

CERTIFICATE OF DELIVERY

I hereby certify that on the 19th day Of December, 2012 I mailed a true and correct copy of the above and foregoing *Motion to Dismiss* to: Warren F. Bickford, Fellers, Snider, Blankenship, Bailey & Tippen, P.C., 100 North Broadway, Suite 1700, Oklahoma City, Oklahoma 73102

SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



TOM BATES
FIRST ASSISTANT ATTORNEY GENERAL

DEFERRED PROSECUTION AGREEMENT

The State of Oklahoma, by and through its duly elected and acting Attorney General E. Scott Pruitt, through his First Assistant Attorney General Tom Bates, in and for Tulsa County, State of Oklahoma, pursuant to 22 O.S. § 305.1 *et seq.* and after considering the factors listed below, enters into the following *Deferred Prosecution Agreement* with **WINDSTREAM CORPORATION.**

FACTORS CONSIDERED

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;
2. The nature of the offense with priority given to first offenders and non-violent crimes;
3. Any special characteristics of Windstream Corporation;
4. Whether Windstream Corporation will cooperate and benefit from a deferred prosecution program;
5. Whether available programs are appropriate to Windstream Corporation's needs;
6. Whether the services for Windstream Corporation are more readily available from the community;
7. Whether Windstream Corporation, in light of the compliance and training programs discussed in paragraphs 2(e) through (g) of the Terms and Conditions set forth below, constitutes a substantial danger to others;
8. The recommendations of the law enforcement agency involved in the case;
9. The opinions of the victim; and
10. Any mitigating or aggravating circumstances.

CHARGES

The Attorney General states that he has sufficient evidence to charge Windstream Corporation with *Bribery*, in violation of Title 21 O.S. § 381, and *Conspiracy to Defraud a School District*, in violation of Title 21 O.S. § 424, related to or arising from Windstream Corporation providing Dr. James David Sisney, the former Superintendent of Schools for the

Exhibit A

Broken Arrow Public School System, with free lodging, free food and beverage, free sporting event tickets, free event souvenirs and free ground transportation for the 2007 NCAA Basketball Tournament held in the Atlanta Georgia Dome on March 31st and April 2nd, 2007. Windstream Corporation denies any wrongdoing, but enters into this agreement as a compromise of disputed claims.

Windstream Corporation fully cooperated in the investigation of this matter. This agreement is made in the best interest of the State and Windstream Corporation, and is not contrary to the public interest of the State of Oklahoma.

The State of Oklahoma, by and through the Attorney General of Oklahoma, hereby agrees to dismiss the indictment in *State v. Windstream Corporation*, Case No. CF-2012-3841 (District Court of Tulsa County, Oklahoma) and agrees not to prosecute the above offenses against Windstream Corporation provided it complies with the terms and conditions of this *Deferred Prosecution Agreement*.

TERMS AND CONDITIONS

Windstream Corporation agrees to comply with the following terms and conditions of this *Deferred Prosecution Agreement* for a period of one (1) year from the date of this agreement:

(1) Windstream Corporation does hereby acknowledge the right to a speedy and public trial by jury; the right to confront and cross-examine all witnesses called to testify against it; the right to remain silent; the right to subpoena witnesses and present evidence in its own defense; the right to testify if it so chooses, however, anything that Windstream Corporation says can be used against it in a court of law; the right to be presumed innocent of the crime; and the right to require the State of Oklahoma to prove its guilt beyond a reasonable doubt. Windstream Corporation has the right to counsel, and to have counsel present prior to and during the signing of this *Deferred Prosecution Agreement*, and if it can

not afford to hire an attorney, one would be appointed to represent it. **Windstream Corporation has read and understands each of the above rights and specifically waives the right to a speedy accusation, and a speedy trial, in exchange for the State of Oklahoma agreeing to this *Deferred Prosecution Agreement*.**

(2) Windstream Corporation does hereby agree to the following conditions during the time period of this *Deferred Prosecution Agreement*;

- (a) Windstream Corporation shall not violate any criminal laws of the City, State or Federal governments, and shall be law-abiding;
- (b) Windstream Corporation will cooperate fully with any investigation by the Oklahoma Attorney General's office;
- (c) Windstream Corporation understands that it will be a violation of this agreement to knowingly, willfully, and intentionally make an untruthful statement to any branch of government or a representative thereof;
- (d) Windstream Corporation will make a one hundred thousand dollar (\$100,000.00) non-tax deductible payment to the Broken Arrow Public Schools Foundation upon dismissal of the indictment and charges against it;
- (e) Windstream Corporation will maintain a Code of Business Ethics and Conduct in Governmental Contracting and Government Sales and Compliance Training for its sales employees to specifically address the policy on entertainment of government employees, with training to be conducted on an annual basis; Windstream agrees to provide a copy of the training materials to the Attorney General's office within 30 days of this Agreement;
- (f) Windstream Corporation will maintain Working With Integrity Guidelines and computer-based training to address government compliance issues for all employees, with training to be conducted on an annual basis;

Windstream agrees to provide a copy of the training materials to the Attorney General's office within 30 days of this Agreement;

(g) Windstream Corporation will maintain a position for "Director of Government Contract Compliance" in its Legal Department. The person holding this position will work with the sales and marketing groups to educate and monitor the regulations for government contracting and the regulations regarding interactions between Windstream employees and government customers;

(h) Windstream Corporation hereby states that it has carefully read the above rules and conditions and fully understands its obligations under the terms of this agreement.

(3) The State of Oklahoma hereby agrees to dismiss the indictment and not to file charges against Windstream Corporation for the crimes stated above or for any other crimes arising from the facts and circumstances giving rise to the above charges if Windstream Corporation satisfactorily completes the conditions of this agreement.

(4) As provided for by law, any deferred prosecution agreement shall be a record open to the public. 22 O.S. § 305.2(H).

TERMINATION OF THE AGREEMENT

Both the State of Oklahoma and Windstream Corporation may mutually terminate the deferred prosecution at any time, and the case shall proceed as if there had been no agreement. If the State of Oklahoma makes the termination decision unilaterally, it shall only do so in light of all the relevant circumstances of the alleged violation of this agreement. If the State of Oklahoma should decide to terminate the agreement, it shall:

1. Send a written notice of termination to Windstream Corporation and its attorney, if any, explaining the reasons for the termination;
2. Disclose to Windstream Corporation, or the attorney for Windstream

Corporation, the evidence supporting the decision to terminate; and

- 3. Afford Windstream Corporation the opportunity to be heard and present evidence, and cross-examine witnesses before a judge of the district court. It shall have ten (10) days from the date of mailing of the notice to file a written request with the court clerk for the county in which a charge is pending for the hearing, after which the right to a hearing shall be waived. The burden shall be upon the State of Oklahoma to prove that Windstream Corporation did not fulfill the conditions of the agreement, and that an information should be filed.

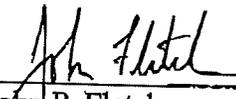
If the agreement is terminated by the State of Oklahoma, and Windstream Corporation is brought to trial before a jury, Windstream Corporation agrees that the court shall instruct the jury not to consider any delay in filing charges while Windstream Corporation was participating in the deferred prosecution program.

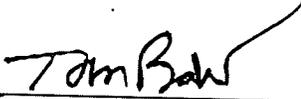
The State of Oklahoma and Windstream Corporation both understand and agree with the terms and conditions of this agreement.

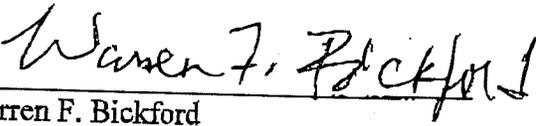
DATED this 19th day of December, 2012.

WINDSTREAM CORPORATION

E. SCOTT PRUITT
ATTORNEY GENERAL

By: 
John P. Fletcher
Exec. Vice President & General Counsel

By: 
Tom Bates
First Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105


Warren F. Bickford
John D. Russell
Fellers Snider Blankenship Bailey & Tippens, P.C.
100 North Broadway, Suite 1700
Oklahoma City, Oklahoma 73102
Attorneys for Windstream Corporation

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA,)
PLAINTIFF,)

VS.)

