

LEASE AGREEMENT

THIS AGREEMENT OF LEASE, made this 29th day of May, in the year Two Thousand Eight, between

VILLAGE OF POTSDAM, a Municipal Corporation, organized under the laws of the State of New York and having a mailing address of Post Office Box 5168, Potsdam, New York, 13676, hereinafter called Lessor,

AND

POTSDAM PUBLIC LIBRARY, having a mailing address of 2 Park Street, Potsdam, New York, 13676, hereinafter called the Lessee, witnesseth:

1) Demise, Term, Rent and Property Exchange

a) [Lessee Demised, Term and Rent] The Lessor leases to the lessee the building known as the southern portion of the Civic Center in the Village of Potsdam consisting of the first floor and the first floor entrance area (adjacent to Park Street), the second and third floor areas located on the west side of the building (the stage area of the former auditorium), and areas in the basement below the library as shown on a building plan, dated 1976 and drawn by Brooks Washburn, and attached to this lease as **Attachment A**. Lessee shall also have the use of the shared municipal parking lot. The initial 25 year term lease shall terminate on May 31, 2033, at an annual rent of \$1 per year, payable at the office of the Lessor in the said Village of Potsdam, on the first day of June each year upon demand thereof, with the first payment to be made on the signing of this lease.

b) [Lessor Property Exchange] Lessee shall for the sum of one (\$1.00) Dollar transfer by Bargain and Sale Deed with Covenant against Grantor to the Lessor, within one (1) month of the signing of this agreement, the premises known as the northern portion of the Civic Center, now housing the Potsdam Public Museum. The property generally described as: ALL that tract or parcel of land situate in the Town and Village of Potsdam, County of St. Lawrence, State of New York and bounded thus: BEGINNING at a point in the south bounds of Elm Street where it is intersected by the west bounds of Park Street and running thence along the south bounds of Elm Street, westerly 65.5 feet to a point 120.5 feet easterly from the northwest corner of Lot No. 22. Thence southerly at an angle of 90° with the south bounds of Elm Street (said line running along the west side of the concrete gutter on the westerly side of the Library) 85 feet. Thence easterly and parallel with the south bounds of Elm Street 65.5 feet to a point in the west bounds of Park Street. Thence along the west bounds of Park Street northerly 85 feet to the place of beginning. As surveyed, 1935 by Howard M. Smith, surveyor. Said premises being what is commonly referred to as the Museum property and being the same premises conveyed by the Village of Potsdam to The Potsdam Public Library and Reading Room, by deed dated November 19, 1935, and recorded in the St. Lawrence County Clerk's Office in Liber 295 Deeds at Page 231, on November 21, 1935.

c) [Annual Escalation Calculation] Where this lease contains provisions for an annual escalation adjustment, the value shall be calculated using Consumer Price Index, All Urban Consumer data from the United States Bureau of Labor Statistics, available on the internet at <http://www.bls.gov/cpi/>. The data shall be from the "Not Seasonally Adjusted, Northeast Urban, All Items" dataset, using 1982-84 = 100 as a base period. Annual escalation will be effective June 1st of each year, and the time period used shall be the calendar year period immediately prior to the June 1 lease year. A sample calculation and methodology are shown on **Attachment B**.

