

AGENDA  
SHAWNEE MUNICIPAL AUTHORITY  
June 3, 2013 AT 6:30 P.M.  
COMMISSION CHAMBERS AT CITY HALL  
SHAWNEE, OKLAHOMA

RESCHEDULED TO JUNE 10, 2013 AT 6:30 P.M.

CALL TO ORDER

DECLARATION OF A QUORUM

1. Consider approval of Consent Agenda:
  - a. Minutes from the May 20, 2013 regular meeting (Recessed until May 28, 2013)
  - b. Authorize staff to solicit bids for the Jefferson Terrace Water Line Replacement
2. Discussion, consideration and possible action on real estate purchase contract for property located at 200 S. Beard, Shawnee, Oklahoma.
3. Consider Bids:
  - a. Sale and Removal of 150# Negative Pressure Ozone System (Award)
4. New Business

(Any matter not known about or which could not have been reasonably foreseen prior to the posting of the agenda)
5. Administrative Reports
6. Consider an Executive Session to discuss potential claims, litigation or other options regarding encroachment into City's utility service area by other entities as authorized by 25 O.S. §307(B)(4).
7. Consider matters discussed in Executive Session regarding discuss potential claims, litigation or other options regarding encroachment into City's utility service area by other entities as authorized by 25 O.S. §307(B)(4).
8. Adjournment

Respectfully submitted

Phyllis Loftis, CMC, City Clerk

**Shawnee Municipal Authority**

**1. a.**

**Meeting Date:** 06/03/2013

Minutes

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Minutes from the May 20, 2013 regular meeting (Recessed until May 28, 2013)

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Attachments

Minutes

THE TRUSTEES OF THE SHAWNEE MUNICIPAL AUTHORITY OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN REGULAR SCHEDULED SESSION IN THE COMMISSION CHAMBERS AT CITY HALL, 9TH AND BROADWAY, SHAWNEE, OKLAHOMA, MONDAY, MAY 20, 2013, DURING THE BOARD OF CITY COMMISSIONERS MEETING AT 6:30 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. UPON ROLL CALL, A QUORUM WAS DECLARED WITH THE FOLLOWING MEMBERS IN ATTENDANCE:

PRESENT: Harrod, Mainord, Hall, Winterringer, Smith

ABSENT: Stephens, Agee

Call to Order

Declaration of a Quorum

A motion was made by Trustee Harrod, seconded by Trustee Smith, to recess the Shawnee Municipal Authority meeting until Tuesday, May 28, 2013, at 6:30 p.m. Motion carried 5-0

AYE: Harrod, Smith, Mainord, Hall, Winterringer

NAY: None

SHAWNEE MUNICIPAL AUTHORITY NOW IN RECESS (6:32 P.M.) UNTIL TUESDAY, MAY 28, 2013, 6:30 P.M.

SHAWNEE MUNICIPAL AUTHORITY RECONVENED FOLLOWING THE COMMISSION MEETING ON TUESDAY, MAY 28, 2013 WITH THE FOLLOWING TRUSTEES PRESENT:

Stephens, Agee, Harrod, Mainord, Hall, Winterringer, Smith

AGENDA ITEM NO. 1: Consider approval of Consent Agenda

- a. Minutes from the May 6, 2013 regular meeting.
- b. Budget Amendment Fund 501

*To bring up compensated absences from fund balance to accommodate those who left through April 30, 2013*

- c. Authorize staff to seek bids on slip lining reinforced concrete pipe.

A motion was made by Trustee Harrod, seconded by Trustee Hall, to approve the Consent Agenda item Nos. 1(a-c). Motion carried 7-0.

AYE: Harrod, Hall, Winterringer, Smith, Stephens, Agee, Mainord

NAY: None

AGENDA ITEM NO. 2: Public hearing and presentation of the budget for FY 2013-2014 for the Shawnee Municipal Authority.

Chairman Mainord declared a public hearing open regarding the budget for FY 2013-2014 for the Shawnee Municipal Authority. City Treasurer Cindy Sementelli gave an overview of the SMA budget as it had been previously presented. No one came forward with comments or questions and Chairman Mainord closed the public hearing.

AGENDA ITEM NO. 3: Consider Bids:

- a. Water Meters and Vault Structure Project  
Contract No. SMA-13-06 (Open)

**BIDDER**

**AMOUNT**

Jordan Contractors, Inc.  
Tecumseh, OK

\$225,330.00

Interim Public Works Director Steve Nelms announced that one bid was received and after review and consideration it was staff's recommendation to award the bid to Jordan Contractors Inc. of Tecumseh, Oklahoma in the total amount of \$225,330.00.

A motion was made by Trustee Hall, seconded by Trustee Winterringer, to accept staff's recommendation and award the bid to Jordan Contractors Inc. in the total amount of \$225,330.00. Motion carried 7-0.

AYE: Hall, Winterringer, Smith, Stephens, Agee, Harrod, Mainord  
NAY: None

b. Sale and Removal of 150# Negative Pressure Ozone System (Open)

**BIDDER**

**AMOUNT**

Fisher Ferry Water District  
Vicksburg, MS

\$77,000

Interim Public Works Director Steve Nelms read the bid into the record and requested that the bid award be deferred to the next meeting to allow staff to review.

A motion was made by Trustee Winterringer, seconded by Trustee Hall, to defer the bid award to the June 3, 2013 Shawnee Municipal Authority meeting. Motion carried 7-0.

AYE: Winterringer, Hall, Smith, Stephens, Agee, Harrod, Mainord  
NAY: None

**AGENDA ITEM NO. 4:**

New Business (Any matter not known about or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no new business.

**AGENDA ITEM NO. 5:**

Administrative Reports

a. Consumer Water Quality Report

Interim Public Works Director Steve Nelms advised we have received the Consumer Water Quality Report. The results of this report show the period of January 1 to December 31, 2012, we were in compliance.

There have been some adjustments made to the ratio of Shawnee Twin Lakes and Wes Watkins Reservoir to improve the taste of the water. All water is still in compliance and safe to drink there is just a large amount of organics in the lakes at this time of year.

AGENDA ITEM NO. 6:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (9:17 p.m.)