WINDSTREAM CORPORATION, a)
Delaware Corporation, 4001 Rodney)
Parham Road, Little Rock, AR 72212)
DEFENDANT.)

NO. CF-2012-3841

DISTRICT COURT
FILED

DEC 19 2012

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

ORDER OF DISMISSAL

NOW on this 19th day of December, 2012, this matter comes on for hearing upon the State's *Motion to Dismiss* the above-styled and numbered cause of action.

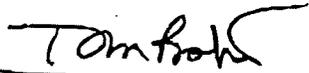
THE COURT after being fully advised and on consideration thereof, finds that said motion should be sustained.

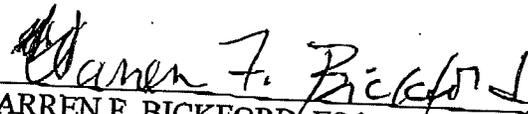
IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the State's *Motion to Dismiss* is hereby sustained and the above-styled and numbered cause of action is hereby dismissed without prejudice to the refileing of the same.

WILLIAM C. KELLOUGH

HONORABLE WILLIAM C. KELLOUGH
JUDGE OF THE DISTRICT COURT

APPROVED:

By: 
TOM BATES, OBA# 15672
FIRST ASSISTANT ATTORNEY GENERAL


WARREN F. BICKFORD, ESQ., OBA #773
JOHN D. RUSSELL, ESQ., OBA # 13343
FELLERS, SNIDER, BLANKENSHIP BAILEY & TIPPENS, P.C.
ATTORNEY FOR DEFENDANT WINDSTREAM CORPORATION

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA

DISTRICT COURT
FILED

DEC 19 2012

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES DAVID SISNEY,)
)
 Defendant.)

Case No. CF-2012-3842

MOTION TO DISMISS

COMES NOW the State of Oklahoma, by and through its duly elected and acting Attorney General E. Scott Pruitt, through his First Assistant Attorney General Tom Bates, and moves this Court to dismiss the above entitled cause pursuant to the terms of a *Deferred Prosecution Agreement*, attached herein as State's Ex. A.

Respectfully submitted,

SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA

By:



TOM BATES, OBA #15672
FIRST ASSISTANT ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
Phone: (405) 522-1863
FAX: (405) 522-0069

CERTIFICATE OF DELIVERY

I hereby certify that on the 19th day Of December, 2012 I mailed a true and correct copy of the above and foregoing *Motion to Dismiss* to: John Dowdell, Esq., 401 South Boston Avenue, Tulsa, OK 74103

SCOTT PRUITT
ATTORNEY GENERAL OF OKLAHOMA



TOM BATES
FIRST ASSISTANT ATTORNEY GENERAL

AGREEMENT OF DEFERRED PROSECUTION

The State of Oklahoma, by and through its duly elected and acting Attorney General E. Scott Pruitt, through his First Assistant Attorney General Tom Bates, in and for Tulsa County, State of Oklahoma, pursuant to 22 O.S. § 305.1 *et seq.* and after considering the factors listed below, enters into the following *Deferred Prosecution Agreement* with **JAMES DAVID SISNEY**.

FACTORS CONSIDERED

1. Whether the State of Oklahoma has sufficient evidence to achieve conviction;
2. The nature of the offense with priority given to first offenders and non-violent crimes;
3. Any special characteristics of James David Sisney;
4. Whether James David Sisney will cooperate and benefit from a deferred prosecution program;
5. Whether available programs are appropriate to James David Sisney's needs;
6. Whether the services for James David Sisney are more readily available from the community or from the corrections system;
7. Whether James David Sisney constitutes a substantial danger to others;
8. The recommendations of the law enforcement agency involved in the case;
9. The opinions of the victim; and
10. Any mitigating or aggravating circumstances.

