



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2023-010

TO: Mayor and Council

FROM: Timothy E. Wilson *TW*
Deputy City Attorney

DATE: April 7, 2023

MEETING: May 9, 2023

RE: Damage claim of
Sekou Diawara
5322 NW Elm Avenue
Lawton, Oklahoma 73505

Submitted in the amount of \$9,688.45 on February 17, 2023

RECOMMENDATION: Approval in the amount of \$1,000.00

BASIS OF CLAIM: Sekou Diawara is the owner of the property located at 5322 NW Elm Avenue and alleges on November 22, 2022, the City of Lawton was making repairs to the City's sewer main, and they traveled through his side and back yard to gain access to the easement. While gaining access to the easement the city damaged his yard, and fence. The sanitary overflow also damaged trees that had been recently planted. Claimant submitted an estimate from Different Strokes Drywall, Paint & More, LLC. to repair his fence in the amount of \$6,188.45, and an additional estimate from Different Strokes Drywall, Paint & More, LLC., to repair the yard in the amount of \$2,500.00, an invoice from Fast Growing Trees.Com in the amount of \$504.38, for four trees, a receipt from Bedrock Nursery in the amount of \$395.99 for the purchased of one tree with installation and mulch, another receipt from Bedrock Nursery in the amount of \$168.75, for landscape material, a receipt from Home Depot in the amount of \$84.27, for planting material. Claimant states in his claim he is seeking \$6,188.45 for fence, \$2,500.00 for sod, and \$1,000.00 for trees.

DATE OF DAMAGE: November 2022

FACTS: According to records obtained from Wastewater Collections/Wastewater Maintenance, on November 19, 2022, at approximately 9:55 a.m. a Wastewater Collection crew was checking the sewer main on the lines segment behind 5326 NW Elm Avenue and found the line to be holding. The crew performed a preventative maintenance and flushed the line and got it flowing but had concerns that it

could become a problem. On Monday November 21, 2022, they found the line to be holding again and sewer water had dispersed throughout claimant's yard. The crew set up a bypass pump on the line segment and Sewer Construction was notified that a point repair was needed. Sewer Construction made contact with Mr. Diawara at 5322 NW Elm Avenue on November 21, 2022 and discussed gaining access through his yard to make the repair to the City's main. The yard did sustain some impressions from the track-hoe and the fence/gate was taken down to gain access to the easement. After the repair was completed during the week of November 21, 2022, Sewer Construction placed the claimant's property on a list for cleanup and repair. The week of March 27, 2023, the cleanup crew applied topsoil to the ruts in the yard and the fence was repaired. It has been determined that five of the trees are dead and one may still make it. The claims investigator has talked with claimant, and he is satisfied with all the repairs made by the City of Lawton and is requesting \$1,000.00 for the replacement of the trees.

Records obtained from Wastewater Collections show three (3) prior obstructions on the first pipe segment above this location, seven (7) obstructions on the actual pipe segment, one (1) obstruction on first pipe segment below and no prior main history on the second pipe segment below this location in the last three (3) years.

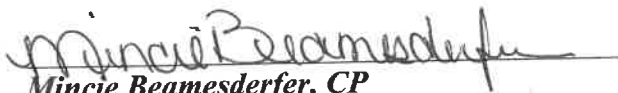
LEGAL BASIS FOR APPROVAL OF CLAIM: Pursuant to Title 51, Oklahoma Statutes, §151 et seq., municipalities are held accountable in the same manner as private entities or individuals for negligent acts or omissions that result in harm to others. However, negligence is never presumed, and the burden of proving negligence and that it was the proximate cause of the harm complained of, is on the complaining party. Oklahoma Ry. Co. v. Ivery, 204 P.2d 978 (Okla. 1949). In the case of a defective water and sanitary sewer system, the Oklahoma Supreme Court has held that a complaining party does not meet his burden of proving negligence unless prior notice of the defective condition, actual or constructive, has been received by the entity controlling and managing the system. City of Holdenville v. Griggs, 411 P.2d 521 (Okla. 1966). In that instance, a duty arises to abate the defect within a reasonable time. Id. at 522.

In this instance:

The City had prior notice of a defective issue with the main and would therefore be liable for this claim.

Accordingly, this office recommends approval of this claim in the amount of \$1,000.00.

TIMOTHY WILSON
DEPUTY CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator