

AGENDA
BOARD OF CITY COMMISSIONERS
February 1, 2016 AT 6:30 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

INVOCATION

FLAG SALUTE

All motions will be made in the affirmative. The fact that a commissioner makes or offers a second to a motion does not mean that the commissioner must vote in favor of passage.

1. Consider approval of Consent Agenda:
 - a. Minutes from the January 19, 2016 regular meeting.
 - b. Acknowledge the following minutes:
 - Shawnee Civic and Cultural Development Authority Minutes from December 17, 2015 meeting
 - c. Mayor's Appointments

Shawnee Housing Authority
Sherry Lankford 2nd Full Term Expires 02/14/2019
Reappointment
 - d. Authorize staff to trade-in 2000 American LaFrance Rescue fire truck to Conrad Fire Equipment toward new Engine 3 apparatus previously authorized and ordered.
 - e. Authorize staff to request bids to lease City owned property located at the northeast corner of Leo Street and Westech Road for the purpose of pasture land.
 - f. Authorize staff to request bids for the Municipal Auditorium Heating, Ventilation and Air Conditioning System (HVAC).
 - g. Approve closure of utility easement for property located at 2701 Crown Point and authorize staff to execute Utility Easement Release.
 - h. Acceptance of Shawnee Market Place public improvements and place maintenance bonds into effect.

2. Citizens Participation

(A three minute limit per person)
(A twelve minute limit per topic)
3. Presentation by City Manager to Employee of the Month, Joshua Kimer, Parks Department.
4. Consider and approve resolution authorizing the Mayor to sign and execute State of Oklahoma Department of Transportation Project Agreement No. 32255(04), US-270B, Kickapoo Spur, South to Farrall Street (SH18).
5. Presentation of recognition from the Shawnee Beautification Committee to the following:
 - Family Dental of Shawnee
 - St. John Lutheran Church
 - Augusta Court Home Owners Association
 - Sonic at 45th and Harrison
 - 2000 N. Broadway
6. Authorize staff to enter into an agreement with Fritz Baily Architects of Tulsa, Oklahoma to provide design, engineering and biddable construction documents for the repair and renovation of Fire Station #2 located at 1401 N. Bryan.
7. Discussion, consideration and possible action to approve a Budget Amendment for design, engineering and biddable construction documents for the repair and renovation of Fire Station #2 located at 1401 N. Bryan. *Transfer from General Fund to Capital Fund.*
8. Discussion, consideration and possible action for an agreement for Dobson Technologies to make use of city rights of way upon the payment of a use and maintenance fee.
9. Administrative Reports
 - a. Zoning Process and Role of Planning Commission - Justin DeBruin, Community Development Director
10. City Manager Update
11. New Business

(Any matter not known about or which
could not have been reasonably foreseen
prior to the posting of the agenda)
12. Commissioners Comments
13. Adjournment

Respectfully submitted

Phyllis Loftis, CMC, City Clerk

The City of Shawnee encourages participation from its citizens in public meetings. If participation is not possible due to a disability, notify the City Clerk, in writing, at least forty-eight hours prior to the scheduled meeting and necessary accommodations will be made. (ADA 28 CFR/36)

Regular Board of Commissioners

1. a.

Meeting Date: 02/01/2016

CC Minutse 01-19-2016

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the January 19, 2016 regular meeting.

Attachments

CC Minutes 01-19-2016

BOARD OF CITY COMMISSIONERS PROCEEDINGS
JANUARY 19, 2016 AT 6:30 P.M.

The Board of City Commissioners of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in Regular Session in the Commission Chambers at City Hall, 9th and Broadway, Shawnee, Oklahoma, Tuesday, January 19, 2016 at 6:30 p.m., pursuant to notice duly posted as prescribed by law. Mayor Mainord presided and called the meeting to order. Upon roll call, the following members were in attendance.

Wes Mainord

Mayor

Vacant

Commissioner Ward 1

Linda Agee

Commissioner Ward 2

James Harrod

Commissioner Ward 3-Vice Mayor

Keith Hall

Commissioner Ward 4

Lesa Shaw

Commissioner Ward 5

Micheal Dykstra

Commissioner Ward 6

ABSENT: None

INVOCATION

The Lord's Prayer led by Mayor Mainord

FLAG SALUTE

Led by Boy Scout Troop

AGENDA ITEM NO. 1:

Consider approval of Consent Agenda:

- a. Minutes from the December 21, 2015 regular meeting.
- b. Acknowledge the following reports and minutes:
 - License Payment Report for December 2015
 - Project Payment Report for December 2015
 - Planning Commission Minutes for December 2, 2015 meeting
 - Shawnee Urban Renewal Authority Minutes for December 8, 2015 meeting
 - Shawnee Civic and Cultural Development Authority Minutes for November 19, 2015

- Shawnee Beautification Committee Minutes for September 10, 2015 meeting
- c. Approve lease with Raymond Utter for North Airport Property land and facilities.
- d. Acknowledge Preliminary 2016-2017 Budget Schedule.
- e. Lake Lease Transfer:

TRANSFERS

- Lot 10 Coffman Tract, 15201 Perry Rd.
From: David Griffin and Jeremy Higdon
To: Jeremy and Sage Higdon
 - f. Mayor's Appointments
- Shawnee Housing Authority
Harvey Valentine 1st Full Term Expires 02/14/2019
Replaces Lauri Fluke - Termed Out
- g. Acceptance of Utility Easement from Shawnee Milling Company.
 - h. Acceptance of Utility Easement Release from Shawnee Milling Company.

Vice Mayor Harrod requested that Agenda Item No. 1 (c) be pulled for separate consideration.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Hall, to approve Consent Agenda Item Nos. 1(a-h), less item (c). Motion carried 6-0.

AYE: Harrod, Hall, Shaw, Dykstra, Agee, Mainord
NAY: None

Regarding Agenda Item No. 1(c), Vice Mayor Harrod stated that it is his understanding the contract is still being negotiated.

A motion was made by Commissioner Hall, seconded by Vice Mayor Harrod, to approve a resolution of appreciation to Greg Gibson for over 30 years of service to the City of Shawnee and presentation to Greg Gibson. Motion carried 6-0.

AYE: Hall, Harrod, Shaw, Dykstra, Agee, Mainord

NAY: None

AGENDA ITEM NO. 5:

Consider a resolution of appreciation to John Leathers for over 25 years of service to the City of Shawnee and presentation to John Leathers.

John Leathers was not present to accept the resolution of appreciation presented by Mayor Mainord. Interim Chief Mason Wilson accepted on his behalf.

Resolution No. 6505 was introduced.

A RESOLUTION EXPRESSING APPRECIATION TO JOHN LEATHERS FOR OVER 25 YEARS OF LOYAL SERVICE TO THE CITY OF SHAWNEE, OKLAHOMA; DIRECTING THAT SAID RESOLUTION BE INCLUDED IN THE OFFICIAL RECORDS OF THE CITY OF SHAWNEE, OKLAHOMA; AND AUTHORIZING A COPY BE PRESENTED TO JOHN LEATHERS.

A motion was made by Commissioner Hall, seconded by Commissioner Shaw, to approve a resolution of appreciation to John Leathers for over 25 years of service to the City of Shawnee and presentation to John Leathers. Motion carried 6-0.

AYE: Hall, Shaw, Dykstra, Agee, Harrod, Mainord

NAY: None

AGENDA ITEM NO. 6:

Consider a resolution of appreciation to Ken King for over 25 years of service to the City of Shawnee and presentation to Ken King.

Ken King was not present to accept the resolution of appreciation presented by Mayor Mainord. Interim Chief Mason Wilson accepted on his behalf.

Resolution No. 6506 was introduced.

A RESOLUTION EXPRESSING APPRECIATION TO KEN KING FOR OVER 25 YEARS OF LOYAL SERVICE TO THE CITY OF SHAWNEE, OKLAHOMA; DIRECTING THAT SAID RESOLUTION BE INCLUDED IN

THE OFFICIAL RECORDS OF THE CITY OF SHAWNEE, OKLAHOMA;
AND AUTHORIZING A COPY BE PRESENTED TO KEN KING.

A motion was made by Commissioner Hall, seconded by Vice Mayor Harrod, to approve a resolution of appreciation to Ken King for over 25 years of service to the City of Shawnee and presentation to Ken King. Motion carried 6-0.

AYE: Hall, Harrod, Shaw, Dykstra, Agee, Mainord

NAY: None

AGENDA ITEM NO. 7:

Presentation and discussion by Visit Shawnee, Inc. to include a six-month update of operations and activities

Mr. Randy Gilbert, Chairman of Visit Shawnee, Inc., (VSI) and Ms. Danna Fawble, President of Visit Shawnee, Inc., spoke about the progress and accomplishments made by VSI during the past six months. Both spoke of the development of a smartphone application tool which is now operational and will assist visitors in finding events, restaurants, lodging, etc. They spoke of upcoming beneficial projects such as branding and implementation of wayfinding signs as other helpful tools for visitors. They each thanked the Commission for their support.

AGENDA ITEM NO. 8:

Presentation, discussion, and possible action on Community Branding effort led by Visit Shawnee, Inc.

Mr. Tripp Muldrow, of Arnett, Muldrow and Associates, presented to the City Commission the results of the Community Branding effort. Mr. Muldrow spoke of the advantages of an easily recognizable city brand that can be adapted for all segments of the City and throughout the community. Mr. Muldrow listed Shawnee's assets which include location, friendliness, volunteers and improving tribal relations. During his presentation, he showed the different logos currently in use by the City and other agencies. Mr. Muldrow then presented the proposed new City logo which features a redbud flower with the slogan "Great Things on the Horizon". Different city departments and other agencies' logos would feature a variation of this design. In response to a question from Commissioner Shaw, it was noted that any feedback should be directed to City Manager Justin Erickson.

AGENDA ITEM NO. 9:

Consider Oklahoma Municipal Retirement Fund lump sum payment from Defined Benefit Plan for Charles Huff.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Hall, to approve the Oklahoma Retirement Fund lump sum payment from Defined Benefit Plan for Charles Huff. Motion carried 6-0.

AYE: Harrod, Hall, Shaw, Dykstra, Agee, Mainord

NAY: None

AGENDA ITEM NO. 10:

Consideration of approval of a Final Plat for Shawnee Auto Mall located on Shawnee Mall Drive, east of Union. Case No. S14-15 Applicant: Huitt-Zollars, Inc. (Deferred from December 7, 2015 City Commission Meeting. Planning Commission deferred item to February 2016.)

Justin DeBruin, Community Development Director, gave a brief staff report noting that this item was deferred by the Planning Commission and asking the City Commission to defer as well.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Dykstra, to defer the item to the February 16, 2016 City Commission meeting. Motion carried 6-0.

AYE: Harrod, Dykstra, Agee, Mainord, Hall, Shaw

NAY: None

AGENDA ITEM NO. 11:

Consideration of approval of a Preliminary Plat for Vision Bank Addition, Section I, located at 4301 North Harrison Street. Case No. S17-15 Applicant: Vision Bank, NA

Justin DeBruin gave the staff report and recommended approval with the four conditions listed. It was also noted that the Planning Commission recommending approval of this item as well.

A motion was made by Commissioner Hall, seconded by Vice Mayor Harrod, to approve the Preliminary Plat for Vision Bank Addition, Section I, located at 4301 North Harrison Street, with the following conditions:

1. Before Final Plat approval, present for review and approval an appropriate letter of Map Revision (LOMR) from FEMA, indicating any changes to the floodplain due to channelization.
2. Final construction documents must be approved by the City Engineer concurrent with Final Plat approval
3. Any necessary drainage plans must be approved by the City Engineer concurrent with Final Plat approval
4. All other applicable City standards apply.

Motion carried 6-0.

AYE: Hall, Harrod, Mainord, Shaw, Dykstra, Agee

NAY: None

AGENDA ITEM NO. 12:

A public hearing and consideration of an ordinance to rezone property located at 1500 East Independence Street from R-1; Single Family Residential District to R-2; Combined Residential District. Case No. P15-15 Applicant: The Landrun Group, LLC (Planning Commission deferred item.)

Justin DeBruin, Community Development Director, gave a staff report and asked that the item be deferred.

Commissioner Shaw noted that her Neighborhood Association had met regarding this proposed rezoning. The concerns of the Association are traffic, noise, crime and the environmental impact if the proposed duplexes are built. She also noted the many protest letters that have been received by the City and asked that they be considered when the Planning Commission discusses the issues at their next meeting.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Dykstra, to defer this item until the second City Commission meeting in February. Motion carried 6-0.

AYE: Harrod, Dykstra, Agee, Mainord, Hall, Shaw

NAY: None

AGENDA ITEM NO. 13:

A public hearing and consideration of an ordinance to rezone property located at 2202 North Leo Street from R-1; Single Family

Residential District to R-2; Combined
Residential District. Case No. P16-15
Applicant: Darrin Marical

Justin DeBruin, Community Development Director, gave the staff report. He noted that staff and the Planning recommends approval. Mayor Mainord declared a public hearing in session to consider an ordinance rezoning property located at 2202 North Leo Street from R-1; Single Family Residential District to R-2; Combined Residential District. No one appeared in favor or against said rezoning. The public hearing was closed.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Agee, to approve the ordinance rezoning property located at 2202 North Leo Street from R-1; Single Family Residential District to R-2; Combined Residential District.

Ordinance No. 2578NS was introduced.

AN ORDINANCE CONCERNING THE ZONING CLASSIFICATION OF THE FOLLOWING DESCRIBED PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA, TO-WIT: LOT FOUR (4), BLOCK EIGHT (8), GOLDEN ACRES ADDITION, TO SHAWNEE, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, REZONING SAID PROPERTY FROM R-1; SINGLE FAMILY RESIDENTIAL DISTRICT TO R-2; COMBINED RESIDENTIAL DISTRICT AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SHAWNEE ACCORDINGLY.

Motion carried 6-0.

AYE: Harrod, Agee, Mainord, Hall, Shaw, Dykstra

NAY: None

Ordinance No. 2578NS was adopted by the City Commission.

AGENDA ITEM NO. 14: Acknowledge Sales Tax Report received
January 2016.

Cynthia Arnold, Finance Director, reported that January sales tax collected this month was \$1,546,951.00, which is up 3.19% from 2014. Ms. Arnold also stated that for the fiscal year 2015-2016 it is up 4.66% over fiscal year 2014-2015.

AGENDA ITEM NO. 15:

City Manager Update

City Manager Justin Erickson gave updates on the following city issues:

- a) Downtown Streetscape Project has kicked off as of today, January 19, 2016.
- b) Animal Control hours of operation have been extended to 6:00 p.m. Monday thru Friday, and is now open half a day on Saturdays from 8:00 a.m. to 12:00 p.m. This is to allow more time for displaced animals to be adopted or claimed by owners. Regarding euthanasia, staff has met with local veterinarians and proposal packets have been sent out.
- c) The City and Visit Shawnee Inc. have each set aside money to fund the Wayfinding project. The Community Branding is the first step in the process and provides a good opportunity to start the Wayfinding signage.

In response to questions from Commissioners, Mr. Erickson addressed the following issues as well:

Commissioner Agee asked where the new signage will be placed. Mr. Erickson said signage will be placed at most key entry points in the City and well-traveled streets. More information will be provided as the transition gets closer.

Vice Mayor Harrod asked about the Fire Station on Bryan Street. Mr. Erickson informed him that he would provide an update at the February 1, 2016 City Commission meeting.

AGENDA ITEM NO. 16:

New Business (Any matter not known about or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 17:

Commissioners Comments

Commissioner Agee asked that citizens continue to use the businesses downtown during the Streetscape construction. She also summarized all the

wonderful things going on in the City, mentioning the new branding and VSI phone application, sidewalks and trails, Downtown Streetscape, HVAC at the Municipal Auditorium, the Pottawatomie County Historical Society, Municipal Pool, and new businesses in the downtown area.

Commissioner Shaw stated that the individuals contracted by the City, as well as City staff, have been very productive. She also congratulated Visit Shawnee, Inc. for all of their hard work, and thanked the Boy Scout Troop for attending the meeting.

AGENDA ITEM NO. 11: Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (7:30 p.m.)

WES MAINORD, MAYOR

ATTEST:

PHYLLIS LOFTIS, CMC, CITY CLERK

Regular Board of Commissioners

1. b.

Meeting Date: 02/01/2016

Acknowledge Minutes

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge the following minutes:

- Shawnee Civic and Cultural Development Authority Minutes from December 17, 2015 meeting

Attachments

Expo Minutes 12-17-2015

A MEETING OF THE SHAWNEE
CIVIC AND CULTURAL DEVELOPMENT AUTHORITY
DECEMBER 17, 2015
12:30 P.M.
HEART OF OKLAHOMA EXPOSITION CENTER

THE TRUSTEES OF THE SHAWNEE CIVIC AND CULTURAL DEVELOPMENT AUTHORITY MET FOR THEIR REGULAR SCHEDULED MEETING THURSDAY, DECEMBER 17, 2015 AT 12:30 PM AT HEART OF OKLAHOMA EXPOSITION CENTER, PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. NOTICE WAS FILED AT CITY HALL ON 12/14/2015 AT 1:05PM.

AGENDA ITEM NO.1

CALL TO ORDER.

THE MEETING WAS CALLED TO ORDER AT 12:30 PM BY MR. RANDY GILBERT, CHAIRMAN.

AGENDA ITEM NO.2

ROLL CALL

TRUSTEES PRESENT: MR. RANDY GILBERT
 MR. CASEY BELL
 MR. TIM BARRICK
 MR. JUSTIN ERICSON
 MR. KARL KOZEL
 MRS. SUSAN HAVENS

TRUSTEES ABSENT: MRS. RACHEL MONROE-MELOT

ALSO IN ATTENDANCE: JIMMY GIBSON, MIKE MCCORMICK, CINDY SEMENTELLI- CITY OF SHAWNEE, SHELLY WELCH OF FINLEY & COOK & MIKE CLOVER OF STUART & CLOVER, RANAY & BOBBYE CHURCHWELL, AND RENEE UNDERWOOD

AGENDA ITEM NO.3

DECLARATION OF A QUORUM

CHAIRMAN MR. RANDY GILBERT, DECLARED A QUORUM.

AGENDA ITEM NO.4

APPROVAL OF MINUTES FROM NOVEMBER SC&CDA MEETING.

THE MOTION MADE BY TRUSTEE BELL, SECONDED BY TRUSTEE KOZEL TO APPROVE THE MINUTES AS PRESENTED FOR THE NOVEMBER 2015 MEETING. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL
NAY: NONE
ABSTAIN:

AGENDA ITEM NO.6

APPROVAL OF THE MONTHLY FINANCIAL REPORT.

THE MOTION MADE BY TRUSTEE BARRICK, SECONDED BY TRUSTEE HAVENS TO APPROVE THE MONTHLY FINANCIAL REPORT AS PRESENTED. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL
NAY: NONE
ABSTAIN

AGENDA ITEM NO.7

APPROVAL OF GENERAL CLAIMS.

THE MOTION MADE BY TRUSTEE KOZEL, SECONDED BY TRUSTEE BELL TO APPROVE THE GENERAL CLAIMS. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL
NAY: NONE
ABSTAIN

General Claims

A.	Grissoms	\$11.12
B.	Cintas	\$113.40
C.	Staples Advantage	\$37.47
D.	Bankers Credit Cards	\$338.92
E.	OG&E	\$23,870.77
F.	ONG	\$240.27
G.	AT&T	\$329.52
H.	Automatic Fire Control	\$360.78
I.	ONG	\$464.46
J.	Ask About Windows	\$121.00
K.	CH&W Commercial Tire	\$232.48
L.	Arrow Machinery	\$356.50
M.	Frontier Country Marketing Assoc	\$325.00
N.	Thyssenkrupp	\$932.29
O.	DJ Reveal	\$77.08
P.	MetTel	\$724.97
Q.	INS	\$734.00
R.	Vision Bank	\$454.04
S.	Winkler Door	\$177.76
T.	Finley & Cook	\$440.00
U.	Shawnee Office Systems	\$84.47
V.	Vyve	\$29.99
W.	Hunzicker Brothers	\$491.15
X.	NAPA	\$17.55
Y.	Cutting Edge Lawns	\$3,680.00
Z.	Fuelman	\$358.22
AA.	Arrow Machinery	\$17.50
BB.	City of Shawnee	\$127.25
CC.	City Grease Trap Service	\$200.00
DD.	Grimsley's	\$1,800.70
EE.	Shawnee VSI	\$1,300.00

FF.	City of Shawnee	\$488.25
GG.	Techsico	\$674.80
HH.	Automatic Fire Control	\$540.78
II.	OMAG	\$3,172.00

AGENDA ITEM NO.8

APPROVAL OF SPECIAL EVENT CLAIMS

THE MOTION MADE BY TRUSTEE ERICSON , SECONDED BY TRUSTEE BARRICK THAT THE SPECIAL EVENT CLAIMS BE APPROVED. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL
 NAY:
 ABSTAIN:

Special Claims

A.	Mike McCormick	\$300.00
B.	Vann & Associates	\$2,333.00

AGENDA ITEM NO.9

APPROVAL OF SHAVINGS CLAIMS

THE MOTION MADE BY TRUSTEE BELL , SECONDED BY TRUSTEE BARRICK THAT THE SHAVINGS CLAIMS BE APPROVED. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL
 NAY:
 ABSTAIN:

Shavings

A.	Xylo of Oklahoma	\$3,780.00
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AGENDA ITEM NO.10

DISCUSSION CONSIDERATION & POSSIBLE ACTION
 TO RENEW CONTRACT WITH ST ANTHONYS FOR
 BUSINESS USAGE SET TO EXPIRE 11/30/2015.

THE MOTION MADE BY TRUSTEE BELL , SECONDED BY TRUSTEE BARRICK THAT THE CONTRACT BE ACCEPTED FOR RENEWAL FOR TYPICAL BUSINESS USAGE. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON , KOZEL
 NAY:
 ABSTAIN:

AGENDA ITEM NO.11

DISCUSSION CONSIDERATION & POSSIBLE ACTION
 TO ESTABLISH A SOFTGOODS CONTRACT FOR
 IFYR 2016 BETWEEN THE SC&CDA AND FAYE
 STONE OF HERITAGE EMBROIDERY.

THE MOTION MADE BY TRUSTEE BELL , SECONDED BY TRUSTEE BARRICK THAT THE CONTRACT BE ACCEPTED FOR RENEWAL FOR TYPICAL BUSINESS USAGE. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON , KOZEL
 NAY:
 ABSTAIN:

AGENDA ITEM NO.12

DISCUSSION CONSIDERATION & POSSIBLE ACTION
TO PURCHASE AND MOUNT 4 NEW FORKLIFT
TIRES.

THE MOTION MADE BY TRUSTEE BELL , SECONDED BY TRUSTEE KOZEL THAT AGENDA ITEM #11 WILL BE APPROVED
EFFECTIVE NOVEMBER 30TH . MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON , KOZEL
NAY:
ABSTAIN:

AGENDA ITEM NO.13

IFYR REPORTS

THINGS ARE IN PLACE FOR THE UPCOMING IFR IN JANUARY HELD IN OKC, OK - IFYR YOUTH DIRECTORS WILL BE
HERE AND EXPERIENCE THAT AS THEY LEARN THEIR DUTIES FOR IFYR IN JULY. SUZANNE GILBERT SPOKE ABOUT THE IFR
MAKING A CHARITABLE DONATION TO OUR IFYR CRISIS FUND AFTER THEIR LADIES LUNCHEON. ALL IFYR DUTIES IN THE
OFFICE ARE ON TARGET. RODEO COMMITTEE HEADS FROM YOUTH DIRECTORS & CAMPING WERE HERE DISCUSSING
CONCERNS THEY HAD ABOUT PHOTOGRAPHY FEE, RAISED CAMPING FEES, STALLING FEES, HOW MANY CAMPING SPOTS
COULD BE RESERVED IN THE IFYR PROGRAM, CAMPING TOGETHER WITH FRIENDS, THE BAD WEATHER WE HAD LAST YEAR
ETC.

AGENDA ITEM NO. 14-16

COMMITTEE REPORTS, ADMINISTRATION REPORTS
& OLD BUSINESS

NONE

AGENDA ITEM NO.17

NEW BUSINESS: IFYR PURCHASING A TABLE AT
THE WOMENS LUNCHEON DURING IFR IN OKC
ON BEHALF OF THE IFYR. .

THE MOTION MADE BY TRUSTEE BARRICK , SECONDED BY TRUSTEE KOZEL THAT WE PURCHASE A TABLE AT THE
WOMENS LUNCHEON OF THE IFR ON THE IFYR'S BEHALF WITH A *500 SPENDING CAP. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON , KOZEL
NAY:
ABSTAIN:

AGENDA ITEM NO.18

NEW BUSINESS: DISCUSSION CONSIDERATION
AND POSSIBLE ACTION TO APPROVE THE
ENGAGEMENT LETTER SENT OVER BY FINLEY &
COOK FOR ACCOUNTING PURPOSES AT THE
EXPO CENTER.

THE MOTION MADE BY TRUSTEE KOZEL , SECONDED BY TRUSTEE BARRICK THAT WE APPROVE THE ENGAGEMENT
LETTER WITH FINLEY & COOK. MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON , KOZEL
NAY:
ABSTAIN:

AGENDA ITEM NO.21

PUBLIC & TRUSTEE COMMENTS

THIS WAS TRUSTEE CASEY BELL'S LAST MEETING, WE APPRECIATE HIS TIME & COMMITMENT TO THE EXPO CENTER
AND HIS COMMITMENT AS A TRUSTEE OF THIS BOARD.

AGENDA ITEM NO.22

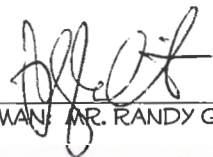
ADJOURNMENT

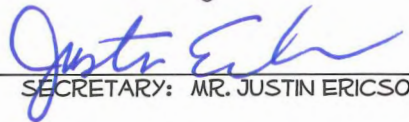
THE MOTION MADE BY TRUSTEE KOZEL, SECONDED BY TRUSTEE HAVENS TO ADJOURN THE MEETING, -
MOTION CARRIED.

AYE: GILBERT, BELL, HAVENS, BARRICK, ERICSON, KOZEL

NAY:

ABSTAIN:



CHAIRMAN: MR. RANDY GILBERT

SECRETARY: MR. JUSTIN ERICSON

Regular Board of Commissioners**1. c.**

Meeting Date: 02/01/2016

Mayors Appts

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Mayor's Appointments

Shawnee Housing AuthoritySherry Lankford 2nd Full Term Expires 02/14/2019*Reappointment*

AttachmentsLankford Appl

CITY OF SHAWNEE



APPLICATION TO SERVE

Boards, Committees, and Commissions

Name: <u>Sherry Lankford</u>	Application Date: <u>1-17-13</u>
Address: <u>2201 Bryant Via, Shawnee, OK 74804</u>	
Mailing Address: <u>Same</u>	
Daytime Phone: <u>405-275-2030</u>	Fax: _____ Email: <u>sherry.lankford@att.net</u>
Profession: <u>Branch Office Administrator</u>	
Business Name: <u>Edward Jones</u>	
Business Address: <u>318 W MacArthur</u>	
Business Phone: <u>405-275-2030</u>	Fax: <u>888-758-6042</u> Email: <u>sherry.lankford@edwardjones.com</u>

Do you live within the City Limits of the City of Shawnee? ☒ Yes or No (please circle)

Do you currently serve on a City board or committee? Yes or ☒ No (please circle)

How many years have you lived in Shawnee? 25

Select the Board/Committee/Commission you are interested in serving on: (please check)

☐ Airport Advisory Board ☐ Beautification Committee ☐ Board of Adjustment (Zoning) ☐ Cable TV Advisory Committee ☐ Civic and Cultural Development Authority ☐ Community Service Contracts Review Committee ☐ Economic Development Foundation, Inc. Board of Trustees ☒ Housing Authority	☐ Library Board ☐ Oklahoma Baptist University Trust Authority ☐ Planning Commission ☐ Regional Park Oversight Committee ☐ Shawnee Hospital Authority ☐ Shawnee Urban Renewal Authority ☐ Tourism Advisory Committee ☐ Traffic Commission ☐ Building Code Board of Appeals ☐ Other:
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Why are you interested in serving on the Board/Committee/Commission selected above?

I was invited by Robert Bernard and Chris Waddell

What will make you a good board member and what skills or knowledge do you have that would be relevant to this board/committee/commission?

I'm currently on the Shawnee Rotary Club board, Chamber of Commerce Beautification Committee and a past member of Downtown Shawnee

What civic or volunteer activities (if any) are you currently involved in?

Knight Vision Character Building program at Horace Mann School sponsored by Shawnee Rotary. Chamber Beautification Committee.

List education, including degree(s) earned:

High School - Del City High School

Have you ever served on a City-appointed board/committee/commission before? If so, which ones and for how long did you serve?

no

Please include up to three personal or professional references:

Name	Relationship	Phone Number
<u>Robert Barnard</u>	<u>Friend & Rotarian</u>	<u>273-7839</u>
<u>Jim Smith</u>	<u>Boss</u>	<u>275-2030</u>
<u>Chris Waddell</u>	<u>Friend, Rotarian & Chiropractor</u>	<u>878-1340</u>

PLEASE READ CAREFULLY:

Appointment by the Commission is for one term and individuals may not serve more than two consecutive full terms. Appointment to a second term remains at the discretion of the City Commission.

My signature affirms that all information contained herein is true to the best of my knowledge, and that I understand that any misstatement of fact or misrepresentation of credentials may result in disqualification from further consideration.

Signature Sherry Lankford Date 1-17-13

Applications are retained on file for one (1) year. Applicants are encouraged to include a letter of interest with this application. Thank you for your interest in serving Shawnee.

Send application form to:

Shawnee City Clerk
PO Box 1448
Shawnee, OK 74802
878-1605 (phone)
878-1581 (fax)
dmayo@ShawneeOK.org

Regular Board of Commissioners

1. d.

Meeting Date: 02/01/2016

Fire Truck Trade In

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Authorize staff to trade-in 2000 American LaFrance Rescue fire truck to Conrad Fire Equipment toward new Engine 3 apparatus previously authorized and ordered.

Attachments

Fire Truck trade in

CITY OF SHAWNEE FIRE DEPARTMENT

16 West 9th Street
P (405) 878-1671 | F (405) 878-1618



ADMINISTRATION

Dru Tischer, Fire Chief
(405) 878-1556

Andy Starkey, Deputy Fire Chief
(405) 878-1538

Clarice Brock, Secretary
(405) 878-1671

DATE: January 26, 2016
TO: Mayor, Vice Mayor and City Commissioners
CC: Justin Erickson, City Manager; Cindy Arnold, Finance Director; James Bryce, Operations Director
FROM: Dru Tischer, Fire Chief
SUBJECT: Request permission to trade-in retired fire apparatus

I am respectfully requesting permission to trade-in our retired 2000 American LaFrance Rescue (City ID # 2920; pictured below) toward the purchase of our new Engine 3 apparatus that will be delivered next month. We have been offered \$15,000 in trade-in allowance for this truck by Conrad Fire Equipment (Pierce Fire Apparatus dealer from whom we are purchasing the new Engine) toward the new Engine which, I believe, is more than we would receive at auction. This apparatus has accumulated 154,723 miles on the odometer and has responded to 24,784 emergency incidents while serving as our busiest unit over the past 16 years. It is basically worn-out and no longer fit for emergency response within our department.



Regular Board of Commissioners

1. e.

Meeting Date: 02/01/2016

Pasture Land Req Bids

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Authorize staff to request bids to lease City owned property located at the northeast corner of Leo Street and Westech Road for the purpose of pasture land.

Attachments

Reg Park Req Bids Memo

Mayor
WES MAINORD



The City of Shawnee
Office of the Director of Operations

P.O. Box 1448
Shawnee, Oklahoma 74802-1448
(405) 878-1529 Fax (405) 878-1593
www.ShawneeOK.org

Commissioners
VACANT
LINDA AGEE
JAMES HARROD
KEITH HALL
LESA SHAW
MICHEAL DYKSTRA

Date: January 27, 2016
To: Mayor and City Commissioners
From: James Bryce, Director of Operations
RE: Request to bid Regional Park Property Lease

Nature of the Request:

Staff requests authorization to solicit bids from qualified individuals for the Leasing of the Regional Park Property for the purpose of pasture land.

Staff Analysis, Considerations:

In 2009/2010 the City of Shawnee purchased 160 acres on the N.E. corner of Westech and Leo Street for the purpose of building a Regional Park. At the time of purchase staff chose to lease the property to the individual that was currently using it for pasture land. By leasing the property, Parks Department staff would not need to mow and maintain the acreage. In the past couple of years there has been some inquiry about the property and the want to lease it. The lease will be for a year term with option of a yearly renewal for two more consecutive years. This would put bidding out the property for lease every three years.

Recommendation:

It is staff's recommendation to solicit bids on leasing the property.

Budget Consideration:

There will be no cost to city other than advertising the bid and administering the lease papers.

Regular Board of Commissioners

1. f.

Meeting Date: 02/01/2016

Mun Aud Req Bids

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Authorize staff to request bids for the Municipal Auditorium Heating, Ventilation and Air Conditioning System (HVAC).

Attachments

Mun Aud HVAC Memo

Mayor
WES MAINORD



The City of Shawnee
Office of the Director of Operations

P.O. Box 1448
Shawnee, Oklahoma 74802-1448
(405) 878-1529 Fax (405) 878-1593
www.ShawneeOK.org

Commissioners

VACANT
LINDA AGEE
JAMES HARROD
KEITH HALL
LESA SHAW
MICHEAL DYKSTRA

Date: January 28, 2016
To: Mayor and City Commissioners
From: James Bryce, Director of Operations

RE: Auditorium HVAC Project

Nature of the Request:

Request to go out for bid on the Auditorium HVAC Project

Staff Analysis, Considerations:

The Municipal Auditorium was built in the mid 30's and was only equipped with a heat source. This heat source was a coal fired furnace that was converted to natural gas sometime in the 70's or 80's. Currently this furnace is unreliable and very dangerous to light. Parks crews have to reset the furnace several times a day in order for it to light. This has to be done with extreme caution because if you are not standing in the right spot you will get burned from the flames that shoot out the back as it lights. Repair personnel have refused to work on this unit because of the condition of the unit.

A new HVAC system would allow many more opportunities for the facility to be used, especially during the summer when it is way too hot. Most of the functions during the summer are in the evenings when it begins to cool off.

The City has been saving funds for this project for three years and is now ready to move forward.

Recommendation:

It is staff's recommendation to bid out this project.

Budget Consideration:

Project is funded out of the Capital Outlay budget.

Account # 301-5-1120-5420 609 1120-01 Heat and Air Auditorium
\$588,000.00

Current Engineers estimate is \$500,378.00

Asbestos Abatement Contingency \$30,000.00

Regular Board of Commissioners

1. g.

Meeting Date: 02/01/2016

Crown Pt Utility Easement Release

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Approve closure of utility easement for property located at 2701 Crown Point and authorize staff to execute Utility Easement Release.

Attachments

Crown Point Memo



City of Shawnee
Community Development Department

222 N. Broadway
Shawnee, OK 74801
(405) 878-1665 Fax (405) 878-1587
www.ShawneeOK.org

MEMORANDUM

DATE: January 28, 2016
TO: City of Shawnee City Commission
FROM: Justin DeBruin, Community Development Director
RE: Release of Easement – 2701 Crown Point

A request has been made to the City to partially close an existing utility easement located at 2701 Crown Point. Currently, a twenty (20') foot utility easement exists directly over the constructed residential structure on site creating in issue of nonconformance. In 2007, a sewer line existing within the subject easement was relocated into a perimeter utility easement to bring the property into conformance, but no further action was taken at that time to close the subject easement. The property has come up for sale and cannot proceed until this issue is remedied.

Staff has no objection to the closure of the subject utility easement as all lines have been relocated to a separate easement.

