Huey Stockstill, Inc.

Please pay: Huey Stockstill, Inc. - 10/11/09

CONSTRUCTION
CG CAD-001
REV 11-02

MISSISSIPPI DEPARTMENT OF TRANSPORTATION
CONTRACTORS ESTIMATE - RECAP SHEET

STPD-9601(005)
104798/801

P.O. No. 3941

Invoice Number _____

Vendor Number V0000083480

Project No. STPD-9601(005)/104798801000 County PEARL RIVER Sheet No. 1 of 8

In Account With CITY OF PICAYUNE, 815 N. BEECH STREET, PICAYUNE, MS 39466

Contract Number: OG00000387 Surety HARTFORD ACCIDENT AND INDEMNITY COMPANY

Est. No. 2 (Progress - ~~XXXX~~) Period January 31, 2009 Thru February 28, 2009 Document No.:

Line Item	OCA	User Code 1	Object	Project Number/Detail Code	User Code 2	Current Period	Previous Estimate	Total Allowed to Date
001	080100	221	3510	104798801000	1	107,737	310,740	418,477
002						0	0	0
004	080100	221	3530	104798801000	1	0	0	0
006						107,737	310,740	418,477
010	080100	221	3520	104798801000	1	0	0	0
011	080100	221	3510	104798801000	1	0	0	0
012	072880	734	6500			0	0	0
Total Net Work Due for Project 014								
						107,737	310,740	418,477

Quantities Checked
Original Signed: *Jeffery L. Lee*
JEFFERY L. LEE, P.E., Project Engineer

LPA Official: *Richard Miller*

Chief Engineer By:
Original Signed
B.B. House, P.E., P.E. Contract Administration Engineer

Contract Completion Date	Total Units/Days Allowed	Contract % Complete	Contract % of Elapsed Time
08/02/2009	210.0	7.22	13.81
		-4,363	
		103,374	

Contract 104798801000 2

Matching Funds Deduction for LPA 4.04942\$

TOTAL Net Amount Owed to LPA

-12,583

298,157

401,531

The sole purpose of the Contract Administration Engineer's signature is to acknowledge that the LPA has submitted all certification required for payment.
AMOUNT OF PAYMENT FOR PROGRESS ESTIMATES SHOULD BE TO THE NEAREST DOLLAR (\$000) FINAL ESTIMATES SHOULD BE ROUNDED TO THE NEAREST CENTS (\$0.00)

001-201-756.05
OK BY: 3/11/09
LA Miller 3-11-09

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM HERSCHEL MARKS TO RE-SUBDIVIDE PROPERTY LOCATED AT 717 BURLEY ST FROM TWO LOTS INTO ONE LOT

Motion was made by Council Member Guy, seconded by Council Member Turnage to accept the Planning Commission's recommendation to approve request from Herschel Marks to re subdivide property located at 717 Burley St. from two lots into one lot.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE REQUEST FROM MARILYN SCHROEDER TO SUBDIVIDE PROPERTY LOCATED AT 213 NORWOOD ST. INTO TWO LOTS

Motion was made by Council Member Watkins, seconded by Council Member Turnage to accept the Planning Commission's recommendation to approve request from Marilyn Schroeder to subdivide property located at 213 Norwood St. parcels 6175150010300700S/6175150010300700H into two lots.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO HOLD PUBLIC HEARING FOR PROPERTY CLEANUP

Motion was made by Council Member Watkins, seconded by Council Member Turnage to declare property located on Neal Rd., parcels 617-209-000-003-01-034 and 617-209-003-01-033, a Public Nuisance and allow property owner 30 days to clean said property. If said property is not cleaned within the 30 days it will be turned over to the City of Picayune to clean with charges for cleanup placed as a lien against the property.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO SET A DATE FOR PUBLIC HEARING FOR PROPERTY CLEANUP AT 118 & 120 SOUTH GREY AVE

Motion was made by Council Member Watkins, seconded by Council Member Turnage to set a Public Hearing date of April 21, 2009 for property cleanup at 118 & 120 South Grey Ave.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

AT THIS TIME THERE WAS A PRESENTATION BY PATTIE BRANTLEY CONCERNING THE COMPREHENSIVE PLAN

ORDER TO ENTER CLOSED SESSION TO DETERMINE THE NEED FOR AN EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to enter closed session to determine the need for an executive session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members, Watkins, Turnage and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

ORDER TO ENTER EXECUTIVE SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to enter executive session to discuss the following:

- A. Contractual matter with CRI Web Design
- B. Contractual matter with bond money
- C. Compromise of disputed claims
- D. Contractual matter with Centraplex
- E. Possible sale of land
- F. Contractual matter with NSI
- G. Contractual matter with Airport

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

RETURN TO REGULAR SESSION

Motion was made by Council Member Watkins, seconded by Council Member Turnage to return to regular session.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

APPROVE SIX MONTH CONTRACT WITH CRI WEB DESIGN

Motion was made by Council Member Turnage, seconded by Council Member Guy to approve six month contract with CRI Web Design and authorize Mayor's signature.

CRI Web Design Hosting & Maintenance Contract
Submitted to
City of Picayune
March 10, 2009
(Revised 6-month contract)

I. Description of Services

- A. Site Maintenance** – CRI Web Design agrees to perform maintenance for your web site including updates, revisions, or corrections on a monthly basis. For a monthly fee of \$50, paid to CRI Web Design, CRI Web Design agrees to maintain your website and provide changes as needed for up to 1 hour of site maintenance per month. If more maintenance is desired, additional hours will be charged at \$50 per hour in increments of 15 minutes. This fee will be paid every month for as long as CRI Web Design maintains your site. A six-month minimum contract agreement, paid in advance, is required.
- B. Site Hosting** – A six month fee of \$210.00, paid to CRI Web Design, will cover the hosting charges for your web site. This fee must be prepaid for six months and renewal must be paid within 30 days of expiration. Additional hosting requests, such as additional web space over 250 MB, email addresses, etc., can be added at additional charges.

II. Terms of Payment

- A. Site Hosting** –
A six-month fee of \$210.00, paid to CRI Web Design, will cover the hosting charges for your web site. This fee must be prepaid for six months and renewal must be paid within 30 days of expiration. Additional hosting requests, such as additional web space over 250 MB, shopping carts, message boards, etc., can be added at additional charges.
- B. Site Maintenance and additional Design**
- i. For a monthly fee of \$50, paid to CRI Web Design, CRI Web Design agrees to maintain your website and provide changes as needed for up to 1 hour of site maintenance per month. If more maintenance is desired, additional hours will be charged at \$50 per hour in increments of 15 minutes. This fee will be paid every month for as long as CRI Web Design maintains your site. All additional maintenance fees for site maintenance and design will be billed on a monthly basis as incurred.
 - ii. A six-month minimum contract agreement is required.
 - iii. Additional pages, graphic design, or changes other than standard updates, revisions, or corrections will require additional payment, to be determined, as these additional services are needed.

III. Obligations of CRI Web Design

- A. **Web Site Design** – CRI Web Design will determine the method, details, and means of constructing the web site. CRI Web Design agrees to allow final approval, by you, of the design prior to publishing.
- B. **Site Maintenance** – CRI Web Design agrees to perform maintenance, as agreed upon in section II, in a reasonable amount of time.
- C. **Changes in Services** – Any proposed changes to the services listed herein, will not be assigned without a written agreement between CRI Web Design and your company/organization.

IV. Obligations of Business/Organization

- A. **Content** - You agree to provide the content for your site updates.
 - i. You must provide any images, photographs, or graphics you would like included on your site. If you do not own any of the aforementioned items, they can be designed or obtained for you by CRI Web Design at additional costs.
 - ii. City of Picayune must provide any written text that you would like included in the body of the site.
- B. **Site Maintenance** - Any changes throughout the month should be submitted to CRI Web Design in a timely fashion.
- C. **Changes in Services** – Any proposed changes to the services listed herein, will not be assigned without a written agreement between CRI Web Design and your company/organization.

I, the undersigned, by affixing my signature hereto, attest that I have read and fully understand the terms expressed in this contract and agreement, and that by affixing my signature hereto, I agree to abide by said agreement to the best of my abilities.

City Representative: _____ Date: _____

Please Print Representative Name, Title : _____

CRI Representative: _____ Date: _____
Suzanne Shean, President

CRI Web Design
124 Peninsula Drive
Carriere, MS 39426
601-273-6014

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

NO ACTION TAKEN WITH BOND MONEY

COMPROMISE OF DISPUTED CLAIMS

Motion was made by Council Member Turnage, seconded by Council Member Watkins to adjust utility accounts in the name of Bernice Carter, Mark Gibson, and Berry Veterinary as recommended by City Manager and City Clerk.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

NO ACTION TAKEN CONCERNING CENTRAPLEX

NO ACTION TAKEN CONCERNING POSSIBLE SALE OF LAND

APPROVE CONTRACT WITH NSI

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve agreement for collection services with NSI and authorize Mayor to sign contract.



Agreement for Collection Services

THIS AGREEMENT, made and entered into on this ____ day of MARCH in the year 2009 between NETWORK SERVICES, INC, hereinafter called COLLECTOR, and the CITY OF PICAYUNE hereafter called CLIENT

WHEREAS, CLIENT desires from time to time during the term of this Agreement to submit to COLLECTOR for collection certain claims, accounts, or other evidences of indebtedness, and

WHEREAS, COLLECTOR desires to provide CLIENT with collection services with respect to claims

NOW THEREFORE, for and in consideration of the mutual covenants hereinafter set forth, it is mutually agreed by and between the parties hereto that all actions taken by CLIENT and COLLECTOR pursuant to this Agreement shall be in accordance with the following Terms and Conditions

TERMS AND CONDITIONS

1.0 All claims referred by CLIENT to COLLECTOR will be handled on a contingency fee basis with commission rates on all monies collected after claims are placed with COLLECTOR as follows:

COLLECTION FEES:

Table with 2 columns: Description of account type and Commission rate. Includes categories like 'Accounts \$50.00 and above & under 6 months old' with rates of 30%, 35%, 50%, and 45%.

If NSI pays court costs, commission fee will be 50%. No legal action will be taken without authorization of CLIENT.

1.1 Monies collected will be remitted to CLIENT monthly with reports reflecting a description of the collection activities.

1.2 CLIENT understands all payments received by CLIENT'S office, once processing has begun regardless of the source will be subject to the agreed upon commission fee. CLIENT also agrees to report payments received at their office at least once a week.

