



Name of Community

NORTHWEST TERRITORIES

CONTRACT FOR POTABLE WATER DELIVERY

Name of Contractor

CONTRACT NUMBER:

Date

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Contract No.
Name of Contractor

POTABLE WATER DELIVERY CONTRACT

This contract made the 1 day of July , 2008:

BETWEEN:

Community

OF THE FIRST PART

AND:

Contractor Name

OF THE SECOND PART

WHEREAS:

The contractor wishes to provide trucked potable water delivery service for the of approximately twelve million five hundreds thousand (12,500,000) gallons annually (“the Service”) and the wishes to retain the Contractor to provide the Service;

NOW THEREFORE, in consideration of covenants and agreements hereinafter reserved and contained, the parties agree as follows:

ARTICLES

1 TECHNICAL

1.1 SCOPE OF SERVICE

Except as expressly stated herein, the Contractor shall provide a trucked potable water delivery service within the Community, in accordance with the specifications set out in the Schedules attached to and forming part of this Contract and the terms and conditions of this Agreement (“the Service”). Without limiting the generality of the foregoing, the Contractor shall, at its own risk and expense:

- 1.1.1 organize and perform the Service in accordance with this Contract, including Schedule A ‘Scope of Trucked Potable Water Delivery’ attached hereto;

- 1.1.2 unless otherwise expressly stated herein, furnish at its own expense all appropriate supervision, labor, repair, maintenance, equipment and materials necessary to provide the Service;
- 1.1.3 pay for all other charges incurred under this Contract;
- 1.1.4 complete all record keeping and reports required by the Community; and
- 1.1.5 obtain all licenses and permits required for the provision of the Service.

1.2 TERM OF CONTRACT

1.2.1 The Service shall commence on July 1, 2008 and shall continue until June 30, 2013.

1.2.2 At the end of the contract period, if the Contractor performs the covenants contained herein, provides acceptable service and maintains pricing that is satisfactory to the Community, and unless the Community provides written notice to the contrary to the Contractor at least ninety (90) days before the termination of this contract, the contract will be renewed for a further three (3) year term commencing on July 1st, 2013 and ending June 30, 2016.

1.3 COMMUNITY'S REPRESENTATIVE

1.3.1 For the purposes hereof, the Community's representative will be the Director of Public Works and Engineering.

1.4 CONTRACTOR'S REPRESENTATIVE

1.4.1 For the purposes hereof, the Contractor's representative will be _____.

2 FINANCIAL

2.1 PAYMENT

2.1.1 As full consideration for performance hereof, the Community will pay the Contractor according to Schedule B "Financial".

3 GENERAL TERMS AND CONDITIONS

3.1 COMMUNITY'S OPERATIONS

- 3.1.1 The Contractor has observed the operations of the Community and is aware of the general conditions.
- 3.1.2 The Contractor shall not impede or interfere with the Community's operations in performing the Service.

3.2 INDEPENDENT CONTRACTOR

- 3.2.1 The Contractor is an independent Contractor, and all persons employed by the Contractor in connection herewith shall be employees of the Contractor, and not employees of the Community in any respect.
- 3.2.2 The Contractor is not and shall not hold itself out to be an agent of the Community.

3.3 CONTROL OF THE SERVICE

- 3.3.1 Although the provision of the Service is the sole responsibility of the Contractor, the Community reserves the right to inspect, oversee, and make inquiries into the provision of the Service. The Community may issue directives to the Contractor to remedy any conditions which the Community considers to be detrimental to the Service or a breach of this agreement. The Contractor will be required to carry out the terms of such directives as soon as possible and, in any event, not more than seven (7) days after receipt of a notice in writing from the Community.
- 3.3.2 The Contractor shall effectively direct and supervise the Service to ensure compliance with this Contract.
- 3.3.3 The Community has final approval on all matters relating to the provision of the Service, including, but not limited to, frequency of deliveries and the terms and conditions upon which the Service is to be operated.
- 3.3.4 Any person employed by the Contractor who is deemed by the Community's Representative to be incompetent shall be removed from the job, at the request of the Community's representative, acting reasonably.
- 3.3.5 The Contractor shall at all times co-operate with the Community's representative, the Chief of the Fire Department, or their designates, the Health Officer and any other officer, agent or employee of the Community in reference to compliance with laws and regulations.