CITY OF SHAWNEE
RELEASE OF EASEMENT
PARTIAL RELEASE OF EASEMENT

KNOW ALL MEN BY THESE PRESENTS:

That the City of Shawnee, a Municipal Corporation, being the owner of an Easement Twenty (20) feet in width for a Sewage Pipeline as recorded in the office of the County Clerk of Pottawatomie County, Oklahoma per the following: Book 731, Page 79 does hereby, for good and valuable consideration, release, terminate, and abandon a portion of said easement shown on Exhibit “1” and attached hereto as a part of this document.

Description of the easement to be closed is as follows:

COMMENCING AT THE SOUTHWEST CORNER OF LOT ONE (1), BLOCK ONE (1), NORTHRIDGE ADDITION, SECTION 7, TO THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, THENCE EAST ALONG THE SOUTH LINE OF SAID LOT ONE (1) A DISTANCE OF 4.62 FEET TO THE POINT OF BEGINNING; THENCE N43°48’35” E A DISTANCE OF 187.75 FEET TO THE NORTH LINE OF SAID LOT ONE (1); THENCE EAST ALONG SAID NORTH LINE A DISTANCE OF 27.82 FEET; THENCE S43°48’43” W A DISTANCE OF 18.75 FEET TO THE SOUTH LINE OF SAID LOT ONE (1); THENCE WEST ALONG SAID SOUTH LINE A DISTANCE OF 27.83 FEET TO THE POINT OF BEGINNING.

DATED this ____ day of _____, 20__.

ATTEST:

THE CITY OF SHAWNEE

City Clerk

BY: _____
MAYOR

STATE OF OKLAHOMA)
) SS
COUNTY OF POTTAWATOMIE)

Before me, the undersigned, a Notary Public in and for said County and State, personally appeared_____, to me known to be the identical person who executed the within and foregoing instrument as the _____ Mayor of The City of Shawnee and acknowledged to me that he/she executed the same as his/her free and voluntary act and deed and the free voluntary act and deed of such corporation for the uses and purposes therein set forth.

Given under my hand and seal this ____ day of _____, 20__.

Notary Public #_____

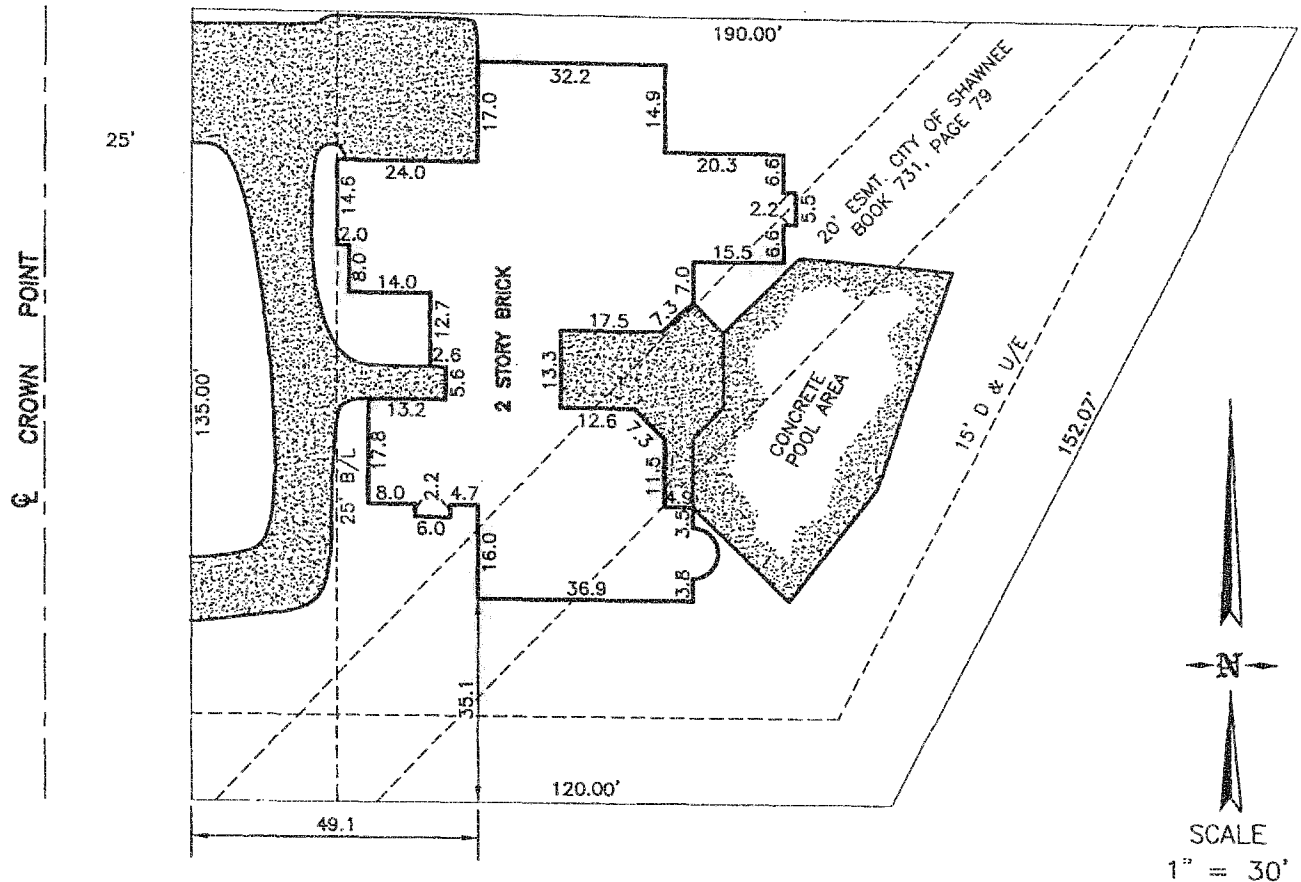
My Commission expires:_____

REVIEWED for form and legality.

City Attorney

MORTGAGE INSPECTION CERTIFICATE

NOTE ENCROACHMENT OF 20' EASEMENT.



EASEMENT IN FAVOR OF THE CITY OF SHAWNEE, OKLAHOMA, RECORDED IN BOOK 750, PAGE 289 DOES NOT APPLY TO PROPERTY.

LEGAL DESCRIPTION:

I, Billy Gene Knight hereby certify that this Mortgage Inspection Certificate was prepared for CHOICE TITLE INSURANCE AGENCY, that it is not a land boundary survey plat, and that it is not to be relied upon for the establishment of fence, building or other future improvement lines.

LOT ONE (1), BLOCK ONE (1), NORTHRIDGE ADDITION, SECTION 7, TO THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF.

Said described property is located within an area having a Zone Designation (X) by the Federal Emergency Management Agency (FEMA), on Flood Insurance Rate Map No. (40125C), with a date of identification of (April 2, 1992), for Community No. (0101 D), in (Pottawatomie) County, Oklahoma and Incorporated Areas.

I further certify that the improvements on the above described parcel, on this date FEBRUARY 14, 2007, except utility connection, are entirely within the parcel, except as shown, that there are no encroachment upon the described premises by improvements on any adjoining premises, except as indicated, and that there is no apparent evidence or sign of any easements crossing or burdening any part of said parcel, except as noted.

BILLY GENE
K
DILLIARD

Regular Board of Commissioners

1. h.

Meeting Date: 02/01/2016

SMP Acceptance

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acceptance of Shawnee Market Place public improvements and place maintenance bonds into effect.

Attachments

SMP Accept Memo

Mayor
WES MAINORD



The City of Shawnee
Engineering Department
222 N. Broadway Ave
Shawnee, Oklahoma 74801
(405) 878-1660
www.ShawneeOK.org

Commissioners

LINDA AGEE
JAMES HARROD
KEITH HALL
LESA SHAW
MICHAEL DYKSTRA

M E M O R A N D U M

Date: January 26, 2016

To: Justin Erickson, City Manager

From: John Krywicki, P.E., City Engineer

A handwritten signature in black ink, appearing to be "JK", is written over the name "John Krywicki" in the "From" line.

Re: Acceptance of Shawnee MarketPlace (Phase I) Public Improvements

The City of Shawnee and Shawnee MarketPlace Investors, LP had entered into a Sales Tax Rebate Agreement whereby sales tax would start to be remitted back to Shawnee MarketPlace Investors upon completion and acceptance of the public improvements by the City Commission.

MarketPlace's contractor(s) have now completed all work associated with the public improvements, i.e., roadway paving, sidewalks, traffic signals, storm sewer, waterlines, and sanitary sewer improvements, and have completed such in accordance with the City of Shawnee standards and specifications.

The required Maintenance Bonds have been submitted for the various improvements (attached), and the total dollar valuation of the public improvements is at **\$1,389,835**.

Dollar Value Public Improvements:

Waterline Improvements	\$235,950
Sanitary Sewer Improvements	100,000
Storm Sewer Improvements	282,500
Paving/sidewalk Impr.	460,000
Traffic Signals Impr.	312,385

At the February 1, 2016 City Commission meeting, staff will recommend acceptance of the public improvements and placing maintenance bonds into effect.

If you have any questions or need additional information, please advise.



RLI Insurance Company
P.O. Box 3967 Peoria, IL 61612-3967
Phone: 309-692-1000 Fax: 309-689-3937

MAINTENANCE BOND

Bond No. SSB0428522

KNOW ALL MEN BY THESE PRESENTS:

That We, Grooms & Pollard Utility Services, LLC
of Edmond, OK

(hereinafter called the "Principal"), as Principal, and RLI Insurance Company, of
Peoria, Illinois, as Surety, an Illinois corporation duly licensed to
transact business in the State of Oklahoma, (hereinafter called the "Surety"), as Surety, are held and firmly bound unto
City of Shawnee, OK

(hereinafter called
the Obligor), in the sum of twenty three thousand, four hundred ninety five dollars & no/100's
Dollars (\$23,495.00), for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, 2015

WHEREAS, the said Principal has heretofore entered into a contract with ~~XXXXXX~~ The Ridgemont Company, for
Water Line to serve Shawnee Market Place and;

WHEREAS, the said Principal is required to guarantee the item/work installed under said contract, against defects in materials or
workmanship which may develop during the period of two (2) year(s) from the date of acceptance of the contract.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH, that if said Principal shall faithfully carry out and perform the said
guarantee, and shall, on due notice, repair and make good at its own expense any and all defects in materials or workmanship in the said
work which may develop during the period specified above or shall pay over, make good and reimburse to the said Obligor all direct loss
and damage which said Obligor may sustain by reason of failure or default of said Principal so to do, then this obligation shall be null and
void; otherwise shall remain in full force and effect.

Grooms & Pollard Utility Services, LLC

Principal

By: 

RLI Insurance Company

By: 

Donna Stevens

Attorney in Fact



9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY

RLI Insurance Company

Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of **RLI Insurance Company** and **Contractors Bonding and Insurance Company**, required for the applicable bond.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Randall D. Webb, Gary Liles, Diane Dowdy, Donna Stevens, Patsy Payne, Carey Payne, jointly or severally

in the City of Oklahoma City, State of Oklahoma, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 2nd day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, and/or **Contractors Bonding and Insurance Company**, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 20th day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

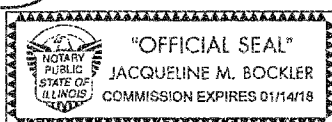
State of Illinois }
County of Peoria }

SS



On this 2nd day of February, 2015, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler Notary Public





RLI Insurance Company
P.O. Box 3967 Peoria, IL 61612-3967
Phone: 309-692-1000 Fax: 309-689-3937

MAINTENANCE BOND

Bond No. SSB0428523

KNOW ALL MEN BY THESE PRESENTS;

That We, Grooms & Pollard Utility Services, LLC
of Edmond, OK

(hereinafter called the "Principal"), as Principal, and RLI Insurance Company, of
Peoria, Illinois, as Surety, an Illinois corporation duly licensed to
transact business in the State of Oklahoma, (hereinafter called the "Surety"), as Surety, are held and firmly bound unto
City of Shawnee, OK

(hereinafter called
the Obligee), in the sum of ten thousand dollars & no/100's
Dollars (\$10,000.00), for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, 2015.

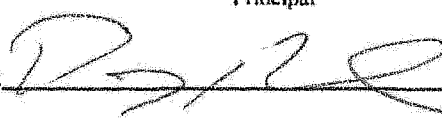
WHEREAS, the said Principal has heretofore entered into a contract with ~~XXXXXX~~ The Ridgemont Company, for
Sanitary Sewer and structures to serve Shawnee Market Place and;

WHEREAS, the said Principal is required to guarantee the item/work installed under said contract, against defects in materials or
workmanship which may develop during the period of two (2) year(s) from the date of acceptance of the contract.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH, that if said Principal shall faithfully carry out and perform the said
guarantee, and shall, on due notice, repair and make good at its own expense any and all defects in materials or workmanship in the said
work which may develop during the period specified above or shall pay over, make good and reimburse to the said Obligee all direct loss
and damage which said Obligee may sustain by reason of failure or default of said Principal so to do, then this obligation shall be null and
void; otherwise shall remain in full force and effect.

Grooms & Pollard Utility Services, LLC

Principal

By: 

RLI Insurance Company

By: 

Donna Stevens

Attorney in Fact



9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY

RLI Insurance Company

Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of **RLI Insurance Company and Contractors Bonding and Insurance Company**, required for the applicable bond.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Randall D. Webb, Gary Liles, Diane Dowdy, Donna Stevens, Patsy Payne, Carey Payne, jointly or severally

in the City of Oklahoma City, State of Oklahoma, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and Contractors Bonding and Insurance Company, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 2nd day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, and/or **Contractors Bonding and Insurance Company**, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 20th day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

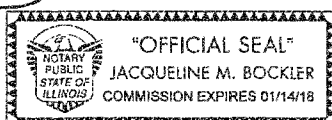
State of Illinois
County of Peoria

} SS



On this 2nd day of February, 2015, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler Notary Public





RLI Insurance Company
P.O. Box 3967 Peoria, IL 61612-3967
Phone: 309-692-1000 Fax: 309-689-3937

MAINTENANCE BOND

Bond No. SSB0428524

KNOW ALL MEN BY THESE PRESENTS;

That We, Grooms & Pollard Utility Services, LLC
of Edmond, OK

(hereinafter called the "Principal"), as Principal, and RLI Insurance Company, of
Peoria, Illinois, as Surety, an Illinois corporation duly licensed to
transact business in the State of Oklahoma, (hereinafter called the "Surety"), as Surety, are held and firmly bound unto
City of Shawnee, OK

(hereinafter called
the Obligor), in the sum of ~~two hundred eighty two thousand five hundred dollars 1st year, twenty eight thousand, two~~
~~\$282,500 1st year~~ hundred fifty dollars & no/100's next four (4) years
Dollars ~~\$28,250 next 4 years~~ for the payment of which sum well and truly to be made, we, the said Principal and the said Surety, bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 20th day of February, 2015.

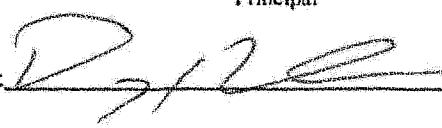
WHEREAS, the said Principal has heretofore entered into a contract with ~~xxxxxx~~ The Ridgemont Company, for
Storm Sewer to serve Shawnee Market Place and;

WHEREAS, the said Principal is required to guarantee the item/work installed under said contract, against defects in materials or
workmanship which may develop during the period of two (2) year(s) from the date of acceptance of the contract.

NOW, THEREFORE, THE CONDITION OF THIS BOND IS SUCH, that if said Principal shall faithfully carry out and perform the said
guarantee, and shall, on due notice, repair and make good at its own expense any and all defects in materials or workmanship in the said
work which may develop during the period specified above or shall pay over, make good and reimburse to the said Obligor all direct loss
and damage which said Obligor may sustain by reason of failure or default of said Principal so to do, then this obligation shall be null and
void; otherwise shall remain in full force and effect.

Grooms & Pollard Utility Services, LLC

Principal

By: 

RLI Insurance Company

By: 

Donna Stevens

Attorney in Fact



9025 N. Lindbergh Dr. | Peoria, IL 61615
Phone: (800)645-2402 | Fax: (309)689-2036

POWER OF ATTORNEY

RLI Insurance Company

Contractors Bonding and Insurance Company

Know All Men by These Presents:

That this Power of Attorney is not valid or in effect unless attached to the bond which it authorizes executed, but may be detached by the approving officer if desired.

That this Power of Attorney may be effective and given to either or both of **RLI Insurance Company** and **Contractors Bonding and Insurance Company**, required for the applicable bond.

That **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, each Illinois corporations (as applicable), each authorized and licensed to do business in all states and the District of Columbia do hereby make, constitute and appoint:

Randall D. Webb, Garv Liles, Diane Dowdy, Donna Stevens, Patsy Payne, Carey Payne, jointly or severally

in the City of Oklahoma City, State of Oklahoma, as Attorney in Fact, with full power and authority hereby conferred upon him/her to sign, execute, acknowledge and deliver for and on its behalf as Surety, in general, any and all bonds, undertakings, and recognizances in an amount not to exceed Ten Million Dollars (\$10,000,000.00) for any single obligation.

The acknowledgment and execution of such bond by the said Attorney in Fact shall be as binding upon this Company as if such bond had been executed and acknowledged by the regularly elected officers of this Company.

RLI Insurance Company and **Contractors Bonding and Insurance Company**, as applicable, have each further certified that the following is a true and exact copy of the Resolution adopted by the Board of Directors of each such corporation, and now in force, to-wit:

"All bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation shall be executed in the corporate name of the Corporation by the President, Secretary, any Assistant Secretary, Treasurer, or any Vice President, or by such other officers as the Board of Directors may authorize. The President, any Vice President, Secretary, any Assistant Secretary, or the Treasurer may appoint Attorneys in Fact or Agents who shall have authority to issue bonds, policies or undertakings in the name of the Corporation. The corporate seal is not necessary for the validity of any bonds, policies, undertakings, Powers of Attorney or other obligations of the Corporation. The signature of any such officer and the corporate seal may be printed by facsimile or other electronic image."

IN WITNESS WHEREOF, **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, as applicable, have caused these presents to be executed by its respective Vice President with its corporate seal affixed this 2nd day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

CERTIFICATE

I, the undersigned officer of **RLI Insurance Company**, and/or **Contractors Bonding and Insurance Company**, each Illinois corporations, do hereby certify that the attached Power of Attorney is in full force and effect and is irrevocable; and furthermore, that the Resolution of the Company as set forth in the Power of Attorney, is now in force. In testimony whereof, I have hereunto set my hand and the seal of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company** this 20th day of February, 2015.