2) Lessee's Covenants

- a) [To Pay Rent] That it will pay the said rent at the times and in the manner aforesaid.
- b) [To Pay Capital Improvement/Reserve Repair Funds.] That upon signature of this agreement, it will pay \$833.33 per month retroactive to July 1, 2006 through the month of signature and monthly thereafter until May 31, 2008. Thereafter, or until such time as both parties agree to modify or suspend the payment, it will pay monthly payments increasing annually on June 1st by the Annual Escalation Calculation thereafter, with \$833.33 used as the base payment for escalation. Said funds to be held in a separate interest bearing account by Lessor and to be used for repairs, upgrades, modifications, and improvements to the existing building by Lessor, as may mutually be determined by a committee comprised of two representatives of the Library Board and two representatives of the Village Board. In the event of deadlock, the committee will hire a mutually acceptable expert advisor (e.g. an architect or engineer) to break the tie. Nothing shall restrict the lessee from making its own capital improvements at its own expense over and above lessee's annual payment. This fund shall not exceed \$100,000 at any time unless agreed to by both parties. At the end of the lease period the funds will be split evenly between the Library and the Village.
- c) [To Pay Maintenance Costs.] That upon signature of this agreement, it will pay \$1,006.38 per month retroactive to July 1, 2006 through the month of signature, and monthly thereafter until May 31, 2008 for the "maintenance" and "snow" costs as listed on the spreadsheet in **Attachment C**. Thereafter, it will pay monthly payments increasing annually on June 1st by the Annual Escalation Calculation for building and property maintenance services to be provided by Lessor. \$1,006.38 will be used as the base payment for escalation. Maintenance costs will include the Grounds, Building, and Snow removal costs shown on the spreadsheet, Attachment "C" and include but are not limited to heating, boiler, plumbing and electrical system maintenance, lights (including bulb replacements as needed), snow removal from parking lot, and from sidewalk and steps from 6:00 am until 2:30 p.m.-Monday - Friday, trash and recyclable removals, book collection, contracted trash removal charges, and building envelope maintenance. It is expressly agreed that the maintenance charges are based on an average of 2 hours per week of maintenance time by the Head Maintenance Worker (building maintenance, building envelope, complete overhead light changeout, boiler maintenance, etc.) and 1 hour per week by the Cleaner (snow shoveling,

recyclables, trash collection, and book collection). Further that the Cleaner will keep detailed time accounting for performed work during contract year 2008-09, and that the spreadsheet and price will be adjusted up or down in the contract commencing June 1, 2009 and thereafter based on the agreed actual time as determined based on actual hours worked in the contract year commencing June 1, 2008.

- d) [To Pay Utility Charges.] Retroactive to July 1, 2006, all Civic Center utility charges which have already been paid through the date of effectiveness of this lease, will be paid to Landlord. Thereafter, utility charges which may become payable during the continuance of this lease will be a Village expense, and such charges shall be charged to the Lessee on a monthly basis. Retroactive and future utility charges shall be charged as a percentage of charges to the Civic Center for the various utilities as follows:
- i) Gas charges shall be based on 28 % of Civic Center monthly gas bill.
 - ii) Electricity charges shall be based on 24% of Civic Center monthly electric bill.
 - iii) Water/sewer shall be charged based on an estimated use of 15,000 gallons of water and sewer use per quarter, billed monthly. Water and sewer will be billed using the then current rates.
- e) [To Keep in Repair] That it will perform minor maintenance tasks not covered in section 2c.
- f) [Not to Injure or Overload.] That it will not intentionally injure, over-load, or deface or suffer to be injured, overloaded, or defaced the premises or any part thereof.
- g) [To Indemnify against Accidents and Negligence-Snow and Ice.] In place of a hold harmless agreement, both Lessor and Lessee agree to carry liability insurance coverage of at least \$1,000,000.00 per person/ \$3,000,000.00 per occurrence for the subject premises.
- h) [Not to Suffer Unlawful Use, or to Endanger Insurance.] That it will not intentionally make or suffer any unlawful, improper, or offensive use of the premises, or any use or occupancy thereof contrary to any law of the state or any law of the said village now or hereafter made, or which shall be injurious to any person or property, or which shall be liable to endanger or affect any insurance on the said building or to increase the premium thereof.
- i) [Not to Make Alterations, Place Signs, etc.] That it will not make any alterations or additions in or to the premises without the written consent, which may not be reasonably withheld, of the Lessor, or suffer any holes to be made or drilled in the outside stone or brick work, or suffer any signs to be placed upon the building except such as the Lessor shall in writing approve.

