The City of Durant encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at least 48 hours prior to the scheduled meeting is encouraged in order to make the necessary accommodations. The City of Durant may waive the 48-hour rule if interpreters for the deaf (signing) or translation services for limited English proficient (LEP) individuals are not the necessary accommodation.

THE DURANT CITY UTILITIES AUTHORITY / DCUA

5:00 PM **Roscoe J. Hatfield Council Chambers - AMENDED AGENDA** **May 26, 2016**

SPECIAL CALLED AGENDA

DURANT CITY HALL
300 W. EVERGREEN, DURANT, OK
ROSCOE J. HATFIELD COUNCIL CHAMBERS

CALL TO ORDER

ROLL CALL

ORDER OF BUSINESS

1. Consent Items

To help streamline meetings and allow the focus to be on other items requiring strategic thought, the "Consent Items" portion of the agenda groups the routine, procedural, and self-explanatory non-controversial items together. These items are voted on in a single motion (one vote). However, any Council member requesting further information on a specific item thus removes it from the "Consent Items" section for individual attention and separate vote.

2. Consider Items Removed from Consent

3. Administration

a. Consider Approval of Commercial Metals Company Economic Development Agreement

b. Consider Approval of Industrial Water Purchase Agreement Between Durant City Utilities Authority and Rural Water and Sewer District #5 (C-2016-25)

c. Consider Approval of Interlocal Cooperation Agreement Between the City of Durant and Rural Water District #5 (C-2016-26)

ADJOURNMENT

CERTIFICATE

This is to certify that in conformity with the Oklahoma Open Meeting Act, notice of the date, time and place of this meeting was filed with the City Clerk of Durant on the 19th day of May, 2016 and that an agenda of said meeting was posted at the place of such meeting at 4:30 p.m. on the 24th day of May, 2016 and amended agenda was posted at 4:46 p.m. on the 25th day of May, 2016.

Cynthia J. Price, City of Durant

Agenda Item: 3.a.

The City of Durant

Office of City Clerk

Memorandum

Date:	5/24/2016
To:	Utilities Authority Special Called Meeting
From:	Sarah Sherrer, City Manager
Re:	Consider Approval of Commercial Metals Company Economic Development Agreement

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Council Information / Action Requested

Approve Commercial Metals Company Economic Development Agreement.

City Staff Information / Action Follow-up, if Council authorizes this action:

City Clerk - Obtain signatures on agreement.

ATTACHMENTS:

Description	Type	Upload Date
Commercial Metals Company Economic Development Agreement	Backup Material	5/24/2016

COMMERCIAL METALS COMPANY
ECONOMIC DEVELOPMENT AGREEMENT

BY AND AMONG

THE CITY OF DURANT, OKLAHOMA,

DURANT INDUSTRIAL AUTHORITY,

DURANT TAX INCREMENT FINANCE AUTHORITY,

THE DURANT CITY UTILITIES AUTHORITY,

COMMERCIAL METALS COMPANY

AND

CMC STEEL OKLAHOMA, LLC

May [___], 2016

COMMERCIAL METALS COMPANY
ECONOMIC DEVELOPMENT AGREEMENT

THIS ECONOMIC DEVELOPMENT AGREEMENT (this "Agreement") is made on or as of this [___] day of May, 2016, by and among **City of Durant, Oklahoma**, a municipal corporation (the "City"), **Durant Industrial Authority**, a public trust ("DIA"), **Durant Tax Increment Finance Authority**, a public trust (the "Trust"), **The Durant City Utilities Authority**, a public trust (the "Utilities Authority" and, collectively with the City, DIA and the Trust, the "City Parties"), **Commercial Metals Company**, a Delaware corporation ("CMC Parent"), and **CMC Steel Oklahoma, LLC**, a Delaware limited liability company and a wholly-owned subsidiary of CMC Parent ("CMC Oklahoma" and, collectively with CMC Parent, "CMC").

WITNESSETH:

WHEREAS, the City has an interest in promoting economic development by creating competitive industrial development opportunities within the City as a method of retaining and expanding employment in the area, attracting major investment, enhancing the tax base, stimulating economic growth, improving the community's quality of life, and otherwise strengthening the community; and

WHEREAS, representatives of the City Parties have been in discussions with representatives of CMC for more than a year regarding an economic development project proposed by CMC to construct, develop, equip and operate a technologically advanced processing building having the operational capability of producing steel products (the "Plant"); and

WHEREAS, as authorized by the Oklahoma Local Development Act, Title 62, Oklahoma Statutes, Section 850, *et seq*., as amended (the "Local Development Act"), the City adopted and approved the Commercial Metals Company Economic Development Project Plan (the "Project Plan") by Ordinance No. 1789 (the "TIF Ordinance") adopted on March 8, 2016 in order to achieve these economic development objectives; and

WHEREAS, pursuant to the Local Development Act and the TIF Ordinance, the City established Increment District No. 2, City of Durant, consisting of approximately 400 acres currently owned by DIA and located on or around 584 Old Highway 70, Durant, Oklahoma and generally at the southwest corner of the intersection of Old Highway 70 and the new Highway 70, all as more particularly described on Exhibit A attached hereto (the "Increment District"); and

WHEREAS, the Project Plan envisions the construction, development, equipping and operation of the Plant within the Increment District (collectively, the "Project"); and

WHEREAS, the Project will generate substantial capital investment and create significant new employment within the Increment District; and

WHEREAS, in order to create a competitive industrial development opportunity and recognizing the significant costs associated with the Project, the City wishes to incentivize CMC to locate the Plant in the City by providing for economic development incentives and assistance in development financing of the construction of the Plant in the form of reimbursement of a portion of the projected Plant construction and equipping costs; and

WHEREAS, implementation of the Project and the Project Plan will expand employment in the area, attract major investment, enhance the tax base and make possible investment, development and economic growth which would otherwise be difficult or impossible without the apportionment of ad valorem taxes and other forms of public assistance to the Project; and

WHEREAS, in accordance with the provisions of the Project Plan and as authorized by the Local Development Act, the City desires to designate the Trust as the public entity designated to carry out and implement certain financial and contractual provisions of the Project Plan; and

WHEREAS, the City Parties deem it appropriate to approve the execution of this Agreement, which provides for the implementation of the Project Plan and determine such approval to be in the best interests of the City, and the health, safety, and welfare of the State and its residents in accordance with the public purposes of the Project Plan.

NOW, THEREFORE, in consideration of the promises and mutual obligations herein set forth, the parties hereby covenant and agree with each other as follows:

SECTION 1. DEFINED TERMS

1.1 Definitions. All capitalized terms used in this Agreement shall, unless otherwise defined in the body of this Agreement, have the following meanings:

"ADF" means the assistance in development financing described in Section 4.2 of this Agreement.

"Agreement" has the meaning set forth in the Preamble to this Agreement and includes any amendments, supplements or other modifications to this Agreement.

"Apportionment Fund" means the fund called "Increment District No. 2 – Apportionment Fund," which will be held by and be the property of the City or the Trust (or a trustee acting on behalf of the City or the Trust).

"City" has the meaning set forth in the Preamble to this Agreement.

"City Council" means the City Council of the City of Durant.

"City Parties" has the meaning set forth in the Preamble to this Agreement.

"CMC" has the meaning set forth in the Preamble to this Agreement.

"CMC Advances" has the meaning set forth in Section 6.8 of this Agreement.

"CMC Oklahoma" has the meaning set forth in the Preamble to this Agreement.

"CMC Parent" has the meaning set forth in the Preamble to this Agreement.

"DIA" has the meaning set forth in the Preamble to this Agreement.

"Exemption Amount" means, with respect to any tax year, the amount of ad valorem tax exemption to which CMC is entitled under the Manufacturing Tax Exemption Program with respect to the Project.

"Increment District" has the meaning set forth in the Recitals to this Agreement.

"Local Development Act" has the meaning set forth in the Recitals to this Agreement.

"Manufacturing Tax Exemption Program" means the five-year ad valorem tax exemption pursuant to the authorization of Article X, § 6B of the Oklahoma Constitution and the operation of 68 O.S. § 2802.

"Maximum ADF" has the meaning set forth in Section 4.2 of this Agreement.

"Minimum Payment Obligation" has the meaning set forth in Section 6.7 of this Agreement.

"Payment in Lieu of Ad Valorem Tax" means the excess of the Minimum Payment Obligation for any year over the sum of the Exemption Amount for such year, if any, and any ad valorem tax amounts for such year.

"Plant" has the meaning set forth in the Recitals to this Agreement.

"Project" has the meaning set forth in the Recitals to this Agreement.