1.3 COLLECTOR agrees that all activities of service for CLIENT shall be carried out in compliance with all applicable federal, state, and local laws. COLLECTOR further agrees that all service activities shall be conducted peaceably and to only assign employees who are trained to the

Client Initials: _____

NETWORK SERVICES, INC

Collection Contract
Page 2

- extent necessary to insure that all collection activities undertaken are, and will be, in full compliance with all local, state, and federal law.
- 1.4 **CLIENT** hereby warrants that all claims forwarded to **COLLECTOR** will be valid and legally enforceable debts, and **CLIENT** has complied with all applicable federal, state, and local laws with respect thereto prior to the referral of said claims to **COLLECTOR**. Further, **CLIENT** agrees to provide when requested to do so by **COLLECTOR**, written verification of a claim.
- 1.5 Claims requiring legal action will be handled by **COLLECTOR** only with the prior authorization of **CLIENT**. Court costs will be reimbursed from the first monies collected on the suit.
- 1.6 Compromise settlements will not be made on accounts without prior approval of **CLIENT**.
- 1.7 **CLIENT** agrees to discontinue the mailing of monthly statements from their office to prevent debtor confusion. **CLIENT** further agrees to notify **COLLECTOR** immediately upon receipt of any and all correspondence from debtor such as bankruptcy notice, attorney letters, insurance rejections, or similar matters.
- 1.8 **CLIENT** reserves the right to withdraw any account that was sent to **COLLECTOR** after six (6) months from date of referral if no payments or arrangement for payments have been made. Prior to the six (6) month period, any account may be returned to **CLIENT** if approved by Collection Manager and will be subject to a processing fee of \$15 or regular commission fee, whichever is lower. Such approval shall not be unreasonably withheld.
- 1.9 **COLLECTOR** agrees to indemnify, defend and hold **CLIENT** harmless from any and all losses, damages, claims and/or causes of action for any kind or character arising out of or relating to any service or collection activity performed by or at the direction of **COLLECTOR**.
- 1.10 **COLLECTOR** agrees not to disclose any information furnished to it by **CLIENT** to any third party and agrees to require all of its employees not to disclose such information, with the exception for the debtors collection account to be placed on their credit file in the Equifax Credit Information System.
- 1.11 **COLLECTOR** agrees to provide insurance coverage for its collection activities contemplated by this Agreement and for the indemnity provisions provided for in paragraph 1.9. Such coverage shall include "contractual" coverage. This provision shall survive any termination of this Agreement.
- 1.12 **COLLECTOR** agrees to obtain all necessary licenses or other approval from any and all agencies, boards, officials, departments, or other government or regulatory bodies in any jurisdiction, which **COLLECTOR** engages in collection activities
- 1.13 Both parties have the right to cancel or terminate this contract after the initial six (6) month period, upon 30 days written notice, provided, however, that either party may terminate this Agreement immediately should the other party breach any of the terms of this Agreement.
- 1.14 It is understood and agreed that **COLLECTOR'S** services are made available and provided as an "independent contractor" only, and that **CLIENT** does not engage or appoint **COLLECTOR** as its employee in connection with such services.
- 1.15 By signing this agreement, **CLIENT** also consents to **COLLECTOR** communicating with **CLIENT** by fax, email, or any other form of delivery of written communications. **COLLECTOR** hereby consents to the same from **CLIENT**.

Client Initials: _____

NETWORK SERVICES, INC
Collection Contract
Page 3

1.16 This Agreement may not be assigned to any third party by COLLECTOR without CLIENT'S prior consent.

THIS AGREEMENT, Consists of 3 pages including the **TERMS AND CONDITIONS**, and constitutes the entire Agreement between the parties hereto and cannot be amended, modified or canceled in any respect except by an amendment in writing signed by both parties.

IN WITNESS WHEREOF, the parties have hereunto set their clearly authorized signatures this day and year shown below.

CITY OF PICAYUNE

NETWORK SERVICES, INC.

By: _____

By: _____

Printed Name: _____

Printed Name: KARAN R. MCGEE

TITLE: _____

TITLE: PRESIDENT

DATE: _____

DATE: _____

TELEPHONE: 601-799-5542

TELEPHONE: 1-800-544-0390, EXT 441

FAX: 601-799-5546

FAX: 601-583-5494

PHYSICAL ADDRESS:

815 Beach Street
Picayune, Mississippi 39466

PHYSICAL ADDRESS

810 Hardy Street
Hattiesburg, Mississippi 39403

MAILING ADDRESS

815 Beach Street
Picayune, Mississippi 39466

MAILING ADDRESS

Post Office Box 1725
Hattiesburg, Mississippi 39403

CONTACT PERSON: _____

OTHER IMPORTANT TELEPHONE NUMBERS:

MANAGEMENT: Extension 441 or 601-583-5441

OPERATIONS: Extension 445 or 601-583-5445

COLLECTION MGR: Extension 450 or 601-583-5450

MARKETING: Extension 444 or 601-583-5444

IT/COMPUTER: _____

Telephone extension: _____

EMAIL:

EMAILS:

MANAGEMENT: krm100@network-collections.com

ACCOUNT PROCESSING OR BILLING QUESTIONS:

operations@network-collections.com

CUSTOMER SERVICE:

marketing@network-collections.com

FOR REPORTS: _____

FOR QUESTIONS ABOUT ACCOUNTS:

THANK YOU FOR CHOOSING NSI!

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

CONTRACTUAL MATTER WITH AIRPORT

Motion was made by Council Member Watkins, seconded by Council Member Turnage to accept letter from Tyron Gill and credit his Site G payment toward existing parking apron account.

G4, LLC

148 Runway Road Suite F
Picayune, Mississippi 39466

Dear Mr. Greenwood:

This letter is in regards to our lease sites here at the airport. My interest in writing this letter to you is to inform you and the city of Picayune that I would no longer like to incorporate Site F with Site G. The money that I have paid for Site G, could be credited to the Site F additional parking.

It would be greatly appreciated if you and the city could approve this request.

Sincerely,



Tyron E. Gill
(601) 273-0215
Tyron@g9corp.com

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins, and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

MOTION TO ADJOURN

Motion was made by Council Member Guy seconded by Council Member Watkins to adjourn until Tuesday, March 24, 2009 at 5:30 pm.

The following roll call was made:

VOTING YEA: Mayor Mitchell, Council Members Turnage, Watkins and Guy

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Parker and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried.

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk

**STATE OF MISSISSIPPI
COUNTY OF PEARL RIVER
CITY OF PICAYUNE**

Be It Remembered that the Mayor and City Council of the City of Picayune, Pearl River County, Mississippi, met at City Hall, 815 North Beech Street, in said City, Tuesday, March 24, 2009, at 5:30 p.m. in special called session with the following officials present: Mayor Greg Mitchell, Council Members, Donald Parker, Larry Watkins, and Anna Turnage, Interim City Manager Harvey Miller. Council Members Leavern Guy and Jerry Bounds were absent.

It Being Determined a quorum was present, the following proceedings were held.

Opening prayer was given by Council Member Donald Parker, followed by the Pledge of Allegiance led by Mayor Greg Mitchell.

ORDER TO APPROVE MDOT ECONOMIC RECOVERY STIMULUS/STP PROJECTS

Motion was made by Council Member Watkins, seconded by Council Member Turnage to adopt the following Road Projects Fund Allocation and to approve the MDOT Economic Stimulus/STP Projects as presented.

City of Picayune

Road Projects Fund Allocation

Uncommitted STP Funds As of 3/25/09	\$419,289.00
STP Funds for Economic Recovery Project	129,555.00
Economic Recovery Funds	378,056.00
Bond Monies available	<u>352,800.00</u>
Total Available Funds	\$ 1,279,700.00

\$ 1,279,700.00 divided by 5 Precincts = \$ 255,940.00 per precinct

Each Councilman's precinct will receive credit for that portion of the Economic Recovery Project that is within their precinct – thereby reducing their precinct's portion of the funds for street projects.

As Adopted on March 24, 2009

CITY OF PICAYUNE
815 North Beech Street
Picayune, Mississippi 39466

Greg H. Mitchell, Mayor

March 10, 2009

Mr. David Seyfarth,

Herewith are potential projects for the Economic Recovery Package:

1.	Palestine Road & Crosby Street – 7152	\$172,000
2.	North Main Street – 7155	95,000
3.	Beech Street – 7153	<u>273,000</u>
	Total	\$540,000

Funding:

Economic Recovery	\$378,056
STP Funds 80/20	
MDOT (80%)	129,555
City (20%)	<u>32,389</u>
Total	\$540,000

Contact:

Barbara McGrew
601-798-9778 Phone
601-798-0564 FAX
piccomdex@bellsouth.net email

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell and Council Members Turnage, Parker, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried

ORDER TO APPROVE NEEL SCHAFFER FOR PRELIMINARY ENGINEERING FOR THE MDOT ECONOMIC RECOVERY STIMULUS/STP CONSTRUCTION PROJECTS

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve contract with Neel Schaffer for preliminary engineering for the MDOT Economic Recovery Stimulus/STP Construction Projects and authorize Mayor's signature.



engineers
planners
surveyors
environmental
scientists
landscape
architects

March 11, 2009

City of Picayune
Mayor Greg Mitchell
815 North Beech Street
Picayune, MS 39466

REFERENCE: MDOT SMALL URBAN ECONOMIC RECOVERY PROJECTS
PRELIMINARY ENGINEERING SERVICES

Dear Mayor Mitchell:

Neel-Schaffer is pleased to offer this Letter Agreement to provide preliminary engineering services pertaining to the Mississippi Department of Transportation (MDOT) Small Urban Economic Recovery Fund projects which MDOT has agreed to fund. It is our understanding that presently MDOT has committed to fund construction costs for the following projects from the Economic Recovery monies:

- Palestine Road and Crosby Street Milling, Overlay & Striping.
- North Main Street Milling, Overlay & Striping.
- Beech Street Milling, Overlaying, and Striping.
- Fifth Street & North Jackson Street Striping
- Goodyear Boulevard Striping
- South Blanks Striping
- Martin Luther King Boulevard Striping

Neel-Schaffer will provide these Design Phase Services which will include all engineering work necessary to prepare the necessary Plans, Specifications, and Estimate (PS&E) Package for the above listed projects and to gain approval from both MDOT and the Federal Highway Administration (FHWA) to advertise for bids. These services will be provided for a lump sum fee of \$45,900.00. We will provide our services in accordance with the attached Exhibit A, "General Terms and Conditions."

Neel-Schaffer will assist in the bidding process and these services will be considered complete once a low bidder has been identified and MDOT and FHWA have issued concurrence that the low bidder may be awarded the project, at which time MDOT will take over the construction engineering and inspection for these projects.

Neel-Schaffer appreciates the opportunity to work with you on this project. If this Letter Agreement is acceptable, please execute both documents and return one to us.

Sincerely,
NEEL-SCHAFFER, INC.

ACCEPTED: CITY OF PICAYUNE, MISSISSIPPI

Jeffery L. Lee, P.E.
Sr. Project Manager

Name: _____ Date: _____

(Faint mirrored text from reverse side of page)

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell and Council Members Turnage, Parker, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried

ORDER TO APPROVE PERFORMANCE CONTRACT AGREEMENT WITH SIEMENS BUILDING TECHNOLOGIES, INC

Motion was made by Council Member Watkins, seconded by Council Member Turnage to approve Performance Contract Agreement with Siemens Building Technologies, Inc and authorize Mayor's signature.

PERFORMANCE CONTRACTING AGREEMENT
between

and
Siemens Building Technologies, Inc.

TABLE OF ARTICLES

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

PERFORMANCE CONTRACTING AGREEMENT

Number: _____

**Article 1
AGREEMENT**

This **AGREEMENT**, is made this _____ day of _____, by and between Siemens Building Technologies, Inc., ("SIEMENS") and the party identified below as the **CLIENT**.

The CLIENT:

DESIGNATED REPRESENTATIVE:
PHONE: _____ **FAX:** _____

Siemens Building Technologies, Inc.
1000 Deerfield Parkway
Buffalo Grove, Illinois 60018

With offices at:

DESIGNATED REPRESENTATIVE:
PHONE: _____ **FAX:** _____

For services in connection with the following project:

Project

PERFORMANCE CONTRACTING AGREEMENT

Articles and Attachments

This Agreement shall consist of this document which includes the following thirteen articles and indicated Exhibits ("Contract Documents") which are acknowledged by the CLIENT and SIEMENS and incorporated herein by this reference:

Articles

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

Exhibits

- Exhibit A Scope of Work and Services
- Exhibit B Payment Schedule(s)
- Exhibit C Performance Assurance

This Agreement, when accepted in writing by an authorized representative of the CLIENT and by an authorized representative of SIEMENS, constitutes the entire, complete and exclusive agreement between the Parties. The above documents constitute the entire Agreement between the CLIENT and SIEMENS relative to the project scope as stated in Exhibit A and supersede all prior and contemporaneous negotiations, statements, representations, agreements, letters of intent, awards, or proposals, either written or oral relative to the same. This Agreement 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 to SIEMENS the Contract Sum in such manner as agreed in Exhibit B and in accordance with the payment terms and conditions established by the Contract Documents.

Agreed for

(Signature) by: _____

Print Name and Title: _____

Agreed for **Siemens Building Technologies, 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 of the Contract Documents comprising this Agreement, have the meanings stated herein, unless the context otherwise specifies or requires, or unless otherwise defined in the Contract Documents:

"Acceptance" means the CLIENT has signed the Certificate of Substantial Completion.

"Acceptance Date" means the date on which the CLIENT signs the Certificate of Substantial Completion.

"Accumulated Realized Savings" means the sum of the actual savings achieved from the Effective Contract Date of this Agreement through the end of the current Annual Period, derived from the sum of the Measured & Verified Savings plus the Stipulated Savings.

"Accumulated Guaranteed Savings" means the sum of the Guaranteed Measured & Verified Savings plus the Stipulated Savings from the Guarantee Date of the Agreement through the end of the current Annual Period.

"Annual Guaranteed Savings" are the Measured & Verified Savings and the Stipulated Savings that occur in any Annual Period of the Guarantee Term.

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

"Baseline" means a period of time or multiple periods of time that have occurred prior to project commencement, which has been agreed upon and is set forth in Exhibit C. The energy usage, operating practices, and facility and equipment in place during such time period represents the basis against which all future energy and operating usage will be compared in order to determine the Accumulated Realized Savings.

"BTU" a unit of thermal energy defined as a British Thermal Unit.

"Certificate of Substantial Completion" means documentation executed by the CLIENT agreeing that the Work, or a designated portion of the Work, is Substantially Complete in accordance with the Agreement and such Work is accepted by the CLIENT.

"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 Substantial Completion Date.

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

"Contracted Baseline" means the future annual period or multiple annual periods post-FIM implementation agreed upon and stated in Exhibit C that define the energy usage, operating practices, and facility and equipment in place post-FIM implementation and represents the basis on which the Guaranteed Savings are calculated.

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

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

"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.

PERFORMANCE CONTRACTING AGREEMENT

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

"Escalation Factor" means an annual escalation percentage to be applied to the previous year's Energy Savings, Operational Savings and Technical Support Program, beginning and occurring on dates outlined in Performance Assurance, Exhibit C.

"Facility" or "Facilities" means the building(s) or structure(s) where Work will be installed or implemented. It shall have the same meaning as the term "Site".

"Facility Improvement Measures" or "FIMs" means the methods, techniques, application of know-how, installation 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 Facilities, including without limitation the ECMs, OIMs, TIMs, USMs, WCMs, SCMs and any other, non-conservation-related activities, means or methods.

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

"Guaranteed Measured & Verified Savings" means the Measured & Verified Savings guaranteed to be achieved as described in the Performance Assurance, Exhibit C.

"Guaranteed Savings" means the amount of savings that this Agreement anticipates will be achieved at the Facilities defined in this Agreement, calculated as the aggregate of the Measured & Verified Savings and the Stipulated Savings amounts identified in the Performance Assurance, Exhibit C, but shall not exceed the aggregate of the Contract Sum, the Performance Assurance TSP Payments, and the CLIENT'S cost of financing the Work.

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

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

"Maintenance Services TSP" means the Services performed under a Technical Support Program as stated in the Scope of Work and Services, Exhibit A.

"Material Change" means an event causing a _____ % deviation in the Contracted Baseline

"Measured and Verified Savings" means those savings that can be measured and verified by the methodology as set forth in Performance Assurance, Exhibit C.

"Operational Improvement Measure" or "OIM" means the programs, practices, methodologies, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities, or as instituted by the CLIENT hereunder, for the purpose of improving the efficiency of operations activities, operational costs and/or operational results as described in the Scope of Work and Services Exhibit A.

"Parties" means the CLIENT and SIEMENS.

"Performance Assurance" is the process of ascertaining that the FIMs defined in Scope of Work and Services, Exhibit A are performing at the guaranteed values that are defined in Performance Assurance, Exhibit C.

"Performance Assurance TSP" means the Services performed to monitor and report the performance relative to the guarantees defined in Performance Assurance, Exhibit C.

"Performance Guarantee" means the result of the Performance Assurance process as set forth in Exhibit C hereof.

PERFORMANCE CONTRACTING AGREEMENT

"Performance Guarantee Period" means the entire period from the Guarantee Date of this Agreement until the termination or expiration of this Agreement as set forth herein.

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

"Realized Annual 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.

"Savings Excess" means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is zero or greater, the Guarantee Savings in Performance Assurance, Exhibit C, has been fulfilled.

"Savings Shortfall" means the Realized Annual Savings less the Annual Guaranteed Savings for the Annual Period. If the amount is less than zero the Guarantee Savings in Performance Assurance, Exhibit C, has not been fulfilled.

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

"Site" shall have the same meaning as Facilities.

"Stipulated Savings" are the savings that have been mutually agreed upon and are stipulated to by SIEMENS and the CLIENT prior to or upon implementation of the FIMs. The Stipulated Savings cannot be changed unless agreed upon by the Parties or as set forth herein. The Stipulated Savings for each Annual Period, with the corresponding Escalation Factor if applicable, are set forth in Performance Assurance, Exhibit C.

"Substantial Completion" or **"Substantially Complete"** means the first to occur of the following: (i) the Work, or 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, that the CLIENT will be able to realize from such Work substantially all of the practical benefits intended to be gained therefrom, or otherwise to employ the Work or the FIMs associated therewith for their intended purposes; or (ii) temporary, qualified or final certificates of occupancy, if required, have been issued with respect to such portions of the Work by the appropriate public authority.

"Technical Support Program" or **"TSP"** is a plan detailing the tasks, material, and responsibilities provided by SIEMENS to the CLIENT during a specified time period defined in the Scope of Work and Services, Exhibit A, and/or described in the Performance Assurance, Exhibit C.

"Term" is a stipulated period of time starting on the Effective Contract Date of this Agreement and ending at the termination or expiration of this Agreement as set forth herein.

"Technology Improvement Measure" or **"TIM"** means the application of new technology methods, devices, materials and/or software as installed or instituted by SIEMENS at the Facilities for the purpose of improving the efficiency of operations activities, operational costs and/or utility costs as described in the Scope of Work and Services, Exhibit A.

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

"Total Guaranteed Savings" are the amount of savings identified to be achievable based on calculations and adjustments as set forth in Performance Assurance, Exhibit C. Total Guaranteed Savings includes all savings that SIEMENS has guaranteed for each Annual Period of the Term and may also include Construction Period Savings if specified in Performance Assurance, Exhibit C.

"Utility Services Measure" or **"USM"** means the application of utility services methods and technology as described in the Scope of Work and Services, Exhibit A.

"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.

PERFORMANCE CONTRACTING AGREEMENT

"Water Conservation Measure" or "WCM" means the equipment, devices, materials, programs, practices, methodology and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of Facility's water consumption, as described in Scope of Work and Services, Exhibit A.

"Waste Conservation Measure" or "SCM" means the equipment, devices, materials, programs, practices, methodology and/or software as installed or coordinated by SIEMENS at the Facility for the purpose of improving the efficiency of operations, activities, operational costs and/or operations results, as described in Scope of Work and Services, Exhibit A.

Article 3

General

- 3.1 The CLIENT hereby engages and SIEMENS hereby accepts the engagement to perform and provide the Work and Services as set forth in Exhibit A hereof and in accordance with the terms and conditions of this Agreement.
- 3.2 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 venture, 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.
- 3.3 SIEMENS represents, warrants and covenants to the CLIENT that:
- (a) It has all requisite corporate power and 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 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 this 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 Service are to be performed.
- 3.4 The CLIENT represents, warrants and covenants to SIEMENS that:
- (a) It has all requisite corporate power and 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; and
 - (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.

Article 4

Performance Guarantee

- 4.1 SIEMENS guarantees that the Guaranteed Savings generated from the Guarantee Date to the last date of the Performance Guarantee Period will be no less than the Total Guaranteed Savings shown in Performance Assurance, Exhibit C. The measurement and verification calculation methodology for determining the Measured & Verified Savings is set forth in Performance Assurance, Exhibit C.
- 4.1.1 **General.** Except as otherwise provided, energy savings will be calculated for each month of each Annual Savings Period as the product of (a) "units of energy saved" (kWh, Therms, GJ, etc.) multiplied by (b) "cost of energy."

