**MINUTES OF A REGULAR CITY COUNCIL MEETING**

**OF THE CITY OF GREENVILLE, MISSISSIPPI**

**April 5, 2011**

**BE IT REMEMBERED that the City Council of the City of Greenville, Mississippi met in regular session at City Hall at the hour of 4:00 P.M., Tuesday the 5th day of April, 2011 for the purpose of transacting such business as might properly come before it.**

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**There were present the following officers and members of Council:**

**Mayor: Heather McTeer-Hudson**

**Council Members: Kenneth L. Gines, Ann Hollowell, Carl McGee, Errick Simmons, Betty Watkins and Carolyn Weathers**

**Also Present:**

**Andy Alexander, City Attorney Teresa Kingdom, Human Resources Director**

**Amelia D. Wicks, City Clerk Steve Osso, External Financial Consultant**

**Lorenzo Anderson, City Engineer Pam Richards, Water/Utility Manager**

**Freddie Cannon, Interim Police Chief Al Scarborough, Info Technology Director**

**Milton Davenport, Fleet Director Carlon Williams, Planning/Zoning Director**

**Lee Gordon, Fire Chief Gwanda Wilson, Municipal Court Clerk**

**Brad Jones, Public Works Director**

**Absent:**

**Lane Rodgers, Airport Director**

**Yvette Yeager, Parks and Recreation Director**

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**Mayor Hudson introduced Pastor John Carroll of Greater Faith Tabernacle of Greenville, MS who offered the invocation followed by the Pledge of Allegiance to the flag.**

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**Mayor Hudson announced the March 2011 Employees of the Month. Those employees are:**

**Engineering Traffic Division – Undra Washington; Public Works Street Division – Jimmie Little; Fire Department – Johnny Hughes; and Police Department – Dorothy Giles.**

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 **Mayor Hudson proceeded to the City Council Agenda Items and requested any additions or deletions to the agenda. The following items were added or deleted:**

On motion by Councilwoman Hollowell, seconded by Councilman Gines with all members present voting AYE, Council added “Council to hear and consider the request of Mr. Al Brock to remove 426 Rubye Drive from the demolition list” to the agenda and placing as Item # 5c on the Agenda.

On motion by Councilwoman Weathers, seconded by Councilwoman Hollowell with all members present voting AYE, Council added “Council to consider approval of pay requests 1608, 1609 and 1610 to Priority 1 Technologies, Inc.” to the Agenda.

On motion by Councilman McGee, seconded by Councilman Gines with all members present voting AYE, Council added “Personnel issue in the Public Works Department for Executive Session” to the Agenda.

On motion by Councilman Simmons, seconded by Councilwoman Hollowell with all members present voting AYE, Council added “Update on contract negotiations for Executive Session” to the Agenda.

On motion by Councilwoman Hollowell, seconded by Councilman Gines with all members present voting AYE, Council added “Pending litigation/settlement consideration for Executive Session” to the Agenda.

On motion by Councilman Gines, seconded by Councilman Simmons with all members present voting AYE, Council added “Discussion regarding litigation of City Equipment in Executive Session” to the Agenda.

On motion by Councilwoman Hollowell, seconded by Councilman Gines with all members present voting AYE, Council added “Discussion of other business conducted at 5 Orchard Place” to the Agenda following Item 5a.

On motion by Councilman McGee, seconded by Councilman Simmons with all members present voting AYE, except Councilwoman Hollowell who voted NAY, Council added “Discussion of use of City Hall for upcoming election business” to the Agenda.

On motion by Councilman Gines, seconded by Councilman Simmons with all members present voting AYE, Council removed Item # 17 “Council to consider approval of travel/training for Councilman Carl McGee and Councilman Errick D. Simmons to attend the MS Black Caucus of Local Elected Officials during the 2011 MS Municipal League summer conference in the amount of $175.00 each” from the agenda.

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 **The following departmental reports were presented:**

City Clerk’s Office Mayor’s Office

Engineering Municipal Court

Fire Department Planning and Zoning

Fleet Department Police Department

Human Resources Public Works

Information Technology Water/Utility Department

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 **On motion by Councilman Gines, seconded by Councilman Simmons with all members present voting AYE, Council approved the minutes of a Regular City Council meeting held March 15, 2011.**

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**On motion by Councilwoman Watkins, seconded by Councilwoman Hollowell with all members present voting AYE, Council approved the minutes of a Public Works Special City Council meeting held March 17, 2011.**

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 **On motion by Councilman Gines, seconded by Councilwoman Weathers with all members present voting AYE, Council received the minutes of a Planning Commission meeting held March 22, 2011.**

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 **ORDER # 11-112**

**ORDER: GRANTING THE REQUEST OF DR. ROBERT OLIVER FOR A CONDITIONAL USE PERMIT TO LOCATE A HOME OCCUPATION FOR A BILLING OFFICE AT 5 ORCHARD PLACE, ZONED R-1. (PLANNING COMMISSION RECOMMENDED APPROVAL)**

**On motion by Councilman Gines, seconded by Councilwoman Weathers with all members present voting AYE, Council granted a Conditional Use Permit to Dr. Robert Oliver.**

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 **ORDER # 11-113**

**ORDER: TABLING DISCUSSION OF OTHER BUSINESS USES ALLEGEDLY CONDUCTED AT 5 ORCHARD PLACE UNTIL FURTHER INFORMATION IS OBTAINED FROM THE PLANNING DEPARTMENT.**

 **On motion by Councilwoman Watkins, seconded by Councilman Gines with all members present voting AYE, Council tabled discussion until additional information is obtained.**

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**ORDER # 11-114**

**ORDER: GRANTING THE REQUEST OF MR. BRYANT BARNES FOR A CONDITIONAL USE PERMIT TO LOCATE A TELEPHONE HOME OCCUPATION FOR A REAL ESTATE BROKERAGE OFFICE AT 1225 WAXHAW DRIVE, ZONED R-2. (PLANNING COMMISSION RECOMMENDED APPROVAL)**

**On motion by Councilwoman Weathers, seconded by Councilman Gines with all members present voting AYE, Council granted a Conditional Use Permit to Mr. Bryant Barnes.**

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 **ORDER # 11-115**

**ORDER: RECINDING ORDER #11-091 OF MARCH 15, 2011 AND APPROVING THE REQUEST OF MR. AL BROCK FOR A THIRTY (30) DAY EXTENSION TO MAKE REPAIRS AND SHOW IMPROVEMENT TO PROPERTY LOCATED AT 426 RUBYE DRIVE THERBY NULLIFYING RESOLUTION #10-208 OF NOVEMBER 16, 2010.**

 **On motion by Councilwoman Hollowell, seconded by Councilman Gines with all members present voting AYE, Council rescinded Order #11-091, granted Mr. Brock 30 days and nullified Resolution # 10-208.**