"Project Costs" has the meaning set forth in Section 4.5 of this Agreement.

"Project Area" means the area within which Project Costs will be expended, which area is co-extensive with the Increment District.

"Project Plan" has the meaning set forth in the Recitals to this Agreement.

"Property" means the approximately 400 acres of property currently owned by DIA and to be transferred to CMC Oklahoma prior to commencement of construction of the Plant, which property also comprises the Increment District.

"Proposed TIF Termination Date" has the meaning set forth in Section 4.7 of this Agreement.

"TIF Bonds" has the meaning set forth in Section 5.3 of this Agreement.

"TIF Costs" has the meaning set forth in Section 4.5 of this Agreement.

"TIF Ordinance" has the meaning set forth in the Recitals to this Agreement.

"TIF Promissory Note" has the meaning set forth in Section 7.1 of this Agreement.

"TIF Revenues" means one hundred percent (100%) of the increments of real and personal property ad valorem taxes generated within the Increment District, in excess of the real and personal property ad valorem taxes generated from the base assessed value of the Increment District, as such increments are determined and defined pursuant to the Local Development Act; *provided* that "TIF Revenues" shall be deemed to include one hundred percent (100%) of any Payments in Lieu of Ad Valorem Taxes made by CMC to the extent that such Payments in Lieu of Ad Valorem Taxes, when combined with the increments of real and personal property ad valorem taxes generated within the Increment District, exceed the real and personal property ad valorem taxes generated from the base assessed value of the Increment District. For the avoidance of doubt, "TIF Revenues" shall not include any CMC Advances.

"Trust" has the meaning set forth in the Preamble to this Agreement.

"Utilities Authority" has the meaning set forth in the Preamble to this Agreement.

"Water Agreement" has the meaning set forth in Section 3.1(c) of this Agreement.

1.2 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles applied on a basis consistent with the accounting practices of CMC Parent and as historically applied in the financial statements of CMC Parent or such other accounting method as the parties may approve in writing.

1.3 Computation of Time. In this Agreement, in the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the word "to" means "to but excluding."

SECTION 2. NATURE OF THE AGREEMENT

2.1 Scope of the Project.

The Project contemplates the construction of the Plant within the Increment District, as generally depicted on the Preliminary Site Development Plan attached hereto as Exhibit B. The Plant is expected to primarily use recycled materials and would incorporate an innovative continuous-continuous technology developed by CMC that melts, casts and rolls steel from a single uninterrupted strand, producing higher yields and lower energy costs than the traditional mini-

mill process. CMC anticipates that substantially all of the Plant's production capacity would be utilized to produce rebar for the construction industry, and the Plant is expected to produce 350 thousand tons of rebar per year.

The approximately 400 acres of property comprising the Increment District is currently owned by DIA. DIA will transfer the property to CMC Oklahoma promptly (but no later than 30 days) after execution of this Agreement unless waived in writing by CMC Oklahoma. The Plant is projected to be operational in the Fall of 2017.

CMC expects to expend approximately $274 million on constructing and equipping the Plant. The proposed Plant is expected to initially create approximately 120 new permanent jobs at start-up of the Plant and a total of 175 new permanent jobs, inclusive of the initial 120 positions, when the Plant achieves full production, with an average annual wage equal to approximately $60,000. The total number of jobs could grow to an estimated 220 new permanent jobs over time if increased production and expansion opportunities at the Plant are realized as anticipated.

The Project will help to expand employment, bring new residents to the area, and stimulate additional private development in the area and will be financed from a combination of public and private sources, including apportionment of ad valorem tax increments from the Increment District. The assistance in development financing provided through the Increment District will help enable CMC to construct and equip the Plant and is a condition precedent to CMC's willingness to construct the Project. Based on substantial, mutual reliance on the discussions of the parties to-date, CMC represents that it has committed over $85 million toward the Project prior to the date hereof, and all of the parties have expended considerable time and resources to ensure the Project's feasibility.

2.2 Designation of Public Trust.

Pursuant to Section VIII of the Project Plan and the TIF Ordinance, the City has designated the Trust as the public entity to assist in carrying out and administering the provisions of the Project Plan and to implement the obligations of this Agreement, which shall be performed for the benefit of the City. The Trust has been authorized by the City Council to exercise all powers necessary or appropriate thereto pursuant to Title 62, Section 854 of the Local Development Act, except for approval of the Project Plan and those powers enumerated in paragraphs 1, 2, 4, 7, 13 and 16 of that Section, which powers have been reserved to the City Council. The Trust has also been authorized and designated by the City Council to carry out those provisions of the Project Plan and this Agreement related to issuance of the TIF Bonds as provided in Sections 854(3) and 863 of the Local Development Act and Section 5.3 of this Agreement.

2.3 Public Assistance.

In accordance with the Project Plan and this Agreement, the Trust will provide assistance in development financing to CMC in the form of reimbursement of $23,287,633 to be used by CMC to offset a portion of the projected Plant construction and equipping costs. The parties acknowledge and agree that CMC shall be responsible for constructing and completing, or causing the construction and completion of, the Project, and all costs of the Project will be

financed by CMC, relying in part on the assistance in development financing provided and the other development incentives referenced in Section 3.

2.4 Relationship of the Parties.

The undertaking of this Agreement is a complex process which will require the mutual agreement of the parties and their timely actions on matters appropriate or necessary to implementation. The parties hereto shall use commercially reasonable efforts to perform and to assist others in performing their respective obligations in accordance with this Agreement. This Agreement specifically does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of any other party.

2.5 Compliance with Applicable Laws and Regulations.

The parties hereto shall comply with applicable federal, state, and local laws and regulations.

SECTION 3. CONDITIONS PRECEDING PROJECT DEVELOPMENT

The following are critical conditions, subject to enforcement pursuant to Section 7.1 hereof, which are essential to the performance of the parties' other obligations under this Agreement, and which all parties agree to use all commercially reasonable efforts to perform:

3.1 Critical Conditions Essential for the Performance of CMC Obligations.

(a) Receipt by CMC of all permits and approvals necessary to construct and operate the Plant on the Property in a commercially reasonable manner intended by CMC;

(b) Receipt by CMC of confirmation reasonably acceptable to CMC that all utilities necessary to operate the Plant on the Property are or will be available at reasonable rates and connection expenses;

(c) Execution of an Industrial Water Purchase Agreement (the "Water Agreement") among the Utilities Authority, Rural Water and Sewer District No. 5, Bryan County, Oklahoma, and CMC Oklahoma on terms and conditions acceptable to CMC;

(d) Consummation of the transfer of the Property from DIA to CMC;

(e) Approval by CMC of the authorizations for repayment of CMC Advances and of the financing documents for the issuance of the TIF Bonds (as defined below) and placement in escrow of all financing documents no later than July 15, 2016 as provided in Section 5 herein;

(f) Approval by CMC of the proposed accounting and supplemental billing procedures intended to track expenditures pursuant to this Agreement and the Project Plan; and

(g) Certification from CMC that all of the material economic development incentives previously discussed with the City Parties, the State of Oklahoma and certain other parties have been provided to CMC or are available to CMC.

3.2 Critical Conditions Essential for the Performance of City Party Obligations.

(a) Consummation of the transfer of the Property from DIA to CMC;

(b) Recordation of a covenant on the Property obligating CMC to make certain minimum payments as described in Section 6.7, in accordance with this Agreement and in form and substance reasonably satisfactory to the City Parties;

(c) Approval by the City Parties of the financing documents for the issuance of the TIF Bonds;

(d) Commencement and commercially reasonable diligence in construction of the Plant; and

(e) Hiring by CMC Oklahoma of not less than 75 new employees (not including construction-related employees) whose duties are to provide services at the Plant.

SECTION 4. CITY OBLIGATIONS

4.1 Project Plan Adoption.

The City has adopted the Project Plan and established the Increment District as an ad valorem increment finance district pursuant to the Local Development Act and authorized the implementation of the Project Plan, including the provision of assistance in development financing pursuant to this Agreement.

4.2 Assistance in Development Financing.

The Trust shall provide assistance in development financing ("ADF") to CMC in the amount of $23,287,633 to defray a portion of the costs of the construction and equipping of the Plant on or before July 3, 2017 by means of the financing described in Section 5 and, if applicable, Section 7.1 of this Agreement; *provided* that, if CMC elects to receive such assistance in development financing prior to July 3, 2017, then the amount of the financing proceeds provided to CMC may be reduced by the resulting increase in accrued interest on the Series A TIF Bonds.