PERFORMANCE CONTRACTING AGREEMENT

- (a) Units of energy saved are computed by a software application which is specified in Exhibit C. 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 of Exhibit C. 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 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 applied to utility, energy or other costs which are to be applied are set forth in Exhibit C. SIEMENS and the CLIENT agree that the Baseline data which is set forth in Exhibit C is an 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 both the Annual Realized Savings and the Accumulated Realized Savings.
- 4.3 SIEMENS and the CLIENT agree that the Contracted Baseline defined in Exhibit C will represent the new operation 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 during the entire term of the Performance Guarantee Period.
- 4.4 The CLIENT agrees to notify SIEMENS prior to or within 30 days of any:
- Material Change to operating schedules, strategies, equipment and conditions in the Facility from those described in the Contracted Baseline data.
 - Any other Material Changes in or at the Facility that may increase or decrease energy usage, including without limitation: changes in operations, business conducted, occupancy, hours of operation, and energy consuming equipment and malfunctions, failures and related changes in energy consuming equipment; and
 - Any damage to, or destruction of, the FIM Work that may result in a Material Change.
- 4.5 SIEMENS agrees to respond and advise the CLIENT within 30 days of the receipt of a notice of a Material Change to SIEMENS will:
- Continue the Performance Assurance without adjustments;
 - Require an adjustment to the Performance Assurance as a result of the Material Change; or,
 - Where a commercially reasonable adjustment to the Performance Guarantee is unavailable, terminate the Performance Assurance and terminate the Performance Guarantee.
- 4.6 Failure of the CLIENT to notify SIEMENS of a Material Change shall void the Performance Guarantee and Performance Assurance where a commercially reasonable adjustment is unavailable and where a Savings Shortfall cannot be prevented.
- 4.7 Performance Guarantee Period savings reconciliation as identified in Section 4.1 will be performed at the end of each annual period as follows unless otherwise agreed:
- Within thirty (30) days of the Guarantee Date the Construction Savings shall be reconciled and added to the Accumulated Realized Savings;
 - At each annual reconciliation, the Realized Annual Savings shall be applied to the Accumulated Realized Savings.
 - Should the Accumulated Realized Savings be greater than the Accumulated Guaranteed Savings, a Savings Excess shall be recorded.
 - Should the Accumulated Realized Savings be less than the Accumulated Guaranteed Savings, a Savings Shortfall shall be recorded.
 - A Savings Shortfall shall be paid by SIEMENS within thirty (30) days following the CLIENT'S acceptance of reconciliation and the amount paid shall be then added to calculate the Accumulated Realized Savings.
 - If SIEMENS can correct a shortfall through an operational improvement at no material 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. The amount of such Savings Shortfall shall be added to calculate the Accumulated Realized Savings.
- 4.8 The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT enter into and maintain, during the entire term of the Performance Guarantee Period, the Performance Assurance TSP. If the CLIENT
-

PERFORMANCE CONTRACTING AGREEMENT

- fails to enter into, breaches, cancels or otherwise causes the termination of the Performance Assurance TSP the Performance Guarantee shall terminate immediately and be void and of no force or effect. The services to be provided under the Performance Assurance TSP are defined in Exhibit A.
- 4.9 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 SIEMENS for the aggregate of the Contract Sum, Performance Assurance TSP Payments; and, the CLIENT'S cost of financing the Work.
- 4.10 The Performance Assurance TSP is the technical service to be provided by SIEMENS to the CLIENT during the Performance Guarantee Period, commencing on the Guarantee Date. Performance Assurance TSP is defined in the Glossary and described more fully in Exhibit A.
- (a) The CLIENT represents that all existing equipment (equipment that is not installed by SIEMENS under this Agreement) deemed necessary to achieve the Performance Guarantee is in satisfactory working condition. Prior to the beginning of the Guarantee Period SIEMENS will have inspected all such existing equipment and reported any deficiencies to the CLIENT.
- (b) If the existing equipment or Equipment installed by SIEMENS 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.
- 4.11 SIEMENS will have no liability or obligation to continue providing Performance Assurance TSP Services or 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 prevent a Savings Shortfall;
- (b) Provide access to any Site where Work is to be performed as required by the Contract Documents;
- (c) Service and maintain all equipment involved with the FIMs defined in the Scope of Work and Services, Exhibit A, in accordance with the manufacturers' recommendations in order to prevent a Savings Shortfall; or,
- (d) Provide SIEMENS with accurate Facility operating information, including energy usage and cost, executed preventive maintenance and repair records, building or equipment additions, and occupancy levels during each Annual Period, as soon as such information becomes reasonably available to the CLIENT.
- 4.12 Should the CLIENT decide to discontinue the guarantee before the end of the contract period, 30 days notice will be given and the CLIENT will select one of the following:
- (a) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will re-invest the avoided cost in building improvements and services that improve the overall building(s) performance which are implemented by SIEMENS.
- (b) SIEMENS will cancel the Performance Assurance TSP and the CLIENT will pay to SIEMENS _____ % of the remaining value left in the TSP Annual Period.
- 4.13 Unless expressly contrary to law, any disputes concerning the calculation of the Realized Annual Savings, Accumulated Realized Savings, or changes to the Contracted Baseline under this Performance Guarantee, 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 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, 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 working hours, Monday through Friday inclusive, excluding holidays, unless otherwise agreed herein. The CLIENT shall make the Site available in order for Work to proceed in an efficient manner.

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- 5.3 SIEMENS is not required to conduct safety, reacceptance or other tests, install new devices or equipment or make modifications to any Equipment beyond the Scope set forth in this Agreement. Any CLIENT request to change the Scope or the nature of the Work must be in the form of a mutually agreed upon change order, effective only when executed by the Parties.
- 5.4 All Deliverables shall become the CLIENT'S property upon full payment to SIEMENS. SIEMENS may retain full copies of such Deliverables. All Instruments shall remain SIEMENS' property. 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. All Deliverables and Instruments provided to the CLIENT are for Permitted Users' use and only for the purposes disclosed to SIEMENS. The CLIENT shall not transfer any Deliverables or copies of Instruments to other parties 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 Site shall not relieve others of their responsibility to the CLIENT or to others.
- 5.6 SIEMENS warrants that:
- Unless otherwise agreed, all Equipment shall be new and of good quality. Until one year from the date that 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.
 - Labor for all Work, excluding TSP Services, is warranted to be free from defects in workmanship for one year after the Works are performed. TSP services are warranted to be free from defects in workmanship for ninety (90) days after the Services are performed.
- 5.7 Warranty Limitation:
- 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) subjected to unreasonable or improper use or storage, used beyond rated conditions, operated other than per SIEMENS' or the manufacturer's instructions, or otherwise subjected to improper maintenance, negligence or accident; (iii) damaged because of any use of the Equipment after the CLIENT has, or should have, 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.
 - 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, the issuance of a credit or refund for the original purchase price of such defective component or portion of the Equipment or Services.
 - 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

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DISCLAIMED. SIEMENS MAKES NO WARRANTY, EXPRESS OR IMPLIED, THAT ANY EQUIPMENT PROVIDED HEREUNDER WILL PREVENT ANY LOSS, OR WILL IN ALL CASES PROVIDE THE PROTECTION FOR WHICH IT IS INSTALLED OR INTENDED. 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.

- 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 otherwise specifically stated herein, or
 - (b) CLIENT, 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 FOR 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 with the Work and Services 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 Site 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 Site where the Work is to be performed as may be reasonably requested by SIEMENS;
 - (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, notify SIEMENS promptly of all known or suspected Hazardous Materials at the Site, of any contamination of the Site 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 Site where the Work is to be performed;
 - (j) Furnish to SIEMENS any contingency plans, safety programs and other policies, plans or programs related to any Site 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 and 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

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- 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;
- (l) Promptly notify SIEMENS of any unusual or materially changed operating conditions, hours of usage, system malfunctions, installed equipment or building alterations that may affect the Equipment or energy usage or 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 project Site. 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, the work of any other person or entity, or Site 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 Site. So as not to discourage SIEMENS from voluntarily addressing health or safety issues while at the Site, 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, conditions may change or circumstances outside SIEMENS' reasonable control (including changes of law) 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 conditions or circumstances 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 and 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 Unless otherwise agreed in writing, SIEMENS shall be compensated for any extra work requested by the CLIENT at SIEMENS' then prevailing rates and shall be reimbursed for costs and expenses (plus reasonable profit and overhead) reasonably incurred in its performance of the Work or Services. The Contract Sum provides for, and is in consideration

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of, only the Work and Services specifically included under the Scope of Work and Services, Exhibit A. All other work services, including but not limited to the following, shall be separately billed or surcharged on a time and material basis:

- (a) Emergency services performed at the CLIENT'S request, if inspection does not reveal any deficiency covered by the Scope of Work and Services, Exhibit A;
 - (b) Work and/or services performed at the CLIENT'S request at times other than during SIEMENS normal work hours; and
 - (c) Work and/or services performed on equipment not covered by the Scope of Work and Services, Exhibit A.
- 8.2 Unless otherwise agreed in writing, SIEMENS may invoice the CLIENT on a monthly or other progress-billing basis. 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 disagreement within 21 days of receipt of the invoice, and shall pay the portion not in dispute.
- 8.3 SIEMENS may suspend or terminate the Work or Services at any time if payment is not received when due and 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 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 attorneys' and witnesses' fees) incurred for collection under this Agreement.
- 8.5 Except to the extent expressly agreed in writing, SIEMENS' fees do not include any taxes, excises, fees, duties or other government charges related to the Work or Services, and the CLIENT shall pay such amounts or reimburse SIEMENS for any amounts it pays. If the CLIENT claims that 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.

Article 9

Acceptance

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 or Final Completion to the CLIENT. If the described portion of the Work as performed is Substantially Complete as defined herein, the CLIENT will accept that Work by signing the Certificate of Substantial or Final Completion and returning it to SIEMENS. If the Work is not Substantially Complete, then the CLIENT Representative shall notify SIEMENS within five (5) business days of any discrepancies and SIEMENS shall correct the Work to conform to the description of the Work set forth herein and resubmit the Certificate of Substantial or Final Completion to the CLIENT if SIEMENS agrees with the notice of discrepancies or, if SIEMENS disagrees with the notice, shall notify the CLIENT of its disagreement and such disagreement shall be resolved under the terms of this Agreement. If the CLIENT Representative does not deliver written notice to SIEMENS within five (5) business days of receiving the Certificate of Substantial or Final Completion, the CLIENT will be deemed to have agreed to, signed and returned the Certificate of Substantial or Final Completion. Any disputes concerning the completion or Substantial Completion of the Work will be resolved by submitting the issue to a third party professional engineering firm 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 hereto. 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:
- (a) Workers' Compensation at the statutory amounts and limits as prescribed by applicable law.

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- (b) Employer's Liability insurance (and, where applicable, Stop Gap extended protection endorsement) limits 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 maintain, at its own expense, property insurance written on a builder's "all-risk" or equivalent policy form in the amount of the initial Contract Sum, 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 with 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 coverage 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 a 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 Site, and a portion 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 Risk of loss of materials and Equipment furnished by SIEMENS shall pass to the CLIENT upon their delivery to the Site, and the CLIENT shall be responsible for protecting and insuring them against theft and damage. However, until SIEMENS is paid in full, SIEMENS shall retain title for security purposes only and the right to repossess materials and Equipment.
- 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
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shall be solely to the extent the Damages are caused by or arise directly from consultants' or agents' negligent acts or omissions or willful misconduct in connection of the Work. SIEMENS' obligations under this indemnity shall not extend to Damages attributable to the negligence of the CLIENT or its agents, contractors or employees. control the defense and settlement of any claim for which SIEMENS has an obligation UNLESS CONTRARY TO APPLICABLE LAW, IN NO EVENT SHALL THE CLIENT UNDER THIS INDEMNITY OR OTHERWISE UNDER THIS AGREEMENT INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF USE, OR LOST PROFITS, HOWEVER CAUSED, EVEN IF SIEMENS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND, IN ANY EVENT APPLICABLE LAW, SIEMENS' AGGREGATE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF THIS AGREEMENT, OR OUT OF ANY GOODS OR SERVICES UNDER THIS AGREEMENT, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, TRESPASS, INDEMNITY OR ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO \$1,500,000 OR THE TOTAL COMPENSATION RECEIVED BY SIEMENS FROM THIS AGREEMENT.