ATTEST:

(SEAL)

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WES MAINORD  
CHAIRMAN

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DONNA MAYO, DEPUTY CITY CLERK  
SECRETARY

**Shawnee Municipal Authority**

**1. b.**

**Meeting Date:** 06/03/2013

Request Bids Jefferson Terrace Water Line

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Authorize staff to solicit bids for the Jefferson Terrace Water Line Replacement

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Attachments

Request Bids Jefferson Terrace

**Mayor**  
WES MAINORD



**The City of Shawnee**  
*Office of the Finance Director*

P.O. Box 1448  
Shawnee, Oklahoma 74802-1448  
(405) 878-1601 Fax (405) 878-1571  
[www.ShawneeOK.org](http://www.ShawneeOK.org)

**Commissioners**  
PAM STEPHENS  
LINDA AGEE  
JAMES HARROD  
KEITH HALL  
JOHN WINTERRINGER  
STEVE SMITH

**Date:** 5/30/2013

**To:** Mayor and City Commissioners

**From:** Cynthia Sementelli, Finance Director/Treasurer

**RE: Jefferson Terrace Water Line Replacement**

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*Nature of the Request:*

*Staff is requesting permission to solicit bids for the Jefferson Terrace Water Line Replacement.*

*Staff Analysis, Considerations:*

*If approved by City Commission June 3<sup>rd</sup> SMA will open bids July 1<sup>st</sup> award bid July 15. This Project consist of relocating and up sizing all 2" water lines to 6" with in the Jefferson Terrace Addition.*

*Recommendation:*

*Staff respectfully request that the City Commission approve this request. Per DEQ, SMA must up size all 2" water lines to 6".*

*Budget Consideration:*

*The Jefferson Terrace Water Line Project SMA 14-01 will be taken out of the 1040 water line replacement capital account. budgeted amount is \$1,000,000 for the 13/14 FY.*

**Shawnee Municipal Authority**

**2.**

**Meeting Date:** 06/03/2013

Real Estate Purchase

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Discussion, consideration and possible action on real estate purchase contract for property located at 200 S. Beard, Shawnee, Oklahoma.

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Attachments

Memo

Purchase Agreement



**City of Shawnee**  
16 W. 9<sup>th</sup> Street  
Shawnee, OK 74801  
(405) 878-1665 Fax (405) 878-1587  
[www.ShawneeOK.org](http://www.ShawneeOK.org)

## **MEMORANDUM**

**AGENDA:** June 3, 2013

**TO:** Shawnee City Commission

**FROM:** Brian McDougal, City Manager  
James Bryce, Operations Manager  
Steve Nelms, Interim Utilities Director

**RE:** \*\*\**CONFIDENTIAL – REAL ESTATE DISCUSSION*\*\*\*

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### **SUMMARY OF REQUEST**

Staff is requesting authorization by the City Commission to enter into a contract for the purchase of real property at 200 S. Beard (see attached map). The purchase price is \$200,000 plus the City would pay related closing expenses and fees, for a total estimated cost of around \$210,000. In addition, the City may incur due diligence costs related to the evaluation of the site and the consideration of environmental liabilities. The property is owed by Dolese Bros. Co. and was purchased in 2004 for \$184,000 according to the Pottawatomie County Assessor.

### **STAFF ANALYSIS**

The property is approximately 2.78 acres and is immediately east of the City's existing Public Works facility located at 111 S. Kickapoo. According to a site survey (2004), the site included a small office building (864 square feet), a shop building (2,340 square feet), loading area and associated infrastructure. The small office building has been removed. Other site features include a retention pond, sediment traps, sandpit and an 8,000 gallon fuel tank. There is little to no value attributed to the site features and most or all of the remaining features would be removed upon development by the City.

Operationally, purchase of the property will benefit the City in the following ways:

1. Provides direct access to a Collector Street and will allow for many more options with regard to City operations that presently occur at the Public Works facility.
2. Provides direct rail access should it become feasible to transport materials (gravel, sand, etc.) to the site via railcar.
3. Allows for the ordering of bulk materials and associated cost savings on account of drastically increased storage capabilities.

4. Provides much needed space for the storage of materials, vehicles, and other equipment.
5. Allows for the expansion of the Public Works facilities at a single consolidated site, which would facilitate:
  - a. Expansion of parking and storage areas;
  - b. Relocation of equipment to the new property, enabling the garage to expand, facilitating work on heavy equipment and fire apparatus;
  - c. Installation of propane service; and
  - d. Relocation of the radio shop and construction of additional bays to store the command post trailer, CERT trailer and generator trailers and maintain a better state of readiness for emergency needs.

## **STAFF RECOMMENDATION**

The subject property presents a rare opportunity for the City to acquire substantial acreage next to the existing Public Works facility. Purchase of the property will provide operational flexibility and allow for expansion opportunities in an efficient and consolidated manner.

Staff recommends that the Shawnee City Commission authorize Staff to enter into a contract with Dolese Bros. Co. for the purchase of 200 S. Beard, subject to an inspection and due diligence period.

Attachments



PUBLIC WORKS

200 S. BEARD

## REAL ESTATE PURCHASE AGREEMENT

THIS REAL ESTATE PURCHASE AGREEMENT ("Agreement") made the 28<sup>th</sup> day of May, 2013, by and between DOLESE BROS. CO., an Oklahoma corporation ("Seller") and the Shawnee Municipal Authority, an Oklahoma public trust ("Purchaser").

### WITNESSETH:

1. Definitions. In addition to the other terms defined herein, the following terms will have the meanings set forth in this Section 1 of this Agreement:

- (a) "Land" will mean and include those certain tracts of land described in **Exhibit "A,"** attached hereto and made a part hereof, together with all appurtenances and hereditaments thereto and Seller's interest in and to all easements benefitting the Land, streets, alleys, and other public ways adjacent thereto.
- (b) "Improvements" will mean and include all buildings, structures and improvements (including the footings, light poles, signage and foundations, columns, piles, improvements, fixtures, equipment and other installations of such buildings and structures) erected on the Land on the date hereof, and will include all alterations and additions thereto, all replacements thereof and any other building, structure or improvement hereafter erected thereon.
- (c) "Title Company" will mean First American Title and Trust Company or such other title insurance company authorized to write title insurance in the State of Oklahoma and approved in writing by Purchaser.
- (d) "Property" will mean and ~~include~~ <sup>include</sup> the Land and the Improvements.
- (e) "Closing" will mean the consummation of the sale and purchase pursuant to this Agreement.
- (f) "Encumbrance" will mean any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.
- (g) "Environmental Laws" will mean all federal, state, local and foreign laws and regulations relating to pollution or protection of human health or the environment (including, without limitation, ambient air, surface, water, ground water, land surface or subsurface strata), including without limitation laws relating to emissions, discharges, Releases (as hereinafter defined) or threatened Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials. Environmental Laws include but are not limited to RCRA (as hereinafter defined), CERCLA and TSCA (as hereinafter defined).