Because state reimbursements under the Manufacturing Tax Exemption Program are not expected to be made on a standard ad valorem tax payment schedule, current TIF Revenues received by the Trust during a particular year may only be sufficient to make partial bond and/or debt service payments for such year with respect to the financing described in Section 5 and, if applicable, Section 7.1 of this Agreement. Accordingly, CMC has agreed to make CMC Advances pursuant to Section 6.7 of this Agreement to provide the remaining funds necessary to make such bond and/or debt service payments, which shall be treated as principal only to the extent the CMC Advances are used to pay principal, not interest, on the TIF Bonds or TIF Promissory Note, with the balance treated as accrued interest.

For any year, the ADF shall be treated as amortized by TIF Revenues in an amount equal to the product of (a) the ratio of (i) actual TIF Revenues applied in such year to the financing described in Section 5, and, if applicable, Section 7.1, of this Agreement to (ii) the total revenues available for such purposes in such year (TIF Revenues plus CMC Advances) times (b) the principal amount paid with respect to such financing in such year. The payment of any amounts toward the financing described in Section 5 and, if applicable, Section 7.1 of this Agreement from sources other than TIF Revenues shall be treated as a subordinate debt of the Trust that shall be repaid pursuant to Section 4.9 of this Agreement until the Maximum ADF has been reached under this Section 4.2.

"Maximum ADF" shall mean the earlier of: (1) when the sum of the amortized principal calculated above and the amortized principal paid pursuant to Section 4.9 (excluding accrued interest paid on the CMC Advances) equals $23,287,633; or (2) when the Increment District is terminated in accordance with Section 4.7 of this Agreement.

4.3 Authorizations.

Pursuant to the Project Plan and the TIF Ordinance, the City authorizes the Trust as the public entity designated by the City to undertake certain responsibilities in connection with the Project, including the ability to (a) issue tax apportionment bonds or notes, or both; (b) incur project costs as defined in the Project Plan and approval of contracts in connection therewith; (c) provide funds to or reimburse the City for the payment of project costs and other costs incurred in support of the Project; (d) incur the cost of issuance of notes or bonds for payment of such costs and to accumulate appropriate reserves, if any, in connection with them; and (e) make payments of TIF Revenues to CMC as provided in Sections 4.9 and 7.1, if applicable.

4.4 Collection of Apportioned Tax Increments and CMC Advances.

The City or the Trust shall receive TIF Revenues as collected by the County, the TIF Revenues shall constitute funds of the Trust, and the Trust shall maintain such funds in the Apportionment Fund to be used only for the purposes described in this Agreement. The City or the Trust may also receive CMC Advances made pursuant to Section 6.8 of this Agreement and, if any CMC Advances are received, then the amount of such CMC Advances shall be used only for the purposes described in this Agreement.

4.5 TIF Project Costs.

The Project Plan authorized payment of certain project costs to be financed by the apportionment of TIF Revenues as set forth in Section 853(14) of the Local Development Act (collectively, the "Project Costs"), which include, without limitation, a portion of: (i) the cost of construction, development and equipping of the Plant ("CMC Direct Costs"); (ii) the payment of assistance in development financing (as authorized by Section 853(14)(o) of the Local Development Act) to CMC or other third party as reimbursement for the payment of TIF Costs (as defined herein); (iii) the costs incurred or to be incurred by or on behalf of the City or the Trust in implementing and administering the Project Plan, including payment and/or reimbursement of costs advanced

in connection with the preparation and approval of the Project Plan, administrative costs, organizational costs and professional service costs; and (iv) financing costs and fees (including costs of issuance), principal, interest (including capitalized interest), prepayment premium paid on debt service and funding of reserves with respect to the TIF Bonds (collectively with items (ii) and (iii), the "TIF Costs").

In accordance with the Project Plan, Project Costs to be financed by the apportionment of TIF Revenues shall not exceed (x) $23,287,633 of CMC Direct Costs, plus (y) any TIF Costs.

CMC shall be responsible for providing reasonable evidence to the Trust of eligible CMC Direct Costs in accordance with the provisions of this Section. CMC's certification of the foregoing eligible CMC Direct Costs shall be utilized to provide the assistance in development financing as hereinafter provided in this Agreement.

4.6 Assistance in Obtaining Governmental Approvals.

The construction of the Project will require approvals by the City and other governmental entities in accordance with applicable laws, ordinances and regulations. The City will use commercially reasonable efforts to obtain and expedite the necessary approvals for undertaking and implementing the construction of the Project, to the extent that the City has the authority to grant approval. The City, with the commercially reasonable cooperation of CMC, shall be responsible for assisting CMC in complying with applicable requirements, filing appropriate applications and taking other steps necessary or desirable to expedite and obtain the approvals necessary for undertaking and implementing the Project.

4.7 Term of District.

The City and the Trust agree not to take or omit to take any action that would in any way contribute to or cause the elimination of any portion of the area or duration of the Increment District or that would in any way reduce or otherwise jeopardize the TIF Revenues to be apportioned to the Increment District while unpaid Project Costs remain outstanding; *provided, however*, this provision shall not be construed to prohibit the City, from time to time in the normal course of its legislative powers, from proposing changes in taxing measures that may impact the applicable levies and resulting TIF Revenues, nor to prohibit the City from terminating the Increment District on the later of sixteen (16) fiscal years after the date the Increment District became effective or the period of time necessary to fully repay all TIF Bonds and the TIF Promissory Note, if applicable, according to the terms described in Sections 5 and 7 of this Agreement (the "Proposed TIF Termination Date"). Notwithstanding anything in this Agreement to the contrary, the Increment District may be terminated, at the election of the City and the Trust, on the Proposed TIF Termination Date and, if the Increment District is terminated on such date, then the City and the Trust shall no longer have any obligation to repay any CMC Advance amounts still owing to CMC, or interest thereon, as of such date; *provided*, however, that any City action to terminate the Increment District shall provide that tax revenues and state reimbursements received under the Manufacturing Tax Exemption Program with respect to the Project for periods accruing prior to the actual termination date shall continue to be used to pay eligible Project Costs. Any remaining balances, or interest thereon, still owing to CMC once all

such tax revenues and state reimbursements for periods accruing prior to the actual termination date have been accounted for shall be forgiven.

4.8 Water Agreement.

The Utilities Authority agrees to consult in good faith with CMC with respect to implementation of the Water Agreement and the other areas addressed therein and further agrees to honor all of its obligations under the Water Agreement and to pursue all of its rights under the Water Agreement.

4.9 Repayment of CMC Advances.

(a) The parties hereto acknowledge that the right of CMC to participate in the Manufacturing Tax Exemption Program, pursuant to which CMC may be exempted from payment of certain ad valorem tax obligations, was a material inducement for, and serves as a condition to, CMC's proceeding with the Project. CMC's Minimum Payment Obligations may require CMC to pay CMC Advances, as defined in Section 6.8 of this Agreement.

(b) Therefore, the City authorizes and the Trust shall provide repayment to CMC for all CMC Advances made pursuant to Section 6.8 of this Agreement, together with interest thereon at the same rate established for the Series A TIF Bonds beginning on, and accruing from, the day following the first anniversary of each CMC Advance and ending upon repayment of the amount of the CMC Advance. For the avoidance of doubt, the parties acknowledge and agree that the amount of interest owed on any CMC Advance shall be established and fixed upon repayment of the applicable CMC Advance and shall cease accruing as of such date regardless of whether such interest amount is paid immediately or not paid until repayment in full of the Series A Bonds and the TIF Promissory Note, if applicable.

(c) The CMC Advance, together with any interest thereon, shall be payable solely out of TIF Revenues; *provided* that such repayments shall be treated as payments on accrued interest to the extent the CMC Advances repaid were originally used to pay interest and treated as payments on principal to the extent CMC Advances repaid were originally used to pay principal, on the TIF Bonds or TIF Promissory Note, if applicable; *provided further* that CMC's right to receive such payments shall be subordinate to the right of any purchaser of the TIF Bonds and the TIF Promissory Note, if applicable, to receive regularly-scheduled, amortized payments with respect to such TIF Bonds and TIF Promissory Note, if applicable.

(d) In the event of partial repayments to CMC for CMC Advances pursuant to this Section 4.9, such repayments shall be applied first toward amounts treated, pursuant to paragraph (c) of this Section 4.9, as payments on accrued interest on the TIF Bonds or TIF Promissory Note, if applicable, and second toward amounts treated, pursuant to paragraph (c) of this Section 4.9, as payments on principal on the TIF Bonds or TIF Promissory Note, if applicable. For the avoidance of doubt, with respect to the calculation of accrued interest on CMC Advances as described in paragraph (b) of this Section 4.9, the application of the amounts as described in the previous sentence shall be treated as a partial repayment of the full CMC Advance and no further interest shall accrue on the amount of such partial repayment to CMC. Repayments shall be

applied to the interest accrued on the full CMC Advance, pursuant to paragraph (b) of this Section 4.9, only to the extent that funds available for such repayments exceed amounts treated as accrued interest and principal payments toward the TIF Bonds or TIF Promissory Note, if applicable, pursuant to paragraph (c) of this Section 4.9.