3.4 CONTRACT PERFORMANCE

- 3.4.1 Payments to the Contractor shall not be a waiver of any breach of this Contract by the Contractor or relieve the Contractor from the performance of any obligations under this Contract.

3.5 CONFIDENTIALITY

3.5.1 The Contractor acknowledges that in performing the Services, the Contractor may be exposed to certain confidential information. The Contractor agrees it will not make use of any of that information without the express permission of the Community. This clause shall survive beyond the term of this contract and any renewals thereof.

3.6 RECORD KEEPING

3.6.1 The Contractor, to the satisfaction of and under the direction of the Community's representative, shall obtain, prepare, and maintain books, receipts, and records of all water received and of all deliveries for which payment is claimed from the Community or which is deemed to be a private sale. The Contractor shall permit the Community's representative and the Community's Auditors to inspect and take copies of any entry in such books and records at all reasonable times during or after the contract period.

3.6.2 The Community's Finance Department will forward "meter books" to the Contractor near the end of each and every month. The Contractor shall complete the meter books, by filling in the total volume of water delivered to each user during the month, and shall return the meter books to the Community's Finance Department by the end of the 5th working day of the following month.

3.6.3 The Contractor shall submit a written report at the end of each calendar year outlining the meter reading for each truck fill station, and the total overall volume of water received and delivered under this Contract, or delivered under any private sales. The report shall be submitted to the Community's Representative by the 15th day of January of each year.

3.6.4 The Contractor and the Community each agree to explore options of electronically transferring water delivery data from the Contractor's computer database to the Community's computer database. This is intended to replace the requirement outlined in 3.6.2.

3.7 COMPLIANCE WITH LAWS AND REGULATIONS

3.7.1 The Contractor shall observe and comply with all applicable federal and territorial statutes and regulations and all municipal by-laws in providing the Service.

3.7.2 The Contractor shall obtain all licenses and permits required for the provision of the Service. Without limiting the generality of the foregoing, the Contractor shall obtain and maintain a valid Community business license throughout the term of the Contract and any renewal.

3.7.3 The Community will not be responsible for the Contractor's failure to perform the Service in accordance with the Contract documents, nor for its failure to comply with applicable laws and regulations.

3.8 WATER QUALITY

3.8.1 The Contractor shall ensure that its equipment is properly maintained so as to remain free of contamination at all times and be in a clean and sanitary condition for the delivery of potable water that meets all applicable standards.

3.8.2 The Contractor shall have access to all relevant Community water test results for the purpose of confirming that the water supplied to the Contractor by the Community meets all applicable standards.

3.9 STANDBY TRUCK

3.9.1 The Contractor shall at all times maintain, in fully operable condition and repair, a standby potable water delivery truck suitable and capable of deliveries in accordance with the terms and conditions herein set out.

3.10 INDEMNIFICATION

3.10.1 The Contractor agrees to defend, indemnify and hold harmless the Community, its Council, officers, employees and agents, against and from any and all loss, claims, actions or suits, including costs and legal fees (on a solicitor and his own client basis), for or on account of injury, bodily or otherwise, to or death of persons, damage to or destruction of property belonging to the Community, or others, resulting from, arising out of, or in any way connected with the Contractor's operations and performance of work hereunder, excepting only such injury or harm as may be caused solely by the fault of negligence of the Community, its Council, officers, employees or agents.

3.11 APPLICABLE LAW

3.11.1 This Contract shall be governed by the laws of the Northwest Territories.

3.12 INSURANCE

3.12.1 The Contractor shall without limiting its obligations or liabilities hereto, obtain and maintain at its sole expense and pay for during the period of this contract the following insurance coverage with insurance companies who are licenced to provide insurance in the Northwest Territories. The amount and type of insurance specified herein in no way reduces or limits the liability or responsibility of the Contractor hereunder.

3.12.2 Within 30 days after acceptance of the Contractors tender and within 14 days of the start of the contract, the Contractor shall, unless otherwise directed in writing by the Community, deposit with the Community an Insurer's Certificate of Insurance in a form acceptable to the Community and if requested, the originals or certified true copies of all insurance contracts maintained by the Contractor pursuant to the insurance coverage requirements shown hereunder. The Contractor will provide to the Community on the annual anniversary date of the contract an insurer's certificate of insurance providing evidence of continued insurance coverage.

3.12.3 The provisions of the insurance coverage requirements contained hereunder are not intended to cover all of the Contractors risk under this contract. Any additional risk management measures or additional insurance coverage the Contractor may deem

necessary to fulfill its obligations under this contract shall be at the Contractor's own discretion and expense.

3.12.4 The Contractor agrees to waive all rights of recourse against the Community for damages to any of the Contractor's property or property of others for which the Contractor is responsible and the Contractor's Insurers have no right of subrogation against the Community.

3.12.5 Commercial General Liability Insurance with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury, death and property damage including loss of use thereof. This insurance shall be maintained continuously from commencement of the work until not less than 12 months from the date of the Final Certificate of Completion. The insurance policy must include but is not limited to:

- Premises, Property and Operations Liability
- Products and Completed Operations Liability
- Owners and Contractor's Protective Liability
- Blanket Written Contractual Liability
- Broad Form Property Damage Extension
- Personal Injury Liability
- Employees as Additional Insured
- Cross Liability
- Contingent Employers Liability
- Non-owned Automobile Liability SPF # 6

The Policy must show the Community as an additional insured but only with respect to the operations of the named insured.

This policy shall be endorsed to provide 30 days written notice to the Community for cancellation, termination or material change to the insurance coverage.

3.12.6 Automobile liability insurance with respect to Contractor's owned and leased vehicles used directly or indirectly in the performance of the work with limits of not less than two million dollars (\$2,000,000) inclusive per occurrence for bodily injury death and property damage as per Standard Policy Form # 1.

3.12.7 All perils physical damage coverage on the vehicles providing the water delivery services with a deductible not more than \$5,000.

The policy will also be endorsed by the insurer to provide 30 days advance written notice to the Community for any cancellation, termination or material change in the insurance coverage provided to the contractor.

3.12.8 PROPERTY INSURANCE: provide All Risks property insurance including replacement cost on the parking garage owned, leased, rented or used by the contractor.

The policy will also be endorsed by the insurer to provide 30 days advance written notice to the Community for any cancellation, termination or material change in the insurance coverage provided to the contractor

3.13 BONDING

3.13.1 The Contractor shall not be required to provide a performance bond.

3.14 WORKERS' COMPENSATION

3.14.1 Prior to commencing Service, the Contractor shall comply with all applicable Workers' Compensation and Employers Liability Acts in the Northwest Territories and, upon request, shall furnish proof thereof satisfactory to the Community.

3.15 FORCE MAJEURE

3.15.1 If the Contractor or the Community is prevented from or delayed in its performance under this Contract as an unavoidable result of fire, delays in transportation, an act of God or of the Queen's Enemies, an order of a governmental official body, or other cause beyond its reasonable control, the time for performance of that party shall be extended by the length of time it is so prevented or delayed. If any event of force majeure involving the Contractor or its subcontractors disrupts, or threatens to disrupt, the Community's operations, the Community may cancel this Contract by written notice terminating without liability all obligations imposed by this Contract. For greater certainty, a labour dispute at the Community or between the Contractor and its employees shall not be an excuse for non-performance by either party.

3.16 NO ASSIGNMENT, DELEGATION OR SUB-CONTRACT

3.16.1 The Contractor shall not assign this Contract or its interest therein nor delegate or sub-contract any of the Services to be performed by it hereunder without the express written consent of the Community, and any such attempted assignment, delegation or sub-contract shall entitle the Community to terminate the Contract. If assignment, delegation or sub-contract is done with such consent it shall not relieve the Contractor from its responsibility for the performance of any of its obligations hereunder.

3.17 NONWAIVER

3.17.1 The failure of the Community to insist upon or enforce strict performance by the Contractor of any of the terms of this Contract or to exercise any rights herein shall not be construed as a waiver or relinquishment to any extent of its right to assert or rely upon such terms or rights on any future occasion.