- (h) “Environmental Liabilities” will mean (i) any and all obligations to pay the amount of any judgment or settlement, (ii) the cost of complying with any settlement, judgment or order for injunctive or other equitable relief, (iii) the cost of compliance or corrective action in response to any notice, demand or request from any department, agency or other body or component of any federal, state or local governmental authority that exercises any form of jurisdiction or authority under an Environmental Law (“Environmental Authority”), including a notice inviting comment (“Administrative Notice”), (iv) the amount of any civil penalty or criminal fine, and any court costs and reasonable amounts for attorney’s fees, fees for witnesses and experts, and costs of investigation and preparation for defense of any Administrative Notice or of any claim or any Proceeding (as hereinafter defined), regardless of whether such Proceeding is threatened, pending or completed, that may be or have been asserted against or imposed upon Seller or the Property before Closing or Purchaser after Closing and arising out of: (i) A failure of Seller to comply at any time before Closing with all Environmental Laws; (ii) The presence of any Hazardous Materials on, in, under, at or in any way affecting the Property at any time before Closing; (iii) A Release at any time before Closing of any Hazardous Materials on, in, under or in any way affecting any adjacent site or facility; (iv) The identification of Seller as a potentially responsible party under CERCLA or under any other Environmental Laws; (v) The presence at any time before Closing of any above-ground and/or underground storage tanks, as defined in RCRA or any other Environmental Law on, in, at or under the Property; and (vi) Any and all claims for injury or damage to persons or property arising out of exposure to Hazardous Materials originating at the Property or resulting from the operation thereof, in any case before Closing.
- (i) “Hazardous Materials” will mean any and all materials and substances which are or have been determined to be harmful to health or the environment, including but not limited to: (i) “hazardous wastes” as defined in the Resource Conservation and Recovery Act (“RCRA”) or other applicable federal, state or local law, ordinance, rule or regulation; (ii) “hazardous substances” as defined in the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) or any other applicable federal, state and local law, ordinance, rule or regulation; (iii) gasoline or any other petroleum product or byproduct, polychlorinated biphenyls, asbestos and urea formaldehyde; (iv) “toxic substances” as defined in the Toxic Substances Control Act (“TSCA”); and (v) any radioactive materials or substances.
- (j) “Permitted Encumbrances” will mean (i) the standard title exceptions, modified as follows: (A) the restrictive covenant exception, with respect to which the notation “None of Record” (except for the other Permitted Encumbrances) shall be entered; (B) the exception as to taxes which shall have inserted the year of Closing and be followed by the words “Not yet due and payable”; and (C) the exception for “any discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or any overlapping of improvements” shall be deleted (except for shortages in area); and (ii) exceptions shown on the Title Commitment and/or the Survey not timely objected to by Purchaser pursuant to Section 6 and (iii) other exceptions which Purchaser approves in writing.
- (k) “Knowledge” will mean the actual knowledge without investigation of Mark A. Helm, William E. Schlittler and Daryl Moomey.

2. Purchase and Sale. For the consideration hereinafter set forth, but subject to the terms, provisions, covenants and conditions herein contained, Seller hereby sells and agrees to convey and assign to Purchaser, and Purchaser hereby purchases and agrees to pay for, the Property.

3. Earnest Money and Purchase Price.

- (a) Purchase Price. The purchase price for the Property shall be Two Hundred Thousand and No/100 Dollars (\$200,000) ("Purchase Price"). The Purchase Price shall be payable by wire transfer in immediately available funds at the Closing as hereinafter provided.
- (b) No Earnest Money will be paid.

4. Seller's Representations and Warranties. Seller represents and warrants to Purchaser as follows (which representations and warranties will be deemed also made by Seller to Purchaser as of the date of Closing):

- (a) Authority. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Oklahoma and is qualified to do business in Oklahoma. Seller has the power, right and authority to enter into and perform all of the obligations required of Seller under this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. The execution, delivery, and performance of this Agreement by Seller and the consummation by Seller of the transactions contemplated herein have been authorized by all requisite corporate actions on the part of Seller. This Agreement constitutes the valid and binding obligation of Seller, enforceable in accordance with its terms.
- (b) Consents. Seller has taken all requisite action and obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Seller of its obligations hereunder.
- (c) Execution. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Seller pursuant to this Agreement will be duly authorized, executed and delivered by Seller. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Seller pursuant to this Agreement will be valid and legally binding upon Seller and enforceable in accordance with their respective terms.
- (d) Breach. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby does now constitute or will result in a breach of, or a default under any agreement, document, instrument or other obligation to which Seller is a party or by which Seller may be bound, or any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court or governmental body, applicable to Seller or to the Property.
- (e) Lease. The Property is not subject to any leases.

- (f) No Other Agreements. The Property is not subject to any other agreements for the sale of the Property, any rights of first refusal, any options to purchase, or any management agreements. The Property is not subject to any service or maintenance agreements that will survive the Closing.
- (g) Title. Seller holds good and valid marketable title, in fee simple, to the Property, and hereby agrees to deliver and convey to Purchaser by duly and validly executed and acknowledged special warranty deed and other instruments of conveyance, good and valid marketable title, in fee simple, to the Property subject only to the Permitted Encumbrances.
- (h) Lawful Use. To Seller's Knowledge, the location, construction, occupancy, operation, and use of the Property (including the buildings, improvements, fixtures and equipment forming a part thereof) do not violate any applicable law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority of any board of fire underwriters (or other body exercising similar functions), or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Property, including without limitation all building codes, flood disaster laws and health and environmental laws and regulations. Seller has no information or Knowledge of any change contemplated in any Applicable Laws or any judicial or administrative action, or any action by adjacent landowners, or any natural or artificial conditions upon the Property, or any significant adverse fact or condition relating to the Property.
- (i) Access. To Seller's Knowledge, the Property has full and free access to and from public highways, streets and roads, and Seller has no Knowledge of any pending or threatened governmental proceeding or any other fact or condition which would limit or result in the termination of such access.
- (j) Litigation. There are no actions, suits or proceedings, civil or criminal or any administrative proceedings, formal or informal (individually and collectively, "Proceeding") which have been instituted or, to Seller's Knowledge, threatened against or affecting the Property, at law or in equity, or before any federal, state or municipal governmental commission, board, bureau, agency or instrumentality which will materially adversely affect the value, occupancy, use or operation of the Property. Seller will give Purchaser prompt written notice of any such Proceeding arising subsequent to the date hereof and prior to the Closing Date.
- (k) Assessments. There are no assessments for public improvements against the Property which remain unpaid, including, without limitation, those for construction of sewer or water lines or mains, streets, sidewalks and/or curbs. Seller has no Knowledge of any intended public improvements which may involve any charge being levied or assessed with respect to the Property or any intended or proposed Applicable Laws including, without limitation, zoning changes which may adversely affect the use of the Property.
- (l) Labor and Material. All bills for services, labor and material provided at the Property, will have been paid prior to the Closing and at Closing there will be no liens or lienable claims arising from labor performed or materials supplied, or both,

affecting the Property. If subsequent to Closing, any mechanic's, materialman's or other lien or charge will be filed against the Property or against Purchaser, based upon any act or omission of Seller, its agents, servants or employees or any contractor or subcontractor, within thirty (30) days after written notice to Seller of the filing thereof, Seller will take action, by bonding, deposit, payment or otherwise, as will remove and discharge such lien of record as against the Property.