RLI Insurance Company
Contractors Bonding and Insurance Company

Roy C. Die Vice President

State of Illinois
County of Peoria

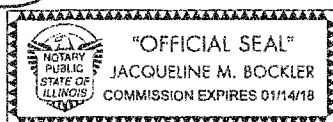
} SS



On this 2nd day of February, 2015, before me, a Notary Public, personally appeared Roy C. Die, who being by me duly sworn, acknowledged that he signed the above Power of Attorney as the aforesaid officer of the **RLI Insurance Company** and/or **Contractors Bonding and Insurance Company**, and acknowledged said instrument to be the voluntary act and deed of said corporation.

Jacqueline M. Bockler

Notary Public



MAINTENANCE BOND

Bond No. 1083561

KNOW ALL MEN BY THESE PRESENTS:

That Red Star Construction, LLC
as Principal, and Lexon Insurance Company
a corporation organized under the laws of the State of Oklahoma and authorized to transact
business in the State of Oklahoma, as Surety, are held and firmly bound unto the City of
Shawnee in penal sum of Four Hundred Sixty Thousand and No/100-----

Dollars (\$ 460,000.00--) in lawful money of the United States of America, said sum being
equal to one hundred percent (100%) of the total contract price for the first (1) year, ten percent
(10%) for four (4) years after completion and final acceptance (total of 5 years maintenance), for
the payment of which, well and truly to be made, we bind ourselves and each of us, our heirs,
executors, administrators, trustees, successors, and assigns, jointly and severally, firmly by these
presents.

DATED this 14th day of August, 2015.

The condition of this obligation is such that:

WHEREAS, said Principal entered into a written CONTRACT with
City of Shawnee, OK, dated July 13, 2015, for
(State or Other Entity)
Public Paving and Sidewalks for Shawnee Marketplace

all in compliance with the plans and specifications therefore, made a part of said

Contract and on file in the office of City Clerk, P.O. Box 1448, Shawnee, OK 74802-1448.

The term of this bond is for the period commencing August 14, 2015 and
expiring August 14, 2016, unless released by the Obligee prior thereto.
However, the term of this bond may be extended for an additional one-year
period by the issuance of a Continuation Certificate by the Surety.

NOW, THEREFORE, if said Principal shall pay or cause to be paid to the City of Shawnee all damages, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work, occurring within a period of five (5) years ({one hundred (100%) percent for first year, ten (10%) for 5 years thereafter, of total contract price} for all projects for the construction of paving) from and after acceptance of said project by the City of Shawnee; and if Principal shall pay or cause to be paid all labor and materials, including the prime contractor and all subcontractors; and if principal shall save and hold City of Shawnee harmless from all damages, loss and expense occasioned by or resulting from any failure whatsoever of said Principal, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes or alterations in said Contract and no deviations from the plan or mode of procedure herein fixed shall have the effect of releasing the sureties, or any of them, from the obligations of this BOND.

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in his name and its corporate seal to be hereunto affixed by its duly authorized officers, and the said Surety has caused these presents to be executed in its name and its corporate seal to be hereunto affixed by its attorney-in-fact, duly authorized so to do, the day and year first above written.

(SEAL)

ATTEST:

PRINCIPAL:

Red Star Construction, LLC

BY

TITLE

PRESIDENT

(SEAL)

ATTEST:

Andrea Martinez
Andrea Martinez

SURETY:

Lexon Insurance Company

BY

NAME Brady K. Cox, Attorney-in-Fact

MB2

Lexon Insurance Company

KNOW ALL MEN BY THESE PRESENTS, that LEXON INSURANCE COMPANY, a Texas Corporation, with its principal office in Louisville, Kentucky, does hereby constitute and appoint: William D. Baldwin, Brent Baldwin, Brock Baldwin, Brady K. Cox, Blaine Allen, Russ Frenzel its true and lawful Attorney(s)-in-Fact to make, execute, seal and deliver for, and on its behalf as surety, any and all bonds, undertakings or other writings obligatory in nature of a bond.

This authority is made under and by the authority of a resolution which was passed by the Board of Directors of LEXON INSURANCE COMPANY on the 1st day of July, 2003 as follows:

Resolved, that the President of the Company is hereby authorized to appoint and empower any representative of the Company or other person or persons as Attorney-In-Fact to execute on behalf of the Company any bonds, undertakings, policies, contracts of indemnity or other writings obligatory in nature of a bond not to exceed \$ 2,000,000.00, Two Million dollars, which the Company might execute through its duly elected officers, and affix the seal of the Company thereto. Any said execution of such documents by an Attorney-In-Fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company. Any Attorney-In-Fact, so appointed, may be removed for good cause and the authority so granted may be revoked as specified in the Power of Attorney.

Resolved, that the signature of the President and the seal of the Company may be affixed by facsimile on any power of attorney granted, and the signature of the Assistant Secretary, and the seal of the Company may be affixed by facsimile to any certificate of any such power and any such power or certificate bearing such facsimile signature and seal shall be valid and binding on the Company. Any such power so executed and sealed and certificate so executed and sealed shall, with respect to any bond of undertaking to which it is attached, continue to be valid and binding on the Company.

IN WITNESS THEREOF, LEXON INSURANCE COMPANY has caused this instrument to be signed by its President, and its Corporate Seal to be affixed this 21st day of September, 2009.

LEXON INSURANCE COMPANY



BY

David E. Campbell
David E. Campbell
President

ACKNOWLEDGEMENT

On this 21st day of September, 2009, before me, personally came David E. Campbell to me known, who be duly sworn, did depose and say that he is the President of LEXON INSURANCE COMPANY, the corporation described in and which executed the above instrument; that he executed said instrument on behalf of the corporation by authority of his office under the By-laws of said corporation.



AMY L. TAYLOR
Notary Public - State of Tennessee
Davidson County
My Commission Expires 01-09-16

BY

Amy L. Taylor
Amy L. Taylor
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of LEXON INSURANCE COMPANY, A Texas Insurance Company, DO HEREBY CERTIFY that the original Power of Attorney of which the forgoing is a true and correct copy, is in full force and effect and has not been revoked and the resolutions as set forth are now in force.

Signed and Seal at Mount Juliet, Tennessee this 14th Day of August, 2015.



BY

Andrew Smith
Andrew Smith
Assistant Secretary

"WARNING: Any person who knowingly and with intent to defraud any insurance company or other person, files and application for insurance of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties."



The Ohio Casualty Insurance Company
62 Maple Avenue, Keene, New Hampshire 03431

MAINTENANCE BOND

Bond #80C004674

KNOW ALL MEN BY THESE PRESENTS, that we,
Midstate Traffic Control, Inc.

as Principal, and The Ohio Casualty Insurance Company, as Surety, are held and firmly bound unto
City of Shawnee, Oklahoma
(hereinafter called the Obligor), in the penal sum of * see below

Dollars * see below

for the payment of which, well and truly to be made, we do hereby bind ourselves, our heirs, executors,
administrators, successors and assigns, jointly and severally, firmly by these presents.

Dated: September 1, 2015

WHEREAS, the said Principal has heretofore entered into a contract with the Obligor for
Shawnee Marketplace Traffic Signal

and,

WHEREAS, the work called for under said contract has now been completed and accepted by said Obligor;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the said

Principal shall for a period of five (5) years from and after the date of the completion of the contract indemnify
the Obligor against any loss or damage directly arising by reason of any defect in the material or workmanship that may
be discovered within the period aforesaid, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that in the event of any default on the part of the Principal, written statement of the
particular facts showing such default and the date thereof shall be delivered to the Surety by registered mail, at its
home office in the city of Keene, New Hampshire, promptly and in any event within ten (10) days after the Obligor or his
representative shall learn of such default; and that no claim, suit or action by reason of any default of the Principal
shall be brought hereunder after the expiration of thirty days from the end of the maintenance period as herein set
forth.

Midstate Traffic Control, Inc.

By: [Signature] (Principal)

The Ohio Casualty Insurance Company

By: [Signature]
Pamela K. Hays
(Attorney-in-Fact)

S-177

*Bond Amount - 100% for 1st year, reduced to 10% per year for years 2-5

1st year - Three Hundred Twelve Thousand Three Hundred Eighty Five and 35/100 Dollars (\$312,385.35)

2nd year - Thirty One Thousand Two Hundred Thirty Eight and 53/100 Dollars (\$31,238.53)

3rd Year - Thirty One Thousand Two Hundred Thirty Eight and 53/100 Dollars (\$31,238.53)

4th year - Thirty One Thousand Two Hundred Thirty Eight and 53/100 Dollars (\$31,238.53)

5th Year - Thirty One Thousand Two Hundred Thirty Eight and 53/100 Dollars (\$31,238.53)

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Certificate No. 5810459

American Fire and Casualty Company
The Ohio Casualty Insurance Company

Liberty Mutual Insurance Company
West American Insurance Company

POWER OF ATTORNEY

KNOWN ALL PERSONS BY THESE PRESENTS: That American Fire & Casualty Company and The Ohio Casualty Insurance Company are corporations duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint Benson A. Cashion; Cynthia L. Trickey; James R. Ramsay; Judy Schoggen; Matthew K. Cashion, Jr.; Nick W. Peters; Pamela K. Hays; William H. Griffin

all of the city of Little Rock, state of AR each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed hereto this 11th day of December, 2014



American Fire and Casualty Company
The Ohio Casualty Insurance Company
Liberty Mutual Insurance Company
West American Insurance Company

By: David M. Carey
David M. Carey, Assistant Secretary

STATE OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY

On this 11th day of December, 2014, before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of American Fire and Casualty Company, Liberty Mutual Insurance Company, The Ohio Casualty Insurance Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



NOTARIAL SEAL
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires March 28, 2017
Haver, Pennsylvania Association of Notaries

By: Teresa Pastella
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

ARTICLE IV - OFFICERS - Section 12. Power of Attorney. Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

ARTICLE XIII - Execution of Contracts - SECTION 5. Surety Bonds and Undertakings. Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

Certificate of Designation - The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

Authorization - By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Gregory W. Davenport, the undersigned, Assistant Secretary, of American Fire and Casualty Company, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seals of said Companies this 1st day of September, 2015



By: Gregory W. Davenport
Gregory W. Davenport, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.

Regular Board of Commissioners

3.

Meeting Date: 02/01/2016

EOM

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Presentation by City Manager to Employee of the Month, Joshua Kimer, Parks Department.

Attachments

No file(s) attached.

Regular Board of Commissioners

4.

Meeting Date: 02/01/2016

Kickapoo to Farrall

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Consider and approve resolution authorizing the Mayor to sign and execute State of Oklahoma Department of Transportation Project Agreement No. 32255(04), US-270B, Kickapoo Spur, South to Farrall Street (SH18).

Attachments

Kickapoo Memo

Kickapoo Agreement

Kickapoo Resolution

Mayor
WES MAINORD



The City of Shawnee
Engineering Department
222 N. Broadway Ave
Shawnee, Oklahoma 74801
(405) 878-1660
www.ShawneeOK.org

Commissioners

LINDA AGEE
JAMES HARROD
KEITH HALL
LESA SHAW
MICHAEL DYKSTRA

MEMORANDUM

Date: January 26, 2016

To: Justin Erickson, City Manager

From: John Krywicki, P.E., City Engineer

A handwritten signature in dark ink, appearing to be 'JK', is written over the 'From' line.

**Re: Proposed Kickapoo Street Paving Project from The Spur to Farrall,
Consider Project Agreement between City of Shawnee and ODOT**

The City of Shawnee passed a Resolution and Project Agreement with ODOT in June of 2013 to share the costs for Preliminary Engineering and Design of the Kickapoo Project from the Spur to Farrall. Shortly after, ODOT and the City jointly participated in the process to select an Engineering firm to do the work, and had decided upon Poe & Associates (OkC). Poe & Associates was charged with completing design plans to 75% completion and to develop extensive and accurate construction cost estimates so that the City and ODOT could use in developing a project agreement and identify funding levels. Poe completed their work, and the last several months we have held discussions with ODOT to arrive at a Project Agreement that can now be presented to the City Commission for consideration.

The Kickapoo Project from the Spur to Farrall will follow the exact same template as the recently completed Kickapoo north project, i.e. sidewalks both sides, stamped border along sidewalks, stamped paving at signalized intersections, concrete street paving, decorative signalization where planned, storm sewer and improved drainage system, and all new waterlines and upgrades along the extents of the project.

The total estimated construction cost of the entire roadway project is at \$14,451,499.00, and the waterline improvements are estimated at \$1,703,155.00. Also, it is estimated that the costs for construction engineering, inspection, and administration costs over the construction period of the project is at \$867,091.00. Thus, the overall total construction cost estimate of the project is at **\$17,021,745.00**.

Under the Agreement being submitted, the City will be responsible for all the waterline costs associated with the project, and will have to provide all the required right-of-way

and easements necessary to construct the project. Also, the City will allow the current US270 which is the Spur from US270 to Kickapoo, Kickapoo from Spur to Highland, Highland from Kickapoo to Beard, and then Beard from Highland to Farrall to be taken off of the States highway system designation, and the City accepting future maintenance responsibilities over these sections of streets.

In exchange for what the City will be responsible for directly as part of the Kickapoo Project, i.e., waterline costs and right-of-way acquisition, and willing to accept future maintenance over the roads removed from the highway system, ODOT will provide 100% of the construction costs for the Kickapoo Project, 100% of the engineering costs to bring the design plans and right-of-way plans to final completion, and 100% of all construction inspection and admin costs during the course of construction.

We will present and recommend for approval the Resolution and Project Agreement to the City Commission at their regularly scheduled meeting on February 1, 2016.

If you have any questions or need additional information, please advise.

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 32255(04)**

US-270B, Kickapoo Spur, South to Farrall Street (SH-18).

THIS AGREEMENT, made the day and year last written below, by and among the City of Shawnee, hereinafter referred to as the **CITY** and the Department of Transportation of the State of Oklahoma, hereinafter referred to as the **DEPARTMENT**, for the following intents and purposes and subject to the following terms and conditions, to wit:

WITNESSETH:

WHEREAS, the **DEPARTMENT** is charged under the laws of the State of Oklahoma with the construction and maintenance of state highways and bridges; and,

WHEREAS, the **DEPARTMENT**, as part of its responsibilities for the construction and maintenance of state highways and bridges, must cooperate with the local entities of government to allow the location, construction and maintenance of mutual use facilities pursuant to Title 69 OS §304; and

WHEREAS, receipt of the benefits of this project will require that the **CITY** assume certain financial obligations; and,

WHEREAS, the **CITY** is a municipal corporation and charter city created and existing under the Constitution and laws of Oklahoma; and,

WHEREAS, the Constitution and laws of the State of Oklahoma impose fiscal limitations on the **CITY** and its ability to agree to financial obligations; and,

WHEREAS, the parties hereto recognize those fiscal limitations and agree that the financial obligations assumed by the **CITY** by the terms of this agreement are enforceable only to the extent as may be allowed by law or as may be determined by a court of competent jurisdiction; and,

WHEREAS, it is understood that, by virtue of the Oklahoma Constitution Article 10, Section 26, the payment of **CITY** funds in the future will be limited to appropriations and available revenues in the then-current **CITY** fiscal year;

NOW THEREFORE, subject to the limitations herein before described and the limitations of applicable Oklahoma law, the **DEPARTMENT** and the **CITY**, in consideration of the mutual covenants and stipulations as set forth herein, do mutually promise and agree as follows:

SECTION 1: PROJECT AGREEMENT

1.1 The **DEPARTMENT** will request approval from the Transportation Commission for participation in the project that consists of a portion of US270B from the junction of W. Kickapoo Street Spur and Kickapoo Street south to E. Highland Street as well as a section of Kickapoo Street from E. Highland Street south to SH18, which is E. Farrall Street.

1.2 The **DEPARTMENT** will recommend approval of the project by the Federal Highway Administration (FHWA).

1.3 The **CITY** shall by resolution, duly authorize the execution of this agreement by proper officials and attach copies of such resolution to this agreement.

1.4 The **CITY** shall each comply with Title VI of the Civil Rights Act of 1964, 78 O.S. § 252.42, U.S.C. §2000d-et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 - "Nondiscrimination in federally assisted Programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act 1964."

1.5 The **DEPARTMENT** and the **CITY** mutually recognize that each party is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The **DEPARTMENT** and **CITY** hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or officers which may occur during the prosecution or performance of this agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under the Governmental Tort Claims Act and any judgments which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a party or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act.

SECTION 2: ENGINEERING RESPONSIBILITIES

2.1 The **DEPARTMENT** shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E).

2.1.1 The design and plans shall be subject to review and approval by the **DEPARTMENT** and FHWA and shall conform to current State and AASHTO policies and standards, as modified by the **DEPARTMENT**.

2.2 To the extent permitted by law, all data prepared under this agreement shall be made available to the **DEPARTMENT** without restriction or limitation on their further

use, with exception of any documents or information that would be considered attorney/client privileged.

2.3 The **DEPARTMENT** will conduct the environmental studies and prepare the National Environmental Protection Act documents as required.

2.4 The **DEPARTMENT** will forward the environmental documents to FHWA for approval.

SECTION 3: LAND ACQUISITION AND UTILITY RELOCATION

3.1 The **CITY** warrants that, they have or will acquire all land, property, or rights-of-way in their respective jurisdictions needed for complete implementation of said project, free and clear of all obstructions and encumbrances and in full accordance with the **DEPARTMENT's** guidelines for Right-of-Way Acquisition on Federal-Aid Projects, the Uniform Relocation Act, the National Environmental Protection Act and all other applicable local, state and federal regulations.

3.2 The **CITY** shall remove, at its own respective expense, or cause the removal of, all encroachments on existing streets as shown on said plans.

3.3 In exchange for the consideration provided from and through the **DEPARTMENT**, the **CITY** shall assume the ownership and take over the maintenance responsibilities of that portion of US270B otherwise known as W. Kickapoo Spur Street immediately, upon execution of this contract and certification by the **DEPARTMENT** that the roadway is found to meet the minimum design guidelines as set forth in the *State of Oklahoma County Road Design Guidelines* Manual and in addition found the driving surface to have no less than a good rating according to the *County Road Surface Management System*. The **CITY** and shall assume ownership of the remainder of US-270B from W. Kickapoo Spur Street south along Kickapoo Street to E. Highland Street then east along E. Highland Street to S. Beard Street then south along S. Beard Street to E. Farrall Street and then west along E. Farrall Street to US-270/SH-3W as well as SH-18 from US-270/SH-3W East and North to I-40 at the completion and acceptance of the projects. Maintenance responsibilities for these remaining projects will begin upon successful completion of each construction project. The transfer of ownership shall be completed in accordance with the **DEPARTMENT** policy for removal of highways from the State highway system upon completion and acceptance of the final project, and certification by the **DEPARTMENT** that the roadway is found to meet the minimum design guidelines as set forth in the *State of Oklahoma County Road Design Guidelines* Manual and in addition found the driving surface to have no less than a good rating according to the *County Road Surface Management System*. SH-3E from Highland Street to I-40 shall remain with State responsibility for maintenance, and **DEPARTMENT** shall have jurisdiction.

3.4 The **CITY** warrants that utility adjustment costs are included as a part of the agreement and responsibility of the **CITY** and will certify prior to establishing a letting date that all existing utility facilities (if any) have been properly adjusted in full accordance with **DEPARTMENT** policies to accommodate the construction of said project prior to the beginning of any work and will be solely responsible for payment of any and all contractor expenses, claims, suits and/or judgments directly resultant from any actual utility relocation delays.

SECTION 4: CONSTRUCTION RESPONSIBILITIES

4.1 The PARTIES hereto agree to comply with all applicable laws and regulations meeting Environmental Protection Agency (EPA) requirements for pollution prevention including discharges from storm water runoff on this project. The **DEPARTMENT** shall require the contractor who may be awarded the project to meet all Oklahoma Department of Environmental Quality (ODEQ) requirements for storm water runoff on this project. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water management plan (SWMP) sheet, and appropriate USGS topographical map contained in the plans constitute the storm water management plan for the project described previously in this document. Further, if required, the **DEPARTMENT** shall require the contractor to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under the OPDES General Permit with the Oklahoma Department of Environmental Quality which authorizes the storm water discharges associated with construction activity from the construction site and to develop if required a Storm Water Pollution Prevention Plan (SWPPP).

4.1 The roadway improvements and all devices specified herein shall not be altered, removed, or cease to be operative without mutual written consent of the **DEPARTMENT** and the **CITY** with jurisdiction over that portion of the roadway improvement.

4.2 Upon approval of this agreement and the plans, specifications, and estimates by the Federal Highway Administration, the **DEPARTMENT** will advertise and let the contract for this project in the usual and customary manner. It is agreed that the projects herein contemplated are proposed to be financed as described in this agreement, and that this agreement, all plans, specifications, estimate of costs, acceptance of work, payments, and procedure in general hereunder are subject in all things at all times to all Federal laws, regulations, orders and approvals as may be applicable hereto.

4.3 The **DEPARTMENT**, using its own forces or the services of others, will supervise and inspect all work performed by the construction contractor and will

provide such engineering, inspection and testing services as may be required to ensure that the construction of the project is accomplished in accordance with the approved PS&E.

4.4 Upon completion of the project, the new roadway will be maintained by the appropriate jurisdiction in accordance with the Oklahoma Transportation Commission Policy.

SECTION 5: CONSTRUCTION FUNDING

5.1 The total estimated construction cost is \$7,863,044.00 for JP32255(04), \$4,172,043.00 for JP32400(04), and \$2,416,412.00 for JP32401(04). The **DEPARTMENT** agrees to provide 100%. The **CITY** agrees that local funds shall be used to provide their obligation towards the non-participating items for waterline relocation estimated cost of \$1,703,155.00 which shall be deposited with the **DEPARTMENT** prior to the advertisement for bids.

5.2 It is understood by the **CITY** and the **DEPARTMENT** that the funding participation herein may be altered due to bid prices, construction supervision cost and other cost incurred during construction. The **CITY** will be responsible for payment of its required funding share within 45 days of receipt of a **DEPARTMENT** invoice. Upon final acceptance of this project, the amount of **DEPARTMENT** funds and the amount previously deposited by the **CITY** will be deducted from the total cost and a refund will be made by the **DEPARTMENT** to the **CITY** or additional funding will be requested from the **CITY**.

SECTION 6: PRIOR UNDERSTANDING

6.1 This agreement incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the parties.

SECTION 7: AMENDMENTS OR MODIFICATION OF AGREEMENT

7.1 No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by the **DEPARTMENT** shall be effective unless reduced to writing and executed by the parties with same formalities as are observed in the execution of this agreement.

SECTION 8: GOVERNING LAW AND VENUE

8.1 Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance, or enforcement of this agreement shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

SECTION 9: DISPUTE RESOLUTION

9.1 The parties hereto have entered into this agreement in the State of Oklahoma and the laws of the State of Oklahoma shall apply. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to filing court action. Mediation shall be conducted in the city of Oklahoma City area and the costs of such mediation shall be borne equally by the parties. If mediation is not successful, venue for any action brought to enforce the terms of this agreement shall be Oklahoma County, State of Oklahoma. Each party shall bear any costs and attorney fees incurred by that party in such litigation.

SECTION 10: TERMINATION

10.1 This agreement may be terminated by any of the following conditions:

10.1.1 By mutual agreement and consent, in writing of both parties.

10.1.2 By the **DEPARTMENT** by written notice to the **CITY** as a consequence of failure to perform the services set forth herein in a satisfactory manner.

10.1.3 By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

10.1.4 By the **DEPARTMENT** for reasons of its own and not subject to the mutual consent of the **CITY** upon five (5) days written notice to the **CITY**.

10.1.5 By satisfactory completion of all services and obligations described herein.

10.2 The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the **DEPARTMENT** and the **CITY** under this agreement. If the potential termination of this agreement is due to the failure of either the **DEPARTMENT** or the **CITY** to fulfill their obligation as set forth herein, the non-breaching party will notify the party alleged to be in breach that possible breach of agreement has occurred. The party alleged to be in breach should make a good faith effort to remedy that breach as outlined by non-breaching party within a period mutually agreed by each party.

SECTION 11: RECORDS

11.1 The **CITY** is to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its respective offices at all reasonable times, during the agreement period and for three (3) years from the date of final payment under the agreement, for inspection by the **DEPARTMENT** and the State Auditor and Inspector, and copies thereof shall be furnished to the **DEPARTMENT** if requested.

SECTION 12: NOTICES

12.1 All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this agreement shall be in writing and shall be deemed to have been properly given or sent:

12.1.1 If intended for the **DEPARTMENT**, by mailing first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid addressed to:

Oklahoma Department of Transportation
Division 3 Engineer
Kevin S. Bloss
P.O. Box 549
Ada, Oklahoma 74820

12.1.2 If intended for the **CITY**, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to:

City of Shawnee
Mayor Mainord
16 West 9th
Shawnee, OK 74801

SECTION 13: HEADINGS

13.1 Article headings used in this agreement are inserted for convenience of reference only and shall not be deemed a part of this agreement for any purpose.

SECTION 14: BINDING EFFECTS

14.1 This agreement shall be binding upon and inure to the benefit of the **DEPARTMENT** and the **CITY**, severally, and shall be binding upon their successors and assigns, respectively, subject to the limitations of Oklahoma law.

SECTION 15: SEVERABILITY

15.1 If any provision, clause, or paragraph of this agreement or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this agreement which are not affected by the determination. The provisions, clauses, or paragraphs of this agreement and any documents incorporated by reference are declared severable.

SECTION 16: EFFECTIVE DATE

16.1 This agreement shall become effective on the date of execution by the **DEPARTMENT's** Deputy Director/Chief Engineer or designee as the last party to execute this agreement.

THIS SPACE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Deputy Director/Chief Engineer of the **DEPARTMENT** or designee, pursuant to authority vested by the Transportation Commission, has hereunto subscribed his name as Deputy Director/Chief Engineer of the **DEPARTMENT** and the **CITY** have each severally executed same pursuant to authority prescribed by law. The **CITY** on the ____ day of _____, 20____, and the **DEPARTMENT** on the ____ day of _____, 20____.

CITY OF SHAWNEE

Reviewed For Form And Legality:

City Attorney Date

Attest:

City Clerk Date

Mayor Date

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION

Recommended For Approval:

Approved As To Form And Legality:

Division 3 Engineer Date

General Counsel Date

Approved:

Deputy Director/Chief Engineer Date

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 32255(04)**

INVOICE

Make check PAYABLE, and MAIL TO: **Oklahoma Department of Transportation
Comptroller Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204**

To: City of Shawnee
Mayor Mainord
16 West 9th
Shawnee, OK 74801

Invoice Number: #####(##)

Division Name: Project Management Division
Date: 10/29/2015

Description - Explanation of Charge	Total
Due Date: Date	
US-270B, Kickapoo Spur, South to Farrall Street (SH-18).	
Job Piece Number 32255(04), 32400(04), 32401(04)	
<u>Cost Breakdown</u>	
Engineers Estimate: JP 32255(04)	\$ 7,863,044.00
E&C: @ 6 %	\$ 471,783.00
Engineers Estimate: JP 32400(04)	\$ 4,172,043.00
E&C: @ 6 %	\$ 250,323.00
Engineers Estimate: JP 32401(04)	\$ 2,416,412.00
E&C: @ 6 %	\$ 144,985.00
Total City of Shawnee Costs: \$ 1,703,155.00	
Accounting Use Only	\$ 17,021,745.00

--	--

- ☐ Purchaser Copy
- ☐ Remit with Payment
- ☐ Retain in Division
- ☐ To Comptroller

RESOLUTION NO. _____

A RESOLUTION SUPPORTING CERTAIN PROJECT AGREEMENT FOR FEDERAL-AID IMPROVEMENTS DESCRIBED BELOW BY AND BETWEEN THE CITY OF SHAWNEE AND THE OKLAHOMA DEPARTMENT OF TRANSPORTATION.

BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE CITY OF SHAWNEE, OKLAHOMA:

WHEREAS, it is in the best interest of the City of Shawnee, Oklahoma, to execute that certain project agreement for Job Piece Number 32255(04), 32400(04), 32401(04), by and between the City of Shawnee and the Oklahoma Department of Transportation;

NOW THEREFORE, it is hereby resolved that the Mayor is hereby authorized and directed to execute the above described agreement on behalf of the City of Shawnee, and duly signed by the Mayor on this 1st day of February, 2016.

CITY OF SHAWNEE

WES MAINORD, MAYOR

ATTEST:

PHYLLIS LOFTIS, CMC, CITY CLERK

Approved as to form and legality on the 1st day of February, 2016, by the City Attorney,
Mary Ann Karns.

MARY ANN KARNS, CITY ATTORNEY

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 32255(04)**

US-270B, Kickapoo Spur, South to Farrall Street (SH-18).

THIS AGREEMENT, made the day and year last written below, by and among the City of Shawnee, hereinafter referred to as the **CITY** and the Department of Transportation of the State of Oklahoma, hereinafter referred to as the **DEPARTMENT**, for the following intents and purposes and subject to the following terms and conditions, to wit:

WITNESSETH:

WHEREAS, the **DEPARTMENT** is charged under the laws of the State of Oklahoma with the construction and maintenance of state highways and bridges; and,

WHEREAS, the **DEPARTMENT**, as part of its responsibilities for the construction and maintenance of state highways and bridges, must cooperate with the local entities of government to allow the location, construction and maintenance of mutual use facilities pursuant to Title 69 OS §304; and

WHEREAS, receipt of the benefits of this project will require that the **CITY** assume certain financial obligations; and,

WHEREAS, the **CITY** is a municipal corporation and charter city created and existing under the Constitution and laws of Oklahoma; and,

WHEREAS, the Constitution and laws of the State of Oklahoma impose fiscal limitations on the **CITY** and its ability to agree to financial obligations; and,

WHEREAS, the parties hereto recognize those fiscal limitations and agree that the financial obligations assumed by the **CITY** by the terms of this agreement are enforceable only to the extent as may be allowed by law or as may be determined by a court of competent jurisdiction; and,

WHEREAS, it is understood that, by virtue of the Oklahoma Constitution Article 10, Section 26, the payment of **CITY** funds in the future will be limited to appropriations and available revenues in the then-current **CITY** fiscal year;

NOW THEREFORE, subject to the limitations herein before described and the limitations of applicable Oklahoma law, the **DEPARTMENT** and the **CITY**, in consideration of the mutual covenants and stipulations as set forth herein, do mutually promise and agree as follows:

SECTION 1: PROJECT AGREEMENT

1.1 The **DEPARTMENT** will request approval from the Transportation Commission for participation in the project that consists of a portion of US270B from the junction of W. Kickapoo Street Spur and Kickapoo Street south to E. Highland Street as well as a section of Kickapoo Street from E. Highland Street south to SH18, which is E. Farrall Street.

1.2 The **DEPARTMENT** will recommend approval of the project by the Federal Highway Administration (FHWA).

1.3 The **CITY** shall by resolution, duly authorize the execution of this agreement by proper officials and attach copies of such resolution to this agreement.

1.4 The **CITY** shall each comply with Title VI of the Civil Rights Act of 1964, 78 O.S. § 252.42, U.S.C. §2000d-et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Part 21 - "Nondiscrimination in federally assisted Programs of the Department of Transportation-effectuation of Title VI of the Civil Rights Act 1964."

1.5 The **DEPARTMENT** and the **CITY** mutually recognize that each party is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. § 151 et seq.). The **DEPARTMENT** and **CITY** hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or officers which may occur during the prosecution or performance of this agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under the Governmental Tort Claims Act and any judgments which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a party or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act.

SECTION 2: ENGINEERING RESPONSIBILITIES

2.1 The **DEPARTMENT** shall provide professional engineering services for the development of the Plans, Specifications and Estimates (PS&E).

2.1.1 The design and plans shall be subject to review and approval by the **DEPARTMENT** and FHWA and shall conform to current State and AASHTO policies and standards, as modified by the **DEPARTMENT**.

2.2 To the extent permitted by law, all data prepared under this agreement shall be made available to the **DEPARTMENT** without restriction or limitation on their further

use, with exception of any documents or information that would be considered attorney/client privileged.

2.3 The **DEPARTMENT** will conduct the environmental studies and prepare the National Environmental Protection Act documents as required.

2.4 The **DEPARTMENT** will forward the environmental documents to FHWA for approval.

SECTION 3: LAND ACQUISITION AND UTILITY RELOCATION

3.1 The **CITY** warrants that, they have or will acquire all land, property, or rights-of-way in their respective jurisdictions needed for complete implementation of said project, free and clear of all obstructions and encumbrances and in full accordance with the **DEPARTMENT's** guidelines for Right-of-Way Acquisition on Federal-Aid Projects, the Uniform Relocation Act, the National Environmental Protection Act and all other applicable local, state and federal regulations.

3.2 The **CITY** shall remove, at its own respective expense, or cause the removal of, all encroachments on existing streets as shown on said plans.

3.3 In exchange for the consideration provided from and through the **DEPARTMENT**, the **CITY** shall assume the ownership and take over the maintenance responsibilities of that portion of US270B otherwise known as W. Kickapoo Spur Street immediately, upon execution of this contract and certification by the **DEPARTMENT** that the roadway is found to meet the minimum design guidelines as set forth in the *State of Oklahoma County Road Design Guidelines* Manual and in addition found the driving surface to have no less than a good rating according to the *County Road Surface Management System*. The **CITY** and shall assume ownership of the remainder of US-270B from W. Kickapoo Spur Street south along Kickapoo Street to E. Highland Street then east along E. Highland Street to S. Beard Street then south along S. Beard Street to E. Farrall Street and then west along E. Farrall Street to US-270/SH-3W as well as SH-18 from US-270/SH-3W East and North to I-40 at the completion and acceptance of the projects. Maintenance responsibilities for these remaining projects will begin upon successful completion of each construction project. The transfer of ownership shall be completed in accordance with the **DEPARTMENT** policy for removal of highways from the State highway system upon completion and acceptance of the final project, and certification by the **DEPARTMENT** that the roadway is found to meet the minimum design guidelines as set forth in the *State of Oklahoma County Road Design Guidelines* Manual and in addition found the driving surface to have no less than a good rating according to the *County Road Surface Management System*. SH-3E from Highland Street to I-40 shall remain with State responsibility for maintenance, and **DEPARTMENT** shall have jurisdiction.

3.4 The **CITY** warrants that utility adjustment costs are included as a part of the agreement and responsibility of the **CITY** and will certify prior to establishing a letting date that all existing utility facilities (if any) have been properly adjusted in full accordance with **DEPARTMENT** policies to accommodate the construction of said project prior to the beginning of any work and will be solely responsible for payment of any and all contractor expenses, claims, suits and/or judgments directly resultant from any actual utility relocation delays.

SECTION 4: CONSTRUCTION RESPONSIBILITIES

4.1 The PARTIES hereto agree to comply with all applicable laws and regulations meeting Environmental Protection Agency (EPA) requirements for pollution prevention including discharges from storm water runoff on this project. The DEPARTMENT shall require the contractor who may be awarded the project to meet all Oklahoma Department of Environmental Quality (ODEQ) requirements for storm water runoff on this project. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water management plan (SWMP) sheet, and appropriate USGS topographical map contained in the plans constitute the storm water management plan for the project described previously in this document. Further, if required, the DEPARTMENT shall require the contractor to file a Notice of Intent (NOI) for Storm Water Discharges Associated with Construction Activity under the OPDES General Permit with the Oklahoma Department of Environmental Quality which authorizes the storm water discharges associated with construction activity from the construction site and to develop if required a Storm Water Pollution Prevention Plan (SWPPP).

4.1 The roadway improvements and all devices specified herein shall not be altered, removed, or cease to be operative without mutual written consent of the **DEPARTMENT** and the **CITY** with jurisdiction over that portion of the roadway improvement.