3.18 SUSPENSION OF SERVICE

3.18.1 The Community may, at any time, suspend any part of the Service, including all remaining Service, for any reason whatsoever by giving notice to the Contractor specifying the part of Service to be suspended and the effective date of suspension. The Contractor shall continue to perform any unsuspended part of the Service. Suspension shall not limit or waive the Contractor's responsibility pursuant to Article 1. The Community shall not be held liable for any damages or loss of anticipated profits on

account of suspension of any part of the Service. Without limiting the generality of the foregoing:

3.19 TERMINATION FOR CONVENIENCE

3.19.1 Either party may terminate this Contract at any time without cause by giving four (4) months' notice to the other party. Such termination shall not affect the rights of the parties which have accrued prior to the date of termination and shall not relieve any party from obligations arising during the term of this agreement. In the event of termination, the Contractor and Community shall each be released and discharged from any claims by one against the other in connection with the termination of this Contract or the Service herein described. The Community shall not be held liable for damages or loss of anticipated profits on account of such termination.

3.20 RENEGOTIATION

3.20.1 Either party may request a revision of rates under this agreement by providing written notification to the other party not later than October 15 of any given year. Unless agreed otherwise, any rate adjustments shall be effective as of the first day of the following January.

3.21 CANCELLATION FOR CAUSE

3.21.1 Community retains the right to terminate this Contract without notice or penalty if Contractor does not provide acceptable service or does not maintain competitive prices.

3.22 CHANGES

3.22.1 Each change in the Service shall be authorized in advance by written change order issued by the Community.

3.23 PURCHASE RIGHTS

3.23.1 Right of First Offer

If the Contractor intends to sell all or substantially all of the assets used in the performance of this contract and to assign the remaining term of this contract to the purchaser of the assets, prior to offering the assets for sale to such third party, the Contractor shall notify the Community in writing of its intent and shall specify in the notice in reasonable detail the assets the Contractor proposes to sell and terms of sale that would be acceptable to the Contractor. The Community shall have 10 business days after receipt of the Contractor's notice in which to elect to purchase all, but not less than all, of the assets (including the remaining term of this contract) specified in the notice on the terms set forth in the notice or upon such other terms as may be agreed upon between the Community and the Contractor. If the Community does not elect to purchase the assets, the Contractor may offer the assets for sale to third parties, subject to the Community's right of first refusal set forth below. If the assets are sold to a third party, this Right of First Offer shall apply to any assignee of this contract and to any assets used by the assignee in performing the contract.

3.23.2 Right of First Refusal

If at any time during the term of this contract, the Contractor receives a *bona fide* offer for the purchase of the remaining term of this contract together with all or substantially all of the assets the Contractor uses to perform this contract, which is acceptable to the Contractor in all respects (“the Acceptable Offer”), the Contractor shall give the Community notice of the Acceptable Offer, together with a true and complete copy of the Acceptable Offer. An Acceptable Offer shall provide that the purchase price thereunder shall be payable by cash or a combination of cash and vendor financing. An agreement that is conditional upon the Community not exercising this Right of First Refusal shall be deemed to be an Acceptable Offer. The Contractor agrees that the Community shall have the right to purchase the assets set forth in the Acceptable Offer for the price and on the terms and conditions contained in the Acceptable Offer. The Community may exercise this right at any time within 10 business days following receipt of the written notice of the Acceptable Offer. If the Community elects to exercise the right, the Community’s notice to the Contractor shall constitute a binding agreement of purchase and sale. If the Community does not so elect, the Contractor shall be free to sell the Premises on the terms and conditions set forth in the Acceptable Offer, but this Right of First Refusal shall thereafter remain in full force and effect during the balance of the term of this agreement. If the Acceptable Offer is not completed, this Right of First Refusal shall remain in force for any subsequent Acceptable Offer. The Contractor agrees not to assign this contract unless the Contractor has complied with this clause first. The Contractor shall be entitled to transfer this contract and any part of the assets used in performing this contract to a corporation controlled by the Contractor or controlled by the same shareholders who control the Contractor without triggering this Right of First Refusal.

3.24 DEFAULT

If:

3.24.1 The Contractor fails to comply with any of the terms or conditions of this contract;

3.24.2 a proceeding in bankruptcy, receivership or insolvency is instituted by or against the Contractor or his property; or

3.24.3 the Contractor makes an assignment for the benefit of creditors;

the Community may sue the Contractor for damages or terminate the Contract without notice or penalty.

3.25 COMPLETE AGREEMENT

3.25.1 This Contract and attachments constitute the complete Contract between the parties. It is subject to change only by an instrument executed by the Community.