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**ORDER # 11-116**

**ORDER: DENYING THE REQUEST OF MR. BILL YOSTE REPRESENTING CELLULAR SOUTH TO LOCATE A 120’ MONOPOLE, WITH NO GUY WIRE, COMMUNICATION TOWER NEAR THE TENNIS COURT OFF CAUSEY DRIVE, ZONED PUB UNTIL A PUBLIC HEARING IS HELD. [REFERENCE GREENVILLE CODE OF ORDINANCES APPENDIX B, ZONING, ARTICLE XXXII, SECTION 3204]**

**On motion by Councilman McGee, seconded by Councilman Gines with all members present voting AYE, Council denied Mr. Bill Yoste request.**

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**ORDER # 11-117**

**ORDER**

 WHEREAS, by Deed dated March 10, 1958, which Deed was recorded at Book 656, Page 193 of the land records of Washington County, Mississippi, the City of Greenville, Mississippi conveyed to the Board of Trustees of the Greenville Municipal Separate School District (“District”) all of the then-existing public school property held by the City, including the Garrett Hall school property and the Jessie G. McBride school property (formerly known as the Susie P. Trigg (Court) School property); and

 WHEREAS, the Deed of Conveyance contains a clause of reversion of any such property to the City under which “[i]n the event any portion of any of the property herein conveyed should ever cease to be used for school purposes, or should ever be used for any purpose other than school purposes, title thereto shall automatically revert to the [City].”; and

 WHEREAS, the District is not itself currently operating schools at the Garrett Hall and McBride properties, but Washington County Opportunities, Inc., a Mississippi non-profit corporation, has requested to operate Head Start Educational programs at those properties; and

 WHEREAS, the District has advised the City that it wishes to enter into an agreement with WCOI under which WCOI would operate Head Start programs at the properties under lease agreements between the District and WCOI; and

 WHEREAS, the District wishes to ensure that such proposed lease of the Garrett Hall and McBride properties would not violate the terms of the March 10, 1958 Deed, thereby inadvertently causing the properties to revert to the City; and

 WHEREAS, the City Council of the City of Greenville, Mississippi believes that utilization of these facilities for the purpose noted above is within both the letter and spirit of the Deed of Conveyance;

 IT IS THEREFORE ORDERED as follows:

 1. The use of the Garrett Hall and McBride school facilities for housing and operating Head Start programs is, in fact, a use for school purposes, and is not a use for any purposes other than school purposes; and

 2. So long as the properties are used exclusively for school purposes by the District or for purposes of operating a Head Start program or programs, and for no other purpose, these properties shall not revert to the City of Greenville, Mississippi.

 This \_\_\_\_\_ day of April, 2011.

 CITY OF GREENVILLE, MISSISSIPPI

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 Heather McTeer-Hudson, Mayor

ATTEST:

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Amelia D. Wicks, City Clerk

**On motion by Councilwoman Weathers, seconded by Councilman Gines with all members present voting AYE, Council approved the use of Garrett Hall and McBride school facilities as “for school purposes” by Washington County Opportunities, Inc. as Head Start centers.**

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 **RESOLUTION # 11-007**

**RESOLUTION**

RESOLUTION AUTHORIZING THE CITY OF GREENVILLE TO BE NAMED AS A PARTY PLAINTIFF IN THAT CERTAIN LAWSUIT TO BE FILED ON BEHALF OF THE MISSISSIPPI ASSOCIATION OF SUPERVISORS (“MAS”), THE MISSISSIPPI MUNICIPAL LEAGUE (“MML”) AND VARIOUS CITIES AND COUNTIES AGAINST THE CHAIRMAN OF THE MISSISSIPPI DEPARTMENT OF REVENUE (MDOR), IN HIS OFFICIAL CAPACITY, FOR DECLARATORY AND INJUNCTIVE RELIEF REGARDING THE MDOR’S IMPLEMENTATION OF SENATE BILL 3100 PRESCRIBING THE APPRAISAL METHOD FOR SECTION 42 PROPERTY IN THE STATE.

WHEREAS, the Mayor and Greenville City Council (“City”) hereby finds, determines, adjudicates and declares as follows:

The City desires to be named as a party Plaintiff in that certain lawsuit to be filed in the Chancery Court of Hinds County, Mississippi, in which the MAS and the MML and various other cites and counties are named plaintiffs, and in which the plaintiffs seek a declaratory judgment that the implementation of SB 3100 (2005 Regular Session, Mississippi Legislature) as to the appraisal of Section 42 property in the State is illegal and injunctive relief against the DOR directing it to cease to impose its interpretation on local governments in the State.

Pursuant to prior actions taken by the MAS and MML, those organizations will not only be lead party plaintiffs in the lawsuit but will also fund the legal action by way of a fund into which both entities have agreed to contribute through the participation of their members and the City will not incur additional costs as a result of agreeing to be named as a party plaintiff in the action.

The City has lost significant revenue as a result of the unfair and illegal taxation of Section 42 properties in the City and participation in the lawsuit seeking to end the tax breaks for Section 42 property owners will benefit the City, its citizens and all tax payers in the City.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND GREENVILLE CITY COUNCIL AS FOLLOWS:

That the City of Greenville desires to be named as a party plaintiff in that certain lawsuit to be filed in the Chancery Court of Hinds County by the MAS and the MML and various other cities and counties against the Chairman of the MDOR, in his official capacity, to challenge the methodology put in place by the MDOR to appraise Section 42 properties in the State..

The City will not incur additional costs of litigation by being named as a party plaintiff in this legal action since the MAS and MML have agreed to fund this action through the participation of their members.

The lawsuit in which the City is agreeing to participate, if successful, will result in an increase in the amount of ad valorem taxes paid by the Section 42 property owners in the City and thus, will benefit the City, its citizens and other taxpayers in the City.

Councilwoman Weathers moved and Councilman Gines seconded the motion for adoption of the foregoing Resolution and the question being put to a roll call vote, the results were as follows:

 Councilman Kenneth L. Gines voted: AYE

 Councilwoman Ann Hollowell voted: AYE

Councilman Carl McGee voted: AYE

 Council man Errick Simmons voted: AYE

 Councilwoman Betty Watkins voted: AYE

 Councilwoman Carolyn Weathers voted: AYE

The motion having received the affirmative vote of a majority of the members present, the Mayor declared the motion carried and the resolution adopted, on this the 5th day of April, 2011.