- (m) Condemnation. Seller has not received any notice from any governmental authority that the Property, or any portion thereof, is or will be subject to or affected by any condemnation or similar proceedings.
- (n) Insurance Notices. No notices or requests have been received by Seller from any insurance company issuing any policies insuring any part of the Property which have not been complied with. Any notices or requests from any such insurance company received prior to Closing will be complied with by Seller prior thereto.
- (o) Status of Taxes. There are no agreements, waivers or other arrangements providing for an extension of time with respect to the assessment of any type of tax or deficiency against the Property, nor are there any Proceedings or claims for additional taxes and assessments asserted by any taxing authority. There are no special assessments or deferred assessments.
- (p) Structural or Other Defects. Seller has disclosed to Purchaser any material defects of which Seller has Knowledge with respect to the physical condition and maintenance of the Property and not susceptible to discovery by Purchaser from normal inspection of the Property.
- (q) Compliance with Environmental Laws. To Seller's Knowledge, the operations on, condition of and use of the Property by Seller conform to, and give rise to no liability under, any federal, state or local law, ordinance, requirement, rule, regulation, license, permit, judicial or administrative order, injunction judgment, or decree relating to zoning, land use or the environment, including without limitation those pertaining to Hazardous Materials, subsidence, water drainage, treatment or impoundment, nuisances, environmental matters and reclamation, and all other restrictions and covenants regarding the use of the Property, the failure to comply with which might have a material adverse effect on the Property. No asbestos, material containing asbestos which is or may become friable or material containing asbestos deemed hazardous by Applicable Law has been installed in the Property. To Seller's Knowledge, Seller has complied and is now complying with all Environmental Laws applicable to the Property. To Seller's Knowledge, Seller has obtained all permits, licenses, and approvals necessary or required for the use of the Property from any Environmental Authority. Seller has not received any communication in any form from any Environmental Authority or any other person alleging that Seller is not in material compliance with any Environmental Law. To Seller's Knowledge, there are no circumstances that may prevent or interfere with compliance by Purchaser with all Environmental Laws applicable to the Property after the Closing. To Seller's knowledge, there are no present or past actions, activities, circumstances, conditions, events or incidents, including without limitation, any release as defined in CERCLA or any other Environmental Laws ("Release") of any Hazardous Materials, that could form the basis for assertion of

any Environmental Liability against Seller, Purchaser or the Property. There is no Proceeding pending against Seller or the Property, not is any such Proceeding, to the Knowledge of Seller, threatened, in which any violation by Seller or the Property of any Environmental Law is alleged or any Environmental Liability is asserted, nor, to the Knowledge of Seller, is there any basis for any such Proceeding. To Seller's Knowledge, all above ground and underground storage tanks have been duly registered with all applicable federal, state and local government authorities.

5. Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller as follows (which representations and warranties will be deemed also made by Purchaser to Seller as of the Closing Date):

- (a) Authority. Purchaser is an Oklahoma Public Trust that is a duly organized, validly existing entity in good standing under the laws of Oklahoma. Purchaser has the power, right and authority to enter into and perform all of the obligations required of Purchaser under this Agreement and the instruments and documents referenced herein, and to consummate the transaction contemplated hereby. Purchaser has all requisite authority and power to enter into this Agreement. The execution, delivery, and performance of this Agreement and the consummation by Purchaser of the transactions contemplated herein have been authorized by all requisite actions on the part of Purchaser.
- (b) Consents. Purchaser has taken all requisite action and obtained all requisite consents, releases and permissions in connection with entering into this Agreement and the instruments and documents referenced herein or required under any covenant, agreement, encumbrance, law or regulation with respect to the obligations required hereunder, and no consent of any other party is required for the performance by Purchaser of its obligations hereunder.
- (c) Execution. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Purchaser pursuant to this Agreement will be duly authorized, executed and delivered by Purchaser. This Agreement is, and all agreements, instruments and documents to be executed and delivered by Purchaser pursuant to this Agreement will be valid and legally binding upon Purchaser and enforceable in accordance with their respective terms.
- (d) Breach. Neither the execution of this Agreement nor the consummation of the transaction contemplated hereby does now constitute or will result in a breach of, or a default under any agreement, document, instrument or other obligation to which Purchaser is a party or by which Purchaser may be bound, or any law, statute, ordinance, rule, governmental regulation or any writ, injunction, order or decree of any court of governmental body, applicable to Purchaser or to the Property.

6. Title Review.

- (a) Survey. Within twenty (20) days from the date hereof, Purchaser will obtain, at Purchaser's expense, a survey ("Survey") of the Property by a registered land professional engineer or surveyor acceptable to Purchaser and to the Title Company

in accordance with the ALTA/ACSM Minimum Urban Class Standard Detail Requirements. The Survey will be in form and substance acceptable to Purchaser and to the Title Company, including re-certification of Seller's existing survey for the benefit of Purchaser, subject to the approval of Seller, not to be unreasonably withheld. In the event the legal description of the Property contained on the Survey differs from the legal description attached to this Agreement, the legal description on the Survey shall be incorporated into this Agreement and used on the Title Commitment (as hereinafter defined) and all closing documents.

- (b) Owner's Title Policy Commitment. Within twenty (20) days from the date hereof, Purchaser will obtain, at Purchaser's expense, an owner's title policy binder ("Title Commitment") issued by the Title Company, showing title to the Property in Seller and committing to issue the owner's title policy to Purchaser called for under Section 15(b)(4) of this Agreement, such binder to specify all easements, liens, encumbrances, restrictions, conditions or covenants with respect to the Property. Purchaser will also request the Title Company to deliver to Seller and Purchaser concurrently with the Title Commitment a legible copy of each document that is the basis for an exception to coverage in such title commitment (collectively, the "Exception Documents").
- (c) Review. Purchaser will have fifteen (15) days after the receipt of the last of the Title Commitment, Exception Documents, and Survey within which to notify Seller in writing of any objections Purchaser has to any matters appearing or referred to in the Title Commitment, Exception Documents, or Survey. With regard to items to which Purchaser does so object, Seller shall promptly undertake to eliminate or modify such unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller is unable or unwilling to eliminate or modify such unacceptable matters to the reasonable satisfaction of Purchaser within twenty (20) days after receipt by Seller of the above described notice to Seller, Purchaser may terminate this Agreement by notice in writing to Seller, or may accept such title to the Property as Seller can deliver
- (d) Payoff of Liens. If, on the Closing Date, there may be any liens or encumbrances which Seller is obligated to pay and discharge in order to clear title as required by this Agreement, Seller may satisfy the same out of any cash portion of the Purchase Price, provided Seller will simultaneously either deliver to Purchaser at the Closing instruments in recordable form and sufficient to satisfy such liens and encumbrances of record, together with the cost of recording such instruments, or (provided that Seller has made arrangements with Purchaser's attorney in advance of Closing) Seller will deposit with the Title Company sufficient monies acceptable to and required by him to insure the obtaining and the recording of such satisfactions and the issuance of title insurance to the Purchaser free of any such liens or encumbrances. The existence of any such taxes or other liens and encumbrances will not be deemed a failure to cure objections to title if Seller will comply with the foregoing requirements.

