

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (hereinafter "Settlement Agreement") is entered into this \_\_\_ day of November, 2015, by and among the Broken Arrow Municipal Authority ("Authority"), Crossland Heavy Contractors, Inc. ("CHC"), Crossland Construction Company, Inc. ("Crossland") and Oil Capital Electric LLC ("Oil Capital"). These entities are collectively referred to as the "Parties" throughout this Settlement Agreement.

### I. RECITALS

**WHEREAS**, in or about February 7, 2012, the Authority entered into a construction contract ("Contract") with CHC for certain Water Supply Improvements on City of Broken Arrow Project No. 075036 ("Project") and to perform such work in accordance with the contract documents, which included, among other things, the drawings and specifications;

**WHEREAS**, Crossland was retained by CHC as a subcontractor on the Project;

**WHEREAS**, Oil Capital was retained by CHC as a subcontractor on the Project;

**WHEREAS**, CHC, Crossland and Oil Capital have delivered to the Authority claims for payment involving unpaid Oklahoma state and local sales taxes ("Claims");

**WHEREAS**, the Parties now desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of the Claims.

**NOW, THEREFORE**, it is hereby agreed as follows:

### II. SETTLEMENT AND RELEASE

**1. Tax Payment:** Crossland agrees to pay to the Oklahoma Tax Commission ("Tax Commission"), as an advance on amounts due the sum of One Million Seven Hundred Ninety-Two Thousand and 00/100 Dollars (\$1,792,000.00) ("Tax Payment"). This amount represents the sales tax determined to be due on Project purchases made by CHC and Crossland absent any exemption. The Tax Payment shall be made only if the Authority approves this Settlement Agreement, the Authority having previously authorized resolution in order to qualify CHC and Crossland for waiver and abatement of penalty, interest, collection fees and costs under the 2015 Voluntary Compliance Initiative tax amnesty program established by the Tax Commission pursuant to 68 O. S. 216.3 ("VCI") as to such sales tax. The Authority shall assist CHC and Crossland as they may reasonably request in their filing for and confirming their eligibility and entitlement for participation in VCI and waiver of penalty and interest thereunder or as otherwise allowable by the Tax Commission with respect to such sales tax.

**2. Reimbursement Payments:** The Authority agrees to reimburse Crossland One Million Seven Hundred Forty-Two Thousand and 00/100 Dollars (\$1,742,000.00) plus interest at the rate of seven (7.00) percent all payable in thirty-six (36) equal monthly installments beginning December 1, 2015 ("Reimbursement Payments"). The amortization schedule for the Reimbursement Payments is attached as Exhibit "A." The principal amount may be prepaid at any time without penalty.

**3. Oil Capital Payments:** The Authority agrees to reimburse Oil Capital the sum of One Hundred Forty-Four Thousand Eight Hundred and 00/100 Dollars (**\$144,800.00**) and CHC agrees to reimburse Oil Capital the sum of Thirty-Six Thousand Two Hundred and 00/100 Dollars (**\$36,200.00**). Together these two (2) payments constitute the "Oil Capital Payments." The Oil Capital Payments represent the sales tax proposed to be assessed to Oil Capital by the Tax Commission on Project purchases made by Oil Capital and shall be paid by Oil Capital to the Tax Commission. The Oil Capital Payments shall be made only if the Authority and Oil Capital approve this Settlement Agreement, the Authority having previously authorized resolution in order to qualify Oil Capital for waiver and abatement of penalty, and interest, collection fees and costs under VCI as to such sales tax assessment and payment by Oil Capital.

**4. Mutual Releases**

**a. Release by CHC:** In consideration of the Tax Payment, completion of the Reimbursement Payments, the Oil Capital Payments and the Mutual Releases provided herein, CHC does hereby fully, finally and forever release and discharge Oil Capital, the Authority and their trustees, affiliates, predecessors, and successors and all of their respective board members, directors, officers, agents, employees, insurers, and attorneys, of and from any and all claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to the Claims.

**b. Release by Crossland:** In consideration of the Tax Payment, completion of the Reimbursement Payments, the Oil Capital Payments and the Mutual Release provided herein, Crossland does hereby fully, finally and forever release and discharge Oil Capital, the Authority and their trustees, affiliates, predecessors, and successors and all of their respective board members, directors, officers, agents, employees, insurers, and attorneys, of and from any and all claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to the Claims.

**c. Release by Authority:** In consideration of the Tax Payment, the Oil Capital Payments and the Mutual Release provided herein, the Authority does hereby fully, finally and forever release and discharge Oil Capital, Crossland and CHC and their affiliates, predecessors, and successors and all of their respective board members, directors, officers, agents, employees, insurers, and attorneys, of and from any and all claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to the Claims.