 THE CITY OF GREENVILLE CITY COUNCIL

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Heather McTeer-Hudson, Mayor

ATTEST:

Amelia D. Wicks, City Clerk

(SEAL)

 **On motion by Councilwoman Weathers, seconded by Councilman Gines with all members present voting AYE, Council adopted a Resolution regarding Senate Bill 3100.**

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 **ORDER # 11-118**

**ORDER: APPROVING A SERVICE AGREEMENT WITH BACKFLOW SOLUTIONS, INC. TO ADMINISTER THE BACKFLOW TRACKING FOR CROSS-CONNECTION CONTROL PROGRAMS.**

**SEE DOCUMENT AT END**

**On motion by Councilwoman Weathers, seconded by Councilwoman Watkins with all members present voting AYE, Council entered into a Service Agreement with Backflow Solutions, Inc.**

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**ORDER # 11-119**

**ORDER: APPROVING A SERVICE AGREEMENT WITH THE UNITED STATES DEPARTMENT OF AGRICULTURE WILDLIFE SERVICES TO CONTROL BEAVERS IN DRAINAGE SYSTEMS.**

**SEE DOCUMENT AT END**

**On motion by Councilwoman Weathers, seconded by Councilwoman Watkins with all members present voting AYE, Council entered into a Service Agreement with USDA to control beavers in drainage systems.**

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**ORDER # 11-120**

**ORDER: AWARDING BID FOR BUDGETED ROOF REPLACEMENT OF FIRE STATION # 5 TO SULLIVAN AND SONS CONSTRUCTION COMPANY IN THE AMOUNT OF $7,800.00 FOR A 30 YEAR ARCHITECTURAL ROOF.**

|  |
| --- |
| Sealed Bid # 033111Budgeted Roof Replacement – Fire Station # 5Corner of Alexander & Beauchamp Streets |
|  |  |  |
| **Company** | **25 Year Roof** | **30 Year Roof** |
| Hill’s Roofing and RepairGreenville, MS | $7,383.00with a 5 year warranty | $9,844.00 |
| Clinton Powell Roofing & Construction Cleveland, MS | $6,750.00with a 3 year warranty | $7,425.00 |
| Sullivan & Son’s Construction Co.Greenville, MS | $6,240.00with a 1 year warranty | $7,800.00 |

 **Councilwoman Hollowell, seconded by Councilwoman Weathers, motioned for approval of bidder Hill’s Roofing and Repair based on the warranty offered. Substitute motion was offered by Councilman Simmons, seconded by Councilman Gines with all members present voting AYE, except Councilwoman Weathers and Councilwoman Hollowell who voted NAY, Council awarded the bid to Sullivan and Sons Construction.**

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**ORDER # 11-121**

**ORDER: APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF GREENVILLE AND HARLAN R. PRUESS, INC. FOR PROPERTY LOCATED AT GREENVILLE MID-DELTA AIRPORT COMMENCING APRIL 1, 2011 AND ENDING SEPTEMBER 30, 2011.**

**SEE DOCUMENT AT END**

**On motion by Councilwoman Hollowell, seconded by Councilwoman Weathers with all members present voting AYE, Council approved a Lease Agreement with Harlan R. Pruess, Inc.**

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**ORDER # 11-122**

**ORDER: APPROVING THE USE OF UNMARKED VEHICLES BY THE GREENVILLE POLICE DEPARTMENT TO AID IN THE FURTHERANCE OF MAINTAINING LAW AND ORDER.**

**On motion by Councilwoman Weathers, seconded by Councilman Simmons with all members present voting AYE, Council approved the use of unmarked vehicles by the Police Department.**

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**ORDER # 11-123**

**ORDER: APPROVING THE USE OF THE REMAINING 2007 AND 2008 STREET BOND IMPROVEMENT FUNDS IN THE AMOUNT OF $528,288.64 FOR REPAIRS TO THEOBALD STREET.**

 **Motion was entered by Councilwoman Weathers, seconded by Councilwoman Hollowell to remand discussion of streets to the Public Works Committee. Substitute motion was entered by Councilwoman Watkins, seconded by Councilman Simmons, with all members present voting AYE, except Councilwoman Weathers who voted NAY, approving the use of the remaining 2007 and 2008 Street Bond funds.**

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**ORDER # 11-124**

**ORDER: APPROVING TRAVEL/TRAINING FOR AARON NICHOLSON AND JEFF APPLETON TO ATTEND THE 57TH ANNUAL WATER SUPPLY AND POLLUTION CONTROL SHORT COURSE IN STARKVILLE, MS FROM MAY 23 – 27, 2011 IN THE AMOUNT OF $403 EACH.**

 **On motion by Councilwoman Hollowell, seconded by Councilman Simmons with all members present voting AYE, Council approved travel/training for Aaron Nicholson and Jeff Appleton.**

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**ORDER # 11-125**

**ORDER: APPROVING TRAVEL FOR MAYOR HEATHER MCTEER-HUDSON, COUNCILMAN KENNETH L. GINES, COUNCILWOMAN ANN HOLLOWELL, COUNCILMAN CARL MCGEE, COUNCILMAN ERRICK D. SIMMONS, COUNCILWOMAN BETTY WATKINS AND COUNCILWOMAN CAROLYN WEATHERS (REGISTRATION FEE) TO ATTEND THE 2011 MS MUNCIPAL LEAGUE ANNUAL SUMMER CONFERENCE FROM JUNE 26 – 30, 2011 IN BILOXI, MS IN THE AMOUNT OF $225.00 EACH.**

 **On motion by Councilwoman Weathers, seconded by Councilman Gines with all members present voting AYE, Council approved travel for the Mayor and Council to attend the 2011 MML Annual Summer Conference.**

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**ORDER # 11-126**

**ORDER: APPROVING PAY REQUEST 9586817 IN THE AMOUNT OF $556.26; PAY REQUEST 9593140 IN THE AMOUNT OF $1,752.00; PAY REQUEST 9594882 IN THE AMOUNT OF $59.80; AND PAY REQUEST 9621527 IN THE AMOUNT OF $93.72 TO PORT SUPPLY FOR PAYMENT OF PURCHASES UNDER THE 2006-CKWX0459 METHAMPHETAMINE GRANT. (100% GRANT FUNDED.)**

 **On motion by Councilman McGee, seconded by Councilwoman Hollowell with all members present voting AYE, Council approved pay requests to Port Supply.**

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**ORDER # 11-127**

**ORDER: APPROVING PAY REQUEST WSG8546 IN THE AMOUNT OF $106.02; PAY REQUEST WSK6627 IN THE AMOUNT OF $1,392.16; AND PAY REQUEST WRP4329 IN THE AMOUNT OF $5,781.82 TO CDW GOVERNMENT FOR PURCHASES UNDER JAG GRANT 2009-SB-B9-3057. (100% GRANT FUNDED)**

 **On motion by Councilman Gines, seconded by Councilwoman Hollowell with all members present voting AYE, Council approved pay requests to CDW Government.**

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**ORDER # 11-128**

**ORDER: APPROVING PAY REQUEST 310343 TO DAWKINS OFFICE SUPPLIES FOR PURCHASES UNDER JAG GRANT 2009-SB-B9-3057 IN THE AMOUNT OF $220.00 (100% GRANT FUNDED)**