7. Delivery of Information. Within five (5) days after the date of this Agreement, Seller shall deliver to Purchaser copies of any of the following that are in Seller's possession or control: reports of any environmental site assessments of the Property; any files relating to the ownership of the Property, including surveys; drawings; prior title reports and prior title insurance commitments

and policies; and similar materials; provided, that in the event Purchaser fails to purchase the Property, all such information will be returned to Seller.

8. Inspection. Seller will allow Purchaser and all authorized representatives of Purchaser to enter upon the Property, during normal business hours, from time to time during the period commencing on the date hereof and ending thirty (30) days thereafter ("Inspection Period"), to inspect the Property, including the environmental assessments as described in Section 9 below. During the Inspection Period, Purchaser may also seek from the appropriate governmental authorities such easements, zoning changes, special use permits, and other governmental approvals, permits, and authorizations as Purchaser deems necessary or appropriate for Purchaser's intended use and development of the Property, and Seller shall cooperate with Purchaser's efforts. Purchaser will provide to Seller, promptly upon receipt thereof, copies of all reports, maps and studies obtained by Purchaser as the result of Purchaser's inspection of the Property, including, without limitation, copies of any structural reports, appraisals, and environmental studies and reports. Notwithstanding anything to contrary herein, Purchaser may have a Phase II Assessment (as hereinafter defined) in accordance with Section 9 below, and the Inspection Period shall be extended up to sixty (60) additional days if Purchaser determines to have such Phase II Assessment conducted and cannot have it completed in less time.

If it should be determined by Purchaser in its sole judgment that the Property is not in a condition acceptable to Purchaser, then Purchaser shall notify Seller in writing, prior to the expiration of the Inspection Period, of its decision as to whether or not to terminate this Agreement or allow Seller to eliminate or modify such unacceptable conditions. If such written notice from Purchaser to Seller is not received within the Inspection Period, the condition will be deemed to be acceptable and objection thereto will be deemed to have been waived for all purposes, without, however, releasing Seller from its representations and warranties with respect to such conditions that are set out under Section 4 hereof.

With regard to conditions that are unacceptable to Purchaser and of which Purchaser has notified Seller in writing of its election to allow Seller to eliminate or modify such unacceptable conditions in accordance with the immediately preceding paragraph, Seller shall promptly undertake to eliminate or modify such unacceptable matters to the reasonable satisfaction of Purchaser. In the event Seller is unable or unwilling to eliminate or modify such unacceptable conditions to the reasonable satisfaction of Purchaser within twenty (20) days after receipt by Seller of the above described notice to Seller, Purchaser may terminate this Agreement by notice in writing to Seller at any time prior to the Closing Date and the elimination or modification of such unacceptable condition to Purchaser's reasonable satisfaction, or may accept the Property in such condition as Seller can deliver.

9. Environmental Review Period. Purchaser may elect, entirely at Purchaser's cost, to proceed with a preliminary or initial phase environmental assessment ("Phase I Assessment"). Seller agrees to allow Purchaser's designated environmental company representatives reasonable access to the Property for purposes of performing the Phase I Assessment.

Purchaser agrees to provide Seller with a copy of any Phase I Assessment report obtained by Purchaser. If there are any recommended actions or recognized environmental conditions on the Property identified in such report, Purchaser will indicate to Seller, simultaneously with Purchaser's delivery of such report to Seller, whether Purchaser wants to proceed with any phase II environmental procedures ("Phase II Assessment") or in the alternative terminate this Agreement.

If Purchaser wishes to undertake a Phase II Assessment, then, Purchaser's environmental consultants may undertake the inspections, studies and procedures as described in the Phase II Assessment proposal as Purchaser deems necessary for its evaluation. Any and all costs associated with such Phase II Assessment will be entirely at the cost of Purchaser.

If the Phase II Assessment discloses any recommended actions, environmental conditions or hazardous materials that exist at or on the Property ("Environmental Conditions"), then along with the report, Purchaser will also provide Seller with Purchaser's decision as to whether or not to terminate this Agreement or to accept the Property in such condition as Seller can deliver.

Seller acknowledges and agrees that any and all information, whether written or oral, regarding the environmental status of the Property provided to Seller by Purchaser or its employees or agents under this Agreement will be considered the sole and exclusive property of Purchaser and is considered and will be kept confidential by Seller in perpetuity, except as provided below, and will not be discussed with or provided to any third party, without the prior written consent of Purchaser, which consent may be granted or withheld in Purchaser's sole discretion. Purchaser makes no representations or warranties regarding any such information.

Seller will indemnify, defend and hold Purchaser harmless from and against any and all claims, judgments, damages, penalties, fines, costs, liabilities, or losses (including, without limitation, reasonable attorneys' fees) resulting from (i) Seller's removal and remediation of the Environmental Conditions, (ii) any conditions or contamination existing prior to the Closing Date at, on or emanating from or onto the Property, or (iii) any disposal, arrangement for disposal, or release by Seller of Hazardous Substances (as hereinafter defined) at any location other than the Property.

Seller's and Purchaser's obligations under this Section 9 will survive the termination of this Agreement for a period of three (3) years.

10. Fire and Other Casualty. In the event of damage by fire or other casualty to the Property prior to the Closing Date, Purchaser will have the option to terminate this Agreement by notice in writing to Seller. If Purchaser does not elect to thus terminate, this Agreement will remain in full force and effect and Purchaser will take title subject to such destruction.

11. Condemnation. Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings. In the event of the institution of proceedings for condemnation of all or any portion of the Property or the sale of all or any portion of the Property in lieu of condemnation, Purchaser will have the option to terminate this Agreement by notice in writing to Seller. If Purchaser does not elect to thus terminate, this Agreement will remain in full force and effect and in such event Seller will assign to Purchaser at the Closing any and all rights and claims Seller may have to the proceeds of any such condemnation or sale in lieu of condemnation to the extent that such proceeds do not exceed the Purchase Price, and Purchaser will take title to the Property with the assignment of such claim and interest and subject to such condemnation. Seller shall in all cases retain the right to the proceeds from any such condemnation or sale in lieu of condemnation to the extent that such proceeds exceed the Purchase Price.