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 or components) intended for use in the Work, constitutes an infringement of any United States patent or copyright. SIEMENS will provide Notice and given authority, information, and assistance in a timely manner in any such proceeding. SIEMENS will pay the damages and costs awarded in any such proceeding. SIEMENS will not be responsible for any settlement of such suit or proceeding without the CLIENT's consent. In case the Work, or any part thereof, as a result of any suit or proceeding is enjoined, SIEMENS will, at its option, either: (i) procure for the CLIENT the right to continue using said Work; (ii) replace the Work with 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 defend or settle any suit or proceeding brought against the CLIENT if the Work is supplied according to the CLIENT'S design or instructions wherein compliance with the Work does not deviate from its normal course of performance; (ii) modified by the CLIENT or its contractors combined by the CLIENT or its contractors with items not furnished hereunder; (iii) an instruction, modification, or combination a suit is brought against the CLIENT. If the Work, design, instruction, modification or combination, a suit or proceeding is brought against the CLIENT expressly prohibited by law, the CLIENT shall protect SIEMENS in the same manner as if SIEMENS has agreed to protect the CLIENT under the provisions of Section 10.5(a).
- (c) THIS SECTION 10.5 IS AN EXCLUSIVE STATEMENT OF ALL THE DUTIES OF SIEMENS UNDER THE AGREEMENT WITH RESPECT TO PATENTS AND COPYRIGHTS, AND DIRECT OR CONTRIBUTORY PATENT OR COPYRIGHT INFRINGEMENT AND THE REMEDIES OF THE CLIENT RELATING TO ANY CLAIMS, SUITS, OR PROCEEDINGS UNDER PATENTS AND COPYRIGHTS. Compliance with Section 10.5 as provided herein shall constitute the entire liabilities of the Parties under the Agreement with respect to the intellectual property.

10.6 The parties acknowledge that the price for which SIEMENS has agreed to perform the Work under the Agreement was calculated based upon the foregoing allocations of risk, and that each party 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, removal, treatment, transportation, disposal, monitoring, abatement or remediation of any contamination at which Work is performed and any soil or groundwater at the Site by petroleum or petroleum products (collectively called "Oil"), asbestos, PCBs or hazardous, toxic, radioactive or infectious substances regulated under RCRA, CERCLA or any other federal, state or local environmental laws, rules, standards or ordinances (collectively called "Hazardous Materials"), including with-

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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. 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 OF PROFITS, 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.

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 an 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 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, 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. In addition, if by reason of said 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 the 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 upon 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 kind at which Work is performed and any soil or groundwater at the Site 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 sm

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detectors, ballasts, mercury bulb thermostats, used oil, contaminated filters, contaminated absorbents, a refrigerant. Except as expressly disclosed pursuant to Section 11.2, the CLIENT represents and warrants that there are no Hazardous Materials or Oil, present at the CLIENT'S locations 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 Site where SIEMENS is to perform Work or of contamination of the Site 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 present, potentially present or likely to become present at the Site and provided a copy of any Site 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 or not 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 Site 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 and 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.

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. 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 Unless contrary to applicable law and with the exception of disputes arising under Article 4, 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. Judgment may be entered upon the award in the highest state or federal court having jurisdiction over the matter. Where allowed by applicable law, the prevailing Party shall recover all costs, including attorney's fees, incurred as a result of the dispute.

PERFORMANCE CONTRACTING AGREEMENT

- 12.5 This Agreement and all provisions of this Agreement allocating responsibility or liability between the Parties shall survive the completion of the Work and the termination of this Agreement.
- 12.6 SIEMENS' performance of the Work is expressly conditioned on the CLIENT 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 to SIEMENS by the CLIENT relating to the Work, even if signed by SIEMENS, unless SIEMENS signs a written statement expressly indicating 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 in effect 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 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 Performance Assurance, Exhibit C.

Article 13**Maintenance Services Technical Support Program**

- 13.1 The scope of services provided by SIEMENS for the Maintenance Services Technical Support Program (MSTSP) is stated in Exhibit A.
- 13.2 The CLIENT represents that all equipment not installed by SIEMENS under this Agreement and subject to a MSTSP is in satisfactory working condition. SIEMENS will have inspected all such equipment within the first thirty (30) days of MSTSP 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 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 operating condition at the CLIENT'S sole expense. Any services provided by SIEMENS in the course of such restoration shall 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, unavailability 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 MSTSP and adjust the MSTSP 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 MSTSP and release SIEMENS from any further obligations with respect to the MSTSP.
- 13.6 If the MSTSP scope of Services defined in this Agreement provides for equipment maintenance, repairs and 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 cost improvement compared to the original. Exchanged components become the property of SIEMENS, except for Hazardous Materials, which under all circumstances remain the property and responsibility of the CLIENT.

PERFORMANCE CONTRACTING AGREEMENT

FOR SIEMENS' INTERNAL PURPOSES ONLY

(PLEASE REMOVE THIS PAGE FROM THE CONTRACT AS IT IS INSTRUCTIONAL ONLY)

The previous 17 pages represent the basic Terms and Conditions of the Performance Contract. This document is locked. Changes can only be accepted by Legal. If less than 10 modifications are required to address customer concerns a special Exhibit called "Addendum No. 1" should be created and referenced on Page 3. If more than 10 modifications are required then Legal may decide to add "Custom" to the footer indicating that this contract contains more than 10 changes from the standard version. Where an Addendum No. 1 is created, the Addendum should note the Article number and associated subsections that are being modified and then fully outline the changes or new text that is required. For example, as used in to modify the previous PCA where an incorrect reference existed in section 4.7:

1. Section 4.7 is modified as follows:

"Performance Guarantee Period savings reconciliation as identified in Section 4.4 4.1 will be performed at the end of each annual period...."

Please do not forget to fill in the blanks in the following areas:

1. The Agreement page requires information to be inserted indicating the date, contacts, etc.
2. Glossary, definition of Material Change. Please insert a percentage in an amount where you believe such percentage will adversely affect our performance under the guarantee.
3. 4.12 (b). Please include the amount of the percentage in this section that you have valued as the amount necessary to compensate us for the remainder of the Annual Period's TSP.
4. 12.9. Please insert the amount from Exhibit B Article 1.1.

To complete the Performance Contract it is necessary to also prepare and attach to these Terms and Conditions:

Exhibit A: Scope of Work and Services
Exhibit B: Payment Schedules
Exhibit C: Performance Assurance

These Exhibits are not locked. While a general template is outlined in each Exhibit it will be necessary for each project to have these Exhibits specifically modified to outline the details that are specifically applicable to the current project. Inapplicable items in the current general template can be removed. When removing an Article, the Article number should be left with "Reserved" as its text. This is necessary as the Terms and Conditions reference specific articles in the Exhibits. If an Article were totally eliminated the number sequencing would be changed making the references incorrect.

The Exhibits must clearly outline the complete contractual obligations between the parties.

To print the document without this last page, under page range/pages in the Print Menu type: 1-17 and click OK or discard this page as it is independently numbered and does not form part of the Terms and Conditions.

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 1: Scope of FIM Work

- 1.1 *Description:* Except as otherwise expressly provided herein, SIEMENS shall provide a turnkey solution for the Client's water metering system utilizing the Sensus Flexnet Advanced Metering Infrastructure (AMI) System. Within this simple architecture there are a few key components:
- Endpoints- Power Sources (meters)
 - Tower Gateway Base Stations (TGB)
 - Regional Network Interface (RNI) hardware and software

This turnkey solution includes:

- Download of billing account data from the billing system
- Installation of meter endpoints
- Programming of meter endpoints
- Installation of all boosters, repeaters, concentrators and system software
- Upload of all critical billing account data back into the billing system
- Commissioning/verification of the system.

SIEMENS will include added inventory of the dominant meter sizes for replacements and reactivations. The necessary auxiliary equipment such as curb stops, lids, nuts, boxes, bolts & gaskets will be provided as required. SIEMENS will also provide training and administrative support prior to project completion to ensure a functional system.

- 1.2 *Specific Elements:* The Work shall include the following:
 1.2.1 The following meter quantities will be installed during the implementation phase of this project:

Meter Size	Replace	Retrofit	Total
3/4"			
1"			
1.5"			
2"			
3" Turbine			
3" Compound			
4" Turbine			
4" Compound			
6" Turbine			
6" Compound			
8" Turbine			
8" Compound			
Total			

- 1.2.2 Necessary curb stops, lids, boxes, nuts, bolts, & gaskets, flange fasteners, etc.
 1.2.3 Installation of X, XXX Meters
 1.2.4 Installation of ****Insert Product Specifics Here****

Exhibit A - Scope of Work and Services

XXXXX Water Authority

- 1.3 *Technical Specifications:* The Work shall be performed in accordance with the following specifications, which are specifically incorporated herein and made part hereof:
 - 1.3.1 Sensus specifications as presented in Attachment C of the Proposal.
 - 1.3.2 Design documents, as required, are to be developed in accordance with applicable codes, standards, and State law. Detailed design development will occur during the design phase of the project.

- 1.4 CLIENT's Responsibility:
 - 1.4.1 Weekly progress and scheduling meetings
 - 1.4.2 Route scheduling, addresses and installed meter inventories
 - 1.4.3 Customer database of accounts
 - 1.4.4 Customer notification
 - 1.4.5 Space for contractor trailer, laydown area and equipment/material storage.
 - 1.4.6 Provide support for hard to find meter locations and system isolation assistance when needed
 - 1.4.7 Provide a designated representative to interface with Siemens on all issues related to the project
 - 1.4.8 As routes are completed, customer agrees to complete their inspections and sign offs according to the Siemens route acceptance and sign off procedures
 - 1.4.9 Ongoing replacement of meters with AMI compatible meter/registers
 - 1.4.10 Monthly number of water meter accounts throughout term
 - 1.4.11 Monthly records of billed water, billed cost, meter size, meter number and rate schedule of customers throughout term
 - 1.4.12 Annual listing of meters randomized for meter testing
 - 1.4.13 Monthly purchased/pumped, sold and/or distributed water volumes from the water plant records throughout term

Article 2: FIM Work Implementation Period

- 2.1 Commencement of Work:
 - 2.1.1 SIEMENS shall commence the Work within XX calendar days from the Effective Contract Date, and shall perform the Work diligently and shall complete the Work no later than 365 calendar days from the day of commencement.