4.2 Upon approval of this agreement and the plans, specifications, and estimates by the Federal Highway Administration, the **DEPARTMENT** will advertise and let the contract for this project in the usual and customary manner. It is agreed that the projects herein contemplated are proposed to be financed as described in this agreement, and that this agreement, all plans, specifications, estimate of costs, acceptance of work, payments, and procedure in general hereunder are subject in all things at all times to all Federal laws, regulations, orders and approvals as may be applicable hereto.

4.3 The **DEPARTMENT**, using its own forces or the services of others, will supervise and inspect all work performed by the construction contractor and will

provide such engineering, inspection and testing services as may be required to ensure that the construction of the project is accomplished in accordance with the approved PS&E.

4.4 Upon completion of the project, the new roadway will be maintained by the appropriate jurisdiction in accordance with the Oklahoma Transportation Commission Policy.

SECTION 5: CONSTRUCTION FUNDING

5.1 The total estimated construction cost is \$7,863,044.00 for JP32255(04), \$4,172,043.00 for JP32400(04), and \$2,416,412.00 for JP32401(04). The **DEPARTMENT** agrees to provide 100%. The **CITY** agrees that local funds shall be used to provide their obligation towards the non-participating items for waterline relocation estimated cost of \$1,703,155.00 which shall be deposited with the **DEPARTMENT** prior to the advertisement for bids.

5.2 It is understood by the **CITY** and the **DEPARTMENT** that the funding participation herein may be altered due to bid prices, construction supervision cost and other cost incurred during construction. The **CITY** will be responsible for payment of its required funding share within 45 days of receipt of a **DEPARTMENT** invoice. Upon final acceptance of this project, the amount of **DEPARTMENT** funds and the amount previously deposited by the **CITY** will be deducted from the total cost and a refund will be made by the **DEPARTMENT** to the **CITY** or additional funding will be requested from the **CITY**.

SECTION 6: PRIOR UNDERSTANDING

6.1 This agreement incorporates and reduces to writing all prior understandings, promises, agreements, commitments, covenants, or conditions, and constitutes the full and complete understanding and contractual relationship of the parties.

SECTION 7: AMENDMENTS OR MODIFICATION OF AGREEMENT

7.1 No changes, revisions, amendments or alterations in the manner, scope, or type of work or compensation to be paid by the **DEPARTMENT** shall be effective unless reduced to writing and executed by the parties with same formalities as are observed in the execution of this agreement.

SECTION 8: GOVERNING LAW AND VENUE

8.1 Any claims, disputes or litigation relating to the solicitation, execution, interpretation, performance, or enforcement of this agreement shall be governed by the laws of the State of Oklahoma and the applicable rules, regulations, policies, and procedures of the Oklahoma Transportation Commission. Venue for any action, claim, dispute or litigation, mediation or arbitration shall be in Oklahoma County, Oklahoma.

SECTION 9: DISPUTE RESOLUTION

9.1 The parties hereto have entered into this agreement in the State of Oklahoma and the laws of the State of Oklahoma shall apply. The parties agree to bargain in good faith in direct negotiation to achieve resolutions of any dispute and, if such efforts are unsuccessful, to retain a neutral mediation service to mediate the dispute prior to filing court action. Mediation shall be conducted in the city of Oklahoma City area and the costs of such mediation shall be borne equally by the parties. If mediation is not successful, venue for any action brought to enforce the terms of this agreement shall be Oklahoma County, State of Oklahoma. Each party shall bear any costs and attorney fees incurred by that party in such litigation.

SECTION 10: TERMINATION

10.1 This agreement may be terminated by any of the following conditions:

10.1.1 By mutual agreement and consent, in writing of both parties.

10.1.2 By the **DEPARTMENT** by written notice to the **CITY** as a consequence of failure to perform the services set forth herein in a satisfactory manner.

10.1.3 By either party, upon the failure of the other party to fulfill its obligations as set forth herein.

10.1.4 By the **DEPARTMENT** for reasons of its own and not subject to the mutual consent of the **CITY** upon five (5) days written notice to the **CITY**.

10.1.5 By satisfactory completion of all services and obligations described herein.

10.2 The termination of this agreement shall extinguish all rights, duties, obligations and liabilities of the **DEPARTMENT** and the **CITY** under this agreement. If the potential termination of this agreement is due to the failure of either the **DEPARTMENT** or the **CITY** to fulfill their obligation as set forth herein, the non-breaching party will notify the party alleged to be in breach that possible breach of agreement has occurred. The party alleged to be in breach should make a good faith effort to remedy that breach as outlined by non-breaching party within a period mutually agreed by each party.

SECTION 11: RECORDS

11.1 The **CITY** is to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at its respective offices at all reasonable times, during the agreement period and for three (3) years from the date of final payment under the agreement, for inspection by the **DEPARTMENT** and the State Auditor and Inspector, and copies thereof shall be furnished to the **DEPARTMENT** if requested.

SECTION 12: NOTICES

12.1 All notices, demands, requests, or other communications which may be or are required to be given, served or sent by either party to the other pursuant to this agreement shall be in writing and shall be deemed to have been properly given or sent:

12.1.1 If intended for the **DEPARTMENT**, by mailing first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid addressed to:

Oklahoma Department of Transportation
Division 3 Engineer
Kevin S. Bloss
P.O. Box 549
Ada, Oklahoma 74820

12.1.2 If intended for the **CITY**, by mailing by first class mail or, if sender prefers, by registered or certified mail, return receipt requested, with postage prepaid, addressed to:

City of Shawnee
Mayor Mainord
16 West 9th
Shawnee, OK 74801

SECTION 13: HEADINGS

13.1 Article headings used in this agreement are inserted for convenience of reference only and shall not be deemed a part of this agreement for any purpose.

SECTION 14: BINDING EFFECTS

14.1 This agreement shall be binding upon and inure to the benefit of the **DEPARTMENT** and the **CITY**, severally, and shall be binding upon their successors and assigns, respectively, subject to the limitations of Oklahoma law.

SECTION 15: SEVERABILITY

15.1 If any provision, clause, or paragraph of this agreement or any document incorporated by reference shall be determined invalid by a court of competent jurisdiction, such determination shall not affect the other provisions, clauses, or paragraphs of this agreement which are not affected by the determination. The provisions, clauses, or paragraphs of this agreement and any documents incorporated by reference are declared severable.

SECTION 16: EFFECTIVE DATE

16.1 This agreement shall become effective on the date of execution by the **DEPARTMENT's** Deputy Director/Chief Engineer or designee as the last party to execute this agreement.

THIS SPACE LEFT INTENTIONALLY BLANK

IN WITNESS WHEREOF, the Deputy Director/Chief Engineer of the **DEPARTMENT** or designee, pursuant to authority vested by the Transportation Commission, has hereunto subscribed his name as Deputy Director/Chief Engineer of the **DEPARTMENT** and the **CITY** have each severally executed same pursuant to authority prescribed by law. The **CITY** on the ____ day of _____, 20____, and the **DEPARTMENT** on the ____ day of _____, 20____.

CITY OF SHAWNEE

Reviewed For Form And Legality:

City Attorney Date

Attest:

City Clerk Date

Mayor Date

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION

Recommended For Approval:

Approved As To Form And Legality:

Division 3 Engineer Date

General Counsel Date

Approved:

Deputy Director/Chief Engineer Date

**STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION
PROJECT AGREEMENT NO. 32255(04)**

INVOICE

Make check PAYABLE, and MAIL TO: **Oklahoma Department of Transportation
Comptroller Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204**

To: City of Shawnee
Mayor Mainord
16 West 9th
Shawnee, OK 74801

Invoice Number: #####(##)

Division Name: Project Management Division
Date: 10/29/2015

Description - Explanation of Charge	Total
Due Date: Date	
US-270B, Kickapoo Spur, South to Farrall Street (SH-18).	
Job Piece Number 32255(04), 32400(04), 32401(04)	
<u>Cost Breakdown</u>	
Engineers Estimate: JP 32255(04)	\$ 7,863,044.00
E&C: @ 6 %	\$ 471,783.00
Engineers Estimate: JP 32400(04)	\$ 4,172,043.00
E&C: @ 6 %	\$ 250,323.00
Engineers Estimate: JP 32401(04)	\$ 2,416,412.00
E&C: @ 6 %	\$ 144,985.00
Total City of Shawnee Costs: \$ 1,703,155.00	
Accounting Use Only	\$ 17,021,745.00

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- ☐ Purchaser Copy
- ☐ Remit with Payment
- ☐ Retain in Division
- ☐ To Comptroller

Regular Board of Commissioners

5.

Meeting Date: 02/01/2016

Beautification Comm Rec

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Presentation of recognition from the Shawnee Beautification Committee to the following:

- Family Dental of Shawnee
 - St. John Lutheran Church
 - Augusta Court Home Owners Association
 - Sonic at 45th and Harrison
 - 2000 N. Broadway
-

Attachments

No file(s) attached.

Regular Board of Commissioners

6.

Meeting Date: 02/01/2016

FD #2 Agreement

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Authorize staff to enter into an agreement with Fritz Baily Architects of Tulsa, Oklahoma to provide design, engineering and biddable construction documents for the repair and renovation of Fire Station #2 located at 1401 N. Bryan.

Attachments

FD #2 Memo Agreement

CITY OF SHAWNEE FIRE DEPARTMENT

16 West 9th Street
P (405) 878-1671 | F (405) 878-1618



ADMINISTRATION

Dru Tischer, Fire Chief
(405) 878-1556

Andy Starkey, Deputy Fire Chief
(405) 878-1538

Clarice Brock, Secretary
(405) 878-1671

DATE: January 26, 2016
TO: Mayor, Vice Mayor and City Commissioners
CC: Justin Erickson, City Manager; John Krywicki, City Engineer; Mary Ann Karns, City Attorney
FROM: Dru Tischer, Fire Chief
SUBJECT: Request permission to enter into agreement with Fritz Baily Architects (**Bryan Street Fire Station No. 2 Rehab Project**)

As a result of the Request for Qualifications process, staff is requesting permission to enter into an agreement with Fritz Baily Architects of Tulsa, Oklahoma to provide architectural design services for the design and construction management of the Bryan Street Fire Station No. 2 Rehab Project. Fritz Baily was one of ten firms that responded to our RFQ for this project. The project committee, comprised of City Manager Justin Erickson, Fire Chief Dru Tischer, City Engineer John Krywicki and Deputy Fire Chief Andy Starkey, selected a list of four candidates to be interviewed based on information submitted by each firm and discussions with past clients of those firms. During these interviews, Fritz Baily was selected as the most qualified firm for this project based on their prior experience with fire station design and renovation, the strong recommendations of their past clients and their ability to deliver services in a timely manner. Per our request, Fritz Baily submitted contract language with a cost proposal for the project in the amount of \$123,000. After several meetings and discussions, we now have contract language that is acceptable to staff and a reduced cost proposal for the project in the amount of \$106,500. As shown in Exhibit D of the attached contract, the time frame allows for construction to begin within 6 months of notice to proceed. Staff is recommending approval of the attached contract language for the \$106,500 total amount.

AIA[®] Document B101[™] – 2007

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the 16th day of December
in the year 2015
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

City of Shawnee
16 W. 9th Street
Shawnee, OK 74801

This document has important legal
consequences. Consultation with
an attorney is encouraged with
respect to its completion or
modification.

and the Architect:
(Name, legal status, address and other information)

Fritz Baily, P.C.
1836 S. Baltimore Avenue
Tulsa, OK 74114

for the following Project:
(Name, location and detailed description)

Fire Station No. 2 Rehab
1401 N. Bryan Street, Shawnee, OK 74801

The Owner and Architect agree as follows:

TABLE OF ARTICLES

1	INITIAL INFORMATION
2	ARCHITECT'S RESPONSIBILITIES
3	SCOPE OF ARCHITECT'S BASIC SERVICES
4	ADDITIONAL SERVICES
5	OWNER'S RESPONSIBILITIES
6	COST OF THE WORK
7	COPYRIGHTS AND LICENSES
8	CLAIMS AND DISPUTES
9	TERMINATION OR SUSPENSION
10	MISCELLANEOUS PROVISIONS
11	COMPENSATION
12	SPECIAL TERMS AND CONDITIONS
13	SCOPE OF THE AGREEMENT

EXHIBIT A INITIAL INFORMATION

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Article) and in optional Exhibit A, Initial Information:

(Complete Exhibit A, Initial Information, and incorporate it into the Agreement at Section 13.2, or state below Initial Information such as details of the Project's site and program, Owner's contractors and consultants, Architect's consultants, Owner's budget for the Cost of the Work, authorized representatives, anticipated procurement method, and other information relevant to the Project.)

§ 1.2 The Owner's anticipated dates for commencement of construction and Substantial Completion of the Work are set forth below:

- .1 Commencement of construction date:
To be decided.
- .2 Substantial Completion date:
To be decided.

§ 1.3 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance for the duration of this Agreement. If any of the requirements set forth below exceed the types and limits the Architect normally maintains, the Owner shall reimburse the Architect for any additional cost.

(Identify types and limits of insurance coverage, and other insurance requirements applicable to the Agreement, if any.)

.1 General Liability

\$1,000,000.00

.2 Automobile Liability

\$1,000,000.00

.3 Workers' Compensation

\$100,000.00

.4 Professional Liability

\$1,000,000.00

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.5 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services including NFPA 1500.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project's requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work.

§ 3.3.3 The Architect shall submit the Design Development documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 The Architect shall update the estimate for the Cost of the Work.

§ 3.4.5 The Architect shall submit the Construction Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, take any action required under Section 6.5, and request the Owner's approval.

§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES

§ 3.5.1 GENERAL

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

§ 3.5.2 COMPETITIVE BIDDING

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

1. procuring the reproduction of Bidding Documents for distribution to prospective bidders;
2. distributing the Bidding Documents to prospective bidders, requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders;
3. organizing and conducting a pre-bid conference for prospective bidders;
4. preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to all prospective bidders in the form of addenda; and

- 3 organizing and conducting the opening of the bids, and subsequently documenting and distributing the bidding results, as directed by the Owner.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- 1 procuring the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- 2 organizing and participating in selection interviews with prospective contractors; and
- 3 participating in negotiations with prospective contractors, and subsequently preparing a summary report of the negotiation results, as directed by the Owner.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

§ 3.6 CONSTRUCTION PHASE SERVICES

§ 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™-2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201-2007, those modifications shall not affect the Architect's services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect's responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

§ 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule submitted by the Contractor, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review Shop Drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Upon request of the Owner, and prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Additional Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2.

(Designate the Additional Services the Architect shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit.)

Additional Services	Responsibility (Architect, Owner or Not Provided)	Location of Service Description (Section 4.2 below or in an exhibit attached to this document and identified below)
§ 4.1.1 Programming	A	Basic Service
§ 4.1.2 Multiple preliminary designs	A	Basic Service
§ 4.1.3 Measured drawings	A	Basic Service
§ 4.1.4 Existing facilities surveys	A	Basic Services
§ 4.1.5 Site Evaluation and Planning (B203™-2007)	NP	
§ 4.1.6 Building information modeling	A	Basic Services
§ 4.1.7 Civil engineering	NP	Separate Fee
§ 4.1.8 Landscape design	NP	
§ 4.1.9 Architectural Interior Design (B252™-2007)	NP	
§ 4.1.10 Value Analysis (B204™-2007)	NP	
§ 4.1.11 Detailed cost estimating	A	Basic Service
§ 4.1.12 On-site project representation	A	Limited Site Visits - see Sec. 4.3.3.2
§ 4.1.13 Conformed construction documents	NP	
§ 4.1.14 As-designed Record Drawings	A	Basic Services
§ 4.1.15 As-constructed Record Drawings	A	Basic Services
§ 4.1.16 Post occupancy evaluation	NP	
§ 4.1.17 Facility Support Services (B210™-2007)	NP	
§ 4.1.18 Tenant-related services	NP	
§ 4.1.19 Coordination of Owner's consultants	A	Basic Services
§ 4.1.20 Telecommunications/data design	NP	
§ 4.1.21 Security Evaluation and Planning (B206™-2007)	NP	
§ 4.1.22 Commissioning (B211™-2007)	NP	
§ 4.1.23 Extensive environmentally responsible design	NP	
§ 4.1.24 LEED® Certification (B214™-2007)	NP	
§ 4.1.25 Fast-track design services	NP	
§ 4.1.26 Historic Preservation (B205™-2007)	NP	
§ 4.1.27 Furniture, Furnishings, and Equipment Design (B253™-2007)	NP	

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Architect's responsibility, if not further described in an exhibit attached to this document.

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.3 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

~~§ 4.3.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following services until the Architect receives the Owner's written authorization:~~

- ~~1. Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;~~
- ~~2. Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;~~
- ~~3. Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;~~
- ~~4. Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;~~
- ~~5. Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;~~
- ~~6. Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;~~
- ~~7. Preparation for, and attendance at, a public presentation, meeting or hearing;~~
- ~~8. Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;~~
- ~~9. Evaluation of the qualifications of bidders or persons providing proposals;~~
- ~~10. Consultation concerning replacement of Work resulting from fire or other cause during construction; or~~
- ~~11. Assistance to the Initial Decision Maker, if other than the Architect.~~

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services; notify the Owner with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of these services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- ~~1. Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;~~
- ~~2. Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;~~
- ~~3. Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;~~
- ~~4. Evaluating an extensive number of Claims as the Initial Decision Maker;~~
- ~~5. Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or~~
- ~~6. To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.~~

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- ~~1. Two (2) reviews of each Shop Drawing, Product Data item, sample and similar submittal of the Contractor.~~
- ~~2. Two (4) visits per month to the site by the Architect over the duration of the Project during construction or as mutually~~
- ~~3. Two (2) inspections for any portion of the Work to determine whether such portion of the needed Work is substantially complete in accordance with the requirements of the Contract Documents.~~
- ~~4. Two (2) inspections for any portion of the Work to determine final completion~~

§ 4.3.4 If the services covered by this Agreement have not been completed within thirty-six (36) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

§ 5.2 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsurface conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance as appropriate to the services provided.

§ 5.7 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.8 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.9 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service.

§ 5.10 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.11 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.12 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work or from any estimate of the Cost of the Work or evaluation prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding and price escalation; to determine what materials, equipment, component systems and types of construction are to be included in the Contract Documents; to make reasonable adjustments in the program and scope of the Project; and to include in the Contract Documents alternate bids as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget for the Cost of the Work. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requests detailed cost estimating services, the Architect shall provide such services as an Additional Service under Article 4.