 **On motion by Councilman Gines, seconded by Councilman Simmons with all members present voting AYE, Council approved a pay request to Dawkins Office Supplies.**

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COUNCILWOMAN HOLLOWELL RECUSES HERSELF

**ORDER # 11-129**

**ORDER: APPROVING THE CLAIMS PAYABLE DOCKET PLUS MANUAL CHECK REPORT IN THE TOTAL AMOUNT OF $585,843.04.**

 **On motion by Councilman Gines, seconded by Councilman Simmons with all members present voting AYE, Council approved the Claims Payable Docket plus Manual Check Report.**

COUNCILWOMAN HOLLOWELL REJOINS

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**ORDER # 11-130**

**ORDER: APPROVING PAY REQUESTS 1608 IN THE AMOUNT OF $14,504.00; PAY REQUEST 1609 IN THE AMOUNT OF $3,999.00; AND PAY REQUEST 1610 IN THE AMOUNT OF $14,800.00 TO PRIORITY 1 TECHNOLOGIES, INC. FOR WORK PERFORMED UNDER GRANT # EMW-2009-F0-09857 FOR THE FIRE DEPARTMENT TONE SYSTEM. (90% GRANT FUNDED)**

 **On motion by Councilwoman Hollowell, seconded by Councilman Simmons with all members present voting AYE, Council approved pay requests to Priority 1 Technologies.**

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 **ORDER #11-131**

**ORDER: GRANTING THE USE OF CITY HALL FOR MUNICIPAL ELECTION MEETING PURPOSES.**

 **On motion by Councilman McGee, seconded by Councilman Gines with all members present voting AYE, except Councilwoman Hollowell who voted NAY, Council approved the use of City Hall for municipal election meetings.**

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**EXECUTIVE SESSION**

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**There being no further business coming before the City Council the meeting was adjourned.**

**THE CITY COUNCIL OF GREENVILLE,**

 **MISSISSIPPI**

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 **Heather McTeer-Hudson, Mayor**

**ATTEST:**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Amelia D. Wicks, City Clerk**

**BSI ONLINE SUBSCRIPTION AGREEMENT**

Effective this *5th* day of *April*, 2011, Backflow Solutions Inc., an Illinois corporation (“BSI”) and the City of *Greenville*, State of *Mississippi,* a body politic and corporate (the “Municipality”; BSI and Municipality may sometimes be referred to individually as a “Party” and collectively as the “Parties”), hereby enter into an online subscription agreement (the “Agreement”) whereby BSI will perform certain notification and data management functions on behalf of the Municipality and the Municipality will provide BSI with the information described hereafter, and require that all companies that perform mandated backflow assembly (“Assembly” or “Assemblies”) tests (“Backflow Test(s)”) within the Municipality be directed to the BSI website to enter the result of each Backflow Test performed within the Municipality.

1. **Municipality Responsibilities**. In addition to any other responsibilities set forth in this Agreement, Municipality shall:

(a) Furnish BSI with a current water customer billing database, which shall include a current list of all testable Assemblies, and identify the type of testable assembly, make, model number, serial number, size, hazard and the location address of each such Assembly (the “User Data”).

(b) Furnish the User Data in an electronic format, acceptable to BSI (“Electronic Data”).

(c) Cooperate with BSI for the purposes of updating User Data and other information to ensure the continuing accuracy of the “Online Database”.

2. **BSI Responsibilities**. In addition to any other responsibilities set forth elsewhere in this Agreement, BSI shall through the use of its proprietary software (the “BSI Online Software”):

(a) Maintain the Online Database to insure a functional backflow assembly tracking system that is easy to understand and use by licensed testers (“Testers”). BSI shall also maintain an internet website (the “Web Site”) where Testers shall input all data related to Backflow Tests they conduct within the Municipality (the “Test Report”).

(b) Send up to two (2) notices to water customers that have Assemblies, advising them that their Assembly is due for testing. The “Test Due Notice” shall be mailed approximately 30 days prior to the scheduled test date (“Test Date”). The second notice (the “Overdue Notice”) shall be sent after the Test Date has passed if Backflow Test results have not been entered to the Online Data Base. The Overdue Notice will advise the water customer of its delinquent test status and recite the penalties which may result from failure to comply with the testing procedure. BSI shall transmit an electronic copy of each Test Report to the Municipality within a reasonable time following its receipt. To facilitate the testing procedure, the Test Due Notice will include the identity of the water customer’s last Tester of record, together with all relevant contact information, provided that information is available to BSI. At the time the Test Due Notice is mailed to the water customer, BSI will also transmit a notice to the last Tester of record advising that Tester that the water customer’s assembly is due to be tested (the “Tester Notification”). The Tester Notification is designed to increase test compliance, thereby reducing enforcement costs incurred by the Municipality.

 (c) Transmit a notice of non-compliance to the Municipality by electronic transmission (“e-mail”) if BSI fails to receive a Test Report for a water customer within 15 days of the Overdue Notice.

3. **Warranty and Hold Harmless**.

(a) BSI hereby represents and warrants to Municipality that BSI is the owner of the BSI Online Software and Web Site or otherwise has the right to grant to Municipality the rights set forth in this Agreement. In the event any breach or threatened breach of the foregoing representation and warranty, Municipality’s sole remedy shall be to require BSI to either: i) procure, at BSI’s expense, the right to use the software, or ii) refund to Municipality the full amount of the Subscription Fee.

(b) The Municipality acknowledges and agrees that the BSI Online Software and Web Site are the exclusive property of BSI and that BSI is making the BSI Online Software, Web Site and Online Data Base available to the Municipality and the Testers. While the BSI Online Software and Web Site enables Testers to upload completed test data, BSI accepts no responsibility or liability for fraudulent acts, errors or omissions which may be contained in the Test Reports.

(c) BSI makes no warranty or other assurance as to the operation, quality or functionality of its Web Site or its fitness for any particular purpose. Access to the Web Site may be interrupted, restricted or delayed for any reason. BSI disclaims all responsibility for any damages or losses (including, without limitation, financial loss, damages for loss in business projects, loss of profits or other consequential losses) arising in contract, tort or otherwise from the use of or inability to use the Web Site.

(d) IN NO EVENT SHALL BSI, ITS SUCCESSORS OR ASSIGNS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY ARISING OUT OF THE USE OF OR INABILITY TO USE THE BSI ONLINE SOFTWARE, WEB SITE AND/OR DATA BASE EVEN IF BSI OR ITS SUCCESSOR OR ASSIGNS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES and in no event shall BSI’s liability to Municipality, whether in contract, tort (including negligence), or otherwise, exceed the Subscription Fee paid by the Municipality. The foregoing limitations shall apply even if the above-stated warranty fails of its essential purpose. SOME STATES DO NOT ALLOW LIMITATION OR EXCLUSION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES.