- j) [Not to Assign.] Neither party will assign, underlet, or part with the possession of the whole or any part of the premises without consent of the other.
- k) [To Permit Lessor to Enter.] That the Lessor at all reasonable times may enter to view the premises and to make repairs which the Lessor may see fit to make.
- l) [To Yield up Premises.] That at the expiration of the said term it will peaceably yield up to the Lessor the premises and all erections and additions made upon the same, in good repair in all respects, reasonable use and wear and damage by fire and other unavoidable casualties excepted, as the same now are or may be put in by the Lessor.
- m) [Property and Persons on Premises at Lessee's Risk.] That all property of any kind that may be on the premises during the continuance of this lease shall be at the sole risk of the Lessee, and that the Lessor shall not be liable to the Lessee or any other person for any injury, loss, or damage to property or to any person on the premises.
- n) [Assent Not Waiver of Future Breach of Covenants.] That no assent, express or implied, by the Lessor to any breach of any of the Lessee's covenants, shall be deemed to be a waiver of any succeeding breach of the same covenant.

3) Lessor's Covenant for Quiet Enjoyment

- a) The Lessor covenants that the Lessee shall peaceably hold and enjoy the premises.

4) Proviso for Re-entry

- a) If the Lessee or his representatives or assigns shall neglect or fail to perform and observe any covenant which on the Lessee's part is to be performed, or if his leasehold estate shall be taken on execution, or if the Lessee shall be declared bankrupt or insolvent according to law, or shall make an assignment for the benefit of his creditors, then the Lessor may, immediately or at any time thereafter, and without notice or demand, enter into and upon the premises or any part thereof, and repossess the same as of their former estate, and expel the Lessee and those claiming under him and remove their effects, forcibly, if necessary, without being taken or deemed to be guilty of any manner of trespass, and thereupon this lease shall terminate, but without prejudice to any remedies which might otherwise be used by the Lessor for arrears of rent or any breach of the Lessee's covenants.

5) Termination of Lease or Suspension of Rent in Case of Fire

- a) In case the premises or any part thereof shall at any time during the said term be destroyed or damaged by fire or other unavoidable casualty so as to be unfit for occupancy and use, and so that the premises cannot be rebuilt or restored by the Lessor within one year thereafter, then this lease shall terminate; but if the

premises can be rebuilt or restored within one year, the Lessor will at his own expense and with due diligence so rebuild or restore the premises, and a just and proportionate part of the payments pursuant to sections 2b and 2c hereby reserved shall be paid by the Lessee until the premises shall have been so rebuilt or restored.

VILLAGE OF POTSDAM

POTSDAM PUBLIC LIBRARY

Reinhold J. Tischler
By, Mayor, Village of Potsdam

Pamela Yurgarts
By, president, Potsdam
Public Library Board

ACKNOWLEDGMENTS

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) ss:

On the 29th day of May, in the year Two Thousand ~~Seven~~ ^{Eight}, before me, the undersigned, personally appeared Reinhold J. Tischler, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) ~~is~~ ^{are} subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lori S. Queor

LORI S. QUEOR
Notary Public, State of New York
No. 01QU5017093
Qualified in St. Lawrence County
Commission Expires 8/30/09

STATE OF NEW YORK)
COUNTY OF ST. LAWRENCE) ss:

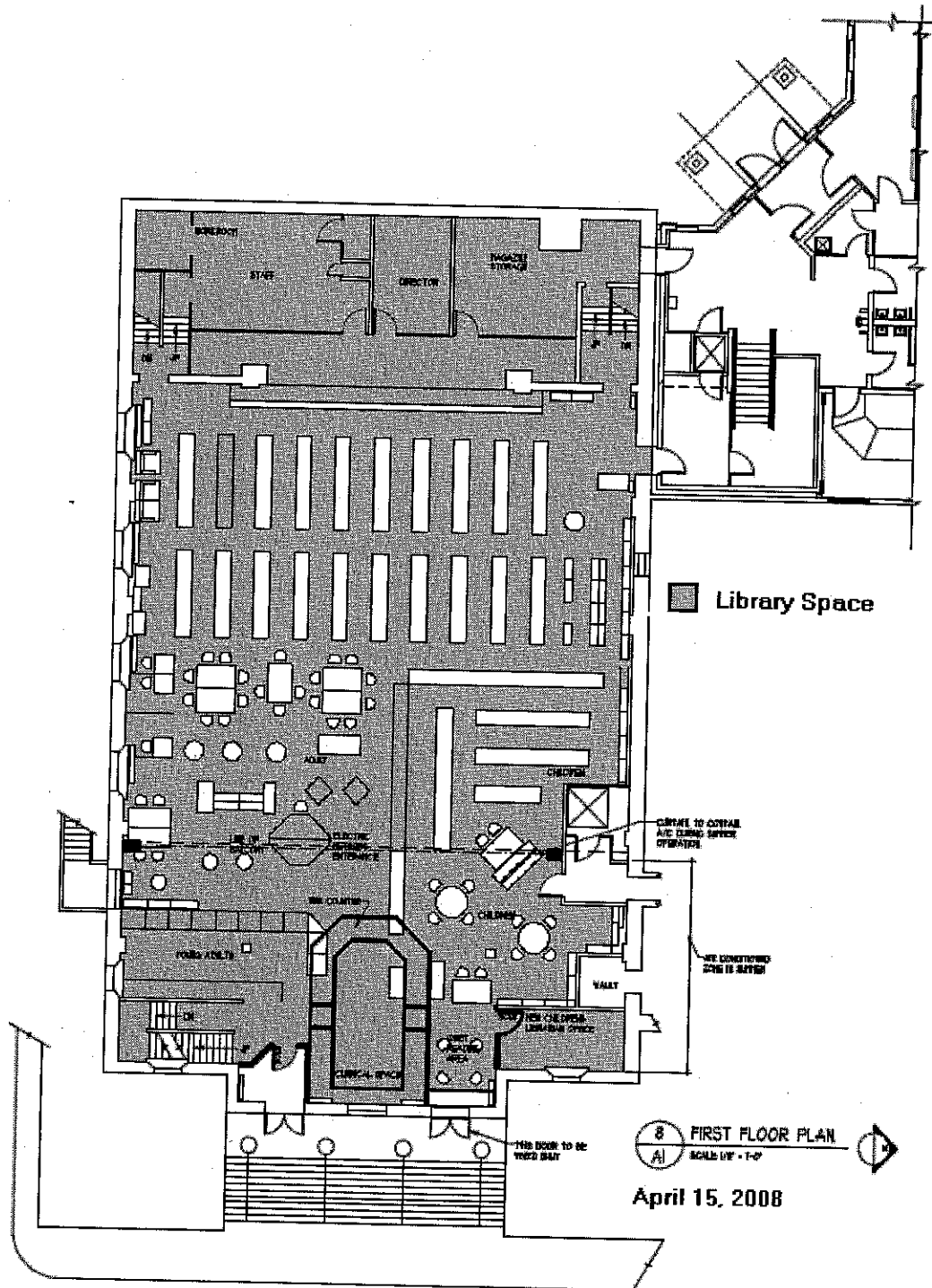
On the 29th day of May, in the year Two Thousand ~~Seven~~ ^{Eight}, before me, the undersigned, personally appeared Pamela Yurgarts, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) ~~is~~ ^{are} subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in ~~his/her/their~~ capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Lori S. Queor

LORI S. QUEOR
Notary Public, State of New York
No. 01QU5017093
Qualified in St. Lawrence County
Commission Expires 8/30/09

ATTACHMENT A

(Basement and First Floor Plans)



ATTACHMENT B

Memo To: Pam Yurgartis, Pat Musante
 From: Michael D. Weil, Village Administrator
 Re: Annual Cost Escalator
 Date: May 8, 2007

I've put together this sheet to describe how the annual escalator is calculated. Although Pat and I understand it now, the institutional memory may not survive the terms of the lease!

According to the lease, the CPI calculation is for the calendar year immediately preceding the contract/lease year. As the lease was supposed to have started for the 2006-07 year, that is considered the "base year" with an annual value of \$35,744. There would be no escalation factor for the first year. Presumably, the second year will start on or about July 1, 2007; the cost factor, based on the agreement language, would be based on the previous calendar period of January 1, 2006 to December 31, 2006.