§ 6.4 If the Bidding or Negotiation Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, through no fault of the Architect, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 authorize rebidding or renegotiating of the Project within a reasonable time;
- .3 terminate in accordance with Section 9.5;
- .4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect, without additional compensation, shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication or derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the author of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 GENERAL

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

~~§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.~~

~~§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:~~

~~(Check the appropriate box. If the Owner and Architect do not select a method of binding dispute resolution below, we do not subsequently agree in writing to a binding dispute resolution method other than litigation; the dispute will be resolved in a court of competent jurisdiction.)~~

☐ ~~Arbitration pursuant to Section 8.3 of this Agreement~~

☒ ~~Litigation in a court of competent jurisdiction~~

☐ ~~Other (Specify)~~

§ 8.3 ARBITRATION

~~§ 8.3.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement, any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of this Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.~~

~~§ 8.3.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.~~

~~§ 8.3.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.~~

~~§ 8.3.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.~~

§ 8.3.4 CONSOLIDATION OR JOINDER

~~§ 8.3.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).~~

~~§ 8.3.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.~~

~~§ 8.3.4.3 The Owner and Architect grant to any person or entity made a party to an arbitration conducted under this Section 8.3, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Architect under this Agreement.~~

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the laws of the State of Oklahoma, without regard to conflicts of law provisions. Jurisdiction and venue shall be Pottawatomie County District Court, Shawnee, Oklahoma.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, or (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

See Exhibit D

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

As mutually agreed to by both parties.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

(Insert amount of, or basis for, compensation.)

As mutually agreed to by both parties.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus ten percent (10%), or as otherwise stated below.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

SEE EXHIBIT D

Schematic Design Phase:	Twenty percent (20%)
Design Development Phase:	Fifteen percent (15%)
Construction Documents Phase:	Forty percent (40%)
Bidding or Negotiation Phase:	Five percent (5%)
Construction Phase:	Twenty percent (20%)

Total Basic Compensation: one hundred percent (100.00%)

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices. (If applicable, attach an exhibit of hourly billing rates or insert them below.)

See Exhibit B.

Employee or Category	Rate
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§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

1. Transportation and authorized out-of-town travel and subsistence;
2. Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
3. Fees paid for securing approval of authorities having jurisdiction over the Project;
4. Printing, reproductions, plots, standard form documents;
5. Postage, handling and delivery;
6. Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
7. Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
8. Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
9. All taxes levied on professional services and on reimbursable expenses;
10. Site office expenses; and
11. Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Ten percent (10%) of the expenses incurred.

§ 11.9 COMPENSATION FOR USE OF ARCHITECT'S INSTRUMENTS OF SERVICE

If the Owner terminates the Architect for its convenience under Section 9.5, or the Architect terminates this Agreement under Section 9.3, the Owner shall pay a licensing fee as compensation for the Owner's continued use of the Architect's Instruments of Service solely for purposes of completing, using and maintaining the Project as follows:

Five-thousand dollars (\$5,000.00)

§ 11.10 PAYMENTS TO THE ARCHITECT

§ 11.10.1 An initial payment of

Zero Dollars

(\$ 0.00) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.
(Insert rate of monthly or annual interest agreed upon.)

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

- 1 AIA Document B101™-2007, Standard Form Agreement Between Owner and Architect
- 2 AIA Document E201™-2007, Digital Data Protocol Exhibit, if completed, or the following:

NON-COLLUSION AFFIDAVIT

STATE OF OKLAHOMA

§§:

COUNTY OF POTTAWATOMIE

Ted Bailly, AIA of lawful age, being first duly sworn, on oath says that he/she is the agent authorized by the VENDOR to submit the attached Proposal. Affiant further states that the VENDOR has not been a party to any collusion among the Proposers in restraint of freedom of competition by agreement to Propose at a fixed price or to refrain from submitting a Proposal; or with any City official or employee as to quantity, quality, or price in the prospective contract, or any other terms of said prospective contract; or in any discussions between the Proposers and any City official concerning exchange of money or other thing of value for special consideration in the awarding of a contract; that the undersigned Proposer has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the City of Shawnee, Oklahoma, any money or other thing of value, either directly or indirectly, in the procuring of the award of a contract pursuant to this Proposal.

Fritz Bailly, P.C.

FIRM NAME

By: [Signature]

Sworn before me this 27th day of January, 2016

[Signature]

Notary Public

My commission expires 07.17.2016



BUSINESS RELATIONSHIP AFFIDAVIT

STATE OF OKLAHOMA

SS-

COUNTY OF POTTAWATOMIE

Ted Bailey, P.C. of lawful age, being first duly sworn, in oath says that he/she is the agent authorized by the VENDOR to submit the attached Proposal. Affiant further states that the nature of any partnership, joint venture, or other business relationship presently in effect or which existed within one (1) year prior to the date of this statement with any party to the prospective contract is as follows:

none

Affiant further states that any such business relationship presently in effect or which existed within one (1) year prior to the date of this statement between any officer or director of the Proposing company and any other party to the prospective contract is as follows:

none

Affiant further states that the names of all persons having such business relationships and the positions they hold with their respective companies or firms are as follows:

none

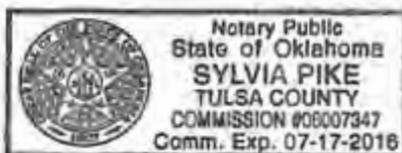
(If none of the business relationships herein above mentioned exists, affiant should so state.)

[Signature]
AFFIANT

Sworn before me this 27th day of January, 2016

[Signature]
Notary Public

My commission expires 07-17-2016



3 Other documents:

(List other documents, if any, including Exhibit A, Initial Information, and additional scopes of service, if any, forming part of the Agreement.)

Exhibit A - Document B101-2007

Exhibit B - Hourly Rate Schedule

Exhibit C - Project Description

Exhibit D - Compensation

OWNER:

CITY OF SHAWNEE

A Municipal Corporation

(SEAL)

BY _____

ATTEST:

NAME Justin Erickson

TITLE City Manager

Phyllis Loftis, CMC, City Clerk

APPROVED AS TO FORM AND LEGALITY THIS ____ DAY OF _____, 2015.

MARY ANN KARNS, CITY ATTORNEY

(SEAL)

CONTRACTOR:

ATTEST:

Fritz Bailly, P.C.
(name of firm)

BY [Signature]

BY [Signature]

(signature)

(signature)

NAME Tedrick Bailly

NAME Ted Bailly, AIA

(printed)

(printed)

TITLE SECRETARY

TITLE President

(Secretary/Treasurer)

(President/Vice President)

ADDRESS

1836 S. Baltimore Ave.
Tulsa, OK 74119

**AIA**[®]**Document B101[™] – 2007 Exhibit A****Initial Information**

for the following PROJECT:

(Name and location or address)

Fire Station No. 2 Rehab

1401 N. Bryan Street, Shawnee, OK 74801

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:*(Name, legal status and address)*

City of Shawnee

16 W. 9th Street

Shawnee, OK 74801

THE ARCHITECT:*(Name, legal status and address)*

Fritz Baily, P.C.

1836 S. Baltimore Avenue

Tulsa, OK 74114

This Agreement is based on the following information.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

ARTICLE A.1 PROJECT INFORMATION**§ A.1.1 The Owner's program for the Project:***(Identify documentation or state the manner in which the program will be developed.)*

See Exhibit C.

§ A.1.2 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

The existing Fire Station No. 2 is located at 1401 N. Bryan Street in Shawnee, OK. The existing station is a single story and is approximately 6,000 square feet.

§ A.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1
(Provide total, and if known, a line item break down.)

Not to exceed \$1,200,000.00

§ A.1.4 The Owner's other anticipated scheduling information, if any, not provided in Section 4.2:

§ A.1.5 The Owner intends the following procurement or delivery method for the Project:
(Identify method such as competitive bid, negotiated contract, or construction management.)

Competitive bidding to select a General Contractor.

§ A.1.6 Other Project information:
(Identify special characteristics or needs of the Project not provided elsewhere, such as environmentally responsible design or historic preservation requirements.)

The existing Fire Station No. 2 has had mold issues and has had it remediated. There is the possibility that mold may have developed again. The Architect does not provide environmental services and any related services are not included in this agreement.

ARTICLE A.2 PROJECT TEAM

§ A.2.1 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address and other information.)

Dru Tischer - Fire Chief

16 West Ninth, Shawnee, OK 74801 Email: dtischer@shawneecok.org

Andy Starkey - Assistant Fire Chief

16 West Ninth, Shawnee, OK 74801 Email: astarkey@shawneecok.org

John Krywicki - City Engineer

222 N. Broadway, Shawnee, OK 74801 Email: jkrywicki@shawneecok.org

§ A.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address and other information.)

§ A.2.3 The Owner will retain the following consultants and contractors:
(List discipline and, if known, identify them by name and address.)

Don Collins
Collins Design Service
112 Allee St.
Clemson, SC 29631
(864) 654-1841 - Studio
(864) 653-0378 - Cell
firestationdesign@gmail.com

§ A.2.4 The Architect identifies the following representative in accordance with Section 3.3:
(List name, address and other information.)

Whit Todd, AIA Email: wtodd@fritzbailey.com
Fritz Bailey, P.C.
1836 S. Baltimore Ave.
Tulsa, OK 74119

§ A.2.5 The Architect will retain the consultants identified in Sections A.2.5.1 and A.2.5.2.
(List discipline and, if known, identify them by name, legal status, address and other information.)

§ A.2.5.1 Consultants retained under Basic Services:

- 1 Structural Engineer
Wallace Engineering
200 East Mathew Brady
Tulsa, OK 74103

- 2 Mechanical Engineer
HP Engineering
1836 S. Baltimore Ave.
Tulsa, OK 74119

- 3 Electrical Engineer
HP Engineering
1836 S. Baltimore Ave.
Tulsa, OK 74119

§ A.2.5.2 Consultants retained under Additional Services:

Civil Engineer (if approved)

Wallace Engineering
200 East Mathew Brady
Tulsa, OK 74103

§ A.2.6 Other Initial Information on which the Agreement is based:
(Provide other Initial Information.)

EXHIBIT B

Fritz Baily, P.C. Hourly Rates

<u>Personnel</u>	<u>Amount</u>
Principal	\$160.00
Project Manager	\$125.00
Senior Designer	\$125.00
Construction Administrator	\$ 100.00
Documents Coordinator	\$ 95.00
Designer	\$ 90.00
Interior Designer	\$ 80.00
Senior Technician	\$ 80.00
Technician	\$ 65.00
Program Coordinator	\$ 60.00
Clerical/Support	\$ 55.00

PROJECT DESCRIPTION

The project consists of providing A/E services to provide biddable Contract Documents and services during construction for the remodel and/or redesign of Fire Station No. 2 located at 1401 Bryan Street, Shawnee, OK. The Owner desires a functional and effective Fire Station facility with strong emphasis on efficient space utilization and effective site aesthetics.

The existing Fire Station No. 2 went online in 1999. There have been major site drainage issues and building quality issues that have resulted in water damage, mold, and other building failures. The building was abandoned as an active fire station and is now used as a storage facility and houses several fire department trucks.

The architecture services to be provided includes: Architecture, Structural Engineering, Mechanical/Plumbing Engineering, Electrical Engineering and Interior Design. Civil Engineering is to be provided by the city engineer and is not included in the Architect's scope of work. Services during construction for the site civil improvements is also not included in the Architect's scope of work. The drawings and specifications for the civil engineering (produced and provided by the city) will be incorporated into the Architect's bid documents so that a single contractor will be utilized for both projects. The civil engineering work will be an "alternate" for bidding purposes and shall be administered during the construction phase by the city.

Partial Demolition, Reuse Existing Foundation, Slab and Metal Structure:

The complete demolition of the building and site improvements except for the building foundation, slab and metal building structure. This will entail rebuilding the site drainage, site paving, building envelope systems, MEP systems, and building interiors. Civil engineering services are not included in the architect's services.

EXHIBIT D

SEQUENCE OF SERVICES AND COMPENSATION

If mutually agreed to by both parties, the Architect's Compensation will be adjusted if the Cost of the Work substantially exceeds \$1,100,000.

We propose a two phase process to deliver the design services. We propose this because the demolition of the existing envelope might remove structural elements or could damage required structural elements. The structural integrity of the structural frame after demolition is complete needs to be determined. Also, the architectural detailing cannot occur until the structural frame is exposed.

PHASE ONE

Phase one entails:

- The visual evaluation of the existing building by the Architect and the Structural Engineer. The Structural Engineer is a consultant to the Architect.
- A biddable document that outlines the scope of the selective demolition that is required for the Architect and Structural Engineer to conduct a more thorough visual inspection of the existing building structural system.
- The Architect shall assist the city with obtaining bids from contractors to provide the selective demolition services.
- The selected contractor shall enter into an agreement with the city to provide the required demolition services and the contractor shall selectively demolish components of the building as outlined in the bid documents.
- The Architect and Structural Engineer shall evaluate the exposed structure and shall issue a report of their findings. The report shall be used as the basis of design for the second phase of the project.

PHASE TWO

Using the report that was produced during Phase One of the project, the Architect and it's consultants shall provide architectural design services as outlined in the agreement. Phase two entails the typical phases of an architectural project as outlined in the agreement:

- Schematic Design
- Design Development
- Construction Documents
- Bidding
- Services during Construction

FEES

PHASE ONE

Twelve thousand five hundred dollars (\$12,500)

PHASE TWO

Ninety four thousand dollars (\$94,000) provided in the following phases:

- Schematic Design \$9,000
- Design Development \$15,000
- Construction Documents \$41,000
- Bidding \$6,000
- Services during Construction \$23,000

CIVIL ENGINEERING SERVICES, SCOPE AND COORDINATION

The city shall provide the civil engineering services required of the project. The architect's services extend to the exterior face of the building and five feet beyond the building envelope for utilities. The civil engineering services provided by the city shall begin at the face of the building envelope outward and shall include utilities up to five feet of the building envelope. The city and the Architect shall coordinate the interface of building elements as needed. The Architect is not responsible for the design services of the civil engineer. The Architect's services during construction does not include the work beyond the design services provided by the Architect.

TIME FRAME

Phase One

Three weeks from notice to proceed (based on a week to select a contractor).

Phase Two

- Schematic Design Three weeks (begins once city has approved report from phase one)
- Design development Three weeks
- Construction documents Four weeks
- Bidding Four weeks (Bidding is to begin in the first part of July, 2016)
- Construction Six Months

This schedule provides a week of flex time to allow bidding to begin the first week of July, 2016.

Regular Board of Commissioners

7.

Meeting Date: 02/01/2016

FD 2 Budget Amd

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion, consideration and possible action to approve a Budget Amendment for design, engineering and biddable construction documents for the repair and renovation of Fire Station #2 located at 1401 N. Bryan. *Transfer from General Fund to Capital Fund.*

Attachments

Budget Amd

Estimated Revenue, Fund Balance, or Transfers IN

Fund Number	Account Number	Project Code	Line Item	Description	Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
001	3001			Fund Balance	6,278,515.00	(120,000.00)	6,158,515.00
				Total	-	(120,000.00)	(120,000.00)

Appropriations

[illegible]

Approved by the City Commission this
02/01/2016

Explanation of Budget Amendment:
To move money to pay for firestation
will be paid back once some debt is paid off
in capital fund

Approved:

Mayor _____

Attest:

City Clerk

Posted By _____ Date _____ BA# _____ Pkt.# _____

Estimated Revenue, Fund Balance, or Transfers IN

Fund Number	Account Number	Project Code	Line Item	Description	Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
301	4901			Fund Balance	-	120,000.00	120,000.00
				Total	-	120,000.00	120,000.00

Appropriations

Fund Number	Account Number	Project Code	Line Item	Description	Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
301	5-0720-5420			Capital Outlay- Suppression	718,244.00	120,000.00	838,244.00
					-	-	-
					718,244.00	120,000.00	838,244.00

Approved by the City Commission this
02/01/2016

Explanation of Budget Amendment:
Loan from General fund reserves to pay
for firestation rehab consultant- will be paid back

Approved:

Mayor _____
Attest: _____

City Clerk _____

Posted By _____ Date _____ BA# _____ Pkt.# _____

Regular Board of Commissioners

8.

Meeting Date: 02/01/2016

Dobson Tech

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion, consideration and possible action for an agreement for Dobson Technologies to make use of city rights of way upon the payment of a use and maintenance fee.

Attachments

Dobson Tech Memo

Dobson Tech Permit

Mayor
WES MAINORD



CITY MANAGER
JUSTIN ERICKSON

The City of Shawnee

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P.O. Box 1448
Shawnee, Oklahoma 74802-1448
Tel: (405) 878-1686
Fax: (405) 214-4249
maryann.karns@shawneeok.org
www.ShawneeOK.org

Commissioners
VACANT
LINDA AGEE
JAMES HARROD
KEITH HALL
LESA SHAW
MICHEAL DYKSTRA

MEMORANDUM

To: Mayor and City Commissioners

From: Justin Erickson

Re: Use of City Rights of Way by:
Dobson Technologies, Transport and Telecom Solutions, LLC

Date: February 1, 2016

Dobson Technologies needs to use various rights of way belonging to the City for the expansion of its system. At this time, Dobson does not have customers within the City limits; the expansion is being done for OneNet. There may be customers within the City in the future.

Telecommunications companies, by Oklahoma law, are not required to obtain a franchise. However, cities can charge maintenance and inspection fees in lieu of the franchise.

The maintenance and inspection fee is normally 3% of gross revenues, as in the agreement you approved with United Private Network. In this case, it may be many years before that income is available. The bulk of the cost to the City occurs at the time of installation when the lines are laid. Because of that circumstance, Dobson has agreed to pay the City \$7500 within thirty days, then 1.5% of any gross revenues in the future. The term is for 25 years, which is consistent with our other franchise agreements.

PERMIT FOR THE USE OF RIGHT OF WAY

This Permit is between the CITY OF SHAWNEE, OKLAHOMA, an Oklahoma home rule municipality (the "Grantor") and Dobson Technologies – Transport and Telecom Solutions, LLC 13900 N. Portland Avenue, Oklahoma City, OK 73134, a/k/a DOBSON TECHNOLOGIES (the "Grantee").

