

# City of Lawton City Council Agenda

Tuesday, September 28, 2021	2:00 PM	Lawton City Hall
		<b>Council Chambers/Auditorium</b>

## MEETING CALLED TO ORDER WITH INVOCATION AND PLEDGE OF ALLEGIANCE

## ROLL CALL

**PRESENTATION:** Receive the annual update of the Hotel/Motel tax funded activities for FY 2020-2021 from the Lawton Economic Development Corporation.

**PROCLAMATION:** Hispanic Heritage Month

## **REPORTS: MAYOR/CITY COUNCIL**

## AUDIENCE PARTICIPATION: Anyone having an item of business to present to the City Council that does not appear on the agenda please come forward at this time.

## **CONSENT AGENDA:**

The following items are considered to be routine by the City Council and will be enacted with one motion. Should discussion be desired on an item, that item will be removed from the Consent Agenda prior to action and considered separately.

1. Consider approval of the minutes of the Lawton City Council regular meeting <u>21-99</u> of September 14, 2021.

## Attachments: 14Sept21

Consider the following damage claims recommended for denial: Frank Walker, on behalf of the YMCA in the amount of \$24,567.39, Wayne Willis, on behalf of Galilee Missionary Baptist Church in the amount of \$12,940.00, Delores McFarland in the amount of \$433.43 and Martin Morales in the amount of \$1,750.00.

Attachments:DC-2021-019, YMCA-MemorandumDC-2021-020, Galilee Missionary Baptist Church-MemorandumDC-2021-021, McFarland, Delores-MemorandumDC-2021-024, Morales, Martin-Memorandum

Consider approving Council Policy 1-1, Employee Travel, dated September 28, 2021 to replace Council Policy 1-1, Employee Travel dated October 10, 2006.

Attachments: Travel policy 09282021

Consider approving a resolution amending the City of Lawton FY21-22 budget, as amended, by appropriating \$16,755.00 from the General Fund to the Streets Division's Construction, Improvements, and Additions account for the completion of the Farmer's Market parking lot.

Attachments: Farmer's Market Parking Lot Resolution

 Consider approving a resolution amending the City of Lawton FY21-22 budget, as amended, by appropriating \$3,665.73 from the General Fund to the Police Uniform Division's Maintenance Material-Motive Equipment account.

Attachments: Unit #6653 Repairs Resolution

6. Consider renewing a professional services agreement with BKD, LLP (BKD) for the City's annual auditing services for FY 2020-2021, including the City's required single audit of expenditures from federal financial awards.

 Attachments:
 City of Lawton - Contract - Annual Audit - Gov GAGAS and Single

 Audits
 City of Lawton - Contract Addendum - Change of Service

 City of Lawton Contract - Agreed-Upon Procedures

 7. Consider approving a resolution that ratifies the National Incident Management System (NIMS) as the continuing incident management system at the City of Lawton and designating Comanche County Emergency Management Director Clint Langford as the new Local Point of Contact (LPOC) for NIMS compliance.

Attachments: Emergency Management Resolution 2021

- 8. Consider directing staff to review the current approval and siting process of memorials and tributes such as statues, monuments, pavilions, gardens, fountains, trees, etc. and to develop a formal process for the endorsement.
- Consider accepting a Temporary Construction Easement from The Jim & <u>21-382</u> Kay Johnson Trust for right of way needed for the W. Gore Blvd Reconstruction from SW 67th ST to SW 82nd ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s).

10.	Consider accepting a Permanent Roadway and Utility Easement from Michael Todd Wyatt, Mitchell Scott Wyatt, Johnna Kay Parks, and Shana Leigh Wyatt Horton, for right of way needed for the W. Gore Blvd Reconstruction from SW 67th ST to SW 82nd ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s) and authorizing payment for the same.	<u>21-489</u>
11.	Consider approving Amendment No. 1 to the Contract for Right-of-Way Acquisition Services - West Gore Blvd. (82nd ST to 67th ST) - Project No. 2012-08 with Smith-Roberts Land Services, Inc.	<u>21-483</u>
	Attachments: Contract Amendment #1 - SLRS signed - Right-of-way.pdf	
12.	Consider approving plans and specifications for the Larrance Street Drainage Improvements (SW B Ave to SW D Ave) - Project #2014-06A and authorizing staff to advertise for bids.	<u>21-497</u>
13.	Approve Amendment No. 1 for the Project No. 2020-04A City Hall Renovation with MA+ Architecture, LLC.	<u>21-506</u>
	Attachments: G802-2017-Lawton City Offices Amendment-1.pdf	
14.	Consider extending the current contracts with BlueCross BlueShield (BCBS) for the purpose of providing health care insurance coverage for City of Lawton retirees over the age of 65 for an additional year, as authorized by the contract.	<u>21-508</u>
15.	Consider extending contract for (RFPCL16-034) Banking Services to IBC Bank of Lawton, OK for an additional 90 days.	<u>21-510</u>
	Attachments:       Recommendation Memo         Contract Extension       RFPCL16-034 Proposal Exhibit	
16.	Consider approving a bid with Air Solutions, LLC for the City HVAC Maintenance Contract (CL22-002) effective September 30, 2021, and authorizing the Mayor and City Clerk to execute the contract.	<u>21-514</u>
	Attachments:       P&R Director Recommendation         Bid Abstract       HVAC Contract CL22-002 (003)	

Agenda

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## **BUSINESS ITEMS:**

**City Council** 

17. Consider approving a Resolution fixing the amount of Street Improvement General Obligation Bonds, Series 2021, to mature each year; fixing the time and place the bonds are to be sold; designating a paying agent/registrar; approving the preliminary official statement and distribution thereof; ratifying and confirming a continuing disclosure agreement; authorizing the clerk to give notice of said sale as required by law and fixing other details of the issue

Attachments: Resolution Authorizing Sale of the Series 2021 Bonds

18. Consider approving an Agreement for Economic Development Assistance -Retail [i.e. Sales Tax Rebate Agreement] with Cache Properties LLC, including any floor amendments that may be made thereto, to assist with the cost of public improvements associated with the development of Phase One the Mathis Center on the property located at 4800 NW Cache Road and authorize the Mayor and City Clerk to execute the agreement.

Attachments: 16. Sales Tax Rebate Agreement - Mathis Center Exhibit A Exhibit B Exhibit C

19. Hold a public hearing and consider approving the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year 2020, for submission to HUD, and authorize the Mayor to sign all necessary documents required to submit the approved CAPER.

Attachments: 2020 CAPER numbers

20. Hold a public hearing and consider an ordinance to amend Chapter 18, Lawton City Code, 2015, that amends Sections 18-1-1-106, 18-5-1-503, 18-5-8-580, 18-5-8-581, 18-5-9-591, 18-5-9-592, 18-6-10-602, 18-6-11-612, 18-6-12-623, 18-6-12-624, 18-6-13-635, 18-6-13-636, 18-6-14-646, 18-6-15-658, 18-6-16-671, and 18-6-18-692, Chapter 18, Lawton City Code, 2015, by adding definitions and establish zoning requirements for medical marijuana growing, processing, and dispensary facilities, providing for severability and allowing floor amendments.

Attachments: Proposed MM Zoning w-Processing Tiers Ordinance **21.** Hold a public hearing and consider an ordinance changing the zoning of the property located at 1925 West Gore Blvd Suite A. Lawton, OK 73505 from the C-1 Local Commercial District to the C-5 General Commercial District zoning classification with a binding site plan, and also consider a request for a Use Permitted on Review for medical marijuana processing (non-chemical) in conjunction with a dispensary.

Attachments: Site Plan (1925 W Gore) 2021-0907 Location Map for Rezoning(1925 W Gore) 2021-0907 Application for Rezoning(1925 W Gore) 2021-0907 **Opposition Letter** Ordinance (1925 West Gore Blvd Suite A) 2021-0907

22. Consider approving an ordinance, including any floor amendment related thereto, pertaining to Public Health and Safety, renaming the title of Chapter 8 of Lawton City Code from "Civil Defense" to "Public Health and Safety"; amending Sections 8-1-101, 8-1-102, 8-1-103, 8-1-104, 8-1-105, 8-1-106, 8-1-107, 8-1-108, 8-1-110, 8-1-112, 8-1-113, 8-1-114, 8-1-115, 8-1-118, 8-1-119; repealing and reserving Sections 8-1-109, 8-1-111, 8-1-116, 8-1-117; creating Sections 8-1-122 and 8-1-123, Article 8-1, Chapter 8, Lawton City Code, 2015; updating the provisions of the chapter to include revising the scope of said chapter, updating definitions to include adding the definition of "Emergency Management", removing references to "Civil Defense", adding other definitions, adding a section on cybersecurity and an emergency operations center, and bringing several sections into compliance with the Oklahoma Emergency Management Act of 2003; providing for severability and establishing an effective date.

Attachments: Chapter 8 Ordinance & Brief Gist

23. Consider an ordinance pertaining to collection services for unpaid utility <u>21-516</u> bills, creating Section 22-1-1-105, Article 22-1, Chapter 22, Lawton City Code 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable, which includes unpaid utility bills, to refer utility bill indebtedness to the collection agency for collection, and authorizing the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the indebtedness, and establishing an effective date.

Attachments: Utility Collection Services Ordinance

21-495

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24.	Consider approving a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, by authorizing the addition of a collection fee in an amount not to exceed thirty-five percent (35%) for debts and accounts receivables including, but not limited to, unpaid fees, penalties, interest, and other sums due to the City for unpaid utility bills and establishing an effective date.	<u>21-517</u>
	Attachments: Utility Collection Services Fees Resolution	
25.	Consider approving an ordinance pertaining to collection services for court penalties, costs, fines, and fees creating Section 9-1-135, Article 9-1, Chapter 9, Lawton City Code, 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for court penalties, costs, fines and fees in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the Court, providing for severability and establishing an effective date.	<u>21-518</u>
	Attachments: Court Collection Services Ordinance	
26.	Consider approving a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, by authorizing the addition of a collection fee in an amount not to exceed thirty-five percent (35%) for unpaid court penalties, costs, fines and fees in municipal court cases in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court and establishing an effective date.	<u>21-519</u>
	Attachments: Court Collection Services Fees Resolution	
27.	Consider approving a professional services agreement for collection services between the City of Lawton and Perdue, Brandon, Fielder, Colling & Mott, L.L.P.; and authorize the Mayor and City Clerk to execute the agreement.	<u>21-520</u>
	Attachments: Professional Services Agreement - FINAL 2021 Informative Packet Perdue	
STAFF RE	<b>EPORTS</b>	
EXECUTI	VE SESSION ITEMS:	
28.	Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation concerning pension calculations, and, if necessary, take appropriate action in open session.	<u>21-513</u>
29.	Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending claim of Linda Towne and, if necessary, take appropriate action in open session.	<u>21-515</u>

# ADJOURNMENT

"The City of Lawton encourages participation from all of its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at (580) 581-3305 at least 48 hours prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive the 48-hour rule if interpreters for the deaf (signing) is not the necessary accommodation."



Commentary

File #: 21-99

## Agenda Date: 9/28/2021

Agenda No: 1.

## **ITEM TITLE:**

Consider approval of the minutes of the Lawton City Council regular meeting of September 14, 2021.

**INITIATOR:** Traci Hushbeck, City Clerk

**STAFF INFORMATION SOURCE:** Traci Hushbeck, City Clerk

BACKGROUND: N/A

**EXHIBIT:** Draft minutes of September 14, 2021

**KEY ISSUES:** N/A

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Approve the minutes of the Lawton City Council regular meeting of September 14, 2021.

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## **MINUTES** LAWTON CITY COUNCIL REGULAR MEETING SEPTEMBER 14, 2021 – 2:00 P.M. LAWTON CITY HALL COUNCIL CHAMBERS/AUDITORIUM

Stan Booker, Mayor

Also Present: Michael Cleghorn, City Manager John Ratliff, City Attorney Traci Hushbeck, City Clerk COL Rhett A. Taylor, Fort Sill Liaison

Mayor Booker called the meeting to order at 2:00 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Mike Keahbone, First Baptist Church, followed by the Pledge of Allegiance.

**ROLL CALL** 

PRESENT:	Keith Jackson, Ward Two Linda Chapman, Ward Three Jay Burk, Ward Four Allan Hampton, Ward Five Sean Fortenbaugh, Ward Six Onreka Johnson, Ward Seven Randy Warren, Ward Eight
ABSENT:	Mary Ann Hankins, Ward One

## **REPORTS: MAYOR/CITY COUNCIL** - None

## **AUDIENCE PARTICIPATION:**

Dave Goodin, 1107 SW Pecan Road, stated he was promised the City would clean up the trash on 11<sup>th</sup> Street and it has not been done. He stated he is documenting all of this to send to the federal EPA.

## **CONSENT AGENDA:**

Mayor Booker stated items #2 and #18 will be discussed separately and items #13 and #23 will be stricken from the agenda.

MOVED by Warren SECOND by Fortenbaugh to approve the consent agenda with the exception of items, #2, #13 and #18. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren, NAY: None, MOTION CARRIED.

- 1. Consider approval of the minutes of the Lawton City Council regular meeting of August 24, 2021.
- 2. Consider withholding payment of disputed invoices from Johnson Controls, Inc.

Ratliff stated the City has had a relationship with Johnson Controls for several years and there have been several issues. Staff met with representatives from Johnson Controls to talk about several areas of maintenance that we requested they fix, and they were given assurances by Johnson Controls that they would honor their contract and absolutely nothing has occurred. Since the contract has expired the City has received invoices from Johnson Controls totaling \$89,828.06. Given the nature of the issues we have had with them and given that we have had damages in excess of \$500,000 and based on the fact that they did not honor their contract and they did not maintain the equipment, the least the City can do is not pay this invoice. That is his recommendation.

Rusty Whisenhunt, Director of Public Utilities, briefed the council on the issues with Johnson Controls at the wastewater treatment plant.

<u>MOVED by Warren SECOND by Chapman</u> to approve non-payment of Johnson Controls invoices and direct the City Attorney to engage in negotiations with Johnson Controls concerning the disputed invoices. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

- 3. Consider ratifying the action of the City Manager by accepting the Health Literacy grant of \$9,000.00 from the Oklahoma Department of Libraries for three bicycle repair stations, health classes, and health supplies.
- 4. Consider ratifying the action of the City Manager by accepting the Unite Us Oklahoma grant of \$10,000.00 from Unite Us for the Lawton Public Library to be a Community Champion to advocate and assist with building the Unite Us network.
- 5. Consider authorizing the use of 2015 CIP funding in an amount not to exceed \$150,000.00 for the installation of electrical improvements at Elmer Thomas Park to support additional lighting for the annual Holiday in the Park event.
- 6. Consider approving an Airport Improvement Program (AIP) construction grant for the Lawton-Ft Sill Regional Airport in the amount of \$1,111,111.00.
- 7. Consider adopting a **Resolution 21-166** authorizing the installation and/or removal of traffic control measures at NW 75th Street at Willow Creek Park and SW Sherman Valley Drive near Patton Hill Drive.
- 8. Consider acknowledging receipt of an Oklahoma Department of Environmental Quality general permit for the land application of water treatment plant residuals from the City of Lawton Medicine Park Water Treatment Plant onto two application sites.

- 9. Consider accepting two Permanent Roadway and Utility Easements and a Permanent Drainage Easement from Cate Farms, LLC for right of way needed for the W. Gore Blvd Reconstruction from SW 82nd Street to 67th Street, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s) and authorizing payment for the same.
- 10. Consider approving Amendment No. 9 to the December 9, 2014 contract with Garver, LLC, which will amend the scope of service to provide professional services necessary for the final design, bidding, construction administration, application engineering programming service, and implementation of SCADA system improvements for the MPWTP, SEWTP, and water distribution system.
- Consider approving Agreement between City of Lawton and EST, Inc., for the Professional Engineering Services and the Preparation of Contract Documents for the 'Street Reconstruction Project: SW 38th ST from SW Bishop Rd to W Gore Blvd, Project No. 2021-02.
- 12. Consider rejecting all bids received for CL19-034 (2021) Sulfuric Acid and authorize staff to re-advertise once market conditions stabilize due to bid exceeding available funding for current fiscal year.
- 13. Consider approving a contract award to Air Solutions, LLC for the City HVAC Maintenance contract effective September 30, 2021. **STRICKEN**
- 14. Consider extending contract RFPCL19-035 Physical Damage Coverage for Select Vehicles & Heavy Equipment to North American Insurance Agency of Lawton, LLC, dba INSURICA of Lawton
- 15. Consider extending CL20-002 Manhole Coating Product with Corgill Construction, Inc. of Greenwood, Arkansas for an additional year.
- 16. Consider awarding contract for (CL22-001) Supplemental Nuisance Abatement to Looking Good Lawncare and Veteran's Tree and Lawn, LLC.
- 17. Consider awarding contract (CL22-004) Precast Concrete Manholes (Large) to Primary Structure of Guthrie, OK.
- 18. Consider awarding Contract Number CL-21-032, Mowing & Litter Contract Area R to Adult & Teen Challenge of Oklahoma.

Ratliff stated he just wanted to enter this into the record because it is not listed in the attachments, which is exhibit 3, the legal opinion. The legal opinion is as follows: I believe the bid from Complete Landsculpture of Texas is non- responsive. Section 9 "Changes to Specifications" of the General Conditions for Bidding Requirements Contracts document states "Changes in specification reducing the quality, versatility or applicability of the product or service shall cause the rejection of the bid." Our specifications show the City will determine the frequency of tasks with a minimum of 8 mowings. Complete Landsculpture added a note to their

price bid which states their per visit pricing is based on 18 mowings a year and if their frequencies are reduced or delayed extra work pricing may be necessary. I interpret that to mean they intend to charge more if we do not provide a minimum of 18 mowings per year, and therefore their bid price is not firm.

<u>MOVED by Warren SECOND by Hampton</u> to award Contract Number CL-21-032, Mowing & Litter Contract Area 'R' to Adult & Teen Challenge of Oklahoma. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

- 19 Consider awarding contract CL20-028 (2021) Liquid Aluminum Sulfate to TR International Trading Company of Edmonds, WA.
- 20. Consider approving appointments to boards and commissions.

## **Board of Adjustment**

Shane Lupi 1906 NW Cherry Avenue Lawton, OK 73505 580-704-0018 Term Expires 10/28/2024

## **Building Development Appeals Board**

Joshua Dickson 811 SE 3<sup>rd</sup> Street Lawton, OK 73501 580-536-5820 Term Expires 09/07/2023

## Mayor's Commission on the Status of Women

Jennifer Ellis- Western District PO Box 442 204 Big Rock Road Medicine Park, OK 73557 580-355-2182 Term Expires 09/07/2023

Emily K Ellis- Eastern County Commissioner 515 NW Dearborn Avenue Lawton, OK 73501 Term Expires 09/20/2023

## Lawton Urban Renewal Authority (LURA)

John Purcell 3006 NE Muse Circle Lawton, OK 73507 Term Expires 07/31/2024

## LURA Continued...

Dr. Ernest Sheppard 2604 NW Lake Front Drive Lawton, OK 73505 Term Expires 07/31/2024

## **BUSINESS ITEMS:**

21. Hold a public hearing and consider an ordinance to close a 25-foot wide by 100-foot long portion of the right-of-way of SE Stafford Avenue, adjacent to Lot 10, Block 12, Industrial Addition.

Richard Rogalski, Deputy City Manager, stated on August 10, 2021, City Council voted to set this date to hold a public hearing for a request to close a 25-foot wide by 100-foot-long portion of the right-of-way of SE Stafford Avenue, adjacent to Lot 10, Block 12, Industrial Addition. The request has been made by AMG Holding Company LLC, owners of the adjacent property, to accommodate the placement of a new ground mounted transformer by PSO to provide enhanced electrical service for the building. AEP-PSO would be allowed to be install the new transformer at that location in the public right-of-way but have requested this closure to obtain an easement specific for their equipment. On August 14, 2021 notice was mailed to the nine (9) property owners within 300 feet of the requested area and the private utility companies that have rights to our right-of-way. Notice was also published in the Lawton Constitution on September 3, 2021. The Planning Department has received no letters or call regarding this request. City Council Policy 5-1, regarding the closing of public ways and easements states "Public ways and easements are considered to be held in trust by the City government for the present and/or future use of the people of the City of Lawton. Except when a major development or redevelopment plan previously adopted by the LMAPC (CPC) and approved by the City Council requires closing of a public way or easement, it shall be the policy of the City Council not to approve such closings." Upon review, staff does not believe that this request meets this policy and recommends that the City Council deny this request.

## PUBLIC HEARING OPENED.

John Chestnut, Southwest Design Associates, 702 SW 52<sup>nd</sup>, stated they were hired in March 2020 to do the plans. In March 2021 they were notified by PSO that they could not put the transformer in the right of way. He spoke with staff in planning, and he was instructed on how to go about closing the right of way. They are asking for 25 feet of the 90-foot right of way. Since he spoke to staff this was lost in the shuffle and what should have been a two-month process has become a six-month process. His client has had to pay \$20,000 in rent over this period. To move the transformer would cost \$200,000. All they are asking for is this 25 feet. If they get this property they are dedicating it to PSO to be a utility easement.

Hampton questioned if anything is on this property.

Rogalski stated it is just gravel. Staff does not object to the transformer going there, they just feel it is not necessary to close and vacate the right of way. In order for them to grant PSO the

easement they would have to vacate the right of way, which would take away the rights to the property. If we close it then the city has a right to reopen, and we are in the same situation as today. He stated PSO could have put that transformer in back when they were originally asked.

Mr. Chestnut stated that PSO will not do it.

Art South, attorney for the applicant, stated Mr. Scotts leased this building almost two years ago and the plans were initially approved. In the plans the transformer was in a different location and the City requested that the plans be changed, and the transformer be moved. In March 2021, Mr. Chestnut came down here and was told the plan would be submitted to a committee and was told this would not be a problem. All this time Mr. Scotts has been paying \$5,000 a month in rent. Mr. Scotts was told by PSO that they will not put a transformer on a municipal right of way because the City can tell them to move it at any time at PSO's expense. He was told by PSO it has to be put on private property. They are talking about a lot of money to move this transformer to the private property. Mr. Scotts can take a 25 x 25 piece, but it has to be on private property. There will still be easements on both sides of the street. His client is going to have employees and he is going to sell product and taxes will be paid on this.

Tim Hushbeck, AEP-PSO, 226 E. B Avenue, stated they do not want to build on there without an easement because if they were forced to move they would have to pay the \$200,000 to move it. They have no desire to put a transformer there without an easement.

Fortenbaugh stated if they pass this as written it will give them what they need.

Rogalski state his recommendation is based on the policy and if you absolutely have to close this right of way for this person to do what they want to do. Technically you do not because PSO has the right to place the transformer in our right of way. The City or PSO has to choose to do something they don't want to do. This can happen without the City closing the right of way. If we ever have the desire that we might want to use that right of way, then we should hold it for the public.

Fortenbaugh questioned who owns the property.

Rogalski stated they are the underlying property owner of the right of way, we hold right of way in trust so we can't sell the right of way to them. Either we close right of way that we don't have to or PSO puts a transformer in right of way that they don't want to.

Fortenbaugh stated he sees a strip of gravel in an industrial area, and he feels they need to help them out if we can find the right way to do it.

Johnson stated they are just asking for 25 feet, she questioned if that is the way the ordinance is currently written.

Rogalski stated the ordinance was written exactly as they requested it.

Hampton questioned if it would affect the City putting any utilities in that easement.

Rogalski stated if it is closed, it is gone forever.

Warren stated if this was on Cache Road or Sheridan Road he could see the issue, but there is a slim chance we would ever need this right of way.

## PUBLIC HEARING CLOSED.

<u>MOVED by Johnson SECOND by Fortenbaugh</u> to adopt **Ordinance 21-21**, waive the reading of the ordinance, read the title only. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

(Title read by City Attorney)

Ordinance 22-21

AN ORDINANCE CLOSING A 25-FOOT WIDE BY 100-FOOT LONG PORTION OF THE RIGHT-OF-WAY OF STAFFORD AVENUE, ADJACENT TO LOT 10, BLOCK 12, INDUSTRIAL ADDITION.

22. Consider receiving a presentation on the modified Public Service Organizations scoring results for FFY 2021, discuss recommendations from the City Planning Commission, and consider approving the Public Service Organization individual allocation amounts that are part of the Annual Action Plan for FFY 2021, and authorizing the Mayor and City Clerk to execute the agreements.

Christine James, Community Services Director, stated this is the continuing item of the individual allocations to the eight public service organizations that applied for CDBG funding for this year. She stated this issue was sent back to the City Planning Commission to revisit the scoring of the applications and the allocation amounts. (James presented information on the proposed funding which is on file in the City Clerk's office)

Warren stated he feels this will work and he does not think there was any better solution they could come up with, but it will not fix the problem. If you have a new entity the problem with reoccur. The ones that apply every year are part of the problem. It was originally set up that each entity would have a limited amount of time to utilize these funds and then they would rotate off. This way you are using the funds as start up funding for multiple entities. That is not what has happened. He suggested that before next time, the council look at reworking the plan.

Johnson stated they do need to look ahead because the slices are going to get smaller as others apply. She suggested some type of notification to the current recipients to let them know the possibility of the process changing so they can start looking for additional funding.

James stated next year they are looking at a requirement to come to a pre-bid type meeting to go over information before they apply. The hardest part of this is the deadlines from HUD and how much they can do ahead of time.

Hampton stated part of the issue is giving these entities forewarning that they may not get as much funding. They need to know that things are changing, and we cannot guarantee the same funding.

James stated they want to reach more organizations.

<u>MOVED by Johnson SECOND by Hampton</u> to approve the Public Service Organization individual allocation amounts that are part of the Annual Action Plan for FFY 2021 and authorize the Mayor and City Clerk to execute the agreements. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

23. Consider an ordinance amending Chapter 8, Lawton City Code 2015, renaming the chapter, revising the scope, adding, and deleting definitions, adding a section on cybersecurity, and bringing several sections within Chapter 8, Lawton City Code 2015, into compliance with the Oklahoma Emergency Management Act of 2003 and establishing an effective date. **STRICKEN** 

# STAFF REPORTS: None

The Mayor and Council convened in executive session at 2:47 p.m. and reconvened in regular, open session at 4:25 p.m. Roll call reflected all members present.

## **EXECUTIVE SESSION ITEMS:**

24. Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation concerning pension calculations, and, if necessary, take appropriate action in open session.

Ratliff read the title of item #24. No action was taken.

25. Pursuant to Section 307 B4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss a pending conflict of interest investigation under City Code Section 17-2-13-274, and if necessary, take action in open session.

Ratliff read the title of item #25.

<u>MOVED by Hampton SECOND by Fortenbaugh</u> that the agenda item has been resolved and no further action is needed to be taken. AYE: Jackson, Chapman, Burk, Hampton, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Mayor Booker read the following statement:

I would like to address the council about a misunderstanding that I unintentionally helped perpetuate regarding allegations of an OSBI investigation that involved the City of Lawton and open records laws. I want to express my sincere regret for my role in this unfortunate misunderstanding. Like the rest of you, I am proud to represent our great city and I am

committed to acting in its best interest. Earlier this year I was contacted and provided information from various public outlets. I understood the information to be accurate and shared this information with other members of the public. Thereafter I learned that some of the information was not true. While I was not the source of the information, my role in sharing it led to unnecessary public embarrassment to our city clerk, Ms. Hushbeck, and one of our council members, Mr. Burk. I have apologized. I deeply regret my role in this misunderstanding. As head of our municipal government, I understand and acknowledge my mistake. If I had to do it over again, I would not have shared the information I received. In the future I will make sure that any information I receive from the public is thoroughly vetted. I can do better, I will do better. I appreciate our city clerk and the members of this body and everyone's willingness to move past this misunderstanding and work together in the unified goal of helping and serving our community.

There being no further business to consider, the meeting adjourned at 4:28 p.m. upon motion, Second and roll call vote.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK



# City of Lawton

Commentary

File #: 21-509

Agenda Date: 9/28/2021

Agenda No: 2.

## **ITEM TITLE:**

Consider the following damage claims recommended for denial: Frank Walker, on behalf of the YMCA in the amount of \$24,567.39, Wayne Willis, on behalf of Galilee Missionary Baptist Church in the amount of \$12,940.00, Delores McFarland in the amount of \$433.43 and Martin Morales in the amount of \$1,750.00. **INITIATOR:** City Attorney, John Ratliff

STAFF INFORMATION SOURCE: Deputy City Attorney, Kelea Fisher

**BACKGROUND:** The listed claims have been filed against the City of Lawton with the City Clerk. The claims have been investigated by the staff and legal opinions/recommendations have been prepared by the City Attorney's Office.

YMCA:	Claim in the amount of \$24,567.39
Galilee Missionary Baptist Church:	Claim in the amount of \$12,940.00
Delores McFarland:	Claim in the amount of \$433.43
Martin Morales:	Claim in the amount of \$1,750.00

**EXHIBIT:** Legal Opinions/Recommendations

**KEY ISSUES:** N/A

## FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Deny the claims listed above.



## CLAIMS MEMORANDUM #DC-2021-019

TO:	Mayor and Council
FROM:	Kelea L. Fisher Deputy City Attorney
DATE:	September 15, 2021
<b>MEETING:</b>	September 28, 2021
RE:	Damage claim of YMCA #5, SW 5th Street Lawton, Oklahoma 73501 Submitted in the amount of \$24,567.39 on June 21, 2021
<b>RECOMMENDATION:</b>	Denial

**BASIS OF CLAIM**: Frank Walker, CEO of Lawton Family YMCA located at #5 SW 5<sup>th</sup> Street, alleges on January 8, 2021, an obstruction in the City of Lawton's sewer main caused wastewater to back up in the basement of the YMCA, causing damage to the flooring, carpet, walls, and equipment. Mr. Walker has filed a claim in the amount of \$24,567.39 which includes the following: an estimate from Johnson Mason Carpet Cleaning in the amount of \$8,304.38 for removal of damaged floor covering, baseboards, cabinet, toilets, cleaning surfaces and HEPA vacuuming; an estimate from Comanche Lumber in the amount of \$4,839.02 for floor covering and installation; an invoice from All-N-One LLC. in the amount of \$6,657.85 for installation of drywall, baseboards, storage bins and turf, to include the removal of turf and the cost of storage bins; an estimate from Turf Factory in the amount of \$2,186.25 for padded turf; and an invoice from Johnson Mason Carpet Cleaning in the amount of \$2,572.89 for water extraction, dehumidification and air movers.

**FACTS**: According to Glenn Hinton, Wastewater Collections Superintendent, Wastewater Collections' records show on January 8, 2021, at approximately 2:52 p.m., the division was notified that the basement was flooding at the building located at #5 SW 5<sup>th</sup> Street. A Wastewater Collections crew was dispatched and arrived on scene at approximately 3:07 p.m. The crew entered the lower manhole and found a blockage and attempted to clear the obstruction but were unsuccessful. The crew then entered the upper manhole and was able to break the blockage of debris and grease. **Records show no prior main history on the pipe segment above, the actual pipe segment, first pipe** 

segment below, second pipe segment below, third pipe segment below or the fourth pipe segment below this location in the last three (3) years. None of the pipe segments appear on the SSES report.

LEGAL BASIS FOR DENIAL 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, there is no prior history on the actual pipe segment in question or the first, second, third or fourth pipe segments below this pipe segment in the past three years. Therefore, the City had no prior notice, actual or constructive, of a defective condition with the main and would not be liable for the damages that occurred.

In the future, if Claimants experience a problem with the sewer line, it is advised that they notify Wastewater Collections/Maintenance at 581-3500 or after hours and weekends at 581-3272. The City will send a crew out to check the main line immediately.

It is recommended that the Claimants contact a private plumber to install a backflow preventer/backwater valve and not flush wipes and personal hygiene products down the line.

KELEA L. FISHER DEPUTY CITY ATTORNEY

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Mincie Beamesderfer, CLA Claims Investigator

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# OFFICE OF THE CITY ATTORNEY

## CLAIMS MEMORANDUM #DC-2021-020

TO:	Mayor and Council
FROM:	Gregory Gibson GWG Assistant City Attorney
DATE:	September 15, 2021
<b>MEETING:</b>	September 28, 2021
RE:	Damage claim of Galilee Missionary Baptist Church 7 NE Dr. Louis K. Jones Ave. Lawton, Oklahoma 73507 Submitted in the amount of \$12,940.00 on June 28, 2021
<b>RECOMMENDATION:</b>	Denial

**BASIS OF CLAIM**: Wayne Willis, Representative for Galilee Missionary Baptist Church, alleges on or about August 1, 2020, the church's asphalt parking lot was damaged due to a City trash truck turning to exit the parking lot. The church's parking lot sustained damage in previous years, and after making repairs, the dumpster was moved to a different location in the lot. Now both areas of the parking lot where the dumpster has been placed are damaged. Mr. Willis has submitted an estimate J&S Concrete Construction, Inc. in the amount of \$12,940.00 to repair both areas in the parking lot. The estimates are to remove and haul off the old asphalt, set and pour 6" of concrete with a 2' gravel base, with #3 rebar ties, in the area in front of the refuse facility, and 4" of concrete with a 2" gravel base and #3 rebar ties in the parking lot area that is damaged.

# DATE OF DAMAGE: August 2020

**FACTS**: According to Jason Mansel, Solid Waste Superintendent, he has spoken with his office staff and the Solid Waste Collections Supervisors regarding the claim, and they were not aware of the issue with parking lot, nor have they spoken with Mr. Willis or anyone else from the church. Mr. Mansel inspected the parking lot on July 8, 2021 and reported that the parking lot has a very thin layer of asphalt that is not in accordance with City Code. Once the thin asphalt is infiltrated with moisture, heavy trucks will cause the asphalt to fail. The only way to avoid asphalt damage would be to place the dumpster closer to the roadway and service it there, however, it would need to comply with City Code 6-1-5-188 – Refuse Facilities. The Claims Investigator also inspected the parking lot and took photos and measured the thickness of the asphalt. The asphalt is approximately 2" inches thick in both areas. Both areas of the parking lot have failed due to the thin layer of the asphalt, moisture infiltration beneath the asphalt, and

Claims Memorandum #DC-2021-020 Page 2 of 2

the weight of the trucks. The parking lot is not in compliance with City of Lawton Code 6-1-5-188, A-5, which requires "A minimum six-inch thick concrete pad *shall* be provided for the refuse container(s) enclosure, and a minimum fifty (50) feet by twelve (12) feet unobstructed approach path constructed with a minimum six (6) inches thick concrete (recommended) or asphalt paving shall be provided for the collection truck access to the front of the enclosure. In addition, sufficient area to maneuver the truck through the site, including a through driveway or a turn-around area must be provided. The collection truck must be able to perform its required functions without backing across any driveway entrance or onto any public street."

It should be noted that the estimate provided is for concrete, not asphalt, and would represent a significant *upgrade* to the parking lot. Concrete is significantly higher priced than asphalt.

**LEGAL BASIS FOR DENIAL 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 this instance, there is no negligent act by the City. The parking lot was not in compliance with City Code, and the City employee did not know the depth of the asphalt was not in compliance with the City Code before driving on the parking lot to service the customer's dumpster.

## This office recommends denial of this claim in full.

GREGORY GIBSON ASSISTANT CITY ATTORNEY

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Mincie Beamesderfer, CLA Claims Investigator



# OFFICE OF THE CITY ATTORNEY

## CLAIMS MEMORANDUM #DC-2021-021

TO: FROM:	Mayor and Council Kelea L. Fisher Deputy City Attorney
DATE:	September 15, 2021
<b>MEETING:</b>	September 28, 2021
RE:	Damage claim of Delores McFarland 5023 NE Haddington Place Lawton, Oklahoma 73507 Submitted in the amount of \$443.41 on June 30, 2021
<b>RECOMMENDATION:</b>	Denial

**BASIS OF CLAIM**: Claimant alleges on June 28, 2021, she was running on the sidewalk north of Gore Boulevard on Flower Mound Road and tripped on a crack in the sidewalk. Claimant further alleges the trip caused her to injure her knee and break her watch. Claimant was treated and released at Comanche County Memorial Hospital the same day. Claimant is seeking a total of \$443.41, which includes an in the amount of \$63.00 for her hospital copay and an Apple work order in the amount of \$380.41 for her watch repair.

## DATE OF DAMAGE: June 28, 2021

**FACTS**: Ms. McFarland alleges on June 28, 2021, at 7:01 a.m., she was jogging on north Flower Mound Road and tripped on a crack and fell down, causing her to cut her knee open to the bone. Claimant went to Comanche County Memorial Hospital and was treated and released. On June 30, 2021, Claimant filed a claim and provided pictures of the crack and informed the City Attorney's Claims Investigator of the location of the crack and stated that she jogs this area on regular basis. The Claims Investigator then met Cliff Haggenmiller, Streets Superintendent, at the location to observe and take additional pictures of the crack. The area identified by Claimant was a cracked portion of concrete with a cracked piece protruding from the sidewalk. The protruding area measured approximately one (1) inch in height. According to Mr. Haggenmiller, the Streets Department has not received any prior notice or complaints from the Claimant or any other citizens regarding the sidewalk.

**LEGAL BASIS FOR DENIAL OF CLAIM**: Lawton City Code Section 20-1-103 (Duty to keep sidewalks accessible—Liability for injuries) provides as follows:

- A. All owners, occupants and users of real property abutting upon streets in the city, at their own cost and expense, shall maintain and keep the sidewalks (and paving laid thereon), bordering their property:
  - 1. In a safe, adequate and good condition, without defects;
  - 2. At curb grade and level and free of depression, excavations, elevations, inequalities, obstacles, obstructions or encroachments, natural or artificial, above or below ground level, or which overlap, impinge upon or appropriate any part of the sidewalk area or the space eight feet above it; and

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- 3. Easily accessible to and freely and safely used by the public for travel by foot.
- B. The owner, occupant and user of the property abutting upon any defective sidewalk shall be primarily liable for any injury or damage inflicted upon any person as a result of a violation of subsection A. hereof.

Negligence is defined as the failure to exercise ordinary care to avoid injury to another's person or property. 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. <u>Oklahoma Ry. Co. v.</u> <u>Ivery</u>, 204 P.2d 978 (Okla. 1949).

When a defect in a sidewalk is so slight that no careful or prudent person would reasonably anticipate any danger from its existence, but still an accident happens which could have been guarded against by the exercise of extraordinary care and foresight, the question of the (city's) responsibility is one of law. <u>Id.</u> Classifying a defect trivial or slight is merely a convenient way to describe a defect from which, considering all of the circumstances, all reasonable men would agree the city would not (in the exercise of reasonable care and prudence) anticipate danger to the public using the way. <u>Rider v. City of Norman</u>, 1970 OK 200, 476 P.2d 312, 312. In the <u>Rider</u> case, the Court found that the plaintiff's view of a sidewalk defect was clear and unobstructed and it was daylight and in such circumstances, a slight lip on the sidewalk was held to be a trivial defect. <u>Id.</u>

## This office recommends denial of this claim for the following reasons:

According to Lawton City Code, property owners are responsible for maintaining sidewalks abutting their property in a safe, adequate and good condition free of defects. The sidewalk in question, abuts private property and therefore, any defects in the sidewalk that may have led to Claimant's injury, would be the responsibility of the private property owner should a court find that the sidewalk defect caused Claimant's injury.

However, even if the City was responsible for maintaining this particular sidewalk (which is not the case), the City would not be liable for Claimant's injury. Claimant alleges she tripped and fell over a defect that, according to Oklahoma case law, would be classified as trivial. Furthermore, the incident occurred at 7:00 a.m., in the daylight, and there is no evidence to suggest that her view of the defect

Claims Memorandum #DC-2021-021, Page 3 of 3

was anything other than clear and unobstructed. Therefore, the City would not be liable for Claimant's injuries in accordance with well-established case law.

KELEA L. FISHER DEPUTY CITY ATTORNEY

Mincie Boamesderfer

Mincie Beamesderfer, CLA Claims Investigator

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# OFFICE OF THE CITY ATTORNEY

## CLAIMS MEMORANDUM #DC-2021-024

TO:	Mayor and Council
FROM:	Kelea Fisher Deputy City Attorney
DATE:	September 15, 2021
<b>MEETING:</b>	September 28, 2021
RE:	Damage claim of Martin Morales 3407 SW Crestview Dr. Lawton, Oklahoma 73505 Submitted in the amount of \$1,750.00 on July 12, 2021
<b>RECOMMENDATION:</b>	Denial

**BASIS OF CLAIM**: Claimant, Martin Morales, states that on July 9, 2021 he was eastbound on Cache Road in the inside lane in front of the Fusion Buffet at 4102 NW Cache Road when he hit a bump in the road that caused his radiator to crack on his 2013 Cadillac ATS. Claimant states he was on his way to Elgin when he noticed his car running very hot. Claimant submitted an invoice dated July 12, 2021, from Legend Driven in Lawton in the amount of \$1,741.32 for replacement of the radiator and coolant.

# DATE OF DAMAGE: July 9, 2021

**FACTS**: According to Cliff Haggenmiller, Streets Department Superintendent, the area of the roadway in question has been classified as an irregularity in the roadway. Mr. Haggenmiller describes the irregularity as a condition similar to what a driver might experience going over normal railroad crossings. A properly maintained vehicle, traveling at a regular rate of speed is able to drive over the irregularity with no damage to the vehicle. The City Attorney's Claims Investigator went to the area to observe traffic and the roadway irregularity. There is a raised portion of asphalt, however, the irregularity was so insignificant, all of the vehicles traveling during her time of observation continued driving at a regular rate of speed without issue. Although the Streets Department has received calls regarding this location, there were no calls reporting damage to a vehicle. Furthermore, the irregularity is of such a minimal nature that it cannot be classified as a hazard. It should be noted that according to online research, the radiator in the 2013 Cadillac ATS, has been reported to have numerous issues. One owner reported in July of 2017, he had already replaced four radiators in his vehicle.

Claims Memorandum DC-2021-024 - Page 2

**LEGAL BASIS FOR DENIAL OF CLAIM:** Under Oklahoma law, a municipality has a duty to use ordinary care to maintain its streets in a reasonably safe condition for usual and ordinary use, or to use ordinary care to adequately warn of any dangerous condition of which the municipality knows, or reasonably should know, in sufficient time to have removed or corrected the condition, or have given adequate warning of its existence. OUJI 2d 11.1 (Duty of Municipality to Maintain Public Ways). The test to determine whether the City was negligent is "whether or not such municipality, in the exercise of reasonable care and prudence, could have or should have, anticipated danger and damages to the traveling public using the way." <u>Rider v. City of Norman</u>, 476 P.2d 312, 313 (Okla. 1970). A municipality, however, is not an insurer of the safety of travelers. <u>Zachary v. City of Sapulpa</u>, 442 P.2d 328 (1966). A **municipality will, therefore, not be liable for every defect or obstruction, however slight or trivial, or little likely to cause injury, <u>or for every mere inequality or irregularity in the surface of the way.</u> Id. It is only against danger which can or ought to be anticipated, in the exercise of reasonable care and prudence, that the municipality is bound to guard. <u>Id</u>.** 

Additionally, Lawton City Code, 2015, Section 23-16-1602 (Accidents involving damage to property) provides as follows:

A. The driver of any vehicle involved in an accident resulting only in apparent damage to property shall immediately stop such vehicle at the scene of such accident or as close thereto as possible.....

B. If the damage resulting from such accident is to the property of the driver only, with no damage to the person or property of another, the driver need not stop at the scene of the accident but shall make report of the damage to the Lawton police department within twenty-four (24) hours of such accident. (Emphasis added)

This office recommends denial of this claim in full because in this instance:

- 1. The City did *not* act negligently in this instance. The bump in the roadway is a mere irregularity in the roadway for which the City would not be liable according to well established caselaw. Additionally, the Streets Department had not received any prior reports of damage prior to this incident.
- 2. Mr. Morales had a duty pursuant to Lawton City Code 2015, Section 23-16-1602 to make a report of the alleged damage to his vehicle to the police department within twenty-four (24) hours of the incident and failed to do so.

KELEA FISHER DEPUTY CITY ATTORNEY

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Claims Investigator mbH:\Damage Claims\MR\\2021-DCmemos\2021-024 Raised area in roadway Den doc



Commentary

File #: 21-502

Agenda Date: 9/28/2021

Agenda No: 3.

## **ITEM TITLE:**

Consider approving Council Policy 1-1, Employee Travel, dated September 28, 2021 to replace Council Policy 1-1, Employee Travel dated October 10, 2006.

**INITIATOR:** Michael Cleghorn, City Manager

**STAFF INFORMATION SOURCE:** Michael Cleghorn, City Manager

**BACKGROUND:** To establish a standardized travel policy when requesting to attend schools, conferences, conventions, job related training, or official travel and to provide employees guidance on allowable expenditures and the proper means to document those expenditures. This policy offers direction to employees who are traveling for public business purposes, which are properly approved before the travel occurs, and assists with accountability of all travel expenses upon return. The policy provides the administrative regulations governing all travel on behalf of the City of Lawton. Such travel includes being out of town on City business, training, seminars, workshops, professional conferences overnight or local vicinity travel. To protect the interests of both the City and its employees, the following procedures govern reimbursement. This policy sets out standard guidelines for expense reimbursement, deviations from this policy may result in the employee not being reimbursed for their travel.

**EXHIBIT:** Proposed Policy 1-1 dated September 28, 2021

**KEY ISSUES:** Should City Council approve Policy 1-1, Employee Travel, dated September 28, 2021 to replace Council Policy 1-1, Employee Travel, dated October 10, 2006.

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Approve Policy 1-1, Employee Travel dated September 28, 2021.

# **Council Policy 1-01 Employee Travel**

**DISTRIBUTION:** All Departments

EFFECTIVE DATE: September 28, 2021

SUBJECT: Employee travel

**PURPOSE:** To establish a standardized travel policy when requesting to attend schools, conferences, conventions, job related training, or official travel and to provide employees guidance on allowable expenditures and the proper means to document those expenditures. This policy offers direction to employees who are traveling for public business purposes, which are properly approved before the travel occurs, and assists with accountability of all travel expenses upon return.

**BACKGROUND:** The policy provides the administrative regulations governing all travel on behalf of the City of Lawton. Such travel includes being out of town on City business, training, seminars, workshops, professional conferences overnight or local vicinity travel. To protect the interests of both the City, its council members and employees, the following procedures govern reimbursement.

This policy sets out standard guidelines for expense reimbursement, deviations from this policy may result in the employee not being reimbursed for their travel.

## **PROCEDURES:**

## 1. General Provisions

- **a.** Travel arrangements and payment of travel expenses will be made in accordance with guidelines established herein.
- **b.** All overnight trips must be authorized in advance by completing the Travel and Training Authorization Form and signed by the proper approval authority:
  - i Trip estimated cost totals less than \$3,499 Department Director
  - ii Trip estimated cost totals more than \$3,500– Department Director and Finance Director are both required to sign
  - iii Any employee taking more than two out-of-state trips per fiscal year must have a Travel and Training Authorization Form signed by their Deputy City Manager (or the City Manager for the Police and Fire Chiefs and City Attorney).

Once signed, forward the Travel and Training Authorization to the designee in the Finance Department.

- c. Funds for travel expenses must be appropriated in the approved annual budget.
- **d.** Travel expenses shall be paid only for officials representing the City of Lawton. Expenses for spouses, friends, and business associates will not be reimbursed, nor shall they be charged on the city credit card.

- e. For any travel that is grant funded, the travel reimbursement will be completed in accordance with the grantor's policy (e.g., Oklahoma State grants will follow the State's travel policy).
- **f.** Advance approval from the appropriate Deputy City Manager or City Manager is required when travel is being funded by a commercial vendor.

## 2. Out-of-Town Travel

#### a. Registration

- i. The City will pay the registration for City-related workshops, conferences and seminars via a City of Lawton issued Credit Card or a Payment Authorization. Special events and tours that are not job-related and are leisure activities are not allowable expenses. Accidental use of a City issued Credit Card will be immediately reported to their Director. The employee is financially responsible to remit payment for all unapproved purchases.
- ii. Reimbursement will not be made for meals provided at a hotel, conference, seminar, or convention when a meal(s) is included as part of the registration, or otherwise provided at no charge to the employee. Whether or not the employee partakes in the meal is not relevant when deducting the meal amount from the per diem allotment. A continental breakfast will not be deducted from per diem amounts. If the employee has any dietary restrictions and will not be able to partake in an otherwise provided meal the City will pay per diem for that meal(s) provided that the employee provides evidence of the restriction.
- b. Transportation Employees are expected to utilize the most economic mode of transportation available. Each department is responsible for making transportation arraignments.
  - i. Commercial Airfare Air travel should be considered when travel distance exceeds two hundred (200) miles one way. The City will prepay expenses for airfare or public transportation. These expenses should not exceed the cost of a round trip coach ticket with no add-ons (extra leg room, early boarding, etc.) fees.
  - ii. Rental Vehicle Normally Rental Vehicles are not an authorized expense. However, it is recognized that under some circumstances a rental may be necessity. Rental cars will be limited to a compact size vehicle. Documentation for the justification is required when submitting the Travel Expense Report. The City is self-insured and it is not necessary to take out additional insurance. A copy of the City's insurance paperwork can be obtained before departure. Additional insurance will not be a reimbursable expense.
  - iii. **Ground Transportation and Parking** Cab fare (e.g., taxi, uber or lyft), tolls, shuttles and parking fees incurred while on City business are reimbursable expenses. Parking at the airport will be reimbursed at the

lowest rate available.

- iv. City Vehicle Employees are encouraged to use a City owned vehicle when traveling on City business. Reimbursements when using a city vehicle are limited to tolls, gasoline, parking and other related expenses en route to and from a destination. Reimbursement will be made only for expenses justified with itemized receipts.
- v. **Private Vehicle** In certain limited circumstances travel in a privately owned vehicle maybe permitted with prior approval of the Department Director.
  - Reimbursement amounts will be the IRS established rate at the time of travel. Mileage reimbursement will be calculated from the Traveler's starting locality. Travel reimbursement requests should include the route from either MapQuest or Google Maps. Expenses that result from unjustified excursions from the travel route will not be reimbursed.
  - Toll fees and parking fees for a private vehicle are eligible expenses for reimbursement. The City will NOT be responsible for any other automobile related expenses when travel occurs in a privately owned vehicle. If a City-owned vehicle is unavailable, then other expenses related to the privately owned vehicle may be reimbursable.

If an employee requests to use a private vehicle for travel that normally would be provided by airfare, the employee's reimbursement will not exceed the cost of the most economical airfare. Due to fluctuations in airfare, the comparison rate will be established and documented, in writing, and attached to the Travel and Training Authorization and approved by the Department Director at the time other reservations are made. No lodging in route (round trip) will be allowed for any employee electing to drive a private vehicle when air flights are available, unless carpooling is shown to reduce the overall cost of the trip.

3. Employees may use a City credit card or will be reimbursed for parking, toll fees, etc., at actual cost when itemized receipts are provided.

## c. Lodging

- i. The City will pay for reasonable and appropriate actual lodging expenses upon submission of an itemized hotel receipt. Employees are encouraged to inquire about discounted or government lodging rates. Moreover, city employees are encouraged to inquire about a possible tax exemption for official travel hotel stays.
- ii. Employees are encouraged to secure lodging at a conference-hosted hotel at the conference discount rate if available.

iii. The City will not reimburse the employee for additional expenses charged to the room (such as charges for suite upgrades, sitting rooms, movies, pornography, room service, valet parking, mini bar charges or other higher cost arrangements). Any amount that is charged to a City credit card that is deemed un-reimbursable will be reimbursed to the City by the employee.

#### d. Meals

Payment for meals are based on the General Services Administration (GSA) per diem rate at <u>https://www.gsa.gov/travel/plan-book/per-diem-rates</u>. Note these rates include M&IE (meals & incidentals).

- i. Alcoholic beverages are not reimbursable under any circumstance.
- ii. Meals will be reimbursed for City of Lawton employees only.
- iii. If the employee received an advance on meal per diems and returns early then the employee must repay the difference between the advance and the actual M&IE entitlement.
- **iv.** Amounts shown below include food, taxes and tips. Receipts for meals are not required. Reimbursement will not be made for meals provided at a hotel, conference, seminar, or convention when a meal(s) is included in the registration or otherwise provided at no charge. A continental breakfast will not be deducted from per diem amounts. Meals not included in registration fees are eligible for reimbursement per meal as follows:

Breakfast 20% of Per Diem Rate Lunch 30% of Per Diem Rate Dinner 50% of Per Diem Rate

For departures **to** the destination city, the following times should be used to determine the percentage of the per diem amount which is allowable:

Between Midnight and 6:00 a.m.	100%
Between 6:01 a.m11:59 a.m.	80%
Between 12:00 p.m. and 11:59 p.m.	50%

For arrivals **from** the destination city, the following times should be used to determine the percentage of the per diem amount which is allowable:

Before 11:00 a.m.	20%
Between 11:00 a.m6:59 p.m.	50%
After 7:00 p.m.	100%

v. Receipts do not need to be turned in for Per Diem expenses.

If the employee has any dietary restrictions and will not be able to partake in an otherwise provided meal the City will pay per diem for that meal(s). To ensure the correct per diem amount is calculated, provide dietary restriction information on the Travel and Training Authorization form, Section 16 (Remarks/Justifications).

#### e. Miscellaneous Expense Information

- i. Miscellaneous fees or expenses (e.g., baggage fees, tolls, or other items) will be reimbursed at actual cost.
- **ii.** The City will not reimburse for personal items, services, or entertainment, including without limitation toiletries, medicine, clothing, grooming, laundry, dry cleaning, movies, snacks, or alcoholic beverages.
- iii. The employees shall be held responsible for exercising good judgment, practicability, and reasonableness with expenses incurred. Reimbursement claims that appear excessive will require additional documentation and justification. If it is determined the additional documentation is insufficient, those charges shall not be reimbursed.
- iv. Employees must request in advance and receive approval from the Department Director and Assistant City Manager and/or City Manager if training travel is combined with a personal vacation. Under no circumstance will the City reimburse any personal expenses.

#### f. Travel Payment and Reimbursement Procedures

- i. The following must be submitted to the Finance Department Designee for an advance of per diem:
  - Payment Authorization Form
  - Travel and Training Authorization Form
  - For conferences or training, including a copy of the official conference brochure or agenda and completed registration form, which indicates the meeting location, dates of the conference, and costs
  - Airline itinerary, ticket stubs, or electronic ticket information

#### g. Travel Expense Report

- i. When the Traveler returns, a Travel Expense Report needs to be completed within fourteen (14) days of travel and submitted to the Finance Department Designee.
- ii. The Travel Expense Report should include all expenses from the trip.

- iii. Include copies of receipts from all expenses (Excluding receipts for meals (unless a City Credit Card is used for meals). Per Diem, expenses do not require receipts).
- iv. If any additional expenses need reimbursement, turn in a payment authorization with the Travel Expense Report.