The factor is taken from the U.S. Department of Labor Bureau of Labor Statistics web site, <http://www.bls.gov/cpi/>. On that page, go to the detailed cpi statistics area and look for the "All Urban Consumers (Current Series)" dataset. Once that set is found, get the data for the "Northeast Region, All Items." I've copied that from the website for information.

The CPI factor for the contract starting in July 2007 is the change in the index for the 2006 calendar year and is calculated using data from the following table:

Using the Annual value for 2006 (215.0) and the annual value for 2005 (207.5):

www.bls.gov
 BLS Home | Programs & Surveys | Get Detailed Statistics | Glossary | What's New | Find It! in DOL

Change Output Options: From: 2004 To: 2007 include graphs [NEW!](#) [More](#)

Data extracted on: May 8, 2007 (9:00:38 AM)

Consumer Price Index - All Urban Consumers

Series Id: CUUR916083AD
 Not Seasonally Adjusted
 Area: Northeast urban
 Item: All items
 Base Period: 1982=84=100

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual	HALF1	HALF2
2004	195.9	196.8	198.6	199.4	199.9	201.1	201.0	201.0	201.2	202.5	202.6	201.9	200.2	198.6	201.7
2005	202.6	203.6	206.0	206.9	206.2	206.3	207.9	209.7	210.8	211.5	210.0	209.0	207.5	205.3	209.7
2006	211.0	211.6	212.8	214.7	215.7	216.7	217.5	218.1	216.3	215.2	214.8	215.2	215.0	213.8	216.2
2007	215.838	216.551	218.334												

$$\begin{aligned} \text{CPI} &= (215.0-207.5)/207.5 \times 100 \\ &= 7.5/207.5 \times 100 \\ &= 0.0361 \times 100 \\ &= 3.61\% \end{aligned}$$

For the 2007-08 lease year, the Grounds, Snow, Building, and Reserve categories would be increased by 3.61% (multiplied by 1.0361) to account for the CPI increase.

The other categories (Gas, Light, Water/Sewer) would be billed on the percent of use as shown in the agreement.

ATTACHMENT C

Cost Spreadsheet

Revised 4/2/08

Library	Lighting	Heating
Main Floor	4,680	14,040
Lobby	372	372
Bookstore	640	640
area near bookstore	418	418
bathroom area	260	260
office area	915	915
3rd floor area	726	726
Total Library	8,009	17,369
Village		
Museum Main Floor	2,684	8,052
Main basement storerooms	2,636	2,636
	1,372	1,372
subtotal museum	6,692	12,060
basement	1,112	1,112
code/planning	2,015	2,015
vestib/neighborhood	3,247	3,247
main floor	3,049	3,049
court office	1,040	1,040
court room	1,500	1,500
	11,963	11,963
Fire Department		
first floor	1,650	2,475
vehicle bay	2,660	3,990
second floor	2,660	3,990
	6,970	10,455
Total Village space	25,625	34,476
Total Building Space	33,634	52,302

Lighting load: 1620,454

Analysis of lighting load based on watts per square foot revealed wide variances despite higher wattage units in the library and more energy efficient fixtures in part of the main civic center. As a rough measure of use, percent of square foot of the building can be used. This does not account for time of use, specific appliances included or any other variances. Without several years of dedicated metering, there is no precise analysis for this.

An estimate of use for lighting would be a proportional amount of square footage in the building.

The library is approximately 24% of the building area.

The library's portion of the lighting load will be the percentage indicated times the actual monthly billings.

Heating load: 1620,428

The same kind of load analysis would be as true for the heat as for the lighting. The only difference I could reasonably inject as a variable is ceiling height. I would estimate that the library area and museum main area would probably represent three times the equivalent heating load as compared to single story rooms. I would estimate the fire department to be 1.5 times the equivalent load. An estimate of use for heating would be a proportional amount of square footage in the building, with weighting given to the library, fire, and museum areas.

The heating load is approximately 28% of the building area.

The library's portion of the heating load will be the percentage indicated times the actual monthly billings.