(e) The parties acknowledge that reimbursement payments from the State pursuant to the Manufacturing Tax Exemption Program are required by Oklahoma statute to be treated in the same manner as ad valorem tax payments and, therefore, are included in the definition of "TIF Revenues" under the Project Plan and under this Agreement. Pursuant thereto, the City shall make requests of the appropriate County officials when appropriate to ensure all claims for reimbursement from the State under the Manufacturing Tax Exemption Program are timely filed and all State reimbursement payments received thereunder with respect to the Project are timely distributed as provided in 62 O.S. § 193, the Project Plan and this Agreement. State reimbursement payment not timely received for purposes of reducing CMC's Minimum Payment Obligation pursuant to Section 6.8 of this Agreement shall be used only toward repayment of CMC Advances pursuant to this Section 4.9.

(f) Notwithstanding any of the foregoing, if the State of Oklahoma terminates the Manufacturing Tax Exemption Program at any time while the Increment District remains in effect, and the State determines not to reimburse the City or County for the amounts of the CMC Advances, then no repayment under this Section shall be authorized for such unreimbursed CMC Advances (and any related interest thereon).

SECTION 5. FINANCING

5.1 NO LIABILITY OF CITY OR TRUST.

NEITHER THE CITY NOR THE TRUST SHALL HAVE ANY LIABILITY FOR REPAYMENT OF ANY INDEBTEDNESS INCURRED BY THE TRUST PURSUANT TO THIS AGREEMENT OTHER THAN THE OBLIGATION TO COLLECT, ACCOUNT FOR, AND TIMELY USE TAX INCREMENT REVENUES AND CMC ADVANCES AS HEREIN AUTHORIZED AND AGREED. THE TRUST HAS NO TAXING POWER.

5.2 Apportioned Tax Increments.

In accordance with the Project Plan, the ad valorem increment shall be one hundred percent (100%) of the new revenue attributable to increases in the value of the Increment District. Pursuant to Section 6.7, the ad valorem tax revenues within the Increment District may be augmented by agreement and covenant between the Trust and CMC.

5.3 Tax Apportionment Revenue Bonds.

The Trust shall issue Tax Apportionment Revenue Bonds (collectively, and including the Series A Bonds and the Series B Bonds, as described below, the "TIF Bonds") no later than July 3, 2017 and, subject to Section 7.1, in an approximate aggregate amount of $23,533,380; *provided* that, if CMC elects to receive such assistance in development financing prior to July 3, 2017,

then the amount of financing provided to CMC may be reduced by the resulting increase in accrued interest on the Series A Bonds and the TIF Promissory Note, if applicable. The TIF Bonds shall be issued in two series, comprised of approximately $20,433,380 in Series A Bonds and approximately $3,100,000 in Series B Bonds. The Series A Bonds are expected to be purchased by a syndicate of commercial banking institutions with locations in Durant, Oklahoma, and the Series B Bonds shall be purchased by DIA.

The proceeds of the TIF Bonds shall be used as follows:

Series A Bonds	$20,433,380
Series B Bonds	$3,100,000
Total Bond Proceeds	$23,533,380
Less: Bond Issuance Costs (estimated)	$(245,747)
Assistance in Development Financing to CMC	$23,287,633

Series A TIF Bonds. The Series A TIF Bonds shall be payable solely from the TIF Revenues and CMC Advances, if any, on a *pari passu* basis with the TIF Promissory Note, if applicable, and a senior and priority basis over the Series B TIF Bonds and any other obligations of the Trust. The Series A TIF Bonds are expected to bear an annual interest rate of 5.10% and to be fully amortizing from the date of issuance with payments due annually. The term of the Series A TIF Bonds is expected not to exceed twelve (12) years from the date of issuance but may be extended if payments on the Series A TIF Bonds are not made as required.

Series B TIF Bonds. The Series B TIF Bonds shall be payable solely from the TIF Revenues and CMC Advances, if any, on a subordinated basis to the Series A TIF Bonds and the TIF Promissory Note, if applicable, and on a senior and priority basis over any other obligations of the Trust. The Series B TIF Bonds shall not earn any interest and no principal payments shall be due until the Series A TIF Bonds and the TIF Promissory Note, if applicable, have been paid in full. Following repayment of the Series A TIF Bonds and the TIF Promissory Note, if applicable, the TIF Revenues shall be used to repay the Series B TIF Bonds. The term of the Series B TIF Bonds is expected not to exceed fourteen (14) years from the date of issuance but may be extended if payments on the Series B TIF Bonds are not made as required.

In no event shall the Trust be required to use any revenues to repay the TIF Bonds or the TIF Promissory Note, if applicable, other than TIF Revenues and CMC Advances under the Project Plan. The TIF Bonds shall be issued without compliance with applicable requirements for tax exempt status under the United States Internal Revenue Code. Neither the TIF Bonds nor the TIF Promissory Note, if applicable, shall constitute an obligation of the City; *provided* that the City declares its intent to take all annual action as may be necessary to apportion all tax increment from the Increment District available under applicable statutes to payment or prepayment of the TIF Bonds and the TIF Promissory Note, if applicable. Other terms and conditions of the TIF Bonds and the TIF Promissory Note, if applicable, are subject to approval by the Trust, CMC and the purchasers of the TIF Bonds.

Should the apportioned tax increments and CMC Advances generated by the Project be greater than what is necessary to pay the TIF Bonds and the TIF Promissory Note, if applicable, as

scheduled, then any excess apportioned tax increments or CMC Advances shall be used to prepay outstanding principal on the TIF Bonds and the TIF Promissory Note, if applicable, with the Series A TIF Bonds and the TIF Promissory Note to be repaid on a *pari passu* basis and a priority basis over the Series B TIF Bonds and the Series B TIF Bonds to be repaid only after the Series A TIF Bonds and the TIF Promissory Note, if applicable, have been repaid in full.

5.4 Deposit in Escrow.

All financing documents related to the issuance of the TIF Bonds shall be approved, adopted and deposited into escrow on or before July 15, 2016, subject only to funding of note/bond purchase agreements and disbursement to CMC, pursuant to commercially reasonable escrow instructions approved by CMC and the Trust; *provided* that, for the avoidance of doubt, the parties acknowledge that the TIF Bond purchasers shall not be required to escrow the purchase price of the TIF Bonds, and the purchase price of the TIF Bonds shall be funded in connection with the issuance of the TIF Bonds.

SECTION 6. CMC OBLIGATIONS

6.1 Development of Project.

In accordance with the provisions of this Agreement, CMC shall cause the Project to be constructed on the Property and shall use commercially reasonable efforts to operate the Plant as contemplated hereby on a continual basis during the term of the Increment District.

6.2 Commencement and Completion Date.

CMC shall commence construction of the Plant within 90 days following conveyance of the Property from DIA to CMC. CMC will use commercially reasonable efforts to ensure that the Plant is operational on or before November 1, 2017.

6.3 Financing.

CMC hereby represents and warrants that it has sufficient financing that, together with the assistance in development financing being provided hereunder and other financing incentives to be provided to CMC as discussed with the City Parties, will enable CMC to construct and fully equip the Plant as contemplated by this Agreement. CMC shall be responsible to pay all construction and equipping costs.

6.4 Reporting.

On or prior to April 30th of each year, CMC shall submit an annual report to the Trust and DIA detailing all ad valorem tax payments made by CMC with respect to the Project, including real and personal property ad valorem tax payments and Payments in Lieu of Ad Valorem Tax. Such reports shall be made as long as the Increment District remains in effect. All financial reports shall be confidential to the extent permitted by Oklahoma law; *provided* that the Trust and DIA

shall be permitted to disclose such reports to their governing bodies and to the holders of any TIF Bonds.

6.5 Development and Maintenance Restrictions.

CMC shall develop and maintain the Project in accordance with all applicable federal, state, and local laws and regulations. In addition, CMC shall maintain the appearance of the Plant and the Property in a reasonable manner.