(e) The Municipality agrees to hold BSI, its successors and assigns harmless now and forever from any and all liabilities that may arise from the Municipality’s backflow assembly tracking program and or its cross-connection control program.

4. **Protection and Confidentiality**. Municipality acknowledges that the BSI Online Software, Web Site and Online Data Base constitute and contain valuable proprietary products and trade secrets of BSI and/or its suppliers. Therefore, Municipality agrees:

(a) To respect and not to remove, obliterate, use or cancel from view any copyright, trademark, confidentiality or other proprietary notice, mark, or legend appearing on any of the BSI Online Software or Web Site or output generated by the BSI Online Software or Web Site.

(b) That it will not modify, reverse engineer, disassemble, or decompile the BSI Online Software, or any portion thereof.

(c) That all copies of the BSI Online Software in any form provided by BSI or made by Municipality are the sole property of BSI and/or its suppliers. Municipality shall not have any right, title, or interest to any such BSI Online Software or Web Site or copies thereof except as provided in this Agreement, and further shall secure and protect all BSI Online Software, the Web Site and any documentation related thereto consistent with maintenance of BSI’s proprietary rights therein.

(d) To treat (and take precautions to ensure that its employees treat) the BSI Online Software, Web Site and any documentation related thereto as confidential in accordance with the confidentiality requirements and conditions set forth below.

(e) To indemnify BSI with respect of any liabilities, losses, expenses, or other costs whatsoever incurred by BSI as a result of a breach of Municipality’s obligations hereunder, including, but not limited to, any claims made against BSI by any third party.

5. **Term of Subscription Agreement**. Municipality’s subscription and this Agreement will be on a full calendar year basis. If the Agreement is signed at a time other than January 1 of any calendar year the subscription fee will be prorated in accordance with paragraph 7, below, and, absent notice of cancellation, the subscription shall automatically renew for the next calendar year at the then prevailing Subscription Fee.

6. **Inducement**. Municipality acknowledges and agrees that in order to induce BSI to provide the service contemplated by this Agreement, BSI will charge the sum of $9.95 (the “Data Entry Charge”) for each Test Report submitted to the Online Data Base. The Data Entry Charge shall be paid prior to uploading the test data to the Online Data Base. Municipality shall require all Testers performing Backflow Tests in its community to post all Test Reports to the Online Data Base. Municipality further agrees that BSI may elect to increase the Data Entry Charge, at it sole discretion, effective January 1 of any calendar year, provided BSI provides the Municipality and known Testers not less than 30 days prior notice of each such increase.

7. **Cost**. Municipality shall pay BSI the sum of $495.00 per calendar year as the annual “Subscription Fee”. In the event Municipality initially subscribes for a period which is less than a full calendar year, the Subscription Fee will be prorated based on the number of days remaining in the then calendar year. The Subscription Fee is based on Municipality’s ability to provide BSI acceptable Electronic Data. BSI may elect to increase the Subscription Fee, at it sole discretion, effective January 1 of any calendar year, provided BSI provides the Municipality not less than 30 days prior notice of each such increase

8. **Termination**. Absent BSI’s receipt of written notice of termination received by BSI no later than November 1 of the current calendar year, this Agreement will automatically renew on a calendar year basis for as long as Municipality remains a fully paid-up subscriber. BSI reserves the right to terminate this agreement at any time if Municipality fails to abide by the terms and conditions hereof. In the event of an early termination by either Party, there will be no refund of the Subscription Fee, or any part thereof. In the event that this Agreement is terminated for any reason, BSI, upon written request of the Municipality and receipt of an amount equal to the then current Subscription Fee, shall deliver all current User Data to Municipality in electronic format.

9. **Representations and Warranties**. The Parties hereby represent and warrant each to the other that they have the right and authority to enter into this Agreement and to perform their obligations hereunder, that the granting of the rights and undertaking of the obligations hereunder will not infringe upon or conflict with any rights of a third party, and that their performance hereunder will not violate any applicable U.S. laws or government rules and regulations.

10. **Governing Law and Jurisdiction**. The rights and obligations of the Parties under this Agreement shall be governed by the laws of the State of Illinois, without reference to conflict of law principles. Any dispute or claim arising out of or in connection with this Agreement or the performance, breach or termination thereof, shall be finally settled by arbitration in Chicago, Illinois, under the rules of arbitration of the American Arbitration Association (provided, that in the event of arbitration, the parties agree that neither party shall be permitted to conduct more than three (3) depositions and one (1) round of written discovery). Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Notwithstanding the foregoing, either party may apply to the Circuit Court of Cook County, Illinois or the United States District Court for the Northern District of Illinois, Eastern Division for injunctive relief without breach of this arbitration process. In the event of any litigation or arbitration proceedings arising out of or relating to this Agreement, the prevailing party in such action shall be entitled to recover all costs and fees associated therewith including, without limitation, reasonable attorneys’ fees.

11. **Notices**. All notices required or permitted under this Agreement shall be in writing and shall be deemed received when (a) delivered personally, (b) sent by confirmed facsimile or confirmed e-mail (followed by the actual document via U.S. Mail), (c) three (3) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) day after deposit with a commercial express courier specifying next day delivery, with written verification of receipt. Unless otherwise indicated in writing by either Party to the other Party, all communications shall be sent to the address set forth for each party on the signature page hereto. Notices sent to Testers pursuant to paragraph 6, above, shall be sent to the address they register on the BSI Online Web Site.

12. **Severability**. If any provision of this Agreement is held to be unenforceable or invalid for any reason, the remaining provisions will continue in full force and effect with such unenforceable or invalid provision to be changed and interpreted to best accomplish its original intent and objectives.

13. **Amendment; Waiver**. No changes or modifications to or waivers of any provisions of this Agreement shall be effective unless evidenced in writing and signed by the Parties. The failure of either Party to enforce its rights under this Agreement at any time for any period shall not be construed as a waiver of such rights.

14. **Counterparts; Facsimile Signatures**. This Agreement may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page. Receipt of an executed signature page to this Agreement by facsimile or other electronic transmission shall constitute effective delivery thereof.

15. **Force Majeure**. Neither Party shall be liable for failure or delay in performing its obligations hereunder if such failure or delay is due solely to circumstances beyond its reasonable control, including, without limitation, acts or omissions of any governmental body, war, terrorism, insurrection, sabotage, embargo, fire, flood, strike or other labor disturbance, and interruption of or delay in transportation or utility services necessary to performance hereunder, or any other act, omission or occurrence beyond the Party’s reasonable control (provided the non-performing Party promptly notifies the other Party of the applicable circumstances and takes all reasonable measures to remedy the situation in as expeditious a manner as possible). Failure of subcontractors and inability to obtain materials shall not be considered beyond a Party’s reasonable control under this paragraph 15.