VIOLATION

The Attorney General states that he has sufficient evidence to charge James David Sisney with *Bribery*, in violation of Title 21 O.S. § 382, related to or arising from James David Sisney accepting from Windstream Corporation free lodging, free food and beverage, free sporting event tickets, free event souvenirs and free ground transportation for the 2007 NCAA Basketball Tournament, held in the Atlanta Georgia Dome on March 31st and April

2nd, 2007, while he was employed as the Superintendent of Schools for the Broken Arrow Public School System. James David Sisney denies wrongdoing, but enters into this agreement as a compromise of disputed claims.

James David Sisney fully cooperated in the investigation of this matter. This agreement is made in the best interest of James David Sisney, and is not contrary to the public interest of the State of Oklahoma.

The State of Oklahoma, by and through the Attorney General of Oklahoma, hereby agrees not to prosecute the above offenses against James David Sisney provided he complies with the terms and conditions of this *Deferred Prosecution Agreement* as provided by law.

TERMS AND CONDITIONS

James David Sisney agrees to comply with the following terms and conditions of this *Deferred Prosecution Agreement* for a period of one (1) year from the date of this agreement:

(1) James David Sisney does hereby acknowledge the right to a speedy and public trial by jury; the right to confront and cross-examine all witnesses called to testify against him; the right to remain silent; the right to subpoena witnesses and present evidence in his own defense; the right to testify if he so chooses, however, anything that James David Sisney says can be used against him in a court of law; the right to be presumed innocent of the crime; and the right to require the State of Oklahoma to prove his guilt beyond a reasonable doubt. James David Sisney has the right to counsel, and to have him present prior to and during the signing of this *Deferred Prosecution Agreement*, and if he cannot afford to hire an attorney, one would be appointed to represent him. **James David Sisney has read and understands each of the above rights and specifically waives the right to a speedy accusation, a speedy trial, and any statute of limitations in exchange for the State of Oklahoma agreeing to this *Deferred Prosecution Agreement*.**

(2) James David Sisney does hereby agree to the following conditions during the

time period of this *Deferred Prosecution Agreement*;

(a) James David Sisney shall not violate any laws of the City, State or Federal governments, and shall be law-abiding citizen, provided that offenses such as minor traffic and parking violations shall not be considered a violation of this agreement.

(b) James David Sisney will cooperate fully with any investigation by the Oklahoma Attorney General's office;

(c) James David Sisney understands that it will be a violation of this agreement to not tell the truth to any branch of government or a representative thereof;

(d) James David Sisney will make a ninety five hundred dollar (\$9,500) payment to the Broken Arrow Public School Foundation. James David Sisney will not claim this payment as a deduction on any state or federal tax return.;

(e) James David Sisney will not seek employment or become employed as a school administrator in the State of Oklahoma;

(f) James David Sisney hereby states that he has carefully read the above rules and conditions and fully understands its obligations under the terms of this agreement.

(3) The State of Oklahoma hereby agrees not to file charges against James David Sisney for the crimes stated above if James David Sisney satisfactorily completes the conditions of this agreement. The State of Oklahoma further states James David Sisney is not the subject or target of any other currently pending criminal investigation.

(4) As provided for by law, any deferred prosecution agreement shall be a record open to the public. 22 O.S. § 305.2(H).

TERMINATION OF THE AGREEMENT

Both the State of Oklahoma and James David Sisney may mutually terminate the deferred prosecution at any time, and the case shall proceed as if there had been no agreement.

If the State of Oklahoma makes the termination decision unilaterally, it shall only do so in light of all the relevant circumstances of the case. Arrest of James David Sisney for an offense shall not automatically terminate the agreement. If the State of Oklahoma should decide to terminate the agreement, it shall:

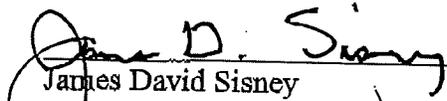
1. Send a written notice of termination to James David Sisney and his attorney, if any, explaining the reasons for the termination;
2. Disclose to James David Sisney, or the attorney for James David Sisney, the evidence supporting the decision to terminate; and
3. Afford James David Sisney the opportunity to be heard and present evidence, and cross-examine witnesses before a judge of the district court. He shall have ten (10) days from the date of mailing of the notice to file a written request with the court clerk for the county in which a charge is pending for the hearing, after which the right to a hearing shall be waived. The burden shall be upon the State of Oklahoma to prove that James David Sisney did not fulfill the conditions of the agreement, and that an information should be filed.