6.6 Point of Delivery; Access and Inspection.

CMC shall cause, and shall require all contractors to cause, all equipment to be delivered to a construction site on the Property so that such equipment can be assessed for personal property ad valorem taxes in accordance with Oklahoma law and regulation. In addition, CMC shall permit the authorized representatives of the City, the County and the Trust access to the Plant and the Property at all reasonable times which any of them deems necessary for the purposes of this Agreement and shall work cooperatively with the Bryan County Assessor's Office to grant access to the Property and any equipment located thereon to facilitate assessment thereof. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

6.7 Minimum Payment Obligation.

CMC shall make, and a covenant on the Property shall provide for, payments in the amounts and at the times described on Exhibit C attached hereto for so long as the Increment District remains in effect (the "Minimum Payment Obligation"). The form, substance, and legal effect of the covenants shall be satisfactory to the Trust, CMC and the proposed purchasers of the TIF Bonds.

6.8 CMC Advances.

The parties acknowledge that CMC intends to participate in the Manufacturing Tax Exemption Program pursuant to which CMC would be exempted from payment of certain ad valorem tax obligations and the State of Oklahoma obligated to reimburse the County or the City for all or a portion of the lost local tax revenue. If CMC participates in such Program, CMC's Minimum Payment Obligation shall be reduced to the extent that reimbursement payments with respect to a particular tax year are actually received by the County or the City from the State of Oklahoma on or before the due date for CMC's Minimum Payment Obligation and only in the amount of such payments actually received for the immediately following year. Reimbursement payments not received by the following year's Minimum Payment Obligation due date shall be committed only toward CMC Advance repayments as described in Section 4.9 of this Agreement.

If the State of Oklahoma has approved CMC's participation in the Manufacturing Tax Exemption Program for any tax year (which approval includes the amount of reimbursement to be paid to the County or the City) but has not made the corresponding reimbursement payment to the County or the City by the date described on Exhibit C, then CMC shall be required to pay an amount equal to the pending reimbursement amount in order to satisfy its Minimum Payment Obligation; *provided*

that the portion of CMC's payment of such amount that is equal to the Exemption Amount for the year of such payment shall be treated as an advance of funds from CMC to the Trust to enable the Trust to make scheduled debt service payments on the TIF Bonds and the TIF Promissory Note, as applicable (such advances of funds referred to herein as the "CMC Advances"), and the remaining portion of CMC's payment of such amount shall be treated as a Payment in Lieu of Ad Valorem Taxes and/or an ad valorem tax payment, as applicable; *provided further* that the portion of CMC Advances used to pay interest shall be treated as accrued interest, and the portion of CMC Advances used to pay principal shall be treated as principal. CMC Advances shall not be treated as TIF Revenues and shall constitute an obligation of the Trust to be repaid promptly by the Trust pursuant to Section 4.9 of this Agreement.

Notwithstanding the foregoing, if the State of Oklahoma terminates the Manufacturing Tax Exemption Program at any time while the Increment District remains in effect, then CMC acknowledges and agrees that it shall be obligated to pay the full Minimum Payment Obligation without the credit for State reimbursements as described above and, to the extent any advances have been made by CMC as described above and the State determines not to reimburse such amounts, then such advance (and any related interest thereon) shall be forgiven by CMC.

6.9 Requirements for Purchasers of Property.

CMC shall not sell, assign or otherwise transfer any interest in the Property prior to completion of construction of the Project. If CMC desires to sell, assign or otherwise transfer an interest in the Property or the Project following completion of construction but during the term of this Agreement, then CMC shall require any purchaser, lessee or successor that acquires any interest in the Property or the Project ("Purchaser") to agree to assume the obligations of CMC under this Agreement, the Project Plan, and any other plans related to the Project as adopted or approved by the City or the Trust, including, without limitation, the covenant in Section 6.7 of this Agreement regarding CMC's Minimum Payment Obligation; *provided* that, notwithstanding the foregoing, CMC shall remain liable under this Agreement notwithstanding any assumption of its obligations by a subsequent Purchaser.

6.10 Other Actions.

CMC agrees to take such other reasonable actions as may be appropriate or desirable to support the implementation of the Project including, by way of example, executing such supplemental agreements and covenants (including covenants running with the Property) as may be reasonably necessary or appropriate to implement this Agreement and for the financing of project costs pursuant to the Project Plan and Section 5.3 of this Agreement and furnishing information reasonably requested by the City Parties, and in other matters that may be of benefit to the Project. The City Parties agree to take such other reasonable actions as may be appropriate or desirable to support the implementation of the Project including, by way of example, furnishing information reasonably requested by CMC, and in other matters that may be of benefit to the Project.

SECTION 7. REMEDIES

7.1 Equitable Relief; TIF Promissory Note; Specific Right to TIF Revenues.

Due to the nature of the Project and the mutual reliance on the representations and promises contained herein and the discussions of the parties prior to the date hereof, CMC and the City Parties acknowledge that damages alone would not be an adequate remedy for breaches of any of the provisions of this Agreement. Accordingly, without prejudice to any other rights and remedies it may have, the parties shall be entitled to the granting of equitable relief (including, without limitation, injunctive relief) concerning any threatened or actual breach of this Agreement by the other parties.

In the event that any of the proposed purchasers of Series A Bonds determines not to purchase Series A Bonds or not to purchase the full amount of Series A Bonds contemplated to be purchased by such purchaser as of the date hereof, then the Trust will use its commercially reasonable efforts to identify an alternate third-party purchaser for such Series A Bonds, including, without limitation: (a) seeking increased participation from a committed third-party purchaser; (b) seeking participation from alternate local economic partners with the financial capacity and investment experience to qualify to purchase Series A Bonds; and (c) submitting appropriate private placement information on the TIF Bond issuance to multiple state and/or regional banking institutions who have indicated a past interest in municipal bond issuances and offering them the opportunity to participate in the Series A Bond issuance on the same terms and conditions offered to the local syndicate of commercial banking institutions. If the Trust is unable to identify an alternate third-party purchaser despite using its commercially reasonable efforts, then (i) CMC shall be entitled to receive all of the available net proceeds of the TIF Bond issuance, after payment of Bond Issuance Costs as described above, and (ii) the Trust shall issue a promissory note to CMC (the "TIF Promissory Note") in an original principal amount equal to $23,287,633, less the amount received by CMC pursuant to clause (i), above. The TIF Promissory Note shall be paid by the Trust out of TIF Revenues and CMC Advances, have substantially the same terms as the Series A Bonds (including with respect to interest rate and timing and amounts of payments) and shall be *pari passu* with the Series A Bonds and senior to the Series B Bonds; *provided* that, notwithstanding anything to the contrary herein, if a payment default occurs with respect to the TIF Bonds as a result of a breach by CMC of its obligations under this Agreement, then the holders of the TIF Bonds shall be entitled to receive payments of TIF Revenues in preference and priority over any payments owed to CMC until such default is cured. In no event shall the Trust be required to use any revenues to repay the TIF Promissory Note other than TIF Revenues and CMC Advances.

7.2 Other Rights and Remedies of the Parties; No Waiver by Delay.

The parties shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Agreement, and any delay by the parties in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Agreement shall not operate as a waiver of such rights to so deprive it of or limit such rights in any way (it being the intent of this provision that the parties should not be constrained so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise to exercise such remedy at a time when it may hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by any of the parties with respect to any specific default by any of the other parties under this

Section be considered or treated as a waiver of the rights of such waiving party to any other defaults by any of the other parties with respect to the particular default except to the extent specifically waived in writing.

7.3 Rights and Remedies Cumulative.

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by any party, or any successor in interest, of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by any other party. No waiver made by any such party with respect to the performance, or manner or time thereof, or any obligation of any other party or any condition to its own obligations under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of any other party or condition to its own obligations beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the party.

SECTION 8. GENERAL PROVISIONS

8.1 Conflict of Interest; Representatives of City Parties Not Individually Liable.

No official or employee of the City or the Trust shall have any personal interest in this Agreement, nor shall any such person voluntarily acquire any ownership interest, direct or indirect, in the legal entities which are parties to this Agreement; *provided* that this restriction shall not prohibit any such person from acquiring publicly-traded stock of CMC Parent through open market transaction in an aggregate amount less than five percent (5%) of the outstanding publicly traded stock of CMC Parent. No official or employee of any of the City Parties shall be personally liable to CMC or any assignee or successor in interest in the event of any default or breach by any of the City Parties or for any amount which becomes due to CMC or its assigns or successors under this Agreement.

8.2 Nondiscrimination.

CMC agrees not to discriminate on the basis of race, color, religion, gender or national origin in violation of any applicable law or regulation in constructing or operating the Plant or otherwise related to the Project.