#### h. Additional Information

#### i. Attendance and Conduct

- 1. Traveling on behalf of the City and using public funds is a privilege. As an employee, you are expected to attend the conference and training sessions. Be good stewards of tax payer dollars.
- 2. An employee found to be absent from a substantial portion of the conference, seminar, sessions, or other activity without good and justifiable cause will be subject to disciplinary actions in accordance with the applicable Personnel Policies.
- Any employee who performs any action that reflects poorly upon the City of Lawton; is involved in any conduct that is offensive; violates the common decency or morality of the community, or whose conduct is unbecoming of an employee will be subject to disciplinary actions in accordance with the City's Personnel Policies.

#### ii. Cancellations

- If registration, lodging, and/or transportation has been prepaid by the City and the employee is unable to complete the intended travel, the employee and sponsoring department are required to follow up on the cancellation policy of the sponsoring organization and lodging site. All possible means are to be explored to obtain refunds, partial refunds, or options for substituting another employee.
- 2. The employee must provide written justification, which is approved by the Department Director, to explain and justify the reason for their inability to travel as previously arranged. This written justification must be submitted to the Director of Finance.

#### iii. Refunds

- The sponsoring department and the employee have the responsibility for the oversight and administration of seeking refunds to the City and depositing those refunds with the Finance Department.
- 2. Any refunds the City obtains due to cancellations or overpayments

must be deposited with the Finance Department. Any such refund received can be credited back to the department's budget; within the same fiscal year, by providing the original funding information to the Finance Department Designee with the refund.

- If the City refund is payable to the employee, it must be endorsed to the City, delivered to, and receipted by the Finance Department.
- 4. If the refund is credited to the employee's personal credit card, the claimant is responsible for reimbursing the Finance Department for any amount due the City.

## REFERENCES: None

**RESCISSION:** This police rescinds Council Policy 1-01 dated October 10, 2006.

Stan Booker Mayor



Commentary

File #: 21-492

Agenda Date: 10/12/2021

Agenda No: 4.

## **ITEM TITLE:**

Consider approving a resolution amending the City of Lawton FY21-22 budget, as amended, by appropriating \$16,755.00 from the General Fund to the Streets Division's Construction, Improvements, and Additions account for the completion of the Farmer's Market parking lot. **INITIATOR:** Richard Rogalski, Deputy City Manager

**STAFF INFORMATION SOURCE:** Kristin Huntley, Deputy Finance Director

**BACKGROUND:** Council previously approved Resolution 20-86 on September 8, 2020, which allocated \$200,000.00 to the Streets Division's Construction, Improvement, and Additions account for the completion of the Farmer's Market parking lot. \$69,564.15 was spent in FY21, and \$113,680.85 of encumbered purchase orders were rolled over to FY22. This leaves funding for the project short by \$16,755.00. A budget amendment is needed to allocate \$16,755.00 to the Streets Division's Construction, Improvements, and Additions account.

EXHIBIT: Resolution 21-\_\_\_\_

**KEY ISSUES:** N/A

FUNDING SOURCE: General Fund

**STAFF RECOMMENDED COUNCIL ACTION:** Approve a resolution amending the City of Lawton FY21 -22 budget, as amended, by appropriating \$16,755.00 from the General Fund to the Streets Division's Construction, Improvements, and Additions account for the completion of the Farmer's Market parking lot.

## CITY OF LAWTON, OKLAHOMA RESOLUTION NO. 21-\_\_\_\_

A RESOLUTION AMENDING RESOLUTION NO. 21-111, WHEREBY THE CITY OF LAWTON, OKLAHOMA BUDGET FOR FISCAL YEAR 2021-2022 WAS ORIGINALLY ADOPTED, AND AS PREVIOUSLY AMENDED BY RESOLUTION 21-127, RESOLUTION 21-163, RESOLUTION 21-164, AND RESOLUTION 21-167, BY APPROPRIATING SIXTEEN THOUSAND SEVEN HUNDRED FIFTY-FIVE AND 00/100 DOLLARS (\$16,755.00) FROM THE GENERAL FUND TO THE STREETS DIVISION'S CONSTRUCTION, IMPROVEMENTS, AND ADDITIONS ACCOUNT FOR THE COMPLETION OF THE FARMER'S MARKET PARKING LOT.

**WHEREAS,** the City of Lawton has adopted the provisions of the Oklahoma Municipal Budget Act (the Act) in 11 O.S. Sections 17-201 through 17-216; and

**WHEREAS**, the City Manager prepared a budget for the fiscal year ending June 30, 2022 (FY 2021-2022) consistent with the Act; and

**WHEREAS,** the Act in section 17-215 provides for the City Manager of the City, or designee, as authorized by the governing body, to transfer any unexpended and unencumbered appropriation from one department to another within the same fund; and

**WHEREAS,** the budget was formally presented to the Lawton City Council at least 30 days prior to the start of the fiscal year in compliance with Section 17-205; and

**WHEREAS**, the City of Lawton City Council conducted a Public Hearing at least 15 days prior to the start of the fiscal year, and published notice of the Public Hearing in compliance with Section 17-208 of the Act; and

**WHEREAS,** Resolution No. 21-111 approved the City of Lawton, Oklahoma budget for Fiscal Year 2021-2022, and established budget amendment authority; and

**WHEREAS,** City Council previously approved Resolution 21-127, amending Resolution No. 21-111 to increase hotel/motel revenue by Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00), and to appropriate Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00) to the Hotel Motel Fund's Professional Services account for the purpose of supporting certain economic development and tourism activities within the community; and

**WHEREAS,** City Council previously approved Resolution 21-163, amending Resolution No. 21-111, by appropriating Eighteen Thousand Five Hundred and 00/100 Dollars (\$18,500.00) from the Special Revenue Fund (Fire Training Court Costs) to Fire Training's Computer Supplies account for the purchase of Chromebooks; and

**WHEREAS,** City Council previously approved Resolution 21-164, amending Resolution No. 21-111, by transferring Ten Thousand and 00/100 Dollars (\$10,000.00) from the Solid Waste Division Overtime account (Enterprise Fund) to the Drainage Maintenance Division Overtime account (Drainage Maintenance Fund) for the purpose of supplementing solid waste collection operations; and

**WHEREAS,** City Council previously approved Resolution 21-167, amending Resolution No. 21-111, by appropriating Two Hundred Thirteen Thousand Five Hundred and 00/100 Dollars (\$213,500.00) from the Cellular Phone System Fund to the Emergency Communications Division's personnel services accounts to fund the reorganization of the Emergency Communications Department; and

**WHEREAS,** City Council previously approved Resolution 20-86, which allocated Two Hundred Thousand and 00/100 Dollars (\$200,000.00) to the Streets Division's Construction, Improvements, and Addition account for the Farmer's Market parking lot; and

**WHEREAS**, One Hundred Eighty-Three Thousand Two Hundred Forty-Five and 00/100 Dollars (\$183,245.00) of this money was spent or rolled into FY22, creating a shortfall of Sixteen Thousand Seven Hundred Fifty-Five and 00/100 Dollars (\$16,755.00); and

**WHEREAS**, a budget amendment is needed to appropriate Sixteen Thousand Seven Hundred Fifty-Five and 00/100 Dollars (\$16,755.00) from the General Fund to the Streets Division's Construction, Improvements, and Additions account for the completion of the Farmer's Market parking lot.

# NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAWTON, OKLAHOMA:

**SECTION 1**. The City Council does hereby amend the FY 2021-2022 Budget originally adopted on the 25th day of May, 2021, for the purpose of appropriating Sixteen Thousand Seven Hundred Fifty-Five and 00/100 Dollars (\$16,755.00) from the General Fund to the Streets Division's Construction, Improvements, and Additions account (1005502-53020).

**SECTION 2.** The City Council does hereby authorize the City Manager to transfer any unexpended and unencumbered appropriations, at any time throughout FY 2021-2022 from one line item to another, one object category to another within a department, or one department to another within a fund, without further approval by the City Council.

**SECTION 3.** All supplemental appropriations or decrease in the total appropriation of a fund shall be adopted at a meeting of the City Council and filed with the State Auditor and Inspector.

**ADOPTED AND APPROVED,** by the City Council of Lawton this 28th day of September, 2021.

(SEAL)

STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY



Commentary

File #: 21-511

Agenda Date: 9/28/2021

Agenda No: 5.

## **ITEM TITLE:**

Consider approving a resolution amending the City of Lawton FY21-22 budget, as amended, by appropriating \$3,665.73 from the General Fund to the Police Uniform Division's Maintenance Material-Motive Equipment account.

**INITIATOR:** James Smith, Police Chief

**STAFF INFORMATION SOURCE:** Greg Ellis, Lieutenant - Fleet Maintenance; Kristin Huntley - Deputy Director, Finance

**BACKGROUND:** On June 29, 2021, LPD Unit #6653 was involved in an accident resulting in a claim (Claim#: 872393934000001) being filed with GEICO Secure Insurance Co. On August 28, 2021, GEICO issued payment on the claim via check N226639707 in the amount of \$3,665.73. This check was deposited into the General Fund. The Police Department needs move the funds from the GEICO payment to the appropriate expense account so that the repairs to Unit #6653 can be scheduled and completed.

EXHIBIT: Resolution No. 21-\_\_\_\_

**KEY ISSUES:** Does the City of Lawton wish to accept the budget amendment?

FUNDING SOURCE: General Fund

**STAFF RECOMMENDED COUNCIL ACTION:** Approve Resolution No. 21-\_\_\_\_\_ amending the FY21-22 budget, as amended, by appropriating \$3,665.73 from the General Fund to the Police Uniform Division's Maintenance Material-Motive Equipment account.

## CITY OF LAWTON, OKLAHOMA RESOLUTION NO. 21-\_\_\_\_

A RESOLUTION AMENDING RESOLUTION NO. 21-111, WHEREBY THE CITY OF LAWTON, OKLAHOMA BUDGET FOR FISCAL YEAR 2021-2022 WAS ORIGINALLY ADOPTED, AND AS PREVIOUSLY AMENDED BY RESOLUTION 21-127, RESOLUTION 21-163, RESOLUTION 21-164, RESOLUTION 21-167, AND RESOLUTION 21-\_\_\_\_, BY APPROPRIATING THREE THOUSAND SIX HUNDRED SIXTY-FIVE AND 73/100 DOLLARS (\$3,665.73) FROM THE GENERAL FUND TO THE POLICE UNIFORM DIVISION'S MAINTENANCE MATERIAL-MOTIVE EQUIPMENT ACCOUNT FOR THE REPAIR OF UNIT 6653.

**WHEREAS,** the City of Lawton has adopted the provisions of the Oklahoma Municipal Budget Act (the Act) in 11 O.S. Sections 17-201 through 17-216; and

**WHEREAS**, the City Manager prepared a budget for the fiscal year ending June 30, 2022 (FY 2021-2022) consistent with the Act; and

**WHEREAS,** the Act in section 17-215 provides for the City Manager of the City, or designee, as authorized by the governing body, to transfer any unexpended and unencumbered appropriation from one department to another within the same fund; and

**WHEREAS,** the budget was formally presented to the Lawton City Council at least 30 days prior to the start of the fiscal year in compliance with Section 17-205; and

**WHEREAS**, the City of Lawton City Council conducted a Public Hearing at least 15 days prior to the start of the fiscal year, and published notice of the Public Hearing in compliance with Section 17-208 of the Act; and

**WHEREAS,** Resolution No. 21-111 approved the City of Lawton, Oklahoma budget for Fiscal Year 2021-2022, and established budget amendment authority; and

**WHEREAS**, City Council previously approved Resolution 21-127, amending Resolution No. 21-111 to increase hotel/motel revenue by Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00), and to appropriate Four Hundred Twenty Thousand and 00/100 Dollars (\$420,000.00) to the Hotel Motel Fund's Professional Services account for the purpose of supporting certain economic development and tourism activities within the community; and

**WHEREAS,** City Council previously approved Resolution 21-163, amending Resolution No. 21-111, by appropriating Eighteen Thousand Five Hundred and 00/100 Dollars (\$18,500.00) from the Special Revenue Fund (Fire Training Court Costs) to Fire Training's Computer Supplies account for the purchase of Chromebooks; and

**WHEREAS,** City Council previously approved Resolution 21-164, amending Resolution No. 21-111, by transferring Ten Thousand and 00/100 Dollars (\$10,000.00) from the Solid Waste Division Overtime account (Enterprise Fund) to the Drainage Maintenance Division Overtime account (Drainage Maintenance Fund) for the purpose of supplementing solid waste collection operations; and

**WHEREAS,** City Council previously approved Resolution 21-167, amending Resolution No. 21-111, by appropriating Two Hundred Thirteen Thousand Five Hundred and 00/100 Dollars (\$213,500.00) from the Cellular Phone System Fund to the Emergency Communications Division's personnel services accounts to fund the reorganization of the Emergency Communications Department; and

**WHEREAS,** City Council previously approved Resolution 21-\_\_\_\_, amending Resolution No. 21-111, by appropriating Sixteen Thousand Seven Hundred Fifty-Five and 00/100 Dollars (\$16,755.00) from the General Fund to the Streets Division's Construction, Improvements, and Additions account for the completion of the Farmer's Market parking lot; and

**WHEREAS,** LPD Unit 6653 was involved in an accident, and GEICO issued payment to the City in the amount of Three Thousand Six Hundred Sixty-Five and 73/100 Dollars (\$3,665.73) for the damages; and

**WHEREAS**, a budget amendment is needed to appropriate Three Thousand Six Hundred Sixty-Five and 73/100 Dollars (\$3,665.73) from the General Fund to the Police Uniform Division's Maintenance Material-Motive Equipment account for the repair of Unit 6653.

# NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAWTON, OKLAHOMA:

**SECTION 1**. The City Council does hereby amend the FY 2021-2022 Budget originally adopted on the 25th day of May, 2021, for the purpose of appropriating Three Thousand Six Hundred Sixty-Five and 73/100 Dollars (\$3,665.73) from the General Fund to the Police Uniform Division's Maintenance Material-Motive Equipment account (1007002-51030).

**SECTION 2.** The City Council does hereby authorize the City Manager to transfer any unexpended and unencumbered appropriations, at any time throughout FY 2021-2022 from one line item to another, one object category to another within a department, or one department to another within a fund, without further approval by the City Council.

**SECTION 3.** All supplemental appropriations or decrease in the total appropriation of a fund shall be adopted at a meeting of the City Council and filed with the State Auditor and Inspector.

**ADOPTED AND APPROVED,** by the City Council of Lawton this 28th day of September, 2021.

(SEAL)

## STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY



Commentary

File #: 21-488

Agenda Date: 9/28/2021

Agenda No: 6.

## **ITEM TITLE:**

Consider renewing a professional services agreement with BKD, LLP (BKD) for the City's annual auditing services for FY 2020-2021, including the City's required single audit of expenditures from federal financial awards.

INITIATOR: Kristin Huntley, Deputy Finance Director

**STAFF INFORMATION SOURCE:** Kristin Huntley, Deputy Finance Director

**BACKGROUND:** BKD has served as the City's auditing firm for the preceding six fiscal year audit engagements, including the single audits of federal financial awards. During this period of service, BKD has successfully assisted the City in bringing current all of its previous required audits such that currently no audits are presently delinquent with respect to any of the City's continuing disclosure filings on bonded indebtedness or other regulatory submissions. The negotiated fee for the FY 2020-2021 audit is \$149,900.00.

**EXHIBIT:** Professional Services Contract; Contract Addendum; Agreed Upon Procedures

**KEY ISSUES:** None

FUNDING SOURCE: General Fund - Finance Department - Professional Services

**STAFF RECOMMENDED COUNCIL ACTION:** Approve the professional services agreement with BKD for auditing services and authorize the Mayor and City Clerk to execute BKD's engagement letter.



September 1, 2021

Lawton City Council Honorable Stan Booker, Mayor Mr. Michael Cleghorn, City Manager Ms. Kristen Huntley, Interim Director of Finance City of Lawton, Oklahoma 212 SW 9<sup>th</sup> Street Lawton, Oklahoma 73501

We appreciate your selection of **BKD**, LLP as your service provider and are pleased to confirm the arrangements of our engagement in this contract. Within the requirements of our professional standards and any duties owed to the public, regulatory, or other authorities, our goal is to provide you **Unmatched Client Service**<sup>®</sup>.

In addition to the terms set forth in this contract, including the detailed **Scope of Services**, our engagement is governed by the following, incorporated fully by this reference:

- HIPAA Business Associate Agreement
- Terms and Conditions Addendum

## **Summary Scope of Services**

As described in the attached Scope of Services, our services will include the following:

CITY OF LAWTON, OKLAHOMA (the City)

- Audit Services for the year ended June 30, 2021
- Compilation Services of the SA&I Form 2643/2645 Annual Survey of City and Town Finances as of and for the year ended June 30, 2021

## **Engagement Fees**

The fees for our services will be \$149,900. Our quoted fees include estimated travel costs and fees for services from other professionals, if any, as well as an administrative fee of four (4) percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as software licensing, user access, and research tools, and similar expense items. The fees are broken down as follows:



	Fis	scal Year 2021
Financial audit for City Single audit State auditor and inspector form Landfill agreed-upon procedures Expenses	\$	117,000 18,000 3,000 1,900 10,000
Total	\$ <u></u>	149,900

Our fees are based upon the understanding that your personnel will be available to assist. Assistance from your personnel is expected to include:

- Preparing audit schedules to support all significant balance sheet and certain other accounts
- Responding to auditor inquiries
- Preparing confirmation and other letters
- Pulling selected invoices and other documents from files
- Helping to resolve any differences or exceptions noted

We will provide you with a detailed list of assistance and schedules required and the date such assistance and schedules are to be provided before the audit begins. All schedules should be provided in electronic form unless indicated otherwise.

Our timely completion of the audit depends on your timely and accurate schedule and analyses preparation and on the availability of your personnel to provide other assistance. If there are inaccuracies or delays in preparing this material (including the trial balance and supporting schedules and draft financial statements), or if we experience other assistance difficulties that add a significant amount of time to our work, our fees will increase. If these circumstances occur, we will promptly notify you to discuss alternative solutions and the impact on our fees.

Our hours and related fees to complete the audit are also based on the following assumptions:

- There will be no required restatements, and required audit adjustments, if any, will be limited in volume and complexity.
- Single audit major programs/clusters, as determined by the OMB Uniform Guidance requirements, will be limited to two. Additional major programs will generally require an additional \$6,500 per program.
- The City will provide the trial balance prior to fieldwork, currently anticipated to being in late October or early November 2021 and will make ready supporting schedules upon arrival.
- The City will provide a completed draft of the financial statements, notes to financial statements and supplemental schedules and other required information upon the conclusion of our final

fieldwork, currently anticipated to be late November 2021. The draft is expected to agree to the trial balances and documentation provided.

- Any assistance with the implementation of new significant accounting standards will be limited to general guidance and inquires.
- No significant growth in the operations of the City or additions of major funds, component units or joint ventures has occurred.

Our pricing for this engagement and our fee structure are based upon the expectation that our invoices will be paid promptly. Payment of our invoices is due upon receipt. We will issue progress billings during the course of our engagement.

## Additional Costs Related to Implementing New Standards

Assistance and additional time as a result of the adoption of new standards, such as those listed in the attached **New Auditing and Accounting Standards**, are not included within our standard engagement fees. These fees will be based on time expended and will vary based on the level of assistance and procedures required.

## **Contract Agreement**

Please sign and return this contract to indicate your acknowledgment of, and agreement with, the arrangements for our services including our respective responsibilities.

BKD, LLP

BKD,LIP

Acknowledged and agreed to as it relates to the entire contract, including the Scope of Services, HIPAA Business Associate Agreement and Terms and Conditions Addendum, on behalf of CITY OF LAWTON, OKLAHOMA.

BY \_\_\_\_\_\_Stan Booker, Mayor

DATE \_\_\_\_\_

BY

Michael Cleghorn, City Manager

DATE \_\_\_\_\_

ATTEST:

Traci L. Hushbeck, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

John Ratliff, City Attorney

## Scope of Services

The following apply for all services:

Assistance	Our timely completion of services depends on the assistance you provide us in accumulating information and responding to our inquiries. Inaccuracies or delays in providing this information or the responses may result in untimely filings or inability to meet other deadlines.
Responsibility for Outcomes	We may perform additional services for you that are not covered by this contract. You agree to assume full responsibility for the substantive outcomes of the contracted services and for any other services we may provide, including any findings that may result.
	You also acknowledge these services are adequate for your purposes, and you will establish and monitor the performance of these services to ensure they meet management's objectives. All decisions involving management responsibilities related to these services will be made by you, and you accept full responsibility for such decisions.
	We understand you have designated (or will) a management-level individual to be responsible and accountable for overseeing the performance of these services, and you have determined (or will) this individual is qualified to conduct such oversight.
Additional Costs Related to COVID- 19	Our fees do not consider additional efforts driven by the SARS-CoV-2 virus and the related COVID-19 (COVID-19) environment. Complexities and uncertainties related to various provisions of new laws and the continued issuance of interpretative and procedural guidance from federal agencies may affect our services. Fees related to COVID-19 activities will be billed based on time expended. Additional efforts or services may include:
	• Accounting and auditing issues such as going concern, other-than-temporary impairment of investments, collectability of receivables, inventory valuation, compliance with debt agreements, modification of lease terms, additional major programs subject to Single Audit, etc.

## **Audit Services**

We will audit the basic financial statements and related notes to the basic financial statements for the following entity with the objective of expressing an opinion on the financial statements; issuing a report on your compliance based on the audit of your financial statements; issuing a report on your compliance, in all material respects, with the types of compliance requirements described in the *U.S. Office of Management and Budget* (OMB) *Compliance Supplement* that are applicable to each of your major federal award programs; issuing a report on your internal control over compliance with the types of compliance requirements that are applicable to each of your major federal award programs; and issuing a report on your schedule of expenditures of federal awards:

CITY OF LAWTON, OKLAHOMA as of and for the year ended June 30, 2021

We will also express an opinion on whether the combining schedules, debt service coverage schedule and schedule of expenditures of federal awards ("supplementary information") are fairly stated, in all material respects, in relation to the financial statements as a whole.

We will also provide you with the following nonattest services:

- We will complete the auditee portion of the Form SF-SAC (Data Collection Form) through the Federal Audit Clearinghouse. We will not make the submission on your behalf. You will review a draft(s) of the submission prior to transmission and agree that you are solely responsible for approving the final draft for transmission as well as for the auditee submission and certification
- Preparing a draft of the single audit report, including the schedule of expenditures of federal awards

Cynthia Burns, director, is responsible for supervising the engagement and authorizing the signing of the report or reports.

We will issue a written report(s) upon completion of our audit(s), addressed to the following parties:

Entity Name	Party Name
CITY OF LAWTON, OKLAHOMA	City Council

You are responsible to distribute our reports to other officials who have legal oversight authority or those responsible for acting on audit findings and recommendations, and to others authorized to receive such reports.

The following apply for the audit services described above:

**Our Responsibilities** We will conduct our audit in accordance with auditing standards generally accepted in the United States of America (GAAS), the standards applicable to financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States and Title 2 U.S. *Code of Federal Regulations* (CFR) Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards require that we plan and perform the audit of the financial statements to obtain reasonable rather than absolute assurance about whether the financial statements are free of material misstatement, whether caused by fraud or error, and the audit of compliance with the types of compliance requirements described in the *OMB Compliance Supplement* applicable to each major federal award program to obtain reasonable rather than absolute assurance about whether noncompliance having a direct and material effect on a major federal award program occurred.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

Limitations & Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk that some material misstatements or noncompliance having a direct and material effect may not be detected exists, even though the audit is properly planned and performed in accordance with GAAS.

In making our risk assessments, we consider internal control relevant to your preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances but not for the purpose of expressing an opinion on the effectiveness of your internal control. However, we will communicate to you in writing any significant deficiencies or material weaknesses in internal control relevant to the audit of the financial statements that we identify during the audit. Also, in the future, procedures could become inadequate because of changes in conditions or deterioration in design or operation. Two or more people may also circumvent controls, or management may override the system.

We are available to perform additional procedures with regard to fraud detection and prevention at your request, subject to completion of our normal engagement acceptance procedures. The actual terms and fees of such an engagement would be documented in a separate contract to be signed by you and **BKD**, LLP.

**Opinion** We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, add an emphasis-of-matter or other matter paragraph(s), or withdraw from the engagement. If we discover conditions that may prohibit us from issuing a standard report, we will notify you as well. In such circumstances, further arrangements may be necessary to continue our engagement.

YourManagement and, if applicable, those charged with governance acknowledge and<br/>understand their responsibility for the following:

• For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America (or other basis if indicated in the contract)

٠	For the design, implementation, and maintenance of internal control relevant
	to the preparation and fair presentation of financial statements that are free
	from material misstatement, whether due to fraud or error

- For identifying and ensuring compliance with the laws, regulations, contracts, and grants applicable to your activities (including your federal award programs)
- To provide us with:
  - Access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters
  - Additional information that we may request for the purpose of the audit
  - Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures, or other engagements that satisfy relevant legal, regulatory, or contractual requirements or fully meet other reasonable user needs.

Written Confirmations Required	As part of our audit process, we will request from management and, if applicable, those charged with governance written confirmation acknowledging certain responsibilities outlined in this contract and confirming:
	<ul> <li>The availability of this information</li> <li>Certain representations made during the audits for all periods presented</li> <li>The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole</li> </ul>
Peer Review Report	<i>Government Auditing Standards</i> require that we provide you with a copy of our most recent external peer review report and any letter of comment, and any subsequent peer review reports and letters of comment received during the period of the contract. Our most recent peer review report accompanies this contract.
Supplementary Information	<ul><li>With regard to any supplementary information that we are engaged to report on:</li><li>Management is responsible for its preparation in accordance with applicable</li></ul>
	<ul> <li>criteria</li> <li>Management will provide certain written representations regarding the supplementary information at the conclusion of our engagement</li> <li>Management will include our report on this supplementary information in any document that contains this supplementary information and indicates we have reported on the supplementary information</li> <li>Management will make the supplementary information readily available to intended users if it is not presented with the audited financial statements</li> </ul>

Implementation of New Standards	Unless indicated in our contract, our services and related fees do not include substantive assistance beyond routine advice related to the adoption of new accounting and reporting standards. Should you require assistance, we will bill you at our standard hourly rates.
Assistance with Application of Standards	Transactions or changes in business may require you to apply existing standards differently each year, such as when business operations create new revenue streams, operations are discontinued, liquidity or operational challenges are encountered, business combinations are executed, etc. We welcome your questions throughout the year and are happy to provide general guidance and routine support; however, our engagement does not include substantive effort to assist you with applying standards to these circumstances, unless otherwise indicated in the contract.

## **Compilation Services**

We will compile, from information provided in the City's audited financial statements, Form SA&I 2643 – Annual Survey of City and Town Finances (the Form) of the City as of June 30, 2021, and for the year then ended in the prescribed format required by Oklahoma Statute, Section 17-105.1 of Title 11 and provided by the Office of the State Auditor and Inspector of the State of Oklahoma.

The objective of our engagement is to:

- Prepare the Form in accordance with the applicable financial reporting framework based on information provided by you
- Assist you in the preparation of the Form without undertaking to obtain or provide any assurance that there are no material modifications that should be made to the financial information contained in the prescribed form in order for them to be in accordance with the applicable financial reporting framework

Cynthia Burns, director, is responsible for supervising the engagement and authorizing the signing of the report or reports. This engagement will include documentation submission to applicable third parties. Your authorization for such submissions is required in the attachment to this contract.

The following apply for the compilation services described above:

Our Responsibilities	We will conduct our compilation engagement in accordance with Statements on Standards for Accounting and Review Services (SSARS) promulgated by the Accounting and Review Services Committee of the AICPA and comply with the AICPA's <i>Code of Professional Conduct</i> , including the ethical principles of integrity, objectivity, professional competence, and due care.
	We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. Accordingly, we will not express an opinion, a conclusion, nor provide any assurance on the financial information.
Limitations & Fraud	Our engagement cannot be relied upon to identify or disclose any financial information misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or noncompliance with laws and regulations. However, we will inform you of any such matters, if material, that come to our attention.
Report	As part of our engagement, we will issue a report that will state that we did not audit or review the Form and that, accordingly, we do not express an opinion, a conclusion, nor provide any assurance on it.
	You agree to include our accountant's compilation report in any document containing financial statements that indicates that we have performed a compilation engagement on such financial statements and, prior to inclusion of the report, to ask our permission to do so.

If, for any reason, we are unable to complete our engagement, we may decline to issue a report as a result of this engagement.

Your The engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare the Form in accordance with the applicable financial reporting framework and assist management in the presentation of the Form in accordance with the applicable financial reporting framework. Management has the following overall responsibilities that are fundamental to our undertaking the engagement in accordance with SSARS:

- The selection of the financial reporting framework to be applied in the preparation of the Form
- The preparation and fair presentation of the Form in accordance with the applicable financial reporting framework
- The design, implementation, and maintenance of internal controls relevant to the preparation and fair presentation of the Form that are free from material misstatement, whether due to fraud or error
- The prevention and detection of fraud
- To ensure that the entity complies with laws and regulations applicable to its activities
- The accuracy and completeness of records, documents, explanations, and other information, including significant judgments, provided by management for the engagement
- To provide us with:
  - Access to all information of which management is aware that is relevant to the preparation and fair presentation of the Form, such as records, documentation, and other matters
  - Additional information that we may request for the purpose of the engagement
  - Unrestricted access to persons within the entity from whom we determine it necessary to make inquiries

You retain responsibility for performing management responsibilities and making management decisions and for designating an individual with suitable skills, knowledge, and experience to oversee our preparation of your financial information. You are responsible for evaluating the adequacy and results of the services performed and accepting responsibility for such services. Accordingly, we will routinely submit to you journal entries, listings of transactions, or other entries or changes for your approval. You should review these items and contact us regarding any questions or changes that you wish to be made. If you approve of these entries, no response is necessary.

#### **Implementation of New Standards** Unless indicated in our contract, our services and related fees do not include substantive assistance beyond routine advice related to the adoption of new accounting and reporting standards. Should you require assistance, we will bill you at our standard hourly rates.

## Assistance with Application of Standards

Transactions or changes in business may require you to apply existing standards differently each year, such as when business operations create new revenue streams, operations are discontinued, liquidity or operational challenges are encountered, business combinations are executed, etc. We welcome your questions throughout the year and are happy to provide general guidance and routine support; however, our engagement does not include substantive effort to assist you with applying standards to these circumstances, unless otherwise indicated in the contract.

## New Auditing and Accounting Standards

## **Fiduciary Activities**

Governmental Accounting Standards Board Statement No. 84, *Fiduciary Activities*, is effective for fiscal years beginning after December 15, 2019, with retrospective application in the year the update is first applied. The Statement is expected to significantly change how entities evaluate and report fiduciary activities.

If the entity would like to early adopt or begin the process of preparing for the retrospective application of this Statement during the current year's audit, we can assist you with this process. We will need input and assistance from the accounting department throughout the process of implementation.

## Leases

Governmental Accounting Standards Board Statement No. 87, *Leases*, is effective for fiscal years beginning after June 15, 2021. Early application is encouraged.

Statement No. 87 establishes a single model for lease accounting based on the foundational principle that leases are financings of the right to use an underlying asset. Under this Statement, a lessee is required to recognize a lease liability and an intangible right-to-use lease asset, and a lessor is required to recognize a lease receivable and a deferred inflow of resources. We can assist you with the adoption by providing services which may include, but are not limited to:

- Assessing your readiness by assisting with the evaluation of your:
  - Current controls and policies
  - Current internal resources and system capabilities
- Assisting with changes required to adopt Statement No. 87, including:
  - Assisting with information gathering to develop an inventory of all lease agreements, service contracts, and other arrangements that may contain right-to-use lease assets
  - Recommending enhancements to existing controls and policies or suggesting new controls and policies to address Statement No. 87
  - Documenting any changes from your previous lease recognition and reporting methods
  - Drafting the required disclosures

The time it will take to perform the above assistance and our additional audit procedures relating to the adoption of the Statement, and any time to assist you with the adoption, may be minimized to the extent your personnel will be available to provide timely and accurate documentation and information as requested by us.

## HIPAA Business Associate Agreement

We agree not to use or disclose Protected Health Information ("PHI") obtained or produced in any form of media during the course of our work in a manner prohibited by the *Health Insurance Portability and Accountability Act of 1996* ("HIPAA"), as amended. We may use or disclose PHI for purposes of (a) performing our engagement, (b) management and administration of BKD, or (c) carrying out legal responsibilities of BKD. We will not further disclose information except as permitted or required by this contract or as required by law. When using or disclosing PHI in relation to this engagement, we will limit disclosures as required by HIPAA. We will not use PHI in any marketing activities in a manner that would violate HIPAA. We represent to you that we have implemented what we consider to be appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI as required for us as a business associate to comply with HIPAA.

With respect to your PHI, we will report to you any breach (as defined in 45 CFR 164.402), material security incident, or use or disclosure not authorized by this agreement and, to the extent practical, assist you in mitigating any harmful effects caused by breaches, material security incidents, or unauthorized uses or disclosures of which we become aware. To assist you in fulfilling your responsibility to notify impacted individuals and others of a breach involving unsecured PHI (as required under 45 CFR 164.400 et seq.), in this report we will identify to you, to the extent reasonably possible:

- 1. Each individual whose unsecured PHI was subject to the breach.
- 2. Any other available information you are required to include in your notification to such individual(s) or others under 45 CFR 164.404(c).

We agree that any material violation of these confidentiality provisions by us entitles you to terminate this engagement. Similarly, if we become aware of a violation of HIPAA by you that cannot be or is not timely cured, we may be obligated to terminate this engagement.

## BKD agrees to:

- 1. Upon their request, make available to the Secretary of Health and Human Services (HHS) our internal practices and books and records relating to the use and disclosure of PHI for purposes of determining your compliance with the Security and Privacy Rule, subject to any applicable legal privileges.
- 2. Make available information necessary for you to make an accounting of disclosures of PHI about an individual.
- 3. To the extent we maintain information that is part of a Designated Record Set, make available information necessary for you to respond to requests by individuals for access to PHI that is not in your possession but is considered part of a Designated Record Set.
- 4. Upon receipt of a written request from you, incorporate any amendments or corrections to PHI contained in our workpapers in accordance with the Security and Privacy Rule to the extent such PHI is considered part of a Designated Record Set.

For purposes of this agreement, the term "Security and Privacy Rule" refers to the final rules published to implement the Administrative Simplification provisions of the *Health Insurance Portability and Accountability Act of 1996*, specifically 45 CFR Parts 160 and 164. The terms "Protected Health Information" and "Designated Record Set" have the same meaning as defined in the Security and Privacy Rule.

At the conclusion or termination of this engagement, any PHI retained by us will be subject to the same safeguards as for active engagements.

We will obtain from any agents, including subcontractors, to whom we provide PHI received from you, or created or received by us on behalf of you, an agreement to the same restrictions and conditions that apply to us with respect to such PHI.

To the extent that any relevant provision of HIPAA is eliminated or held to be invalid by a court of competent jurisdiction, the corresponding portion of this agreement shall be deemed of no force and effect for any purpose. To the extent that any relevant provision of HIPAA is materially amended in a manner that changes the obligations of business associates or covered entities that are embodied in term(s) of this engagement, the Parties agree to negotiate in good faith appropriate amendment(s) to this engagement to give effect to such revised obligations. In addition, the terms of this engagement should be construed in light of any interpretation and/or guidance on HIPAA issued by HHS from time to time.

## **BKD, LLP Terms and Conditions Addendum**

#### GENERAL

1. Overview. This addendum describes BKD, LLP's standard terms and conditions ("Terms and Conditions") applicable to Our provision of services to the Client ("You"). The Terms and Conditions are a part of the contract between You and BKD, LLP. For the purposes of the Terms and Conditions, any reference to "Firm," "We," "Us," or "Our" is a reference to BKD, LLP ("BKD"), and any reference to "You" or "Your" is a reference to the party or parties that have engaged Us to provide services.

#### **BILLING, PAYMENT, & TERMINATION**

2. **Billing and Payment Terms.** We will bill You for Our professional fees and costs as outlined in Our contract. Interest will be charged on any unpaid balance after 30 days at the rate of 10 percent per annum, or as allowed by law at the earliest date thereafter, and highest applicable rate if less than 10 percent.

We reserve the right to suspend or terminate Our work for this engagement or any other engagement for nonpayment of fees. If Our work is suspended or terminated, You agree that We will not be responsible for Your failure to meet governmental and other deadlines, for any penalties or interest that may be assessed against You resulting from Your failure to meet such deadlines, and for any other damages (including but not limited to consequential, indirect, lost profits, or punitive damages) incurred as a result of the suspension or termination of Our services.

Our fees may increase if Our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. Our engagement fees do not include any time for post-engagement consultation with Your personnel or third parties, consent letters and related procedures for the use of Our reports in offering documents, inquiries from regulators, or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

- 3. **Billing Records.** If these services are determined to be within the scope and authority of Section 1861(v)(1)(I) of the Social Security Act, We agree to make available to the Secretary of Health and Human Services, or to the U.S. Comptroller General, or any of their duly authorized representatives, such of Our books, documents, and records that are necessary to certify the nature and extent of Our services, until the expiration of four (4) years after the furnishing of these services. This contract allows access to contracts of a similar nature between subcontractors and related organizations of the subcontractor, and to their books, documents, and records.
- 4. **Termination.** Either party may terminate these services in good faith at any time for any reason, including Your failure to comply with the terms of Our contract or as We determine professional standards require. Both parties must agree, in writing, to any future modifications or extensions. If services are terminated, You agree to pay BKD for time expended to date. In addition, You will be billed costs and fees for services from other professionals, if any, as well as an administrative fee of four (4) percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as software licensing, user access, and research tools, and similar expense items.

#### **DISPUTES & DISCLAIMERS**

- 5. **Mediation.** Any dispute arising out of or related to this engagement will, prior to resorting to litigation, be submitted for nonbinding mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. Unless the parties agree otherwise, the American Arbitration Association ("AAA") will administer any such mediation in accordance with its Commercial Mediation Rules. The mediator will be selected by agreement of the parties. If We cannot agree, a mediator shall be designated by the AAA. The mediation proceeding shall be confidential. Each party will bear its own costs in the mediation, but the fees and expenses of the mediator will be shared equally.
- 6. **Indemnification.** Unless disallowed by law or applicable professional standards, You agree to hold BKD harmless from any and all claims which arise from knowing misrepresentations to BKD, or the intentional withholding or concealment of information from BKD by Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. You also agree to indemnify BKD for any claims made against BKD by third parties, which arise from any wrongful actions of Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. You anagement or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. The provisions of this paragraph shall apply regardless of the nature of the claim.
- 7. Statute of Limitations. You agree that any claim or legal action arising out of or related to this contract and the services provided hereunder shall be commenced no more than one (1) year from the date of delivery of the work product to You or the termination of the services described herein (whichever is earlier), regardless of any statute of limitations prescribing a longer period of time for commencing such a claim under law. This time limitation shall apply regardless of whether BKD performs other or subsequent services for You. A claim is understood to be a demand for money or services, demand for mediation, or the service of suit based on a breach of this contract or the acts or omissions of BKD in performing the services provided herein. This provision shall not apply if enforcement is disallowed by applicable law or professional standards.
- 8. Limitation of Liability. You agree that BKD's liability, if any, arising out of or related to this contract and the services provided hereunder, shall be limited to the amount of the fees paid by You for services rendered under this contract. This limitation shall not apply to the extent it is finally, judicially determined that the liability resulted from the intentional or willful misconduct of BKD or if enforcement of this provision is disallowed by applicable law or professional standards.
- 9. Waiver of Certain Damages. In no event shall BKD be liable to You or a third party for any indirect, special, consequential, punitive, or exemplary damages, including but not limited to lost profits, loss of revenue, interruption, loss of use, damage to goodwill or reputation, regardless of whether You were advised of the possibility of such damages, regardless of whether such damages were reasonably foreseeable, and regardless of whether such damages arise under a theory of contract, tort, strict liability, or otherwise.
- 10. Severability. If any portion of this contract is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of the terms set forth in this contract.

- 11. Assignment. You acknowledge and agree that the terms and conditions of this contract shall be binding upon and inure to the parties' successors and assigns, subject to applicable laws and regulations.
- 12. **Disclaimer of Legal or Investment Advice.** Our services do not constitute legal or investment advice.

## RECORDS, WORKPAPERS, DELIVERABLES, & PROPRIETARY INFORMATION

- 13. **Maintenance of Records.** You agree to assume full responsibility for maintaining Your original data and records and that BKD has no responsibility to maintain this information. You agree You will not rely on BKD to provide hosting, electronic security, or backup services, *e.g.*, business continuity or disaster recovery services, to You unless separately engaged to do so. You understand that Your access to data, records, and information from BKD's servers, *i.e.*, BKDconnect, can be terminated at any time and You will not rely on using this to host Your data and records.
- 14. **BKD Workpapers.** Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, We may be requested by regulatory or enforcement bodies (including any State Board) to make certain workpapers available to them pursuant to authority granted by law or regulation. Unless We are prohibited from doing so by law or regulation, BKD will inform You of any such legal process or request. You agree We have no legal responsibility to You in the event We determine We are obligated to provide such documents or information. In addition, You agree to compensate or reimburse BKD for all costs and expenses, including reasonable attorney's fees, associated with BKD's compliance with requests or demands for its workpapers or other information related to this engagement, and for any testimony required by summons or subpoena.
- 15. Use of Deliverables and Drafts. You agree You will not modify any deliverables or drafts prepared by Us for internal use or for distribution to third parties. You also understand that We may on occasion send You documents marked as draft and understand that those are for Your review purpose only, should not be distributed in any way, and should be destroyed as soon as possible.

Our report on any financial statements must be associated only with the financial statements that were the subject of Our engagement. You may make copies of Our report, but only if the entire financial statements (exactly as attached to Our report, including related footnotes and supplementary information, as appropriate) are reproduced and distributed with Our report. You agree not to reproduce or associate Our report with any other financial statements, or portions thereof, that are not the subject of Our engagement.

16. **Proprietary Information.** You acknowledge that proprietary information, documents, materials, management techniques, and other intellectual property are a material source of the services We perform and were developed prior to Our association with You. Any new forms, software, documents, or intellectual property We develop during this engagement for Your use shall belong to Us, and You shall have the limited right to use them solely within Your business. All reports, templates, manuals, forms, checklists, questionnaires, letters, agreements, and other documents which We make available to You

are confidential and proprietary to Us. Neither You, nor any of Your agents, will copy, electronically store, reproduce, or make any such documents available to anyone other than Your personnel. This provision will apply to all materials whether in digital, "hard copy" format, or other medium.

#### REGULATORY

- 17. U.S. Securities and Exchange Commission ("SEC") and other Regulatory Bodies. Where We are providing services either for (a) an entity that is registered with the SEC, (b) an affiliate of such registrant, or (c) an entity or affiliate that is subject to rules, regulations, or standards beyond those of the American Institute of Certified Public Accountants ("AICPA"), any term of this contract that would be prohibited by or impair Our independence under applicable law or regulation shall not apply to the extent necessary only to avoid such prohibition or impairment.
- 18. **Offering Document.** You may wish to include Our report(s) on financial statements in an exempt offering document. You agree that any report, including any auditor's report, or reference to Our firm, will not be included in any such offering document without notifying us. Any agreement to perform work in connection with an exempt offering document, including providing agreement for the use of the auditor's report in the exempt offering document, will be a separate engagement.

Any exempt offering document issued by You with which We are not involved will clearly indicate that We are not involved by including a disclosure such as, "**BKD**, LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. **BKD**, LLP also has not performed any procedures relating to this offering document."

19. **BKD Not a Municipal Advisor.** BKD is not acting as Your municipal advisor under Section 15B of the *Securities Exchange Act* of 1934, as amended. As such, BKD is not recommending any action to You and does not owe You a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. You should discuss such matters with internal or external advisors and experts You deem appropriate before acting on any such information or material provided by BKD.

#### TECHNOLOGY

- 20. **Electronic Sites.** You agree to notify Us if You desire to place Our report(s), including any reports on Your financial statements, along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site. You recognize that We have no responsibility to review information contained in electronic sites.
- 21. Electronic Signatures and Counterparts. This contract and other documents to be delivered pursuant to this contract may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this

contract are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this contract or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the internet), by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software, will have the same effect as physical delivery of the paper document bearing an original signature.

22. Electronic Data Communication and Storage. In the interest of facilitating Our services to You, We may send data over the internet, temporarily store electronic data via computer software applications hosted remotely on the internet, or utilize cloud-based storage. Your confidential electronic data may be transmitted or stored using these methods. In using these data communication and storage methods, We employ measures designed to maintain data security. We use reasonable efforts to keep such communications and electronic data secure in accordance with Our obligations under applicable laws, regulations, and professional standards.

You recognize and accept that We have no control over the unauthorized interception or breach of any communications or electronic data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us. You consent to Our use of these electronic devices and applications during this engagement.

#### **OTHER MATTERS**

- 23. **Third-Party Service Providers.** BKD may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about You to third-party service providers in serving Your account. BKD maintains, however, internal policies, procedures, and safeguards to protect the confidentiality and security of Your information. In addition, BKD will secure confidentiality agreements with all service providers to maintain the confidentiality of Your information. If We are unable to secure an appropriate confidentiality agreement, You will be asked to consent prior to BKD sharing Your confidential information with the third-party service provider.
- 24. **Independent Contractor.** When providing services to You, We will be functioning as an independent contractor; and in no event will We or any of Our employees be an officer of You, nor will Our relationship be that of joint venturers, partners, employer and employee, principal and agent, or any similar relationship giving rise to a fiduciary duty to You.
- 25. Use of BKD Name. Any time You intend to reference BKD's firm name in any manner in any published materials, including on an electronic site, You agree to provide Us with draft materials for review and approval before publishing or posting such information.
- 26. Praxity. BKD is an independent accounting firm allowed to use the name "Praxity" in relation to its practice. BKD is not connected, however, by ownership with any other firm using the name "Praxity." BKD will be solely responsible for all work carried out on Your behalf. In deciding to engage BKD, You acknowledge that We have not represented to You that any other firm using the name "Praxity" will in any way be responsible for Our work.

- 27. **BKD Status as LLP.** BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD**, LLP have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, for any debts, obligations, or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract, or otherwise.
- 28. Entire Agreement. The contract, including this *Terms and Conditions Addendum* and any other attachments or addenda, encompasses the entire agreement between You and BKD and supersedes all previous understandings and agreements between the parties, whether oral or written. Any modification to the terms of this contract must be made in writing and signed by both You and BKD.
- 29. Force Majeure. We shall not be held responsible for any failure to fulfill Our obligations if such failure was caused by circumstances beyond Our control.



September 1, 2021

Ms. Kristen Huntley, Interim Director of Finance CITY OF LAWTON, OKLAHOMA 212 SW 9<sup>th</sup> Street Lawton, Oklahoma 73501

The following documents management's acknowledgement and understanding of their responsibilities related to the audit of the basic financial statements as mentioned in our engagement letter dated September 1, 2021.

Your	Management and, if applicable, those charged with governance acknowledge and
Responsibilities	understand their responsibility for the following:

- For the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America (or other basis if indicated in the contract)
- For the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error
- For identifying and ensuring compliance with the laws, regulations, contracts, and grants applicable to your activities (including your federal award programs)
- To provide us with:
  - Access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements such as records, documentation, and other matters
  - Additional information that we may request for the purpose of the audit
  - Unrestricted access to persons within the entity from whom we determine it necessary to obtain audit evidence

The results of our tests of compliance and internal control over financial reporting performed in connection with our audit of the financial statements may not fully meet the reasonable needs of report users. Management is responsible for obtaining audits, examinations, agreed-upon procedures, or other engagements that satisfy relevant legal, regulatory, or contractual requirements or fully meet other reasonable user needs.



Written Confirmations Required	As part of our audit process, we will request from management and, if applicable, those charged with governance written confirmation acknowledging certain responsibilities outlined in this contract and confirming:
	<ul> <li>The availability of this information</li> <li>Certain representations made during the audits for all periods presented</li> <li>The effects of any uncorrected misstatements, if any, resulting from errors or fraud aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements taken as a whole</li> </ul>
Supplementary Information	With regard to any supplementary information that we are engaged to report on:
	<ul> <li>Management is responsible for its preparation in accordance with applicable criteria</li> <li>Management will provide certain written representations regarding the supplementary information at the conclusion of our engagement</li> <li>Management will include our report on this supplementary information in any document that contains this supplementary information and indicates we have reported on the supplementary information</li> <li>Management will make the supplementary information readily available to intended users if it is not presented with the audited financial statements</li> </ul>

## **Other Engagement Matters and Limitations**

This addendum to our original contract serves to identify the additional services you have requested, but does not modify any other rights, restrictions, or agreements contained in that contract. These services will be performed based on the terms of that original agreement, except as otherwise indicated herein.

## **Contract Agreement**

Please sign and return this contract to indicate your acknowledgement of, and agreement with, the arrangements for our services.

BKD, LLP

BKD, LIP

Acknowledged and agreed to as it relates to the entire contract on behalf of CITY OF LAWTON, OKLAHOMA.

BY <u>Stan Booker, Mayor</u>

DATE \_\_\_\_\_

BY

Kristen Huntley, Interim Director of Finance

DATE

ATTEST:

Traci L. Hushbeck, City Clerk

APPROVED as to form and legality this day of September, 2021.

John Ratliff, City Attorney



September 1, 2021

Ms. Kristen Huntley, Interim Director of Finance CITY OF LAWTON, OKLAHOMA 212 SW 9<sup>th</sup> Street Lawton, Oklahoma

We appreciate your selection of **BKD**, LLP as your service provider and are pleased to confirm the arrangements of our engagement in this contract. Within the requirements of our professional standards and any duties owed to the public, regulatory, or other authorities, our goal is to provide you **Unmatched** Client Service<sup>®</sup>.

In addition to the terms set forth in this contract, including the detailed **Scope of Services**, our engagement is governed by the following, incorporated fully by this reference:

• Terms and Conditions Addendum

#### **Summary Scope of Services**

As described in the attached Scope of Services, our services will include the following:

#### CITY OF LAWTON, OKLAHOMA

• Agreed-Upon Procedure Services for the year ended June 30, 2021

## **Engagement Fees**

Our fees are included in the engagement letter of the City's financial statement audit dated August 26, 2021.

## **Contract Agreement**

Please sign and return this contract to indicate your acknowledgment of, and agreement with, the arrangements for our services including our respective responsibilities.

BKD, LLP

BKD,LIP



Acknowledged and agreed to as it relates to the entire contract, including the **Scope of Services** and **Terms and Conditions Addendum**, on behalf of CITY OF LAWTON, OKLAHOMA.

BY <u>Stanley Booker, Mayor</u>

DATE \_\_\_\_\_

BY Kristen Huntley, Interim Director of Finance

DATE \_\_\_\_\_

ATTEST:

Traci L. Hushbeck, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

John Ratliff, City Attorney

## Scope of Services

The following apply for all services:

Assistance	Our timely completion of services depends on the assistance you, or the responsible party(ies), provide us in accumulating information and responding to our inquiries. Inaccuracies or delays in providing this information or the responses may result in untimely filings or inability to meet other deadlines.
Responsibility for Outcomes	We may perform additional services for you that are not covered by this contract. You agree to assume full responsibility for the substantive outcomes of the contracted services and for any other services we may provide, including any findings that may result.
	You also acknowledge these services are adequate for your purposes, and you will establish and monitor the performance of these services to ensure they meet management's objectives. All decisions involving management responsibilities related to these services will be made by you, and you accept full responsibility for such decisions.
	We understand you have designated (or will) a management-level individual to be responsible and accountable for overseeing the performance of these services, and you have determined (or will) this individual is qualified to conduct such oversight.
Performance of Nonattest Services – SEC & PCAOB	Our performance of certain nonattest services may not be permitted under the SEC and PCAOB independence rules, to which we are <u>not</u> currently subject. Accordingly, if we perform services that are not permitted under those rules, you would not be permitted to use our reports in a registration statement or other document requiring compliance with those rules.
	You agree to inform us promptly if you are considering any future public offering of securities, use of our reports to comply with the Investment Advisers Act custody rule, or other action that would necessitate our future compliance with the independence rules of the SEC and PCAOB.

## Agreed-Upon Procedure Services

We will apply the procedures enumerated in the attachment to this contract to the City's compliance with Oklahoma Administrative Code Title 252: 515-27-82(h)(3) as of June 30, 2021. The management of CITY OF LAWTON is responsible for compliance with Oklahoma Administrative Code Title 252.

CITY OF LAWTON has agreed to these procedures and acknowledged that the procedures to be performed are appropriate for the intended purpose of assisting CITY of LAWTON with respect to the requirements of Oklahoma Administrative Code Title 252: 515-27-82(h)(3). Our responsibility is to carry out these procedures and report on our findings. It is understood that we make no representation regarding the appropriateness of these procedures for the purpose for which this report has been requested or for any other purpose. The procedures we will perform may not address all the items of interest to a user of our report and may not meet the needs of all users of our report and, as such, users are responsible for determining whether the procedures performed are appropriate for their purposes.

Our engagement to perform agreed-upon procedures is not designed to constitute an examination or a review of the subject matter, the objective of which is the expression of an opinion or conclusion, respectively, on the subject matter. Accordingly, the report will not express an opinion or a conclusion on the City's compliance with Oklahoma Administrative Code Title 252. If additional procedures were to be performed, other matters might have come to our attention. In addition, we have no obligation to perform any procedures beyond those listed in the attachment to this letter.

Cynthia Burns, director, is responsible for supervising the engagement and authorizing the signing of the report or reports.

We will issue a written report summarizing the procedures performed and the results of those procedures to the following:

## **Entity Name** CITY OF LAWTON

The report will be intended for use by and restricted to the use of the specified parties and our report will contain such restricted use language.

The following apply for the agreed-upon procedure services described above:

Our Responsibilities	We will conduct our agreed-upon procedures engagement in accordance with attestation standards established by the American Institute of Certified Public Accountants.
Limitations & Fraud	Our engagement will not include a detailed examination of all transactions and cannot be relied upon to disclose misstatements that might exist due to error, fraud, and illegal acts. However, we will inform you of any such matters, if material, that come to our attention.
	You accept that these procedures are not a substitute for management's responsibility to ensure controls are in place to prevent and detect theft and all other forms of fraud and illegal acts. Therefore, you agree we are not responsible for the cost of damages or any liability arising from errors or irregularities, fraud,

	defalcations, or any other form of noncompliance or theft, caused by current or former employees, directors, owners, or third parties.
Report	If, for any reason, we are unable to complete our procedures, we may decline to issue a report as a result of this engagement.
Management Responsibilities	<ul> <li>The management of CITY OF LAWTON is responsible for the following:</li> <li>Proper recording of transactions and preparation of financial statements</li> <li>Establishing and maintaining effective internal control over financial reporting</li> <li>Setting the proper tone</li> <li>Creating and maintaining a culture of honesty and high ethical standards</li> <li>Establishing appropriate controls to prevent, deter, and detect fraud and illegal acts</li> <li>Identifying and ensuring compliance with laws and regulations applicable to its activities</li> <li>Establishing and maintaining effective internal control over compliance</li> <li>Implementing and monitoring controls</li> </ul> To facilitate our engagement, management of CITY OF LAWTON is responsible for supplying us with all necessary information and for allowing us access to personnel to assist in performing our services. It should be understood that management is responsible for the accuracy and completeness of these items and for the subject matter.
Written Representations	At the conclusion of our engagement, we will request certain written representations from you about the subject matter information and related

matters.

## **BKD, LLP Terms and Conditions Addendum**

#### GENERAL

1. Overview. This addendum describes BKD, LLP's standard terms and conditions ("Terms and Conditions") applicable to Our provision of services to the Client ("You"). The Terms and Conditions are a part of the contract between You and BKD, LLP. For the purposes of the Terms and Conditions, any reference to "Firm," "We," "Us," or "Our" is a reference to BKD, LLP ("BKD"), and any reference to "You" or "Your" is a reference to the party or parties that have engaged Us to provide services.

#### **BILLING, PAYMENT, & TERMINATION**

2. **Billing and Payment Terms.** We will bill You for Our professional fees and costs as outlined in Our contract. Interest will be charged on any unpaid balance after 30 days at the rate of 10 percent per annum, or as allowed by law at the earliest date thereafter, and highest applicable rate if less than 10 percent.

We reserve the right to suspend or terminate Our work for this engagement or any other engagement for nonpayment of fees. If Our work is suspended or terminated, You agree that We will not be responsible for Your failure to meet governmental and other deadlines, for any penalties or interest that may be assessed against You resulting from Your failure to meet such deadlines, and for any other damages (including but not limited to consequential, indirect, lost profits, or punitive damages) incurred as a result of the suspension or termination of Our services.

Our fees may increase if Our duties or responsibilities are increased by rulemaking of any regulatory body or any additional new accounting or auditing standards. Our engagement fees do not include any time for post-engagement consultation with Your personnel or third parties, consent letters and related procedures for the use of Our reports in offering documents, inquiries from regulators, or testimony or deposition regarding any subpoena. Charges for such services will be billed separately.

- 3. **Billing Records.** If these services are determined to be within the scope and authority of Section 1861(v)(1)(I) of the Social Security Act, We agree to make available to the Secretary of Health and Human Services, or to the U.S. Comptroller General, or any of their duly authorized representatives, such of Our books, documents, and records that are necessary to certify the nature and extent of Our services, until the expiration of four (4) years after the furnishing of these services. This contract allows access to contracts of a similar nature between subcontractors and related organizations of the subcontractor, and to their books, documents, and records.
- 4. **Termination.** Either party may terminate these services in good faith at any time for any reason, including Your failure to comply with the terms of Our contract or as We determine professional standards require. Both parties must agree, in writing, to any future modifications or extensions. If services are terminated, You agree to pay BKD for time expended to date. In addition, You will be billed costs and fees for services from other professionals, if any, as well as an administrative fee of four (4) percent to cover items such as copies, postage and other delivery charges, supplies, technology-related costs such as software licensing, user access, and research tools, and similar expense items.

#### **DISPUTES & DISCLAIMERS**

- 5. **Mediation.** Any dispute arising out of or related to this engagement will, prior to resorting to litigation, be submitted for nonbinding mediation upon written request by either party. Both parties agree to try in good faith to settle the dispute in mediation. Unless the parties agree otherwise, the American Arbitration Association ("AAA") will administer any such mediation in accordance with its Commercial Mediation Rules. The mediator will be selected by agreement of the parties. If We cannot agree, a mediator shall be designated by the AAA. The mediation proceeding shall be confidential. Each party will bear its own costs in the mediation, but the fees and expenses of the mediator will be shared equally.
- 6. **Indemnification.** Unless disallowed by law or applicable professional standards, You agree to hold BKD harmless from any and all claims which arise from knowing misrepresentations to BKD, or the intentional withholding or concealment of information from BKD by Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. You also agree to indemnify BKD for any claims made against BKD by third parties, which arise from any wrongful actions of Your management or any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. You also agree to any partner, principal, shareholder, officer, director, member, employee, agent, or assign of Yours. The provisions of this paragraph shall apply regardless of the nature of the claim.
- 7. **Statute of Limitations.** You agree that any claim or legal action arising out of or related to this contract and the services provided hereunder shall be commenced no more than one (1) year from the date of delivery of the work product to You or the termination of the services described herein (whichever is earlier), regardless of any statute of limitations prescribing a longer period of time for commencing such a claim under law. This time limitation shall apply regardless of whether BKD performs other or subsequent services for You. A claim is understood to be a demand for money or services, demand for mediation, or the service of suit based on a breach of this contract or the acts or omissions of BKD in performing the services provided herein. This provision shall not apply if enforcement is disallowed by applicable law or professional standards.
- 8. Limitation of Liability. You agree that BKD's liability, if any, arising out of or related to this contract and the services provided hereunder, shall be limited to the amount of the fees paid by You for services rendered under this contract. This limitation shall not apply to the extent it is finally, judicially determined that the liability resulted from the intentional or willful misconduct of BKD or if enforcement of this provision is disallowed by applicable law or professional standards.
- 9. Waiver of Certain Damages. In no event shall BKD be liable to You or a third party for any indirect, special, consequential, punitive, or exemplary damages, including but not limited to lost profits, loss of revenue, interruption, loss of use, damage to goodwill or reputation, regardless of whether You were advised of the possibility of such damages, regardless of whether such damages were reasonably foreseeable, and regardless of whether such damages arise under a theory of contract, tort, strict liability, or otherwise.
- 10. Severability. If any portion of this contract is deemed invalid or unenforceable, said finding shall not operate to invalidate the remainder of the terms set forth in this contract.

- 11. Assignment. You acknowledge and agree that the terms and conditions of this contract shall be binding upon and inure to the parties' successors and assigns, subject to applicable laws and regulations.
- 12. **Disclaimer of Legal or Investment Advice.** Our services do not constitute legal or investment advice.

## RECORDS, WORKPAPERS, DELIVERABLES, & PROPRIETARY INFORMATION

- 13. **Maintenance of Records.** You agree to assume full responsibility for maintaining Your original data and records and that BKD has no responsibility to maintain this information. You agree You will not rely on BKD to provide hosting, electronic security, or backup services, *e.g.*, business continuity or disaster recovery services, to You unless separately engaged to do so. You understand that Your access to data, records, and information from BKD's servers, *i.e.*, BKDconnect, can be terminated at any time and You will not rely on using this to host Your data and records.
- 14. **BKD Workpapers.** Our workpapers and documentation retained in any form of media for this engagement are the property of BKD. We can be compelled to provide information under legal process. In addition, We may be requested by regulatory or enforcement bodies (including any State Board) to make certain workpapers available to them pursuant to authority granted by law or regulation. Unless We are prohibited from doing so by law or regulation, BKD will inform You of any such legal process or request. You agree We have no legal responsibility to You in the event We determine We are obligated to provide such documents or information. In addition, You agree to compensate or reimburse BKD for all costs and expenses, including reasonable attorney's fees, associated with BKD's compliance with requests or demands for its workpapers or other information related to this engagement, and for any testimony required by summons or subpoena.
- 15. Use of Deliverables and Drafts. You agree You will not modify any deliverables or drafts prepared by Us for internal use or for distribution to third parties. You also understand that We may on occasion send You documents marked as draft and understand that those are for Your review purpose only, should not be distributed in any way, and should be destroyed as soon as possible.

Our report on any financial statements must be associated only with the financial statements that were the subject of Our engagement. You may make copies of Our report, but only if the entire financial statements (exactly as attached to Our report, including related footnotes and supplementary information, as appropriate) are reproduced and distributed with Our report. You agree not to reproduce or associate Our report with any other financial statements, or portions thereof, that are not the subject of Our engagement.

16. **Proprietary Information.** You acknowledge that proprietary information, documents, materials, management techniques, and other intellectual property are a material source of the services We perform and were developed prior to Our association with You. Any new forms, software, documents, or intellectual property We develop during this engagement for Your use shall belong to Us, and You shall have the limited right to use them solely within Your business. All reports, templates, manuals, forms, checklists, questionnaires, letters, agreements, and other documents which We make available to You

are confidential and proprietary to Us. Neither You, nor any of Your agents, will copy, electronically store, reproduce, or make available to anyone other than Your personnel, any such documents. This provision will apply to all materials whether in digital, "hard copy" format, or other medium.

#### REGULATORY

- 17. U.S. Securities and Exchange Commission ("SEC") and other Regulatory Bodies. Where We are providing services either for (a) an entity that is registered with the SEC, (b) an affiliate of such registrant, or (c) an entity or affiliate that is subject to rules, regulations, or standards beyond those of the American Institute of Certified Public Accountants ("AICPA"), any term of this contract that would be prohibited by or impair Our independence under applicable law or regulation shall not apply to the extent necessary only to avoid such prohibition or impairment.
- 18. **Offering Document.** You may wish to include Our report(s) on financial statements in an exempt offering document. You agree that any report, including any auditor's report, or reference to Our firm, will not be included in any such offering document without notifying us. Any agreement to perform work in connection with an exempt offering document, including providing agreement for the use of the auditor's report in the exempt offering document, will be a separate engagement.

Any exempt offering document issued by You with which We are not involved will clearly indicate that We are not involved by including a disclosure such as, "**BKD**, LLP, our independent auditor, has not been engaged to perform and has not performed, since the date of its report included herein, any procedures on the financial statements addressed in that report. **BKD**, LLP also has not performed any procedures relating to this offering document."

19. **BKD Not a Municipal Advisor.** BKD is not acting as Your municipal advisor under Section 15B of the *Securities Exchange Act* of 1934, as amended. As such, BKD is not recommending any action to You and does not owe You a fiduciary duty with respect to any information or communications regarding municipal financial products or the issuance of municipal securities. You should discuss such matters with internal or external advisors and experts You deem appropriate before acting on any such information or material provided by BKD.

#### TECHNOLOGY

- 20. **Electronic Sites.** You agree to notify Us if You desire to place Our report(s), including any reports on Your financial statements, along with other information, such as a report by management or those charged with governance on operations, financial summaries or highlights, financial ratios, etc., on an electronic site. You recognize that We have no responsibility to review information contained in electronic sites.
- 21. Electronic Signatures and Counterparts. This contract and other documents to be delivered pursuant to this contract may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the same agreement or document, and will be effective when counterparts have been signed by each of the parties and delivered to the other parties. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this

contract are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of this contract or any other document contemplated hereby, bearing an original manual or electronic signature by facsimile transmission (including a facsimile delivered via the internet), by electronic mail in "portable document format" (".pdf") or similar format intended to preserve the original graphic and pictorial appearance of a document, or through the use of electronic signature software will have the same effect as physical delivery of the paper document bearing an original signature.

22. Electronic Data Communication and Storage. In the interest of facilitating Our services to You, We may send data over the internet, temporarily store electronic data via computer software applications hosted remotely on the internet, or utilize cloud-based storage. Your confidential electronic data may be transmitted or stored using these methods. In using these data communication and storage methods, We employ measures designed to maintain data security. We use reasonable efforts to keep such communications and electronic data secure in accordance with Our obligations under applicable laws, regulations, and professional standards.

You recognize and accept that We have no control over the unauthorized interception or breach of any communications or electronic data once it has been transmitted or if it has been subject to unauthorized access while stored, notwithstanding all reasonable security measures employed by us. You consent to Our use of these electronic devices and applications during this engagement.

#### **OTHER MATTERS**

- 23. Third-Party Service Providers. BKD may from time to time utilize third-party service providers, *e.g.*, domestic software processors or legal counsel, or disclose confidential information about You to third-party service providers in serving Your account. BKD maintains, however, internal policies, procedures, and safeguards to protect the confidentiality and security of Your information. In addition, BKD will secure confidentiality agreements with all service providers to maintain the confidentiality of Your information. If We are unable to secure an appropriate confidentiality agreement, You will be asked to consent prior to BKD sharing Your confidential information with the third-party service provider.
- 24. **Independent Contractor.** When providing services to You, We will be functioning as an independent contractor; and in no event will We or any of Our employees be an officer of You, nor will Our relationship be that of joint venturers, partners, employer and employee, principal and agent, or any similar relationship giving rise to a fiduciary duty to You.
- 25. Use of BKD Name. Any time You intend to reference BKD's firm name in any manner in any published materials, including on an electronic site, You agree to provide Us with draft materials for review and approval before publishing or posting such information.
- 26. Praxity. BKD is an independent accounting firm allowed to use the name "Praxity" in relation to its practice. BKD is not connected, however, by ownership with any other firm using the name "Praxity." BKD will be solely responsible for all work carried out on Your behalf. In deciding to engage BKD, You acknowledge that We have not represented to You that any other firm using the name "Praxity" will in any way be responsible for Our work.

- 27. **BKD Status as LLP.** BKD is a registered limited liability partnership under Missouri law. Under applicable professional standards, partners of **BKD**, LLP have the same responsibilities as do partners in a general accounting and consulting partnership with respect to conformance by themselves and other professionals in BKD with their professional and ethical obligations. However, partners in a registered limited liability partnership do not have individual civil liability, directly or indirectly, for any debts, obligations, or liabilities of or chargeable to the registered limited liability partnership or each other, whether arising in tort, contract, or otherwise.
- 28. Entire Agreement. The contract, including this *Terms and Conditions Addendum* and any other attachments or addenda, encompasses the entire agreement between You and BKD and supersedes all previous understandings and agreements between the parties, whether oral or written. Any modification to the terms of this contract must be made in writing and signed by both You and BKD.
- 29. Force Majeure. We shall not be held responsible for any failure to fulfill Our obligations if such failure was caused by circumstances beyond Our control.

### City of Lawton, Oklahoma Schedule of Agreed-upon Procedures

- 1. Agree the City's estimated construction and demolition landfill closure and post-closure costs reported in the June 30, 2021 basic financial statements to correspondence from the Oklahoma Department of Environmental Quality (ODEQ).
- Using information obtained from the Standard and Poor website, determine whether the City was in compliance with the bond ratings required by OAC Title 252: 515-27-82 local government financial test, item (d)(1). If not, using information from the most recent audited financial statements, recalculate the City's required financial ratios as per Oklahoma Administrative Code (OAC) Title 252: 515-27-82 local government financial test, items (d)(2)(A) and (B) as of June 30, 2021.
- 3. Read the independent auditor's report on the City's basic financial statements for the year ended June 30, 2021, to determine the financial statements the City prepared are in conformity with accounting principles generally accepted in the Unites States of America.
- 4. Determine whether the City was in default at June 30, 2021, on any of its general obligation debt by observing debt service transactions in the underlying financial statements and making inquiries of city personnel and bond trustees.
- 5. Determine whether the City operated at a deficit financial condition as defined in OAC Title 252: 515-27-82 local government financial test, item (b)(3) for the last two fiscal years ended June 30, 2021 and 2020, by reading the audited basic financial statements for those two years.
- 6. Determine whether the City received an unmodified opinion on its latest basic financial statements as of and for the year ended June 30, 2021, by reading the relevant independent auditor's report.
- 7. Recalculate and verify that the total environmental obligations of the City do not exceed 43% of the City's total annual revenues as defined by OAC Title 252: 515-27-82 local government financial test, item (c)(2) for the year ended June 30, 2021, by reading the City's audited basic financial statements.
- 8. Observe whether the current municipal finance test materials have been placed in the City's landfill operating records. Management will ensure a reference to the closure and post-closure costs will be assured through the financial tests and will be included in the City's audited financial statements.



File #: 21-490

Agenda Date: 9/28/2021

Agenda No: 7.

#### **ITEM TITLE:**

Consider approving a resolution that ratifies the National Incident Management System (NIMS) as the continuing incident management system at the City of Lawton and designating Comanche County Emergency Management Director Clint Langford as the new Local Point of Contact (LPOC) for NIMS compliance. **INITIATOR:** Dewayne Burk, Deputy City Manager

STAFF INFORMATION SOURCE: Comanche County Emergency Management Director Clint Langford

**BACKGROUND:** The President in Homeland Security Directive (HSPD)-5, directed the Secretary of the Department of Homeland Security to develop and administer a National Incident Management System (NIMS), which would provide a consistent nationwide approach for Federal, State, local, and tribal governments to work together more effectively and efficiently to prevent, prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity.

EXHIBIT: Resolution No. 21-\_\_\_\_

**KEY ISSUES:** N/A

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Approve a resolution that ratifies the National Incident Management System (NIMS) as the continuing incident management system at the City of Lawton and designate Comanche County Emergency Management Director Clint Langford as the new Local Point of Contact (LPOC) for NIMS compliance.

#### RESOLUTION NO. 21-\_\_\_\_

#### A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF LAWTON, OKLAHOMA, RATIFYING THE NATIONAL INCIDENT MANAGEMENT SYSTEM (NIMS) AS THE CONTINUING STANDARD FOR INCIDENT MANAGEMENT IN THE CITY OF LAWTON, OKLAHOMA, AND DESIGNATING THE COMANCHE COUNTY EMERGENCY MANAGEMENT DIRECTOR, MR. CLINT LANGFORD, AS THE NEW LOCAL POINT OF CONTACT (LPOC) FOR NIMS COMPLIANCE.

**WHEREAS**, On Feb. 28, 2003, pursuant to the Homeland Security Act of 2002, the President of the United States issued Homeland Security Directive (HSPD)-5, for the purpose of enhancing the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system; and

**WHEREAS**, The Secretary of Homeland Security is directed and empowered to coordinate with State and local governments to ensure adequate planning, equipment, training, and exercise activities, and to provide assistance to State and local governments to develop all-hazards plans and capabilities, including those of greatest importance to the security of the United States, and will ensure that State, local, and Federal plans are compatible; and

WHEREAS, In an effort to facilitate the most efficient and effective incident management protocol it is necessary for Federal, State, local, and tribal entities to participate, implement and employ standardized terminology, organizational structures, interoperable communications, consolidated action plans, unified command structures, uniform personnel qualification standards, uniform standards for planning, training, and exercising, comprehensive resource management, and designated incident facilities during emergencies or disasters; and

**WHEREAS**, the standardized NIMS procedures that have been adopted for managing personnel, communications, facilities and resources will improve the City's eligibility to apply for and expend federal grant funding to enhance local and state agency readiness, maintain first responder safety resources, and streamline current incident management processes; and

**WHEREAS**, the NIMS has been adopted and is currently incorporated within the City's operational activities and emergency response protocols, and recognizes the requirement to designate a specific individual need who will serve as the Local Point of Contact (LPOC) for the purpose of coordinating NIMS activities and to ensure NIMS compliance; and

**NOW, THEREFORE, BE IT RESOLVED** by the Mayor and City Council of the City of Lawton, Oklahoma, that the National Incident Management System (NIMS) continues to be recognized as the current standard for incident management in the City of Lawton, Oklahoma.

**BE IT FURTHER RESOLVED** that the Comanche County Emergency Management Director, Mr. Clint Langford, is hereby designated as the Local Point of Contact (LPOC) for continuing NIMS compliance.

**PASSED, APPROVED AND ADOPTED** this 14th day of September, 2021, by the Mayor and City Council of the City of Lawton, Oklahoma.

Stanley Booker, Mayor

ATTEST:

Traci Hushbeck, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

John Ratliff, City Attorney



File #: 21-487

Agenda Date: 9/28/2021

Agenda No: 8.

#### **ITEM TITLE:**

Consider directing staff to review the current approval and siting process of memorials and tributes such as statues, monuments, pavilions, gardens, fountains, trees, etc. and to develop a formal process for the endorsement and siting of future requests per the Council's direction

**INITIATOR:** Jeffery Temple, Parks & Recreation Director

STAFF INFORMATION SOURCE: Keith Neitzke, Parks Superintendent

**BACKGROUND:** The City of Lawton has several memorials and tributes in various parks and open areas such as those for the various wars, special interest tributes or a tribute to a loved one. These are very respectful ways to recognize and remember important people and events throughout history. Memorials and tributes are found in many of our City parks such as the Korean War Memorial and the Vietnam Memorial which are sited in Elmer Thomas park. However, these have been approved over many years on an individual basis with no master plan or without the siting being considered in relation to future requests. Staff would like to establish a proper procedure for applications and/or requests for future memorial projects and to recommend options for a dedicated area for future requests. Intent is to determine the most effective way to honor and respect each memorial as well as the best siting.

**EXHIBIT:** None

**KEY ISSUES:** None

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Direct staff to initiate the development of a formal process for the endorsement and possible siting of future memorial & tribute requests per the Council's direction to present for Council approval



File #: 21-382

Agenda Date:

Agenda No: 9.

#### **ITEM TITLE:**

Consider accepting a Temporary Construction Easement from The Jim & Kay Johnson Trust for right of way needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s).

**INITIATOR:** Director of Engineering, Joseph Painter

STAFF INFORMATION SOURCE: Director of Engineering, Joseph Painter

**BACKGROUND:** This tract is located at 6950 W. Gore Blvd, Lawton, OK 73505, and is one of several tracts needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08. The tract consists of approximately 0.001 acres of new Temporary Construction Easement. The owner has elected to donate the right-of-way to The City of Lawton for project West Gore Blvd from 67<sup>th</sup> to 82<sup>nd</sup> streets. Staff recommends that Council accept a Temporary Construction Easement.

**EXHIBIT:** Document is on file in the City Clerk's office.

**KEY ISSUES:** NA

FUNDING SOURCE: 2015 CIP

**STAFF RECOMMENDED COUNCIL ACTION:** Accept a Temporary Construction Easement from The Jim & Kay Johnson Trust for right of way needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s).



# City of Lawton

Commentary

File #: 21-489

Agenda Date: 9/28/2021

Agenda No: 10.

#### **ITEM TITLE:**

Consider accepting a Permanent Roadway and Utility Easement from Michael Todd Wyatt, Mitchell Scott Wyatt, Johnna Kay Parks, and Shana Leigh Wyatt Horton, for right of way needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s) and authorizing payment for the same.

**INITIATOR:** Director of Engineering, Joseph Painter

#### **STAFF INFORMATION SOURCE:** Director of Engineering, Joseph Painter

**BACKGROUND:** This tract is one of several tracts needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08. The tract consists of approximately 0.258 acres of new Permanent Roadway and Utility Easement. After negotiations with the property owner, the amount agreed upon was \$9,290.00. Staff recommends that Council accept a Permanent Roadway and Utility Easement and authorize payment.

**EXHIBIT:** Document is on file in the City Clerk's office.

**KEY ISSUES:** NA

FUNDING SOURCE: 2015 CIP

**STAFF RECOMMENDED COUNCIL ACTION:** Accept a Permanent Roadway and Utility Easement from Michael Todd Wyatt, Mitchell Scott Wyatt, Johnna Kay Parks, and Shana Leigh Wyatt Horton, for right of way needed for the W. Gore Blvd Reconstruction from SW 67<sup>th</sup> ST to SW 82<sup>nd</sup> ST, Project #2012-08, and authorizing the Mayor and City Clerk to execute the document(s) and authorizing payment of \$9,290.00 for the same.



File #: 21-483

Agenda Date: 9/28/2021

Agenda No: 11.

#### ITEM TITLE:

Consider approving Amendment No. 1 to the Contract for Right-of-Way Acquisition Services - West Gore Blvd. (82<sup>nd</sup> ST to 67<sup>th</sup> ST) - Project No. 2012-08 with Smith-Roberts Land Services, Inc. **INITIATOR:** Director of Engineering, Joseph Painter, P.E.

**STAFF INFORMATION SOURCE:** Director of Engineering, Joseph Painter, P.E.

**BACKGROUND:** On July 28, 2020, Council awarded an agreement with Smith-Roberts Land Services, Inc. for the right-of-way services for the West Gore Blvd. (82<sup>nd</sup> ST to 67<sup>th</sup> ST), Project No. 2012-08, in the amount of \$98,600 and authorized the Mayor and City Clerk to execute the agreement. This amendment no. 1 includes appraisal reviews of seven (7) different parcels and appraisal acquisition and preparation of easement documents of one (1) additional parcel for the City's use in right-of-way/right-of-entry negotiations for the project. The cost for this amendment is \$12,200. The revised cost for the contract is \$110,800.

**EXHIBIT:** Amendment No. 1 to the Contract for Right-of-Way Acquisition Services - West Gore Blvd. (82<sup>nd</sup> ST To 67 <sup>th</sup> ST), Project No. 2012-08

KEY ISSUES: None

#### FUNDING SOURCE: 2015 CIP

**STAFF RECOMMENDED COUNCIL ACTION:** Approve Amendment No. 1 to the Contract for Right-of-Way Acquisition Services - West Gore Blvd. (82<sup>nd</sup> ST to 67<sup>th</sup> ST) - Project No. 2012-08 with Smith-Roberts Land Services, Inc. in the amount of \$12,200.

#### AMENDMENT No. 1 TO THE CONTRACT FOR RIGHT-OF-WAY ACQUISITION SERVICES – WEST GORE BLVD. (82<sup>ND</sup> ST TO 67<sup>TH</sup> ST) PROJECT NO. 2012-08

#### EASEMENT DOCUMENTS' PREPARATION

This Amendment No. 1 is an agreement made as of the  $28^{th}$  day of <u>September</u> in the year two-thousand and twenty-one by and between the City of Lawton, Oklahoma, a Municipal Corporation, hereinafter referred to as "Owner" and Smith-Roberts Land Services, Inc., hereinafter referred to as "Right-of-Way Consultant" amending the original agreement for the right-of-way services dated July 28, 2020, for the West Gore Blvd. (82<sup>nd</sup> ST to 67<sup>th</sup> ST), Project No. 2012-08 between the said parties.

The OWNER now intends to include the services for Appraisals' Review and Easement Acquisition for the City's use in right-of-way/right-of-entry negotiations for the West Gore Blvd.

(82<sup>nd</sup> ST to 67<sup>th</sup> ST), Project No. 2012-08.

Now, therefore, that in consideration of the covenants, agreements, and representations hereinafter set forth, it is mutually agreed by the parties hereto that the agreement entered into by the parties on July 28, 2020, is amended as follows:

- a) The Right-of-Way Consultant shall provide services to incorporate appraisal reviews of Seven (7) different parcels and appraisal acquisition and preparation of easement documents of One (1) additional parcel for the City's use in right-ofway/right-of-entry negotiations for the West Gore Blvd. (82<sup>nd</sup> ST to 67<sup>th</sup> ST), Project No. 2012-08.
- b) The Owner shall compensate the Right-of-Way Consultant in accordance with the attached Amendment Request for this additional service as identified in the attachment 'A' not to exceed <u>Twelve Thousand and Two-Hundred Dollars</u> (\$12,200)
- c) This amendment No. 1 will be deemed a part of, and be subject to, all terms and conditions of the existing agreement. Except as modified above, the Existing Agreement will remain in full effect for this amendment.

**IN WITNESS WHEREOF.** Owner and Right-of-way Consultant have executed this agreement.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

# **THE CITY OF LAWTON, OKLAHOMA** A Municipal Corporation

**Smith-Roberts Land Services, INC.** Right-of-Way Consultant

ву: Мани.

ATTEST:

Traci Hushbeck, City Clerk

Stan Booker, Mayor

**ATTEST:** 

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_ 2021.

City Attorney



4832 Richmond Square • Oklahoma City, OK 73118 (405) 843-7500 • Fax (405) 840-0242

# Attachment A

May 25, 2021

Mr. Joseph Painter, PE Director of Engineering City of Lawton 2100 SW Sixth Street Lawton, OK 73501 405.919.2350 joseph.painter@lawtonok.gov

#### RE: Amendment Request

Right of Way (ROW) Services for West Gore Blvd. (82nd St. to 67th St.) J/P No. 19144(04), Project No. STP-116B(059), Comanche County

Dear Mr. Painter:

As you are aware, there have been design changes and changes the demands of the project regarding right of way services for the West Gore Boulevard (82nd St. to 67th St.) project as it has progressed. Due to these changes, we are requesting an amendment in the amount of twelve thousand two hundred dollars (\$12,200) to increase our fees for this project. The changes and affected fees are outlined below:

# City of Lawton: W. Gore Blvd (82nd St. to 67th St.) Comanche County PROJECT NO. JP 19144(04) / STP-116B(059)

Original Fees \$	98,600.00

9/4/2020	Add / Remove	Service		Fee	Parcel Affected
	Add	Review Appraisal	\$	850.00	1
	Add	Review Appraisal	\$	850.00	2
	Add	Review Appraisal	\$	850.00	4
	Add	Review Appraisal	\$	850.00	6
	Add	Review Appraisal	\$	850.00	7
	Add	Review Appraisal	\$	850.00	8
		9/4/20 Total Increase	\$	5,100.00	
		9/4/20 Total Fees	<b>\$</b> 1	103,700.00	

(877) 919-7500 • www.srls.net

4832 Richmond Square • Oklahoma City, OK 73118 (405) 843-7500 • Fax (405) 840-0242

1/7/2021	Add / Remove	Service		Fee	Parcel Affected
	Add	Appraisal PM	\$	350.00	19.1
	Add	Appraisal Acquisition	\$	2,700.00	19.1
	Add	Appraisal	\$	3,200.00	19.1
	Add	Review Appraisal	\$	850.00	19.1
	Remove	Temp Driveway Acquisition	\$	(700.00)	19.1
	Add	Appraisal PM	\$	350.00	21
	Add	Appraisal Acquisition	\$	2,700.00	21
	Add	Appraisal	\$	3,200.00	21
	Add	Review Appraisal	\$	850.00	21
	Remove	Waiver Acquisition	\$	(2,850.00)	21
	Remove	Waiver PM	\$	(700.00)	22
	Remove	Waiver Acquisition	\$	(2,850.00)	22
		1/7/21 Total Increase	\$	7,100.00	
5/25/2021		TOTAL FEES	\$ ·	110,800.00	

Please let me know if you have any questions or need further information.

Sincerely,

Mana Julgen Mark W. Bilyeu

President

MWB/dlh



File #: 21-497

Agenda Date: 9/28/2021

Agenda No: 12.

#### **ITEM TITLE:**

Consider approving plans and specifications for the Larrance Street Drainage Improvements (SW B Ave to SW D Ave) - Project #2014-06A and authorizing staff to advertise for bids. **INITIATOR:** Director of Engineering, Joseph Painter, P.E.

**INITIATOR:** Director of Engineering, Joseph Painter, P.E.

**STAFF INFORMATION SOURCE:** Director of Engineering, Joseph Painter, P.E.

**BACKGROUND:** The Larrance Street Drainage Improvements (SW B Ave to SW D Ave) - Project #2014-06A includes the construction of storm drains, concrete pavement, ditch grading and surface restorations on east side of Larrance ST from SW B Ave to SW D Ave, as shown on the plans and specifications of the project on file in the Engineering Division office. This project will help mitigate the flooding issues by the Larrance ST and B Ave intersection. The Engineer's Estimated Construction Cost for this project is \$318,710. The contract time of the project is specified as 60 calendar days.

EXHIBIT: Plans and specifications are on file in the Engineering Division Office

KEY ISSUES: None

FUNDING SOURCE: 2012 and 2016 CIP

**STAFF RECOMMENDED COUNCIL ACTION:** Approve plans and specifications for the Larrance Street Drainage Improvements (SW B Ave to SW D Ave) - Project #2014-06A and authorizing staff to advertise for bids.



File #: 21-506

Agenda Date: 9/28/2021

Agenda No: 13.

#### **ITEM TITLE:**

Approve Amendment No. 1 for the Project No. 2020-04A City Hall Renovation with MA+ Architecture, LLC. **INITIATOR:** Director of Engineering, Joseph Painter

#### STAFF INFORMATION SOURCE: Director of Engineering, Joseph Painter

**BACKGROUND:** Council approved professional services contract with MA+ Architecture, LLC to provide design services for City Hall Renovation Project 2020-04A on December 8, 2020. The initial phase of the project consisted of a Preliminary Report (Schematic Design) for completing the renovation of City Hall. The floors to be completed are the Third Floor North Wing (approximately 9,800 square feet), Third Floor South Wing (approximately 9,100 square feet) and Second Floor South Wing (approximately 8,700 square feet). Existing areas that have been renovated in the past were reviewed to see if those spaces can accommodate existing or new City offices. Completion of the parking lot on the west side as well as sidewalk, landscaping and lighting for the building surround were considered as well. Meetings were held with City staff to determine the needs and best location for City offices throughout the building.

On July 13, 2021, MA+ Architecture presented the schematic design information at the meeting and Council approved Base Bid plus Alternate Package 1 in the amount of \$6,734,087.13. Estimated Costs includes Construction costs, Architect and Engineer (A&E) fees and Furniture, Fixtures and Equipment (FF&E) costs for the project are broken down into the Base Bid plus Alternate Package 1.

The contract above only included Preliminary Report (Schematic Design). This amendment will further include Design Development (DD), Construction Documents (CD), Bidding (B) and Construction Administration (CA) into the existing contract in the amount of \$328,515.00. This includes costs for architectural and interior design services, and also includes mechanical, electrical and plumbing engineering, civil engineering, landscape architecture and structural engineering for DD only. Once the floor loading study is complete by the structural engineer in DD then a fee for the remaining structural engineering will be issued as an additional fee. Testing is also not included in the DD fee as it will be issued after the floor loading study is complete. The total cost for each phase is as follows:

Design Development	\$80,305.00
Construction Documents	\$136,700.00
Bidding	\$22,600.00
Construction Administration	\$88,910.00
Total	\$328,515.00

EXHIBIT: Project No. 2020-04A City Hall Renovation - Amendment No.1

#### **KEY ISSUES:** N/A

#### **FUNDING SOURCE:** 2019 CIP

**STAFF RECOMMENDED COUNCIL ACTION:** Approve Project No.2020-04A City Hall Renovation Amendment No. 1 with MA+ Architecture, LLC.

# **AIA** Document G802<sup>°</sup> – 2017

### Amendment to the Professional Services Agreement

<b>PROJECT</b> : (name and address)	AGREEMENT INFORMATION: Date: December 10, 2020	AMENDMENT INFORMATION: Amendment Number: 001
Renovation of Lawton City Offices		
Lawton City Hall		Date: August 31, 2021
212 SW 9th St.		
Lawton, OK 73501		
OWNER: (name and address)	<b>ARCHITECT:</b> (name and address)	

OWNER: (name and address) City of Lawton 212 SW 9th St. Lawton, OK 73501 ARCHITECT: (name and address) MA+ Architecture, LLC 4000 N. Classen Blvd., Suite 100N Oklahoma City, OK 73118

The Owner and Architect amend the Agreement as follows: Amendment to AIA Document B101-2017, Standard Form Agreement Between Owner and Architect for the Renovation of Lawton City Offices at Lawton City Hall approved December 10, 2020.

The Architect's compensation and schedule shall be adjusted as follows:

Compensation Adjustment: See attached fee proposal dated August 31, 2021.

Schedule Adjustment: To be determined.

SIGNATURES:

MA+ Architecture, LLC ARCHITECT (Firm name)

SIGNATURE Gary L. Armbruster, AIA, ALEP Principal PRINTED NAME AND TITLE 08-31-2021

DATE

City of Lawton OWNER (Firm name)

SIGNATURE Stanley Booker Mayor PRINTED NAME AND TITLE

DATE

APPROVED as to form and legality this \_\_\_\_\_day of \_\_\_\_\_\_, 2021

JOHN RATLIFF, CITY ATTORNEY

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File #: 21-508

Agenda Date: 9/28/2021

Agenda No: 14.

#### **ITEM TITLE:**

Consider extending the current contracts with BlueCross BlueShield (BCBS) for the purpose of providing health care insurance coverage for City of Lawton retirees over the age of 65 for an additional year, as authorized by the contract.

INITIATOR: Human Resources Director, Craig Akard

#### STAFF INFORMATION SOURCE: Human Resources Director, Craig Akard

**BACKGROUND:** The City of Lawton is currently under contract through December 31, 2021 for Retiree over 65 health insurance with BCBS. The proposed contract extension includes an overall premium decrease. BCBS has agreed to an extension with the same terms and conditions that are current in effect. The premium decreases are depicted below:

Stop Loss	Current	New	
	Premium Rates	Premium Rates	
Medicare Supplement Plan F	\$227.55	\$222.00	
Rx PDP Plan	\$226.20	\$218.00	
TOTAL	\$453.75	\$440.00	

EXHIBIT: Contracts are on File in the City Clerk's Office

**KEY ISSUES:** Does the City of Lawton wish to extend the contracts with BlueCross BlueShield for an additional year to include the overall premium decrease?

FUNDING SOURCE: N/A - Premiums are paid solely by the retiree

**STAFF RECOMMENDED COUNCIL ACTION:** Approve extending the current contracts with BlueCross BlueShield for the purpose of providing health care insurance coverage for eligible City of Lawton retirees over the age of 65 for an additional year, as authorized by the contracts.



File #: 21-510

Agenda Date: 9/28/2021

Agenda No: 15.

#### **ITEM TITLE:**

Consider extending contract for (RFPCL16-034) Banking Services to IBC Bank of Lawton, OK for an additional 90 days. **INITIATOR:** Kristin Huntley, Interim Finance Director

STAFF INFORMATION SOURCE: Maegan Dowlen, Contract Administrator

**BACKGROUND:** The contract (RFPCL16-034) Banking Services is currently in effect. The vendor, IBC Bank of Lawton, OK, has agreed to the 90 day contract extension with the same terms, conditions and prices. The recommendation has been received from the Interim Finance Director that the contract be extended for an additional 90 days. IBC Bank has fulfilled the terms and conditions of the current contract.

EXHIBIT: Department Recommendation, Contract Extension Form, and Proposal Exhibit.

**KEY ISSUES:** Does the City of Lawton wish to extend (RFPCL16-034) Banking Services to IBC Bank of Lawton, OK for an additional 90 days?

#### FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Extend contract for (RFPCL16-034) Banking Services to IBC Bank of Lawton, OK for an additional 90 days.



## FINANCIAL SERVICES

212 SW 9<sup>th</sup> Street Lawton, Oklahoma 73501 (580) 581-3328 Ext 4 FAX (580) 581-3438

### **RECOMMENDATION MEMO**

TO: Kristin Huntley, Interim Finance Director

FROM: Maegan Dowlen, Contract Administrator

RE: Banking Services Contract RFPCL16-034

DATE: September 8, 2021

I have reviewed the contract for Banking Services (RFPCL16-034). The City has been banking with IBC for several years and has an excellent working relationship. Due to the Munis software conversion currently being implemented, we are requesting a 90 day extension in order to allow for further development of the software implementation prior to the re-bid of Banking Services.

#### CONTRACT EXTENSION FORM

#### CONTRACT TITLE: Banking Services

CONTRACT NUMBER: RFPCL16-034

In accordance with the Agreement between the parties, the above-described contract is hereby modified in the following respects:

- The contract period is extended to <u>December 31, 2021</u>, by mutual agreement between the undersigned vendor and the City of Lawton, Okiahoma subject to funding availability beyond this fiscal year.
- 2. All other terms and conditions of the contract or any written modifications thereto remain unchanged.
- 3. The laws of the State of Oklahoma shall govern this contract.

WITNESS the hands of the parties hereto this 3 day of T AFFIDAVIT: STATE OF COUNTY OF OKlehome (name of alfiant), of lawful age, being first duly sworn, on oath says that:

1. Affiant is the duly authonized agent of the vendor executing the extension to the above referenced agreement, and that as such agent Affiant has the authority to blind the vendor, whether an individual, partnership, or corporation, for the purpose of negotiating and entering into any extension to or modification of said agreement, and for certifying the facts pertaining to the existence of collusion among vendors and City officials or employees, as well as facts pertaining to the giving or offering of things of value to government personnel in raturn for special consideration in the letting or extension of any contract entered; 2. Affiant is fully aware of the facts and circumstances surrounding the procurement of the contract to which this statement; refers and has been personally and directly involved in the proceedings leading to the submission of such extension; 3. Neither the vendor nor anyone subject to the vendor's direction or control has been a party: at to any collusion among vendors in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding, bit or extension of a contract, nor d, to paying, giving or donating or agreeing to pay give or other thing of value for special consideration in the letting or extension of a contract, nor d, to paying, giving or donating or agreeing to pay give or other thing of value, either directly or indirectly, in procuring the extension of the contract described above. 4. Affiant thas misrepresented the scope or extent of Affiant's authority to bind the vendor free in the directly and hold harmless the City of Lawton, any money or other that Affiant has misrepresented the scope or extent of Affiant's authority to bind the vendor free in a proving and only adments the city of Lawton, any money or other that Affiant has misrepresented the scope or extent of Affiant's authority to bind the vendor form all damages based upon such misrepresentation, including but not limited to all costs and attorney fees incurred, in addition to

Fim: IBC Bank	SUNATURE OF AUTHORIZED AGENT
Adoress: 3817 NW Expression Suite 100	David Hardy, Exceptus Vice Prisident PRINTITYPE NAME/TITLE
Oklubona City, OK 73112 (City, State, Zip)	Subscribed & sworn before me this 31 day of August 20 21
Phone: 405-775-8076	My Commission expires: 61052023 City of Lawton, Oklahoma A Municipal Corporation City of Lawton, Oklahoma
ATTEST:	Stanley Booker, Mayor
CITY CLERK	
APPROVED as to form and legality on behalf of the City of Law	wton on the day of, 20

CITY ATTORNEY

City of Lawton

Proposal

for

The City of Lawton

Submitted by

**Brian Henry** 

President IBC Bank Lawton

July 1, 2016



# **Executive Summary**

Providing Innovative Treasury Management Solutions for the City of Lawton.

IBC Bank is pleased to have the opportunity to present this proposal of treasury management services to the City of Lawton. IBC Bank is committed to continuing its partnership with the City of Lawton to serve in a consultative capacity to assist in establishing any new services needed tomanage your daily cash flow. In addition, by partnering with clients like the City of Lawton, we look at opportunities to explore new ideas for creating solutions that will bring further enhancements to your internal operations to maximize efficiencies. Some of the services highlighted in this proposal for your review include depository services, ACH origination services, Internet Banking and other services designed to meet the needs of the City of Lawton.

Our clients deserve the best in service quality, delivery and reliability. IBC Bank's Commercial Banking professionals are equipped to resolve service related issues quickly and efficiently. IBC Bank and its team of professionals are committed to providing the quality of service that the City of Lawton deserves. This is demonstrated through the expertise of our people, our statewide presence, our financial strength, and our commitment to meeting the financial needs of our communities.

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## **Commercial Banking Group**

IBC Bank's Commercial Banking and Retail Banking groups bring a wealth of knowledge, experience and expertise with over 20 years in average experience of providing commercial and retail banking services to the business community. We provide banking the old fastioned way – a one on one relationship between the City of Lawton and a knowledgeable, professional banker.

We are also proud of our associates in our Commercial Treasury Management division who bring over six years of experience in product development, marketing, strategic planning and business consulting.

IBC Bank's team of professionals possess a strong and diverse background in banking and ofher financial services industries including, commercial lending, investments, financial planning, insurance and bankcard processing. Many of IBC Bank's professionals are actively involved in civic and community organizations and serve on various non-profit boards.

The City of Lawton's Relationship Team:

Brian Henry, Lawton President

Brian has over 25 years of banking experience.

Herschel Hibbard, Vice President, Manager of Corporate Treasury Management

Herschel has over 6 years of banking experience in Treasury Management sales and product development, and retail banking services.

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Deborah Cunningham, Administrative Assistant Commercial Lending-

Deborah has over 37 years of banking experience in bank operations.

# CC....

# Service Solutions - Commercial Accounts

IBC Bank's commercial demand deposit and Public Fund accounts feature end of the month statements, an image of cleared checks and access to daily account activity via our IBCLink-Internet Banking system

A statement of the City of Lawton's checking account(s) will be provided either daily, weekly, or monthly with images of transactions or items. Statements detail all activity for each business day of the month.

#### SPECIFICATIONS FOR CITY OF LAWTON BANKING SERVICE

#### GENERAL INFORMATION:

The City of Lawton is soliciting proposals for a primary banking relationship with a bank that operates within the City limits. The City intends to enter into a contract for services for a period of one year, beginning September 1, 2016, with the right to extend for an additional four years. This agreement may be canceled by mutual agreement with ninety (90) days written notice by either party. Due to Statutes prohibiting obligation of City funds in excess of one year, it will be necessary for the City Council to approve this banking agreement annually.

The bank is required to comply with all depository laws and regulations as set forth in all applicable State and Federal laws and statutes.

Investment activities of the City are not related to the appointment of a bank to provide banking services. The bank must provide the City with the means to conduct its investment activity, including but not limited to, providing wire and safekeeping services if requested.

#### GENERAL REQUIREMENTS:

Unless specifically agreed to by the City in advance or by acceptance of a fee schedule during the bid process, all banking services to the City of Lawton will be without service charges. Any compensation for service requirements not specifically agreed to by the City of Lawton will be in the form of compensating balances. Compensating balances must be proposed in the form of an average daily checking account collected balance. Collected balance is defined to be the deposits in the process of collection, less amount of checks on hand or in process by the bank. All accounts must be secured in accordance with Oklahoma State Statutes and Federal Deposit Insurance Corporation's policies on collateral pledge agreements, which will be approximately twenty five million dollars.

#### SERVICES REQUIRED:

- 1. Check processing.
  - A. Daily account statements on approximately 3 major accounts to include return of canceled checks if possible, and if not possible, clearly readable check and deposit images. Daily statements are to be received within three working days.

Daily account statements can be provided. IBC also makes available balance and history information via our Internet Banking System, IBCLink. B. Monthly statements on approximately 12 accounts to be given to the City no later than three working days from the end of the month.

Monthly accounts statements can be provided. Information is also available via IBCLink.

C. Statements must provide collected balances, detail of adjustments and costs, detail of debits and credits.

Statements provide collected balances, details of adjustments, costs, and detail of debits and credits.

D. The requirement for daily account statements can be changed to monthly statements, if in the opinion of the City an accurate CD Rom or equivalent media device is provided to clear checks, and account access to bank statements and transactions by internet is available.

This information is provided through IBC Link. These services would be at no cost to the City.

2. Automated Clearing House (ACH). Utility payments and direct payroll deposits will be provided electronically.

ACH is available via our secure IBCLink. ACH debits for utility payments and credits for direct deposit can be sent via our website.

3. Savings Bonds.

Issuance of U.S. Savings Bonds to City employees participating in payroll savings deductions plan. (Approximately 30 participants)

Savings Bonds are no longer offered through financial institutions.

4. Cashiers Checks. Provide cashier checks as needed. (Approximately 12 annually)

Available.

Safe deposit box.
 Provide one safe deposit box if requested. (At present there is no requirement)

Available.

6. Wire transfer service.

6. Wire transfer service.

The bank will provide wire transfer services. Wire service credits and debits notices will be provided the day following transaction.

Wire Transfer Services are available via our IBCLink or directly from Deborah Cumpingham. Wire debits and credits can be received via Fax or viewed via IBCLink.

 Collateral pledge agreements. The bank will pledge collateral, as required by Oklahoma State Statutes, sufficient to cover all accounts not insured by F.D.I.C.

Agreed.

8. Checks and deposit slips. The bank must provide all checks and deposit slips for all City accounts. All products must be compatible with existing City equipment.

Agreed.

 Night depository. Locking bags and keys are required. (Approximately 5)

Available.

 Packaged coins and currency.
 The bank must provide approximately 3,000 rolls of coins annually and 2 to 6 packages of \$1, \$5, and \$10 bills daily.

Available.

11. Stop payment and returned checks.

The bank will automatically present returned items a second time. Stop payments of City issued checks will be provided at no charge.

IBC will automatically present return items a second time. Stop payments are available via phone or IBCLink. Stop Payments of City issued checks will be provided at no charge.

12. Automatic investment of general sundry funds.

All collected balances will be invested and interest returned to the City on a daily basis at a rate to be specified in the proposal. The City's accounting office will be notified daily of the prior day's interest. Accounts other than general sundry funds will draw interest at a rate to be specified in the proposal.

IBC currently returns interest to the City on a monthly basis and would propose that to remain the same with the new contract as it meets the business needs if the finance department. Interest will be returned to the City on a monthly basis. IBC offers a Public Funds account, which pays the 91 day Treasury Bill auction rate plus .05%.

Other interest bearing accounts are available.

13. Internet banking services.

The City will be provided the ability to access account balances and transaction information via an internet connection. The system should provide the ability to initiate wire transactions, transmit ACH direct payroll deposits, access utility billing files for origination, electronically place stop payments on checks, and transfer funds within City accounts.

IBCLink is an internet based system. Information reporting, Wires, ACH, Stop Payments, and Account Transfer are available.

14. Credit Card:

The bank will make available, without annual fees, a City of Lawton credit card to be used for a limited number of purchases and expenses. This card would not be a debit cards, and the City would make payment from itemized statements. There will be a need for approximately six cards.

This service is not being utilized, but is available through IBC Bank with no annual fee.

#### **OPTIONAL SERVICES:**

The City wishes proposals on the availability of these services. The availability and cost of these items will be a factor in the choice of the City's banking facilities.

15. Any other Services.

The bank should specify any other services that may be available or provided to the City. Include a brief description and the anticipated fees or costs.

#### PRODEDURES FOR PROPOSAL:

Appendix A is the proposal form that must be fully completed to qualify as a valid proposal. If there is no cost enter "none". If not offering the services enter "no proposal".

Proposals must be received by two o'clock p.m. July 5, 2016 at the office of the City Clerk, 103 SW 4<sup>th</sup> St., Lawton, OK-73501.

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The City reserves the right to reject any and all bids.

#### APPENDIX A PROPOSAL FOR BANKING SERVICES FOR CITY OF LAWTON

Items 1-11, 13 and 14 from the specifications will be provided at no cost to the City of Lawton: Agreed, at no cost.

Item:

- 1. Check processing, paragraphs A, B, and C
- 2. ACH
- 3. Savings bonds
- 4. Cashier checks
- 5. Safe deposit box.
- 6. Wire transfer service
- 7. Collateral pledge on balances
- 8. Checks and deposit slips
- 9. Night depository
- 10. Rolled coins and packaged currency
- 11. Stop payment and insufficient deposit returns
- 12. Internet banking services
- 13. Credit card

The following services require completion:

Item 1, paragraph D. Provision of CD Rom or equivalent media to clear checks: Type, frequency and cost of provision:

IBC Bank will continue to provide images through IBC Link. These services would be a no cost to the City.

# liem 12. Automatic investment of general sundry funds and interest on other accounts:

State the rate to be paid to City of Lawton.

The Bank will pledge collateral, as required by Oklahoma State Statutes, sufficient to cover all account balances not covered by the P.D.I.C. at no cost to the City. The rate shall be the 91 day Treasury Bill plus .05%.

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#### Item 15. Other services:

State any other services and their attendant fees that your bank would offer to the City of Lawton:

NA

#### Name of Financial Institution:

#### International Bank of Commerce

The undersigned acknowledges that they have read and understand the provisions set forth in the specifications for City of Lawton banking services and agrees that they can furnish the specified services at the quoted prices.

Signature of Authorized official:

Title of official: Lawton President

Date: July 1.2016

Office address: 6425 NW Cache Road Lawton, OK\_ 73501

Telephone-number: <u>580-250-2280</u>



#### 7/1/16

Please accept IBC Bank's proposal for banking services for the City of Lawton. It has certainly been our pleasure to provide banking services for over 34 years to the City of Lawton, with the last 12 years being under the IBC Bank name. We certainly believe we have formed a great working relationship with all staff involved.

You will find in our bid proposal that we bave agreed to all the terms and conditions of the RFP. We have submitted our interest rate proposal using the 91 day Treasury Bill auction rate, plus .05%. This rate would be adjusted on a monthly basis.

Please note that we have two individuals that are highly skilled and understand the City of Lawton's needs, as they have been servicing the accounts for the past 12 years. Deborah Cunningham, who is my assistant, and Herschel "Trae" Hibbard, who is our Treasury Management Manager, are available to your staff to assist with any issues that may arise in the daily processing of your transactions.

We look forward to continuing our partnership with your staff with the daily banking needs of the City of Lawton. If we can answer any questions please don't besitate to contact me at the number listed below.

Sincerely,

Brian T Henry President 1BC Bank -- Lawton 6425 NW Cache Rd Lawton, Ok. 73505 580.250.2280 -- telephone 580.351.2427 -- fax <u>brianhenry@ibc.com</u>-- email

# **Bank Information**

### About IBC Bank

IBC Bank continues its 50 year tradition of excellence by being a source for meeting the financial needs of our communities. IBC Oklahoma is a division of International Bancshares Corporation (NASDAQ: IBOC), a \$11.8 billion multi-bank financial holding company headquartered in Laredo, Texas, with 207 facilities and more than 320 ATMs, serving 88 communities in Oklahoma City, and Texas. IBC Oklahoma has served the sooner state since 2004 and locations in Oklahoma City, Tulsa, Lawton, Duncan, and the Dallas Metroplex.

Led by President and CEO Bill Schonacher, IBC Oklahoma is equipped with seasoned banking veterans who bring a deep understanding of commercial lending, business services, and retail banking to the Oklahoma business marketplace. IBC offers an array of both credit and non-credit services and is poised to assist Oklahoma businesses meet their unique financial goals. In addition to building partnerships with our commercial customers, we would like to become your community bank of choice. IBC encourages givic engagement, community involvement, and servant leadership, upholding the IBC Bank "We Do More" philosophy.

# Statement of Confidentiality

This proposal contains detailed information about the capabilities of IBC Bank. IBC Bank is delivering this proposal of treasury management and other financial services with the express understanding that the City of Lawton will hold this information in strict confidence. The information contained in this proposal is considered proprietary and confidential and cannot be copied, reproduced, or disclosed without prior consent from IBC Bank.

### Service Pricing

IBC Bank agrees to waive service fees for the City of Lawton, provided the stated balances remain on deposit with IBC.

# Service Solutions – Investments

With IBC Bank's Public Funds accounts, the City of Lawton earns interest on balances. The rate is the 91 day Treasury Bill auction rate plus .05%.

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IBC Bank will pledge collateral, as required by Oklahoma State Statutes.



File #: 21-514

Agenda Date: 9/28/2021

Agenda No: 16.

#### **ITEM TITLE:**

Consider approving a bid with Air Solutions, LLC for the City HVAC Maintenance Contract (CL22-002) effective September 30, 2021, and authorizing the Mayor and City Clerk to execute the contract. **INITIATOR:** Dewayne Burk, Deputy City Manager

STAFF INFORMATION SOURCE: Stefan Kidd, Building Maintenance Superintendent

**BACKGROUND:** The HVAC contract is an ongoing requirement to maintain the HVAC systems in all City buildings. Current contract expired on June 30, 2021. The City sought qualified service companies for maintenance and repairs to all HVAC equipment as an RFP with 3 responsive bidders. In the past this contract was developed as a fixed price contract but has been changed to "cost plus" to reduce the cost of operating the facilities and at the same time maintain or improve comfort levels in the facilities. Air Solutions, LLC will make repairs and guarantee that repairs to the HVAC system will be made in a timely manner. Contractor will carry out a Periodic Maintenance Plan in accordance with the new contract.

EXHIBIT: P&R Director Recommendation, Bid Abstract and HVAC Maintenance Contract CL22-002

**KEY ISSUES:** Converting HVAC Maintenance Contract to a "cost-plus" structure and awarding a 36-month contract

FUNDING SOURCE: FY 2021-22 Operational Budget

**STAFF RECOMMENDED COUNCIL ACTION:** Approve a bid with Air Solutions, LLC for the City HVAC Maintenance Contract (CL22-002) effective September 30, 2021, and authorize the Mayor and City Clerk to execute the contract.