Snow Plowing and Sweeping

A separate category from building maintenance. This would use the square footage proportion to the general building as calculated in the lighting load. This is charged to DPW accounts and based on estimates from the Superintendent, the annual cost was about \$2,500 in the 2005-06 budget. The library would pay about \$595 for this annually.

Capital Reserve Fund

As there is no "rent" which, in a for profit rental situation would pay for capital expenses that are not charged to the tenants, it is recommended that the budget include a capital reserve for building maintenance and repair for large single year costs, such as roof replacement, boiler work, windows, sidewalks, asphalt resurfacing, and the like. An annual amount of \$10,000 would provide sufficient capital to keep the building in proper repair.

Maintenance

Maintenance is tabulated on a separate spreadsheet. The spreadsheet includes budget lines from the Village budget account 05.1620, Buildings.

Water/Sewer

The library has non-public employee restrooms. The public uses the facilities in the complex. In order to approximate use, we looked at other buildings in the community with public restrooms, several employees, and no food service facilities. Buildings considered similar include the Town Hall, Method Church, Potomac Coop, Kinney's Drugs, Evans & White, and Lewis House. Each of these buildings uses between 12,000 and 18,000 gal/quarter. We used 15,000 gallons as a reasonable amount. Using this amount, and a combined water and sewer rate of \$8.38 per thousand gallons, the annual water/sewer annual cost would be \$532.60.

Total Estimated Annual Cost

Lighting	TBD	(based on actual billings)
Heat	TBD	(based on actual billings)
Maintenance	\$11,451	
Snow	\$595	
Reserve	\$10,000	
Water/Sewer	\$533	
Total	\$22,609	

Base Cost = $(11451 + 595) / 12 = \$1,006.36$

Annually updating values:

Various numbers in the above analysis should be updated annually during budget deliberations. These categories include:

- anticipated electrical cost for upcoming year
- anticipated gas cost for upcoming year
- grounds budget value, plus Civic Center trash costs
- salaries for custodian and building maintenance worker
- boiler chemicals
- boiler maintenance contract
- gasoline
- janitorial supplies
- building maintenance budget number
- estimate of snow plowing costs
- status of capital reserve account

Pursuant to library request, Village will be providing custodial services only for snow removal, book collection, and trash/recyclable collection. Actual time will be tracked during the 2006-07 contract year and the maintenance number for the Cleaner will be adjusted in future contracts.

Building Maintenance and Trash Calculations from budget line 1620 (buildings)

		Head Maintenance	Cleaner (only books, snow, trash)
Salary	1620.101	\$42,286.00	\$30,056.00
	fringe	1.36	1.36
	total	\$57,508.96	\$40,876.16
Longevity	1620.104	included in fringe	
Sick Inc.	1620.109	included in fringe	
	27 wk pay (1/7 of annual salary)	\$8,215.57	\$5,839.35

		2008-09 budget	% for Library	Cost Extension
Salary				
Head Maintenance Worker		\$65,724.53	5.0% (2 hr/wk avg)	\$3,286.23
Cleaner		\$46,716.61	2.5% (1 hr/wk av)	\$1,167.89
Janitorial	1620.420	\$1,600.00	24.0%	\$384.00
	cleaning chems paper supplies			
Trash	1620.429	\$3,850.00	24.0%	\$924.00
	paper trash g/m/p			
Bldg Maint	1620.470	\$15,200.00	26.0%	\$3,952.00
	boiler repair lighting repair roof repairs electrical		(split repairs btw heating and general repairs = 26%)	
Grounds	1620.471	\$325.00	24.0%	\$78.00
Spc. Svc.	1620.48	\$3,188.00		
	Elev. Maint	\$800.00	24.0%	\$192.00
	Fire Alarm	\$200.00	24.0%	\$48.00
	Fire Exting	\$88.00	24.0%	\$21.12
	Hyde Stone	\$2,100.00	28.0%	\$588.00
Chemical	1620.491	\$3,000.00	28.0%	\$840.00
	boiler chem salt	(28% of heating) (2 of 5 entrances)		
				\$11,481.24