- 2.2 *Milestones:* Specific scheduling milestones and coordination requirements are as follows:

- 2.3
 - Contract Signed - 13 November 2007
 - Notice to Proceed - 01 December 2007
 - Account Database to SIEMENS - 01 December 2007
 - Initial Meter Order - 15 December 2007
 - Schedule for first 50% of meters to City - 15 January 2008
 - 10% Complete - 01 February 2008
 - 40% complete - 01 March 2008
 - 80% complete - 01 April 2008
 - 95% complete - 01 May 2008
 - 100% complete - 30 May 2008

Weekly progress and scheduling meetings will be held to update the city staff

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 3: Scope of Performance Assurance Technical Support Program

- 3.1 Perform the testing and analysis as described in the M&V Plan of Exhibit C
- 3.2 One Annual M&V report each year
- 3.3 One Annual review of M&V report with CLIENT's staff
- 3.4 One Annual update presentation to CLIENT's City Council

Exhibit A - Scope of Work and Services
XXXXX Water Authority

Article 4: Scope of Maintenance Services Technical Support Program

- 4.1 Perform the pulling, replacement, testing and analysis as described in the M&V Plan of Exhibit C
- 4.2 Automated Meter Read software maintenance and updates as available
- 4.3 Return of tested meters (rebuilt as required) to CLIENT's inventory

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

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

SIEMENS:

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

Exhibit B – Payment Schedules
XXXXX Water Authority

Article 1: Payment for Scope of FIM Work

- 1.1 **Price:** As full consideration of the Work as described in Exhibit A, Article 1: Scope of FIM Work, the CLIENT shall pay to SIEMENS the Contract Sum of \$ XXXXXXX (plus applicable taxes).
- 1.2 **Escrow:** The CLIENT has agreed to deposit the Contract Sum in an Escrow Account at a financial institution satisfactory to both the CLIENT and SIEMENS. All interest income and 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 following Payment Schedule in Table 2.1 below. The CLIENT shall be responsible for submitting the necessary documentation to the Escrow Agent for timely withdraws 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 30 days from the execution of this Agreement, this Agreement shall be null and void. This 30 day funding period may be extended as mutually agreed upon in writing by both parties. In the event that the Agreement becomes null and void as described in this paragraph and CLIENT has authorized SIEMENS to proceed with Work, CLIENT shall be obligated to reimburse SIEMENS: (i) for the Work performed to date; or (ii) as specified in CLIENT's authorization to proceed with Work.
- 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 Agreement, Article 8.

Table B.1 – FIM Work Payment Schedule

Project Phase	Payments (\$)	Payments (%)	Schedule
Month 1 - DEA cost			
Month 2 – Equipment			
Month 3 - Equipment/Installation			
Month 4 – Installation			
Month 5 - Installation completion			
Month 6 - Punchlist/Retainage			
PROJECT TOTAL:			

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

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

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

Exhibit B – Payment Schedules
XXXXX Water Authority

Article 2: Payment for Performance Assurance Technical Support Program (PATSP)

- 2.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 3, the CLIENT shall pay to SIEMENS the Annual Contract Sum as stated in Table B.2 below (plus applicable taxes).
- 2.2 **Performance Assurance Services Term:** The Term of the PATSP shall be 12 months and shall commence on Effective Guarantee Date.
- 2.3 **Automatic Renewal:** The PATSP shall automatically renew for successive Annual Periods beginning on the anniversary date of Effective Guarantee Date. Either party may amend the PATSP 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. Each renewal shall be and remain subject to the terms and conditions of this Agreement. The Performance Guarantee is dependent upon and is subject to the express condition that the CLIENT enters into and maintains PATSP, during the entire term of the Performance Guarantee Period.
- 2.4 **Termination:** See Article 4.8 of the Agreement.

Table B.2 – Performance Assurance Technical Support Program Payment Schedule

Date	Annual Payments (\$)	Notes

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

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

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

Exhibit B – Payment Schedules
XXXXX Water Authority

Article 3: Payment for Maintenance Services Technical Support Program

- 3.1 **Price:** As full consideration of the Services as described in Exhibit A, Article 4: Scope of Maintenance Services, the CLIENT shall pay to SIEMENS the Annual Contract Sum as shown in Table B.3 below (plus applicable taxes).
- 3.2 **Maintenance Services Term:** The initial or first Term of the Services shall commence on Month, Day, Year and shall have duration of 12 months. Each consecutive Term shall be an Annual Period of 12 months.
- 3.3 **Automatic Renewal:** The Maintenance Services Term shall automatically renew for successive Annual Periods beginning on the ending anniversary date of the initial or first Term as set forth in Article 2.2 above, and each Annual Period thereafter. Either party may terminate or amend the Maintenance Services Technical Support Program at the end of the initial term or at the end of a renewal term by giving the other party at least 60 (sixty) 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 Technical Support Program Payment Schedule

Date	Annual Payments (\$)	Notes

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

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

SIEMENS:

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

Exhibit C – Performance Assurance
XXXX Water Authority

Article 1: Summary of Articles and Total Guaranteed Savings

The following Articles and Table are attached and made part of this Exhibit C:

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

Table 1.1

Year	Billable Usage Increase (kgal)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	

1.1 The Total System Benefits as reflected in Table 1.2 represent the predicted billable usage increase that can be extracted from the unbilled water that the new meters will track as is detailed in Table 1.1 when the unbilled water is converted to a dollar figure based on the formulas herein. The table is provided to show the total system benefits on an annual basis for the term of the Agreement, which is 15 years. Nothing herein should be construed as to guarantee the actual billable usage increase dollars as derived from the tracking of the previously unbilled water usage. Variables such as decreases in water rates or reduction in overall consumption by the residents of the City, or weather conditions may adversely affect the billable usage increase dollars that are realized by the CLIENT despite having realized the level of water metering as guaranteed by SIEMENS. **SIEMENS GUARANTEES THE PREVIOUSLY UNBILLED WATER WILL BE METERED. SIEMENS DOES NOT GUARANTEE THAT THE PREVIOUSLY UNBILLED WATER WILL ACTUALLY EQUATE TO THE DOLLAR SET FORTH IN TABLE 1.2 AS SIEMENS CANNOT PREDICT OR CONTROL WATER RATES.**

Exhibit C – Performance Assurance
XXXX Water Authority

Table 1.2

Year	Billable Usage Increase (\$)	Operational Savings (\$)	Total System Benefits (\$)
Construction			
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
Total			

This Exhibit is attached to and made a part of the Agreement between SIEMENS and the CLIENT.

CLIENT:

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

SIEMENS:

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

Exhibit C – Performance Assurance
XXXX Water Authority

Article 2: Guaranteed Savings Types

- 2.1 Guarantee Types. There are four guarantee options to measure and verify savings or system benefits: Option A - Measured Capacity, Option B - Measured Consumption, Option C - Main Meter Comparison, and Option D - Stipulated.
- (a) Option A - Measured Capacity. This approach is intended for Facility Improvement Measures where a one-time measurement for specific equipment or systems instantaneous baseline energy use, and a one-time measurement for specific equipment or systems instantaneous post-implementation (Post) energy use can be measured. Baseline and Post energy consumption is calculated by multiplying the measured end use instantaneous capacity (i.e. – kW, Gal/hr, BTU/hr) by stipulated hours of operation for each mode of operation (i.e. – hours, week, month). The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C. The work sequence required for data collection, evaluation, and reporting will be defined in the Measurement and Verification article of this Exhibit A.
 - (b) Option B - Measured Consumption. This approach is intended for Facility Improvement Measures where continuous periodic measurements for specific equipment or systems baseline energy use, and continuous periodic measurements for that equipment or systems post-implementation (Post) energy use can be measured. The calculations for energy consumption will be defined in the Measurement and Verification article of this Exhibit C. Periodic inspections and consumption measurements of the equipment or systems will be necessary to verify the on-going efficient operation of the equipment and saving attainment. The predetermined schedule for data collection, evaluation, and reporting will be defined in the Performance Assurance Technical Support Program article of this Exhibit A.
 - (c) Option C - Main Meter Comparison. This approach is intended for measurements of the whole-facility or specific meter baseline energy use, and measurements of whole-facility or specific meter post-implementation (Post) energy use can be measured. The methodology to establish baseline and Post parameter identification, modeling approach and baseline or model adjustments will be defined in the Measurement and Verification article of this Exhibit C. Periodic inspections of baseline energy usage, operating practices, and facility and equipment, and meter measurements of the will be necessary to verify the on-going efficient operation of the equipment, systems, practices and facility, and saving attainment. The predetermined schedule for data collection, evaluation, and reporting will be defined in the Performance Assurance Technical Support Program article of this Exhibit A.

Exhibit C – Performance Assurance
XXXX Water Authority

(d) Option D - Stipulated. This approach is intended for Facility Improvement Measures where the end use capacity or operational efficiency; demand, energy consumption or power level; or manufacturer's measurements, industry standard efficiencies or operating hours are known in advance, and used in a calculation or analysis method that will stipulate the outcome. Both CLIENT and SIEMENS agree to the stipulated inputs and outcome(s) of the analysis methodology. Based on the established analytical methodology the savings stipulated will be achieved upon completion of the Facility Improvement Measures Work and that no further measurements or calculations will need to be performed. The methodology and calculations to establish savings value will be defined in the Measurement and Verification article of this Exhibit C.

2.2 Calculations related to the billable usage increase dollars and kgals are presented in the calculation section 4.2.

Table 2.2 - Source of Billable Usage Increases

*Year 1 Billable Usage Increase – refer to section 4.2 for details

2.3 Table 2.3 identifies the source of Operational Savings defined by the CLIENT. These savings shall not be measured or monitored during the guarantee term. Neither the CLIENT nor SIEMENS will have any right to object to use of such amounts as the Stipulated Savings in the calculation of Annual Realized Savings.

Table 2.3 - Source of Operational Savings

*Year 1 Billable Usage Increase – refer to section 4.2 for details

Exhibit C – Performance Assurance
XXXX Water Authority

Article 3: Guarantee Term Responsibilities of the CLIENT.

This Article details the individual agreed to responsibilities of SIEMENS and the CLIENT, in connection with the management and administration of the Performance Guarantee.

- 3.1 The CLIENT will provide a representative 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, as soon as such information becomes available to the CLIENT.
 - (a) Annually provide monthly number of water meter accounts
 - (b) Annually provide monthly database records of billing information including but not limited to metering dates, billing date, billed water, billed cost, meter size, meter number and address within local, state and federal privacy limitations. This information shall only be used for the sole purposes of this contract.
 - (c) Annually provide copies of all water and sewer rate schedules used for billing during the previous 12 month period if changed from the previous year.
 - (d) Annually provide monthly purchased, pumped, and/or distributed water volumes from the water plant records
- 3.3 CLIENT will provide SIEMENS with copies of utility bills within 30 days of receipt by CLIENT or provide access to utility vendor information.
 - (a) Number of water meter accounts by size
 - (b) Summary billing information on the amount of water sold by meter size
 - (c) Water volume purchased, pumped and distributed from the water plant records
- 3.4 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 CLIENT will provide and coordinate utility meter upgrades for interface with SIEMENS metering and data collection for all repair, replacement, reactivation and new accounts. All charges related for these upgrades are the responsibility of the CLIENT beyond the inventory provided by SIEMENS within the annual service program.
- 3.6 CLIENT will annually facilitate and coordinate utility meter testing including providing a listing of all meters installed in the system, providing access, notification and scheduling of meter replacements as deemed necessary by the CLIENT.