8.3 No Broker.

Each party hereto represents to each other party that the obligations pursuant to this Agreement have not involved any broker nor is any party hereto liable for the payment of a brokerage commission in connection with the negotiation of this Agreement. Each party agrees to indemnify and hold harmless each other party from any and all liability, loss, claim or expenses arising out of any breach of their respective foregoing representation.

8.4 Applicable Law; Submission to Jurisdiction.

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma governing agreements made and fully performed in Oklahoma. Any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby shall be brought in the United State District Court for the Eastern District of Oklahoma, and each of the parties irrevocably submits to the exclusive jurisdiction of such court in any such action or proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the action or proceeding shall be heard and determined only in such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or any transaction contemplated hereby in any other court. The parties agree that any party may file a copy of this Section with such court as written evidence of the knowing, voluntary and bargained agreement among the parties irrevocably to waive any objections to venue or to convenience of forum. Process in any action or proceeding referred to in this Section may be served on any party anywhere in the world by the methods set forth in Section 8.12.

8.5 Severability; Entire Agreement.

If any provisions of this Agreement or the application thereof to any persons or circumstances shall, to any extent, be invalid or unenforceable, then the remainder of this Agreement or the application of such provision, or portion thereof, and each other provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law. This Agreement sets forth the entire understanding between the parties hereto with respect to its subject matter, there being no terms, conditions, warranties or representations with respect to its subject matter other than as contained herein.

8.6 Assignment.

CMC may assign this Agreement to a qualified party upon written notice to and reasonable approval by the City Parties, which shall not be unreasonably withheld. No approval will be required for agreements with Purchaser in accordance with Section 6.9 of this Agreement; *provided*, *however*, that CMC shall provide notice to the City Parties within thirty (30) days of the effective date of such assignment. Such notice shall contain a description of the property affected and the contact information (both mail, facsimile and electronic) for such Purchaser. The Trust may assign its rights under this Agreement to the holders of the Series A TIF Bonds without the consent of any other party.

8.7 Amendment.

This Agreement may be amended by approval of each of the City Parties and CMC unless the proposed amendment requires a modification of the Project Plan, in which event approval by the City Council shall also be required.

8.8 Fiscal Year Limitation.

Notwithstanding any provisions of this Agreement to the contrary, it is acknowledged that the City is subject to certain provisions of the Oklahoma Constitution and law with respect to any obligation to transfer money beyond its fiscal year. Multiyear obligations of the City shall be construed in accordance with such provisions of law, and any unfunded multiyear financial obligations shall be subject to future appropriations.

8.9 Third Parties.

Except as expressly provided otherwise in this Agreement, the provisions of this Agreement are for the exclusive benefit of the parties hereto and not for the benefit of any other persons or entities, as third-party beneficiaries or otherwise, and this Agreement shall not be deemed to have conferred any rights, express or implied, upon any other person or entity.

8.10 Time is of the Essence.

The parties understand and agree that time is of the essence with regard to all the terms and provisions of this Agreement.

8.11 Authority; Headings.

The parties hereto represent and warrant that they are validly existing and lawful entities with the power and authorization to execute and perform this Agreement. The headings set forth in this Agreement are for convenience and reference only, and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

8.12 Notices and Demands.

Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, or delivered personally to:

(a) In the case of the City:

City Council, City of Durant
Attention: City Manager
Durant City Hall
300 W. Evergreen
Durant, Oklahoma 74701

With a copy to:

McAfee & Taft
Attention: Cheryl Vinall Denney
211 N. Robinson Avenue, 10th Floor
Oklahoma City, Oklahoma 73102

(b) In the case of the Trust:

Durant Tax Increment Finance Authority
c/o City Manager, City of Durant
Durant City Hall
300 W. Evergreen
Durant, Oklahoma 74701

With a copy to:

McAfee & Taft
Attention: Cheryl Vinall Denney
211 N. Robinson Avenue, 10th Floor
Oklahoma City, Oklahoma 73102

and

Floyd Law Firm, P.C.
Attention: Stuart B. England
118 E. Main Street
P.O. Box 396
Norman, Oklahoma 73070

(c) In the case of DIA:

Durant Industrial Authority
Attention: Executive Director
215 N. 4th Avenue
Durant, Oklahoma 74701

With a copy to:

McAfee & Taft
Attention: Cheryl Vinall Denney
211 N. Robinson Avenue, 10th Floor
Oklahoma City, Oklahoma 73102

and

Floyd Law Firm, P.C.
Attention: Stuart B. England
118 E. Main Street
P.O. Box 396
Norman, Oklahoma 73070

(d) In the case of the Utilities Authority:

The Durant City Utilities Authority
c/o City Manager, City of Durant
Durant City Hall
300 W. Evergreen
Durant, Oklahoma 74701

With a copy to:

McAfee & Taft
Attention: Cheryl Vinall Denney
211 N. Robinson Avenue, 10th Floor
Oklahoma City, Oklahoma 73102

and

Floyd Law Firm, P.C.
Attention: Stuart B. England
118 E. Main Street
P.O. Box 396
Norman, Oklahoma 73070

(e) In the case of CMC Parent or CMC Oklahoma:

Commercial Metals Company
Attention: General Counsel's Office
6565 N. MacArthur Blvd., Suite 800
Irving, Texas 75039

With a copy to:

Crowe & Dunlevy
Attention: Michael S. Laird or Matthew B. Hickey
324 N. Robinson Avenue
Oklahoma City, Oklahoma 73102

or to such other address, within the United States, with respect to a party as that party may from time to time designate in writing and forward to the others as provided in this Section. A copy of any notice, demand or other communication under this Agreement given by a party under this Agreement to any other party under this Section shall be given to each other party to this Agreement.

8.13 Binding Effect; Survival.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. The representations, warranties,

covenants and undertakings of the parties set forth in this Agreement shall survive the execution and delivery of this Agreement and continue in full force and effect until the later of (i) the date on which this Agreement has been fully performed in accordance with its terms and (ii) the date on which the Increment District is terminated; *provided* that, notwithstanding the foregoing, the provisions of Section 8.4 shall continue indefinitely with respect to matters, events or circumstances occurring or arising prior to such date.

8.14 Modifications.

This Agreement cannot be changed orally, and no executory agreement shall be effective to waive, change, modify or discharge it in whole or in part unless such executory agreement is in writing and is signed by the parties against whom enforcement of any waiver, change, modification or discharge is sought.

8.15 Unavoidable Delays.

The time for performance of any term, covenant, condition, or provision of this Agreement shall be extended by any period of unavoidable delays. In this Agreement, "unavoidable delays" means beyond the reasonable control of the party obligated to perform the applicable term, covenant, condition or provision under this Agreement and shall include, without limiting the generality of the foregoing, delays attributable to acts of God, any other party to this Agreement (for example, a delay in transfer of possession), strikes, labor disputes, governmental restrictions, court injunctions, riot, civil commotion, acts of public enemy and casualty, but shall not include delays attributable to financial difficulties of such party.

8.16 Further Assurances.

Each party agrees that it will, without further consideration, execute and deliver such other documents and take such other action, whether prior or subsequent to closing, as may be reasonably requested by any other party to consummate more effectively the purposes or subject matter of this Agreement.

8.17 Attorneys Fees.

In the event of any controversy, claim or dispute between the parties affecting or relating to the subject matter or performance of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all of its reasonable expenses, including reasonable attorneys' and accountants' fees.

8.18 Counterparts.

This Agreement may be executed in several counterparts, and all such executed counterparts shall constitute the same Agreement. It shall be necessary to account for only one such counterpart in proving this Agreement.

8.19 Construction of this Agreement.

Each of the parties acknowledges that the parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF DURANT, OKLAHOMA
"City"

ATTEST:

_____ By: _____
Stewart Hoffman, Mayor

DURANT TAX INCREMENT FINANCE AUTHORITY
"Trust"

ATTEST:

_____ By: _____
Stewart Hoffman, Chairman

DURANT INDUSTRIAL AUTHORITY
"DIA"

ATTEST:

_____ By: _____
Greg Massey, Chairman

THE DURANT CITY UTILITIES AUTHORITY
"Utilities Authority"

ATTEST:

_____ By: _____
Stewart Hoffman, Chairman

COMMERCIAL METALS COMPANY
"CMC Parent"

ATTEST:

_____ By: _____
[_____]

ATTEST:

CMC STEEL OKLAHOMA, LLC
"CMC Oklahoma"

_____

By: _____
[_____]

STATE OF OKLAHOMA,)
) ss.
COUNTY OF BRYAN)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared Stewart Hoffman, the Mayor of the City of Durant, Oklahoma, a municipal corporation, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said municipal corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

STATE OF OKLAHOMA,)
) ss.
COUNTY OF BRYAN)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared Stewart Hoffman, the Chairman of the Board of Trustees of Durant Tax Increment Finance Authority, a public trust, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

STATE OF OKLAHOMA,)
) ss.
COUNTY OF BRYAN)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared Greg Massey, the Chairman of the Durant Industrial Authority, a public trust, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

STATE OF OKLAHOMA,)
) ss.
COUNTY OF BRYAN)

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared Stewart Hoffman, the Chairman of the Board of Trustees of The Durant City Utilities Authority, a public trust, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said trust for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

STATE OF [_____])
) ss.
COUNTY OF [_____])

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared [_____], the [_____] of Commercial Metals Company, a Delaware corporation, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said corporation for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

STATE OF [_____])
) ss.
COUNTY OF [_____])

Before me, the undersigned, a Notary Public in and for said County and State, on the ____ day of May, 2016, personally appeared [_____], the [_____] of CMC Steel Oklahoma, LLC, a Delaware limited liability company, to me known to be the identical person who executed the within and foregoing instrument and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of said company for the uses and purposes therein set forth.