*City of Lawton* Parks & Recreation Department 14105 SW 11<sup>th</sup> St • Lawton, OK 73501 580-581-3400 • 580-581-3437 Fax

# **MEMORANDUM**

To: Maegan Dowlen, Municipal Securities Disclosure Coordinator

From: Jeffery Temple, Parks & Recreation Director

Subject: RE: RFPCL-22-002 Award (HVAC)

Date: August 19, 2021

Subject RFP has been reviewed with 3 responsive bidders. All 3 bidders appear to be owned by the same individual but are separate entities. The city has maintained an excellent working relationship with Air Solutions, LLC, for on-call work. Air Solutions is a responsive bidder with the best pricing matrix. Recommend award to Air Solutions, LLC with an effective date of 30 Sept 2021.

Respectfully, Jeffer Temple Director, Parks & Recreation

I CERTIFY that I have opened, read, and recorded herein all bids received and listed below:

#### **ABSTRACT OF BIDS** Signature: Bidder Number **Bidder Number** Bidder Number Bidder Number **IFB/RFP Number** Page \_\_1\_\_ CL22-002 of \_2\_ \_\_3\_ \_\_1 \_\_4\_ IFB/RFP Title Date Opened: Hot-Line LLC Artic Refrigeration LLC **Air Solutions LLC** PO Box 874 PO Box 874 08/17/2021 **HVAC Services** PO Box 874 Duncan, OK 73534 Duncan, OK 73534 Duncan, OK 73534 580-467-8420 580-467-8420 580-467-8420 Tom Milan Tom Milan Tom Milan Addenda Acknowledged Addenda Acknowledged Addenda Acknowledged Addenda Acknowledged Number of ADDENDA Issued Buyer None Sego N/A N/A N/A N/A **DELIVERY**: YES **CORPORATE SEAL OR NOTARY:** YES YES NO AFFIDAVIT OF PAYMENTS....\$25,000: YES YES YES NO **CERTIFICATE OF INSURANCE ENCLOSED:** YES NO NO NO Description of Bid Item Est. Qty Unit Unit Amount Unit Amount Unit Amount Unit Amount Item No. Price Remarks Price Remarks Price Remarks Price Remarks \$130.00 Hourly Rate Hour \$129.00 \$129.00 1 Per \$170.00 \$169.00 \$169.00 2 After Hours Rate Per Hour 30% 25% 3 Material Markup Rate 25% Per Item

# **HVAC MAINTENANCE AGREEMENT**

# BETWEEN CITY OF LAWTON AND AIR SOLUTIONS LLC



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THIS IS AN AGREEMENT by and between the City of Lawton, A Municipal Corporation in the State of Oklahoma (hereinafter called CITY), and Air Solutions, LLC (hereinafter called CONTRACTOR). CITY intends to employ CONTRACTOR to provide HVAC Maintenance services for the City of Lawton.

The CITY and CONTRACTOR in consideration of their mutual covenants herein agree in respect of the performance services by CONTRACTOR and the payment for those services by CITY, as set forth below.

### 1. INTRODUCTION/SCOPE

1.1 CONTRACTOR must make repairs and guarantee that repairs to the H.V.A.C. system will be made in a timely manner. Service Companies must set forth a maximum length of time that any unit will be out of service because of minor repairs and/or major overhaul of a system.

1.2 At sites where monitoring equipment is present, CONTRACTOR must remotely monitor environmental conditions and equipment status and alter functions as necessary to improve comfort conditions and optimize energy savings.

1.3 Qualified and trained service personnel that are directly employed by the CONTRACTOR should perform services that are to be provided. Under no condition shall any work specified herein be subcontracted.

1.4 CONTRACTOR must have access to a professional staff of professionals in the fields of refrigeration, boilers, water treatment, and pneumatic, electrical, and electronic controls, which includes at least one professional engineer (PE).

1.5 CONTRACTOR shall schedule preventive maintenance (PM) tasks by computer to assure a uniform and detailed method of scheduling work.

1.6 CONTRACTOR shall maintain in their local office (within 50 miles of the City of Lawton) an adequate inventory of replacement parts and components and shall demonstrate they own the proper tools and test equipment to maintain all the systems under contract. In addition, CONTRACTOR shall maintain a central warehouse whose inventory includes all the replacement parts for any component in the system under contract to ensure fast availability in emergency situations. This includes all temperature sensors, controllers, dampers, valves, actuators, relays, air compressors, flame safeguards and boiler controls.

1.7 CONTRACTOR must own and be able to document the use on 5 other contracts the following tools and test equipment: combustion efficiency test equipment, vibration detector, infrared scanner, water treatment chemical drop test kit, megger tester, conductivity tester, refrigeration oil test kit, electronic refrigeration leak detector, voltmeter, am probe computerized chiller expert system, portable operator terminals for direct digital controller, remote diagnostics via telephone lines, computer aided engineering to change, adjust and calibrate direct digital control.

# 2. GENERAL MAINTENANCE PROCEDURES

#### Maintenance Procedures and Records

2.1 All preventive maintenance tasks shall be computer generated based on a program using each building's run time, on manufacturer's maintenance recommendations and on no less than a five year data bank of maintenance experience and manufacturers' specifications to assure uniform, detailed and all inclusive method of defining preventive maintenance tasks. CONTRACTOR may be required to show copies of said computer generated preventive maintenance reports to demonstrate compliance to this requirement and be given to the Parks and Recreation Director.

2.2 CONTRACTOR shall control scheduling the interval of preventive maintenance and task functions to be performed by both calendar periods and operating hours (runtime) as pertinent to each piece of equipment.

2.3 As work is scheduled, CONTRACTOR shall issue, to the mechanic on the job, a computerprepared service report detailing exactly what tasks to perform, and time of performance, skill levels required and special tools and instrumentation need to maintain the systems at optimum comfort and efficiency levels.

2.4 After each service call is completed, a service report shall be furnished to a designated representative of the City of Lawton for signature.

2.5 After each service call report is signed off, details from the completed service report will be reentered in the data bank to assure closed-loop performance control and continuous program updating. The client has ongoing access to this file within 48 hours of notification of CONTRACTOR.

2.6 On a semiannual basis, CONTRACTOR shall advise and assist in the determination of improvements to the mechanical and control system that shall conserve energy and minimize utility expenditures. This shall include an initial energy management review with written recommendations and thereafter shall provide quarterly energy management audits.

#### Preventive Maintenance Calls

2.7 All planned maintenance service under this agreement will be performed during the City of Lawton normal working hours defined as 8:00 a.m. to 5:00 p.m., Monday - Friday.

2.8 City of Lawton will provide reasonable means of access to all equipment covered by this agreement. CONTRACTOR will be free to start and stop all primary equipment incidental to the operation of the mechanical system(s) as arranged with either the Director or assigned representative of the Parks and Recreation Department for the City.

#### **Emergency Service**

2.9 Every activity performed under this agreement is designed to minimize the incidence of emergency situations. However, backup emergency service will be provided 24 hours a day to minimize downtime and inconvenience.

2.10 CONTRACTOR shall provide emergency service on an as required basis. Emergency service shall be considered as calls in addition to the scheduled preventive maintenance calls that would occur after 4pm and before 7am, weekdays, Monday - Friday and on Weekends and Holidays.

2.10.1 All labor, overtime, travel costs, parts, supplies, and any other expenses incurred and expended on such a call shall be billed by CONTRACTOR on the agreed upon cost-plus rate basis.

2.10.2 This emergency service shall be provided as often as needed, on a 24-hour basis, weekends and legal holiday included.

2.10.3 CONTRACTOR shall guarantee response to an emergency within two (2) hours after notification of system problems.

2.10.4 CONTRACTOR shall supply two emergency phone numbers. A person or persons under direct employment of the bidder must answer these phones and they must be trained on HVAC systems and their operation.

#### Parts and complete Replacement

2.11 CONTRACTOR will repair or replace worn parts or complete components with new parts or reconditioned components. For Automation equipment all replaced parts will be U.L. listed.

2.12 CONTRACTOR shall not make replacements or repairs necessitated by reason of negligence or misuse of the equipment by other than CONTRACTOR or by reason of any other cause beyond his control except ordinary wear and tear. A work order will be issued for work to be preformed for damage caused to equipment by storms, winds, and lighting.

#### 3. ENVIRONMENTAL CONTROL SYSTEM MAINTENANCE

#### Equipment Included

3.1 Thermostats, pressure controls, relays, limits, valves, valve operators, damper motors, humidity controls, step switches, time clocks, contractors, controllers, capacity controls, safety controls, recorders, control panels, gauges, air compressor (for pneumatic control systems) and other replacement equipment.

#### Services Included

3.2 The CONTRACTOR will perform all of the general maintenance services listed below as they apply to the environmental systems and equipment as described above:

3.2.1 Examine each piece of equipment and device to see that it is functioning properly and is in good operational condition.

3.2.2 Clean all components of dust, old lubricants, etc. to allow the equipment to function as designed.

3.2.3 Lubricate all equipment where needed to permit bearings, gears, and all contact wearing points to operate freely and without undue wear.

3.2.4 Adjust all linkages, motors, drives, etc. that have drifted from the initial design settings and positions.

3.2.5 Calibrate all sensing, monitoring, output, safety, and readout devices for proper ranges, settings, and optimum efficiencies.

3.2.6 Replace the device by the installation of replacement parts, should the above maintenance not be adequate.

3.2.7 Replace the device if needed, in view of its condition, age, and cost of previous and subsequent repair.

3.2.8 Test and cycle all equipment as a system after it has been cleaned, lubricated, adjusted, and calibrated, to see that it is in good operational condition and at optimum efficiency.

#### Parts Replacements

3.3 All parts, components, or devices for the environmental system as listed above that are worn or are not in proper operational condition, shall be repaired, and/or replaced with new parts, components, or devices by CONTRACTOR.

3.4 When equipment or parts are replaced in their entirety, and a newer design of this device is available and is functionally equivalent and compatible, the device of the new design shall be used as the replacement.

3.5 All repair and replacement parts, components, and devices for the environmental systems and equipment as listed above shall be supplied by CONTRACTOR.

3.6 All miscellaneous parts and supplies necessary to maintain the environmental systems and equipment shall be supplied by CONTRACTOR.

3.7 CONTRACTOR shall be available, at no additional charge, for consultation regarding design changes and equipment selection, based on past experiences with similar systems.

3.8 CONTRACTOR is solely responsible for replacement refrigerant. This includes catastrophic failure as well as normal losses. Leaks will be repaired, and the amount of refrigerant used will be forwarded to the City for their records.

3.9 CONTRACTOR must submit documentation of compliance to O.S.H.S. standards on the following: hazardous material transporting, lock-out/tag-out, and M.S.D.A. procedures.

#### 4. MECHANICAL SYSTEM MAINTENANCE SERVICE

#### Equipment Included

4.1 The preventive maintenance and the responsibility of CONTRACTOR shall not be limited only to major pieces of equipment located in buildings covered in the contract, but shall also include all

appurtenant devices and systems as listed below that are related to the heating, ventilating, and air conditioning system. (Gas Train)

4.1.1 Heating System

Boilers, burners, furnaces, pumps, heating coils, steam traps, water strainers, unit heaters, duct heaters, heat exchangers, humidifiers, boiler shells, tubes and boiler trim.

4.1.2 Cooling System

Air conditioning compressor(s), evaporative condensers, air coiled condensers, cooling towers, cooling tower fans, pumps, chillers, coils, etc.

4.1.3 Air Handling System

Fans, motors, air grills (cleaning), plenums (cleaning), registers (cleaning), air filters, dampers, induction units, mixing boxes, fan coil units, electric heat elements, etc.

4.1.4. Miscellaneous Equipment

Exhaust fans, automatic valves, control valves, float valves, direct expansion valves, gauges, magnetic starters, manual motor starters, pump and fan motor drives, belts, electrical wiring from motor starter to their respective motor, check valves, and refrigerant.

4.2 All major equipment located in the buildings listed will be covered by this contract. This specification covers that equipment listed herein and shall not be limited to these pieces of equipment. All appurtenant devices and systems as related to the HVAC system will be included. Should the City expand, modify, renovate or add new structures, then that portion shall be added, as required and preventive maintenance will be performed when accepted by the city. A change order will be made to the contract noting changes to the City's HVAC equipment inventory list.

Equipment Not Included

4.3 Maintenance services, including repair, labor, and parts replacement, for the following portions of the systems **are not included** as part of this specification.

Foundations	structural supports	domestic water lines
Oil lines	gas lines	oil storage tanks
Unit cabinets	refractory material	cooling tower structures
Air handling ductwor	k	

4.4 CONTRACTOR shall provide a report of any work that is outside the scope of this specification that needs attention, which includes such equipment as outlined above.

#### Services Included

4.5. The General services listed below shall apply to the systems and equipment located in the buildings covered under this contract and as described in the section entitled EQUIPMENT INCLUDED. The preventive maintenance work shall provide no less than one (1) annual start-up, one (1) annual shutdown and four (4) service inspections per year. CONTRACTOR shall

4.5.1 Examine each piece of equipment and device to see that it is functioning properly and is in good operational condition.

4.5.2 Clean all components of dust, old lubricants, etc. to allow the equipment to function as designed.

4.5.3 Paint all equipment as needed to prevent and protect against corrosion and deterioration.

4.5.4 Lubricate all equipment where needed to permit bearings, gears, and all contact wearing points to operate freely and without undue wear.

4.5.5 Adjust all linkages, motors, drives, etc. that have drifted from the initial design settings and positions.

4.5.6 Calibrate all sensing, monitoring, output, safety, and readout devices for proper ranges, settings, and optimum efficiencies.

4.5.7 Repair the device by the addition of replacement parts, should the above maintenance not be adequate.

4.5.8 Replace the device should the above maintenance not be adequate.

4.5.9 Tear down major pieces of equipment such as refrigeration compressors, water chillers, boilers, etc. and overhaul periodically based on accumulated operating hours, to prevent breakdowns and to improve operational conditions.

4.5.10 Test and cycle all equipment as a system after it has been cleaned, lubricated, adjusted and calibrated to assure that it operates to original design specifications.

4.5.11 CONTRACTOR is solely responsible for replacement refrigerant. This includes catastrophic failures as well as normal losses. Leaks will be repaired and the amount of refrigerant used will be forwarded to the City for their records.

4.5.12 CONTRACTOR must submit documentation of compliance to O.S.H.A. standards on the following: hazardous material transporting, lockout, tag-out, and M.S.D.A. procedures.

4.5.13 CONTRACTOR shall perform spectrochemical analysis of refrigeration compressor oil to determine the concentration levels of each of the following chemicals:

Iron	Silver	Zinc
Lead	Tin	Calcium
Copper	Silicon	Barium
Chromium	Baron	Magnesium
Aluminum	Sodium	Titanium
Nickel	Phosphorus	Molybdenum
Cadmium	Antimony	

This analysis will consist on a minimum of the following four (4) tests: Total Acid (ASTMD 664) Viscosity (ASTMD 445) Water Content (ASTMD 1744) Total Solids (ASTMD 91) Oil analysis shall be performed by the CONTRACTOR during spring start up and analyzed by a qualified laboratory. CONTRACTOR shall provide the City of Lawton with a detailed written report. 4.5.14 CONTRACTOR shall perform boiler flue-gas analysis during heating season switch over with an Electric Flue Gas Analyzer to determine the proper energy efficiency of boiler burner system to maximize burner efficiency and CONTRACTOR shall provide the City of Lawton with a detailed report.

4.5.15 Mechanical maintenance includes all parts, labor and materials necessary to make the repairs and in addition the necessary replacement of any units. Including the following:

- Water circulating pumps as pertaining to heating and cooling systems;
- Water Regulating Valves;
- Float Valves;
- Supply and Exhaust Fans;
- Electric Motors;
- Belts;
- Electric Starters (all);
- Heating and/or Cooling Coils; (clearing only)
- Belt Drives;
- Steam Traps with the Building;
- All water Strainers;
- Capacity and Safety Devices which control the equipment;
- Unit Heaters;
- Fan Cabinets, Air Handling Units;
- Boilers, Boiler Supply & Return lines and Controls;
- Chilled Water Supply & Return lines
- Vacuum Condensate Return Pumps;
- Compressors;
- Condensation lines
- Cooling Towers;
- Air Cooled Condensers;
- Packaged Window Units;
- Steam/Hot Water Converters;
- Packaged Rooftop Units
- Automatic Valve
- Control Valve

# 5 WATER TREATMENT SERVICE

## Equipment Included

5.1 WATER TREATMENT SYSTEM: Hot water system, steam system, chilled water system (open or closed), evaporative condensers, cooling towers, and chilled and hot water circulating pumps.

## Services Included

5.2 CONTRACTOR shall provide the necessary labor and chemicals to properly maintain all water within the heating and cooling circulating system to control metal corrosion, scale formation, biological fouling, or contaminated discharge.

5.3 Chemicals provided must meet OSHA, Environmental Protection Agency and OEQC requirements for safety to personnel and the environment.

5.4 All chemicals supplied must be biodegradable, and all discharged effluents must be non-polluting.

5.5 For open cooling tower systems, an automatic monitoring system shall be supplied to provide continuous water analysis. This equipment shall be programmed on a real time basis, to analyze the quality of the circulating water and automatically adjust the chemical treatment feed rates and bleed intervals based on the level to total dissolved solids, and without effect from variances in water temperatures. The controller shall incorporate emergency fail-safe features, which shall result in a visual alarm during emergency conditions that may result from high concentration conditions.

5.6 All necessary control panels, bleed valves, injection pumps, associated piping and fittings, and all labor to install this monitoring equipment shall be supplied by CONTRACTOR and shall be billed by CONTRACTOR on the agreed upon cost-plus basis.

5.7 CONTRACTOR shall provide all labor to take test samples, adjust feed rates, change settings, drain and flush systems, service automatic monitoring equipment, manually inject chemicals (for closed systems), and provide a detailed water analysis and service report after performing those services as outlined above.

5.8 For hot water heating systems and chilled water systems, CONTRACTOR will perform the following:

Drain system of existing water and chromed compound.

Refill system with clean water and add the required dosage of chemical treatment. Chemical shall be a non-chromate corrosion inhibitor such as the borate nitrite type. It shall be accepted by the pollution agencies as non-pollutant.

### 6 AIR FILTER SERVICE

#### Equipment Included

6.1 Air Filtration System: Pre-filters, frame filters, pouch filters, fan coil filters, and automatic rolltype filters.

#### Services Included

6.2 Filter frames shall be of the reusable type and shall be of a permanent rigid construction that shall permit the insertion of media pads, and may also allow the use of the optional pads with different efficiencies, if needed.

6.3 Filter frames shall be sized to fill the entire cross section of the units to prevent blow-by and eliminate filter spacers in the system.

6.3.1 Filter media (frame or roll type systems) shall be with an average AFI gravimetric rating of not less than 70% efficiency.

6.3.2 Filter media shall be standard polyester fiber and shall be bonded together preventing fiber shedding and blow through for maximum efficiency and shall be of the fire retardant type of at least Class 2 rating.

6.3.3 Roll media for roll type filters shall be made available in varying widths to meet the needs of the Owner and shall be available in dry or tackified polyester fiber.

6.3.4 Permanent filters, if not used, shall be turned over to the Owner upon completion of the contract.

6.4 CONTRACTOR shall provide, install and regularly change all air filters as a frequency dictated by dirt conditions, but no less than six (6) times per year for frame media, and as often as necessary for roll-type media.

# 7 BUILDING OPERATIONS AND MAINTENANCE SERVICE

### General Program Overview

7.1 CONTRACTOR will monitor and maintain all existing operation programs in all buildings so equipped. The operation programs shall be provided 24 hours a day, 7 days a week from Remote Central Operations, and includes but is not limited to:

Command: Start, stop, and adjust building systems connected to the operations center.

Monitor: Record:	Continuously monitor key building conditions. Prepare and furnish client written reports on alarms and their disposition.
Analyze:	Evaluate effectiveness of operating programs and efficiency of mechanical equipment provided client supplies necessary energy utilization documentation to the successful bidder.
Updates:	Revise operating programs as needed to minimize operating costs and accommodate changing client needs.

7.2 CONTRACTOR's Operators will report or dispatch service personnel to correct any alarm or offnormal conditions immediately based on predetermined operating parameters. Client will have access to operators to initiate any program changes.

7.3 In order to insure that the Temperature Control Systems continue to function at maximum efficiency CONTRACTOR will also provide a computerized preventive maintenance program.

7.4 CONTRACTOR will maintain the Temperature Control Systems described in the attached Equipment Inventory. CONTRACTOR is required to perform all preventive maintenance on the basis of equipment use, application, and run time.

7.5 CONTRACTOR will be completely responsible to repair or replace all parts and components for as long as the contract is in effect.

7.6 CONTRACTOR will be required to provide emergency back up service available 24 hours a day, 7 days a week. There will be no additional charges for this emergency service.

## **Building Operations Service – Alarm Dispatching**

7.7 All of the mechanical equipment referred to herein will be monitored and operated on a 24-hour per day basis from the Remote Central Operations Center. Representative space temperatures will

likewise be monitored on a 24-hour a day basis from the same central center. The operators at the central control console will instantaneously detect all off-normal conditions including but not limited to:

Failure of equipment to start as scheduled or on command.

Failure of equipment to stop as scheduled or on command.

Interruption of normal operation.

Off-normal status.

High or low temperature alarms.

7.8 If an alarm condition occurs, the Central Control Console operators shall dispatch a company service technician to rectify the problem immediately. If the alarm condition is found to not be covered under the terms of this specification, the operator shall notify, via a telephone call, the specified client personnel.

#### Operational Analysis/Energy Review

7.9 A detailed analysis of The City of Lawton building environmental systems equipment condition and operating procedures will be performed by CONTRACTOR service operations. CONTRACTOR and the City of Lawton will discuss the operational program and revisions to operational programs that are required to reduce energy consumption, minimize operating costs, and accommodate changing needs. In addition, an Energy Review will be prepared, and a written report submitted quarterly. The report will review all energy usage and charges, including electricity, natural gas, fuel oil, coal or other forms of purchased energy.

#### Weekly Report

7.10 A weekly report of all system activities shall be presented to the City of Lawton monthly. Information on this report shall include:

A listing of all alarms and off-normal condition, the date and time the alarm was received, the alarm point, the nature of the alarm or incident, the action taken by the operator, person or person notified of the alarm, the date and time they were notified, and the time the alarm was cleared.

A listing of all temporary instructions requested by the Owner, the date and time the temporary instructions were received, and the date and time the temporary instructions were cleared.

#### Ongoing Temperature Control Maintenance

Preventive Maintenance

7.11 Each preventive maintenance call will be scheduled by a computer-prepared service report detailing exactly what it takes to perform, time of performance, skill levels required and special tools and instrumentation needed to maintain the system at optimum comfort and efficiency levels.

7.12 Maintenance intervals will be determined by equipment run time, application, location, and CONTRACTOR's computer data bank of maintenance experience and manufacturer's specifications

7.13 After each service call is signed off, details from the completed service report will be reentered in the data bank to assure closed-loop performance control and continuous program updating.

7.14 System analysis will be performed on the equipment covered under this agreement to detect early signs of deteriorating performance and to predict potential equipment failures. After identifying potential problem areas, corrective action, as outlined in this specification will be taken.

#### Component Replacement

7.15 CONTRACTOR will repair or replace any worn, defective, or doubtful components on parts that are part of the maintained systems as described in the attached control inventory. In order to maintain the standardization and integrity of the existing temperature control system, all controls must be replaced with current approved replacement parts only.

#### Additional Services

7.16 During planned maintenance calls, the following additional services will also be provided:

All maintenance tasks should be performed in accordance with a Computerized Preventive Maintenance Program based on the specific equipment, age of equipment, and hours of system operation. A copy of the Computerized Maintenance task form should be submitted with the bid.

CONTRACTOR must provide minimum of two (2) inspections (unless otherwise noted) of each piece of equipment during the contract year. Master records shall be kept in CONTRACTOR's office, and such schedules shall be adhered to.

CONTRACTOR shall have in its possession the manufacturer's specified maintenance and repair procedures and complete parts list for all equipment to be maintained.

CONTRACTOR shall report to The City of Lawton representative when on the job. CONTRACTOR shall be required to provide a service report after each service call.

#### **Emergency Service**

7.17 Emergency Service that may be required in order to keep the system in proper operation must be provided at any time, within 4 hours. Emergency Service shall be provided by a qualified technician on a 24 hour, 7 day-a-week basis, to be billed by CONTRACTOR on the agreed upon cost-plus basis.

7.18 All planned, preventive maintenance service work under these specifications shall be performed during the regular working hours of the regular working day. The regular working day is defined as Monday through Friday, 8:00 a.m. to 5:00 p.m.

#### Parts and Component Replacements

7.19 CONTRACTOR will repair and/or replace worn parts or complete components with new parts. Reconditioned components may be used only when delivery time of new components are extensive and it is mandatory to get a piece of equipment in operation. Replacement under this agreement shall include any device covered under the Scope of Work, including CPU, CRT's Air Compressors, etc.

### Special Conditions

7.20 CONTRACTOR shall not be required to make safety tests and to install new attachments or additional controls or equipment as recommended or directed by any governmental authority or to make replacements mentioned herein with parts or devices of a different design for any reason whatsoever.

7.21 No modification to the existing system will be made that will violate the U.L. Listing as a system.

7.22 The City of Lawton will provide access to all devices, which are to be serviced. CONTRACTOR shall be free to start and stop all primary equipment incidental to the operation of the mechanical system(s) as arranged with and directed by The City of Lawton or a duly authorized representative. The City of Lawton will take responsibility for equipment malfunction where such access is denied.

7.23 CONTRACTOR shall not be liable for any loss, delay, injury, or damage, that may be caused by conditions beyond their direct control including, but not limited to, acts of government, strikes, lockouts, fire, explosion, theft, riot, civil commotion, wars, malicious mischief, floods and other acts of God.

#### 8 TERM OF CONTRACT

8.1 This Maintenance Contract, at the City of Lawton's discretion, will be for a period of **36 months** based on funding availability. If funds are not available and budgeted for FY2021/2022 and/or FY2022/2023, this agreement shall be terminated on June 30, 2022 or June 30, 2023. Start date shall be mutually determined and approved by CONTRACTOR and The City of Lawton. It is understood that The City of Lawton appropriates funds on a fiscal year basis. In the event funds are not appropriated for the fiscal periods beginning July 1st, The City of Lawton shall notify CONTRACTOR in writing by certified mail at least 30 days prior to the end of the current fiscal period of this agreement. Said notification shall relieve both CONTRACTOR and The City of Lawton from any further obligations under this agreement.

8.2 At the end of the initial contract period, this contract may be extended for a period not to exceed an additional 12 months. At the end of the first 12-month extension period, this contact may be extended for an additional period not to exceed 12 months. Any extension for a fourth or fifth year shall be at the amount bid for a twelve-month period of the primary term. All other conditions, as in the original contract, shall remain as set out in the original agreement. The extended contract shall, upon the signing by both parties, become a binding agreement and shall remain in force and effect for the term of the extension.

#### 9 GENERAL PRICING

9.1 CONTRACTOR will provide as part of this proposal a "cost-plus" service price. A cost-plus contract is further defined as an hourly rate plus the CONTRACTOR's cost for materials, supplies, and parts.

This price shall be for each twelve-month period that this service agreement is to be in effect. This price shall reflect maintenance of the equipment detailed in this specification. If during the term of the service agreement The City of Lawton add equipment to a building or buildings, that they would like covered under the service agreement, The City of Lawton and CONTRACTOR will directly negotiate the additional service. Billing to the City of Lawton will be carried out on a MONTHLY basis and will be submitted to the Building Maintenance POC on the 15th of each month. All invoices must include copies

of 3<sup>rd</sup> party material/ supply invoices and must be approved by the Contract POC (Building Maintenance Superintendent)

#### **10 MISCELLANEOUS**

10.1 This contract is neither transferable nor assignable. Direct employees of CONTRACTOR shall perform all work. To assure accountability no subcontracts will be allowed.

10.2 No other agreement, oral or written express, or implied, shall limit or qualify the terms of this agreement unless such additional agreement is accepted in writing by both parties.

10.3 Should any major components of the system be replaced by The City of Lawton, a credit shall be issued by CONTRACTOR prorated over the period during which service and repair of the new equipment is covered by the manufacturer's or installer's warranty.

10.4 Non-performance by either party under the provisions of this contract shall permit either party to terminate this agreement by sending the other party by certified mail a written notice stating when, not less that 30 days thereafter, termination shall be effective.

10.5 CONTRACTOR shall be responsible for making an equipment list to include serial and model numbers of all major equipment located in the buildings covered in this contract. The serial and model number of equipment installed after contract is awarded will be given to the City of Lawton and added to the equipment list. CONTRACTOR will submit the equipment list to the City of Lawton no later than 90 days after contract is awarded.

10.6 All of the General Conditions, terms, and requirements set forth in **Attachment 'A'** *Request for Proposal and Response* are incorporated into this contract. If there is any conflict or disagreement between the conditions and terms in this Contract and the conditions and terms in the incorporated Attachment 'A', the conditions and terms in this Contract shall supersede the conflicting language in Attachment 'A'.

10.7 City Buildings and locations covered under this agreement:

#### **City Buildings**

#### **GROUP 1**

- A. Patterson Center
- B. Fire Station #1
- C. Animal Shelter
- D. Town Hall
- E. HC King Center

#### **GROUP 2**

- F. Wastewater Treatment Plant & Admin Bldg
- G. Water Treatment Plant
- H. Ellsworth Pump Station
- I. Southeast Water Treatment Plant

**Location** 

4 NE Arlington 623 "D" Ave. 2100 SW 6<sup>th</sup> St. 427 "B" Ave. 1705 NW 20th

7 miles SE of Lawton 12 miles NW of Lawton 12 miles NW of Lawton 4596 SE 15<sup>TH</sup>

#### **GROUP 3**

J. New City Hall	212 SW 9 <sup>th</sup> St.
GROUP 4	
<ul><li>K. Lawton Public Library</li><li>L. Owens Multipurpose Center</li><li>M. McMahon Auditorium</li><li>N. Great Plains Museum</li></ul>	110 SW 4 <sup>th</sup> St. 1405 SW 11 <sup>th</sup> St. 801 NW Ferris Ave. 601 NW Ferris Ave.
<u>GROUP 5</u>	
<ul><li>O. City Hall Annex</li><li>P. Lawton Police Station</li></ul>	102 SW 5 <sup>th</sup> St. #10 SW 4 <sup>th</sup> St.
GROUP 6	

Q. Public Safety Building

100 S. Railroad St.

- Signature Page Follows -

#### CITY OF LAWTON, OKLAHOMA A Municipal Corporation

## STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality on behalf of the City of Lawton, Oklahoma, this \_\_\_\_\_ day of \_\_\_\_\_\_, 2021.

JOHN RATLIFF CITY ATTORNEY

for AIR SOLUTIONS LLC

printed name

title

# ATTACHMENT 'A' – REQUEST FOR PROPOSAL AND RESPONSE

City o REQUEST FO	of Lawton DR PROPOSALS
MAIL SEALED PROPOSALS TO City Clerk City of Lawton 212 SW 9# Street Lawton OK 73501 Date Processil Typed:   Date(a) Advertised:	DIRECT INQUIRIES TO Jeffery Temple-Parks & Recreation 580-581-3400 Jeffery temple@lawtonok.gov Marcie Sego – Financial Services - 580-581-3328 No Proposals Received After:
July 27, 2021 July 28, 2021 Proposal Number and Title: RFPCL22-002 HVAC Services Regularments-type Proposal.	August 17, 2021 2:00 P.M. Proposal valid until:
Bid Openings are held at Lawton City Hall 2 <sup>rd</sup> Floor Conference Room 212 SW 9 <sup>th</sup> Street Lawton, OK 73601 (2) 2:00 pm Vandor Name and Point of Contact: ALX Solutions AAC	TBD Reason for No Proposal:
HOLD Address HOLD Address DUNCAN OK Aros Code and Phone Number 580-467-8400 Fadoral Employer Identification Number or Social Security Number	4 Curtruck FAX Aria Code and Phone Number: 580-439-5401
86-1846476 THIS PROPOSAL INVALID IN AFFIDAVIT	NOT SIGNED AND NOTARIZED
I withant is the cuty authorized agent of the Didder vendor another contractor supportantly and entering into sale agreement, and for certifying the facts per- omposition and entering into sale agreement, and for certifying the facts per- omposition of employees, as well as tacts pertaining to the giving or offering of this of any contract pulsuant to the too to which this statement is attached. 2. Affi- submission of such bids, 3. Nether the bidder/wendor nor anyone subject to bid bidders in restriction of twadom of competition by agreement to and at a fixed amployee as to quantify, quality or price in the prospective contract, or as to and any municipal official concerning exchange of money or other thing of va- tion and or agreeng to pay, give or donate to any officer or employee of this problement is attached. 4. Affinar further a source or each of Affinant's authority to brind the bidder herein, and to inder a function.	In Sand Sand Sand Sand Sand Sand Sand San
DUNCAN OK 735340814	Subscribed & evern before methins 17 the Market 17 the Market 20 21 My Commission expires
	CICILY MARKLE Notary Public - State of Oklahoma Commission Number 07010973 My Commission Expitres Nov 13, 2023

# GENERAL CONDITIONS FOR SUBMITTING PROPOSALS TO THE CITY OF LAWTON, OKLAHOMA,

## VENDOR – TO ENSURE CONSIDERATION OF THE PROPOSAL, CAREFULLY FOLLOW THESE INSTRUCTIONS. FAILURE TO DO SO MAY RESULT IN THE REJECTION OF YOUR PROPOSAL WITHOUT FURTHER CONSIDERATION OR NOTICE TO YOU.

SEALED DOCUMENTS: All proposals and this form must be executed and submitted in a sealed envelope or other sealed container. (DO NOT INCLUDE MORE THAN ONE PROPOSAL PER ENVELOPE OR CONTAINER.) The face of the envelope shall contain, in addition to the address on page one (1) of this document, the date and time by which proposals must be submitted in order to be considered and the project number. Proposals not submitted with this form shall be rejected. All proposals are subject to the conditions specified herein. Those which do not comply with these conditions are subject to rejection. Proposals will be considered only on first quality products. Copies of specifications, drawings, schedules or special instructions necessary for preparation of a proposal are on file with the City Cierk and may be examined during normal working hours.

- EXECUTION OF PROPOSAL SUBMISSION: Proposal documents must contain an original signature of authorized representative in the space provided. Proposals must be typed or printed in ink. Use of erasable ink is not permitted. ALL CORRECTIONS MADE BY VENDOR TO PROPOSAL MUST BE INITIALIZED. Do not use white out, correction tape or some other method of masking a correction.
- 2. NO PROPOSAL: If not submitting a proposal, respond by returning page one (1), marking it "NO PROPOSAL SUBMITTED," and explain the reason in the space provided. Failure to submit a proposal three (3) times in succession shall be cause or removal of the supplier's name from the information mailing list, without further notice. NOTE: To qualify as having responded, a vendor must submit a "NO PROPOSAL SUBMITTED," and it must be received no later than the stated proposal opening date and hour.
- 3. OBJECTIONS/CHALLENGES: should a vendor have an objection to or challenge the request, the vendor is responsible for making this known in writing so as to reach the City Clerk no later than seven (7) calendar days prior to the deadline for submission of proposals. The envelope shall be marked in such a way to alert the City Clerk of the urgency in order to immediately notify the Purchasing Division. The envelope will be marked indicating that the content is a challenge to a specified Request for Proposal. For all challenges considered valid by the Purchasing Supervisor, all vendors on the original mailing list, or who have submitted proposals prior to the date and time for proposal submission, will be provided an addendum which addresses the challenge. Challenges/Objections not considered valid will be so stated to the objecting party.
- 4. PROPOSAL OPENING: Proposal opening occurs at the time specified on the proposal form. It is the vendor's responsibility to assure that the proposal is delivered at the proper time and place of the proposal opening. Proposals which for any reason are not delivered at the proper time and place will not be considered. Proposals by telegram, facsimile or telephone are not acceptable. NOTE: Proposals may be examined during normal working hours by appointment, after the date and

CONDITIONS FOR SUBMITTING PROPOSALS Page 2 of 11

time of proposal opening. Proposals become the property of the City and are subject to the provisions of the Oklahoma Open Records Act.

 WITHDRAWAL OF PROPOSAL: Proposals may be withdrawn at any time prior to the proposal opening data and time. After proposals are opened, all proposals will be considered firm and valid until accepted or rejected by the City.

#### 6. AWARDS:

- a. As the best interest of the City may require, the right is reserved to:
  - Accept any individual item, group of items, all or none, or a combination thereof contained within a proposal.
  - To modify a suggested project, based upon proposals received.
  - To reject any and all proposals or waive any minor irregularity or technically in proposals received.
- b. Vendors are cautioned to make no assumptions regarding their success on the awarding of any contract. The City reserves the right to excerpt portions of proposals and recombine them in any combination, which may then be submitted to prospective vendors as an Invitation for Bid.
- ACCEPTANCE OF PROPOSAL: This document constitutes only the vendor's proposal until it is accepted by the City Council for the City of Lawton and a contract is executed by the Mayor and City Clerk on behalf of the City of Lawton.
- WAIVER: The City of Lawton reserves the right to waive any General Provisions, Special Provision(s), or minor project guideline deviation(s) when considered to be in the best interest of the City.
- 9. CHANGES TO PROJECT GUIDELINES: Proposals are to be submitted in accordance with the project guidelines provided. Any exceptions to the project guidelines must be indicated in the place provided on the specifications page(s) or by separate letter from the vendor, if place is not provided on the specifications page(s). Changes in project guidelines reducing the quality, versatility or applicability of the product or service may cause the rejection of the proposal. The City shall make the final determination. Failure to put the City on notice of any deviation from the project guidelines may cause the proposal to be rejected at the discretion of the City.
- 10 MISTAKES: Vendors are expected to examine the project guidelines, delivery schedule, proposal prices and all instructions pertaining to supplies and services. Failure to do so will be at vendor's risk. In all cases, the UNIT PRICE WILL GOVERN.
- 11. INFORMATION: The vendor must provide information pertinent to items proposed. Complete catalogs are not necessary. If furnished, however, the vendor must identify the exact location in the catalog and circle or identify clearly the item being proposed.
- 12. MANUFACTURERS' NAMES AND APPROVED EQUIVALENTS: Any manufacturers' names, trades name brand names, information and/or catalog numbers listed in project guidelines are for information and are not intended to limit competition. The vendor may offer any brand, which meets or exceeds the specification(s) for any item(s). If proposals are based on equivalent products, indicate on the proposal form the manufacturers' name and model number. Vendor

CONDITIONS FOR SUBMITTING PROPOSALS Page 3 of 11

shall submit with his proposal sketches, descriptive literature and/or complete specifications. References to literature submitted with a previous proposal will not satisfy this provision. The vendor shall also explain in detail the reason(s) why the proposed equivalent will meet the specifications and should not be considered an exception thereto. Proposals which do not comply with these requirements are subject to rejection. Proposals lacking any written indication of intent to quote an alternate brand will be received and considered to be in complete compliance with the specifications as listed on the proposal form.

- 13. SAMPLES: Samples of items, when called for, must be furnished free of charge and at no expense to the City. Each individual sample must be labeled with vendor's name, manufacturer's brand name and number, contract number and item reference, or as specified in the attached special conditions. Samples will not be returned,
- 14. TESTING: When testing is required to determine if a sample meets project guidelines and it is determined that the product fails to meet specifications, the cost of testing shall be borne by the vendor. If the sample satisfies the project guidelines, the cost of testing shall be borne by the City.
- 15. NON-CONFORMANCE TO PROJECT GUIDELINES: Items may be tested for compliance with project guidelines by appropriate testing laboratories or by the City. The data derived from any tests for compliance with specifications are public records and open to examination thereto in accordance with Oklahoma Statutes.
- 16. CONDITION AND PACKAGING: It is understood and agreed that any item proposed as a result of this Request for Proposal shall be new (current model at the time of the proposal). All containers shall be suitable for storage or shipment and all prices shall include standard commercial packaging.
- 17 INSPECTION, ACCEPTANCE and TITLE: Inspection and acceptance will be at destination unless otherwise provided. "Destination" shall mean delivered to the receiving dock, department stockroom, or other point specified. The City accepts no responsibility for goods until accepted at the receiving point in good condition. Title and risk of loss or damage to all items shall be the responsibility of the vendor until accepted by the ordering agency. The vendor shall be responsible for filing, processing and collecting all damage claims. However, to assist him in the expeditious handling of damage claims, the ordering department will:
  - Record any evidence of visible damage on all copies of the delivering carrier's Bill of Landing.
  - b. Report damage (whether visible or concealed) to the carrier and vendor, confirming such reports, in writing, within fifteen (15) days of delivery, requesting that the carrier inspect the damaged merchandise.
  - c. Retain the item and its shipping container, including inner packaging material, until inspection is performed by the carrier and disposition given by the vendor, or for a reasonable time after notification to the vendor, whichever comes first.
  - Provide the vendor with a copy of the carrier's Bill of Landing and damage inspection report.
- 18. SAFETY STANDARDS: Unless otherwise stipulated in the proposal, all manufactured items or fabricated assemblies shall comply with applicable requirements of the Occupational Safety and Health Act and any standards

CONDITIONS FOR SUBMITTING PROPOSALS Page 4 of 11

- 19. SERVICE AND WARRANTY: Unless otherwise specified, the vendor shall define any warranty service and replacements that will be provided during and subsequent to this contract. Vendors must explain on an attached sheet to what extent warranty and service facilities are provided. Unless otherwise indicated in this agreement, upon entry into any contract with the City, vendor expressly warrants that all articles, materials, supplies, equipment, and/or services covered in this contract will conform to the project guidelines attached hereto and made a part of any proposal submitted or contract awarded; vendor further warrants that same shall be of good material and workmanship and free from defects.
- 20. REMEDIES: Failure to make delivery or to meet project guidelines authorized the City to seek replacement goods or services elsewhere and to seek legal and equitable remedies against the defaulting vendor. If any of the goods and/or work performed fail to meet the warranties contained herein or in any proposal submitted, vendor, upon notice thereof from the City, shall promptly correct or replace the same at vendor's expense. If vendor shall fail so to do, the City may cancel any agreement entered in whole or in part and pursue all other remedies available. After notice to the vendor, all such goods will be held at vendor's risk. The City may, and at vendor's direction shall, return such goods to vendor at vendor's risk, and all transportation charges, both to and from original destination, shall be paid by vendor. Any payment for such goods shall be refunded by vendor unless vendor promptly corrects or replaces the same at its expense.
- 21 AUTHORIZED USERS: Proposals shall cover requirements during the specified period for all Municipal Departments, Boards, Commissions, Agencies, and Institutions
- 22. LIABILITY: The vendor shall hold and save the City of Lawton, its Departments, Boards, Commissions, Agencies, Institutions and all employees of the aforementioned harmless against the claims by third parties resulting from the vendor's breach of any agreement entered or the vendor's negligence.
- 23. PRICES AND TERMS: Unless otherwise provided in the project guidelines, firm fixed prices shall be submitted F.O.B. Lawton at the indicated Department's address and shall include packing, handling and shipping charges fully prepaid by the vendor. Proposal prices shall be valid for a minimum of sixty (60) days from the date of proposal opening, and shall thereafter remain firm for the life of any contract awarded by the City to a vendor.
- 24. ACCEPTANCE OF PURCHASE ORDERS: Vendors are to accept only those purchase orders issued by the City of Lawton, its Departments, Boards, Commissions, Agencies, Institutions and all employees of the aforementioned, prepared on Accounting Division Forms, unless instructed otherwise in the Request for Proposal or executed contract agreement.
- 25. PRICE ADJUSTMENTS: Manufacturer's price increases, or other increases in the cost of doing business, MAY NOT be passed on to the City of Lawton, its Departments, Boards, Commissions, Agencies, and Institutions, nor may the vendor withdraw or cancel the proposal, or any resulting agreement, or any part of the proposal or agreement for these reasons. Vendors may only cancel the proposal or resulting agreement pursuant to the cancellation clause, if one is included as a part of the Request for Proposal, and then only if the contractual obligation has been fulfilled by the vendor is accordance with the terms stated. Proposals which reflect

CONDITIONS FOR SUBMITTING PROPOSALS Page 5 of 11

I lat the price of an item is based upon "market price" or is "subject to increase" or sed upon some event, or which otherwise indicate that prices reflected are infirm or subject to change, will be deemed non-contorning unless the proposal specifications specifically provide for price escalation. If price variations are allowed to y must be tied to a readily identifiable index which is free from control or influence by two vendor.

- SUMMARY OF TOYAL SALES: If any agreement is entered into as the result of the acceptance of a Request for Proposal or any proposal submitted, the vendor agrees to runnish City of Lawton a summary of sales, including total dollar amount, made under the contract at the end of each quarter, or as stipulated in the attached project guidelines.
- 37 FAYMENT:
  - INVOICING: The ventor shall be paid within a reasonable time after submission of proper certified invoices to the City at the prices stipulated in any agreement entered into as the result of the submission of a Request for Proposal. Invoices shall contain the project number and purchase order number. Failure to follow these instructions may result in delay of processing invoices for payment. The Company or Corporation submitting the Request for Proposal shall be the only office authorized to receive orders, do the billing and invoicing and receive payment. If the vendor wishes to ship or service from a point other than the home office, he will furnish a written list of these locations to the City. HOWEVER, NO ORDERS WILL BE PRESENTD TO, BILLING WILL NOT BE DONE FROM, NOR WILL PAYMENT BE MADE TO THESE LOCATIONS.
  - E REQUIREMENTS ONLY PURCHASES: Any contract resulting from the submission of a Request for Proposal shall be for the quantities actually ordered during the life of the agreement only. Billing shall be made in accordance with instructions by the Department or Division issuing the purchase croer, and only for quantities actually ordered and delivered. The can reserves the right to purchase none of the product or more than the quantity indicated in the proposal.
  - C. TAXES: Purchases by the City of Lawton are not subject to any Sales Tax or Federal Excise Tax. Exemption Certificates will be furnished upon request
  - DiSCOUNTS: Vendors may offer a cash discount for prompt payment; however, such discounts shall not be considered in determining the lowest net cost for proposal evaluation purposes. Vendors are encouraged to reflect cash discounts in the unit prices quoted. Discount time will be computed from the date of satisfactory delivery at place of acceptance or from reheipt of correct involce at the office specified, whichever is later.
  - As provisions of the Uniform Commercial Code shall be adhered to.
- EXTENSION: At the end of the contract period for any contract awarded, or upon the conclusion of a maximum of one (1) extension thereof, the contract may be extended for e-period not to exceed twelve (12) months at the same price and conditions as in the original contract, by mutual agreement between the City and the vendor. The extended contract shall, upon the signing by both parties, become a binding agreement and shall remain in force and effect until terminated by either party, provided that elther party to the contract shall have the option to terminate said

CONDITIONS FOR SUBMITTING PROPOSALS Page 6 of 11

FORM NEWSERIES

extended contract upon thirty days' prior written notice of termination by one party to the other.

- 29. CONFLICT OF INTEREST: The Request for Proposal hereunder is subject to the provisions of City of Lawton Charter and City Code and the laws of the State of Oklahoma. All vendors must disclose with the proposal the name of any Officer, Director or Agent who is also an employee of the City of Lawton or any of its Agencies or Subdivisions. Further, all vendors must disclose the name of any City employee who owns, directly or indirectly, an interest of five percent (5%) or more in the vendor's firm or any of its branches.
- 30. PATENTS AND ROYALTIES: The vendor, without exception, shall indemnify and save harmless the City of Lawton, its Departments, Boards, Commissions, Agencies, Institutions and all employees of the aforementioned from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or used in the performance of any contract resulting from the submission of this Request for Proposal, including its use by the City of Lawton. If the vendor uses any design, device or materials covered by letters, patent copyright, it is mutually agreed and understood without exception that the proposal prices shall include all royatties or cost rising from the use of such design, device, or materials in any way involved in the work.
- FACILITIES: The City reserves the right to inspect the vendor's facilities at any time with reasonable prior notice.
- 32. BANKRUPTCY: If the vendor becomes bankrupt or insolvent, or if a petition in bankruptcy is filed against the vendor, or if a receiver is appointed for the vendor, the City shall have the right to terminate any agreement resulting from the submission of this Request for Proposal upon written notice to the vendor without prejudice to any claim for damages or any other right of the City under any agreement resulting from the submission of this Request for Proposal to the time of such termination.
- 33. ASSIGNMENT: No agreement resulting from the submission of this Request for Proposal shall be assigned by the vendor without written consent of the City.
- 34. INSURANCE: If insurance is required in the project guidelines, unless otherwise specifically stated, proof of the following types and amounts shall be furnished to the City, showing the City as an additional insured thereunder without cost to the City of Lawton, prior to the entry into any agreement:
  - a. General Liability: The vendor shall procure and maintain in full force and effect, for the term of the Contract, a policy or policies under a comprehensive form as required by State law. In addition, the vendor shall have, during the term of the Contract, insurance in the minimum amount of twenty-five thousand dollars (\$25,000) property damages, arising from a single occurrence, one hundred twenty-five thousand dollars (\$125,000) for personal injuries arising from a single occurrence, and one million dollars (\$1,000,000) for any number of claims arising out of a single occurrence or accident. This policy or policies shall hold harmless and indemnify the City of Lawton, its Departments, Boards, Commissions, Agencies, Institutions and all employees of the aforementioned. A current certificate, submitted as a part of the proposal and showing that the vendor has in force and effect such insurance, shall be maintained on file with the City Clerk of the City.
  - b. Automobile Liability: The vendor shall procure and maintain in full force and effect, for the term of the project, vehicle liability coverage in the

CONDITIONS FOR SUBMITTING PROPOSALS Page 7 of 11

amounts specified in subparagraph A of this section. In addition, the vendor shall have, during the term of the project, vehicle liability coverage as outlined in the attached project guidelines. If higher coverage is required by any regulatory entity with oversight of the vendor's business, the City Code, or other authority, then proof of the higher coverage must be provided. This policy or policies shall hold harmless and indemnify the City of Lawton, it Departments, Boards, Commissions, Agencies, Institutions, and all employees of the aforementioned. A current certificate, submitted as a part of the proposal and showing that the vendor has in force and effect such insurance, shall be maintained on file with the City Clerk of the City.

- c. Workers' Compensation: The vendor shall procure and maintain in full force and effect for the period of the project, full Workers' Compensation insurance in accordance with the laws of the State of Oklahoma to protect the vendor and the City against liability under the Workers' Compensation and occupational disease statutes of the State of Oklahoma. A current certificate showing that the vendor has in force and effect the aforesaid insurance or a current certificate showing exemption from the requirement shall be submitted as a part of the proposal and maintained on file with the City Clerk of the City.
- 35. BONDS: Neither Bidder's Bonds nor Performance Bonds are required unless specifically set forth in the project guidelines attached hereto. If Bonds are required, the same shall be held under the following requirements and specifications unless otherwise indicated:
  - a. Bidder's Bonds: If required as a part of the project guidelines, proposals filed with the Municipal Clerk must be accompanied by a Bidder's Bond, certified check or cashier's check in the amount stated and made payable to the City of Lawton. This amount will be retained by the City as damages in the event the successful vendor fails to comply with the terms of any agreement entered into as a result of this Request for Proposal, but shall in no way pursue any and all other remedies available either in equity or at law. All deposits and bonds will be returned to the unsuccessful vendors within a reasonable time after the acceptance of a proposal, and to the successful vendor upon full performance of the contract. Bonds or funds deposited do not accrue interest while held.
  - b. Performance Bonds: If a Performance Bond is required under the project guidelines, the successful vendor must, prior to the entry into any agreement, post the bond, certified check or cashier's check in the amount stated and made payable to the City of Lawton. The Bidder's Bond posted will be returned to the successful vendor upon posting of the Performance Bond and completion of any additional requirements for execution of any agreement by the vendor. The Performance Bond will be released or returned to the vendor, as appropriate after satisfactory completion of the contract and the performance period as stated in the project guidelines attached or any amendments thereto.
- TIME OF ESSENCE: Unless otherwise stated, time shall be considered of the essence to this agreement.
  - a. Vendor specifically agrees that it shall not be grounds to alter the terms of any proposal submitted and that it shall be liable for failure to deliver or delay in delivery occasioned by and including, without limitations, strikes, lock-outs, inability of obtaining material or shipping space, breakdowns, delays of

CONDITIONS FOR SUBMITTING PROPOSALS Page 8 of 11

carrier's or suppliers and pre-existing governmental regulations of the federal and state government or any subdivisions thereof, unless governmental acts and regulations affecting delivery could not be found, recognized, or discovered by due diligence on the part of the vendor prior to submission of the proposal and the City Council's acceptance thereof.

- b. When time is not of the essence, this contract shall be inoperative during such period of time that aforesaid delivery or acceptance may be rendered impossible by reason of fire, strike, Acts of God, or government regulation. Provided, however, to the extent that the vendor has any commercially reasonable alternative method of performing his contract by purchase on the market or otherwise, he shall not be freed of his obligation hereunder by this clause.
- 37 DISCRIMINATION: Vendor agrees, in connection with the performance of work under any agreement entered as a result of this Request for Proposal, as follows:
  - a. Vendor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, ancestry, or physical or mental impairment. The vendor shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, national origin, ancestry, or physical or mental impairment. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The vendor agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth provisions of this section.
  - b. The vendor agrees to include this non-discrimination clause in any subcontract connected with the performance under any agreement entered into as a result of this Request for Proposal.
  - c. In the event of the vendor's non-compliance with the above nondiscrimination clause, any agreement entered into as a result of this Request for Proposal may be terminated by the City. The vendor may be declared by the City until satisfactory proof of intent to comply is made by the vendor.
- 38. DISTRIBUTION OF CONTRACT: One (1) copy of any agreement entered into as a result of this Request for Proposal or award letter shall be furnished to each successful vendor as a result of this Request for Proposal. It shall be the vendor's responsibility to reproduce and distribute copies of any agreement entered in to as a result of this Request for Proposal to all distribution points listed in this Request for Proposal who will accept orders and complete deliveries. No additions, deletions or changes of any kind shall be made to any agreement entered into as a result of this Request for Proposal by the vendor.
- ADVERTISING: In submitting this proposal, vendor agrees not to use the results therefrom as a part of any commercial advertising.
- 40. TERMINATION FOR CONVENIENCE OF THE CITY:
  - a. The performance of work and/or delivery of ordered materials, supplies, equipment, and/or services under any agreement entered into as a result of this Request for Proposal may be terminated by the City, in whole or in part, whenever it is determined to be in the best interest of the City.