Exhibit C – Performance Assurance
XXXX Water Authority

Article 4: Baseline Development

- 4.1 The following data of this article outlines the operating characteristics that are required to be implemented under the FIM Work. This specific configuration of operating practices is the Contracted Baseline.
- 4.2 Parameters to be maintained during the Performance Guarantee Period are:
- (a) Water quality at or above average quality over the most recent 12 month period;
 - (b) Source of water supply at or above average quality water over the most recent 12 month period from previous source of water supply used;
 - (c) Water distribution integrity at or above Baseline maintenance levels; and,
 - (d) Meter/AMR system compatibility with the new system.
- 4.3 The meter performance baseline used for ongoing comparison of future meter test results is as follows:
- (a) Baseline year (full 12 months) – Month Year to Month Year
 - (b) Specific meter accounts included in the baseline are attached in Attachment 1.
 - (c) The baseline meter testing data are included as Attachment 2.
 - (d) Details of annual water consumed for a consecutive 12 month period of each tested meter account, and a grand total of water consumed by these accounts is included in Attachment 3. Additionally included is a tally of the total number of meter accounts by meter size in the baseline survey list. These baseline accounts remain fixed throughout the guarantee period and are the basis for comparison throughout the entire guarantee period.
 - (e) The water district's water and sewer billing rate schedules in force at the beginning of the SBT installation period are used for project development revenue calculations and are documented in Attachment 4 (Ordinance 51.030 through 51.035). This will be the basis used for any financial calculations henceforth, not a water billing rate schedule from any other year.
 - (f) Total population (people) in the water service area at the beginning of this guarantee period is between XX, XXXX based on census estimates for July 2007 as stated on City-Data.com.
- 4.4 The baseline 12 month year is chosen using the most recent 12 months of continuous data available for each account through the existing utility billing system.
- 4.5 Baseline number of meters and sizes is documented as part of the baseline. This is to assure that variances in installed meter counts and associated meter sizes are not inconsistent with the baseline. SIEMENS does not assume responsibility for loss of water consumption within the water district due to declines in installed capability to supply water.
- 4.6 Baseline period population (people) is documented as part of the baseline. This is to assure that variances in population increases or declines are not considered

Exhibit C – Performance Assurance
XXXX Water Authority

in the baseline. SIEMENS does not assume responsibility for loss of water consumption within the water district due to population declines.

- 4.7 Meter testing was performed on a representative sampling of meters to provide the pre-measurement system average level of accuracy for all meters. The meters were tested to AWWA standards and the sampling approach provides a high confidence level that the meters are indeed inefficient with compared to new meter accuracies.

The CLIENT provided a complete account download of historical data for each metered account including monthly consumption, meter size, meter installation data, meter serial number, billed charges, account number, account ID, etc. Using this information and a database of manufacturers' data the following charts were generated for the current meter population to determine the percentage of size and age ranges across the entire meter population.

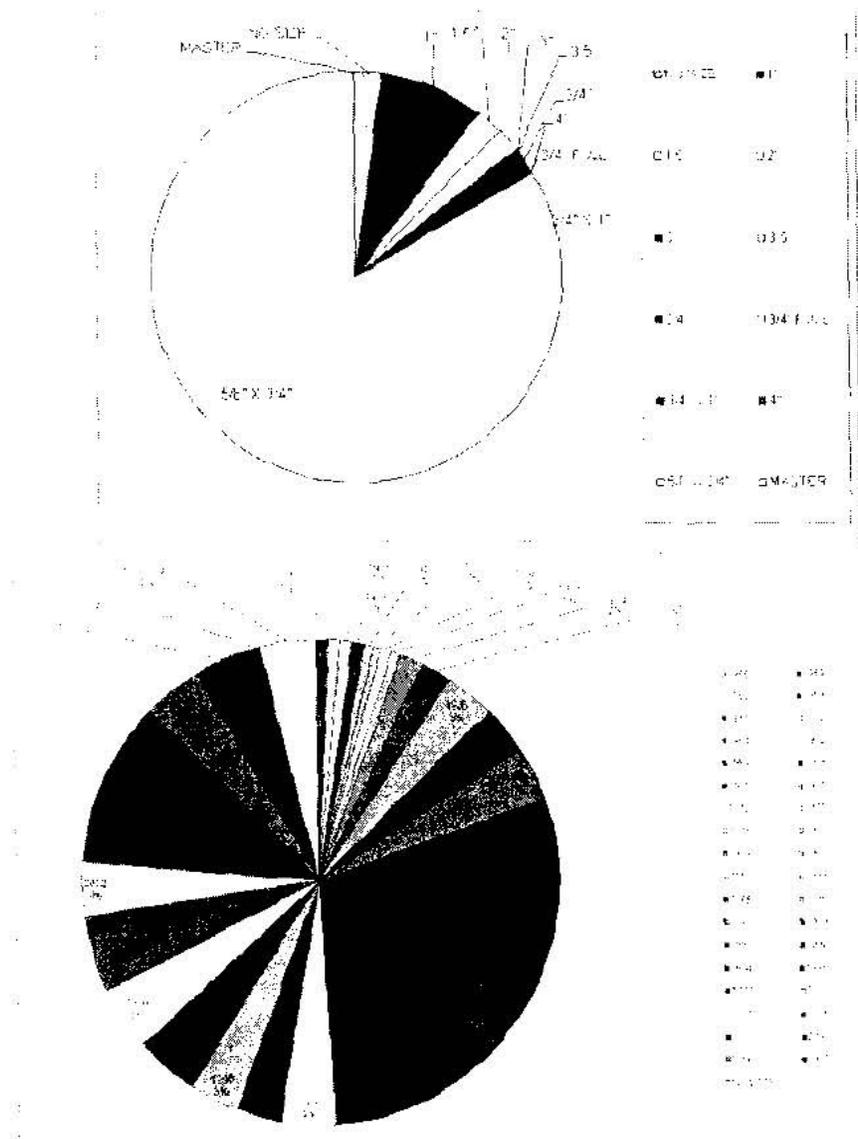


Exhibit C – Performance Assurance
XXXX Water Authority

Based on AWWA guidelines for meter sampling and testing a random sample of the meters were selected, removed from service, delivered to a third-party testing facility with the results presented in Attachment 2. The accuracy tests are to be based on AWWA standards for testing residential water meters per AWWA Manual M6. For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter efficiency by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follow:

$$\begin{aligned} & (15\% \times \text{Measured Efficiency @ High flow}) \\ & + (70\% \times \text{Measured Efficiency @ Medium flow}) \\ & + (15\% \times \text{Measured Efficiency @ Low flow}) \\ & \text{Average Weighted Efficiency of the Meter*} \end{aligned}$$

(*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, "Meter Testing")

- 4.8 The calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee.

Billable Usage Increases or unbilled water usage is calculated as follows:

$$\text{Unbilled Water} = \text{Water Sold} \times (1 - \text{Baseline Accuracy/Post-Installation Accuracy})$$

The new meter accuracy is guaranteed for the first five years of operation with average water flows by the meter manufacturer. After year five it is assumed that the meter efficiency will de-rate for the remainder of its service life. This is the same for the existing meters and the new meters to be installed as part of this project. The following tables show the estimated efficiencies of the meters throughout the term of this project.

Table 4.8a Existing Meter Accuracy over Project Term

Exhibit C – Performance Assurance
XXXX Water Authority

Table 4.8b Proposed Meter Accuracy over Project Term

Exhibit C – Performance Assurance
XXXX Water Authority

5 Article 5: Baseline Data

- 5.1 The annual period(s) selected as the Baseline period starts on Month Year and ends on Month Year. Table 5.1 outlines the utility consumption that occurred during this Baseline period. This Baseline consumption will be used as the reference that future years utility usage in order to determine the Guaranteed Savings. Note that the Sewer is based on Water metering, and therefore is not shown as a distinct measurement.

As mentioned in section 4.8, the calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. The following table shows the results of the baseline analysis and shows the amount of recaptured water for the system associated with the given meter sizes and classifications.

Table 5.1 Baseline Consumption

- This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee.
- 5.2 The operating practices during the Baseline period determine the utility consumption shown in Table 5.1. The following data of this article outline 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 FIM Work and implementing specific configuration of operating practices defined as the Contracted Baseline in Article 4 of this Exhibit C.
- 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

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maintain the current level of facility compliance relative to applicable codes unless specifically outlined to the contrary below.

5.4 The following attachments are included in the contracted baseline:

- Attachment 1: Meter Account List
- Attachment 2: Baseline Meter Testing Data
- Attachment 3: Baseline Consumption Data by Meter Size
- Attachment 4: City Ordinance

Article 6: Utility Rate Structures and Escalation Rates

6.1 The Total System Benefits as reflected in Table 1.2 represent the predicted billable usage increase that can be extracted from the unbilled water that the new meters will track as is detailed in Table 1.1 when the unbilled water is converted to a dollar figure based on the formulas herein. The table is provided to show the total system benefits on an annual basis for the term of the Agreement, which is 15 years. Nothing herein should be construed as to guarantee the actual billable usage increase dollars as derived from the tracking of the previously unbilled water usage. Variables such as decreases in water rates or reduction in overall consumption by the residents of the City, or weather conditions may adversely affect the billable usage increase dollars that are realized by the CLIENT despite having realized the level of water metering as guaranteed by SIEMENS. SIEMENS GUARANTEES THE PREVIOUSLY UNBILLED WATER WILL BE METERED. SIEMENS DOES NOT GUARANTEE THAT THE PREVIOUSLY UNBILLED WATER WILL ACTUALLY EQUATE TO THE DOLLAR SET FORTH IN TABLE 1.2 AS SIEMENS CANNOT PREDICT OR CONTROL WATER RATES.

However, in order to predict the billable usage increase in dollars the City was consulted to determine the mutually agreed upon annual rate increase to be used in these calculations. These numbers are based on the historical increases imposed by the City as well as the planned future increases. Based on information provided by City staff, a rate study performed in Month Year called for a ___ increase in Month Year and then ___ for Year through Year. However, only ___ was incorporated in Year. In order to track the historical increases for the City, we have incorporated a ___ annual increase for the term of the project. Using the baseline rate structure included in Attachment 4, the following table was generated showing the rate structures used in the calculations for the project term.

Table 4.10 Rate Structure Increases over Project Term

In year 1 of the project term the ___ increase is claimed for the complete metered consumption by the baseline meters. For years ___ through ___ the ___ increase was applied to the billable usage increase in order to allow the City to capture and excess savings for other infrastructure improvements needed.

