



OFFICE OF THE CITY ATTORNEY

CLAIMS MEMORANDUM #DC-2024-062

TO: Mayor and Council

FROM: Garrett Lam
Assistant City Attorney

DATE: November 26, 2024

MEETING: January 14, 2025

RE: Damage claim of
Marcel Jordan
1408 NW 33rd Street
Lawton, OK 73505

A handwritten signature in blue ink, appearing to be "GL", is written over the name "Garrett Lam" in the "FROM:" field.

Submitted in the amount of \$42,657.86 on October 18, 2024

RECOMMENDATION: Approval in the reduced amount of \$2,200.00

BASIS OF CLAIM: Marcel Jordan is the owner of the property located at 1408 NW 33rd Street, Lawton, Oklahoma. Mr. Jordan alleges on October 14, 2024, the City of Lawton's water main line broke, causing water and rubble to shoot onto his house. Mr. Jordan obtained an estimate from Nxtbuild Construction in the amount of \$42,657.86, to prep and paint 670 sq. ft. of the house, remove and replace 3 windows, remove and replace 27 linear ft. of gutter, remove and replace 81 linear ft. of soffit, remove and replace 27 linear ft. of fascia, remove and replace 225 sq. ft. of carpet and pad, remove and replace 192 sq. ft. of soffit on the back patio, dry inside the walls and attic, move out contents and rest, and protect floors and walls. After speaking with the Claimant about the estimate and the need for two estimates, the claims investigator obtained an additional estimate from Imprint Construction in the amount of \$2,200.00, to prep and paint all affected areas, clean and silicone front windows, inside and out, detach and reset gutter, paint inside top of window trim, pull back carpet and install new 24" of pad from east wall back from affected area, and re-stretch existing carpet.

DATE OF DAMAGE: October 14, 2024

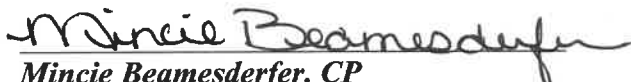
FACTS: According to City of Lawton Dispatch records, the City was notified of a water main break at 1408 NW 33rd Street on October 14, 2024 at approximately 5:00 a.m. A Water Distribution employee responded to the call and arrived at 5:20 a.m. and shut down the water main and called for emergency locates. Water Distribution called in an independent contractor, and they made the repair to the City's water main the same day. **According to the records obtained from Water Distribution there is prior history on this line in the past 3 years.** The Claims Investigator, Mincie Beamesderfer spoke to the claimant about a required second estimate, and he agreed to her obtaining a second estimate from a local

contractor. Jorge Rodriguez, Imprint Construction, met the claimant and claims investigator at the residence and the affected damage was determined and an additional estimate was obtained in the amount of \$2,200.00.

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.

Accordingly, this office recommends approval of this claim in the reduced amount of \$2,200.00. This reduced amount will repair any affected areas of damage.

GARRETT LAM
ASSISTANT CITY ATTORNEY


Mincie Beamesderfer, CP
Claims Investigator