12. Certain Covenants of Seller. Seller covenants and agrees with Purchaser that, between the date hereof and the Closing Date:

- (a) Seller will continue to run and operate the Property in the same manner as Seller has run and operated the Property prior to the date of this Agreement until Closing, subject, however, to the provisions of this Agreement.
- (b) Seller agrees to maintain the Property in its present order, condition and repair and to make any and all repairs and replacements until Closing so that the Property, at Closing, will be in substantially its present condition, reasonable wear and tear accepted.
- (c) Without the prior written consent of Purchaser, Seller will not transfer the Property, or any part thereof, or create on the Property any easements liens, mortgages, encumbrances, or other interests adversely affecting the use of the Property that will survive Closing or permit any changes in the zoning classification of the Property unless approved in writing by Purchaser.
- (d) Seller shall make all commercially reasonable efforts to comply with all notes or notices of material violations of law or municipal ordinances, orders or requirements now noted in or now issued by any state, federal or municipal department having jurisdiction, against or affecting the Property as of the date of Closing, and disclose all such notices to Purchaser. Seller will furnish Purchaser with any authorizations requested to make the necessary searches therefor. With regard to any violations that are unacceptable to Purchaser and of which Purchaser has notified Seller in writing of its election to allow Seller to remedy such noncompliance, Seller shall undertake such steps to comply to the reasonable satisfaction of Purchaser. In the event Seller is unable or unwilling to comply to the reasonable satisfaction of Purchaser within twenty (20) days after receipt by Seller of the above described notice to Seller, Purchaser may terminate this Agreement by notice in writing to Seller at any time prior to the Closing Date, or may accept the Property in such condition as Seller can deliver.
- (e) Seller will promptly deliver to Purchaser a copy of any notice (including, without limitation, a notice of default) sent (of which Seller is given notice) or received by Seller with respect to the Property.
- (f) Immediately upon obtaining knowledge of the institution of any proceedings for the condemnation of the Property, or any portion thereof, or any other proceedings arising out of injury or damage to the Property, or any portion thereof, Seller will notify Purchaser of the pendency of such proceedings.
- (g) In the event of damage to or destruction of all or any portion of the Improvements by fire or other casualty, Seller will promptly notify Purchaser of the nature and extent of such damage or destruction, the amount estimated to be expended to repair or restore the damages or destroyed Improvements, and the estimated period of time it would take to make such repairs and restoration.

13. Conditions to Purchaser's Obligations. The obligations of Purchaser with respect to actions to be taken by Purchaser at or before the Closing are subject to the satisfaction, or the written waiver by Purchaser, of each of the following conditions:

- (a) On the Closing Date, all of Seller's representations and warranties shall be true and correct and Seller shall have performed each covenant to have been performed by Seller hereunder with the time specified.
- (b) On the Closing Date, there shall be no change in the matters reflected in the Title Binder, except in accordance with Section 6 above, and there shall not exist any encumbrance or title defect affecting the Property not described in the Title Binder.
- (c) On the Closing Date, there shall be no change in the matters reflected in the Survey, except in accordance with Section 6 above, and there shall not exist any easement, right-of-way, encroachment, conflict or protrusion with respect to the Property not shown on the Survey.
- (d) The Improvements will be in good condition and repair, ordinary wear and tear due to normal conditions excepted and no damage by fire or other casualty will have occurred unless the provisions of Section 10 have been complied with.
- (e) On the Closing Date, there shall be no litigation pending or threatened, seeking (i) to enjoin the consummation of the sale and purchase hereunder, (ii) to recover title to the Property, or any part thereof or any interest therein, (iii) to increase substantially ad valorem taxes theretofore or thereafter assessed against the Property, or (v) to enjoin the violation of any law, rule, regulation, restrictive covenant or zoning ordinance that may be applicable to the Property.
- (f) Seller will not be insolvent, will not have made a transfer in fraud of creditors, will not have committed any act of bankruptcy or made an assignment for the benefit of creditors, and will not have admitted in writing its inability to pay its debts as they become due. Neither a receiver nor a trustee will have been appointed for all or substantially all of the assets of Seller or for any of the Property in any proceeding brought by Seller, nor will such receiver or trustee have been appointed in any proceeding brought against Seller and not have been discharged on the date of Closing nor will Seller have consented to or acquiesced in such appointment. Seller will not have filed a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the United States or any State thereof, nor will Seller have been adjudged bankrupt or insolvent in proceedings filed against Seller thereunder, nor will a petition or answer proposing the adjudication of Seller as a bankrupt or its reorganization under any present or future federal or state bankruptcy or similar law have been filed in any court and such petition or answer not have been discharged on the date of Closing, nor will any composition, rearrangement, extension, reorganization or other relief of debtors now or hereafter existing have been requested by Seller.
- (g) Neither the Property nor any part thereof or any interest therein will have been taken on execution or other process of law in any action against Seller unless the provisions of Section 11 have been complied with.

- (h) There will be no Environmental Conditions affecting the Property unless the provisions of Section 9 have been complied with.

14. Conditions to Seller's Obligations. The obligations of Seller with respect to actions to be taken by Seller at or before the Closing are subject to the satisfaction, or the written waiver by Seller, of each of the following conditions:

- (a) All of Purchaser's representations and warranties will be true and correct and Purchaser will have performed each covenant to have been performed by Purchaser hereunder within the time specified.

15. The Closing. The Closing of this transaction shall take place at the offices of the Title Company within Five (5) business days of satisfaction of all of the conditions provided in Sections 6, 8, 9, 13, and 14 of this Agreement at the offices of the Title Company.

- (a) Closing Statements. Not less than one day prior to the Closing Date, Purchaser will cause the Title Company to prepare and deliver to Purchaser and Seller a preliminary closing statement for each party, showing all amounts due from each party.

- (b) Seller's Deliveries. On or before the Closing Date, Seller will:

- (i) Deliver to the Title Company a duly executed and acknowledged special warranty deed in the proper form for recordation and in a form sufficient to convey good and marketable title to the Property to Purchaser free of all liens and encumbrances except for the Permitted Encumbrances;
- (ii) Deliver to the Title Company a certificate duly executed by Seller confirming that all representations and warranties made by Seller hereunder are true and correct in all respects, that Seller has performed its obligations hereunder and that all conditions precedent to the obligations of Seller have been satisfied or waived in writing by Seller;
- (iii) Deliver to the Title Company a final closing statement, duly executed by Seller;
- (iv) Deliver to the Title Company such other documents, instruments, certificates and receipts as may be reasonably requested by Purchaser to validly convey good and marketable title to the Property to Purchaser and to induce the Title Company to issue an extended coverage ALTA owner's title policy in the amount of the Purchase Price and through an underwriter approved by Purchaser insuring that Purchaser owns fee simple title to the Property, subject to no exceptions other than the Permitted Encumbrances ("Title Policy");
- (v) Deliver to the Title Company a sworn statement of Seller made under oath and under penalties of perjury that Seller is not a "Foreign Person" and containing such information as is required by Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended and regulations issued thereunder (including temporary and proposed regulations);