16. **Relationship of the Parties**. Nothing in this Agreement shall be construed to imply a partnership, joint venturer or principal-agent relationship between the Parties. Neither Party by virtue of this Agreement shall have any right, power or authority, express or implied, to act on behalf of, or for the use of, the other Party. This Agreement shall not be construed to create rights, express or implied, on behalf of or for the use of any parties other than Municipality and BSI, and neither Municipality nor BSI shall be obligated, jointly or severally, to any third parties or any third party beneficiaries by virtue of this Agreement.

17. **Entire Agreement**. This constitutes the entire agreement between the parties relating to the subject matter hereof.

18. **Privacy Policy**. The information which Municipality provides BSI will only be used by BSI to facilitate the creation and maintenance of the Online Data Base. Testers will only have access to the BSI Online Data Base for the purpose of uploading data through a user name and identity key that will change annually to augment the security of the Online Data Base and Web Site. The information contained in the Online Data Base will not be made available to any third party without Municipality’s written direction.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

BACKFLOW SOLUTIONS, INC., CITY OF GREENVILLE

an Illinois corporation a body politic and corporate

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: Brad Stancampiano Name: Heather McTeer-Hudson

Title: Executive Vice President Title: Mayor

Address: Address:

12609 South Laramie Ave. 340 Main Street

Alsip, Illinois 60803 Greenville, Mississippi 38701

Telephone: (800) 414-4990 Telephone (662) 378-1650

Facsimile: (888) 414-4990 Facsimile: (662) 378-1615

## LEASE AGREEMENT

This LEASE AGREEMENT is made and entered into this the 1st day of April 2011, by and between the City of Greenville, hereinafter referred to as “Lessor”, and Harlan R. Pruess, Inc., hereinafter referred to as “Lessee”.

###### **WITNESSETH**

WHEREAS, the City of Greenville, hereinafter referred to as the Lessor, owns and operates, the Mid-Delta Regional Airport (“Airport”); and

WHEREAS, the Lessee desires to lease certain property and facilities at Airport; and

WHEREAS, the Lessor, and Lessee are mutually desirous of entering into a Lease Agreement whereby Lessee will lease facilities from Lessor, pursuant to the provisions contained herein.

NOW THEREFORE, in consideration of the premises and the mutual covenants contained herein the parties hereto agree as follows:

**ARTICLE 1**

**DEMISE**

1.1 The Lessor hereby leases to Lessee, and Lessee hereby leases from the Lessor the following described property at the Mid-Delta Regional Airport in Washington County, Mississippi, and being described as follows, to-wit:

 Building 443, consisting of 27, 360 sq. feet

 **ARTICLE II**

**TERM**

2.1 The term of this Agreement shall be for Seven (7) months commencing at 12:01 a.m. on April 1, 2011 and expiring at 12:00 p.m. on September 30, 2011, unless sooner terminated in accordance with the provisions of this Agreement.

**ARTICLE III**

**RENT AND FEES**

3.1 As rental for the use and occupancy of the above premises during the term of the Lease Agreement, Lessee shall pay to the Airport the amount of $2,000.00. As additional rent, Lessee agrees to pay to Lessor on a prorated amount the premium amounts incurred for hazard insurance paid by Lessor on the leased premises. For the year 2011, this prorated amount equals $144.58 per month. The total monthly rent for the Leased Premises shall be $2,144.58 beginning April 1, 2011, and monthly thereafter.

3.2 Deposit – Leasee shall further pay at the beginning of the lease term a damage/cleaning deposit in the amount of $2,000.00.

**ARTICLE IV**

**INDEMNITY AND LIABILITY INSURANCE**

4.1 The Lessee, as a material part of the consideration herein, hereby waives all claims against the Lessor for damages to parts and equipment, or other items of personal property, chattels or fixtures, in, upon or about the leased premises, and for injuries, including death, to persons in or about said premises, from any cause arising at any time, and Lessee agrees to indemnify and hold Lessor exempt and harmless from any and all claims, liability, losses or causes of action for damage or injury, including death, to any person or to the goods, equipment, aircraft, parts or other items of personal property, chattels, or fixtures, of any person or party arising in whole or in part from the operations or use of said premises by the Lessee. In addition to its indemnification of Lessor, Lessee shall, at its sole expense, defend all suits which may be brought against Lessor as a result in whole or in part of Lessee’s use of, or operations upon, the leased premises, and Lessee shall be responsible for all attorney’s fees and costs incurred by Lessor as a result of Lessee’s failure to comply with this section of the Lease Agreement and any expenses, including Lessor’s reasonable attorney’s fees incurred in enforcing this obligation. Lessee further agrees that it will at all times during the term of this lease or any renewal hereof, at its own expense, purchase and maintain public liability insurance insuring all activities conducted by Lessee, including those conducted on the above premises, with minimum limits of liability of no less than $1,000,000.00 for personal injury and property damage, with Lessor named as an additional insured therein, to protect Lessor from any and all claims, of whatsoever nature, for personal injury, including death, and property damage which may arise from Lessee’s use and operations under this Agreement. Certificates of such insurance shall be furnished to Lessor upon the execution of the Agreement, with renewal certificates provided throughout the term of this Agreement or any renewal hereof. All such insurance shall be subject to Lessor’s approval. In the event any insurance coverage shall lapse or be terminated, Lessee shall take immediate steps to renew such insurance coverage. These provisions are of the essence to this Lease Agreement.

**ARTICLE V**

# FIRE AND EXTENDED COVERAGE

5.1 In case any of the leased space shall be damaged during the term of this lease or any renewal hereof by fire or other cause covered under the policy of insurance to be carried by Lessor, then and in that event, Lessor agrees to apply the insurance proceeds, or so much thereof as may be necessary, toward the repairs of said damage, and to do so as soon as possible; however, Lessor shall not be obligated to apply any money or funds toward repairs in excess of said insurance proceeds. In the event any such building is unfit for use and occupancy, rent payments shall abate for the period during which said building is unfit for occupancy. In case such leased premises shall be totally destroyed by fire or other casualty, then Lessor shall be under no obligation to rebuild at a cost in excess of the insurance proceeds. These provisions are of the essence of this Lease Agreement.

**ARTICLE VI**

**SUBLETTING AND ASSIGNMENT**

6.1 Lessee shall not assign or transfer this Lease Agreement, or sublet any portion of the Leased Premises without the prior written consent of the Lessor. In no case may this Lease Agreement or any portion of the facility be assigned or sublet for any period or periods after default of any provision herein contained. Any attempt to sublease or assignment of Lessee’s interest in the Leased Premises without the prior approval of the Lessor shall be null and void, shall constitute an event of default on the part of Lessee and shall give the Lessor the right to terminate this Lease Agreement upon notice to Lessee as provided herein.

6.2 In the event the Lessor consents to an assignment or subletting on the part of Lessee of any rights or privileges granted in this Lease Agreement, Lessee shall continue to be primarily liable for any and all payments due the Lessor pursuant to the provisions of this Lease Agreement, and for the full and faithful performance of all provisions contained in this Lease Agreement to be performed by Lessee.