CONDITIONS FOR SUBMITTING PROPOSALS Page 9 of 11

- b. Any such termination shall be effected by the delivery to the vendor of a notice of termination specifying the extent to which performance of work and/or delivery of ordered materials, supplies, equipment, and/or services are terminated, and the date upon which such termination becomes effective.
- C. After receipt of a notice of termination, the vendor shall stop work and/or place no further orders under any agreement entered into as a result of this Request for Proposal on the date and to the extent specified in the notice of termination.
- 41 VENUE: Any agreement entered into as a result of this Request for Proposals shall be governed by the laws of the State of Oklahoma.
- 42. OKLAHOMA STATE CONTRACT: Some items for which the City solicits bids or proposals are on the Oklahoma State Contract. The City is eligible to purchase from the State contract and will check the prices on the State contract and may elect to purchase under that contract without termination of this agreement.
- 43. INTEGRATED AGREEMENT: This writing, with the attachments hereto, and any associated purchase orders constitute the entire agreement of the parties. No separate promises or agreements have been made other than those contained herein. No agreement entered into as a result of this Request for Proposals may be modified except in writing and signed by both parties.
- 44. SURVIVAL OF TERMS: All terms, conditions, specifications, and requirements set forth in this Request for Proposals shall survive the execution of and become a part of any agreement entered into unless specifically deleted in writing and signed by both parties to the agreement.
- 45. ENERGY SAVINGS: Oklahoma is an energy conservation State, and we welcome any comments on your proposal that would indicate energy savings. Energy savings will be considered on all proposals where project guidelines call for Life Cycle Cost Analysis.

CONDITIONS FOR SUBMITTING PROPOSALS Page 10 of 11

AFFIDAVIT FOR PAYMENTS IN EXCESS OF \$25,000.00 CITY OF LAWTON, STATE OF OKLAHOMA

STATE OF DELLANK SS COUNTY OF

The undersigned (architect, contractor, supplier or engineer), of lawful age, being first daly sworn, on oath says that this contract is true and correct. Affiant further states that the (work, services or materials) will be (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that (s) he has made no payment directly or indirectly to any elected official, officer or employee of the City of Lawton, any county or local subdivision of the state, of money or any other thing of value to obtain or procure the contract or purchase order.

John John LAC Business Name / Contractor Name Signed M Print Oh day of allelisto Attested to before me this Notary 2023 My Commission Expires CICILY MARKLE Notary Public - State of Oklahoma Commission Number 07010973 My Commission Expires Nov 13, 2023 NOTE: Copy of this Affidavit must be attached to any invoice submitted by an an

NOTE: Copy of this Affidavit must be attached to any invoice submitted by an arbitract, contractor, of so real supplier for work, services, or materials completed or supplied under the terms of the contract or contracts in excess of \$25,000.00.

CONDITIONS FOR SUBMITTING PROPOSALS PAGE 11 OF 11 Proposal Number: RFPCL22-002 Proposal Title: HVAC Services

Proposal Price Sheet (must be completed and returned with the proposal)				
Tten	Description		and the second sec	The second state of the se
	HVAC Service, NOT	<u>Qty</u>	Unit	the second
	including window units,		1	129 Regular hrs
¥.	annual (12 month) price	1		169 AFter hrs
g	Consolidated Groups		~	25 B markup
	(all 17 sites)	Per	Year	HOURLYDRATE
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			and a	10 1 ABELIDUIS
			- decarra	MATERIAL MARKUP:
	-		1	25% *
2	Group 1 - Patterson Center,	Per	Year	HOURLY RATE
	Fire Station \$1, Animal Shelter, Town hall, HC King			129 Redularhis
	Center	9. 		\$169.9 After hoters
			1	MATERIAL MARKUP:
				2570 *
3	Group 2 Wastewater	ور ورد میشدند. مور ورد میشدند. مور		
·*	Treatment Plant & Admin Bldg,	Per	Year	HOURLY RATE
	Water Treatment Plant,	1		\$ 1698 after hyx +
	Ellsworth Pump Station,		1	
	Southeast Water Treatment Plant	•	3	MATERIAL MARKUP:
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true .	Group 3 - New City Hall	201	Year	HOURLY RATE
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				Life offer tos
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	Group 4 - Lawton Public	Per	Year	HOURLY RATE
5	Library, Owens multipurpose			\$ 1293 realize
	Center, McMahon Auditorium, Great Plains Museum			169. 29 after hos
	Great Frains Museum			MATERIAL MARKUP:
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6	Group 5 - City Hall Annex,	Per	Year	HOURLY RATE
	Lawton Police Station		é	\$ 1291 Nog Ma+
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Warranties are as follows:

Labor: One Year, provided the necessary preventive maintenance is followed on new equipment. Six Months, on repairs to existing equipment, provide no external abuse, physical damage, voltage surge single phased, brown out, mechanical failure, or other causes out of our control.

Materials, Parts, Equipment: Standard Manufactures Warranty applies, if Extended or Paid Warranties are offered this will be past on to the City and offered as an alternate.

# Proposal Number: RFPCL22-002 Proposal Title: HVAC Services

Any questions pertaining to the attached specifications, please contact Jeffery Temple at 580-581-3440 or jeffery.temrle@lawtonok.gov.

#### Notes:

- 1. This is a requirements contract.
- 2. There are insurance requirements for this contract.
- 3. As per accompanying specifications.

#### 4. WARRANTY:

- a) The vendor must provide detailed information on all warranties provided with the purchase of items covered by this contract.
- b) The vendor must also provide details, including prices, on any available extended or optional warranties.
- c) The information provided on warranties will be considered during the proposal evaluation. Available warranties are factor for proposal award.

DISCLAIMER: The City of Lawton reserves the right to accept or reject any or all bids.



Commentary

File #: 21-512

Agenda Date: 9/28/2021

Agenda No: 17.

#### ITEM TITLE:

Consider approving a Resolution fixing the amount of Street Improvement General Obligation Bonds, Series 2021, to mature each year; fixing the time and place the bonds are to be sold; designating a paying agent/registrar; approving the preliminary official statement and distribution thereof; ratifying and confirming a continuing disclosure agreement; authorizing the clerk to give notice of said sale as required by law and fixing other details of the issue

**INITIATOR:** John Ratliff - City Attorney

**STAFF INFORMATION SOURCE:** Michael Cleghorn - City Manager; John Ratliff - City Attorney

**BACKGROUND:** On February 14, 2017, Lawton voters approved a Street Improvements Capital Improvement Program in the amount of \$55,300,000 to be funded by ad valorem taxes. The ordinance approved by voters authorized the issuance of general obligation bonds over a period of 13 years to finance the street improvements repayable by such taxes.

The Resolution presented will fix the amount of the Street Improvement General Obligation Bonds, Series 2021, to mature each year; fix the time and the place the General Obligation Bonds, Series 2021, are to be sold; designating a paying agent/registrar; approving the preliminary official statement and distribution thereof; ratifying and confirming a continuing disclosure agreement; authorizing the City of Lawton City Clerk to give notice of said sale as required by law and fixing other details of the issue. General Obligation Bonds in Oklahoma must be sold through a public or competitive sale process. Upon approval of the Resolution by the City Council, documents will be prepared by the City's financing team to sell the bonds in accordance with Oklahoma Constitutional and Statutory requirements, including the publication of a Notice of Sale of Bonds in the local newspaper. In addition, a Preliminary Official Statement and Instructions to Bidders will be distributed to interested bidders which includes local banks and other banks in Oklahoma and surrounding States and Broker-Dealers.

Bids for the General Obligation Bonds, Series 2021, will be accepted until 11:00 a.m. on October 26, 2021. The bids will be compiled by the financing team and presented to the City Council at its regular meeting on the above date. The bidder offering the lowest interest rate and complying with the Instructions to Bidders will be recommended for acceptance by the City of Lawton City Council.

**EXHIBITS:** Proposed Resolution (included in packet); Notice of Sale; Continuing Disclosure Agreement and Preliminary Official Statement (on file in the City Clerk's Office)

#### KEY ISSUES: N/A

FUNDING SOURCE: 2017 Ad Valorem Tax Street Improvements Capital Improvement Program

File #: 21-512

STAFF RECOMMENDED COUNCIL ACTION: Adopt Resolution No.21-\_\_\_.

#### **RESOLUTION NO. 21-\_\_\_ AUTHORIZING SALE OF BONDS**

PURSUANT TO THE LEGAL NOTICE AS IS REQUIRED BY THE OKLAHOMA OPEN MEETING ACT INCLUDING THE POSTING OF NOTICE AND AGENDA AS IS REQUIRED BY THE TERMS THEREOF, THE MAYOR AND THE CITY COUNCIL OF THE CITY OF LAWTON, OKLAHOMA (THE "CITY") MET IN REGULAR SESSION IN CITY HALL, 212 S.W. 9TH, LAWTON, OKLAHOMA, ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 2021, AT 2:00 P.M.

PRESENT:

ABSENT:

Notice of the schedule of regular meetings of the governing body of the City for the calendar year 2021 having been given in writing to the City Clerk of the City and public notice of this meeting setting forth the date, time, place, and agenda was posted at the entry to City Hall, 212 S.W. 9th, Lawton, Oklahoma, in prominent view twenty-four (24) hours or more prior to this meeting, excluding Saturdays, Sundays, and State designated legal holidays, all in compliance with the Oklahoma Open Meeting Act.

#### (OTHER PROCEEDINGS)

Thereupon, \_\_\_\_\_\_ introduced the proposed municipal resolution set forth herein below, which was read in full by the Clerk and upon motion by Councilmember \_\_\_\_\_\_ seconded by Councilmember \_\_\_\_\_\_, said Resolution was adopted by the following vote:

AYE:

NAY:

Said Resolution was thereupon signed by the Mayor, attested by the City Clerk, sealed with the seal of said municipality, and is as follows:

[Resolution No. 21-\_\_\_\_\_ begins on following page]

A RESOLUTION FIXING THE AMOUNT OF GENERAL OBLIGATION BONDS, SERIES 2021, TO MATURE EACH YEAR; FIXING THE TIME AND PLACE THE BONDS ARE TO BE SOLD; DESIGNATING A PAYING AGENT/REGISTRAR; APPROVING THE PRELIMINARY OFFICIAL STATEMENT AND DISTRIBUTION THEREOF; RATIFYING AND CONFIRMING A CONTINUING DISCLOSURE AGREEMENT; AUTHORIZING THE CLERK TO GIVE NOTICE OF SAID SALE AS REQUIRED BY LAW AND FIXING OTHER DETAILS OF THE ISSUE.

WHEREAS, the issuance of general obligations bonds by The City of Lawton, Oklahoma, in the sum of Three Million, Four Hundred Twenty Thousand Dollars (\$3,420,000)(the "Bonds") for the purpose of improving streets/roadways acquired by the City of Lawton through grant, dedication or otherwise for use by the City of Lawton's inhabitants and traveling public, and City-owned utilities under and adjacent to such streets/roadways found to be in need of repair/replacement, has been duly authorized at an election held on February 14, 2017, for that purpose; and

WHEREAS, the City Council of said City pursuant to Title 62, Oklahoma Statutes 2011, Sections 353 and 354, as amended, hereby deems it beneficial at the present time to sell and the Bonds.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LAWTON, STATE OF OKLAHOMA:

<u>SECTION 1</u>. That the Bonds of said municipality approved by the voters on the 14th day of February, 2017, shall be offered for purposes of sale as authorized by Title 62, Oklahoma Statutes 2011, Sections 353 and 354, as amended, and shall be sold at public sale in the aggregate amount of \$3,420,000 and shall be called "General Obligation Bonds, Series 2021".

SECTION 2. That the Bonds shall be offered for sale, and bids shall be received in the form of sealed or electronic bid in the office of the City of Lawton City Clerk at City Hall, 212 S.W. 9<sup>th</sup> Street, Lawton, Oklahoma, on the 26th day of October, 2021, at 11:00 a.m., local time and that said bonds in the total principal amount of \$3,420,000 shall become due in the amount of \$380,000 on December 1, 2023, \$380,000 on December 1, 2024, \$380,000 on December 1, 2025, \$380,000 on December 1, 2026, \$380,000 on December 1, 2027, \$380,000 on December 1, 2028, \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2028, \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2028, \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2029, \$380,000 on December 1, 2030, and \$380,000 on December 1, 2028, \$380,000 on December 1, 2031. The City Council will convene at 2:00 p.m. in the City Hall Council Chambers, 212 S.W. 9<sup>th</sup> Street, Lawton, Oklahoma, on the said date that the bids are due to consider the bids and to take action to award the Bonds.

<u>SECTION 3</u>. That BOKF, NA, Oklahoma City, Oklahoma, is hereby designated as Paying Agent/Registrar for said Bonds, and the Mayor is authorized to execute an agreement for such services.

<u>SECTION 4</u>. That the Preliminary Official Statement pertaining to the Bonds is deemed by the City Council to be "near final" in accordance with the requirements of Rule 15c2-12 of the Securities and Exchange Commission promulgated pursuant to the Securities and Exchange Act of 1934. The City Council further authorizes distribution of the Preliminary Official Statement by the Financial Advisor in connection with the sale of the Bonds, upon fulfillment of all applicable requirements in City Council Policy 4-3, Municipal Securities Disclosure Policy.

<u>SECTION 5</u>. That the City hereby ratifies and confirms the Continuing Disclosure Agreement for and on behalf of the City with respect to its obligations that may be subject to continuing disclosure requirements pursuant to SEC Rule 15c2-12.

<u>SECTION 6</u>. That the City Clerk is hereby ordered to cause notice of the sale of said bonds to be given as required by state law.

<u>SECTION 7</u>. That by reason of said City of Lawton being without adequate streets/roadways it is deemed and hereby declared necessary for the preservation of the public health, peace and safety that this Resolution shall become operative immediately and this Resolution shall be in full force and effect immediately from and after its passage and approval by the City Council.

[Remainder of page left blank intentionally]

PASSED AND APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2021.

#### THE CITY OF LAWTON, OKLAHOMA

(SEAL)

Mayor

ATTEST:

City Clerk

#### STATE OF OKLAHOMA ) ) SS COUNTY OF COMANCHE )

I, the undersigned, the duly qualified and acting Clerk of The City of Lawton, Oklahoma, hereby certify that the foregoing is a true and complete copy of a Resolution calling for the sale of General Obligation Bonds, Series 2021 adopted by the governing body of said municipality and Transcript of Proceedings of said governing body at a regular meeting thereof duly held on the date therein set out, insofar as the same relates to the introduction, reading, and adoption thereof as the same appears of record in my office.

I further certify that attached hereto is a true and complete copy of the public notice given to the City Clerk of Lawton, Oklahoma, and of the public notice posted in prominent public view at entry to City Hall, 212 S.W. 9th, Lawton, Oklahoma, at least twenty-four (24) hours prior to the meeting wherein said Resolution was approved, excluding Saturdays, Sundays, and State designated legal holidays.

WITNESS my hand and seal this \_\_\_\_ day of \_\_\_\_\_ 2021.

(SEAL)

City Clerk



Commentary

File #: 21-523

Agenda Date: 9/28/2021

Agenda No: 18.

#### **ITEM TITLE:**

Consider approving an Agreement for Economic Development Assistance - Retail [i.e. Sales Tax Rebate Agreement] with Cache Properties LLC, including any floor amendments that may be made thereto, to assist with the cost of public improvements associated with the development of Phase One the Mathis Center on the property located at 4800 NW Cache Road and authorize the Mayor and City Clerk to execute the agreement. **INITIATOR:** City Attorney - John Ratliff

**STAFF INFORMATION SOURCE:** Deputy City Attorney - Timothy Wilson; Deputy City Manager - Richard Rogalski

**BACKGROUND:** At its June 17, 2021, meeting, the Lawton Economic Development Authority reviewed and voted to accept and forward to the City Council with LEDA's approval an application for Economic Development Assistance - Retail, submitted by Cache Properties LLC, to assist with the cost of public improvements associated with the development of Phase One of the Mathis Center on property located at 4800 NW Cache Road, to include a 76,000 square foot furniture store consisting of an Ashley Homestore, Mathis Sleep Center, and Mathis Furniture Outlet. On July 27, 2021, the City Council voted to approve the application and directed the City Attorney to draft an agreement for Council consideration.

Since Council acted at its July 27 meeting, the Developer has provided supplemental information that is included in the proposed Sales Tax Rebate Agreement. The proposed Agreement, which incorporates the supplemental information, includes language that does not limit the 76,000 square foot furniture store building to the three originally named stores. Rather, the proposed Agreement identifies as Phase One Stores for the 76,000 square foot building as "those retail stores branded under the Mathis Brothers family of retail stores (e.g., Mathis Outlet or Mathis Sleep Center) or another nationally recognized home furnishing retail brand (e.g., Ashley Homestore or La-Z-Boy Furniture Store), each of which is operated and managed by Mathis Brothers."

Because (1) the original application the Developer submitted identified the anchor tenant as Mathis Brothers Furniture and (2) the proposed Agreement defines Phase One Stores as being stores either branded under the Mathis Brothers family of retail stores (e.g., Mathis Outlet or Mathis Sleep Center) or another nationally recognized home furnishing retail brand (e.g., Ashley Homestore or La-A-Boy Furniture Store), each of which to be operated and managed by Mathis Brothers, this change fits within the parameters of the initial application. The Chair of LEDA has also been advised of this.

The other terms of the proposed Agreement remain unchanged. If approved the Developer will contract and pay all costs associated with Phase One construction, supporting appurtenances in Phase One, and the off-site infrastructure improvements, and in turn receive an annual rebate of one-half (1/2) of the two percent (2%) sales tax collected that is apportioned to the City's General fund from sales tax generated and collected: (a) from the construction of Phase One [i.e. Phase One 76,000 square foot building, supporting appurtenances to said building, and the off-sight infrastructure improvements - traffic signal, water and sewer) during the Initial Construction Period [up to 24 months], and then (b) from qualifying Phase One stores to be located in the Phase

One 76,000 square foot building during the Retail Sales Period [up to seven years], with said rebate not to exceed \$750,000.

**EXHIBIT:** Sales Tax Rebate Agreement with Exhibits A, B & C thereto

KEY ISSUES: N/A

FUNDING SOURCE: Portion of the sales tax generated as set forth in the proposed Agreement

**STAFF RECOMMENDED COUNCIL ACTION:** After receiving an update from staff, consider whether or not to approve the proposed Agreement, or any floor amendments thereto, and take appropriate action.

#### <u>SALES TAX REBATE AGREEMENT</u> <u>MATHIS CENTER</u>

This SALES TAX REBATE AGREEMENT (the "<u>Agreement</u>") is entered into by and between the CITY OF LAWTON, OKLAHOMA, a municipal corporation of Comanche County, Oklahoma ("<u>City</u>") and CACHE PROPERTIES, LLC, an Oklahoma corporation ("<u>Developer</u>"), whose principal place of business is 1834 NW 52<sup>nd</sup> Street, Lawton Oklahoma, 73505.

#### WITNESSETH:

A. Developer intends to construct a retail development, designated as the Mathis Center, on the land described on Exhibit A attached hereto and made a part hereof.

B. The retail development and accompanying improvements contemplated by Developer will promote economic development, stimulate business and commerce, create additional employment opportunities, offer retail shopping opportunities not now available, and generate new sales tax revenue.

C. Developer has advised City that a contributing factor that would induce Developer to develop the Mathis Center would be an agreement with City to provide economic development incentives, consistent with City Council Policy 1-10 Economic Development Assistance - Retail, in the form of a sales tax rebate. The sales tax rebate will defray the costs to be incurred by Developer for off-site infrastructure and public utilities necessitated by the retail development, specified in detail on <u>Exhibit B</u> attached hereto and made a part hereof.

D. City is authorized under the laws of the State of Oklahoma including Article 10, Section 14 of the Oklahoma Constitution and the cases decided thereunder to establish economic development programs and to provide sales tax incentives for development as part of its economic development plan and for its public purpose as defined in Article 10, Section 14.

E. City has determined that providing economic development incentives pursuant to this Agreement will further public purposes and the economic development goals of City.

F. In connection with the furtherance of public purposes and the economic development goals of City, City has determined that the contemplated improvements to and the use of that portion of the Project herein identified as "<u>Phase One</u>," more specifically described below, which falls within the boundaries of the land described on <u>Exhibit A</u>, are in compliance with State of Oklahoma and City retail incentive policy and criteria.

G. The Lawton City Council has approved the execution of this Agreement by and between City and Developer.

NOW THEREFORE, City and Developer, for good and valuable consideration, do mutually agree as follows:

1. <u>Definitions</u>. As utilized herein, the following terms shall have the meanings indicated.

"<u>Occupant</u>" means an occupant of the Project that is operating a business within the Project and either (a) owns fee simple title to the site of its business, or (b) operates its business pursuant to a written lease agreement with Developer or its assigns.

"<u>**Project**</u>" means the land described on <u>Exhibit A</u> attached hereto and made a part hereof and the improvements thereon. Attached hereto as <u>Exhibit C</u> is a depiction of the Project. The sales tax rebate provided under this Agreement shall only apply to the sales generated exclusively from Phase One of the Project, as defined hereafter.

"<u>Phase One</u>" means the part of the Project that is to be the initial development, which is limited to: (1) the approximately 76,000 square foot building ["<u>Initial Building</u>"] located within the Project, which will house one or more Phase One Stores; (2) the supporting appurtenances to that 76,000 square foot building; and (3) the off-site infrastructure improvements, including those described on <u>Exhibit B</u> (traffic signal, water and sewer).

"<u>Phase One Stores</u>" means those retail stores branded under the Mathis Brothers family of retail stores (e.g., Mathis Outlet or Mathis Sleep Center) or another nationally recognized home furnishing retail brand (e.g., Ashley Homestore or La-Z-Boy Furniture Store), each of which is operated and managed by Mathis Brothers.

"<u>**Project Sales Tax Receipts**</u>" means the sales taxes actually received by the City pursuant to the Oklahoma Tax Code attributable to Phase One during the term of this Agreement from the following two components:

a. "<u>Project Construction Sales Tax Receipts</u>" means sales taxes actually received by the City pursuant to the Oklahoma Tax Code, which were generated from sales associated with the construction of Phase One during the "<u>Initial Construction</u> <u>Period</u>", i.e. the construction of the Initial Building (approximately 76,000 sq. ft), the supporting appurtenances to the Initial Building, and the off-sight infrastructure improvements (traffic signal, water and sewer). To determine the amount of Project Construction Sales Tax Receipts during the Initial Construction Period of Phase One, as defined in "Sales Tax Rebate Period" below, Developer will require that all contractors cause all construction purchases to be delivered to the construction site on the Project and use the appropriate City street address for such purchases and deliveries in such a manner that Oklahoma and City municipal sales taxes shall be applicable to the purchase. Developer shall provide reports and invoices to City and verify that Oklahoma and City municipal sales tax is collected on the City point of delivery for all building items and construction materials.

b. "<u>Project Retail Sales Tax Receipts</u>" means sales taxes actually received by City pursuant to the Oklahoma Tax Code during the "Project Retail Sales Period" of the Project, as defined in "Sales Tax Rebate Period" below, such sales taxes being generated from retail sales conducted within any of the Phase One Stores to be located within the Initial Building of Phase One.

"Sales Tax Rebate Period" is comprised of the following two periods:

a. "<u>Initial Construction Period</u>" means the period beginning upon the issuance by the City of a Building Permit for Phase One and ending upon either (1) the issuance by the City of a certificate of occupancy for the first of the Phase One Stores to be located and operated within the Initial Building of Phase One; or (2) twenty-four (24) months, whichever is earlier.

b. "<u>Project Retail Sales Period</u>" means the period beginning after the conclusion of the Initial Construction Period on the first day of the month of the first reported sales from the first of the Phase One Stores to be opened and operated within the Initial Building of Phase One; and ending (a) when the sales tax rebate is paid in full, (b) when the last of these stores ceases to operate in the Initial Building located in Phase One, or (c) at the end of seven (7) years after commencement of the Project Retail Sales Period, whichever occurs first, provided, however any sales tax rebate subject to this Agreement which remains unpaid after the termination of this Agreement and which accrued prior to expiration of the Sales Tax Rebate Period, shall be paid after the termination of this Agreement. In the event the Agreement is terminated subject to other provisions of the Agreement prior to the conclusion of the "Project Retail Sales Tax Period", no further sales tax rebate obligation will accrue after such termination.

2. **Ownership Interest in Project**. Each party acknowledges and agrees that the Project is located entirely within the city limits of City, is not located in an improvement project financed by tax increment bonds, and does not include any property that is owned or leased by a member of City Council or by a member of City Planning Commission. Developer represents and warrants to City that Developer is the owner of the Project and, subject to paragraph 9 of this Agreement, will hold fee simple title as well as equitable title to the land described on <u>Exhibit A</u>, except as conveyed to an Occupant for the site of its store. The parties further agree that the City will be granted easements for the public improvements being made by the Developer, to include the public water line, public sewer line and traffic signal, with said easements to be in accordance with City standards. Upon completion [and passage of City inspection] of the aforementioned public water line, public sewer line and traffic signal, the City will accept dedication of the improvements and thereafter be responsible for their maintenance [subject to any applicable outstanding maintenance bond].

3. <u>Sales Tax Rebate Calculation</u>. City hereby agrees to provide to Developer, in the form of a sales tax rebate, an amount not to exceed seven hundred fifty thousand dollars (\$750,000) in sales tax generated exclusively from Phase One. The amount of sales tax rebate provided will be calculated based on the following:

- a) The sales tax rebate will be one-half (1/2) of the two percent (2%) sales tax collected from Phase One apportioned to the City's General Fund, up to a maximum of \$750,000 for public improvements; said amount being generated from the taxable sales from Phase One for the period of time set forth in the Sales Tax Rebate Period based upon the Project Sales Tax Receipts information obtained annually by City and confirmed by the Oklahoma Tax Commission.
- b) It is understood and agreed by Developer that if the development fails to generate sales sufficient within the Sales Tax Rebate Period to result in the transfer of the proposed sales tax rebate amount, City will only transfer the amount of actual sales tax generated according to the above criteria. For example, if the development only generates enough sales during the Sales Tax Rebate Period to result in \$500,000 in sales tax rebate, City will only pay the amount of \$500,000.
- c) It is further understood and agreed by Developer that the exact amount of the sales tax rebate will be determined by the actual hard and soft costs (including, but not limited to, interest carry and other financing costs) of constructing the public infrastructure improvements required by paragraph 12 of this Agreement, but in no event shall the amount exceed seven hundred fifty thousand dollars (\$750,000).

A major incentive for City to enter into this Agreement is the opening of one or more Phase One Stores inside the Initial Building that is part of Phase One of the Project. Should none of the Phase One Stores open for business within twelve (12) months after the issuance of the first certificate of occupancy for the Initial Building that is part of Phase One, this Agreement may become null and void at the sole and exclusive option of City. In the event this Agreement is declared null and void under this provision [i.e. terminated by City], no sales tax rebate obligation beyond what accrued during the Initial Construction Period that remains unpaid, if any, will be due the developer.

Except for the sales tax rebate in an amount not to exceed \$750,000, Developer acknowledges and agrees that City will provide no other incentive(s) or assistance as an inducement to construct (1) Phase One, and off-site infrastructure/public utility improvements necessitated by that portion of the Project, or (2) any future development phases to be added to or otherwise associated with the Project beyond Phase One.

City covenants and agrees that it will not take any action which would otherwise place Developer in a subordinated position to receive sales tax rebate amounts under this Agreement from Phase One, it being the intent of the parties that Developer shall have the first right to receive the sales tax rebate described in this Agreement.

#### 4. <u>Rebate of Project Sales Tax Receipts.</u>

- a) City will rebate to Developer, on or before May 1st of each year, sales tax as set forth herein, issuance of a sales tax rebate payment amount by City being deemed City's representation to Developer that the amount of such payment is accurate in accordance with this Agreement. If City has any inquiries concerning the Project Sales Tax Receipts for any Occupant(s) of Phase One (including, without limitation, the inability of the Oklahoma Tax Commission to segregate the sales taxes attributable to the location of an Occupant(s) location in Phase One versus other locations of such retailer in the City of Lawton), City shall have the right to withhold payment of any rebate with respect of such Occupant(s) that City may dispute until City receives such additional information as City shall reasonably require.
- b) Developer shall obtain from each Occupant of Phase One such Occupant's Federal Tax Identification Number, such Occupant's Sales Tax Permit Number issued by the Oklahoma Tax Commission, and an executed release from such Occupant authorizing the Oklahoma Tax Commission to provide to City the Project Sales Tax Receipts information of such Occupant for each calendar year during the Sales Tax Rebate Period. Developer will cooperate with City's efforts to obtain the Project Sales Tax Receipts information.
- c) Subject to City's obligation below to use reasonable efforts to maintain the confidentiality of the Project Sales Tax Receipts, Developer hereby waives any and all right of confidentiality, which Developer may have in respect of sales taxes generated from the Project. Without limiting the generality of the preceding sentence, Developer agrees that City shall have the right to inspect and audit the books and records of Developer to confirm the total amount of sales taxes and Project Sales Tax Receipts attributable to Phase One. Developer shall use reasonable efforts to cause all leases of Phase One and other contracts with Occupants relating to occupancy of Phase One that are executed after the date of this Agreement to include provisions in which the Occupant (i) waives, for the benefit of both Developer and City, any and all rights of confidentiality which such Occupant may have in respect of sales taxes generated from its business at Phase One; (ii) agrees that City shall have the right to inspect and audit the books and records of such Occupant to confirm the total amount of sales taxes generated from the business of such Occupant at Phase One; and (iii) agrees that if during the Sales Tax Rebate Period it has more than one location within the Lawton, Oklahoma city limits it will provide to the Oklahoma Tax Commission a calculation of sales taxes attributable to the store located in Phase One separate from the sales taxes attributable to such other location(s) within the Lawton, Oklahoma, city limits.
- d) City will use its best efforts to obtain from the Oklahoma Tax Commission such sales tax reports as are necessary for City to confirm the Project Sales

Tax Receipts for the immediately preceding calendar year. If City is unable to obtain the amount of sales taxes generated from the business of an Occupant, then such Occupant shall be deemed to have generated no sales taxes for the purposes of calculating the rebate of Project Sales Tax Receipts. City shall use reasonable efforts to maintain the confidentiality of the Project Sales Tax Receipts, subject to any laws that may require disclosure thereof. Performance of this provision shall be deemed to have been completed at the end of the Sales Tax Rebate Period or when receipt of the \$750,000 by Developer is complete, whichever is earlier. Unless terminated earlier by another provision of this Agreement, the Agreement will terminate when the first of the aforementioned conditions is met.

Developer will provide to City as soon as is reasonably practicable after e) the effective date of this Agreement and in any event within thirty (30) days following the date/dates any Phase One Store opens for business in Phase One, an initial or updated, as applicable, roster confirming the Occupants of Phase One and such federal tax identification numbers, sales tax permit numbers, and releases as are obtained by Developer from such Occupants pursuant to Section 4(b) hereof. In addition to the above and foregoing, City shall be entitled, at least on an annual basis, to a report from the Oklahoma Tax Commission on the amount of sales tax generated from Phase One. Developer shall cooperate with City and the Oklahoma Tax Commission to provide information necessary to generate the report requested by City. To allow City to identify accounts for verification, as often as is necessary, but not less often than annually, Developer shall provide to City an updated roster confirming the Occupants of Phase One and any additional federal tax identification numbers and releases obtained by Developer.

5. <u>Maximum Incentive</u>. Notwithstanding anything contained herein to the contrary, in no event shall the sum of the cumulative rebates of sales taxes made by City under this Agreement exceed the sum of \$750,000. Accordingly, notwithstanding any other provision of this Agreement, if the sum of the amounts described herein prior to the expiration of the Sales Tax Rebate Period reaches \$750,000, then as of such date Developer shall not be entitled to any further tax rebates or other incentives under this Agreement.

6. <u>Validity of Incentives</u>. It is understood and expressly agreed by Developer that City does not warrant or guarantee that the grant of sales tax rebates as provided for in this Agreement will be upheld as valid, lawful, enforceable or constitutional in the event the statutory authority for same or City's use thereof is challenged by court action. In the event such action related to this Agreement is instituted, Developer shall be responsible for defending itself, this Agreement, and the sales tax rebates hereunder, at Developer's sole cost of defense. Developer and City shall cooperate with each other in defending against such action to the extent permitted by applicable law. Should such litigation result in the loss of tax rebates as previously paid as provided herein, Developer shall be solely responsible for the payment of all taxes due, including all taxes which otherwise would have been paid to City without the benefit of sales tax rebates without recourse to City, and without any obligation by City to reimburse same back to Developer.

In the event of any legislative or judicial interpretation that limits or restricts City's ability to rebate the general sales tax rebates herein provided or otherwise extracts or imposes any penalty or other restriction upon the payment of same, such rebate will cease and be of no further force, effect or consequence in which event City shall be under no further obligation to Developer. However, City and Developer may agree to modify the sales tax rebate provided for herein to the extent permitted by such legislative or judicial action to the fullest extent then authorized without penalty or other restriction upon City for the rebate of same. Each party shall be responsible for its respective attorney's fees under this Section 6.

In the event the Oklahoma Tax Commission determines, for any reason, that any sales taxes were erroneously paid to City from the sales provided for herein and City shall be required to rebate or repay any portion of such taxes, the amount of such rebate or repayment shall be deducted from the calculation of the general sales taxes paid to Developer and in the event the calculation of sales taxes during the Sales Tax Rebate Period shall reflect an overpayment of the payments, as provided for herein, by City to Developer, Developer agrees to reimburse City the amount of such overpayment, through: (1) an adjustment from the next payment due during the Sales Tax Rebate Period has expired, (2) by direct payment from Developer to City within thirty days after being notified by City of such overpayment. Notice, given in accordance with Section 14 hereof, of any such required adjustment will be provided to Developer at the earliest practical date.

7. **Default**. In the event that (a) at any time during the term of this Agreement, taxes owed to City by Developer become delinquent (provided that Developer retains its right to timely and properly follow the legal procedures for protest and/or contest of any such taxes), or (b) Developer breaches any of the terms and conditions of this Agreement, then Developer shall be in default under this Agreement. In the event of such default, City shall give Developer written notice of such default, and if Developer has not cured such default in its entirety within ninety (90) days of said written notice, this Agreement may be terminated by City, in which event Developer shall no longer have the benefit of any rebates set forth herein that accrue on or after the date of such termination. Notice shall be given in accordance with Section 14 hereof. It is expressly agreed that, notwithstanding any termination or expiration of this Agreement, City shall, throughout the period of any applicable statute of limitations, maintain its rights to audit books and records under Section 4 hereof and to collect any amounts owed to City due to miscalculations of the sales tax rebates provided to Developer hereunder.

#### 8. Intentionally Omitted.

9. <u>Assignment</u>. In connection with a sale of the Project to a bona fide third party purchaser, Developer shall have the right without City's consent to either: (a) assign its rights and obligations under this Agreement; or (b) to retain its rights and obligations under this Agreement. Within thirty (30) days following a sale of the Project, Developer shall provide City written notice of its election of (a) or (b) above. In the event Developer elects (a) above, then the

assignee ("<u>New Developer</u>") shall execute and deliver to City an instrument, reasonably satisfactory to City in form and substance, whereby New Developer (i) agrees that it will continue to operate the Project as a retail shopping center during the remaining term of this Agreement, and (ii) assumes all the obligations of Developer under this Agreement and agrees to be bound by the provisions of this Agreement during the remaining term of this Agreement as if New Developer had been the original Developer hereunder.

Indemnity. It is understood and agreed between the parties that Developer in 10. performing its obligations hereunder, is acting independently, and City assumes no responsibility or liability in connection therewith to third parties, and Developer agrees to forever indemnify, defend and hold harmless City, its officers, agents and employees, against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons that may arise out of or be occasioned by Developer's breach of any of the terms or provisions of this Agreement, or by any negligent act or omission of Developer, its officers, agents, associates, employees or subconsultants, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence of City, its officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence of both Developer and City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Oklahoma, without, however, waiving any governmental immunity available to City under Oklahoma law and without waiving any defenses of the parties under Oklahoma law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11. <u>Term</u>. The term of this Agreement shall expire upon the end of the Sales Tax Rebate Period, unless terminated prior to such time in accordance with the provisions of this Agreement. Except as stated otherwise in this Agreement, any obligations of the parties, as well as any rights and benefits of the parties, which by the express terms of this Agreement or of necessity pertain to a period of time following the termination of this Agreement, shall survive termination.

12. <u>Public Infrastructure Improvements</u>. In connection with its construction Phase One of the Project, and as the primary consideration for the rebate of sales tax made by City in a sum not to exceed \$750,000, Developer will be constructing certain public infrastructure improvements necessitated by Phase One of the Project. These public improvements are subject to Developer's compliance with all City ordinances and regulations with respect to the construction performed by Developer. Specifically, Developer agrees to construct those public water, sewer, and roadway improvements as indicated within the construction plans as approved by the City Council, to include each of the improvements listed on Exhibit B attached hereto and made a part hereof. Upon completion of all listed improvements, Developer will provide to City final hard and soft construction costs (including, but not limited to, interest carry and other financing costs) of each improvement within thirty (30) days of such completion as the basis for determining the actual sales tax rebate (not to exceed \$750,000) due to Developer. 13. <u>Requirements for Construction Purposes</u>. Developer shall use reasonable efforts to include in the contract it enters into with each contractor for construction of improvements to Phase One of the Project a requirement that, to the extent feasible, such contractor shall cause construction purchases to be delivered to the Project and use the appropriate City street address for such purchases and deliveries in such a manner that Oklahoma and City municipal sales and/or use taxes, to the extent applicable, shall apply to such purchases of building items and construction materials to be used for Phase One. Developer shall provide City copies of invoices Developer receives from such contractors for purchases to which this Section 13 applies. Developer agrees that City shall have the right to inspect and audit the books and records of Developer to confirm the total amount of purchases to which this Section 13 applies.

14. <u>Notices</u>. Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for City, to:

City of Lawton City Manager 212 SW 9th Street Lawton, Oklahoma 73501

If intended for Developer, to:

Cache Properties, LLC Attn. Michael McKee 1834 NW 52<sup>nd</sup> Street Lawton, Oklahoma 73505

With a copy, to:

Cache Properties, LLC 3434 West Reno Ave. Oklahoma City, OK 73107 Attn: David Burrage and Sissy Holloway Email: <u>dburrage@mathisbrothers.com</u> <u>sholloway@mathisbrothers.com</u>

15. <u>Venue</u>. The obligations of the parties to this Agreement are performable in Comanche County, Oklahoma, and if legal action is necessary to enforce same, exclusive venue shall lie in Comanche County, Oklahoma.

16. <u>Applicable Laws</u>. This Agreement and construction of Phase One is made subject to the provisions of the Charter and ordinances of City, as amended, and all applicable State and federal laws.

17. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Oklahoma.

18. <u>Legal Construction</u>. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

19. <u>**Counterparts**</u>. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.

20. <u>**Captions</u>**. The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.</u>

21. <u>Entire Agreement</u>. This Agreement embodies the complete agreement of the parties hereto, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Agreement, and except as otherwise provided herein cannot be modified without written agreement of the parties to be attached to and made a part of this Agreement.

22. <u>Subject to Annual Appropriations</u>. It is hereby acknowledged that under Oklahoma law, City may not become obligated to transfer money beyond its fiscal year (July 1 – June 30) and therefore the covenants to rebate sales taxes made herein by City shall be on a year-to-year basis to be renewed by the annual appropriation for additional one year periods until such time as the pledged sales tax rebate has been paid or the Sales Tax Rebate Period has expired, whichever occurs first.

#### [THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

**EXECUTED** to be effective as of this \_\_th day of September, 2021.

CITY OF LAWTON, OKLAHOMA, a Municipal Corporation

By:

STANLEY BOOKER, Mayor

ATTEST:

TRACI L. HUSHBECK, City Clerk

CACHE PROPERTIES, LLC, An Oklahoma limited liability company

By:

Name: \_\_\_\_\_\_ Title: <u>Manager</u>

Approved as to form and legality for City of Lawton, Oklahoma, this \_\_\_\_\_ day of September, 2021.

JOHN RATLIFF, City Attorney

#### EXHIBIT A

#### **LEGAL DESCRIPTION**

#### EXHIBIT B

**Off-Site Infrastructure and Public Utilities** 

EXHIBIT C

#### SITE PLAN

#### **EXHIBIT "A"**

A tract of land in the North One-Half (N/2) of the Northwest Quarter (NW/4) of Section Twenty-Seven (27), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof, described as follows: Commencing at a point 40 feet South and 363 feet West of the Northeast Corner of the Northwest Ouarter (NW/4) of Section 27, Township 2 North, Range 12 West, I.M., Comanche County, Oklahoma: THENCE South 835 feet: THENCE West 835 feet: THENCE North 835 feet; THENCE East 835 feet to the point of beginning. LESS AND EXCEPT: A tract of land beginning at a point 363 feet West and 42.6 feet South of the Northeast Corner of the Northwest Quarter (NW/4) of Section Twenty-seven (27), Township Two (2) North, Range Twelve (12) West., I.M., Comanche County Oklahoma, according to the U.S. Government Survey thereof, this point being 50 feet South of the Center line of Cache Road and being on the South boundary of the easement for U.S. Highway No. 62; THENCE from that point of beginning, S0°08'W a distance of 150 feet; THENCE N89°52'W a distance of 200 feet; THENCE N0°08'E a distance of 150 feet; THENCE S89°52'E a distance of 200 feet to the point of beginning. AND LESS AND EXCEPT: A tract of land commencing at the Northeast Corner of the Northwest Quarter (NW/4) of Section Twenty-seven (27), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof; THENCE West 363 feet; THENCE South 42.6 feet, said point being 50 feet South of the Center line of Cache Road and also being on the South boundary of the easement for U.S. Highway No. 62: THENCE S00°08'W a distance of 150.0 feet to the point of beginning: THENCE S00°08'W a distance of 41.80 feet; THENCE N89°37'03"W a distance of 200 feet; THENCE N00°08'E a distance of 40.93 feet; THENCE S89°52'E a distance of 200 feet to the point of beginning. AND LESS AND EXCEPT: A tract of land commencing a the Northeast Corner of the Northwest Quarter (NW/4) of Section Twenty-seven (27), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof; THENCE South 42.6 feet; THENCE West 363 feet, said point being located 50 feet South of the Center line of Cache Road; THENCE S00°16'57"W a distance of 651.47 feet to the point of beginning; THENCE S89°58'38"W a distance of 835.00 feet; THENCE S00°16'57"W a distance of 179.45 feet; THENCE N89°58'38"E a distance of 835.00 feet; THENCE N00°16'57"E a distance of 179.45 feet to the point of beginning.

## 4902 NW Cache Rd

#### EXHIBIT "A"

TRACT 1: Beginning at a point 919.3 feet N89°37'25"E of the Northwest Corner of the North Half (N/2) of the Northwest Quarter (NW/4) of Section Twenty-seven (27), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof; THENCE South a distance of 659.208 feet; THENCE S89°56'00"E a distance of 502.606 feet; THENCE North a distance of 659.93 feet; THENCE S89°37'25"W a distance of 502.60 feet to the point of beginning.

AND

TRACT 2: All right, title, and interest to certain sewer line easement dated June 17, 1980, filed August 15, 1980, recorded in Book 1104, Page 568 of the records of the County Clerk of Comanche County, Oklahoma, and covering the South 20 feet of the following described property, to-wit; Beginning at a point 668 feet East of the Northwest Corner of the Northwest Quarter (NW/4) of Section Twenty-seven (27), Township Two (2) North, Range Twelve (12) West, I.M., Comanche County, Oklahoma, according to the U.S. Government Survey thereof; THENCE South a distance of 657.26 feet; THENCE East a distance of 251.30 feet; THENCE North a distance of 659.208 feet; THENCE West along the North line of said Northwest Quarter (NW/4) a distance of 251.30 feet to the point of beginning.

# Exhibit B

# Off-Site Infrastructure and Public Utilities

Traffic Plan Water Plan Sewer Plan

#### PUBLIC IMPROVEMENT QUANTITIES

- Traffic Signal Inc.: \$270,000.00

   Signal equipment and installation.

   Wells Construction: \$68,128.00

   Concrete work associated with traffic signal, cross walks, and control safety measures.
- Johnson Plumbing, LLC \$444,222.17
  - Installation of a 12" public water line and an extension of an 8" public sewer.

\*\*\*\* It is understood that the above numbers are estimate costs. Pursuant to Section 12 of this Agreement, Developer will provide to City final hard and soft construction costs (including, but not limited to, interest carry and other financing costs) of each improvement within thirty (30) days of such completion as the basis for determining the actual sales tax rebate (not to exceed \$750,000) due to Developer.

### **CITY OF LAWTON** PLANS OF PROPOSED **TRAFFIC SIGNAL PLAN** N.W. 50th ST. & N.W. CACHE RD. PROJECT NO. LAWTON, COMANCHE COUNTY, OKLAHOMA

R 11 W

N.W. ROGERS LN. 2 N - NWICACHE BD NW CACHE R CONVENTIONAL SYMBOLS CONVENTIONAL SIGNS PROPOSED ROADS INTERSTATE HIGHWAY RAILROADS U.S. HIGHWAY ) ( RANGE & TOWNSHIP WE GORE BLVD SECTION LINES STATE HIGHWAY QUARTER SECTION LINES FENCE GROUND LINE EXISTING EXISTING ROADS DETECTOR LOOP BASE LINE CONTROLLER  $\sim$ MAYOR GRADE LINES  $\otimes$ PULL BOX TELEPHONE & TELEGRAPH STAN BOOKER CONDUIT POWER LINES OIL WELLS MAST ARM & POLE **CITY MANAGER** BUILDINGS W/SIGNAL INDICATION  $\forall$ MICHAEL CLEGHORN DRAINAGE STRUCTURES -IN PLACE WALK & DON'T WALK  $\square$ DRAINAGE STRUCTURES-NEW INDICATION RIGHT-OF-WAY LINES-EXISTING SIGNAL INDICATION  $\triangleleft$ LAWTON CITY COUNCIL RIGHT-OF-WAY LINES-NEW SIGNAL INDICATION WARD 1 - MARY ANN HANKINS WARD 5 - ALLAN HAMPTON  $\leftarrow$ RIGHT-OF-WAY MARKERS-IN PLACE W/BACK-PLATE WARD 2 - KEITH JACKSON WARD 6 - SEAN FORTENBAUGH RIGHT-OF-WAY MARKERS-REMOVE & RESET  $\square \neg \neg$ PEDESTAL POLE W/SIGNAL & RIGHT-OF-WAY MARKERS-NEW WARD 3 - LINDA CHAPMAN WARD 7 - ONREKA JOHNSON WALK & DON'T INDICATIONS  $\forall$ COMBINATION-TRAFFIC SIGNAL & WARD 4 - JAY BURK WARD 8 - RANDY WARREN RIGHT -OF-WAY FENCE STREET LIGHT ON ONE POLE  $\neg$ 2009 OKLAHOMA STANDARD SPECIFICATIONS FOR HIGHWAY CONSTRUCTION -ENGLISH GOVERN, APPROVED BY THE U.S. DEPARTMENT OF TRANSPORTATION,

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PRES. R/W

R/W

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FEDERAL HIGHWAY ADMINISTRATION, JANUARY 4, 2010.

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#### INDEX OF SHEETS

0001.	TITLE SHEET
AT01.	PAY QUANTITIES AND NOTES
T001.	SURVEY DATA SHEET
T002.	SIGNAL PLAN
T003.	SIGNAL DETAIL
T004.	SIGNAL WIRING DIAGRAM
T005.	STRIPING PLAN
T006.	TYPICAL SIGNAL TRAFFIC CONTROL

#### THE FOLLOWING STANDARDS WILL BE REQUIRED ON THIS PROJECT:

IG AND STRIPING	SIGNALS	TRAFFIC CONTROL
PM1-1-03	PMAP1-2-01	TCS1-1-01
PM2-1-01	SPBP1-1-01	TCS2-1-00
PM6-1-00	SA1-1-02	TCS3-1-01
	ID1-1-00	TCS4-1-01
LIGHTING	SNS1-1-02	TCS5-1-00
	PWD1-2-00	TCS6-1-02
PBD1-1-00	CFD1-2-00	TCS7-1-02
HLD1-2-01	CC1-1-00	TCS8-1-00
HLD2-2-01	TSSP1-1-00	TCS9-1-01
	MAD1-1-01	TCS10-1-00
	RPMAD1-1-01	TCS11-1-01
ROADWAY	MDL1-1-00	TCS13-1-00
	MDL2-1-00	TCS14-1-00
SSS-2-00		TCS15-1-01
CSCD-6-00	<b>CITY OF LAWTON</b>	TCS16-1-00
WCR-4-00		TCS18-1-01
TWD-2-00	STREET NAME SIGNS	TCS19-1-01
	SIDEWALK	TCS20-1-00
	WHEELCHAIR RAMPS	

#### MAYOR: STAN BOOKER

SIGNIN

DATE

DATE

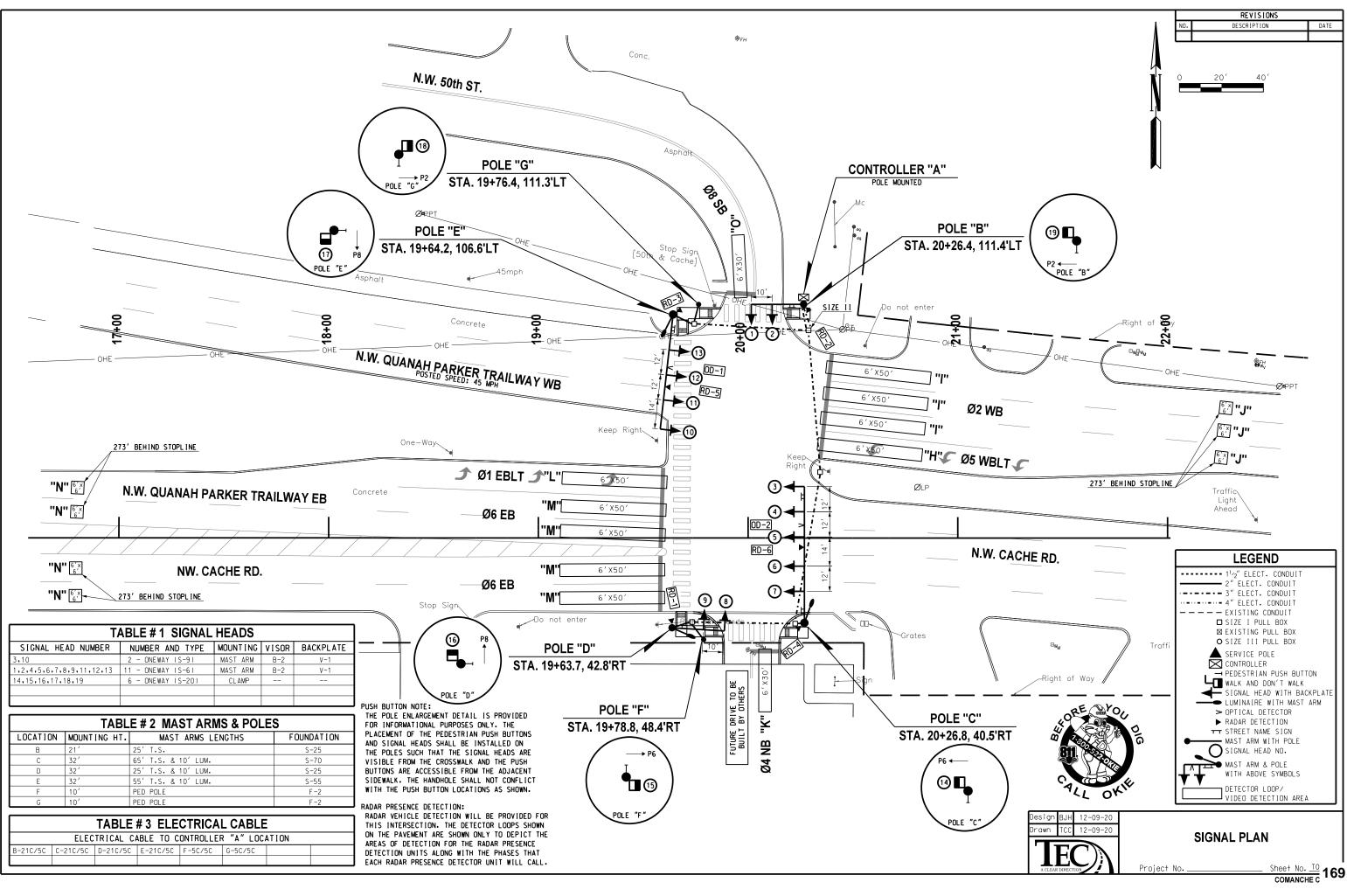
CITY MANAGER: MICHAEL CLEGHORN DATE

CITY ENGINEER: JOSEPH PAINTER, P.E.



# N N N **ONSULTANTS** $\mathbf{O}$ C ERIN ENGINE $\bigcirc$ Ē **FRAF**

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) C:\OIProjects\T-2808 - Design, Cache Rd. & NW 50th 5t.- Lawton, 0K\CAD\SIC

# OFFSITE WATER PLAN 4800 & 4902 NW Cache RD Lawton, Oklahoma

#### GENERAL CONSTRUCTION NOTES

Pay items listed in the bid schedule are the only pay items for the project. Any other items necessary for a complete project, but not shown in the bid schedule shall be considered an incidental item and it's cost to be included in other items The contractor shall verify all utility locations prior to bidding project. All utility locations shown are approximate, except as noted.

Any contractor-caused damage to utility and/or service lines, shown or not shown on the plans, shall be repaired or replaced at no cost to the City Of Lawton and shall be accomplished by the contractor, subcontractor or licensed plumber as approved by the City Engineer

All water mains or service lines that are to be abandoned shall be physically severed as close to the remaining waterline as possible and a mechanical joint cap or plug installed as directed by the City Engineer

The contractor shall be responsible for notifying all utility companies prior to commencing work in the project area. Likewise, the contractor is responsible for coordinating his work and that of the involved utilities in the project area.

The contractor shall be responsible for furnishing all labor, material; equipment and incidental items needed to provide adequate construction signing, barricades, traffic control devices and other related items for the project area, during the construction period. This work is to be considered an incidental item and the cost of this item is to be included in other pay items.

The contractor shall notify the L.P.D. Chief, L.F.D. Chief, City Engineer, Public Works Director and all privately owned ambulance companies 24 hours in advance of when traffic is to be restricted on any street. If an emergency arises, the contractor shall immediately notify all parties previously noted.

The contractor shall provide reasonable access to residential, commercial and public properties in the project area. During construction, traffic may be restricted to local traffic only with approval of the City Engineer.

The contractor shall carefully remove, store and reinstall all City-owned signs whose removal is required by his construction work in the project area. It shall be the contractor's responsibility to arrange for the City to inspect all signs scheduled for removal prior to their removal. Once said signs have been removed, it will be assumed that they were in good condition at the time of removal. Any signs damaged or lost by the contractor shall be replaced at no cost to the City. Materials shall be approved by the City Engineer.

All post-mounted signs shall be reset in concrete and at the proper height and location (City to provide location).

All sidewalk and paved driveway removals shall be bounded by joints or sawcuts.

The contractor shall be responsible for coordinating all driveway closings with the respective property owners and tenants, if property is rented.

Existing concrete drives will be replaced with 6" min. non-reinforced class 3500 PSI H.E.S. concrete as specified on the plan documents.