- (vi) Deliver to the Title Company Seller's closing instructions which will not be inconsistent with the provisions of this Agreement ("Seller's Instructions"); and
  - (vii) Deliver to Purchaser possession of the Property.
- (c) Purchaser's Deliveries. On or before the Closing Date, Purchaser will:
  - (i) Deliver by wire transfer, to an account or accounts designated by the Title Company, immediately available funds in an amount equal to the amount due from Purchaser as shown on the closing statement;
  - (ii) Deliver to the Title Company a certificate duly executed by Purchaser confirming that all representations and warranties made by Purchaser hereunder are true and correct in all respects, that Purchaser has performed its obligations hereunder and that all conditions precedent to the obligations of Purchaser have been satisfied or waived in writing by Purchaser;
  - (iii) Deliver to the Title Company a final closing statement, duly executed by Purchaser; and
  - (iv) Deliver to the Title Company Purchaser's closing instructions which will not be inconsistent with the provisions of this Agreement ("Purchaser's Instructions").
- (d) Proration of Taxes. General real estate taxes for the year of closing relating to the Property, shall be prorated as of the Closing Date. If the Closing shall occur before the tax rate is fixed for the then current year, the apportionment of taxes shall be upon the basis of tax rate for the immediately preceding year applied to the latest assessed valuation, provided that, if the taxes for the current year turn out to be in excess of taxes for the preceding year, Seller agrees to pay Seller's proportionate part of such excess and this covenant shall not merge with the deed but shall continue after the Closing. All special taxes or assessments prior to the Closing Date shall be paid by Seller.
- (e) Closing Fee. The closing fee charged by the Title Company will be paid by Purchaser.
- (f) Title Policy Premium. Purchaser will pay the premium for the Title Policy.
- (g) Recording Fees. Purchaser will pay the fee for the recording of the deed delivered by Seller to Purchaser hereunder and the mortgage tax recording fee on any mortgage incurred by Purchaser.
- (h) Documentary Stamp. Purchaser shall pay the transfer tax and any sales tax due with respect to the special warranty deed by which the Property is to be conveyed to Purchaser.

- (i) Closing Effected. If the Title Company is in a position to comply with Purchaser's Instructions and Seller's Instructions, it will notify Purchaser and Seller, and the parties will instruct the Title Company to proceed to close this transaction by (1) wiring the Purchase Price in accordance with the settlement statement, (2) delivering the documents listed in subsection 15(b) to Purchaser, (3) delivering the documents listed in subsection 15(c) to Seller, and (4) issuing the Title Policy.
- 16. Termination Events. Subject to Section 17, this Agreement may be terminated as follows:
  - (a) by notice given prior to or at the Closing by Purchaser, if a material breach of any provision of this Agreement has been committed by Seller, and such breach has not been cured or waived within ten (10) days after receiving written notice;
  - (b) by notice given prior to or at the Closing by Seller, if a material breach of any provision of this Agreement has been committed by Purchaser and such breach has not been cured or waived within ten (10) days after receiving written notice;
  - (c) by Purchaser pursuant to Section 6, 8, 10, 11, or 12(d) in accordance with the terms thereof, or by Seller in the Purchaser is unwilling to waive such defects or other matters in accordance with Sections 6, 8, 10, or 12(d);
  - (d) If Closing has not occurred within Five (5) business days of satisfaction of all of the conditions provided in Sections 6, 8, 9, 13, and 14 of this Agreement, Seller may terminate this Agreement by written notice to Purchaser;
  - (e) by mutual consent of Purchaser and Seller.
- 17. Effect of Termination. Each party's right of termination under Section 16 is in addition to any other rights it may have under this Agreement.
- 18. Indemnification by Seller. Seller shall indemnify and hold Purchaser harmless from and against, and reimburse Purchaser with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and court costs) asserted against or incurred by Purchaser by reason of or arising out of (a) the breach of any representation or warranty of Seller set forth in this Agreement, (b) the failure of Seller to perform any obligation required by this Agreement to be performed by Seller, and (c) the ownership, maintenance, and/or operation of the Property subsequent to the Closing Date.
- 19. Indemnification by Purchaser. Purchaser shall indemnify and hold Seller harmless from and against, and reimburse Seller with respect to, any and all claims, demands, causes of action, loss, damage, liabilities, costs and expenses (including attorneys' fees and court costs) asserted against or incurred by Seller by reason of or arising out of (a) the breach of any representation or warranty of Purchaser set forth in this Agreement, (b) the failure of Purchaser to perform any obligation required by this Agreement to be performed by Purchaser, and (c) the ownership, maintenance, and/or operation of the Property subsequent to the Closing Date.

20. General Provisions.

- (a) Notices. Any notice, demand, or communication required, permitted, or desired to be given hereunder will be in writing and will be deemed duly given and received (i) when delivered in person (with receipt therefore), (ii) on the next business day after deposit with a recognized overnight delivery service, (iii) on the second day after being sent by certified or registered mail, return receipt requested, postage paid, or (iv) when sent via telecopier or e-mail and followed by one of the foregoing methods, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a party may designate by notice to the other parties):

If to Seller: Dolese Bros. Co.  
20 N.W. 13<sup>th</sup>  
PO Box 677  
Oklahoma City, Oklahoma 73101-0677  
Attention: Daryl G. Moomey, Vice President  
Facsimile: (405)231-0804  
Email: [dmoomey@dolese.com](mailto:dmoomey@dolese.com)

With a copy to: Phillips, Murrah, P.C.  
101 N. Robinson, 13<sup>th</sup> Floor, Corporate Tower  
Oklahoma City, Oklahoma 73102  
Attention: Robert O. O'Bannon  
Facsimile: (405)235-4133  
Email: [roobannon@phillipsmurrah.com](mailto:roobannon@phillipsmurrah.com)

If to Purchaser: Shawnee Municipal Authority  
Attention: City Manager  
16 W. Ninth  
P. O. Box 1448  
Shawnee, Ok 74802  
Facsimile: (405) 878-1571  
Email: [Bmcdougal@shawneeok.org](mailto:Bmcdougal@shawneeok.org)

With a copy to Shawnee Municipal Authority  
Attention: General Counsel/City Attorney  
16 W. Ninth  
P. O. Box 1448  
Shawnee, OK 74802  
Facsimile: (405) 214-4249  
Email: [MaryAnn.Karns@shawneeok.org](mailto:MaryAnn.Karns@shawneeok.org)

- (b) Real Estate Commissions. Purchaser covenants that it has not incurred any obligations for commissions, broker's fees or other related matters. Seller covenants that it has not incurred any obligations for commissions, broker's fees or other

related matters. It is further agreed that in the event any claims are made for commissions, broker's fees or other related items, the party incurring such obligation will hold the other harmless therefrom.