**ARTICLE VII**

**ENVIRONMENTAL PROTECTION**

7.1 Lessee shall strictly comply with all rules, regulations, laws, statutes and administrative orders of the Lessor and of any agencies of the Lessor, Washington County, State of Mississippi and the United States regarding protection of the environment, as now exist or as may hereinafter be adopted. Lessee specifically agrees that no pollutants or contaminants will be disposed of on the Leased Premises in any manner whatsoever. It is an express condition of this Lease Agreement that Lessee shall comply with all rules and regulations of the Federal Aviation Administration (FAA), Environmental Protection Agency (EPA), Mississippi Department of Environmental Quality (MDEQ) and any other authority of competent jurisdiction regarding fixed based operations, as well as the reporting and clean-up of any pollution, emissions, leaks, discharges, releases, escapes or spills causing contamination of the environment.

7.2 Lessee hereby indemnifies and holds the Lessor, its officials, officers, employees and agents, harmless from and against any and all liability, including fines, suits, judgments, claims, loss, costs, damages, expenses, liens and causes of action of every kind resulting from pollution, emissions, leaks, discharges, releases, escapes or spills, arising from the activities or omissions of Lessee and its employees, agents, representatives, suppliers and any third parties under Lessee’s control or which Lessee has the right to control, in connection with operations at the Leased Premises; including, but not limited to, the cost of any required reporting, testing, monitoring, clean-up or environmental remediation. In the event of any pollution, emission, leak, discharge, release, escape or spill, from whatever cause, Lessee shall promptly report any such incidents to the Lessor and to the proper environmental authority or authorities, and thereafter take all necessary and proper actions to limit the discharge and remediate the spill in accordance with approved procedures. The duties and obligations of this provision shall survive the expiration or earlier termination of this Lease Agreement.

7.3 Lessee shall not discharge or dispose of, or permit or condone any third party under its control to discharge or dispose of, any chemicals or other materials into the storm sewers at the Leased Premises in violation of the Lessor’s National Pollutant Discharge Elimination System (NPDES) permit issued by MDEQ. Lessee shall not discharge of or dispose of, or permit or condone any third party under Lessee’s control to discharge or dispose of, any chemicals or other materials into the sanitary sewers at the Airport, without first obtaining a discharge permit from the Lessor.

**ARTICLE VIII**

**DEFAULT**

8.1 In the event of Lessee’s breach of any provision of this Lease Agreement, the Lessor shall give Lessee written notice of default. In the event such default is not corrected within thirty (30) days from the date of such written notice, or within ten (10) days if the event of default is the obligation to remit payments, then the Lessor shall have the right to terminate this Lease Agreement or to terminate Lessee’s right to use and occupy the Leased Premises without terminating this Lease Agreement. The Lessor’s exercise of either of these options shall be effective upon written notice to Lessee. Upon termination of this Lease Agreement, or upon termination of Lessee’s right to use and occupy the Leased Premises without termination of this Lease Agreement, Lessee agrees to promptly remove its personal property, vacate the Leased Premises and surrender possession to the Lessor without further demand.

8.2 Lessee shall, upon the termination of this Agreement, return the Leased Premises to the Lessor in good condition, loss by fire or other unavoidable casualty and reasonable wear and tear excepted. Lessee shall surrender all keys to the Leased Premises and inform the Lessor of all combinations on locks, safes and vaults therein.

8.3 All installations, additions, fixtures, and improvements in or upon the Leased Premises placed there by the Lessee, including without limitation, paneling, partitions, railings, carpeting and flooring, shall, at the Lessor’s option, become the property of the Lessor and shall remain upon the Leased Premises at the termination of this Agreement without compensation, allowance or credit to the Lessee; provided, however, that Lessee shall have the option of removing any trade fixtures which it installed in or upon the Leased Premises prior to the termination of this Agreement, but Lessee shall remain responsible for repairing any damage caused to the leased premises by such removal.

8.4 Any furniture, equipment, machinery or movable property owned by Lessee and brought onto the Leased Premises during Lessee’s occupancy thereof, but which is not removed within thirty (30) days after the termination of the Agreement, shall be deemed to have been abandoned by Lessee and, unless other arrangements are made with Lessor or Lessee’s successor, shall without any further act by Lessee, be conclusively deemed to have been conveyed by Lessee to the Lessor as if by bill of sale without further payment or credit by the Lessor to Lessee and may be sold by the Lessor or disposed of by the Lessor as it sees fit. Any amount realized upon any such sale shall be first applied to any amounts due Lessor from Lessee with any remaining amounts becoming the property of the Lessor. It is specifically understood that any such items remaining on the premises after termination shall remain at the sole risk of the Lessee, and Lessor is not responsible for any loss or damage that may occur prior to their removal by Lessee.

## ARTICLE IX

**HOLDING OVER**

9.1 Any holding over by Lessee after expiration or termination of this Lease Agreement, without the written consent of the Lessor, shall not be deemed to operate as an extension or renewal of this Lease Agreement, but shall only create a tenancy at will, which may be terminated by either party at any time. In the event of such holding over, all provisions of this Lease Agreement shall remain in full force and effect, and Lessee shall continue to pay rent and all other fees due to the Lessor in accordance with the provisions stated herein, until such time as a new lease is negotiated or until the tenancy at will is terminated.

## ARTICLE X

**SECURITY**

10.1 The Lessor assumes no responsibility or liability for damage to the Leased Premises from any cause whatsoever; including, but not being limited to, damage resulting from aircraft incidents. The Lessor assumes no responsibility or liability for security of the Leased Premises or any improvements or equipment thereon, nor for the safety of Lessee’s customers, employees, independent contractors or agents. Lessee assumes full responsibility and risk of loss for all improvements and equipment on the Leased Premises and for the safety of all persons and equipment utilized about the Leased Premises.

10.2 Lessee agrees to strictly observe all applicable security requirements of Federal Aviation Regulation, Part 107, and the Airport Security Program, as now exist and as may hereinafter be amended, and to take such actions as may be required to insure that all employees, patrons and agents observe the said requirements.

10.3 Lessee shall promptly notify Airport Fire Department (at 662-332-1572), City of Greenville Police Department (at 662-378-1515) and Washington County Sheriff’s Department (at 662-334-4523) of any damage to the facility, safety concern or compromise of the Airport Security Program and/or Airport Certification Manual.

10.4 In the event the Lessor incurs any fine or penalty imposed by the FAA, or expense in enforcing the requirements of Federal Aviation Regulation, Part 107, or the Airport Security Program, as a result of the acts or omissions of Lessee, Lessee agrees to pay and/or reimburse the Lessor immediately upon demand for all such costs and expenses.