Property owners will be notified by the City, prior to construction, that it will be the owner's responsibility to remove or relocate fences, trees, shrubs or other property which they intend to keep. If the items are not removed at the time of construction and are in the way of construction, the contractor shall remove and dispose of the items as directed by the City Engineer. Fences shall be reinstalled at the contractor unit price for fences as directed by the City Engineer.

The contractor shall verify all dimensions and elevations prior to the start of work.

Any surplus excavation shall become the property of the contractor, and disposal shall be the contractor's responsibility at no additional cost.

The contractor shall be responsible for all surveying and construction staking for the project.

All grading and surfacing shall be in accordance with the plan sheets and Oklahoma Department of Transportation Standard Specifications for Highway Construction.

All excavation within 2' of pavement shall be backfilled and compacted to 95% standard proctor density with limestone screenings. The contractor shall establish a healthy stand of Bermuda grass over areas disturbed during construction. The method of application shall be solid slab sod. The price for watering and proper maintenance is considered to be incidental and shall be included in the price bid for other items.

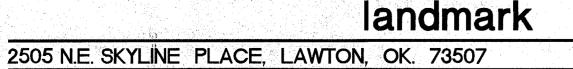
The contractor shall remove and stockpile all salvaged topsoil to be used later as backfill behind curbs and drives. This is not a pay item, but cost of same is to be included in other items of work.

The contractor shall level all disturbed areas with topsoil and hand rake to a uniform appearance. Cost shall be included in the price bid for other items.

The contractor shall take special care not to damage trees and shrubs. Trees and shrubs shall not be removed unless so directed by the engineer. Shrubs so removed shall be placed on the property owner's land or disposed of off-site as directed by the engineer. All costs shall be included in the price bid for other items.

The contractor shall take special care not to damage any sheds or other structures located on existing easements. Sheds shall not be moved unless authorized by the engineer. All costs to remove/replace sheds shall be included in the price bid for other items.

CAUTION: For underground utility locations, contact 1-800-522-6543 prior to excavation.



H. Lester Seiger, P.E., P.L.S.

GENERAL CONSTRUCTION NOTES FOR WATERLINES					
Water mains shall be capped if required for testing, prior to tie—ins being made.					
All excavation within 2' of pavement shall be backfilled and compacted to 95% standard proctor density with limestone screenings.	C1	· · ·			
Fences and mailboxes shall be removed and reinstalled by the contractor as directed by the Engineer.		г, Г			
All service line taps shall be 1" and service lines shall be 1" in size.	C2	H.			
New 1" service lines shall be installed from new main to meter box according to standard detail sheet including angle valve on all meters located adjacent to new main. For services located on the opposite side of the street from the main, the existing service line shall be utilized and connected to the new main.					
Sidewalk repair shall be paid under pay item for concrete drive repair.	C6				
Contractor shall bore under trees in — lieu of tree removal at locations directed by the Project Engineer. Cost shall be included in the price bid for bore w/o casing.					
All water main valves shall be operated only by City of Lawton Public Works personnel. The contractor shall notify the Public Works/Engineering Department a minimum of 96 hours in advance of required valve operations.					
그는 이 같아, 옷 집 중에 가장이 있는 것은 것은 것이 있는 것이 있는 것이 같아. 것은 것은 것은 것은 것은 것은 것은 것을 했는 것이 같아. 것이 가지 않는 것이 같아. 것이 것이 같아. 것이 것이 같아. 같아. 것이 같아. ??????????????????????????					

The contractor shall coordinate tie-ins of new waterlines to existing lines with the City of Lawton Public Works/Engineering Director and the City of Lawton Fire Department Chief.

The contractor shall be responsible for door-to-door notification of all affected persons prior to shutting off a water main.

All new fire hydrants shall be covered with a burlap bag until such time as they are operational.

Existing fire hydrants and related valves shall be removed and salvaged in good condition and delivered to the City of Lawton Public Works/Engineering Maintenance Yard located at 2100 SW 6th Street during normal working hours as directed by the Engineer. Costs to be included with price bid for other items.

The contractor shall remove valve boxes from valves to be abandoned in areas not paved and backfill hole with suitable material. In paved areas where the valve box cannot be easily removed, the contractor shall remove the lid and fill the box with concrete. Salvaged valve boxes and lids shall be delivered by the contractor to the City of Lawton Public Works/Engineering Yard.

All meters to be relocated shall be placed as close to the property line as practical, or as directed by the Project Engineer. The quantities shown in the summary of bid quantities for meter relocation and 1" service line are for bidding purposes only. The actual quantities required will be determined during construction.

All lines and fittings shall be thrust blocked in accordance with City of Lawton water standards.

All backfill for waterline trenching shall be water jetted after the connection of all service lines. Cost to be included in the unit price for

The contractor shall place a 4" thick layer of topsoil on all areas to be grassed. The price of salvaging, importing, and placing topsoil shall be included in the unit price for "GRASSING".

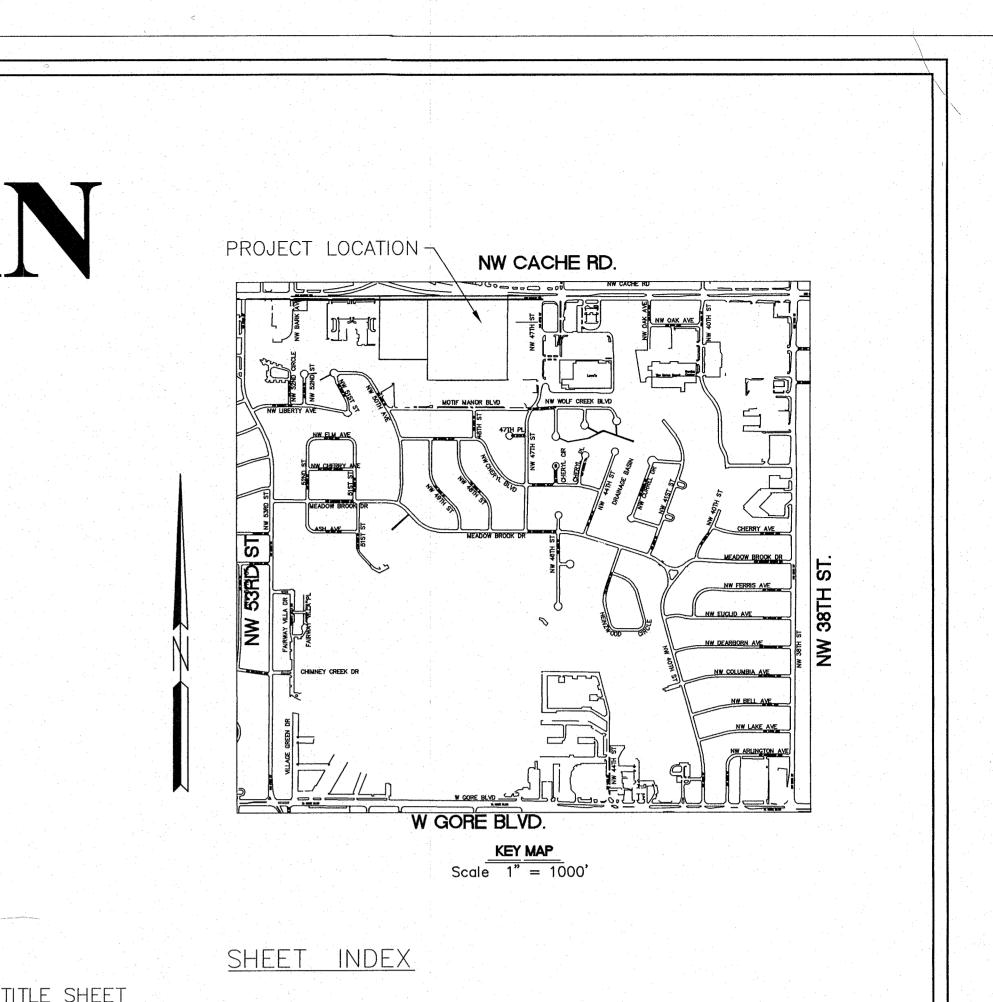
Minimum cover for the waterline installation shall be thirty inches (30") from the top of ground to the top of the pipe unless specified otherwise.

All taps shall be accomplished by the contractor. Cost shall be included in the price bid for service taps or tapping saddle and valve.

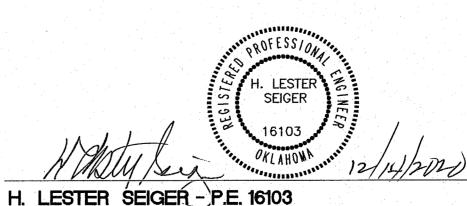
PVC (AWWA C900 DR18) or Polybond lined D.I. (Class 51) sanitary sewer pipe may be required at locations where the minimum spacing requirement with water mains cannot be achieved. The contractor shall furnish and install (complete) the required type and length of pipe at locations as directed by the Engineer. Materials and methods for Trenching/backfill shall follow specifications as set in SECTION 0300 "Sewerline Construction". Cost shall be included in the price bid for "Sanitary Sewer Pipe (PVC C900 DR18 or Polybond D.I. Pipe Class 51).

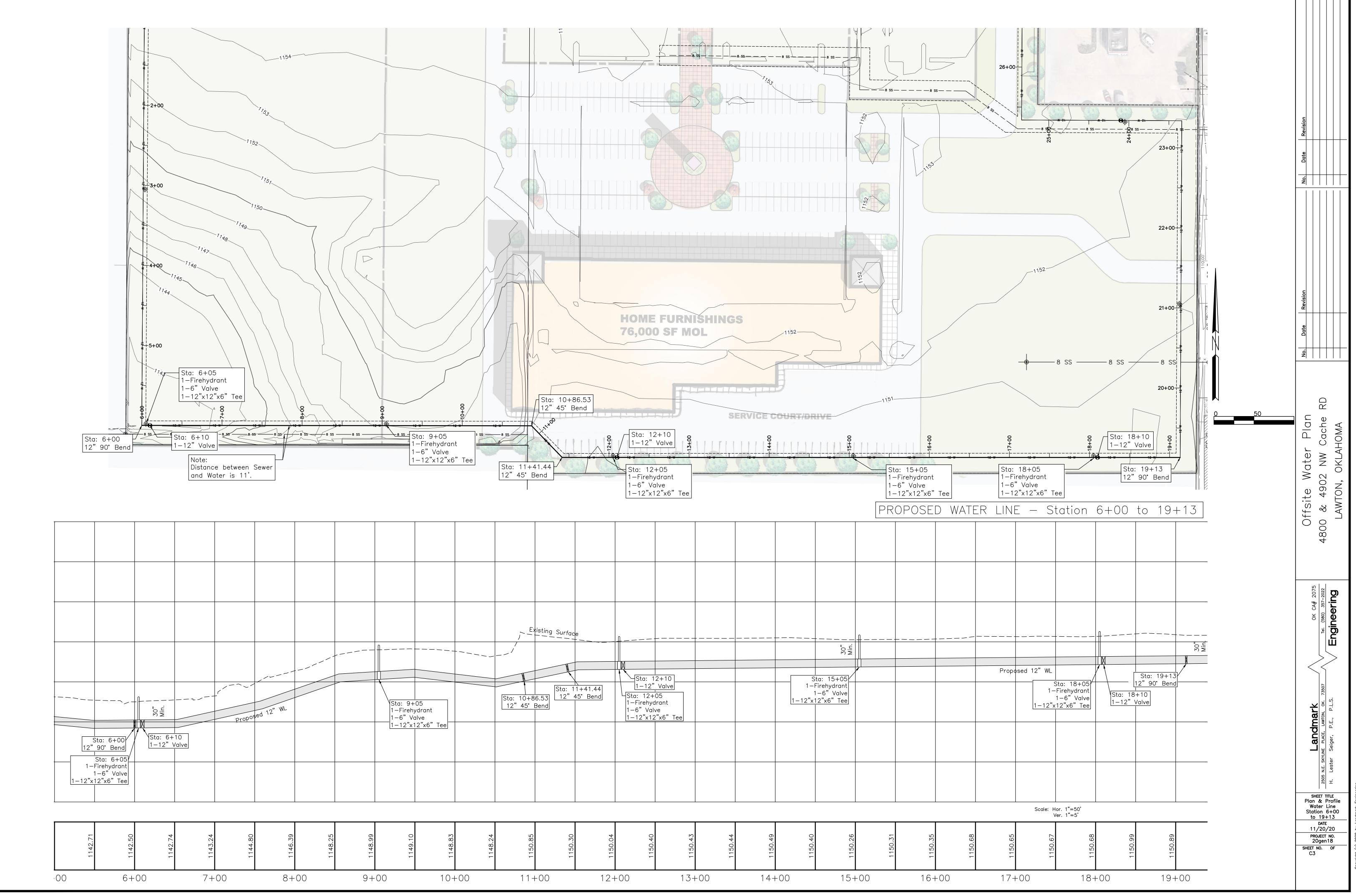
All lines which are to remain in service shall be completely disconnected from abandoned lines by plugging the live line cross or tee with an M.J. plug. Lead joint fittings shall be completely removed and a new line segment sleeved in. The end of abandoned pipe shall be sealed with non-shrink grout. Fittings shall be paid at the contract bid price and all other costs shall be considered incidental.

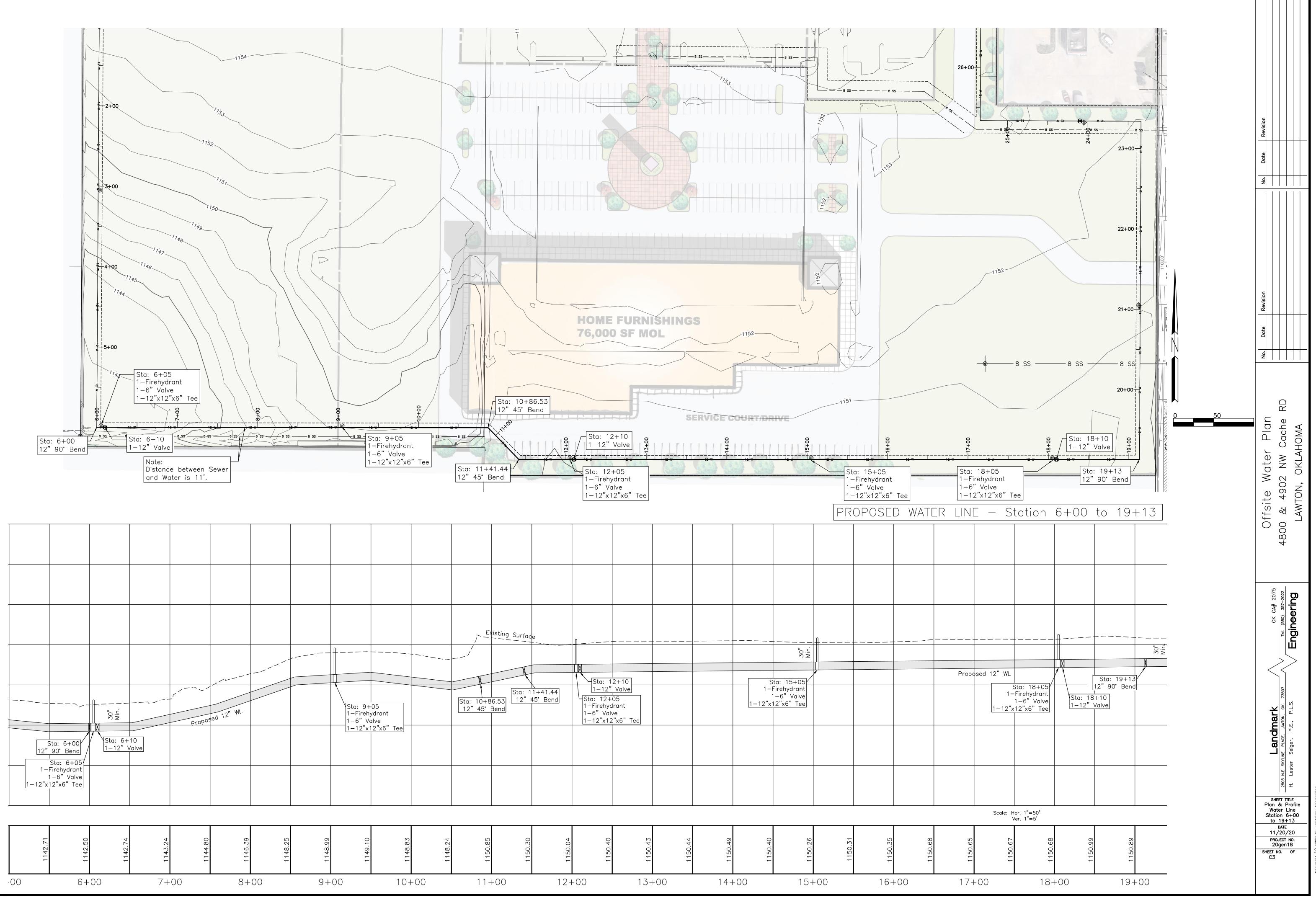


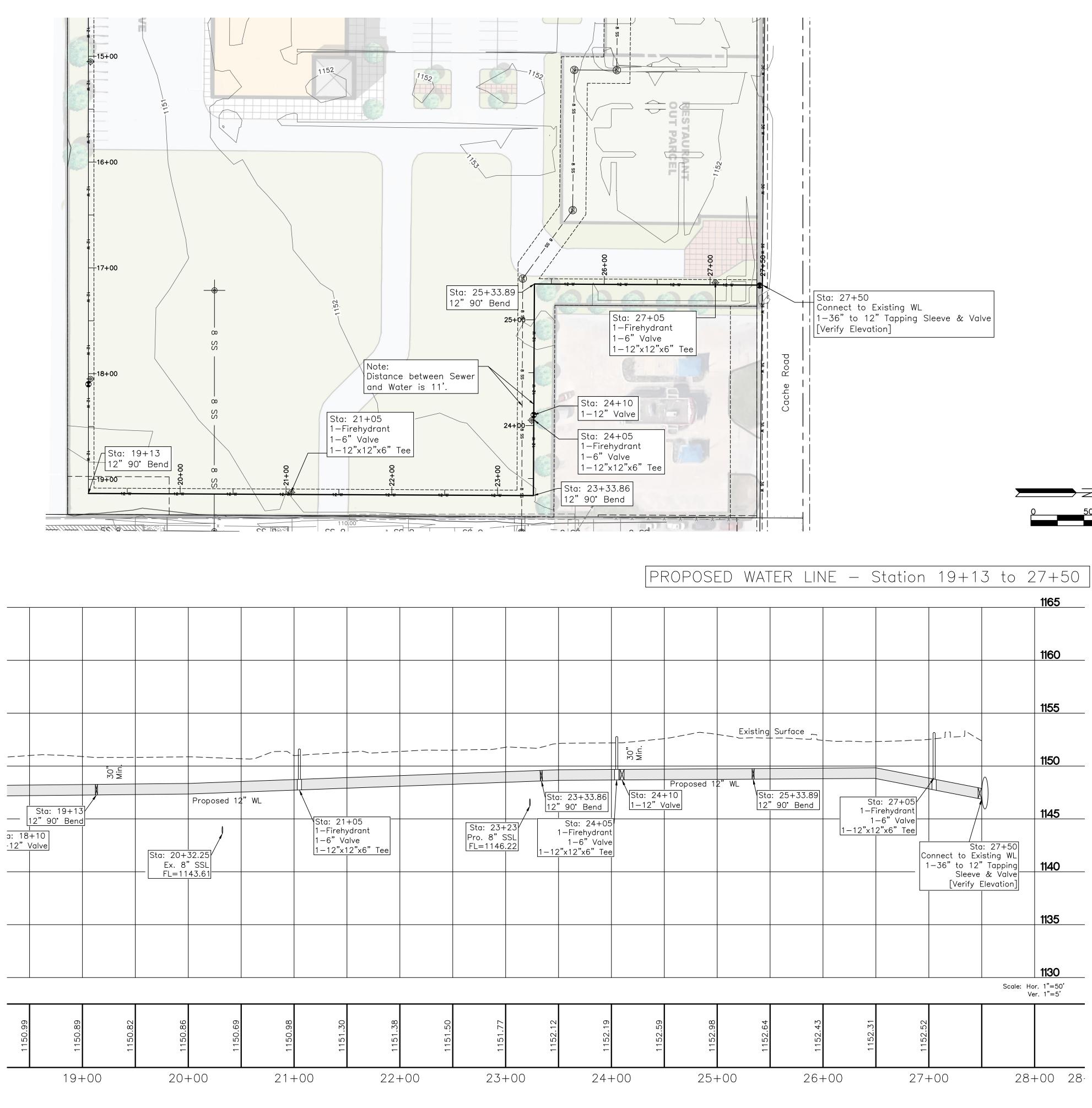


PLAN & PROFILE - WATER LINE - Station 0+00 to 6+00 PLAN & PROFILE - WATER LINE - Station 6+00 to 19+13 PLAN & PROFILE - WATER LINE - Station 9+13 to 27+50 STANDARD DETAILS - WATER SYSTEMS-1 STANDARD DETAILS - WATER SYSTEMS-2









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#### GENERAL CONSTRUCTION NOTES

Pay items listed in the bid schedule are the only pay items for the project. Any other items necessary for a complete project, but not shown in the bid schedule shall be considered an incidental item and it's cost to be included in other items.

The contractor shall verify all utility locations prior to bidding project. All utility locations shown are approximate, except as noted

Any contractor-caused damage to utility and/or service lines, shown or not shown on the plans, shall be repaired or replaced at no cost to the City Of Lawton and shall be accomplished by the contractor, subcontractor or licensed plumber as approved by the City Engineer

All water mains or service lines that are to be abandoned shall be physically severed as close to the remaining waterline as possible and a mechanical joint cap or plug installed as directed by the City Engineer.

The contractor shall be responsible for notifying all utility companies prior to commencing work in the project area. Likewise, the contractor is responsible for coordinating his work and that of the involved utilities in the project area.

The contractor shall be responsible for furnishing all labor, material; equipment and incidental items needed to provide adequate construction signing, barricades, traffic control devices and other related items for the project area, during the construction period. This work is to be considered an incidental item and the cost of this item is to be included in other pay items.

The contractor shall notify the L.P.D. Chief, L.F.D. Chief, City Engineer, Public Works Director and all privately owned ambulance companies 24 hours in advance of when traffic is to be restricted on any street. If an emergency arises, the contractor shall immediately notify all parties previously noted.

The contractor shall provide reasonable access to residential, commercial and public properties in the project area. During construction, traffic may be restricted to local traffic only with approval of the City Engineer.

The contractor shall carefully remove, store and reinstall all City-owned signs whose removal is required by his construction work in the project area. It shall be the contractor's responsibility to arrange for the City to inspect all signs scheduled for removal prior to their removal. Once said signs have been removed, it will be assumed that they were in good condition at the time of removal. Any signs damaged or lost by the contractor shall be replaced at no cost to the City. Materials shall be approved by the City Engineer.

All post-mounted signs shall be reset in concrete and at the proper height and location (City to provide location).

All sidewalk and paved driveway removals shall be bounded by joints or sawcuts.

The contractor shall be responsible for coordinating all driveway closings with the respective property owners and tenants, if property is rented.

Existing concrete drives will be replaced with 6" min. non-reinforced class 3500 PSI H.E.S. concrete as specified on the plan documents.

Property owners will be notified by the City, prior to construction, that it will be the owner's responsibility to remove or relocate fences, trees, shrubs or other property which they intend to keep. If the items are not removed at the time of construction and are in the way of construction, the contractor shall remove and dispose of the items as directed by the City Engineer. Fences shall be reinstalled at the contractor unit price for fences as directed by the City Engineer.

The contractor shall verify all dimensions and elevations prior to the start of work.

Any surplus excavation shall become the property of the contractor, and disposal shall be the contractor's responsibility at no additional cost.

The contractor shall be responsible for all surveying and construction staking for the project.

All grading and surfacing shall be in accordance with the plan sheets and Oklahoma Department of Transportation Standard Specifications for Highway Construction.

All excavation within 2' of pavement shall be backfilled and compacted to 95% standard proctor density with limestone screenings. The contractor shall establish a healthy stand of Bermuda grass over areas disturbed during construction. The method of application shall be solid slab sod. The price for watering and proper maintenance is considered to be incidental and shall be included in the price bid for other items.

The contractor shall remove and stockpile all salvaged topsoil to be used later as backfill behind curbs and drives. This is not a pay item, but cost of same is to be included in other items of work.

The contractor shall level all disturbed areas with topsoil and hand rake to a uniform appearance. Cost shall be included in the price bid for other items.

The contractor shall take special care not to damage trees and shrubs. Trees and shrubs shall not be removed unless so directed by the engineer. Shrubs so removed shall be placed on the property owner's land or disposed of off-site as directed by the engineer. All costs shall be included in the price bid for other items.

The contractor shall take special care not to damage any sheds or other structures located on existing easements. Sheds shall not be moved unless authorized by the engineer. All costs to remove/replace sheds shall be included in the price bid for other items.

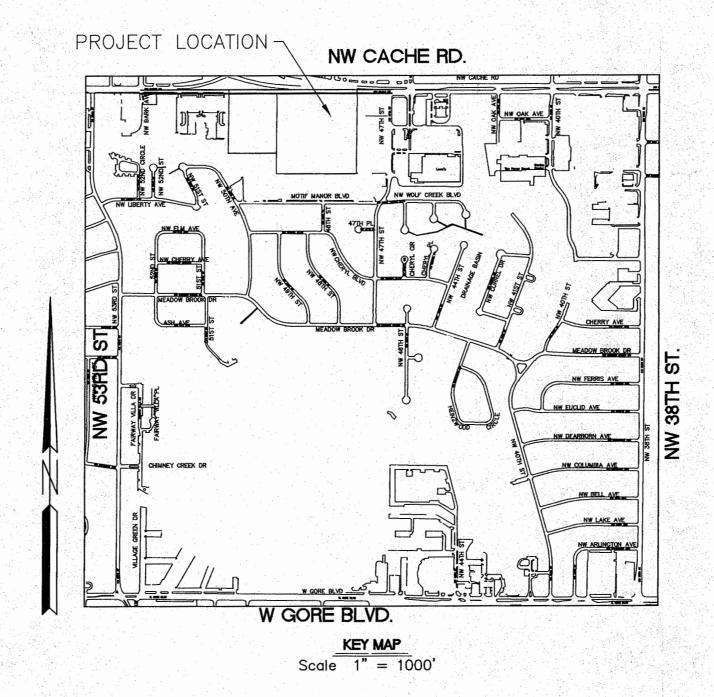
CAUTION: For underground utility locations, contact 1-800-522-6543 prior to excavation.



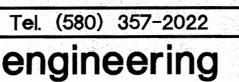
2505 N.E. SKYLINE PLACE, LAWTON, OK. 73507

H. Lester Seiger, P.E., P.L.S.

# OFFSITE SEWER PLAN 4800 & 4902 NW Cache RD Lawton, Oklahoma



C1	TITLE SHEET
C2	PLAN AND PROFILE - SSL A
C3	PLAN AND PROFILE - SSL B
C4	STANDARD DETAILS - SANITARY SEWER-1
C5	STANDARD DETAILS - SANITARY SEWER-2



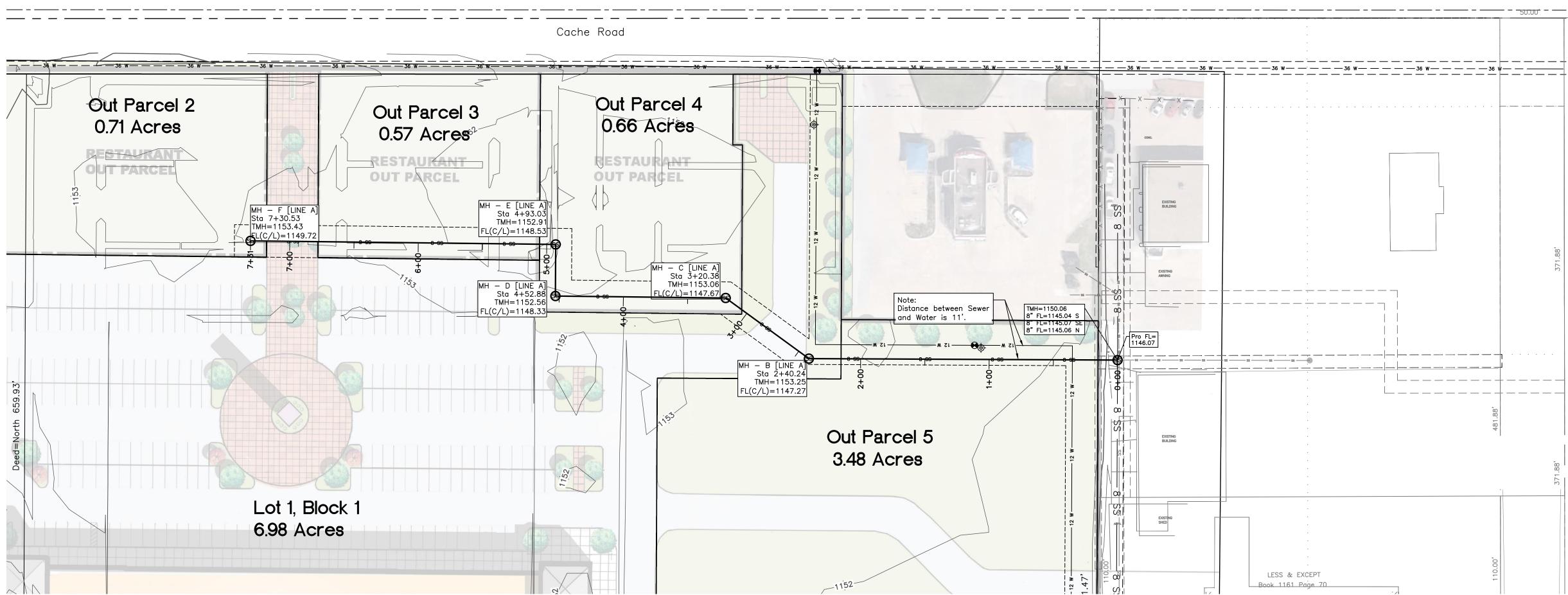


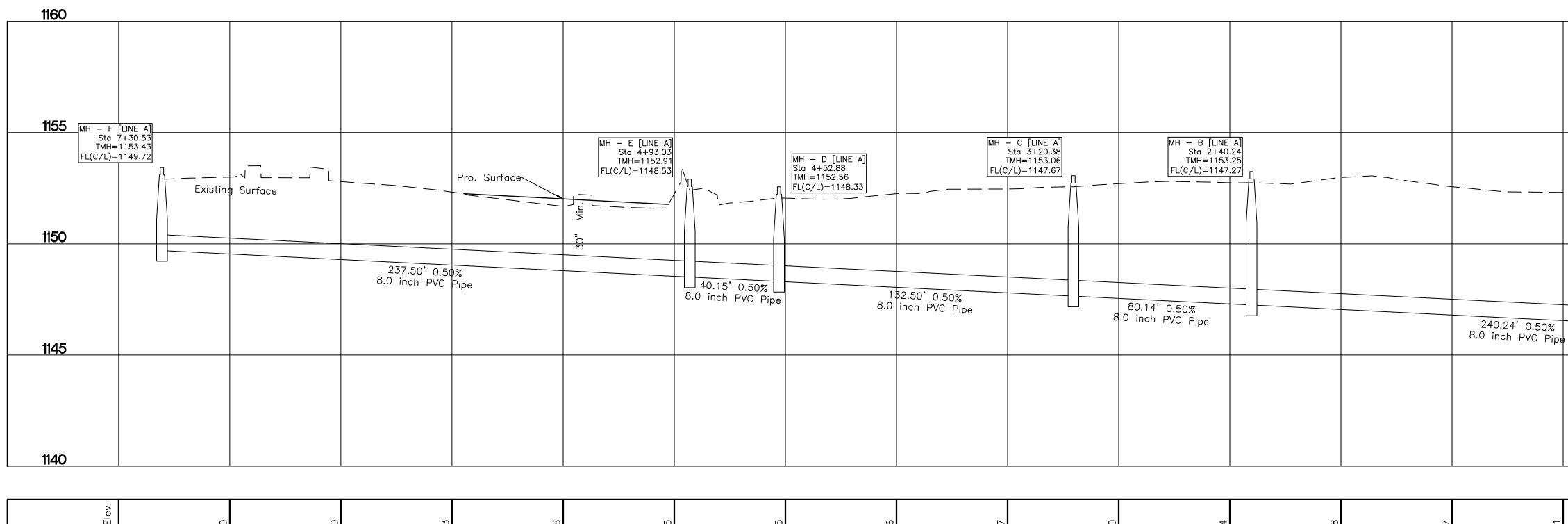


SHEET INDEX TITLE SHEET PLAN AND PROFILE - SSL A PLAN AND PROFILE - SSL B STANDARD DETAILS - SANITARY SEWER-1

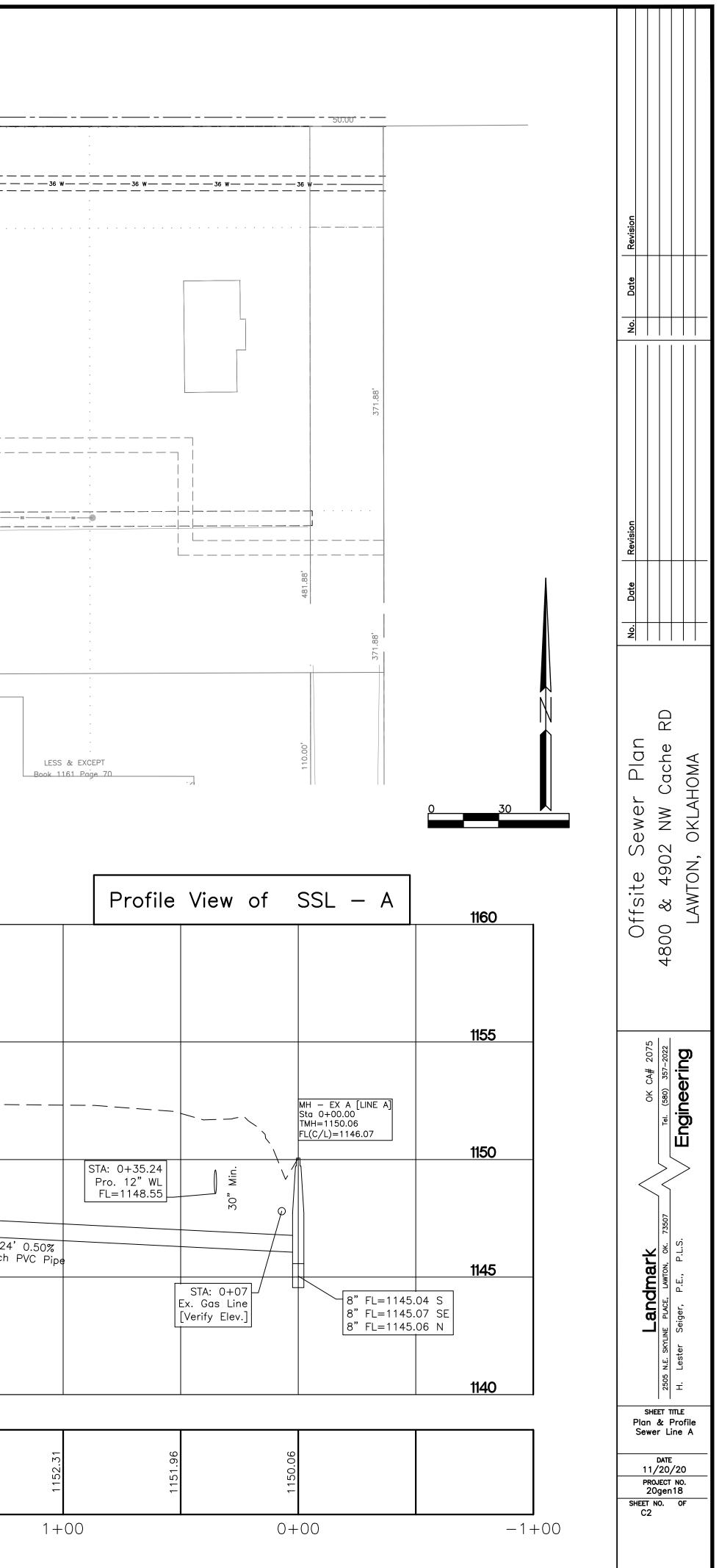
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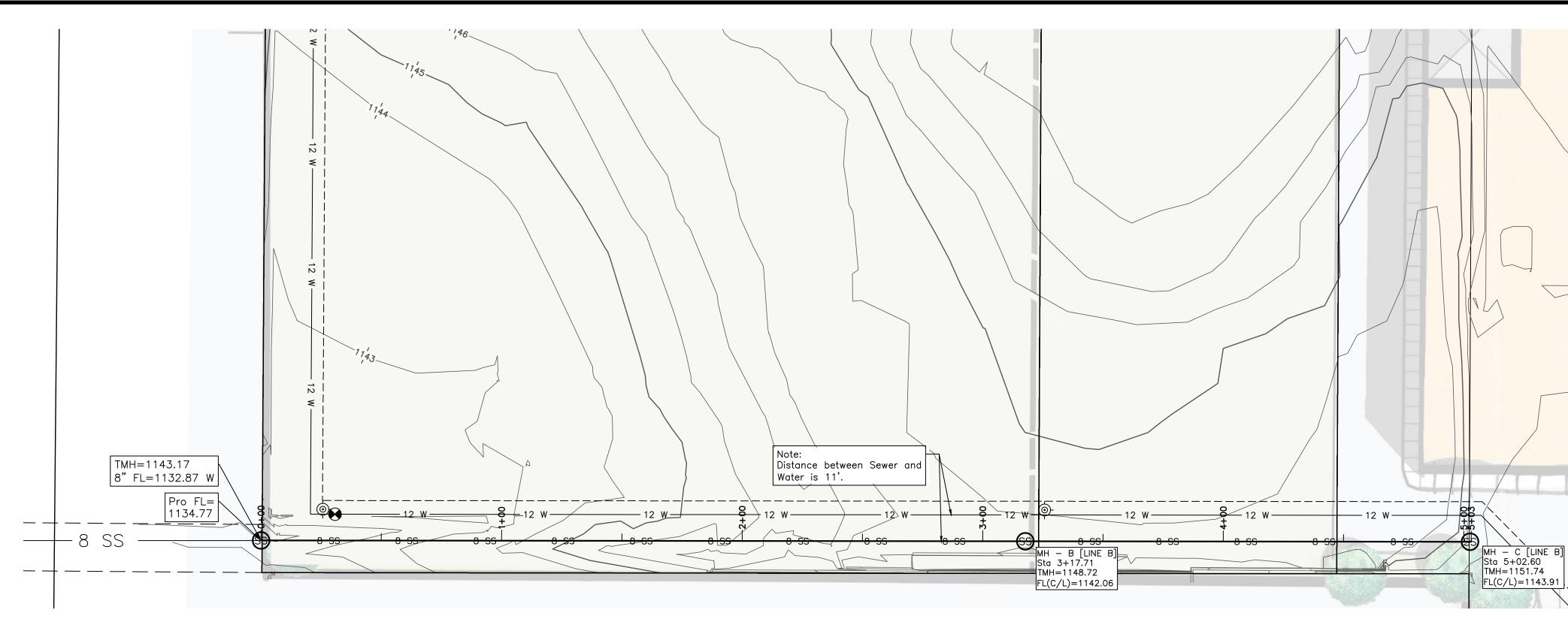


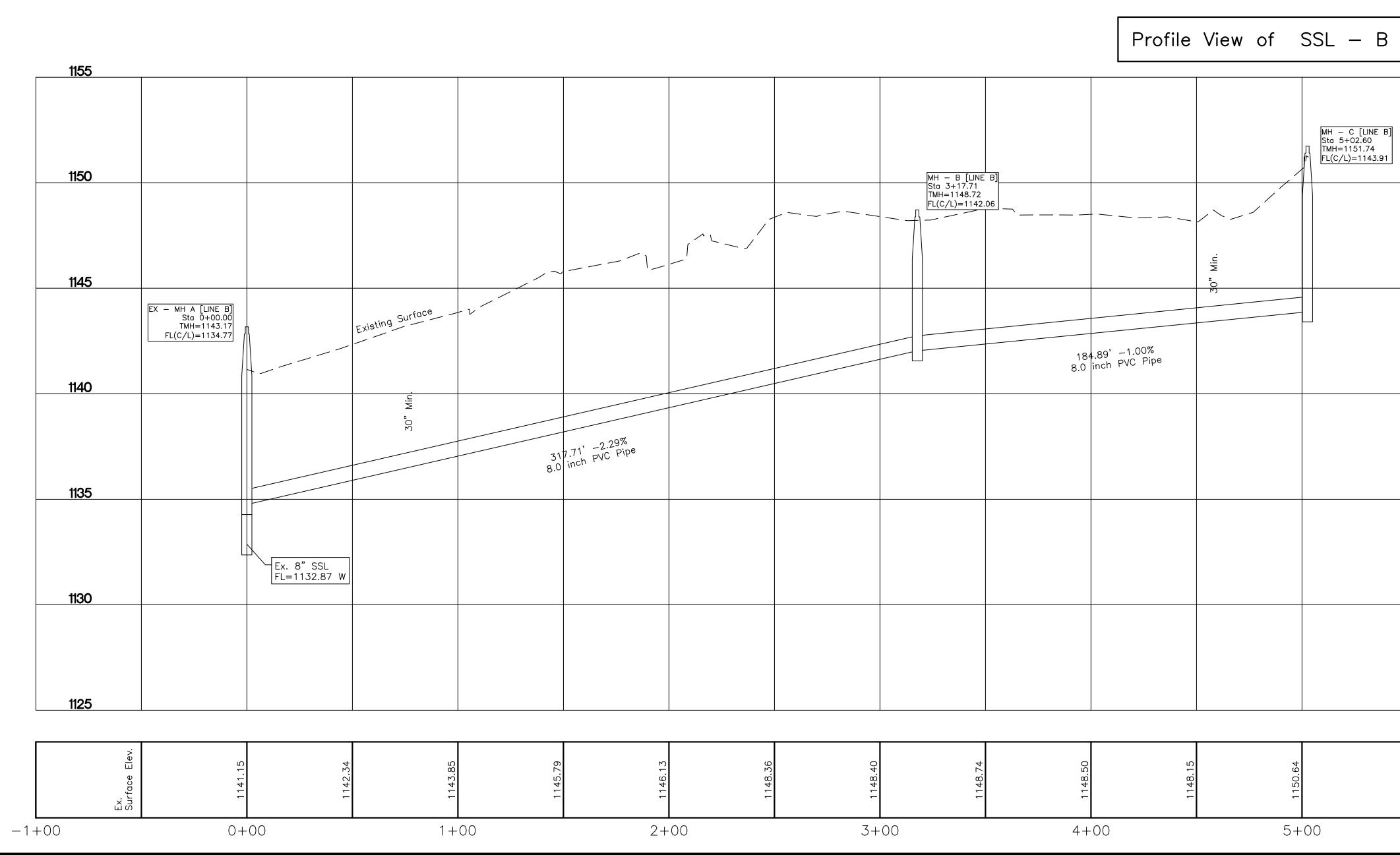


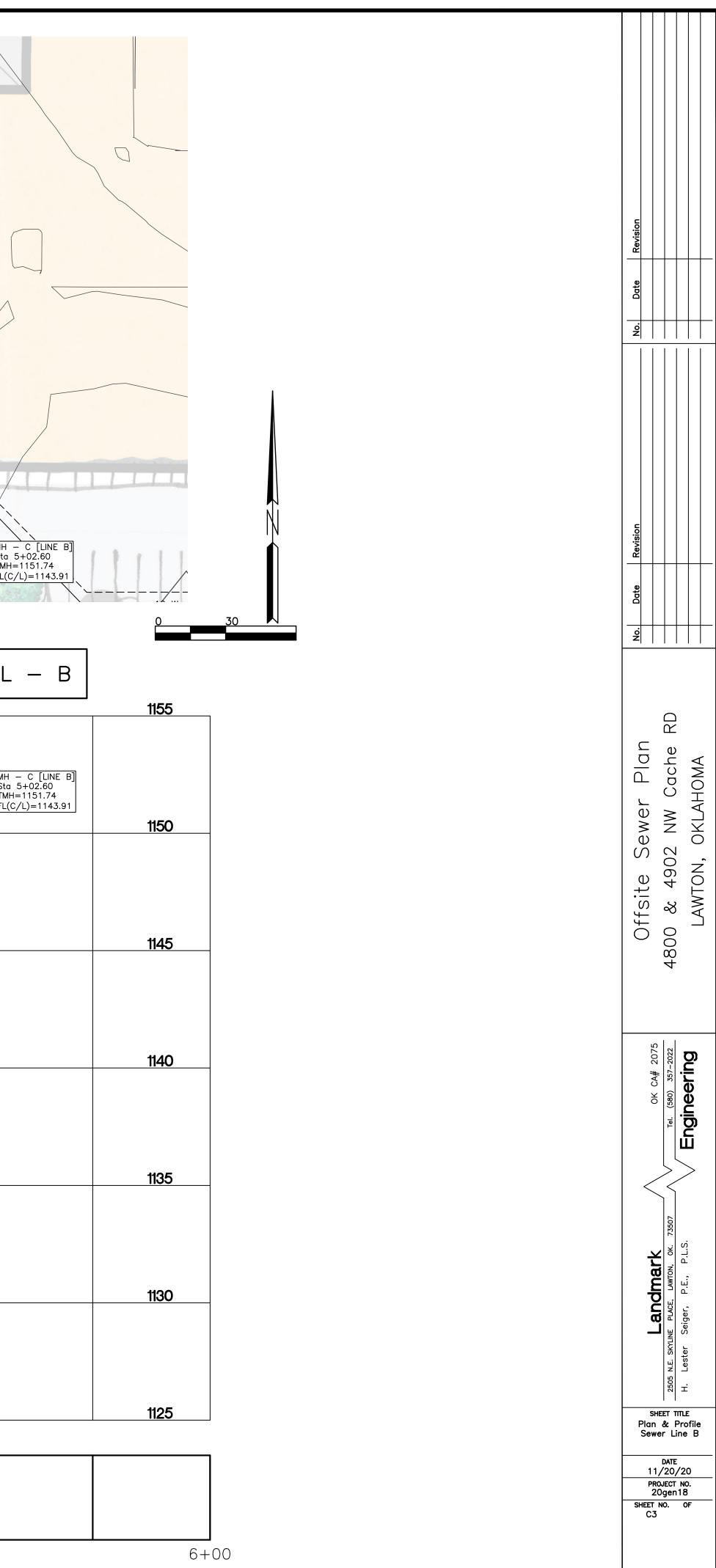
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8+00		7+00		6+00		5+00		4+00		3+00		2+00		1.







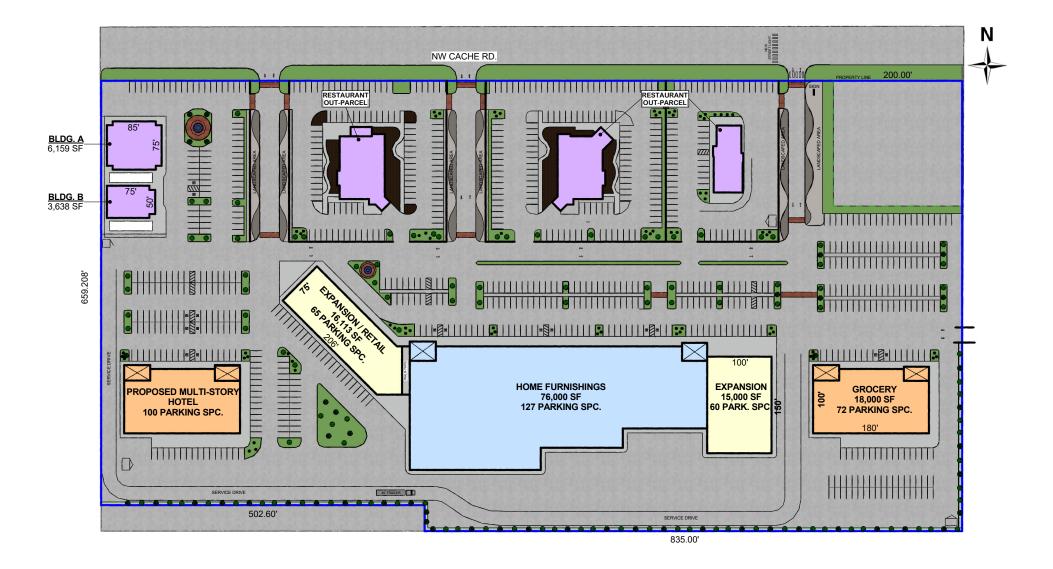




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# Exhibit C

# Development Plan





Commentary

File #: 21-499

Agenda Date: 9/28/2021

Agenda No: 19.

#### **ITEM TITLE:**

Hold a public hearing and consider approving the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year 2020, for submission to HUD, and authorize the Mayor to sign all necessary documents required to submit the approved CAPER.

INITIATOR: Richard Rogalski, Deputy City Manager

**STAFF INFORMATION SOURCE:** Gary Brooks, Interim Housing & Community Development Administrator

**BACKGROUND:** HUD requires grantees to submit a Consolidated Annual Performance and Evaluation Report (CAPER), which reports on the Community Development Block Grant (CDBG) and HOME Investment Partnerships (HOME) Programs' activities and accomplishments during the previous program year. This CAPER covers the program year July 1, 2020 through June 30, 2021.

The Citizen Participation Plan requires a public hearing before the City Council to consider performance reports. The public hearing is to obtain input from citizens and the City Council for development of the CAPER.

**EXHIBIT: 2020 CAPER-End of Year Numbers** 

**KEY ISSUES:** N/A

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Hold a public hearing and approve the Consolidated Annual Performance and Evaluation Report (CAPER) for Federal Fiscal Year 2020, for submission to HUD, and authorize the Mayor to sign all necessary documents required to submit the approved CAPER.

# **2020 CAPER**

End of Year Numbers

### **Administrative Costs**

CDBG Admin	\$134,496.00
HOME Admin	\$46,398.00
HAD Delivery	<u>\$107,864.00</u>
	\$288,758.00
Neighborhood Services	
Code Enforcement	<u>\$79,400.00</u>
	\$368,158.00
Housing Projects	
Emergency Repairs 7	\$21,640.00
	_

**Exterior Improvements 9** 

- Reconstruction Project 1
- )
- \$88,078.02
- \$144,333.19
- \$254,051.21

## **Public Facilities Projects**

Patterson Center

\$77,769.00

## **Public Service Organizations (PSO)**

Assisted 8,293 clients through 7 different PSOs **\$106,872.00** 

## **Tenant Based Rental Assistance (TBRA)**

Assisted 15 clients with monthly

rental payments \$130,339.38

Section 108 Loan Payments \$133,135.04

Grand Total Spent \$1,070.324.63



# City of Lawton

Commentary

#### File #: 21-494

Agenda Date: 9/28/2021

Agenda No: 20.

## **ITEM TITLE:**

Hold a public hearing and consider an ordinance to amend Chapter 18, Lawton City Code, 2015, that amends Sections 18-1-1-106, 18-5-1-503, 18-5-8-580, 18-5-8-581, 18-5-9-591, 18-5-9-592, 18-6-10-602, 18-6-11-612, 18-6-12-623, 18-6-12-624, 18-6-13-635, 18-6-13-636, 18-6-14-646, 18-6-15-658, 18-6-16-671, and 18-6-18-692, Chapter 18, Lawton City Code, 2015, by adding definitions and establish zoning requirements for medical marijuana growing, processing, and dispensary facilities, providing for severability and allowing floor amendments.

#### **INITIATOR:**

Richard Rogalski, Deputy City Manager

#### **STAFF INFORMATION SOURCE:**

Richard Rogalski, Deputy City Manager Kameron Good, Planner I

#### **BACKGROUND:**

The current definition of a "Medical marijuana processor" in Chapter 18 of the Lawton City Code was approved in 2018 with Ordinance No. 18-30. The definition groups include all types of processing activities into one definition. Medical marijuana processing can be broken up into several different activities with varying degrees of impact on adjacent properties. When compared to other cities' definitions such as Tulsa, Oklahoma City, and Norman our code has become outdated.

The attached ordinance proposes the definition of "Medical marijuana processor" be modified to break up processing into four different tiers.

-Tier I processing would allow processing by mechanical means, such as grinding to make "pre-rolled" marijuana cigarettes, "joints" and "blunts." Tier I medical marijuana processor does not include extraction processes of any kind.

-Tier II processing would allow all Tier I processing activities with the addition of cooking and baking. Tier II processing does not include extraction processes of any kind.

-Tier III processing would allow all Tier II and Tier I processing activities with the addition of medical marijuana concentrate extraction processes that use only non-flammable substances.

-Tier IV processing would allow any type(s) of medical marijuana processing, consisting of all extraction processes including flammable chemicals such as butane, alcohol, propane, and ethanol.

The matrix below helps illustrate when the different tiers of medical marijuana processing would be allowed in the zoning districts.

Use	A-1	C-1	C-2	C-3	C-4	C-5	CBD	I-1	I-2	I-3	I-4
Dispensary		P1	P	Р	P	Р	Р	Р		Р	P
Growing - Indoor	P <sup>3</sup> ,POR <sup>4</sup>			4 (s		POR <sup>2</sup>		Р	Р	P	Р
Growing - Outdoor	<b>P</b> <sup>3</sup>										POR
Research		e e		9 8. 5 0		Р		Р	Р	P	P
Processing Tier 1 (Mechanical)	P <sup>6</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	Р	Р	Р	P
Processing Tier 2 (Cooking/baking)	POR <sup>6</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	P <sup>2,5</sup>	POR <sup>2,5</sup>	Р	Р	P	Р
Processing Tier 3 (Non-chemical)	POR <sup>6</sup>	10 A				POR <sup>2</sup>		Р	Р	P	Р
Processing Tier 4 (Chemical)						9 9 2 60 18		7	Р	P	Р

Table I - Proposed expansion of processing

P = Permitted

POR = Permitted on Review

<sup>1</sup>When located on a major street; otherwise a dispensary is a use permitted on review

<sup>2</sup> When associated with a dispensary located within the same building

 $^3$  When located a minimum of 1,000 feet from any non-agriculturally zoned property

<sup>4</sup> When located within 1,000 feet of any non-agriculturally zoned property

<sup>5</sup> When all processed materials are sold on site

<sup>6</sup> When associated with a growing facility located on the same property

The A-1 zoning district would now permit Tier I processing when associated with a growing facility located on the same property. Tier II and Tier III processing would require a Use Permitted on Review when associated with a growing facility located on the same property. Indoor and Outdoor grow facilities are already permitted when located a minimum of 1,000 feet from any non-agriculturally zoned property. This change would allow for an indoor grow to be a Use Permitted on Review when located within 1,000 feet of any non-agriculturally zoned property.

The C-1, C-2, C-3, C-4 and CBD zoning district would permit Tier I processing when associated with a dispensary located within the same building and <u>all processed materials are sold on site</u>. Tier II processing would require a Use Permitted on Review when associated with a dispensary located within the same building and <u>all processed materials are sold on site</u>.