3.25.2 In the event of a conflict between this Contract and the Contractor’s proposal submission or the Community’s original Request for Proposals, this Contract shall apply.

3.26 OTHER CONDITIONS

- 3.26.1 The Contract shall operate for the benefit of and be binding upon the respective executors, administrators, successors and assigns of the Community and the Contractor.
- 3.26.2 Headings, titles and marginal notes which appear in the Contract documents are inserted for convenience only and shall not be used to explain or clarify the clauses or paragraphs below or opposite which they appear.
- 3.26.3 Absolutely no deviations from the Terms and Conditions as contained in this agreement will be permitted.
- 3.26.4 The words “Contractor” and “he” or any derivative thereof shall have a plural, feminine or neuter meaning where the context so requires.

3.27 NOTICES

- 3.27.1 Where notice is required or permitted to be served by one party on the other, the notice shall be given in writing and may be delivered personally, delivered or sent by mail or facsimile transmission at the following addresses:

Notices to: **Community of**
 P.O. Box
 Attention:
 Fax:

Notices to: Contractor
 Att:

Notwithstanding the above, each party shall use the most expeditious method of giving the written notice or communication.

A written notice or communication sent by mail shall be deemed to have been received ten (10) days from the date of posting. Whenever a notice or communication is sent by facsimile transmission, acknowledgement from the receiving party must be given to the other party that the notice or communication has in fact been received, for it to be effective; if no such acknowledgment is given, it shall be deemed to have been received ten (10) days from the date of posting of the original document.

3.28 RESOLUTION OF DISPUTES

- 3.28.1 Except as otherwise provided herein, any dispute arising hereunder which is not disposed of by agreement, may be referred to a single arbitrator appointed by agreement of the parties or, if the parties are unable to agree upon an arbitrator, by a sole arbitrator appointed under the Arbitration Act. The decision of the arbitrator shall be final and binding upon the parties. Each party shall continue to perform their obligations under this agreement while the decision of the arbitrator is pending.

4 EXECUTION

IN WITNESS WHEREOF, the parties hereto have entered into this Contract to be effective the date it is executed by the Community.

CONTRACTOR

THE COMMUNITY OF

By _____

By _____

Title

Title

Date Executed

Date Executed

(SEAL)

By _____

Title

Date Executed

(SEAL)

COMMUNITY OF
Contract No.
Contractor

Schedule A

SCOPE OF TRUCKED POTABLE WATER DELIVERY

A1 EQUIPMENT SPECIFICATIONS

All trucks and accessories shall be operating at 206 meters (676 feet) above sea level with ambient air temperatures ranging from -50 degrees Celsius to +32 degrees Celsius. All trucks and accessories must be able to operate under these conditions.

A2 DELIVERIES

A2.1 Except as otherwise notified by the Community's representative, the Contractor shall make two regular scheduled deliveries per week to each identified user, within the following areas of the Community of Yellowknife, on the days specified:

AREA	DAYS
Location	Monday & Thursday
Location	Tuesday & Friday
Location	Wednesday & Saturday

A2.2 For convenience, the Contractor may alter summer deliveries to _____ and _____ as follows:

AREA	DAYS
Location	Monday and Thursday
Location	Tuesday & Friday

A2.3 The quantity of potable water to be delivered at a single delivery to any household or business establishment shall be the quantity reasonable specified by the householder or manager of the establishment, as the case may be.

A2.4 No delivery shall be made to a household or business except as authorized by the Community. The Contractor shall report any situations obstructing the performance of his duties as per the Trucked Water Service Standards outlined in

Schedule C Specifications of **Water and Sewer Services By-law No. _____** to the Community's representative.

A2.5 The Contractor is not required to make deliveries to any residence or business, the property of which is in an unsanitary condition.

A2.7 In addition to the deliveries herein referenced, the Contractor, without delay and at all times during the contract period, as required and directed by the Chief of the Fire Department or his designate, shall provide all such personnel, equipment and water supplies as are then available to the Contractor. The Contractor shall be paid for this service at a rate of \$90.00 (ninety dollars) per hour per water truck in attendance. Furthermore, if water needs to be obtained from a fill station, the Contractor shall maintain a record of the number of gallons used. If water is obtained from a fire hydrant, no record is necessary.