If the agreement is terminated by the State of Oklahoma, and James David Sisney is brought to trial before a jury, James David Sisney agrees that the court shall instruct the jury not to consider any delay in filing charges while James David Sisney was participating in the deferred prosecution program.

The State of Oklahoma and James David Sisney both understand and agree with the terms and conditions of this agreement.

DATED this 19th day of December, 2012.

E. SCOTT PRUITT
ATTORNEY GENERAL


James David Sisney

By:


Tom Bates
First Assistant Attorney General
313 N.E. 21st Street
Oklahoma City, Oklahoma 73105

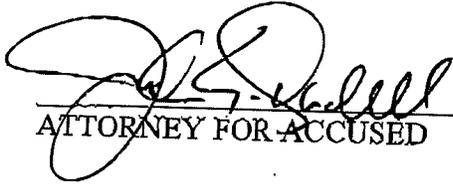

Joel Wohlgemuth
Norman Wohlgemuth Chandler & Dowdell
401 South Boston Avenue
Tulsa, OK 74103
Attorney for James David Sisney

WAIVER OF RIGHT TO SPEEDY TRIAL

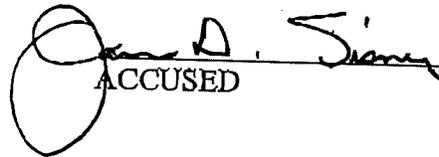
The undersigned Defendant, in consideration for a deferred prosecution of three years, hereby waives his right to speedy trial under the Constitution and laws of the United States of America and under the Constitution and laws of the State of Oklahoma, and agrees that the above matter may be refiled and prosecuted if the undersigned Defendant violate any city, state or federal law within the term of the deferred prosecution.

My constitutional right to speedy trial has been explained to me and I understand and hereby waive and relinquish the same. This waiver is voluntary and in consideration of the deferred prosecution only.

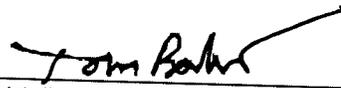
DATED this 19th day of December, 2012.



ATTORNEY FOR ACCUSED



ACCUSED



ASSISTANT ATTORNEY GENERAL

WITNESS

IN THE DISTRICT COURT IN AND FOR TULSA COUNTY
STATE OF OKLAHOMA
DISTRICT COURT
FILED

DEC 19 2012

SALLY HOWE SMITH, COURT CLERK
STATE OF OKLA. TULSA COUNTY

STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 vs.)
)
 JAMES DAVID SISNEY,)
 Defendant.)

Case No. CF-2012-3842

ORDER OF DISMISSAL

NOW on this ___ day of December, 2012, this matter comes on for hearing upon the State's *Motion to Dismiss* the above-styled and numbered cause of action.

THE COURT after being fully advised and on consideration thereof, finds that said motion should be sustained.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the State's *Motion to Dismiss* is hereby sustained and the above-styled and numbered cause of action is hereby dismissed without prejudice to the refileing of the same.

WILLIAM C. KELLOUGH

HONORABLE WILLIAM C. KELLOUGH
JUDGE OF THE DISTRICT COURT

APPROVED:

By: Tom Bates
TOM BATES, OBA # 15672
FIRST ASSISTANT ATTORNEY GENERAL
313 NE 21st Street
Oklahoma City, OK 73105
Phone: (405) 522-1863
FAX: (405) 522-0069

John E. Dowdell
JOHN E. DOWDELL, ESQ., OBA #2460
ATTORNEY FOR DEFENDANT JAMES DAVID SISNEY
NORMAN WOHLGEMUTH CHANDLER & DOWDELL
2900 Mid-Continent Tower
401 South Boston Avenue
Tulsa, OK 74103
Phone: (918) 583-7571
FAX: (918) 584-7846