- (c) Expenses. Except as otherwise expressly provided in this Agreement, each party to this Agreement will bear its respective expenses incurred in connection with the preparation, execution, and performance of this Agreement and the transactions contemplated by this Agreement, including all fees and expenses of agents, representatives, counsel, and accounts. If this Agreement or any term or provision hereof becomes the subject of litigation, the prevailing party in such litigation will be entitled to recover from the non-prevailing party court costs and reasonable attorney's fees.
- (d) Survival of Obligations. The respective representations, warranties, covenants, and agreements of the parties to this Agreement will survive consummation of the transactions contemplated herein and will continue in full force and effect after the Closing for a period of three (3) years.
- (e) Recordation of Agreement. Neither Purchaser nor Seller will record or attempt to record this Agreement or a memorandum hereof without the prior written consent of the other party.
- (f) Headings. The section headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several sections hereof.
- (g) Complete Agreement. This Agreement embodies the complete agreement between the parties hereto and cannot be varied or terminated except by the written agreement of the parties.
- (h) Applicability. The terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.
- (i) Gender. Within this Agreement, words of any gender will be held and construed to include any other gender, and words in the singular number will be held and construed to include the plural, unless the context otherwise requires.
- (j) Construction. The parties have jointly participated in the negotiation and drafting of this Agreement. In the event of an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties and no presumptions or burdens of proof will arise favoring any party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law will be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Nothing in the disclosed schedules will be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty relates solely to the existence of the document or other items itself). The parties intend that each representative, warranty, and covenant contained herein will have independent significance. If any party has breached any representation, warranty, or covenant

contained herein any respect, the fact that there exists another representation, warranty, or covenant relating to the same subject matter (regardless of the relative levels of specificity) which the party has not breached will not detract from or mitigate the fact that the party is in breach of the first representation, warranty, or covenant.

- (k) Specific Performance. The parties hereto recognize that Purchaser's remedies at law for damages in the event of breach of this Agreement may be inadequate. Accordingly, it is the intention of the parties that in the event (i) all representations and warranties made by Purchaser here under are true and correct in all respects, (ii) Purchaser has performed its obligations hereunder and all conditions precedent to the obligations of Purchaser have been satisfied or waived in writing by Purchaser, and (iii) Seller wrongfully refuses to close, Purchaser has the right to enforce specific performance with respect to this Agreement.
- (l) Further Instruments. The parties to this Agreement, whenever, and as often as will be reasonably requested by the other party, will execute, acknowledge, and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments, and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and carry out the intent and purposes of this Agreement.
- (m) Execution in Counterpart. This Agreement may be executed in any number of counterparts, each of which when executed will be an original, but such counterparts will together constitute one and the same Agreement.
- (n) Governing Law. This Agreement will be governed according to the laws of the State of Oklahoma.

IN WITNESS WHEREOF, this Agreement is executed in multiple originals by Seller and Purchaser as of the date first above written.

“SELLER”

DOLESE BROS. CO.,  
an Oklahoma corporation

By: Daryl G. Moomey  
Name: Daryl G. Moomey  
Title: Vice President

“PURCHASER”

SHAWNEE MUNICIPAL AUTHORITY  
an Oklahoma Public Trust

By: \_\_\_\_\_  
Name: Wes Mainord  
Title: Chairman

Attest:

\_\_\_\_\_  
Phyllis Loftis, Secretary

Approved as to form and legality on the \_\_\_\_ day of May, 2013.

\_\_\_\_\_  
Mary Ann Karns, General Counsel

**REAL ESTATE PURCHASE AGREEMENT  
EXHIBIT "A"  
LEGAL DESCRIPTION**

A tract of land in the Northwest Quarter (NW/4) of Section Nineteen (19), Township Ten (10) North, Range Four (4) East of the Indian Meridian, described as beginning at a point 360.1 feet North of the Southeast corner of Lot Twelve (12), in Block Seventy-Four (74), of the AMENDED PLAT of the CITY of SHAWNEE, Oklahoma;

Thence Northwesterly along the centerline of Railroad Track #53 and centerline produced a distance of 748.2 feet to a point 513.32 feet North, and 735.94 feet West of the Southeast corner of Lot Twelve (12), in Block Seventy-Four (74) of said Amended Plat;

Thence at an angle of 90° to the right, a distance of 175.6 feet to a point 20 feet South of the centerline of the main track of the CRI & P Railroad Company, and 118 feet South and 3.5 feet West of the Northwest Corner of Lot Seven (7), Block Thirty-One (31), of said Amended Plat;

Thence South 75° East and parallel to said centerline of said main track, a distance of 710.3 feet to a point on the West line of Beard Street and 306.5 feet South of the Northeast corner of Lot One (1), Block Thirty (30), of said Amended Plat;

Thence South along said West line of Beard Street, a distance of 134 feet to the POINT OF BEGINNING.

**Shawnee Municipal Authority**

**3. a.**

**Meeting Date:** 06/03/2013

Award Bid Ozone System

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Sale and Removal of 150# Negative Pressure Ozone System (Award)

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Attachments

Ozone Bid Award

Ozone BidTab

**Steve Nelms**  
Interim Utility Director  
405-273-1960

**Lyndsay Pickens**  
Administrative Assistant  
Phone: 405-273-1960  
Fax: 405-878-1550



111 S. Kickapoo, Shawnee, OK 74801

**Greg Price**  
Interim Plant Manager  
405-878-1662

**Brad Schmidt**  
Interim Systems Manager  
405-878-1547

## **MEMORANDUM**

To: Donna Mayo  
From: Steve Nelms, Interim Utility Director  
CC: Brian Mcdougal, City Manager. Cindy Sementelli, Finance Director  
Date: 5/29/2013  
Re: Ozone Award

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Staff is making the recommendation to award the sale of the Ozone equipment and all related controls to the highest bidder Fisher Ferry Water District for the amount of \$77,000.

The Land Run Group, LLC recommended a minimum bid of \$75,000 approved by City Commission 12/17/2012

**BID TABULATION SHEET**

**OZONE EQUIPMENT**

**BID FOR SALE AND REMOVAL**

**MAY 20, 2013**

**BIDDER**

**AMOUNT**

**FISHER FERRY WATER DISTRICT**  
Vicksburg, MS

77,000

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**Shawnee Municipal Authority**

**6.**

**Meeting Date:** 06/03/2013

Consider Exec Session

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Consider an Executive Session to discuss potential claims, litigation or other options regarding encroachment into City's utility service area by other entities as authorized by 25 O.S. §307(B)(4).

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**Shawnee Municipal Authority**

**7.**

**Meeting Date:** 06/03/2013

Consider Matters from Exec Session

Submitted By: Donna Mayo, Administration

Department: Administration

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Information

Title of Item for Agenda

Consider matters discussed in Executive Session regarding discuss potential claims, litigation or other options regarding encroachment into City's utility service area by other entities as authorized by 25 O.S. §307(B)(4).

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