Article 7: Contracted Baseline Data

The following information outlines are applicable for this contract:

- 7.1 Measurement and Verification (M&V) methods provided under this Article –
Overview
- 7.2 Option A - Measured Capacity
- 7.3 Option B - Measured Consumption
- 7.4 Option C - Main Meter Comparison
- 7.5 Option D - Stipulated

7.1 Measurement and Verification (M&V) methods - General Overview

- (a) The purpose of the Measurement and Verification (M&V) article is to identify the methods, measurements, procedures and tools that will be used to verify the savings for each FIM. Savings were 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 4.
- (b) The actual guaranteed savings and system benefits associated with this contract are outlined in this Exhibit C, Article 1 - Table 1.1 and Article 2 – Table 2.1 of this contract.
- (c) The M&V option for this FIM is Option A, Measured Capacity

7.2 Option A - Measured Capacity

The underlying premise of our guarantee and of our M&V process is that we expect a new, positive displacement, residential water meter to mechanically wear in response to two primary factors: the amount of cumulative water and age. The meters with greater amounts of cumulative water measured at any given time are likely to be less accurate than meters with lower accumulated reading meters due to increased wear accompanying the increased amount of measured water. Secondly, age is also a contributing factor in meter accuracy. In the M&V phase, the bulk of the meters will be the same age. Thus targeting high cumulative flow meters is justified in addition to a sampling approach for the total population of meters.

Meter testing will be performed on a sampling of meters annually to provide assurance that the meters are maintaining the desired level of accuracy. Refer to the guaranteed accuracy tables, Table 4.8a and Table 4.8b. The meter information will be tested to AWWA standards and the sampling approach provides a high confidence level that the meters are maintaining the desired accuracies.

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Annually, throughout the term of the contract, the CLIENT will provide a randomized composite listing of current meters in electronic format. SIEMENS will pull, replace and test these meters both randomly for accuracy and randomly within a target group of high cumulative flow meters. If the average of the meters tested within any year is above the guaranteed accuracy, the meter accuracy will be deemed acceptable for the year.

The accuracy tests are to be based on AWWA standards for testing residential water meters per AWWA Manual M6. The formulation for that testing is as follows:

For a true test of a water meter at all flow rates, AWWA standards recommend first testing low, medium, and high flow rates and then calculating the aggregate meter efficiency by weighted formula. The three test points (High, Med, and Low flow) are weighted 15%, 70%, and 15%. The formula for meter accuracy is as follows:

$$\begin{aligned} & (15\% \times \text{Measured Efficiency @ High flow}) \\ & + (70\% \times \text{Measured Efficiency @ Medium flow}) \\ & + (15\% \times \text{Measured Efficiency @ Low flow}) \\ & \text{Average Weighted Efficiency of the Meter*} \end{aligned}$$

(*reference: AWWA Meter Manual M6, Fourth Edition; pg 60, "Meter Testing")

The tested meters will be subsequently returned to the water authority for use as future maintenance replacements, reactivations or for new customer accounts if the tested condition is within acceptable meter performance parameters as determined by SIEMENS. Otherwise the tested meters will be returned to the manufacturer for repair under warranty and then returned to the CLIENT's inventory.

The targeted meters are chosen based on a sort of the meter's cumulative water (water measured over its lifetime). All of the meters within 10% of their warranty cumulative flow as shown in specification and warranty documents provided with this contract will be identified and a sample of these meters will be tested in addition to the random sample as identified in the table below up to a confidence and precision target of 80%/20%. The sampling guidelines of Table 7.2a will be used to select the appropriate number of meters to be tested.

The sample size for the random testing is selected to correspond to an 80% confidence level and a 20% precision level as a starting point. The specific selection of these meters is performed by a random number generator that arbitrarily selects accounts from the baseline meter account list.

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Table 7.2a Sampling Guidelines	
Confidence	80%
Precision	20%
Population	Number of Samples
1	1
2	2
3	3
4	3
5-6	4
7-9	5
10-13	6
14-19	7
20-29	8
30-49	9
50-110	10
>110	11

The total count of meters to be tested is the algebraic sum of the targeted sample and the random sample.

As mentioned previously, the calculation of total additional water billed resulting from the meter retrofit project will be based on a comparison between the average efficiency of the old meter population (those meters in the baseline) and the tested efficiency of the new meters. The increase in efficiency (differential meter efficiency) is multiplied by the baseline annual cumulative water for the system or meter size grouping, as applicable. The result is the amount of recaptured water for the system or that meter group. This process is repeated for each meter group in the baseline listing, if applicable. The sum of these amounts of reclaimed water is the total amount of unbilled water under the guarantee. This calculated amount of reclaimed water is compared to the amount of reclaimed water guaranteed. If the calculated amount is higher than the guarantee, then the guarantee is deemed acceptable for that year.

In the event that the average tested meter accuracy is below the guaranteed accuracy, the sample size will be incrementally increased at the discretion of SIEMENS until the meter accuracies average above the guaranteed accuracy. At any point during the testing process, SIEMENS determines that the sampling will not prove the guaranteed accuracy; SIEMENS may discontinue the testing and implement register replacements on all remaining meters or accept the financial responsibility as calculated on the annual reconciliation of the M&V report. The revenue calculation is based upon the dollar rate schedule contained in the baseline data listed above.

Any sewerage revenue associated with the reclaimed water calculated will be included in any revenue reconciliation and are considered part of the savings guarantee. This approach ensures the water authority that the projected performance projected will be maintained throughout the term of the contract.

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Annually SIEMENS will present these M&V results to the water authority staff, and then jointly present the results to the board or council.

Population, installed meters and the interaction of the two are the key indicators that the capability of the water system to sell water is maintained.

$$\text{Population} = \text{XX, XXX}$$

If the population increases, it is reasonable to assume that the water consumption may increase. Alternately, if the population decreases, it is reasonable to assume the district water consumption may decrease at no fault of SIEMENS.

$$\text{Installed meters} = \text{X, XXX}$$

If the number of installed meters increases, it is reasonable to assume that the water consumption may increase. Alternately, if the population decreases, it is reasonable to assume the district water consumption may decrease at no fault of SIEMENS.

The amount of annual rainfall can affect the overall consumption by the residents, by changing the amount of irrigation required to keep their lawns healthy. For the baseline period the amount of precipitation was:

$$\text{Annual Precipitation} = \text{X, XXX}$$

The average rainfall for this location is approximately XXXX inches, based on data provided by the National Oceanic and Atmospheric Administration (NOAA). If the rainfall increases, there should be less usage for irrigation; conversely if it is a particularly dry year, there should be an increase in irrigation to compensate at no fault of SIEMENS.

The population and the number of installed meters are key indicators of the capability of the system to provide water. However, if one drops and the other increases, a method to evaluate whether the system's capability has increased or decreased may be required. SIEMENS will use the following table to evaluate whether the system has effectively increased or decreased.

The basis of the calculation is that meter size is an indication of flow area. If the flow area is greater, then it is reasonable to assume that more flow can be provided than through smaller meters.

Table 7.2b Post-Installation to Base year Meter Size Calculation Example						
Meter Size	Base year # of Meters	Base year Calculation	Base year size ² x # of meters	Post-Installation Year # of meters	Post-Installation Calculation	Post-Installation size ² x # of meters
0.75	8,445	$3/4^2 \times 8,445 =$	4,750.31	AAA	$(5/8)^2 \times \text{AAA}$	0.39 x AAA
1.00	1,001	$1^2 \times 1,001 =$	1,001.00	BBB	$1^2 \times \text{BBB}$	1 x BBB
1.50	199	$1.5^2 \times 199 =$	447.75	CCC	$(1.5)^2 \times \text{CCC}$	2.25 x CCC
2.00	244	$2^2 \times 244 =$	976.00	DDD	$2^2 \times \text{DDD}$	4 x DDD

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3.00	19	3 ² x 19=	171.00	EEE	3 ² x EEE	9 x EEE
4.00	8	4 ² x 8=	128.00	FFF	4 ² x FFF	16 x FFF
6.00	4	6 ² x 4=	144.00	GGG	6 ² x GGG	36 x GGG
8.00	1	8 ² x 1=	64.00	HHH	8 ² x HHH	8 ² x HHH
Totals	9,921		7,682.06	Sum(AAA.HHH)		SUM

If SUM > 7682.06 then the system capability is assumed greater or equal to the base year.

The potential for sufficient increased revenues of the city from water and sewer charges will be confirmed to meet or exceed the baseline revenues by verifying that the meter size calculation as presented in Table 7.2b for any current year is greater than or equal to the base year. If any of these factors are not maintained, the absolute value of the water sold cannot be tied to efficiency improvements. If any of these key indicators are not maintained for a year in the M&V period, the baseline volume of water will prevail and the predicted revenue and savings will be stipulated to have occurred. If the meter size calculation shows a lower potential for water sales than the base year, the projected savings will be stipulated to have occurred.

7.3 Option B - Measured Consumption

7.3.1 N/A

7.4 Option C - Main Meter Comparison

7.4.1 N/A

7.5 Option D – Stipulated

7.5.1 The operational savings for this project were developed through many conversations with City staff. The reported operational savings used in the calculations for this project are stipulated for each year of the project term and were mutually agreed upon by the CLIENT and SIEMENS. The meter reading savings are agreed to occur by the reduction in effort associated with the baseline manual meter reading and the reduction in overall staff required to perform the monthly meter reading tasks.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell and Council Members Turnage, Parker, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried

ORDER TO APPROVE AND ADOPT THE PRELIMINARY 2009 COMPREHENSIVE PLAN

Motion was made by Council Member Parker, seconded by Council Member Turnage to approve and adopt the preliminary 2009 Comprehensive Plan.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell and Council Members Turnage, Parker, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried

COUNCILMAN WATKINS STATED THAT HE WOULD LIKE TO THANK THE PEARL RIVER COUNTY BOARD OF SUPERVISORS FOR THEIR ASSISTANCE IN PAVING AMELIA STREET, RIDGEWOOD RD, AND SOUTH BEECH ST. COUNCILMAN WATKINS ALSO STATED THAT HE IS VERY APPRECIATIVE OF THE COUNTY'S COOPERATION AND PLEASED TO SEE THE COUNTY BOARD TAKING AN ACTIVE PART IN THE CITY OF PICAYUNE

MOTION TO ADJOURN

Motion was made by Council Member Watkins, seconded by Council Member Turnage to adjourn until Tuesday, April 07, 2009 at 6:00 pm.

The following roll call was made:

VOTING YEA: Mayor Greg Mitchell and Council Members Turnage, Parker, and Watkins

VOTING NAY: None

ABSENT AND NOT VOTING: Council Members Guy and Bounds

ABSTAINING AND NOT VOTING: None

The motion was declared carried

Greg Mitchell, Mayor

ATTEST:

Leann Smith, Deputy City Clerk