The C-5 zoning districts would permit Tier I and Tier II processing when associated with a dispensary located within the same building and <u>all processed materials are sold on site</u>. The C-5 zoning district will continue to allow Tier III processing as a Use Permitted on Review when associated with a dispensary located within the same building.

Tier III processing is a permitted use in all Industrial zones, but Tier IV processing is only a permitted use in I-2, I-3, and I-4 Industrial Zoning District.

This concept was brought to the City Planning Commission for discussion on August 26, 2021 and they like it. CPC will hold a public hearing on September 16, 2021. Notice of the public hearing was published in *The Lawton Constitution* on September 1, 2021. **EXHIBIT:** 

Ordinance No. 21\_ Proposed Zoning Matrix

#### **KEY ISSUES:**

Our current Lawton City Code does not address the wide range of medical marijuana processing activities.

# FUNDING SOURCE: :

N/A

#### STAFF RECOMMENDED COUNCIL ACTION:

Adopt Ordinance No. 21-\_\_\_\_, waive the reading of the ordinance, read the title only.

Use	A-1	C-1	C-2	C-3	<b>C-4</b>	C-5	CBD	I-1	I-2	I-3	I-4
Dispensary		<b>P</b> <sup>1</sup>	Р	Р	Р	Р	Р	Р		Р	Р
Growing - Indoor	P <sup>3</sup> ,POR <sup>4</sup>					POR <sup>2</sup>		Р	Р	Р	Р
Growing - Outdoor	P <sup>3</sup>										POR
Research						Р		Р	Р	Р	Р
Processing Tier 1	<b>P</b> <sup>6</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	P <sup>2,5</sup>	<b>P</b> <sup>2,5</sup>	<b>P</b> <sup>2,5</sup>	Р	Р	Р	Р
Processing Tier 2	POR <sup>6</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	POR <sup>2,5</sup>	<b>P</b> <sup>2,5</sup>	POR <sup>2,5</sup>	Р	Р	Р	Р
Processing Tier 3	POR <sup>6</sup>					POR <sup>2</sup>		Р	Р	Р	Р
Processing Tier 4									Р	Р	Р

# **Table I - Proposed expansion of processing**

## P = Permitted POR = Permitted on Review

<sup>1</sup>When located on a major street; otherwise a dispensary is a use permitted on review

<sup>2</sup> When associated with a dispensary located within the same building

<sup>3</sup> When located a minimum of 1,000 feet from any non-agriculturally zoned property

<sup>4</sup> When located within 1,000 feet of any non-agriculturally zoned property

<sup>5</sup> When all processed materials are sold on site

<sup>6</sup> When associated with a growing facility located on the same property

#### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE PERTAINING TO PLANNING AND ZONING AMENDING SECTIONS 18-1-1-106, 18-5-1-503, 18-5-8-580, 18-5-8-581, 18-5-9-591, 18-5-9-592, 18-6-10-602, 18-6-11-612, 18-6-12-623, 18-6-12-624, 18-6-13-635, 18-6-13-636, 18-6-14-646, 18-6-15-658, 18-6-16-671, AND 18-6-18-692, CHAPTER 18, LAWTON CITY CODE, 2015, BY ADDING DEFINITIONS AND ESTABLISH ZONING REQUIREMENTS FOR MEDICAL MARIJUANA GROWING, PROCESSING, AND DISPENSARY FACILITIES, PROVIDING FOR SEVERABILITY AND ALLOWING FLOOR AMENDMENTS.

BE IT ORDAINED by the Council of the City of Lawton, Oklahoma, that:

SECTION 1. Section 18-1-1-106 is hereby amended to read as follows:

#### 18-1-1-106 Definitions.

- A. As used in this chapter, unless otherwise specified, the following terms shall have the meanings respectively ascribed to them in this section:
  - 58. "Medical marijuana processor" means a business licensed by the State of Oklahoma to purchase marijuana from a licensed commercial grower to subsequently prepare, manufacture, package, sell and deliver medical marijuana products to a licensed dispensary or other licensed processor; and who may also process marijuana received from a qualified patient into a medical marijuana concentrate, for a fee; nothing in this code alters state license category requirements for medical marijuana establishments. Applicants may be required to seek multiple state licenses in order to comply with state law.
    - (a) <u>Tier I Processor: means a facility defined and regulated by Oklahoma state</u> <u>law as a medical marijuana processor, and which engages in only the</u> <u>following activity(ies): the preparation (from medical marijuana grown in</u> <u>compliance with state law) by mechanical means of "prerolled" marijuana</u> <u>cigarettes, "joints" or "blunts" and the use of medical marijuana</u> <u>concentrate(s) (produced off-site in compliance with state law) or medical</u> <u>marijuana plant pieces (produced in compliance with state law) as an additive</u> <u>to products by means that do not include cooking and/or baking. Tier I</u> <u>medical marijuana processor does not include extraction processes of any</u> <u>kind.</u>
    - (b) <u>Tier II Processor: means a facility defined and regulated by Oklahoma state law as a medical marijuana processor, and which includes processing activities described in Tier I medical marijuana processor and/or: the use of medical marijuana concentrate(s) (created off-site in compliance with state law), as an additive to product by means of cooking and/or baking. Tier II medical marijuana processor does not include extraction processes of any kind.</u>
    - (c) <u>Tier III Processor: means a facility defined and regulated by Oklahoma state</u> law as a medical marijuana processor, and which includes processing

Ordinance No. 21-\_\_\_\_ Page 2

> activities described in Tier II and Tier I medical marijuana processor and/or: medical marijuana concentrate extraction processes that use only nonflammable substances.

(d) Tier IV Processor: means a facility defined and regulated by Oklahoma state law as a medical marijuana processor, and which engages in the following activities: any type(s) of medical marijuana processing, consisting of all extraction processes including flammable chemicals such as butane, alcohol, propane, and ethanol. \* \* \*

SECTION 2. Section 18-5-1-503 is hereby amended to read as follows:

#### 18-5-1-503 Uses permitted on review.

- A. The following uses may be permitted on review in accordance with Section 18-113 of this code: sale of fireworks.
  - 1. Medical marijuana growing facility within an enclosed building when located within one thousand (1,000) feet from any non-agriculturally zoned property;

\*

\*

2. Medical marijuana Tier III processor when associated with a growing facility within the same property; \*

\*

SECTION 3. Section 18-5-8-580 is hereby amended to read as follows:

\*

\*

#### 18-5-8-580 Uses permitted.

A. The following uses shall be permitted in C-1 (Local Commercial District):

19. Medical marijuana -Tier I processor, when associated with a dispensary located within the same building and all processed materials are sold on site; \*

\*

SECTION 4. Section 18-5-8-581 is hereby amended to read as follows:

#### 18-5-8-581 Uses permitted on review.

A. The following uses may be permitted on review in a C-1 district in accordance with provisions of Section 18-113 of this code:

6. Medical marijuana - Tier 2 processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

SECTION 5. Section 18-5-9-591 is hereby amended to read as follows:

#### 18-5-9-591 Uses permitted.

A. The following uses shall be permitted in C-2 Planned Neighborhood Shopping Center District: \*

25. Medical marijuana - Tier I processor, when associated with a dispensary located within the same building and all processed materials are sold on site; \*

\*

SECTION 6. Section 18-5-9-592 is hereby amended to read as follows:

#### 18-5-9-592 Uses permitted on review.

A. The following uses shall be permitted on review in C-2 Planned Neighborhood Shopping Center District:

8. Medical marijuana - Tier II processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

SECTION 7. Section 18-6-10-602 is hereby amended to read as follows:

#### 18-6-10-602 Uses permitted on review.

A. The following uses shall be permitted on review in C-3 Planned Community Shopping Center District:

\*

4. Medical marijuana -Tier II processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

\*

SECTION 8. Section 18-6-11-612 is hereby amended to read as follows:

#### 18-6-11-612 Uses permitted on review.

A. The following uses shall be permitted on review in C-4 Tourist Commercial District:

4. Medical marijuana - Tier II processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

SECTION 9. Section 18-6-12-623 is hereby amended as follows:

#### 18-6-12-623 Uses permitted.

A. Property and buildings in a C-5 General Commercial District shall be used only for the following purposes:

29. Medical marijuana processing-Tier II processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

\* \* \*

SECTION 10. Section 18-6-12-624 is hereby amended as follows:

#### 18-6-12-624 Uses permitted on review.

A. The following uses may be permitted on review in accordance with the provisions of Section 18-113:

10. Medical marijuana growing and/or processing facility associated with a medical marijuana dispensary when located within the same enclosed building.

\*

<u>11. Medical marijuana - Tier III processor, when associated with a dispensary located within the same building;</u>

\*

\*

SECTION 11. Section 18-6-13-635 is hereby amended to read as follows:

\*

#### 18-6-13-635 Uses permitted.

A. Property and buildings in the CBD may be used for any of the following uses:

7. Medical marijuana -Tier I processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

SECTION 12. Section 18-6-13-636 is hereby amended to read as follows:

#### 18-6-13-636 Uses permitted on review.

A. The following uses may be permitted on review in accordance with provisions contained in Section 18-113 of this code:

6. Medical marijuana -Tier II processor, when associated with a dispensary located within the same building, and all processed materials are sold on site;

SECTION 13. Section 18-6-14-646 is hereby amended to read as follows:

#### 18-6-14-646 Uses permitted.

A. Property and buildings in an I-1 district shall be used only for the following purposes:

\*

19. Medical marijuana -Tier III processor;

SECTION 14. Section 18-6-15-658 is hereby amended to read as follows:

Ordinance No. 21-\_\_\_ Page 5

#### 18-6-15-658 Uses permitted.

- A. The following uses are permitted in the I-2 Industrial Park District:
  - 3. Medical marijuana processing facility- Tier IV processor;

SECTION 15. Section 18-6-16-671 is hereby amended to read as follows:

\*

\*

#### 18-6-16-671 Uses permitted.

A. Property and buildings in an I-3 Light Industrial District shall be used only for the following purposes:

\*

\*

3. The following uses when conducted within a completely enclosed building:

\*

a. Medical marijuana processing facility<u>- Tier IV processor;</u>

SECTION 16. Section 18-6-18-692 is hereby amended to read as follows:

#### 18-6-18-692 Uses permitted.

A. Property and buildings in the F Floodplain District shall be used only for the following purposes:

7. All agricultural land uses <u>listed in Section 18-5-1-502</u>, excluding residential uses buildings and activities;

Ordinance No. 21-\_\_\_ Page 6

SECTION 16. Renumbering. The provisions of Sections 18-5-1-503, 18-5-8-580, 18-5-8-581, 18-5-9-591, 18-5-9-592, 18-6-10-602, 18-6-11-612, 18-6-12-623, 18-6-13-635 and 18-6-14-646, Chapter 18, Lawton City Code, 2015, shall be renumbered consecutively to reflect the new numbering of paragraphs of said sections as amended by this ordinance as to avoid duplication or omission of numbers and/or letters in said sections.

SECTION 17. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this 28<sup>th</sup> day of September, 2021.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

JOHN RATLIFF, CITY ATTORNEY

Ordinance No. 21-\_\_\_ Page 7

#### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE PERTAINING TO PLANNING AND ZONING AMENDING SECTIONS 18-1-1-106, 18-5-1-503, 18-5-8-580, 18-5-8-581, 18-5-9-591, 18-5-9-592, 18-6-10-602, 18-6-11-612, 18-6-12-623, 18-6-12-624, 18-6-13-635, 18-6-13-636, 18-6-14-646, 18-6-15-658, 18-6-16-671, AND 18-6-18-692, CHAPTER 18, LAWTON CITY CODE, 2015, BY ADDING DEFINITIONS AND ESTABLISH ZONING REQUIREMENTS FOR MEDICAL MARIJUANA GROWING, PROCESSING, AND DISPENSARY FACILITIES, PROVIDING FOR SEVERABILITY AND ALLOWING FLOOR AMENDMENTS.

#### Brief Gist

This ordinance defines four levels of medical marijuana processing facilities and establishes zoning districts in which the different levels of medical marijuana processing facilities may be located.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this 28<sup>th</sup> day of September, 2021.

STAN BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

(Published in *The Lawton Constitution* this \_\_\_\_\_ day of \_\_\_\_\_, 2021)



Commentary

File #: 21-495

Agenda Date: 9/28/2021

Agenda No: 21.

#### **ITEM TITLE:**

Hold a public hearing and consider an ordinance changing the zoning of the property located at 1925 West Gore Blvd Suite A, Lawton, OK 73505 from the C-1 Local Commercial District to the C-5 General Commercial District zoning classification with a binding site plan, and also consider a request for a Use Permitted on Review for medical marijuana processing (non-chemical) in conjunction with a dispensary.

#### **INITIATOR:**

Richard Rogalski, Deputy City Manager

#### **STAFF INFORMATION SOURCE:**

Richard Rogalski, Deputy City Manager Kameron Good, Planner I

#### **BACKGROUND:**

1. This request is for Lots 15-21, Block 5, Lee Addition, located at 1925 West Gore Blvd Suite A. The proposed zoning is C-5 with the use being limited to all C-1 uses with the addition of medical marijuana processing (non-chemical) in conjunction with a dispensary. The property owner is Thomas Curt Francias.

2. The zoning of the surrounding area is:

North - R-1

South - C-1

East - C-1

West - C-1

3. The land use of the surrounding area is:

North - single-family residential

South - commercial

East - commercial

West - commercial

4. As shown on the site plan submitted with the application, the applicant proposes to open a medical marijuana processing facility (non-chemical) in conjunction with a dispensary.

5. Notice of public hearing was mailed to 49 owners of property within 300 feet of the requested area on September 8, 2021 and proper notice was published in *The Lawton Constitution* on July 13, 2021. No calls for or against have been received. However, the planning department did receive a letter opposing the rezoning, from Mr. Raymond Duncan of 1914 NW Arlington Ave.

6. This item was brought to the City Planning Commission on August 12, 2021 but was tabled until the next meeting. On August 26, 2021 the CPC continued the public hearing and voted to recommend denial. Following discussion, some Commissioners voiced concerns that the request represented "spot zoning" and that changing the medical marijuana processor definition, suggested by staff, would be a better solution.

#### **EXHIBIT:**

Site Plan Location Map Application Letter Ordinance No. 21-

#### **KEY ISSUES:**

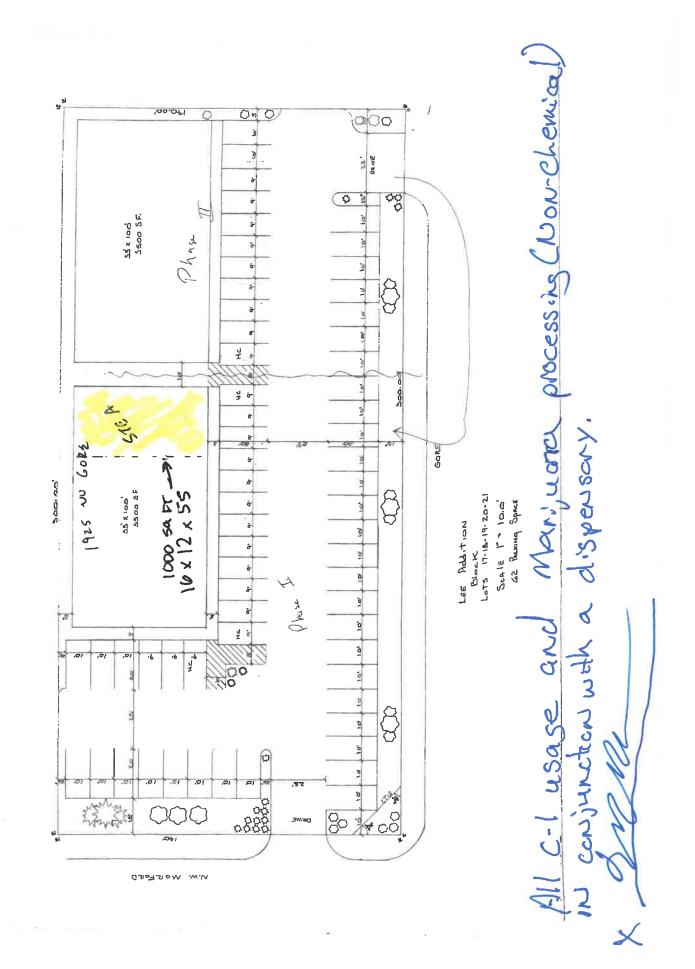
The City Planning Commission was concerned that the request represented "spot zoning".

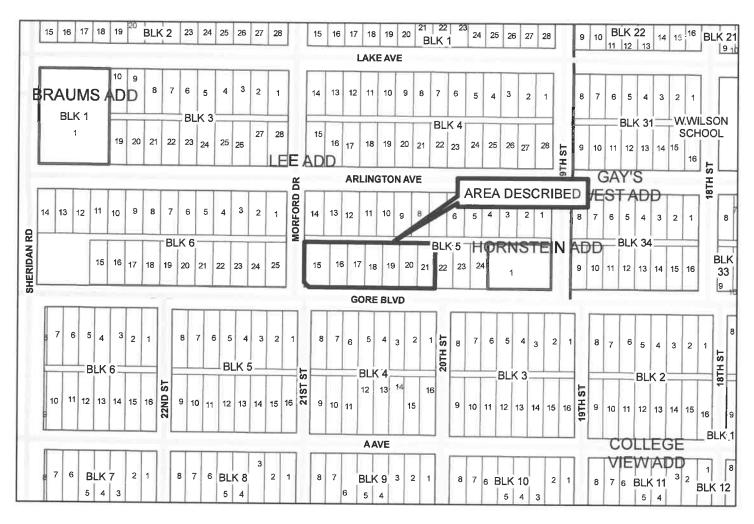
#### **FUNDING SOURCE:**

N/A

## STAFF RECOMMENDED COUNCIL ACTION:

Hold a public hearing and do not approve Ordinance No. 21-\_\_\_\_.





# REZONING REQUEST USE PERMITTED ON REVIEW

**REQUESTED BY: Lamplighter Plaza, LLC** 

USE: Marijuana processing (non-chemical) in conjunction with a dispensary.

ZONING: From C-1 to C-5

AREA DESCRIBED AS:

Lots 15-21 , Block 5, LEE ADDITION,

Less and except: Beginning at the SW Corner of Lot 15; Thence North along west line of said lot 15 a distance of 5'; Thence S45°E a distance of 7.07' to a point on the south line of said lot 15; thence west a distance of 5' to the point of beginning.



# **CITY OF LAWTON PLANNING DIVISION**

212 SW 9<sup>th</sup> Street, Lawton, OK 73501 Telephone 580-581-3375 Fax 580-581-3573

APPLICATION FOR REZONING									
1.	Applicant(s): Lamplighter PlazaLLC, Phone 580-280-0013								
	Address: 1925 West Gore Blud Suite A Fax								
2.	Owner(s): Thomas Curt Francias Phone 580-647-7246								
	Address: POBOX 6862 Fax 580-699-2437								
3.	Request Rezoning From: <u>C-1</u> To: <u>C-5</u>								
4.	Proposed Use (including all buildings to be constructed)								
	From: Retail Clothing & Merchandise								
	To: Manjuana processing (NON-Chanical) w conjunctions Street Address or Location: 1925 west Gore Blue Suite A								
5.	Street Address or Location: 1925 west Gore Blue Suite A								
6.	Legal Description of Property: Included in Attached								
	Documents								
7.	Tract Size: Included In Attached Documents								

- 8. In order that your application can be considered at the next available Planning Commission meeting, you must submit this completed application and all other information to include filing fee to the Planning Division for processing. Due to public hearing notice requirements the Planning Staff will advise you of the earliest date available for consideration by the Planning Commission and City Council. You must submit the following:
  - (a) A completed application form.
  - (b) Proof of ownership of the property or power of attorney from the property owner.
  - (c) Certified list of names and addresses of all property owners within 300 feet of the request. A map showing the 300-foot notification area will be provided to the applicant by the Planning Staff.
  - (d) A filing fee as required by Appendix A, Schedule of Fees and Charges, Lawton City Code.
  - (e) A site plan, basic or detailed, as required by Section 18-1-1-114 of the Lawton City Code. The site plan requirements of Section 18-1-1-114 are located on the back side of this application. Please note: if a detailed site plan is required, the site plan will be part of the rezoning ordinance and will be binding on the development of the property.
- 9. You may submit any other information you wish to support your request for rezoning.

Signature of Applicant(s)

Signature of Property Owner(s)

Date Submitted:

H:\Forms\Rezoning Application

12/2008

Raymond Duncan 1914 NW Arlington Lawton, OK 73507

I am opposed to the rezoning of 1925 Gore Blvd for a Marijuana processing dispensary for the same reason you do no allow strip clubs to be opened next to schools.

Just a couple of store fronts down is a day care center and the whole block of Arlington Avenue which abuts the the alley way has lots of school age children. All the other marijuana dispensaries are in isolated areas of Lawton or in areas with no children. Since there are other dipensaries in Lawton; people who need these products already have a place to purchase them.

Raymond Duncan

Raymond Duncan



#### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION FROM THE EXISTING CLASSIFICATION OF C-1 LOCAL COMMERCIAL DISTRICT TO C-5 GENERAL COMMERCIAL ZONING CLASSIFICATION ON THE TRACT OF LAND WHICH IS HEREINAFTER MORE PARTICULARLY DESCRIBED IN SECTION ONE (1) HEREOF; APPROVING THE SITE PLAN ATTACHED AS EXHIBIT A; AND AUTHORIZING CHANGES TO BE MADE UPON THE OFFICIAL ZONING MAP IN ACCORDANCE WITH THIS ORDINANCE.

WHEREAS, the zoning changes to be made by this ordinance have been recommended to be denied by the City Planning Commission; and

WHEREAS, legal notice has been given and a public hearing held regarding the said changes.

NOW, THEREFORE, be it ordained by the Council of the City of Lawton, Oklahoma, that:

SECTION 1. The following described tract of land, to-wit:

Lots 15-21, Block 5, Lee Addition, Lawton, Oklahoma (Also Known As 1925 West Gore Blvd Suite A)

be and the same hereby is changed from the existing classification of C-1 Local Commercial District to the C-5 General Commercial District zoning classification.

SECTION 2. The site plan attached as Exhibit A is hereby approved and made part of this ordinance. All construction and uses shall be in accordance with this site plan. The use shown on the site plan is a dispensary and medical marijuana processing (non-chemical).

SECTION 3. The changes be made upon the Official Zoning Map and/or sheets thereof reflecting the changes described in this ordinance and the Mayor and City Clerk are hereby authorized to execute the entry on said Official Zoning Map describing the nature of the changes.

PASSED and APPROVED by the Mayor and Council of the City of Lawton this 28<sup>th</sup> day of <u>September</u>, 2021.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

JOHN RATLIFF, CITY ATTORNEY

#### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE CHANGING THE ZONING CLASSIFICATION FROM THE EXISTING CLASSIFICATION OF C-1 LOCAL COMMERCIAL DISTRICT TO C-5 GENERAL COMMERCIAL ZONING CLASSIFICATION ON THE TRACT OF LAND WHICH IS HEREINAFTER MORE PARTICULARLY DESCRIBED IN SECTION ONE (1) HEREOF; APPROVING THE SITE PLAN ATTACHED AS EXHIBIT A; AND AUTHORIZING CHANGES TO BE MADE UPON THE OFFICIAL ZONING MAP IN ACCORDANCE WITH THIS ORDINANCE.

#### Brief Gist

This ordinance changes the zoning classification of property located at 1925 West Gore Blvd Suite A, C-1 Local Commercial District to the C-5 General Commercial District zoning classification and approves the detailed site plan for development of the tract.

PASSED and APPROVED by the Council of the City of Lawton, Oklahoma, this 28<sup>th</sup> day of September, 2021.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

(Published in *The Lawton Constitution* this \_\_\_\_\_ day of \_\_\_\_\_, 2021.)



Commentary

File	#:	21	-505	
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Agenda Date: 9/28/2021

Agenda No: 22.

## **ITEM TITLE:**

Consider approving an ordinance, including any floor amendment related thereto, pertaining to Public Health and Safety, renaming the title of Chapter 8 of Lawton City Code from "Civil Defense" to "Public Health and Safety"; amending Sections 8-1-101, 8-1-102, 8-1-103, 8-1-104, 8-1-105, 8-1-106, 8-1-107, 8-1-108, 8-1-110, 8 -1-112, 8-1-113, 8-1-114, 8-1-115, 8-1-118, 8-1-119; repealing and reserving Sections 8-1-109, 8-1-111, 8-1-116, 8-1-117; creating Sections 8-1-122 and 8-1-123, Article 8-1, Chapter 8, Lawton City Code, 2015; updating the provisions of the chapter to include revising the scope of said chapter, updating definitions to include adding the definition of "Emergency Management", removing references to "Civil Defense", adding other definitions, adding a section on cybersecurity and an emergency operations center, and bringing several sections into compliance with the Oklahoma Emergency Management Act of 2003; providing for severability and establishing an effective date.

INITIATOR: City Attorney - John Ratliff

STAFF INFORMATION SOURCE: City Attorney - John Ratliff & City Manager - Michael Cleghorn

**BACKGROUND:** While dealing with the aftermath of the historic winter weather event in February of this year, Chapter 8 of Lawton City Code 2015 was identified by key leaders in the city as being woefully out of date. This revision of the code is needed in order to align the city code with the Emergency Management Act of 2003 and to ensure city officials/employees are operating the same terminology that their state and federal level counterparts are operating under. This revision also deletes antiquated terminology like "civil defense forces" and "civil defense activities" and replaces those words with terms used in the state statute. Additionally, new sections are being added to address (1) cybersecurity and emergency communication while operating under a proclaimed state of emergency, and (2) the establishment of an Emergency Operations Center.

EXHIBIT: Ordinance No. 21-

## **KEY ISSUES:** N/A

#### FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Approve the proposed ordinance, waive the reading of the ordinance, read the title only, and establish an effective date.

## ORDINANCE NO. 21-\_\_\_

AN ORDINANCE PERTAINING TO PUBLIC HEALTH AND SAFETY, RENAMING THE TITLE OF CHAPTER 8 OF LAWTON CITY CODE FROM "CIVIL DEFENSE" TO "PUBLIC HEALTH AND SAFETY"; AMENDING SECTIONS 8-1-101, 8-1-102, 8-1-103, 8-1-104, 8-1-105, 8-1-106, 8-1-107, 8-1-108, 8-1-110, 8-1-112, 8-1-113, 8-1-114, 8-1-115, 8-1-118, 8-1-119; REPEALING AND RESERVING SECTIONS 8-1-109, 8-1-111, 8-1-116, 8-1-117; CREATING SECTIONS 8-1-122 AND 8-1-123, ARTICLE 8-1, CHAPTER 8, LAWTON CITY CODE, 2015; UPDATING THE PROVISIONS OF THE CHAPTER TO INCLUDE REVISING THE SCOPE OF SAID CHAPTER, UPDATING DEFINITIONS TO INCLUDE ADDING THE DEFINITION OF "EMERGENCY MANAGEMENT", REMOVING REFERENCES TO "CIVIL DEFENSE", ADDING OTHER DEFINITIONS, ADDING A SECTION ON CYBERSECURITY AND AN EMERGENCY OPERATIONS CENTER, AND BRINGING SEVERAL SECTIONS INTO COMPLIANCE WITH THE OKLAHOMA EMERGENCY MANAGEMENT ACT OF 2003; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

#### ORDINANCE

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LAWTON, OKLAHOMA:

**Section 1.** The title of Chapter 8 of Lawton City Code, 2015, is hereby amended and renamed to read as follows:

#### Chapter 8 – PUBLIC HEALTH AND SAFETY CIVIL DEFENSE

**Section 2.** Section 8-1-101 is hereby amended to read as follows:

8-1-101 – Intent of chapter – Scope.

It is declared to be the purpose of this chapter and the policy of the City of Lawton that all emergency management and hazard mitigation functions of the city be coordinated to the maximum extent with the comparable functions of the state and federal government, including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of available workforce, resources and facilities for dealing with disaster and hazard mitigation.

A. The intent of this chapter is to provide for the preparation and carrying out of plans for the civil defense of persons and property within the city in the event of an enemy attack, sabotage or other hostile action, or from fire, flood, earthquake, hurricane or other natural causes, and to provide for the coordination of the civil defense functions of the city with all public agencies

and their various departments, with other cities, and with private agencies, organizations, persons and corporations of every type to ensure the complete and efficient utilizations of all facilities available to combat any disaster or emergency.

**B.** The civil defense department shall be the coordinating agency for all activity of the civil defense program, and during a period of attack or natural disaster it will act as the instrument through which the mayor and mayor pro tem acting in concert may exercise the authority and discharge the responsibilities vested in them by this chapter.

C. This chapter shall not relieve any city department of the normal responsibilities or authority ascribed to it, nor will it adversely affect the work of the American Red Cross or other volunteer agencies dedicated to disaster relief activities.

**State Law reference**— Local civil defense organizations, powers, creation, 63 O.S. Secs. 683.<u>2</u>44 to 683.1<u>8</u>4.

**Section 3.** Section 8-1-102 is hereby amended to read as follows:

#### 8-1-102 – Definitions.

A. As used in this article, the following terms shall have the meanings ascribed to them in this section:

- 1. "Emergency management" means the preparation for and the coordination of all emergency functions by organized and trained persons, who will extend existing governmental functions and provide other necessary nongovernmental functions, to prevent, minimize and repair injury and damage resulting from natural or man-made disasters developing to such an extent to cause an extreme emergency situation to arise which by joint declaration of the mayor and the mayor pro tem jeopardizes the welfare of the citizens of the City of Lawton. These emergency functions include, but are not limited to, firefighting, law enforcement, medical and health, search and rescue, public works, warnings, communications, hazardous materials and other special response functions, evacuations of persons from affected areas, emergency assistance services, emergency transportation, and other functions related to preparedness, response, recovery and mitigation; "Attack" means direct assault against the city by the forces of a hostile nation or agents thereof, including assault by bombing, chemical or biological warfare or sabotage;
- 2. "Emergency Operations Plan" means that plan which sets forth the organization, administration and functions for emergency management by the City of Lawton; "Civil defense" means the preparation for and the carrying out of all emergency functions, other than functions for which military forces or other federal agencies are primarily responsible, to prevent, minimize and repair injury and damage resulting from disasters caused by enemy attack, sabotage or other hostile action, or by fire, flood or other causes. These functions include, but are not limited to, firefighting services, police services,

medical and health services, communications, radiological, chemical and other special weapons defense, evacuation of persons from stricken areas, emergency welfare service, civilian aid service, emergency transportation, plant protection, temporary restoration of public utility services, and other functions related to civilian protection; together with all other activities necessary or incidental to the preparation for and carrying out of the foregoing functions;

- 3. "Emergency" means any occasion or instance for which, in the determination of the President of the United States, the Governor of the State of Oklahoma and the mayor/mayor pro tem of the City of Lawton determine that federal and/or state assistance is needed to supplement local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert threat of a catastrophe in any part of the city; "Civil defense forces" means the employees, equipment and facilities of all city departments, boards, institutions and commissions suitable for, or adaptable to, civil defense activity and designated by the mayor and mayor pro tem jointly to participate in the civil defense activity. In addition, it shall include all volunteer personnel, equipment and facilities contributed by or obtained from volunteer persons or agencies;
- 4. <u>"Significant events" means all hazardous material releases of any size and type, earthquakes, fires involving large buildings or facilities and large grass or wildfires, explosions, bomb threats, terrorist/civil disturbance, aircraft crash, natural disaster, utility disruption, dam breach, technological/man-made incident, search and rescue, structural collapse, and any other incident that poses significant consequences to the City of Lawton; "Civil defense volunteer" means any person duly registered and appointed by the director and assigned to participate in the civil defense activity;</u>
- 5. <u>"Hazard mitigation" means any cost-effective measure which will reduce or eliminate the effects of a natural or man-made disaster;</u> "Civil emergency" means:
  - a. A riot or unlawful assembly characterized by the use of actual force violence or any threat to use force if accompanied by immediate power to execute by three more persons acting together without authority of law; or
  - b. Any natural disaster or man-made calamity, including flood, conflagration, cyclone, tornado, or explosion within the corporate limits of the city resulting in the death and injury of persons or the destruction of property to such an extent that extraordinary measures must be taken to protect the public health, safety and welfare;
- 6. <u>"Man-made disaster" means a disaster caused by acts of man including, but not limited to, an act of war, terrorism, chemical spill or release, or power shortages that require assistance from outside the local political subdivision; "Curfew" means a prohibition against any person or persons walking, running, loitering, standing or motoring upon any alley, street, highway, public property or vacant premises within the corporate limits of the city, except persons officially designated to duty with reference to the civil emergency;</u>

- 7. "Natural disaster" means any natural catastrophe, including, but not limited to, a tornado, severe storm, high water, flood waters, wind-driven water, earthquake, landslide, mudslide, snowstorm, or drought which causes damage of sufficient severity and magnitude to warrant hazard mitigation or the use of resources of the federal government, or the state and political subdivisions thereof to alleviate the damage, loss, hardship or suffering caused thereby; and "Natural disaster" means any condition seriously affecting or threatening public health, welfare or security as a result of severe fire, explosion, flood, tornado, hurricane or similar natural or accidental cause and which is beyond the control of public or private agencies ordinarily responsible for the control or relief of such conditions. This does not include riots, strikes, insurrections or civil disturbances; and
- 8. <u>"Political subdivision" shall mean any county, city, town or municipal corporation of the State of Oklahoma represented by an elected governing body.</u> <u>"Volunteer" means contributing service, equipment or facilities to the civil defense department without remuneration or without formal agreement or contract of hire.</u>

Section 4. Section 8-1-103 is hereby amended to read as follows:

8-1-103 – Emergency <u>management</u> <del>power and</del> authority of <u>the</u> mayor and <u>the</u> mayor pro tem over pubic health and safety. <del>civil defense.</del>

- A. The mayor and mayor pro tem acting in concert may exercise the emergency power and <u>management</u> authority as specified in this chapter.
- **B.** Under the following circumstances, the mayor and mayor pro tem jointly may assemble and utilize <u>emergency management functions</u> the civil defense forces and may prescribe the manner and condition of their use:
  - Whenever, on the basis of information received from authoritative sources, the mayor and mayor pro tem feel that <u>a significant event</u> an <u>attack</u> in the city or a <u>man-made or natural</u> <u>disaster</u> civil emergency is impending or imminent; or
  - 2. During any period of <u>disaster</u>, <u>man-made or natural</u>, <u>attack</u> or <u>due to</u> emergency in the city, and thereafter so long as the mayor and mayor pro tem deem it necessary for <u>hazard mitigation</u>.
- C. During any period when where a disaster attack or emergency in the city is imminent or when the city has been subjected to a significant event attack or civil emergency, the mayor and mayor pro tem acting in concert may promulgate measures such reasonable regulations as they deem necessary to protect life and property and preserve critical resources. Such measures regulations may include, but shall not be limited to, the following:
  - 1. <u>Implementation and execution of an Emergency Management Plan;</u>

- 2. <u>Orders Regulations</u> prohibiting or restricting the movement of vehicles in order to facilitate the mass movement of persons from critical areas of the city;
- 3. <u>Orders Regulations</u> pertaining to the movement of persons from areas deemed to be hazardous or vulnerable to attack or <u>a homeland security issue civil emergency</u>; <u>or</u>
- 4. <u>Orders Regulations</u> designed to <u>mitigate the hazard(s)</u> lessen the hazards to property and citizens from <u>disasters or attack or civil emergency emergencies</u>.
- D. When obtaining formal approval would result in delay of homeland security, the mayor and mayor pro tem jointly may, until council convenes, waive procedures and formalities otherwise required pertaining to the performance of public works, entering into-contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase and distribution of supplies, materials and facilities and expenditures of existing funds. The council is also empowered to waive any such procedures and formalities. The mayor and mayor pro tem acting in concert shall order civil defense forces to the aid of other communities in accordance with the statutes of the state. The mayor and mayor pro tem jointly may request the state, or political subdivisions of the state, to send aid to the city in case of natural disaster or in case of disaster resulting from attack or civil emergency when conditions in the city are beyond the control of the local defense forces.
- E. Whenever the mayor and mayor pro tem jointly find that any condition in the city has attained, or threatens to attain, the proportions of a natural or man-made disaster, they may assemble and utilize municipal firefighters, policemen and other city employees and may prescribe the manner and conditions of their use. The mayor and mayor pro tem, when they jointly deem it in the public interest, may send police and other emergency responders of the city to the aid of other communities stricken by natural or man-made disasters when such disasters are affecting the health, welfare or security of the stricken community; however, after the council convenes, the further continuance of any such disaster relief and the period thereof shall be subject to the action of the council. When obtaining formal approval would result in delay of attack-relief activity, the mayor and mayor pro tem jointly may, until council convenes, waive procedures and formalities otherwise required pertaining to the performance of public works, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase and distribution of supplies, materials and facilities and expenditures of existing funds. The council is also empowered to waive any such procedures and formalities.
- F. Whenever the mayor and mayor pro tem jointly find that any condition in the city has attained, or threatens to attain, the proportions of a natural disaster, they may assemble and utilize civil defense forces and may prescribe the manner and conditions of their use. The mayor and mayor pro tem, when they jointly deem it in the public interest, may send civil defense forces of the city to the aid of other communities stricken by natural disaster when such disaster is affecting the health, welfare or security of the stricken community; however, after the council convenes, the further continuance of any such natural disaster relief and the period thereof shall be subject to the action of the council.

G. The mayor and mayor pro tem acting in concert may make regulations permitting the conduct of practice air raid alerts or tests of the civil defense department. Such regulations shall be filed with the council and shall be binding upon the civil defense forces when they have been approved by resolution of the council.

Section 5. Section 8-1-104 is hereby amended to read as follows:

8-1-104 – Utilization of existing services and facilities.

In carrying out the provisions of this chapter, the mayor and mayor pro tem acting in concert are authorized to utilize the services, equipment, supplies and facilities of the existing departments, bureaus, offices, commissions, committees, authorities and agencies of the city to the maximum extent practicable. The <u>officials</u> <del>officers</del>, agents, employees and personnel of all such departments, bureaus, offices, commissions, committees, authorities and agencies of the city shall cooperate with and extend all services and facilities to the mayor and mayor pro tem <u>in</u> <u>order to execute emergency management activities</u>. <del>, the civil defense department and its director.</del>

State Law reference— Utilization of services, and equipment, etc. 63 O.S. Sec. 683., 18.

#### **Section 6.** Section 8-1-105 is hereby amended to read as follows:

#### 8-1-105 – Expenditures for emergency management activities. civil defense.

- A. The council shall appropriate from time to time such money as may be necessary for carrying out the provisions of this chapter.
- **B.** Except as provided in Section 8-1-103, no person shall expend any public funds in carrying out any <u>emergency management civil defense</u> activity authorized by this chapter without prior approval of the council.
- C. Except as provided in Section 8-1-103, no person shall have the right to bind the city by contract, agreement or otherwise without prior and specific approval of the council.

**Section 7.** Section 8-1-106 is hereby amended to read as follows:

#### 8-1-106 – Exemption from civil liability. Liability of city and agents.

A. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants a license or privilege or otherwise permits the designation or use of the whole or any part or parts of such real estate or premises for the purpose of sheltering persons, or providing a mass immunization and prophylaxis site or during an actual or impending emergency or exercise shall, together with any successors in interest, if any, not be civilly liable for negligently causing the death of, or injury to, any person on or about

such real estate or premises for loss of, or damage to, the property of such person; provided, that the injury or death was caused by or incidental to the actual use of such premises for such real, actual or impending emergency or exercise, and further provided that nothing herein contained shall grant immunity from gross, willful or wanton acts of negligence. Neither the city nor any of its agencies, agents or representatives engaged in any civil defense activities, while complying with or attempting to comply with the rules and regulations promulgated pursuant to the provisions of this chapter, except in cases of willful misconduct, shall be liable for the death or injury to any person or damage to any property, as a result of such activity.

- B. Neither the City of Lawton nor any of its political subdivisions thereof nor any official or employee of the City of Lawton nor any of its political subdivisions thereof nor volunteer whose services have been accepted and utilized by an official or employee of the City of Lawton nor any of its political subdivisions thereof for carrying out the functions of this act shall be civilly liable for any loss or injury resulting to any person's company, corporation or other legal entity as a result of any decision, determination, order or action of such employee in the performance of assigned duties and responsibilities under this chapter during a stated emergency unless such loss or injury was caused by the gross negligence, or willfully and unnecessarily or by the wanton act of such state officer or employee or volunteer. Nothing in this chapter shall be construed to waive the sovereignty or immunity of the City of Lawton, nor any of its political subdivisions thereof, from being sued. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the city the right to inspect, designate and use the whole or any part of the premises or real estate for the purpose of sheltering persons during an actual, impending or practice enemy attack or natural disaster shall not be civilly liable for the death or injury to any person on or about the real estate or premises under license, privilege or other permission or for loss of or damage to property of such person.
- C. The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled to under this chapter, or under the worker's compensation law, or under an pension law, nor the right of any person to receive any benefits or compensations under any act of Congress.

State Law reference - Exemption of civil liability Liability of city, 63 O.S. Sec. 683.14.

is hereby created to read as follows:

Section 8. Section 8-1-107 is hereby amended to read as follows:

8-1-107 - Accept gifts service, grants or loans.

Whenever the federal government or the state or any agency or officer thereof, or any person offers to the <u>City of Lawton city or to the civil defense department</u> any services, equipment, supplies, materials or funds by way of gift, grant or loan for purposes of <u>emergency management</u>

eivil defense and eivil disaster relief, the city, acting through the mayor and mayor pro tem jointly, may authorize any <u>official officer</u> of the city, or the director or any deputy director of the civil defense department, as the case may be, to receive such services, equipment, supplies, materials or funds on behalf of the city, and subject to the terms of the offer and the <u>orders rules</u> and regulations, if any, of the agency making the offer. Such acceptance, however, shall not create any liability on the part of the city, <u>city official eivil defense department or any officer</u>, agent or employee thereof for failure to comply with the terms of such offer and the <u>orders rules</u> and regulations, if any, of the agency making the offer.

State Law reference – Power of city to accept grants <u>Appropriation powers – Gifts, grants and</u> <u>loans</u>, 63 O.S. Sec. 683.17.

#### **Section 9.** Section 8-1-108 is hereby amended to read as follows:

#### 8-1-108 - Coordination of programs - Mutual aid agreements.

- A. All <u>emergency management civil defense</u> and disaster relief functions of the city shall be coordinated to the maximum extent possible with comparable functions of the state, federal and <u>other local</u> governments, including their various departments and agencies, and with private agencies of every type, to the end that the most effective preparation and use can be made of the city's manpower resources and facilities for dealing with any disaster or emergency that may occur.
- B. The <u>city manager director of the civil defense department</u> may, subject to the approval of the mayor, mayor pro tem and council, develop, cause to be developed, or enter into mutual aid agreements for reciprocal <u>emergency management civil defense</u> aid and assistance in case of a disaster too great to be dealt with unassisted. The agreements shall be consistent with the county and state <u>emergency operations civil defense</u> plans and programs. In case of emergency, it shall be the duty of each local <u>emergency response</u> organization for civil defense to render assistance in accordance with the mutual aid agreements.
- C. The <u>mayor/mayor pro tem</u>director of the civil defense department may, subject to the approval of the governor, enter into mutual aid agreements with <u>emergency response and disaster relief civil defense agencies or</u> organizations in other states for reciprocal <u>emergency management civil defense</u> aid and assistance in case of <u>a</u>-disaster<u>s</u> too great to be deal<u>t</u> with unassisted.

State Law reference – <u>Mutual aid arrangements for reciprocal emergency management</u> Authority to enter into mutual aid programs, 63 O.S. Sec. 683.12.

**Section 10.** Section 8-1-109 is hereby repealed and reserved as follows:

8-1-109 - Unauthorized signals prohibited Repealed and Reserved.

No unauthorized person shall operate a siren or other device so as to simulate a blackout signal, air raid, alert or take cover signal or the termination of a blackout, air raid, alert or take cover signal.

#### **Section 11.** Section 8-1-110 is hereby amended to read as follows:

8-1-110 – Entry into barricaded area prohibited – Exceptions.

- A. Employees of the city may erect barricades to keep persons and vehicles from <u>an</u> <u>emergency or the area or scene of a fire, flood, tornado, explosion, riot, unlawful assembly or other assembly or other disasters</u>, or for the purpose of directing pedestrian and vehicular traffic. No unauthorized person shall move, conceal or otherwise tamper with any such barricades. No person shall fail to heed such barricades or the entry into an area so barricaded, or fail to leave the barricaded area when requested to do so.
- B. This section shall not apply to employees of the city engaged in their official duties, utility crews engaged in their official duties, and such other persons as may be designated by the person in charge of such area.

Section 12. Section 8-1-111 is hereby repealed and reserved as follows:

#### 8-1-111 – Unauthorized display of civil defense insignia Repealed and Reserved.

- A. No person shall display any identifying civil defense insignia for any purpose other than that for which it was intended, or under circumstances not authorized by the director of the civil defense department.
- B. No person shall wear or display in any manner any insignia, sign or device purported to be a civil defense insignia except when such insignia has been duly issued by the civil defense department and is displayed in accordance with regulations established by the director of the civil defense department.

Section 13. Section 8-1-112 is hereby amended to read as follows:

8-1-112 – Interfering with <u>first responders and city employees operating under a state of proclaimed emergency</u>. eivil defense department and regulations.

No person shall willfully obstruct, hinder or delay any <u>municipal police officer</u>, fire fighter or <u>any other city employee member of the civil defense department</u> in the enforcement of any of the <u>orders rules</u> or regulations issued pursuant to the authority contained in this chapter. **Section 14.** Section 8-1-113 is hereby amended to read as follows:

8-1-113 – Police to enforce chapter.

The police department is authorized and directed to take any necessary action to make effective any order, rule or regulation promulgated under the authority conferred by this chapter. The Chief of Police is authorized to augment the manpower of the police department with auxiliaries as deemed appropriate to perform enforcement authority lawfully exercised pursuant to this chapter.

#### **Section 15.** Section 8-1-114 is hereby amended to read as follows:

8-1-114 – Chapter not construed as abridging power of council.

Nothing in this chapter shall be construed as power or authority to abridge or lessen the legislative and administrative powers of the <u>city</u> council, unless such <u>authority</u> is specifically granted in this chapter.

#### **Section 16.** Section 8-1-115 is hereby amended to read as follows:

#### 8-1-115 – Conflict with state or federal statute – Military order.

This chapter shall not be construed to conflict with any state or federal statute or with any military or naval order, rule or regulation from any branch of U.S. Armed Forces, Oklahoma Army and/or Air National Guard acting in either a Title 10 or 32 status and/or the state militia acting under the direction of the Governor of Oklahoma. Moreover, nothing in this chapter shall be construed to abridge or constrain military support to civil authority exercised by any branch of the U.S. Armed Forces pursuant to the Insurrection Act of 1807 and the Posse Comitatus Act of 1878.

**Section 17.** Section 8-1-116 is hereby repealed and reserved as follows:

8-1-116 – Duties and powers of public shelter and manager Repealed and Reserved.

In case of national emergency, public shelter managers duly appointed by the civil defense director shall open public shelters; take charge of all stocks of food, water and other supplies stored in the shelter; admit the public according to the city's shelter use plan; appoint deputies and a staff; and take whatever control measures are necessary for the protection and safety of the occupants.

**Section 18.** Section 8-1-117 is hereby repealed and reserved as follows:

8-1-117 - Enforcement Repealed and Reserved.

Public shelter managers are authorized to use reasonable restraint against those who refuse to cooperate with the routine of shelter living under emergency conditions. No person shall refuse to carry out the orders of the public shelter manager, his deputies or his appointed staff.

**Section 19.** Section 8-1-118 is hereby amended to read as follows:

#### 8-1-118 – <u>Proclamation</u> Declaration of emergency.

Whenever in the judgment of both the mayor and mayor pro tem any civil emergency, significant event or a natural or man-made disaster exists, they shall issue a written proclamation of the existence of the emergency and issue such <u>orders rules</u> and regulations as they deem necessary to <u>perform emergency management functions and mitigate hazards</u>. <u>control the situation</u>.

Section 20. Section 8-1-119 is hereby amended to read as follows:

#### 8-1-119 – Proclamation – Orders and regulations.

- A. After proclamation of a<u>n</u> eivil emergency, the mayor and mayor pro tem acting in concert may order a curfew applicable to such geographical areas of the city or to the city as a whole, as they deem advisable, and applicable during such hours as they deem necessary in the interest of the public safety and welfare.
- **B.** After proclamation of a<u>n</u> eivil emergency, the mayor and mayor pro tem acting in concert may also, in the interest of public safety and welfare, make any or all of the following orders:
  - 1. Order the closing of all retail liquor stores;
  - 2. Order the closing of all taverns;
  - 3. Order the closing of all private clubs or portions thereof wherein the consumption of intoxicating liquor and/or beer is permitted;
  - 4. Order the discontinuance of the sale of beer and/or liquor;
  - 5. Order the discontinuance of selling, distributing or giving away gasoline or other flammable or combustible liquids or products in any container other than a gasoline tank properly affixed to a motor vehicle.

- 6. Order the closing of gasoline stations and other establishments the chief activity of which is the sale, distribution or dispensing of flammable or combustible liquids or products;
- 7. Order the discontinuance of selling, distributing, dispensing or giving away of any firearms or ammunition of any character whatsoever;
- 8. Order the closing of any or all establishments or portions thereof the chief activity of which is the sale, distribution, dispensing or giving away of firearms or ammunition;
- 9. Order that no person shall carry, possess or use any club, brick or gasoline-filled bottle or container with a fuse type wick inserted in the neck, or gasoline or petroleum base firebomb or other incendiary missile or weapon who uses or intends to use the same unlawfully against the persons or property of another;
- 10. Order, if deemed necessary, the closing of any and all business, commercial and industrial establishments;
- 11. Call upon regular and auxiliary law enforcement agencies and organizations within or without the city to assist in preserving and keeping the peace;
- 12. Designate any public street, thoroughfare or vehicle parking areas closed to motor vehicle and pedestrian traffic; and
- 13. Issue such other orders as are imminently necessary for the protection of life and property.

Section 21. Section 8-1-122 is hereby created to read as follows:

<u>8-1-122 – Cybersecurity.</u>

The Director of Information Technology shall be empowered to take necessary measures to harden the city's information networks and data from malicious cyber attacks that may attempt to delay, disrupt or impair digital communication during a proclaimed state of emergency.

Section 22. Section 8-1-123 is hereby created to read as follows:

## <u>8-1-123 – Establishment of an Emergency Operations Center (EOC).</u>

The mayor and the mayor pro tem acting in concert may decide to establish an EOC if they determine that it is in the best interest of the city to do so. IN the event an EOC is established, the city manager shall be responsible for its daily operations.

**Section 23.** Severability Clause. If any section, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

**Section 24.** Effective Date. The provisions of this ordinance shall become effective thirty (30) days after its passage.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma this \_\_\_\_day of September, 2021.

## STANLEY BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY

#### ORDINANCE NO. 2021-\_\_\_\_

AN ORDINANCE PERTAINING TO PUBLIC HEALTH AND SAFETY, RENAMING THE TITLE OF CHAPTER 8 OF LAWTON CITY CODE FROM "CIVIL DEFENSE" TO "PUBLIC HEALTH AND SAFETY"; AMENDING SECTIONS 8-1-101, 8-1-102, 8-1-103, 8-1-104, 8-1-105, 8-1-106, 8-1-107, 8-1-108, 8-1-110, 8-1-112, 8-1-113, 8-1-114, 8-1-115, 8-1-118, 8-1-119; REPEALING AND RESERVING SECTIONS 8-1-109, 8-1-111, 8-1-116, 8-1-117; CREATING SECTIONS 8-1-122 AND 8-1-123, ARTICLE 8-1, CHAPTER 8, LAWTON CITY CODE, 2015; UPDATING THE PROVISIONS OF THE CHAPTER TO INCLUDE REVISING THE SCOPE OF SAID CHAPTER, UPDATING DEFINITIONS TO INCLUDE ADDING THE DEFINITION OF "EMERGENCY MANAGEMENT", REMOVING REFERENCES TO "CIVIL DEFENSE", ADDING OTHER DEFINITIONS, ADDING A SECTION ON CYBERSECURITY AND AN EMERGENCY OPERATIONS CENTER, AND BRINGING SEVERAL SECTIONS INTO COMPLIANCE WITH THE OKLAHOMA EMERGENCY MANAGEMENT ACT OF 2003; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

#### Brief Gist

This ordinance amends Chapter 8 of Lawton City Code, renaming the chapter, revising the scope, adding and deleting definitions, adding a section on cybersecurity and an emergency operations center, and bringing several sections within Chapter 8 into compliance with the Oklahoma Emergency Management Act of 2003; and providing for severability. This ordinance will become effective thirty days after passage.

ADOPTED and APPROVED by the Council of the City of Lawton, Oklahoma, this \_\_\_\_\_ day of September, 2021.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI HUSHBECK, CITY CLERK

(Published in The Lawton Constitution this \_\_\_\_\_ day of \_\_\_\_\_, 2021)



Commentary

File #: 21-516

Agenda Date: 9/28/2021

Agenda No: 23.

#### **ITEM TITLE:**

Consider an ordinance pertaining to collection services for unpaid utility bills, creating Section 22-1-1-105, Article 22-1, Chapter 22, Lawton City Code 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable, which includes unpaid utility bills, to refer utility bill indebtedness to the collection agency for collection, and authorizing the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the indebtedness, and establishing an effective date.

**INITIATOR:** Kristin Huntley, Interim Finance Director

**STAFF INFORMATION SOURCE:** Kristin Huntley, Interim Finance Director; Kelea Fisher, Deputy City Attorney; Mardi Repasy, Revenue Services Director

**BACKGROUND:** Title 11 Oklahoma Statutes Section 12-138 provides that the governing body of a municipality may enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable including, but not limited to, unpaid fees, penalties, interest, and other sums due the municipality. This ordinance establishes the City's ability to enter into such a contract and to collect unpaid utility bills in accordance with and as allowed by state statute. The state statute further provides that the collection fee may not exceed thirty-five percent (35%) of the total indebtedness referred by the municipality to the collection agency for collection. This ordinance establishes the same percentage limitation.

EXHIBIT: Ordinance 2021-

**KEY ISSUES:** Click or tap here to enter text.

**FUNDING SOURCE:** n/a

**STAFF RECOMMENDED COUNCIL ACTION:** Adopt Ordinance 21-\_\_\_\_ waive the reading of the ordinance and read the title only.

### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE PERTAINING TO COLLECTION SERVICES FOR UNPAID UTILITY BILLS, CREATING SECTION 22-1-1-105, ARTICLE 22-1, CHAPTER 22, LAWTON CITY CODE, 2015, AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH A COLLECTION AGENCY FOR THE PROVISION OF COLLECTION SERVICES FOR UNPAID UTILITY BILLS IN AN AMOUNT NOT TO EXCEED THIRTY-FIVE PERCENT (35%), PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lawton, Oklahoma that:

Section 1. Section 22-1-1-105 is hereby created to read as follows:

Section 22-1-1-105 - Collection services for unpaid utility bills.

- A. Subject to the provisions of the City of Lawton Charter and Ordinances and Title 11 Oklahoma Statutes Section 22-138, the City Council shall be authorized to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable, which includes unpaid utility bills.
- B. Upon the City entering into a contract with a collection agency as authorized in Subsection A of this Section, the Utility Services Supervisor or the appropriate finance official of the City may refer indebtedness for unpaid utility bills to the collection agency for collection. The indebtedness for unpaid utility bills may include any unpaid fees, penalties, interest or sums established by City Code and due to the City for unpaid utility bills.
- C. In addition to the total amount of the indebtedness owed to the City, the utility customer/consumer will be responsible for repayment of any contracted collection fee established from the City's contract with the collection agency in an amount not to exceed thirty-five percent (35%) of the total indebtedness that has been referred by the City to the collection agency for collection.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

Section 3. Effective Date. The provisions of this ordinance shall become effective 30 days after adoption.

**ADOPTED** and **APPROVED** by the Council of the City of Lawton, Oklahoma, this \_\_\_\_\_ day of September, 2021.

STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY



Commentary

File #: 21-517

Agenda Date:

Agenda No: 24.

### **ITEM TITLE:**

Consider approving a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, by authorizing the addition of a collection fee in an amount not to exceed thirty-five percent (35%) for debts and accounts receivables including, but not limited to, unpaid fees, penalties, interest, and other sums due to the City for unpaid utility bills and establishing an effective date.

**INITIATOR:** Kristin Huntley, Interim Finance Director

**STAFF INFORMATION SOURCE:** Kristin Huntley, Interim Finance Director; Kelea Fisher, Deputy City Attorney; Mardi Repasy, Revenue Services Supervisor

**BACKGROUND:** Should the Council approve an ordinance pertaining to collection services for unpaid utility bills, creating Section 22-1-1-105, Article 22-1, Chapter 22, Lawton City Code 2015, said ordinance will authorize the City to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable, which includes unpaid utility bills and to refer utility bill indebtedness to the collection agency for collection. Said ordinance would also authorize the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the indebtedness. Section 1-2-205 of the Lawton City Code provides additional fees are implemented by amendment of Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, upon passage of a resolution amending Appendix A. This resolution amends Appendix A to reflect the above-referenced collection fee.

**EXHIBIT:** Resolution 2021-

**KEY ISSUES:** Click or tap here to enter text.

**FUNDING SOURCE:** n/a

STAFF RECOMMENDED COUNCIL ACTION: Approve Resolution 2021-\_\_\_\_.

### RESOLUTION NO. 21-\_\_\_\_

### A RESOLUTION AMENDING APPENDIX A, SCHEDULE OF FEES AND CHARGES, LAWTON CITY CODE, 2015, BY AUTHORIZING THE ADDITION OF A COLLECTION FEE IN AN AMOUNT NOT TO EXCEED THIRTY-FIVE PERCENT (35%) FOR DEBTS AND ACCOUNTS RECEIVABLES INCLUDING, BUT NOT LIMITED TO, UNPAID FEES, PENALTIES, INTEREST, AND OTHER SUMS DUE TO THE CITY FOR UNPAID UTILITY BILLS AND ESTABLISHING AN EFFECTIVE DATE.

**WHEREAS,** the Council has approved Ordinance No: \_\_\_\_\_ pertaining to collection services for unpaid utility bills, creating Section 22-1-1-105, Article 22-1, Chapter 22, Lawton City Code 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable, which includes unpaid utility bills, to refer utility bill indebtedness to the collection agency for collection, and authorizing the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the total indebtedness; and

**WHEREAS**, Section 1-2-205 of the Lawton City Code provides additional fees are implemented by amendment of Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, upon passage of a resolution amending Appendix A by the City of Lawton; and

**WHEREAS,** the Lawton City Council has determined that the specific increases set forth in Exhibit "A" hereto are necessary to establish and authorize collection of a fee for unpaid utility bills, in an amount not to exceed thirty-five percent (35%) of the indebtedness;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Lawton, Oklahoma that:

<u>Section 1.</u> APPENDIX A, Schedule of Fees and Charges, Lawton City Code, 2015, be amended as set out in the attached Exhibit "A".

<u>Section 2.</u> EFFECTIVE DATE. The provisions of this resolution shall be in full force and effect on and after October 28<sup>th</sup>, 2021.

<u>Section 3.</u> The Mayor and the City Clerk of the City of Lawton are hereby authorized to sign and execute this Resolution.

**ADOPTED** and **APPROVED** by the Council of the City of Lawton, Oklahoma, this 28<sup>th</sup>, day of September, 2021.

STANLEY BOOKER, MAYOR

ATTEST:

### TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY

### EXHIBIT "A"

### Article A-22-1 - General provisions.

### GENERAL FEES AND CHARGES

22-102	Reduction in base rates for low income elderly and low income disabled, per month	
	Water	5.50
	Sewer	4.18
	Refuse	5.25
22-104	Penalties for nonpayment:	
22-104	Late payment of water charges, 20 days after billing date, minimum 1.34	1.34 or 10% of unpaid bill
22-104	If bill and penalty not paid 40 days after billing date, service restoration during working hours	25.00
22-104	Above, service restoration during other than working hours	50.00
22-104	Deposit for service, service reinstated, or the water turned on	150% of the average monthly bill or surety bond in the minimum amount of \$3,000.00 or an amount to be determined by the City, whichever is greater
22-104	Dishonored checks	25.00
<u>22-105</u>	The City may refer indebtedness for unpaid utility bills to a collection agency for collection. The indebtedness referred to the collection agency may include any unpaid fees, penalties, interest or sums established by City Code and due to the City for unpaid utility bills.	customer/consumer will be responsible for repayment of any contracted collection fee established from the City's contract with the collection agency in an amount not to exceed



Commentary

File #: 21-518

Agenda Date: 9/28/2021

Agenda No: 25.

### **ITEM TITLE:**

Consider approving an ordinance pertaining to collection services for court penalties, costs, fines, and fees creating Section 9-1-135, Article 9-1, Chapter 9, Lawton City Code, 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for court penalties, costs, fines and fees in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the Court, providing for severability and establishing an effective date.

**INITIATOR:** Jillian Allison, Municipal Court Director

**STAFF INFORMATION SOURCE:** Jillian Allison, Municipal Court Director; Kelea Fisher, Deputy City Attorney; Nathan Johnson, Municipal Court Judge

**BACKGROUND:** Title 11 Oklahoma Statutes Section 12-138 provides that the governing body of a municipality may enter into a contract with a collection agency for the provision of collection services for court penalties, costs, fines and fees in cases in a municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court. The statute further provides that if a municipality enters into such contract with a collection agency and authorizes the collection fee, the court shall order defendants to reimburse the fee and such court-ordered fee may be collected as provided by law for the collection of any other civil debt or criminal action. This ordinance establishes the City's ability to enter into such a contract and collect such adjudicated court penalties, costs, fines and fees in cases in Municipal Court in accordance with state statute. The state statute further provides that the collection fee may not exceed thirty-five percent (35%) of the total amount referred to the collection agency for collection. This ordinance establishes the same percentage limitation.

EXHIBIT: Ordinance 2021-

**KEY ISSUES:** n/a

FUNDING SOURCE: n/a

**STAFF RECOMMENDED COUNCIL ACTION:** Adopt Ordinance 2021-\_\_\_\_, waive the reading of the ordinance and read the title only.

### ORDINANCE NO. 21-\_\_\_\_

AN ORDINANCE PERTAINING TO COLLECTION SERVICES FOR COURT PENALTIES, COSTS, FINES AND FEES CREATING SECTION 9-1-135, ARTICLE 9-1, CHAPTER 9, LAWTON CITY CODE, 2015, AUTHORIZING THE CITY TO ENTER INTO A CONTRACT WITH A COLLECTION AGENCY FOR THE PROVISION OF COLLECTION SERVICES FOR COURT PENALTIES, COSTS, FINES AND FEES IN MUNICIPAL COURT IN WHICH THE ACCUSED HAS FAILED TO APPEAR OR OTHERWISE FAILED TO SATISFY A MONETARY OBLIGATION ORDERED BY THE COURT, PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Lawton, Oklahoma that:

Section 1. Section 9-1-135 is hereby created to read as follows:

### Section 9-1-135 - Collection services for court penalties, costs, fines and fees.

- A. Subject to the provisions of the City of Lawton Charter and Ordinances and Title 11 Oklahoma Statutes Section 22-138, the City Council shall be authorized to enter into a contract with a collection agency for the provision of collection services for court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court.
- B. Upon the City entering into a contract with a collection agency as authorized in subsection A of this section, the Municipal Court Clerk or the appropriate finance official of the City may refer unpaid court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court to the collection agency for collection.
- C. In addition to the total amount of the unpaid court penalties, costs, fines and fees owed to the City, the accused will be responsible for repayment of any contracted collection fee established from the City's contract with the collection agency in an amount not to exceed thirty-five percent (35%) of the total amount of unpaid court penalties, costs, fines and fees that have been referred by the City to the collection agency for collection.
- D. If the City enters into such a contract with a collection agency authorizing the collection fee, the Municipal Court shall order defendants to reimburse the fee arising pursuant to subsection C of this section and such court-ordered fee may be collected as provided by law for the collection of any other civil debt or criminal action.

Section 2. Severability. If any section, subsection, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, said portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portion of this ordinance.

Section 3. Effective Date. The provisions of this ordinance shall become effective 30 days after adoption.

**ADOPTED** and **APPROVED** by the Council of the City of Lawton, Oklahoma, this \_\_\_\_\_ day of September, 2021.

ATTEST:

STANLEY BOOKER , MAYOR

TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021.

JOHN RATLIFF, CITY ATTORNEY



Commentary

File #: 21-519

Agenda Date: 9/28/2021

Agenda No: 26.

### **ITEM TITLE:**

Consider approving a resolution amending Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, by authorizing the addition of a collection fee in an amount not to exceed thirty-five percent (35%) for unpaid court penalties, costs, fines and fees in municipal court cases in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court and establishing an effective date.

**INITIATOR:** Jillian Allison, Municipal Court Director

**STAFF INFORMATION SOURCE:** Jillian Allison, Municipal Court Director; Kelea Fisher, Deputy City Attorney

**BACKGROUND:** Should the Council approve an ordinance pertaining to collection services for unpaid court penalties, costs, fines and fees, creating Section 9-1-135, Article 9-1, Chapter 9, Lawton City Code 2015, said ordinance will authorize the City to enter into a contract with a collection agency for the provision of collection services for unpaid court penalties, costs, fines and fees in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary oblation ordered by the court and to said amounts to the collection agency for collection. Said ordinance would also authorize the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the total amount of unpaid court penalties, costs, fines, and fees referred for collection. Section 1-2-205 of the Lawton City Code provides additional fees are implemented by amendment of Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, upon passage of a resolution amending Appendix A. This resolution amends Appendix A to reflect the above-referenced collection fee.

EXHIBIT: Resolution 2021-\_\_\_\_

**KEY ISSUES:** n/a

**FUNDING SOURCE:** Approve Resolution 2021-\_\_\_\_.

**STAFF RECOMMENDED COUNCIL ACTION:** Click or tap here to enter text.

### RESOLUTION NO. 21-\_\_\_\_

### A RESOLUTION AMENDING APPENDIX A, SCHEDULE OF FEES AND CHARGES, LAWTON CITY CODE, 2015, BY AUTHORIZING THE ADDITION OF A COLLECTION FEE IN AN AMOUNT NOT TO EXCEED THIRTY-FIVE PERCENT (35%) FOR UNPAID COURT PENALTIES, COSTS, FINES, AND FEES IN CASES IN MUNICIPAL COURT IN WHICH THE ACCUSED HAS FAILED TO APPEAR OR OTHERWISE FAILED TO SATISFY A MONETARY OBLIGATION ORDERED BY THE COURT AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Council has approved Ordinance No: \_\_\_\_\_ pertaining to collection services for unpaid court penalties, costs, fines, and fees and creating Section 9-1-135, Article 9-1, Chapter 9, Lawton City Code, 2015, authorizing the City to enter into a contract with a collection agency for the provision of collection services for unpaid court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court, to refer said indebtedness to the collection agency for collection, and further authorizing the collection agency to collect a fee in an amount not to exceed thirty-five percent (35%) of the total amount of unpaid court penalties, costs, fines and fees referred to the collection agency; and

**WHEREAS**, Section 1-2-205 of the Lawton City Code provides additional fees are implemented by amendment of Appendix A, Schedule of Fees and Charges, Lawton City Code, 2015, upon passage of a resolution amending Appendix A by the City of Lawton; and

WHEREAS, the Lawton City Council has determined that the specific increases set forth in Exhibit "A" hereto are necessary to establish and authorize collection of a fee for unpaid court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court, in an amount not to exceed thirty-five percent (35%) of the total amount of unpaid court penalties, costs, fines and fees referred to the collection agency;

**NOW, THEREFORE BE IT RESOLVED** by the Council of the City of Lawton, Oklahoma that:

<u>Section 1.</u> APPENDIX A, Schedule of Fees and Charges, Lawton City Code, 2015, be amended as set out in the attached Exhibit "A".

<u>Section 2.</u> EFFECTIVE DATE. The provisions of this resolution shall be in full force and effect on and after October 28<sup>th</sup>, 2021.

<u>Section 3.</u> The Mayor and the City Clerk of the City of Lawton are hereby authorized to sign and execute this Resolution.

**ADOPTED** and **APPROVED** by the Council of the City of Lawton, Oklahoma, this 28<sup>th</sup> day of September, 2021.

### STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

APPROVED as to form and legality this \_\_\_\_\_ day of September, 2021

JOHN RATLIFF, CITY ATTORNEY

### EXHIBIT "A"

### CHAPTER A-9 COURT

### ARTICLE A-9-1 COURT FEES

<u>9-135</u>	The City may refer unpaid court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court to a collection agency for collection.	In addition to the total amount of unpaid court penalties, costs, fines and fees referred to the collection agency, the accused will be responsible for repayment of any contracted collection fee established from the City's contract with the collection agency in an amount not to exceed thirty-five percent (35%) of the total amount of unpaid court penalties, costs, fines and fees referred.
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Commentary

File #: 21-520

Agenda Date: 9/28/2021

Agenda No: 27.

### ITEM TITLE:

Consider approving a professional services agreement for collection services between the City of Lawton and Perdue, Brandon, Fielder, Colling & Mott, L.L.P.; and authorize the Mayor and City Clerk to execute the agreement.

**INITIATOR:** Kristin Huntley, Interim Finance Director; Jillian Allison, Municipal Court Director

**STAFF INFORMATION SOURCE:** Kristin Huntley, Interim Finance Director; Jillian Allison, Municipal Court Director; Kelea Fisher, Deputy City Attorney

**BACKGROUND:** Title 11 Oklahoma Statutes Section 22-138 authorizes the governing body of a municipality to enter into a contract with a collection agency for the provision of collection services for debts and accounts receivable including, but not limited to, unpaid fees, penalties, interest, and other sums due the municipality. Said statute further authorizes the municipality to enter into a contract for the provision of collection services for court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court. The statute further provides that the collection fee charged by the collection agency may be in an amount not to exceed thirty-five percent (35%).

The utility services division currently estimates that the City has over two-hundred thousand dollars (\$200,000.00) in outstanding, unpaid utility bills. In late 2019, the municipal court had an estimated eleven million dollars (\$11,000,000.00) in outstanding, unpaid court penalties, costs, fines and fees. Staff desires to enter into a professional services agreement with Perdue, Brandon, Fielder, Colling & Mott, L.L.P. to provide collection services as authorized by statute. The proposed collection fees (to be collected by Perdue in addition to the outstanding debt owed to the City) will be thirty-five percent (35%) for unpaid utility bills and thirty-percent (30%) for unpaid court related debts. Perdue provides collection services for more than 2,100 local government clients in seven (7) states. Perdue represents over 30 municipalities in the State of Oklahoma (see attachment).

**EXHIBIT:** Perdue Professional Services Agreement; Perdue Informational Packet

**KEY ISSUES:** n/a

FUNDING SOURCE: Click or tap here to enter text.

**STAFF RECOMMENDED COUNCIL ACTION:** Approve a professional services agreement for collection services between the City of Lawton and Perdue, Brandon, Fielder, Colling & Mott, L.L.P.; and authorize the Mayor and City Clerk to execute the agreement.

### PROFESSIONAL SERVICES AGREEMENT FOR COLLECTION SERVICES

THIS Professional Services Agreement for Collection Services (hereinafter, the "Agreement"), is made and entered into by and between **The City of Lawton**, Oklahoma, a municipal corporation (hereinafter, "City"), and **Perdue, Brandon, Fielder, Collins & Mott, L.L.P.**, (hereinafter, Perdue").

WHEREAS, City agrees to employ and does hereby employ Perdue to enforce the collection of debts and accounts receivable including unpaid fees, penalties, interest, and other sums due the City for delinquent utility bills and delinquent court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court. If City should decide to send receivables other than those specified by this Agreement and Perdue agrees to accept such receivables for collection, an amendment to this Agreement would be necessary.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements hereinafter set forth, the adequacy of which is hereby acknowledged, City and Perdue agree as follows:

### SECTION I. CITY'S COLLECTION OBLIGATIONS

A. City agrees to refer unpaid fees, penalties, interest, and other sums due the City for delinquent utility bills to Perdue for collection. City further agrees to refer delinquent court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court to Perdue for collection. City shall refer all delinquent accounts by electronic or magnetic medium, or in any other way that is most favorable to City. All delinquent accounts must be in a specified format that will allow Perdue to process the account data.

B. An account (for collection of court penalties, costs, fines, and fees) is considered delinquent when not paid within thirty (30) days of the scheduled appearance date (if the defendant failed to appear), or from any granted extension, or from the date of conviction or judgment, or other court specified due date. Utility bill receivables are considered delinquent at a date to be determined by applicable City Code or policy or practice within the applicable City Division or Department.

C. The City, at its sole discretion, will determine which accounts (for collection of court penalties, costs, fines and fees and delinquent utility bills) will be referred to Perdue for collection.

D. City will provide Perdue with copies of, or access to, the information and documentation necessary to collect the fees and fines costs and penalties that are subject to this Agreement.

### SECTION II. PERDUE'S COLLECTION OBLIGATIONS

A. Perdue agrees to refer all payments and correspondence regarding delinquent utility accounts directly to the City's Revenue Services Division or as otherwise requested by the City. Perdue reserves the right to return all accounts not being collected within one (1) year of referral by City, as well as any accounts identified as being in bankruptcy. Upon return of these accounts, neither party will have any obligation to the other party to this Agreement.

B. Perdue agrees to refer all payments and correspondence regarding delinquent court penalties, costs, fines and fees directly to the court that has assessed or levied the penalties, costs, fines and fees being collected pursuant to this Agreement. Perdue reserves the right to return all accounts not being collected within one (1) year of referral by City, as well as any accounts identified as being in bankruptcy. Upon return of these accounts, neither party will have any obligation to the other party to this Agreement.

C. Perdue agrees to use its best efforts to collect the delinquent accounts received from the City and to comply with all provisions of state and federal law and regulations promulgated pursuant thereto in the rendition of collection services contemplated by this Agreement.

### SECTION III. INDEPENDENT CONTRACTOR

Perdue is acting as an independent contractor of the City, and the employees, agents, consultants and subcontractors of Perdue are not employees of the City.

### SECTION IV. COLLECTION FEE

City agrees to add a collection fee pursuant to Title 11 O.S. Section 22-138 on all receivables sent to Perdue for collection. The collection fee is added in addition to the amount already due to the City. The collection fee amount for delinquent utility bill is set at thirty-five percent (35%) and the collection fee for delinquent court costs, fines, penalties and fees is set at thirty-percent (30%). This collection fee shall be paid to Perdue only upon collection of the receivable. If the receivable is not collected by Perdue, Perdue is not entitled to a collection fee as it relates to that particular receivable.

### SECTION V. METHOD OF PAYMENT

City shall calculate and receive the amount of any collection fee due to Perdue. Said fee shall be paid to Perdue on a monthly basis. All compensation shall become the property of Perdue at the time of payment.

### SECTION VI. COMMENCEMENT AND TERMINATION OF AGREEMENT

This Agreement is for an initial period beginning on the execution date in 2021 and ending on the same date in 2022. After the initial period, this Agreement may be renewed for two (2) additional one (1) year periods by written agreement of both parties. In the event the Agreement is not renewed after the initial term, it will remain in effect on a month-to-month basis until terminated by either party.

### SECTION VII. NOTICES

For purposes of sending notice under the terms of this Agreement, all notices from City shall be sent to Perdue by certified United States mail, and addressed as follows:

Perdue, Brandon, Fielder, Collins & Mott, L.L.P. Attn: Tony Fidelie, Partner 900 8<sup>th</sup> Street, Suite 1100 Wichita Falls, Texas 76301 Telephone Number: (800) 525-2481 Email: tfidelie@pbfcm.com

All notices from Perdue shall be sent to the City by certified United States mail, and addressed as follows:

City of Lawton Attn: City Manager 212 SW 9<sup>th</sup> Street Lawton, Oklahoma, 73501

### SECTION VIII. VENUE AND CONTROLLING LAW

This Agreement is made and is to be interpreted under the laws of the State of Oklahoma. Venue for any disputes involving this Agreement shall be in the appropriate courts in the City of Lawton, Comanche County, Oklahoma.

### SECTION IX. ACCEPTANCE OF AGREEMENT

In consideration of the terms and compensation herein stated, Perdue hereby accepts said agreement and undertakes performance of said Agreement as set forth above.

### SECTION X. LAW FIRM ASSOCIATION

Perdue and City acknowledge that Perdue has entered into an agreement with the Christensen Law Group in pursuing collections for City. City agrees and acknowledges that Perdue may split a portion of the fees paid to Perdue with the Christensen Law Group for the services they provide.

### SECTION XI. SEVERABILITY

Every provision of this Agreement is intended to be severable. If any term or provision hereof is hereafter deemed by a Court to be illegal, invalid, void or unenforceable, for any reason or to any extent whatsoever, such illegality, invalidity, or unenforceability shall not affect the validity of the remainder of this Agreement, it being intended that such remaining provisions shall be construed in a manner most closely approximating the intention of the Parties with respect to the illegal, invalid, void or unenforceable provision or part thereof.

This Agreement supersedes all prior oral and written agreements between the parties, and can only be amended if done so in writing and signed by all parties. Furthermore, this Agreement cannot be transferred or assigned by either party without the written consent of all parties.

This Agreement is executed on behalf of City by the presiding officer of its governing body who is authorized to execute this instrument by order heretofore passed and recorded in its minutes. This Agreement may be executed in any number of counterparts, and each counterpart shall be deemed an original for all purposes. Signed facsimiles or electronically signed Agreements executed on behalf of City by the presiding officer of its governing body authorized to execute this instrument shall be binding and enforceable. WITNESS the signature of all parties hereto this the \_\_\_\_\_ day of \_\_\_\_\_, 2021. (This date shall also be the execution date as referenced in Section VI of this Agreement.)

### CITY OF LAWTON, OKLAHOMA

A Municipal Corporation,

### STANLEY BOOKER, MAYOR

ATTEST:

TRACI L. HUSHBECK, CITY CLERK

Approved as to form and legality on behalf of the City this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

JOHN RATLIFF City Attorney

## PERDUE, BRANDON, FIELDER, COLLINS & MOTT, L.L.P.

BY: \_\_\_\_\_

Name Partner





# DELINQUENT COLLECTION SERVICES

# CITY OF LAWTON, OKLAHOMA

When experience, reputation and performance matter



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# **INTRODUCTION**

Perdue Brandon Fielder Collins & Mott, LLP (Perdue Brandon) primarily practices in the recovery of delinquent government receivables. When experience, reputation and performance matter, Perdue Brandon is the right choice.

**Experience** – 51 years of experience. **Reputation** – History of exceptional ethical conduct. **Performance** – Proven record of superior results.

We are one of the largest law firms collecting delinquent receivables for more than 2,100 local government clients. Perdue Brandon has a presence in seven states. We represent more than 600 courts for court fines and fees collections as well as dozens of cities for utility receivable collections. Our history of professionalism, upstanding ethical conduct and premier customer service have produced a high degree of ongoing client loyalty.

### More than 550 entities have been Perdue Brandon clients for over 15 years. More than 200 entities have been Perdue Brandon clients for over 30 years.

Perdue Brandon has 14 primary offices and multiple satellite locations. We employee more than 360 personnel, including more than 55 attorneys, who are recognized industry stalwarts with decades of experience implementing and managing collection contracts. Our personnel have indepth experience in civil and criminal matters.

Our dynamic team coupled with our considerable investment in technological infrastructure enhances our capacity to exceed the expectations of clients. We pioneered the use of specialized collection software and continue to utilize the most advanced tools in the industry.

Clients that have transitioned to Perdue Brandon consistently show marked improvement in their clearance and collection percentages as a direct result of our personalized collection program. We ensure a seamless transition and provide effective services, while maintaining premier customer service and client support. Our in-depth experience, national resources and proven collection record combine to deliver superior results.

We customize a collection plan with the goal of resolving outstanding cases and accounts thus increasing collection of your delinquent fines and fees, while providing due process to defaulters. Our hands-on personal approach ensures that we are accurate, persistent and professional.

# Following is a summary of our services and procedures that make us a leader in recovering delinquent fines and fees.



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## **KEY ASPECTS OF OUR COLLECTION PROGRAM**

Dedicated Team of Professionals	A team of attorneys and professional staff are assigned to each Client. A client representative and operations manager assists you with individualized needs. All collection programs are overseen by a lead attorney. Team members, including certified court clerks, provide training and assistance to your staff.
Strategic Data Analysis	Our data analytics and performance analysis allow us to create collection strategies that best fit your needs and goals.
Data Transfer	Our data integration process ensures a seamless, secure transmission of data between the City's system to our <i>Court Trakker</i> <sup>©</sup> system. We prioritize the highest level of confidentiality and security with our client's data.
No Cost	Services are at no cost to the Client.
Continuous Address Research	Cases go through extensive skip tracing efforts. This includes doing address research on an account multiple times to ensure we acquire the best contact information available in making contact with defaulters. Updated defaulter information is provided to the Municipal Court as requested.
Customizable Letters and Scripts	Content of letters and scripts are approved by the Client. Letters are automatically generated based on a variety of conditions, such as age of account, duration since last payment and dollar value of the account.
Customizable Reports	In addition to providing our standard reports, we create customized reports for the Client. Your staff also has the ability to generate reports through our online <i>Automated Assistant</i> <sup>®</sup> platform.
Payments and Invoicing	All communication directs defaulters to make payments to the City, unless otherwise requested. We provide invoicing and an easy transfer of money within the timetable set by you. We are only paid on accounts that have been collected. No fee is charged on time served, dismissals, community service, indigency or uncollected accounts.
Skilled, Multilingual Call Center	We employ a diverse group of collection professionals, which includes qualified multilingual staff members. Our team is efficient, while providing excellent service. Our Contact Specialists are courteous, qualified, trained, efficient and considerate.
Dispute Resolution	Disputes raised by defaulters, whether oral or written, are forwarded to an attorney-led team trained in dispute resolution. There is continuous communication between our staff and the Client regarding any disputes.
Web-based Access - Chat, Payments, Mapping	Online access is provided for City personnel and defaulters. <i>Automated Assistant</i> gives your staff real-time secure access to view the status and progression of accounts. Staff also sees information such as addresses, closed and pending charges, payments and vehicle information. Your staff can chat online with our staff. Defaulters can view their account and make payments. Our mapping feature allows law enforcement to search for defaulters within certain parameters and place their locations on a map.



### PERDUE BRANDON ATTORNEYS AT LAW

# **COLLECTION PROGRAM**

### **Initial Meeting**

Upon hire, Perdue Brandon meets with City staff to review procedures and parameters that the City requests. We quickly implement the items requested, including our defaulter contacts, letters and collection methods.

Our in-house Information Technology (IT) staff writes protocols to carry out the City's instructions for all software updates and data transfer methods. We execute tests using data samples to confirm all files are accurately uploaded. We note partial payment requirements and inform City staff on important aspects of our overall process to answer questions, take suggestions and resolve any remaining details of our program with the City.

### **Defaulter Contacts**

Contact with the defaulter is the most critical portion of the resolution process. Perdue Brandon immediately begins to work your delinquent cases. Once we load and verify your new accounts, all addresses are scrubbed through the United States Postal Service National Change of Address database. Our team then scrubs the data for deceased and incarcerated individuals.

Our next step is to mail collection letters and initiate contact via telephone. When mail is returned, our skilled researchers perform research to determine the location and contact information of the defaulter. Before each mailing, all addresses are verified through a variety of databases. Letters detail all defaulter case information, including docket number, offense description, amount due, payment options, City information and plea options.

Our letters and telephone communication stress the consequences of ignoring court appearance requirements and ensure that defaulters fully understand all options available to them. Our attorneys make sure letters do not violate a defaulter's statutory and constitutional rights. Our Legislative Team ensures we remain compliant with current laws and regulations.

If request for payment is ignored, we continue collection efforts. Resourcefulness and persistence separate Perdue Brandon from other law firms and collection agencies.

### **Client Control**

Case management is ultimately left to the discretion of the the City. It is our duty to provide a level of service that meets your approval. Our collection program and processes are flexible. The City has final approval on notice content, mailing schedule and number of notices to be mailed. The City can suspend our activity on a case at any time.

Perdue Brandon's work is completely transparent to the City. We maintain accurate records of the services performed and make records available for inspection and audit by your staff. Clients also have access to Perdue Brandon collection activity and staff through our online platform, *Automated Assistant*.





### **Customer Service Support**

Our personal collection approach is professional and courteous. Key aspects of our premier customer service are our skilled Contact Specialists, effective Collection Center Managers, continuous staff training and dispute resolution.

### **Our Skilled Contact Specialists are:**

- Courteous when communicating with defaulters. If a defaulter becomes argumentative, a supervisor or attorney completes the phone call.
- Qualified, trained, long-term employees. We do not hire temporary staff.
- Efficient in utilizing the predictive dialer system in conjunction with our specialized software, *Court Trakker*.
- Considerate in leaving messages.
- In open communication with City staff.

### **Our Effective Collection Center Managers:**

- Monitor all staff activities and ensure work is completed efficiently.
- Conduct continual and recurrent training sessions.
- Train all Contact Specialists to be polite, respectful and refrain from threats or anger should a defaulter become verbally abusive or threatening.
- Train our Contact Specialists on how to terminate a conversation in a courteous and professional manner and forward calls, as needed, to the supervisor or an attorney.
- Utilize comprehensive, on-going staff training to stay abreast of changing laws, client requirements, collection techniques and defaulter issues.
- Communicate in writing any changes in regulations to staff followed by training and meetings.
- Remain well-versed in all issues regarding collection of delinquent fines and fees and the daily issues that face existing City staff.

### **Our Continuous Staff Training includes:**

- On-going training related to changing laws, client requirements, collection techniques and defaulter issues.
- Providing American Collector's Association (ACA) skills and techniques training.
- Providing each Contact Specialist a reference manual that includes, but is not limited to, software information, communication techniques and listing of all clients and their specific requirements.
- In-house manuals on company policies and other employment related statutes.
- Utilizing a variety of industry training materials.

### **Our Dispute Resolution Process includes:**

- Handling disputes quickly and effectively.
- Forwarding all documentation to the City for resolution, when necessary, for case disputes such as mistaken identity, non-credited payments, etc.
- Having the manager and supervising attorney address any disputes involving personnel and a defaulter.
- Suspending collection activity on the affected account until an acceptable resolution has been reached.
- Noting all disputes and follow-ups on the account and having information available for the City's review through *Automated Assistant*.





### Additional customer service features

*Toll-Free Phone Number:* We maintain a toll-free (800) telephone number in each of our call centers. We also provide your City with the direct lines and email addresses of our staff. Additionally, our staff regularly check with the City to ensure operations are functioning properly.

*Website:* City personnel can go to our website, pbfcm.com, and, through our *Automated Assistant* platform, chat in real-time with our staff. Our website also includes links to the City's website for online payments.

*Non-English-Speaking Customers:* Language is not a barrier in our collection efforts. Perdue Brandon employs a diverse group of collection professionals, including qualified staff members who speak Spanish and other languages. We also utilize Language Line, an on-demand interpreter service.

### **Case Resolution Campaign**

If requested, Perdue Brandon works with the City to conduct a local Case Resolution Campaign. Prior to the initiation of our Case Resolution effort, we research, update and prepare cases for mailout. We provide media packets that can be utilized on your social media platforms and shared with local media outlets. Notices are in postcard format and designed to catch the receiver's attention.

### Mapping Program

Our team can coordinate with law enforcement to create an up-to-date list of defaulters for execution of warrants. The list can be sorted by many parameters, such as: total due, number of letters or phone calls made, specific zip codes, street name or age of cases. In addition, the officers can run these lists in real time through our *Automated Assistant*.

In conjunction with the defaulter lists, our *Automated Assistant* has a mapping program that allows officers to search defaulters within certain parameters and place their locations on a map. The multi-direction map creates the pin-point map as well as directions from the current location. This pin-point map includes defaulter information. This helps allocate time in the field as the map shows the best route and contains any updated addresses Perdue Brandon has obtained.





Delinquent Collection Services for Fines and Fees \* 2021



### **Automated Services**

Automated Account Batch/Accurint - Defaulter information is sent to Accurint daily for updated information. Prior to automation, a Contact Specialist selects a particular account, evaluates the need for additional research, conducts the research, then updates the account. The automated process saves time, resources and provides a safeguard against any account "falling through the cracks."

Automated Mailings, Return Mail and Address Updates - Our system automatically generates letters based on a predetermined timeline and case parameters. Mailings can then be tracked online through our mailing system. We utilize the Electronic Address Correction Service (ACS), which automates the return-to sender mail process resulting in a 95% reduction in return-to-sender mail.

We also route mail that cannot be delivered as addressed or is forwarded to a new address through the U.S. Post Office's "NIXIE" system. Through the NIXIE system, we import an electronic file from the Post Office that contains address status and information. For example, if the mail was forwarded to a new address, the process automatically changes the address on the account to the new address provided. If the mail was not deliverable as addressed, the process codes the address as a "bad address."

We also integrate an electronic report from the USPS Delivery Tracking (IMB Track) that documents the date and time individual letters are accepted by the USPS and follows them through the delivery process. Integration of this report into Perdue Brandon's system increases mail effectiveness and resolution.

Automated Workflow Monitoring - *Court Trakker* automatically searches for cases for Contact Specialists to work and tracks case workflow. Research and collection work is divided into tasks and assigned to specific staff to complete. If our system detects a case has not been researched or called in a predetermined amount of time, it automatically sends the case to the Contact Specialists for action.

We set the system to determine workflows that keep our Contact Specialists working accounts without the need to stop and determine what needs to happen next. Quantity of the workflow items change daily. This automation ensures an efficient and effective collection process while maximizing the amount of cases that can be worked at one time.



## Perdue Brandon Attorneys at LAW COLLECTION PROCESS

Our approach to resolving cases for the Client includes state-of-the-art systems, one-on-one contact with your defaulters and in-depth analysis of your data to develop the best collection strategies.

Case management is ultimately left to the discretion of the judicial independence of the City. It is our duty to provide a level of service that meets your approval. Our resolution program and processes are flexible. You have final approval of communication content, mailing dates, frequency and the number of mailed notices. You have the authority to suspend our activity on a case at any time. It is not the intention of Perdue Brandon to operate outside of client control but rather to partner and work with you.

#### **Step 1. Cases Received**

We can receive your cases in any format, including but not limited to ASCII, Comma Delimited File, Microsoft Access databases, dBASE, Microsoft Excel, fixed-width text, HTML, SQL tables and XML. Data can be transferred through magnetic media, email, manually or through a Secure File Transfer Protocol (SFTP) site. Data transmission will be seamless and secure.

#### Step 2. Case Information Verification

Case information is reviewed to ensure it was processed correctly and the correct fee was added. If desired, we provide the City an upload report confirming accurate receipt.

#### Step 3. Defaulter Location and Address Research

Identifying the best possible contact information is a critical part of our collection program. We invest significant resources developing fast and accurate skip-tracing.

We utilize our analytic capabilities to identify cases to send to our skip tracing resources for updated data. *Court Trakker* – works seamlessly with skip tracing resources. Cases continuously go through the skip tracing process - on a monthly, quarterly and annual schedule - in an effort to maintain the most current contact information. If a defaulter is contacted on one case, our researchers do an extensive system search to verify whether additional cases exist.

We have the capability to skip-trace cases through batch processing as well as by individual case. Confidential information in our possession remains confidential. Research specialists scrub cases to determine if the defaulter is deceased or incarcerated. Supporting documents are transferred to the City to help alleviate cases from their dockets.

A wide variety of resources and techniques are used, including:

- idiCORE/Accurint
- Social Media
- Automated return mail
- USPS National Change of Address database and USPS NIXIE program
- Telephone calls and directory
- Court or municipality directory and/or reverse index
- Address verification through municipal utility departments

- Motor vehicle records
- Secretary of State registrations
- Driver license and voter registration records
- Assumed name records
- Deed and court records
- Employer information
- Reverse phone searches
- Social Security and death records
- Criminal records





All Perdue Brandon mailings are coded with a unique barcode. We electronically document forwarded and returned mail daily and provide reports of these changes to our staff. We document these activities in real time, with daily backup, for an up-to-date history. This information is available by written report to the City through our *Automated Assistant*. Upon request, we send reports to the City listing new addresses and telephone numbers located.

#### Step 4. Letters

Letters are our first contact with your defaulter. Perdue Brandon provides a series of informative and concise letters. In our initial meetings, letters are reviewed and approved by the City. Each letter details all offenses and related charges. All available options are explained.

#### Step 5. Inbound/Outbound Calls

Phone calls are often the most critical point of any collection strategy. We have collection centers in five locations. Throughout these locations, we have more than 100 Contact Specialists handling accounts daily. We use a multi-level approach utilizing the resources and experience of all our locations.

Standard call times are Monday through Friday 8:00 a.m. to 5:00 p.m. Times are expanded to meet the requirements of our clients.

Our Contact Specialists contact the defaulters. Calls are handled in a courteous and respectful manner. Perdue Brandon staff answer calls and questions in conformity with your preferences.

As allowed by law, a predictive dialer is utilized. This blended inbound/outbound contact solution quickly pairs defaulters with qualified staff and provides transparency. It is a patented proactive predictive dialer that generates more calls and fewer hang-ups.

All calls are recorded. A specialized program verifies whether phone numbers are connected to a mobile device or landline. Based on the information, calls are filtered to the auto dialer. If the number is associated with a landline, the auto dialer automatically calls the number and leaves dispositions as to the result of the call. If the call is answered, they are placed with the first available Contact Specialist and information regarding the defaulter and account details is displayed for the Contact Specialist. If the number is associated with a mobile device, the Contact Specialist is informed and manually "clicks to call" per Telephone Consumer Protection Act (TCPA) guidelines.

A dialer report provides information on total number of outbound call attempts and is divided into categories including call result, line busy and wrong number as well as number of live contacts, right-party contacts and percentage of payments based on the correct contact.

Phone contact services include automated outbound calls, multilingual Contact Specialists, responses to voicemail messages within 24 hours of receipt, voice message retention for after hours calls and call monitoring capabilities.

#### Step 6. Payments

Perdue Brandon's main goal is to obtain payment for you, our client. Offering a simple payment process is key to achieving that goal.

The following is a summary of our payment process:

• Payment is requested in all correspondence, website and telephone contacts.





- All correspondence instructs defaulters to make payments directly to the City, unless instructed otherwide, by certified check, money order, credit card or other method accepted by the City.
- If we receive a check, we forward it to the City. If a check is made payable to us, we endorse the check and deliver it to the City.
- Perdue Brandon directs defaulters to pay online through our payment website at https:// payments.pbfcm.com/pmts/. Our payment website automatically routes defaulters to the City's website to complete the payment process. We do not require a defaulter to create a user name or password to access this information. Payments can be made 24 hours a day, 365 days a year.
- Upon the request of the City, Perdue Brandon monitors all payment agreements. Not only will supervisors in our office consistently monitor activity but reports are available on a daily basis to cross reference with payments received. Billing reports from our office can be provided daily, weekly or monthly at the City's request. Separate user codes help track our payment activities through our software program. All transactions are date stamped, identifiable and traceable from multiple checkpoints.
- We are paid only on the dollars collected.

#### **Step 7. Continuous Process**

Our persistence separates us from competitors. If a letter is returned to us due to a bad address, we conduct additional skip tracing to determine a valid address. Verbal and written contact is then re-initiated based upon new search results.

If payment is not made after a letter is sent, follow-up letters are sent increasing the emphasis on the severity of failing to pay. While our tone is amplified, we are committed to conducting our resolution effort in a professional and ethical manner. The City determines the tone of these letters.

#### **Step 8. Reporting and Documentation**

We place a high priority on keeping you continuously informed of our resolution effort, including cases paid, cases in process and cases determined to be uncollectible (i.e. death, incarceration). If we find a defaulter is deceased or incarcerated, Perdue Brandon provides case information with supporting documents, so the City can determine if the case is uncollectible. All action on each case is documented and available for review through a variety of reports. Attorneys also are available to answer questions.

From the day we add an account to our system, we record details and actions taken on it. Our collection software, *Court Trakker*, tracks and captures every letter, phone call, email, payment and address change. Our IT staff utilizes this information to create customized reports using Microsoft's Reporting Services. Once you have approved the report prototype, we generate the "published" report. You may generate a report through our online *Automated Assistant* platform. We also can mail, email or place a report on a SFTP site for pick up.





### **Utility & Misc Debt Collection Services**

Perdue Brandon currently represents more than 40 cities for the collection of delinquent utility accounts and miscellaneous debt collection. Our collection efforts for delinquent utility and other receivables accounts are conducted with added sensitivity as these debts fall under the Fair Debt Collection Practices Act. In communicating with your delinquent defaulters, we follow all City, State and Federal laws, rules and regulations.

### **Debt pricing**

Perdue Brandon provides collections for utilities and other receivables at no cost to the City. Under Oklahoma law, the cost is passed to the defaulter, same as it is for court receivables.

#### **Data Transfer**

For utilities, our staff generates a "bad debt file" from your system of those delinquent accounts to be submitted to the Firm for collections.

For other department accounts, we request a file or spreadsheet containing as much of the following information as possible: name, account number, address, phone number, date of birth, total amount due, driver's license number and/or social security number.

The data can be sent by electronic format through a SFTP or through our Automated Assistant platform. All defaulter's information is held with the upmost confidently and security. Data is never disclosed, shared or sold.

#### **Defaulter contacts**

In our initial meetings with City Department(s), we customize these letters to meet requirements that the City may have or request.

Perdue Brandon works to achieve maximum recovery of the delinquent accounts using collection techniques that include, but are not be limited to:

- Telephone calls;
- Skip Tracing and
- Mail letters (customized to each department).

### **Commercial Accounts**

Perdue Brandon's procedures regarding delinquent commercial accounts are the same as those for individual accounts. The Firm will conduct an owner search if the business has been closed and/ or filed for bankruptcy.

#### Partial Payments/Settlements/Returned Accounts

The Firm will not accept any partial payments or settlements on any delinquent account unless approved and parameters set by the City. Payment processing and procedures are the same as set forth with our "Payment Processing and Procedures" section in this proposal.

Upon written or electronic notification by the City, the Firm immediately suspends or terminates collection activity on any delinquent account.





Once the Firm has exhausted all our collection efforts on an account, we provide the City Department a list of potential accounts to be returned for possible closing of account(s).

#### **Credit Bureaus Reporting**

Perdue Brandon does not report to credit reporting agencies such as Equifax, TransUnion and Experian. Fair Credit Reporting Act rules and case law (Rodriguez v. Experian Information Solutions, Inc., 2016 WL 3976564 W.D. Wash., July 25, 2016) effectively bans credit reporting for any debt that does not arise from a contract or agreement to pay. This includes such accounts as toll, parking tickets, court fines, vehicle towing and storage fees, etc. Moreover, credit reporting agencies must reject any attempts to report a debt that does not include a complete birthdate for the individual assigned to the debt.

#### **Litigation Referral**

If the City should want to refer certain accounts for potential litigation, the Firm will pursue any legal means deemed necessary to collect that debt. We will not file suit, accept any compromise settlement or incur any expenses chargeable to the Client without the Client's approval. By agreeing to the filing of a lawsuit, the Client understands that it must reimburse Perdue Brandon for all costs and fees chargeable as court costs (e.g., filing fees, citation issuance, process service fees).

### **Coordination with City Departments**

The Firm fully coordinates all contract activities with each City department and works with City staff in accordance with the timeframe(s) for the applicable delinquent account type and balances as indicated by the City. Our collection team can provide advice and information on matters covered by the contract to ensure an efficient collection program for their department.

Our team works with City staff on providing training on our collections processes and online accessibility to the Firm's Automated Assistant platform.

#### Account activity / reports

Perdue Brandon provides online access for City department staff to view account activities, account updates and generate reports through our web-based *Automated Assistant*.



# PROPOSED WORK PLAN

PERDUE BRANDON ATTORNEYS AT LAW

Upon award of the contract, Perdue Brandon meets with the Client to begin the implementation process. Our IT staff writes protocols to carry out the City's instructions for all software updates and data transfer methods. Tests are conducted to confirm all files are accurately uploaded. Following is our proposed work plan.







### **IT Specialists**

Perdue Brandon has an in-house Information Technology Department. Our IT specialists have years of experience and knowledge in the field of technology, specifically related to the collection of government receivables. They continually stay abreast of the latest technology.

We have a staff of network professionals that support our servers, disaster recovery center, Data Center, workstations and printers as well as other types of non-collection software used by our offices to ensure smooth daily operations. Our services include a full-time HELP desk and support ticketing system to provide a central point of contact for support requests.

### **Software Interface**

Perdue Brandon ensures a seamless, efficient data exchange process. We work with more than 50 software programs, quickly interfacing and exchanging data in a secured environment. All information and personal data are confidential and protected. All conversion programming costs, if any, are at our expense.

Clients upload data files through *Automated Assistant* to our SFTP site. After uploading the data, files are moved to archive storage. Reports from the upload automatically are emailed to managers and supervisors for review. Any error in upload automatically suspends the process and sends an email to multiple support people. Data can be received in other formats as needed.

### **Computer System and Online Access**

*Court Trakker* enables us to tailor and update our collection program to meet our clients' needs. We can provide collection reports in a variety of formats based on different types of information and determine work flow by searching for and detecting cases that have not been researched or called in a specific amount of time. Cases needing action are isolated and automatically sent to a Contact Specialist. This automation maximizes the amount of cases that can be worked at one time.

Automated Assistant gives the City real-time secured Internet access to view the status of accounts as they progress through the collection process. With this specialized platform, City staff see and review the latest collection information on accounts including previous and current defaulter addresses, closed and pending charges, payments and vehicle information.

Following are some features of the web-based platform.

**Login** – The platform is accessible through our website, pbfcm.com. Your designated staff can login to our secure, password-protected website anytime. There is no limit on how many users the City can designate for online access.

**Notes/Reports Feature** – You can easily add notes to accounts and generate reports through the platform. We provide your staff with a summary of our terms and abbreviations.





Online Chat Feature - City staff can immediately chat with one of our collection managers.

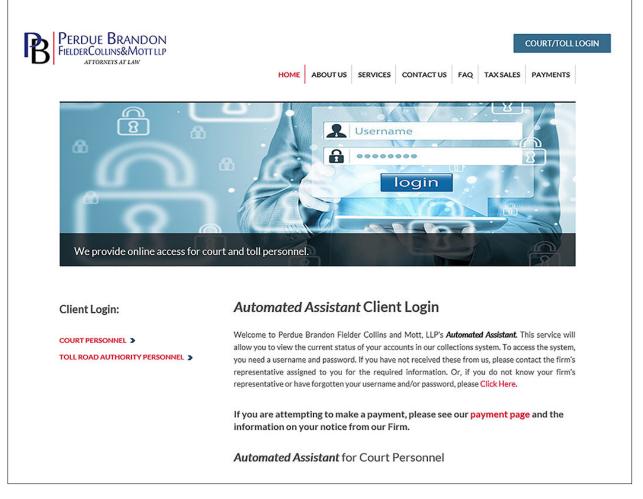
**Mapping Feature** – The mapping program provides law enforcement the ability to search and find defaulters within certain parameters by placing your defaulter's location on a map.

**Security Feature** – We use a REST service to isolate the data and 128-bit tokens to ensure user identity. We have protection against SQL injection as well as cross-site scripting (XSS). These features combine with strong passwords and secure socket layers to protect your data from unauthorized access.

**User-Friendly** – Our menu-driven system is user-friendly and easy to navigate. We train City staff on how to check an account's status and are available to assist as needed.

**Language Feature** – Supports both English and Spanish languages. Upon activation, the application detects the default language preference and sets the application language desired.

**Mobile Device Feature** – Seamless transition from your desktop browser to your mobile device. This mobile capability allows law enforcement personnel immediate access to defaulter collection information to facilitate appropriate interactions between your officers and defaulters.





### **Computer Hardware**

Our Data Center is state-of-the-art, utilizing a large failover capable load balancing VMWare server cluster. Dell and Microsoft, our enterprise partners, helped us design and populate our Data Center with the latest products. The Data Center is built for maximum uptime and provides a number of redundant features, including incoming power lines, climate control systems and multiple internet circuits, all of which are failover enabled. The Data Center is constructed to resist flooding and both straight line and tornadic winds.

Our virtual server cluster utilizes VMWare Enterprise Hypervisor solutions running on Dell Hyperconverged infrastructure. The storage infrastructure is comprised of an all-flash drive array with more than 100 Terabytes of storage in a highly redundant VSAN Cluster. Utilizing the two mentioned architectures gives us the ability to migrate a virtual server from one server node to another without powering off the server and to create new servers in a matter of minutes.

Individual offices connect to the Data Center using variable bandwidth fiber circuits provided by AT&T. The Firm also "pushes" system wide antivirus to all connected systems and keeps the antivirus signatures up-to-date on connected machines for a virus-free environment.

Additional highlights of our computer capabilities include:

- Network appliances are Fortinet next generation routers, switches and endpoints. We also use FortiGate enterprise firewalls for advanced security services like Threat Protection and SSL Inspection. We also use FortClient and the FortiTelemetry options.
- Augmentation of our security infrastructure with FortiEDR on all connected systems. FortiEDR is an A1 based next generation threat protection/anti-virus solution. FortiEDR, in conjunction with a FortiClient real-time Threat Prevention Assessment scans, ensure our systems are safe.
- Zerto for our high-end disaster recovery replication. This software enables automated data recovery, failover and failback including orchestration of all replication functions.
- Trustwave as a third-party penetration testing. Trustwave advises Perdue Brandon and helps eliminate the ever-changing attack vectors used.

### **Disaster Recovery**

Data is replicated to our Disaster Recovery Site using Zerto. The site is a large server cluster that closely mirrors the Data Center. As users add or change data in Data Center, the data at the Disaster Recovery Site also is updated. This VMWare product allows for non-disruptive testing of failover plans to ensure recovery success. In the event of a disaster in the primary Data Center, the Disaster Recovery Site immediately assumes operation.

The Data Center and Disaster Recovery Site use storage arrays with "hot swappable" disk drives. If a disk goes down, it is replaced without any loss of time or data. This "hot swappable" feature also is found in server power supplies, network interface cards and other components identified as needing failover.





Our disaster recovery procedures were tested and proven successful when Hurricane Ike impacted our Houston office. Despite damage and power loss at our office, no data was lost. The Houston office resumed operations from a temporary location within two days of the disaster.

Then, as the COVID-19 Pandemic situation evolved in early February 2020, our network team identified the possible need to transition into a telecommuting environment. A plan was created and extensively tested to ensure firm employees maintained secure access to all firm software and voice services from a remote workspace. As stay-at-home mandates were enforced, the network team quickly implemented the necessary configuration changes allowing a smooth transition to a telecommuting workplace.

### **Confidentiality and Security**

All client data is confidential and held in a secure environment. Our Firm's employee policies require strict confidentiality. Staff have restricted access to data and functions and are allowed access only to those areas that are required to fulfill their duties.

Our network is secure and outside entrance is not allowed except with approved credentials and special software. Additionally, outside devices connecting to our network are checked by a discovery agent that ensures anti-virus software is installed and running before allowing initial network access. If the device is found to be compliant, the device is allowed on the network for user sign on.

Perdue Brandon augments our security infrastructure with FortiEDR and Penetration Testing done by Trustwave, both of which are industry leaders in their area. The Firm also "pushes" system-wide anti-virus to all connected systems and keeps the anti-virus signatures up to date on connected machines. Perdue Brandon only works with companies with the same high level of standards regarding security.

Perdue Brandon has encrypted millions of records containing social security numbers, driver's license numbers and dates of birth. These data items are encrypted at rest, meaning that only a program with the proper security certificate installed can view the data. This is another step in reducing risk of compromising personal information.





Commentary

File #: 21-513

Agenda Date: 9/28/2021

Agenda No: 28.

### **ITEM TITLE:**

Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the status of an ongoing investigation concerning pension calculations, and, if necessary, take appropriate action in open session.

INITIATOR: John Ratliff, City Attorney

**STAFF INFORMATION SOURCE:** Dewayne Burk, Deputy City Manager; Timothy Wilson, Deputy City Attorney; and Craig Akard, Human Resources Director

**BACKGROUND:** Staff, in late 2019, initiated an investigation into the methods used in its employee pension calculations. This investigatory review remains open. The City Attorney/Deputy City Attorney advises the Council that the disclosure of information relating to the ongoing investigation will seriously impair the ability of the public body to conduct said investigatory review and/or defend its interests, and from that determination, the Council should convene in executive session to discuss the matter.

EXHIBIT: N/A

**KEY ISSUES:** N/A

FUNDING SOURCE: N/A

**STAFF RECOMMENDED COUNCIL ACTION:** Convene in executive session to discuss the status of an ongoing investigation concerning pension trust calculations, and, if necessary, take appropriate action in open session.



Commentary

File #: 21-515

Agenda Date: 9/28/2021

Agenda No: 29.

### **ITEM TITLE:**

Pursuant to Section 307B.4, Title 25, Oklahoma Statutes, consider convening in executive session to discuss the pending claim of Linda Towne and, if necessary, take appropriate action in open session. **INITIATOR:** John Ratliff, City Attorney

### **STAFF INFORMATION SOURCE:** Kelea Fisher, Deputy City Attorney

**BACKGROUND:** The City Attorney desires to discuss with the Mayor and Council the pending claim of Linda Towne, filed by and through her attorney Jonathan Irwin. The City Attorney advises the City Council that the Council should determine that disclosure of confidential communications between the Council and the City Attorney regarding the above referenced case will seriously impair the ability of the City to defend the City's interest, and from that determination, the Council should convene in executive session to discuss this matter.

**EXHIBIT:** Click or tap here to enter text.

**KEY ISSUES:** Click or tap here to enter text.

FUNDING SOURCE: Click or tap here to enter text.

**STAFF RECOMMENDED COUNCIL ACTION:** Convene in executive session to discuss the pending claim of Linda Towne and, if necessary, take appropriate action in open session.