**ARTICLE XI**

**NONDISCRIMINATION**

11.1 Lessee, for itself, its successors in interest and assigns, as part of the consideration hereof, does covenant and agree that: (1) No person shall be excluded, on the grounds of race, color or national origin, from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities; (2) In the construction of any improvements on, over or under such land and the furnishing of services thereon, no person shall be excluded, on the grounds of race, color or national origin, from participation in, denied the benefits of, or otherwise be subjected to discrimination; and (3) Lessee shall use the premises in compliance with all other requirements imposed by or pursuant to 49 CFR Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation, and as said Regulations may be amended.

## ARTICLE XII

**SUBORDINATION**

12.1 This Lease Agreement is subject to, and subordinate to, the provisions of any Lease Agreement heretofore or hereafter made between the Lessor and the United States Government relative to the operations, development or maintenance of the Airport, the execution of which is required as a condition precedent to the transfer of federal rights or property to the Lessor for Airport purposes or the expenditure of federal funds for the improvement or development of the Airport.

## ARTICLE XIII

**DEVELOPMENT**

13.1 The Lessor reserves the right to further develop and improve the Airport, and all landing areas and taxi-ways, as it sees fit, regardless of the desires and views of Lessee and without interference or hindrance. In addition, the Lessor reserves the right to take any actions it considers necessary to protect the aerial approaches of the Airport against obstructions which, in the sole discretion of the Lessor, would limit the usefulness of the Airport or constitute a hazard to aircraft.

## ARTICLE XIV

**RIGHT TO AMEND**

14.1 In the event the FAA, or it successors, require modifications or changes in this Lease Agreement, as a condition precedent to the granting of funds for improvement of the Airport or otherwise, Lessee shall make such amendments, modifications, revisions, supplements or deletions to any of the terms, conditions or provisions of this Lease Agreement as may be reasonably required to permit the Lessor to obtain such funding. Any expense resulting from such amendments, modifications, revisions, supplements or deletions of this Lease Agreement shall be including in the granting of funds process; or Lessee may terminate this Lease Agreement with six (6) months advance written notice to the Lessor.

## ARTICLE XV

**RESERVATION**

15.1 The Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft above the surface of the Airport to include the Leased Premises, together with the right to cause in said air space such noise or interference as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of a flight in such air space, and for use of said air space for landing at, taking off from, and operating aircraft on and over the Airport and the Leased Premises. However, if the need arises for the Airport to develop a noise abatement plan, the Lessor will communicate with the Lessee on the development of such plan.

## ARTICLE XVI

**RELATIONSHIP OF THE PARTIES**

16.1 Nothing contained in this Lease Agreement shall be deemed or construed as creating a partnership, joint venture or agency relationship between the parties. Neither party shall have the right or authority to bind the other.

## ARTICLE XVII

**RIGHT TO ENTER**

17.1 The Lessor reserves the right to access the Leased Premises at any time in the event of an emergency. The Lessor reserves the right to inspect the Leased Premises and all improvements at reasonable intervals during regular operating hours to determine whether Lessee is in compliance with the provisions of this Lease Agreement. Failure to comply with the repair and maintenance provisions of this Lease Agreement shall be deemed a breach by Lessee of this Lease Agreement, and the Lessor may, but is not so required, effect such repairs and maintenance which Lessee has failed to perform after notice from the Lessor. Such repairs and maintenance shall be for the account of Lessee. Any amounts so expended by the Lessor shall be repayable by Lessee as additional rent in the month or months such payments are made by the Lessor. Lessor agrees any inspection or repair shall not unduly interfere with or otherwise adversely affect Lessee’s interest.

17.2 The Lessor reserves the right to construct, install, maintain, repair and remove utility lines, pipes, mains, wires, conduit and equipment on, under or across the real property; provided, however, that reasonable efforts shall be made not to interfere with the operations of Lessee. Lessor agrees any inspection or repair shall not interfere with, or otherwise adversely affect, Lessee’s interest .

## ARTICLE XVIII

**WAIVER**

18.1 The waiver of default by either party of any provision of this Lease Agreement shall not operate as a waiver of subsequent defaults.

## ARTICLE XIX

**INTEGRATION**

19.1 This Lease Agreement is the entire Agreement between the parties and cannot be altered or amended except in writing and signed by both parties hereto.

## ARTICLE XX

**BINDING EFFECT**

20.1 The rights and obligations of this Lease Agreement shall extend to and be binding upon the parties and their successors and assigns.

## ARTICLE XXI

**CONSTRUCTION**

21.1 This Lease Agreement shall be construed under, and in accordance with, the laws of the State of Mississippi. In the event any provisions of this Lease Agreement are held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, the remaining portion of this Lease Agreement shall continue in full force and effect.

## ARTICLE XXII

**NOTICE**

22.1 All rental payments and written notices required by this Lease Agreement, unless otherwise provided, shall be deemed delivered when sent by first class mail to the Lessor at the following address:

Mid-Delta Regional Airport

166th Fifth Ave., Suite 300

Greenville, MS 38703-9737

Attn: Director

22.2 All written notices required by this Lease Agreement, unless otherwise provided, shall be deemed delivered when sent by first class mail to Lessee at the following address:

Harlan R. Pruess, Inc.

c/o Phillip Mansour, Jr., Esq.

143 N. Edison Street

Greenville, MS 38701

662-378-2244

IN WITNESS WHEREOF, the signatures of the parties hereto and the seal of the City of Greenville hereto affixed, on this the 5th day of April 2011.

 THE CITY OF GREENVILLE, MS

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Heather McTeer-Hudson, Mayor BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Heather McTeer-Hudson, Mayor

ATTEST:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Amelia D. Wicks, City Clerk

HARLAN R. PRUESS, INC.

 BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Harlan R. Pruess, President

STATE OF MISSISSIPPI

COUNTY OF WASHINGTON

 Personally appeared before me, the undersigned authority in and for the county and state aforesaid, Heather McTeer-Hudson and Amelia D. Wicks who acknowledge that they are Mayor and City Clerk, respectively, of the City of Greenville, Mississippi, a municipal corporation, and that for and on behalf of said corporation and as its act and deed they signed, sealed and delivered the foregoing and above instrument on the day and year therein mentioned, they having been first duly authorized to do so.

 Given under my hand and official seal, this \_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_, 2011.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

My Commission Expires:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

STATE OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

COUNTY OF \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Personally appeared before me, the undersigned authority in and for the county and state aforesaid, Harlan R. Pruess, who acknowledge that he is the President of Harlan R. Pruess, Inc., an \_\_\_\_\_\_\_\_\_\_\_\_\_\_ corporation, and that for and on behalf of said corporation and as its act and deed he signed, sealed and delivered the foregoing and above instrument on the day and year therein mentioned, he having been first duly authorized to do so.

 Given under my hand and official seal, this \_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_, 2011.

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Notary Public

My Commission Expires:

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