Given under my hand and seal the day and year above written.

My commission expires:

_____ _____
Notary Public

EXHIBIT A
LEGAL DESCRIPTION OF INCREMENT DISTRICT

EXHIBIT B
PRELIMINARY SITE DEVELOPMENT PLAN

EXHIBIT C
MINIMUM PAYMENT OBLIGATIONS

Tax Year	Payment Received by	Minimum Payment Obligation
2017	March 31, 2018	$1,392,515
2018	March 31, 2019	$2,767,778
2019	March 31, 2020	$2,692,325
2020	March 31, 2021	$2,616,289
2021	March 31, 2022	$2,525,744
2022	March 31, 2023	$2,440,254
2023	March 31, 2024	$2,367,406
2024	March 31, 2025	$2,285,375
2025	March 31, 2026	$2,199,721
2026	March 31, 2027	$2,119,693
2027	March 31, 2028	$2,060,792
2028	March 31, 2029	$1,998,860
2029	March 31, 2030	$1,933,604
2030	March 31, 2031	$1,166,396
		$30,566,752.00

Agenda Item: 3.b.

The City of Durant

Office of City Clerk

Memorandum

Date:	5/25/2016
To:	Utilities Authority Special Called Meeting
From:	Pat Phelps, City Attorney
Re:	Consider Approval of Industrial Water Purchase Agreement Between Durant City Utilities Authority and Rural Water and Sewer District #5 (C-2016-25)

Council Information / Action Requested

Approval of Industrial Water Purchase Agreement Between Durant City Utilities Authority and Rural Water and Sewer District #5 (C-2016-25)

City Staff Information / Action Follow-up, if Council authorizes this action:

City Clerk - Obtain required signatures on agreement.

ATTACHMENTS:

Description	Type	Upload Date
C-2016-25	Backup Material	5/25/2016

C-2016-25

INDUSTRIAL WATER PURCHASE AGREEMENT

This Industrial Water Purchase Agreement ("Agreement") for the sale and purchase of industrial water is entered into as of the _____day of _____, 2016 by and among The Durant City Utilities Authority, an Oklahoma Public Trust, located at 300 West Evergreen, Durant, OK 74701, hereinafter referred to as the "Seller", Rural Water and Sewer District No. 5, Bryan County, Oklahoma, 22404 State Road 78 South, Durant, OK 74701, hereinafter referred to as the "Purchaser".

WITNESSETH:

Whereas, the Purchaser is organized and established under the provisions of 82 O.S. 1324.1 et. seq., for the purpose of constructing and operating a water supply distribution system serving water users within the area described in plans now on file in the office of the State Director of Rural Utilities Services and to accomplish this purpose, the Purchaser will require a supply of treated water, and

Whereas, the Seller owns and operates a water supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the office of the State Director of Rural Utilities Services, and

Now, therefore in consideration of the foregoing and the ~~mutual~~ agreements hereinafter set forth.

A. The Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this Agreement or any renewal or extension thereof, potable treated water meeting applicable purity standards of the State of Oklahoma, Department of Environmental Quality in such quantity as may be required by the Purchaser not to exceed 1,000,000 gallons per day for the purpose of resale to industrial customers.

2. (Point of Delivery and Pressure) That water will be furnished at typical static pressure range of 38 pounds per square inch to 55 pounds per square inch and a low dynamic pressure of 25 pounds per square inch, at a minimmum flow rate of 750 gallons per minute, from no more than two agreed upon points of delivery (master meter locations) which would be located at the takeover point as determined by Purchaser (also known as the "TOP") at the Site, in Bryan County, State of Oklahoma. Emergency failures of pressure of supply due to main supply line breaks, power failure, flood, fire and use of water to fight the fire, earthquake or other catastrophe shall excuse the Seller from this provision for time as may be necessary to restore service. Seller may deliver water to Purchaser through two separate water lines (the "Water Lines"); provided, however, if both Water Lines are used, the requirements of this Section A.2. and Section A.1. above (I) with respect to the quantity and flow rate shall be met in the aggregate from both Water Lines, and (ii) with respect to water pressure shall be met independently by each of theWater Lines.

3. (Metering Equipment) To furnish, install, operate, and maintain at its

own expense at point of delivery at the Site, the necessary metering equipment, including, but not limited to, a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Purchaser but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the 12 months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read between the 10th and 20th day of each month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings. Purchaser shall have the right to review and approve the metering equipment and locations.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the last workday of each month, with an itemized statement of the amount and cost of water furnished to the Purchaser during the preceding month.

B. The Purchaser Agrees:

1. (Industrial Water Rate Class) To establish an industrial user rate structure for industrial customers located within the corporate city limits. The Purchaser agrees to establish and maintain an industrial user water classification and corresponding rate structure which is equal to the most current industrial water rate structure adopted by Seller. For reference, Resolution 2015-38 establishes the relevant industrial water rate structure adopted by Seller and in effect on the date of this Agreement as set forth on Exhibit A attached hereto.

The following conditions must apply in order to qualify for the industrial water rate:

a. The industrial customer is located in an industrial zone within the corporate city limits of Durant and is engaged in manufacturing or processing.

b. Industrial water usage must exceed one (1) million gallons per month. If usage is one (1) million gallons or more per month, all water usage will be charged at a 20% discount off the current regular commercial water rate approved by Seller. If usage is less than one (1) million gallons per month, the customer will be charged the current regular commercial water rate approved by Seller.

2. (Purchaser Rates and Payment Date) To pay the Seller, not later than the fifteenth (15th) day of each month, for water delivered in accordance with the following schedule of rates:

Purchaser agrees to pay **$2.18** per thousand gallons for the first eight (8) million gallons per month; after eight (8) million gallons the rate is **$2.08** per thousand gallons.

3. (Tax Covenants) Purchaser acknowledges that Seller has advised Purchaser that the requirement of the Internal Revue Code of 1986 and regulations adopted there under (collectively, the "Code") applicable to obligations issued and to be issued by Seller to finance water facilities must be complied with in order for interest on such obligations to be and remain exempt from Federal income taxation. To ensure and maintain compliance with such Code requirements,

Purchaser makes the following covenants:

a. Purchaser will not sell any water purchased under this Agreement in any manner that could cause such sale to result in any facility of Seller being deemed to be used for a private business use under the Code.

b. Purchaser will not resell any water purchased under this Agreement, whether directly or as a part of a sale of water from Purchaser's water system, to a wholesale purchaser for resale by such purchaser (i.e. Purchaser will only sell water purchased under this Agreement to its industrial customers for ultimate consumption or use);

c. Purchaser will not enter into any arrangement for water purchased under this Agreement and resold to Purchaser's retail industrial customers that conveys priority rights or other preferential benefits or that would obligate any retail industrial customer to make payments that are not contingent on the amount of water purchased by such customer as take or pay or take and pay contracts.

In the event such Code requirements or interpretations thereof, change after the date hereof, any or all of the foregoing may be modified by agreement of the parties.

Upon Seller request Purchaser shall confirm to Seller that it has not sold any water purchased under this Agreement other than in compliance with the foregoing.

4. (Additional Tax Covenants) Purchaser represents and confirms that it is a rural water district duly organized and established under the provisions of 82 O.S. 1324.1 et. seq. and covenants that it will continue to be such a rural water district for the term of this Agreement. Purchaser further represents and confirms that it is exempt and will remain exempt from federal income taxation for the term of this Agreement and, by virtue of such exemptions, has not and will not file Federal income tax returns or paid and will not pay any Federal income tax for the term of this Agreement.