**d. Release by Oil Capital:** In consideration of the Oil Capital Payments and the Mutual Release provided herein, Oil Capital does hereby fully, finally and forever release and discharge the Authority, CHC and Crossland, and their trustees, affiliates, predecessors, and successors and all of their respective board members, directors, officers, agents, employees, insurers, and attorneys, of and from any and all claims, demands, causes of action, lawsuits, legal proceedings, damages, costs, expenses, attorneys' fees and liabilities

of any and every kind, character and description, at law or in equity, in any way arising out of, or relating to the Claims.

The Parties acknowledge that this Agreement and the Releases provided herein do not address or resolve potential sales tax liability of any other entity related to the Project.

**5. Reading of Agreement:** In entering into this Settlement Agreement, the Parties represent that they have relied upon the legal advice of their attorneys and that the terms of this Settlement Agreement have been completely read by them and explained by their respective attorneys and that those terms are fully understood and voluntarily accepted.

**6. Modifications:** Except for a modification to the monthly payment schedule, which requires the written consent of only Crossland and the Authority, this Settlement Agreement may not be amended, altered, modified or otherwise changed except in writing executed by all Parties hereto and expressly stating that it is an amendment to this Settlement Agreement. The undersigned hereby acknowledge and agree that they, and each of them, will make no claim, and hereafter waive any right that they now have or they hereafter may have, based upon any alleged oral alteration, oral amendment, oral modification or other changes based upon any alleged oral warranty, representation or promise except as set forth expressly in this Settlement Agreement.

**7. Future Cooperation:** All parties to this Settlement Agreement agree to fully cooperate, to execute any and all supplementary documents and to take all additional actions that may be necessary or appropriate to give full force and effect to the terms and intent of this Settlement Agreement.

**8. Drafting of Document and Reliance:** This Settlement Agreement has been negotiated by the Parties through their respective legal counsel. The Parties warrant, represent, and agree that they are not relying on the advice of the other Parties as to the legal, tax or other consequences of any kind arising out of this Settlement Agreement. Accordingly, the Parties hereby release and hold harmless one another and any or all legal counsel or consultants for any of them from any claim, cause of action or other rights of any kind which the Party may assert because the legal, tax or other consequences of this Settlement Agreement are other than those anticipated.

**9. Binding Effect:** The Parties agree and acknowledge that this Settlement Agreement shall bind the Parties and their respective heirs, administrators, executors, assigns, shareholders, officers, directors, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest, and related entities and shall inure to the benefit of the Parties released and their respective heirs, administrators, executors, assigns, shareholders, officers, directors, members, attorneys, servants, insurers, subsidiaries, divisions, affiliates, employees, agents, representatives, insurance carriers, and predecessors and successors in interest.

**10. Reliance:** The Parties acknowledge and warrant that, except as stated here, no promises or inducements have been made or offered by the Parties and that this Settlement Agreement is executed by the Parties without reliance upon any other statements or representations made by the Parties concerning the nature or merits of any claims that they might have had against

each other. The Parties assume the risk that the facts or law may be otherwise than the Parties believe.

**11. Authority to Execute:** Each individual executing this Settlement Agreement on behalf of a Party represents and warrants that all actions necessary to authorize its execution on behalf of that Party have been duly performed; that such individual has authority to execute this Settlement Agreement on behalf of such Party; and that such Party shall be legally bound hereby.

**12. Governing Law and Attorneys' Fees:** This Settlement Agreement shall be governed by, construed and interpreted in accordance with the laws of the State of Oklahoma. In the event a Party fails to comply with the terms of this Settlement Agreement, including, but not limited to, the payment terms and conditions set forth above, and a Party finds it necessary to enforce such terms of the Settlement Agreement, the prevailing party shall be entitled to recover against the other party or parties its costs and reasonable attorneys' fees associated with any lawsuit filed to enforce the terms and conditions of this Settlement Agreement.

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**BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.**

**Broken Arrow Municipal Authority**

\_\_\_\_\_  
**Attest: City Clerk**

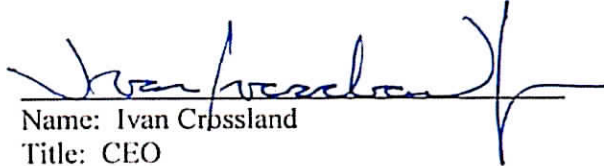
\_\_\_\_\_  
**By: Chairperson Craig Thurmond**

**APPROVED AS TO FORM:**

\_\_\_\_\_  
**Beth Anne Wilkening  
City Attorney**


BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.

CROSSLAND CONSTRUCTION COMPANY, INC.

  
Name: Ivan Crossland  
Title: CEO

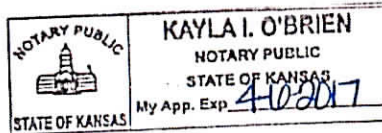
STATE OF Kansas )  
COUNTY OF Cherokee ) ss.

SUBSCRIBED AND SWORN to before me this 13 th day of November, 2015.

  
Notary Public

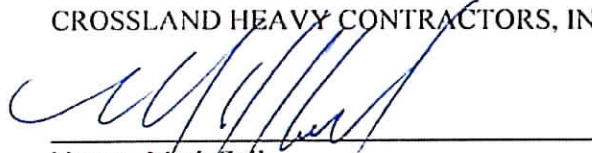
My Commission Expires:

4-10-2017



BEFORE SIGNING BELOW, THE UNDERSIGNED DECLARES THAT HE OR SHE IS LEGALLY COMPETENT TO EXECUTE THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE, THAT HE OR SHE HAS READ AND FULLY UNDERSTANDS IT, AND THAT HE OR SHE VOLUNTARILY EXECUTES IT WITH FULL KNOWLEDGE OF ITS CONTENTS AND MEANING FOR THE PURPOSE OF OBTAINING THE ABOVE-STATED CONSIDERATION.


CROSSLAND HEAVY CONTRACTORS, INC.



Name: Mark Sell  
Title: President

STATE OF Kansas )  
COUNTY OF Cherokee ) ss.

SUBSCRIBED AND SWORN to before me this 13 th day of November, 2015.

  
Notary Public

My Commission Expires:

4-10-2017







Principal: \$1,742,000.00 Interest Rate: 7.0000% Term: 36 Months [Loan Data](#) [Home](#)

Period	Month	Beginning Balance	Payment	Interest	Principal	Remaining Balance
1	Dec-2015	1,742,000.00	53,787.91	10,181.67	43,626.24	1,698,373.76
2	Jan-2016	1,698,373.76	53,787.91	9,907.18	43,880.73	1,654,493.03
3	Feb-2016	1,654,493.03	53,787.91	9,651.21	44,136.70	1,610,356.33
4	Mar-2016	1,610,356.33	53,787.91	9,393.75	44,394.16	1,565,962.16
5	Apr-2016	1,565,962.16	53,787.91	9,134.78	44,653.13	1,521,309.03
6	May-2016	1,521,309.03	53,787.91	8,874.30	44,913.61	1,476,395.42
7	Jun-2016	1,476,395.42	53,787.91	8,612.31	45,175.60	1,431,219.82
8	Jul-2016	1,431,219.82	53,787.91	8,348.78	45,439.13	1,385,780.69
9	Aug-2016	1,385,780.69	53,787.91	8,083.72	45,704.19	1,340,076.50
10	Sep-2016	1,340,076.50	53,787.91	7,817.11	45,970.80	1,294,105.71
11	Oct-2016	1,294,105.71	53,787.91	7,548.95	46,238.96	1,247,866.75
12	Nov-2016	1,247,866.75	53,787.91	7,279.22	46,508.69	1,201,358.06
13	Dec-2016	1,201,358.06	53,787.91	7,007.92	46,779.99	1,154,578.07
14	Jan-2017	1,154,578.07	53,787.91	6,735.04	47,052.87	1,107,525.20
15	Feb-2017	1,107,525.20	53,787.91	6,460.56	47,327.35	1,060,197.85
16	Mar-2017	1,060,197.85	53,787.91	6,184.49	47,603.42	1,012,594.43
17	Apr-2017	1,012,594.43	53,787.91	5,906.80	47,881.11	964,713.32
18	May-2017	964,713.32	53,787.91	5,627.49	48,160.42	916,552.91
19	Jun-2017	916,552.91	53,787.91	5,346.56	48,441.35	868,111.55
20	Jul-2017	868,111.55	53,787.91	5,063.98	48,723.93	819,387.63
21	Aug-2017	819,387.63	53,787.91	4,779.76	49,008.15	770,379.48
22	Sep-2017	770,379.48	53,787.91	4,493.88	49,294.03	721,085.45
23	Oct-2017	721,085.45	53,787.91	4,206.33	49,581.58	671,503.87
24	Nov-2017	671,503.87	53,787.91	3,917.11	49,870.80	621,633.07
25	Dec-2017	621,633.07	53,787.91	3,626.19	50,161.72	571,471.35
26	Jan-2018	571,471.35	53,787.91	3,333.58	50,454.33	521,017.02
27	Feb-2018	521,017.02	53,787.91	3,039.27	50,748.64	470,268.38
28	Mar-2018	470,268.38	53,787.91	2,743.23	51,044.68	419,223.70
29	Apr-2018	419,223.70	53,787.91	2,445.47	51,342.44	367,881.26
30	May-2018	367,881.26	53,787.91	2,145.97	51,641.84	316,239.33
31	Jun-2018	316,239.33	53,787.91	1,844.73	51,943.18	264,296.15
32	Jul-2018	264,296.15	53,787.91	1,541.73	52,246.18	212,049.96
33	Aug-2018	212,049.96	53,787.91	1,236.96	52,550.95	159,499.01
34	Sep-2018	159,499.01	53,787.91	930.41	52,857.50	106,641.51
35	Oct-2018	106,641.51	53,787.91	622.08	53,165.83	53,475.68
36	Nov-2018	53,475.68	53,787.62	311.94	53,475.68	0.00
Loan Totals:			1,936,364.47	194,364.47	1,742,000.00	