A3 PRIVATE SALE OF BULK POTABLE WATER

A3.1 The Contractor shall be provided with potable water for private bulk sales (including call out services to current users) to the public at the rate identified in the **Water and Sewer Services Bylaw _____** and any amendments.

A3.2 **If a current user requests the delivery of additional water during regular office hours, they will be charged a callout fee of \$65.00 (sixty-five dollars) for a 600 gallon delivery. If such a request is made after hours, they will be charged a call-out fee of \$90.00 (ninety dollars) for a 600 gallon deliver. Additional gallons requested will be charged out at \$0.05 (five cents) per gallon. Call-out fees are the responsibility of the requester; they are treated as a private sale and not added to their Community account.**

A3.3 Notwithstanding A3.2, the Contractor will not sell potable water to any residence or business within the boundaries of the Community without obtaining the prior approval of the Community's representative.

A3.4 This section will not prevent the Community from entering into agreements for the bulk sale of water for private use with other parties.

COMMUNITY OF

**Contract No.
Contractor**

Schedule B

FINANCIAL

B1 CONSIDERATION IS BASED ON

- B1.1 Prices are in Canadian Currency.
- B1.2 Water volumes are in imperial gallons.
- B1.3 Prices are exclusive of the Goods and Services Tax.
- B1.4 Terms of payment are net 30 days.

B2 PAYMENT

- B2.1 Reconciliation for volumes in excess of or less than **twelve million and five hundred thousand (12,500,000) gallons** and for private sales shall be calculated and form a part of the December invoice in each year of this agreement. Calculations shall include an adjustment for the interim allowance of **one million two hundred and fifty thousand (1,250,000) gallons.**

- B2.2 Monthly Invoicing – The Contractor will submit a monthly invoice for water delivery based on:

Delivery rate **of \$0.042 per gallon;**

And;

Fuel Surcharge – The contractor may add a Fuel Surcharge delivering water to compensate for fluctuations in fuel prices that will arise during the term of the Contract. The Fuel Surcharge may be added to each invoice as a “below the line” surcharge item on the water delivery services. The fuel surcharge will be calculated in the following manner:

Fuel prices are referenced to the cost per litre of diesel (automobile) fuel in Yellowknife based on the Weekly Pump Price Survey posted by MJ Ervin and Associates Inc.(http://www.mjervin.com?WPPS_Public.htm)

The Contractor’s submission was based on the rate (week of June 1, 2008) of **\$1.499/litre.**

Fuel surcharge rates will be calculated at the start of each moth (12 times per year) based on the price of fuel from the last day of the previous month.

For the purpose of calculating the fuel cost adjustment, it will be assumed that nine and sixteen one hundredths percent (9.16%) of the **delivery rate (\$0.042 per gallon)** or \$0.00384744 per gallon (**which is a portion of that will be subtracted from the haul rate of \$0.042 per gallon**) is considered to be allocated to fuel consumption.

The Fuel Surcharge may only be applied to water delivery services

For greater certainty, the Fuel Surcharge is in addition to any price increase calculated under paragraph below, but there will be no Consumer Price Index adjustment to portion of the delivery rates allocated to fuel costs.

Example 1:

$$\$0.00384744/\text{gal (original)} \times \frac{\$1.25 \text{ (Fuel Price Last day Previous Month)}}{\$1.20 \text{ (Original Fuel Price)}}$$

$$= \$0.0040775/\text{gal (Revised Rate)}$$

CPI adjustment – The base price for delivery shall be adjusted effective January 1 of each year for the year, beginning January 1, 2009, and shall be based on the percentage increase or decrease in the most broadly based Consumer Price Index used by Statistics Canada for Yellowknife over the same index as of December 31, 2007.

The Percentage Change in the CPI Index shall be expressed as a decimal, rounded to 5 decimal points, calculated as follows:

$$\frac{(\text{CPI Index as of December 31 of the year just ended} \\ \text{MINUS Same CPI Index as of December 31, 2007})}{(\text{Same CPI Index as of December 31, 2007})} = \text{Percentage Change} \\ \text{in the CPI Index}$$

The applicable rate increase or decrease over the original rate of \$0.03815256 per gallon (exclusive of any fuel adjustment).

Any price adjustments shall be deferred until the necessary price information or index becomes available, but shall be paid within 30 days of receipt of an invoice for any balance owed or overpaid once the applicable rates are established.