5. (Remedies and Indemnification for Breach of Tax Covenants) Purchaser and Seller agree that:

a. The provisions of Section B.3. and B.4. constitute material terms and conditions of this Agreement:

C. It is further agreed among the Seller and the Purchaser as follows:

1. (Term of Agreement) That this Agreement shall extend for a term of **forty** (40) years from the date of this Agreement.

2. (Failure to Deliver) That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser in accordance with Section A. 1. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of a shortage of water, or the supply of water available to the Seller is otherwise diminished, the supply of water to the Purchaser's consumers shall be reduced or diminished in the same ratio or proportion as the supply to the Seller's consumers is reduced or diminished.

3. (Modification of Agreement) That the provisions of this Agreement pertaining to the schedule of rates to be charged by the Purchaser for water delivered to industrial consumers are subject to modification in accordance with rate changes approved by Seller. Likewise, the schedule of rates to be paid by the Purchaser to the Seller shall be modified to reflect any rate changes approved by Seller proportionally. Other provisions of this Agreement may be modified or altered by written agreement of the Seller and Purchaser.

4. (Regulatory Agencies) That this Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

5. (Infrastructure Improvements in Conjunction with Construction of Commercial Metals Company Steel Rebar Manufacturing Facility) That Rural Water District No. 5 has actual jurisdiction over a portion of the project construction related to infrastructure improvements necessary to facilitate an economic development project in which Commercial Metals Company has committed to construction and operation of a steel rebar manufacturing facility within the city limits of Durant, Oklahoma.

7. (Fee Collection for Sanitary Sewer Billing Service) A meter will be installed and read monthly by City of Durant staff to measure the sanitary sewer discharge of Commercial Metals Company into The Durant City Utilities Authority sanitary sewer collection system, therefore Rural Water District No. 5 will not be responsible for sending billing statements to Commercial Metals Company for sanitary sewer service and a collection fee will not be applicable.

In Witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this agreement to be duly executed in multiple counterparts, each of which shall constitute an original.

THE DURANT CITY UTILITIES AUTHORITY
("Seller")

By: _____
Stewart Hoffman, Chairman

Attest: _____
Cynthia Price, Secretary

RURAL WATER AND SEWER DISTRICT NO. 5
BRYAN COUNTY, OKLAHOMA
("Purchaser")

By: _____
Keiller Burkhalter, Chairman

Attest: _____
Betty Patton, Secretary

EXHIBIT A
TO
INDUSTRIAL WATER PURCHASE AGREEMENT

Industrial Water Rate Inside City Limits:

	Regular Rate
First 2,000 gallons	$14.95
Next 1,000 gallons	$3.60
Next 1,000 gallons	$3.80
Next 1,000 gallons	$3.90
All over 5,000 gallons (rate per 1,000 gallons)	$3.80

Note - 20% Discount Rate available only if 1,000,000 gallons of water are purchased per month.

Agenda Item: 3.c.

The City of Durant

Office of City Clerk

Memorandum

Date:	5/24/2016
To:	Utilities Authority Special Called Meeting
From:	Sarah Sherrer, City Manager
Re:	Consider Approval of Interlocal Cooperation Agreement Between the City of Durant and Rural Water District #5 (C-2016-26)

Council Information / Action Requested

Approve Interlocal Cooperation Agreement between the City of Durant and Rural Water District #5.

City Staff Information / Action Follow-up, if Council authorizes this action:

City Clerk - Obtain required signatures on agreement.

ATTACHMENTS:

Description	Type	Upload Date
C-2016-26 Interlocal Cooperation Agreement	Exhibit	5/24/2016

INTERLOCAL COOPERATION AGREEMENT

THIS AGREEMENT, entered into on the _____ day of _____, 2016, between the **City of Durant** and **Rural Water and Sewer District # 5** of the State of Oklahoma.

ARTICLE I

DURATION

This Agreement will be in full force and binding upon the parties thereto upon the execution of the Agreement and shall continue in full force and effect for one (1) year with the option of being renewed on a yearly basis. However, any participating party may withdraw from this agreement at any time during the first year or any additional term of the Agreement as provided in the Section on Termination and Dissolution set out in Article VIII of the agreement.

ARTICLE II

PURPOSE

The parties hereto, through their respective governing bodies, hereby find and declare:

1. WHEREAS, the above-named parties need assistance in constructing water system improvements to serve Commercial Metals Company, 585 Old Highway 70, Durant, OK 74701.
2. WHEREAS, it is deemed feasible that this local assistance be obtained, through a Community Development Block Grant Economic Development (CDBG-ED) Infrastructure grant from the Oklahoma Department of Commerce for funding of a public facilities project.
3. WHEREAS, the parties are in agreement to cooperate and share in the grant funds received in order to obtain the needed assistance that they are unable to acquire individually.

NOW, THEREFORE, in consideration of the foregoing and in compliance with and pursuant to the provisions, terms and conditions of Title 74 O.S. 1991, Sections 1001, et seq., the parties agree to participate as hereinafter set forth.

ARTICLE III

ORGANIZATION & RESPONSIBILITIES

1. Through this Interlocal Agreement, the **Rural Water and Sewer District # 5** agrees to partner with the **City of Durant**, for a CDBG-ED grant application to provide funding for the Commercial Metals Company public infrastructure project, which includes service areas within the **Rural Water and Sewer District # 5** jurisdiction.
2. The **City of Durant** shall prepare and submit the CDBG-ED grant application for the CMC public infrastructure project, which encompasses lines within the **Rural Water and Sewer District # 5** jurisdiction.

3. Upon a grant award, the **City of Durant** shall administer the CDBG-ED grant project through its entirety.
4. The **City of Durant** shall be the administrative body for administering the water improvements project serving the Commercial Metals Company, with efforts to support the new job creations.
5. The **City of Durant** will be responsible for soliciting and employing the engineer services, conducting the bid process and awarding the construction contract, as required by the application for the administration of the CDBG-ED grant and shall provide the **Rural Water and Sewer District # 5**with such data and information as may be required by the terms of the CDBG-ED grant contract.
6. The **City of Durant,** as agreed upon through the executed Industrial Water Purchase Memorandum of Understanding, shall provide treated water to the **Rural Water and Sewer District # 5** upon completion of the water system constructed pursuant to this Agreement.
7. The **Rural Water and Sewer District # 5** will be responsible for delivering the water supplied by this Agreement to its own customers at such a time as it accepts delivery of water from the **City of Durant.**

FINANCING

1. The **City of Durant** is submitting a CDBG-ED grant request in the amount of $1,000,000 which shall be provided to utilize towards the aforesaid water system improvements.
2. Upon a grant award, the **City of Durant** will adhere to all local and OK Department of Commerce CDBG-ED grant guidelines for all procurement procedures regarding the aforesaid water system improvements as set forth in the grant application.

ARTICLE V

ADMINISTRATION

The **City of Durant**, as the administrative agency for the CDBG-ED grant, shall ensure that all parties to the Agreement comply with the rules and regulations issued by the Oklahoma Department of Commerce for the implementation of the grant project as set forth in the grant contract between the City and the Oklahoma Department of Commerce.

ARTICLE VI

POWERS AND DUTIES OF THE PARTIES

The **City of Durant** shall advise the other parties to this Agreement of those rules and regulations governing the project and shall file with the Oklahoma Department of Commerce such reports and documents required by the CDBG-ED grant contract. The **Rural Water and Sewer District # 5** shall provide to the **City of Durant**, as required, such data and information as may be necessary for the grant application or implementation of the construction of the water system improvements.

ARTICLE VII

ADDITIONAL PARTIES

Upon unanimous approval of all parties, additional local government entities may be made part of this Agreement. Any new parties shall have the same rights and obligations under this Agreement as do the original parties.

ARTICLE VIII

TERMINATION AND DISSOLUTION

If participating parties wish to withdraw from this Agreement during the term of the Agreement, they may do so by notifying all other parties in writing at least thirty (30) days prior to their selected withdrawal date. The withdrawal from this Agreement shall be subject to the approval of the **City of Durant** and the State Attorney General's Office. However, the withdrawing party or parties shall not be relieved of any obligations, responsibility or liability imposed by other agreements executed in conjunction with their Inter Local Cooperation Agreement unless said other agreements are negotiated satisfactory to all parties concerned.

IN WITNESS WHEREOF, the said parties have caused this instrument to be executed by their respective officers, the day and year first above written.

CITY OF DURANT

By: _____

Stewart Hoffman, Mayor

Attest: _____

Cynthia Price, Clerk

RURAL WATER AND SEWER DISTRICT NO. 5

By: _____

Keiller Burkhalter, Chairman

Attest: _____

Betty Patton, Secretary