Pursuant to the covenants and agreements hereinafter contained to be kept and performed by the Grantee, the Grantor does hereby grant, to Grantee a perpetual, permanent right-of-way easement to erect, construct, install, lay, bury both above ground and underground, and thereafter use, operate, inspect, repair, maintain, upgrade, replace and/or rework equipment and facilities, including but not limited to poles, wires, cable, underground conduits, manholes, used to provide telecommunications services, advanced services, information services, broadband services, high capacity services, video services and other similar services and other pertinences thereto required (hereinafter "Facilities"), over, across and/or under construct, operate, and maintain such Facilities along and across streets, alleys, easements, public right-of-way and public property in said City.

SECTION 1 DEFINITION OF TERMS

- 1.1 **Terms.** For the purpose of this Permit, the following terms, phrases, words and their derivations shall have the meaning set forth below. When not inconsistent with the context, words used in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined shall be given their common and ordinary meaning. Notwithstanding anything herein to the contrary, all definitions shall be interpreted as being consistent with applicable law.
- A. "Board of Commissioners" or "City Commission" shall mean the governing body of the Grantor.
 - B. "City Engineer" shall mean the person designated by the City Manager to perform engineering services for the Grantor.
 - C. "City Manager" shall mean the City Manager of the City of Shawnee.
 - D. "Customer" shall mean any person contracting with the Grantee for its services.
 - E. "Gross Revenue" means any revenue, as determined in accordance with generally accepted accounting principles received by the Grantee from the operations of the Facilities in the Service Area; provided, however, that such phrase shall not include: (1) any taxes, fee, or assessment of general applicability or other Permit imposed costs collected by the Grantee from its customers for pass-through to a government agency; (2) Permit Fees paid by

the Grantee to the Grantor; (3) unrecovered bad debt; and (4) credits, refunds, and deposits paid to its Customers.

- F. "Permit" shall mean the non-exclusive rights granted pursuant to this Permit to construct, operate and maintain the Facilities within the Service Area.
- G. "Person" shall mean an individual, partnership, association, organization, corporation, trust or governmental entity.
- H. "Public School" shall mean any state-accredited K-12 public school located within the Service Area.
- I. "Service Area" shall mean the City Limits of the City of Shawnee, Oklahoma.
- J. "State" shall mean the State of Oklahoma.
- K. "Street" shall include each of the following located within the Service Area: public streets, roadways, highways, bridges, land paths, boulevards, avenues, lanes, alleys, sidewalks, circles, drives, easements, rights-of-way and similar public ways and extensions and additions thereto, including but not limited to public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses now or hereafter held by the Grantor in the Service Area, or by any Trust of which the Grantor is the Beneficiary, which shall entitle the Grantee to the use thereof for the purpose of installing, operating, repairing and maintaining the Facilities.
- L. "System" shall mean the Facilities.
- M. "Facilities" shall mean the equipment, fiber optic connections, and other equipment connected therewith in the provision of services to Customers of Grantee, but does not include television services.

SECTION 2

GRANT OF PERMIT

2.1 Grant. The Grantor grants to the Grantee a non-exclusive Permit that authorizes the Grantee to erect, construct, operate, and maintain in, upon, along, across, above, over, and under the Streets, now in existence and as may be created or established during its terms, any poles, wires, cable, underground conduits, manholes, other conductors, and fixtures necessary for the maintenance and operation of the Facilities.

2.2 Term. This Permit and the rights, privileges and authority granted shall be for an initial term of twenty-five (25) years, commencing on the Effective Date of this Permit, as set out in Section 8.9, unless otherwise lawfully terminated in accordance with the terms of this Permit.

2.3 Other Ordinances and Police Powers. The Grantee agrees to comply with the terms of any lawfully adopted generally applicable local ordinances, to the extent that the provisions of the ordinance do not have the effect of limiting the benefits or expanding the obligations of the Grantee that are granted by this Permit. This Permit is a contract, and Grantee reserves the right to challenge the provisions of any ordinance that conflict with its contractual rights, either now or in the future. In the event of a conflict between any ordinance and this Permit, the Permit shall control, provided, however, that the Grantee agrees that it is subject to the lawful exercise of the police power of the Grantor.

2.4 Permit in Lieu of Franchise. Grantor and Grantee agree that this Permit is in lieu of a Franchise. Should any court of competent jurisdiction find that the provision of the Facilities requires a vote of the people as set forth in Art. 18, § 7, of the Oklahoma Constitution, Grantor agrees to expedite, to the extent allowed by law, the holding of such an election.

SECTION 3

CONDITIONS OF STREET OCCUPANCY

3.1 System Construction. All transmission lines of whatever nature, equipment, and structures shall be so installed and located as to cause minimum interference with the rights and reasonable convenience of property owners and at all times shall be kept and maintained in a safe, adequate and substantial condition, and in good order and repair. The Grantee shall, at all times, employ ordinary care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage, injuries, or nuisances to the public. Suitable barricades, flags, lights, flares or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. Any poles or other fixtures placed in any Street by the Grantee shall be placed in such a manner as not to interfere with the usual travel on such Street.

3.2 General Conditions. Grantee shall have the right to utilize existing poles, conduits and other facilities whenever possible, and shall not construct or install any new, different, or additional poles, conduits, or other facilities on public property without obtaining all legally required permits of the Grantor.

3.3 Safety. The Facilities shall not endanger or unreasonably interfere with the safety of Persons or property in the Service Area. The Grantee shall at all times employ ordinary care and shall use commonly accepted methods and devices preventing failures and accidents which are likely to cause damage.

3.4 Compliance with Codes and Regulations. Construction, operation, and maintenance of the Facilities shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with generally applicable federal, state and local regulations and the National Electric Safety Code. The Grantee shall adhere to the Grantor's building and zoning codes currently or hereafter applicable

to construction, operation or maintenance of the Facilities in the Service Area, provided that such codes are of general applicability and such codes are uniformly and consistently applied by the Grantor as to public utility companies and others operating in the Service Area.

3.5 Underground Construction. The Facilities of the Grantee shall be installed underground in those Service Areas where existing telephone and electric systems are both underground at the time of the Facilities construction. In those areas where either telephone or electric utility facilities are installed aerially at the time of system construction, the Grantee may install its facilities aerially with the understanding that at such time as the exiting aerial facilities are required to be placed underground by the Grantor, the Grantee shall likewise place its facilities underground. Nothing in this section shall require the Grantee to construct, operate, and maintain underground any ground-mounted appurtenances. In the event that any telephone or electric utilities are reimbursed by Grantor or any agency thereof for the placement of cable underground or the movement of cable, Grantee shall be reimbursed upon the same terms and conditions as any telephone, electric, or other utilities, including cable television.

3.6 Restoration of Streets. If during the course of the Grantee's construction or maintenance of the Facilities there occurs a disturbance of any Street by the Grantee, Grantee shall replace and restore such Street to a condition reasonably comparable to the condition of the Streets immediately prior to such damage or disturbance.

3.7 Relocation for the Grantor. The Grantee shall, upon receipt of reasonable advance notice to be not less than ten (10) business days, protect, support, temporarily disconnect, relocate, or remove any property of the Grantee when lawfully required by the Grantor pursuant to its lawful police powers. The Grantee shall be responsible for any costs associated with these obligations to the same extent all other users of the Grantor's rights-of-way are responsible for the costs related to their facilities. The Grantee shall in all cases have the right of abandonment of its property.

3.8 Relocation for a Third Party. The Grantee shall, on the request of a Person holding a lawful permit issued by the Grantor, protect, support, raise, lower, temporarily disconnect, relocate in, or remove from the Street as necessary any property of the Grantee, provided that: (1) the expense of such is paid by any such Person benefiting from the relocation; (2) the Grantee is given reasonable advance notice to prepare for such changes, and, (3) if required by the Grantee, that such payment is made in advance. For purposes of this subsection, "reasonable advance written notice" shall be no less than ten (10) business days in the event of a temporary relocation and no less than one hundred twenty (120) days for a permanent relocation.

3.9 Removal in an Emergency. Whenever, in case of fire or other disaster, it becomes necessary in the reasonable judgment of the Grantor to remove any of the Grantee's facilities, no charge shall be made by the Grantee against the Grantor for restoration and repair, unless the Grantor acted in a negligent manner.

3.10 Reimbursement of Costs. If funds are available to any Person using the Streets for defraying the cost of any of the foregoing, the Grantor shall reimburse the Grantee in the same manner in which other Persons affected by the requirement are reimbursed. If the funds are controlled by another governmental entity, the Grantor shall make application for such funds on behalf of the Grantee.

3.11 Tree Trimming. Grantee or its designee shall have the authority to trim trees or other natural growth at its own expense in the public rights-of-way as may be necessary in order to access and maintain the Facilities and to protect its wires and facilities.

SECTION 4

INDEMNIFICATION AND INSURANCE

4.1 Indemnification. The Grantee agrees to indemnify, save and hold harmless, and defend the Grantor, its officers, boards, and employees from and against any liability for damages and for any liability or claims resulting from property damage or bodily injury, caused by the negligence of the Grantee in the construction or operation of the Facilities, provided that the Grantor shall give the Grantee written notice of its obligation to indemnify the Grantor within ten (10) days of receipt of a claim or action pursuant to this Section. In the event any such claim arises, the Grantor shall tender the defense thereof to the Grantee and the Grantee shall have the right to defend, settle, or compromise any claims arising hereunder and the Grantor shall cooperate fully herein. If the Grantor determined in good faith that its interests cannot be represented by the Grantee, the Grantee shall be excused from any obligation to represent the Grantor, and the cost of the separate counsel shall be the responsibility of the Grantor.

4.2 Insurance. The Grantee shall maintain in full force and effect, at its own cost and expense throughout the term of the Permit, Commercial General Liability Insurance in an amount of \$1,000,000 combined single limit for bodily injury and property damage. The Grantor shall be designated as an additional insured. Upon written request, the Grantee shall furnish the Grantor with a certificate of insurance evidencing such coverage.

SECTION 5

REGULATION BY THE GRANTOR

5.1 Permit Fee. Grantee shall pay to the Grantor a onetime fee of seven-thousand five-hundred dollars (\$7,500.00) within thirty (30) days after this Permit is approved by the City and thereafter Grantee shall pay to the Grantor an annual Permit fee in an amount equal to one and one-half percent (1.5%) of the annual Gross Revenue as defined in Section 1.1 of this Agreement.

5.1.1 Permit fee payments due to the City of Shawnee shall be payable quarterly within thirty (30) days after the end of each calendar quarter. A statement of Gross Revenue showing the basis for the computation of the fee shall accompany each payment. Any payment not received after 60 days after notice from Grantor

of non-payment of late fee of three percent (3%) will be assessed and payable to Grantor.

5.1.2 For a period of three (3) years from the date of the receipt of any payment, no acceptance of any payment shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount, nor shall acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums payable under this Agreement by the Grantee.

5.1.3 Audits to verify Permit fee payments may be conducted by the Grantor on behalf of the City Commission for a period of three (3) years after any payment is made. The Grantee will make available to the Grantor for review but not copying all records relevant to auditing and verifying fee agreement to protect the confidentiality of Grantee's records. The Grantee shall reimburse the Grantor for the Grantor's reasonable out-of-pocket costs if the audit results in an increase, by more than five percent (5%) of the Grantee's annual Permit fee payment to the Grantor for the year in question.

5.1.4 If this Agreement is terminated for any reason (other than through the issuance of a renewal or superseding Permit), during a calendar quarter, the Grantee will submit a permit fee payment that is prorated from the end of the last quarter through the date of termination. The Grantee shall file with the Grantor within ninety (90) calendar days of the date its operations in the Grantor cease, a financial statement, certified by the certified public accountant or an authorized representative of the Grantee, showing the Gross Revenues received by the Grantee since the end of the previous fiscal year. Adjustments will be made at that time for Permit fees then due to the date that the Grantee's operations under the terminated Permit ceased.

5.1.5 The Permit granted hereunder shall not be assigned, other than to an entity controlling, controlled by, or under common control with the Grantee, without the prior consent of the City Commission, such consent not to be unreasonably withheld or delayed. No such consent shall be required, however, for a transfer in trust, by mortgage, by other hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Facilities to secure indebtedness.

SECTION 6

RECORDS AND REPORTS

6.1 Inspection of Records/Reports

6.1.1 The Grantor shall have the right to inspect, upon reasonable written notice and during normal business hours, or require Grantee to make available within a reasonable time, access to those records maintained by Grantee which relate to the Facilities operations including specifically Grantee's Gross Revenues records and an annual financial report; provided, however, Grantee may withhold records it

deems to be confidential and proprietary. Grantee shall produce such books and records for Grantor's inspection at Grantee's local office or at another mutually agreed upon location.

6.1.2 The Grantor acknowledges that some of the records that may be provided by Grantee may be classified as confidential and/or trade secret information and therefore may subject Grantee to competitive disadvantage if made public. The Grantor shall therefore maintain the confidentiality of any records provided to it by Grantee that are identified by Grantee in writing as "confidential" or "trade secret." Upon receipt of demand from a third party, government agency or regulatory body for disclosure of records, the Grantor shall advise Grantee and provide Grantee with a copy of any written request by the party demanding access to such records before the proposed release. Until otherwise ordered by a court or agency of competent jurisdiction, the Grantor agrees that, to the extent permitted by state and federal law, it shall deny access to any of Grantee's books and records marked confidential or trade secret as set forth above. The Grantor shall be liable to Grantee for any damages resulting from Grantor's failure to strictly comply with this Section.

6.1.3 Grantee shall provide written notice to Grantor of any default or bankruptcy proceeding that directly or indirectly involves the franchise granted herein.

6.1.4 Grantee shall provide notice to Grantor of any petition to file for bankruptcy or reorganization involving any bankruptcy proceeding.

SECTION 7

ENFORCEMENT AND REVOCATION

7.1 Notice of Violation. In the event that the Grantor believes that the Grantee has not complied with the terms of the Permit, the Grantor shall first informally discuss the matter with Grantee. If these discussions do not lead to resolution of the problem, the Grantor shall notify the Grantee in writing of the exact nature of the alleged noncompliance, including the section or sections of the Permit Grantee is alleged to have violated and the facts and circumstances leading the Grantor to conclude a violation has occurred (the "Violation Notice").

7.2 Grantee's Right to Cure or Respond. The Grantee shall have thirty (30) days from receipt of the Violation Notice to (i) respond to the Grantor, contesting the assertion of noncompliance, which shall toll the running of the thirty (30) day time period herein, or (ii) to cure such default, or (iii) if, by the nature of default, such default cannot be cured within the thirty (30) day period, initiate reasonable steps to remedy such default and notify the Grantor of the steps taken and the projected date that such default will be completed.

7.3 Public Hearing. In the event that the Grantee fails to respond to the Violation Notice received from the Grantor, or in the event that the alleged default is not remedied within the cure period set forth above, or if Grantee contests the assertion of noncompliance, and the City intends to continue its investigation into the default, the Grantor shall schedule a public hearing. The Grantor shall provide the Grantee at least twenty (20) days prior written notice of such hearing, which specifies the time, place, and purpose of such hearing. The notice of hearing shall be published by the Clerk of the Grantor in a newspaper of general circulation in the Service Area if required by applicable law.

7.4 Enforcement. In the event the Grantor, after the hearing set forth in subsection 7.3 above, determines that the Grantee is in default of any provision of the Permit, the Grantor may:

7.4.1 Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or

7.4.2 Commence an action at law for monetary damages or seek other equitable relief; or

7.4.3 In the case of a substantial default of a material provision of the Permit, seek to revoke the Permit itself in accordance with subsection 7.5 below.

7.5 Revocation

7.5.1 Should the Grantor seek to revoke a Permit, after following the procedures set forth above in this Section 7, the Grantor shall give written notice to the Grantee of its intent. The notice shall set forth the exact nature of the noncompliance. The Grantee shall have sixty (60) days from such notice to either object in writing and to state its reasons for such objections and provide any explanation, or to cure the alleged noncompliance. If the Grantor has not received a satisfactory response from the Grantee, it may then seek to revoke the Permit at a public hearing. The Grantee shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the Permit.

7.5.2 At the hearing, the Grantor shall give the Grantee an opportunity to state its position on the matter, after which it shall determine whether or not the Permit shall be revoked. The decision of the City Commission shall be made in writing and shall be delivered to the Grantee. The Grantee may appeal such determination to an appropriate court, which shall have the power to review the decision of the Grantor *de novo*. The Grantee may continue to operate the Facilities until all legal appeal procedures have been exhausted.

7.5.3 Notwithstanding the above provisions, the Grantee does not waive any of its rights under federal law or regulation. The Grantor may, at its sole discretion,

take any lawful action that it deems appropriate to enforce its rights under the Permit in lieu of revocation of the Permit.

7.5.4 Upon revocation of the Permit, Grantee may remove the Facilities from the Streets of Grantor, or abandon the Facilities in place.

SECTION 8

MISCELLANEOUS PROVISIONS

8.1 Jurisdiction and Venue. This Agreement is subject to and shall be construed in accordance with the laws of the State of Oklahoma without regard to conflict of law provisions. Jurisdiction shall be in the courts of the State of Oklahoma and venue shall be in Pottawatomie County; or if federal courts, the Western District of Oklahoma.

8.2 Force Majeure. The Grantee shall not be held in default under, or in noncompliance with the provisions of the Permit, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of the Grantee to anticipate and control. This provision includes, but is not limited to, work delays caused by waiting for utility providers to service or monitor their utility poles to which Grantee's Facilities is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

8.3 Minor Violations. The parties hereby agree that it is not the Grantor's intention to subject the Grantee to penalties, fines, forfeitures, or revocation of the Permit for violations of the Permit where the violation was a good faith error that resulted in no or minimal negative impact on the Subscribers within the Service Area, or where strict performance would result in practical difficulties and hardship to the Grantee which outweighs the benefit to be derived by the Grantor and/or Customers.

8.4 Action of Parties. In any action by the Grantor or the Grantee that is mandated or permitted under the terms hereof, any party shall act in a reasonable, expeditious and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld.

8.5 Equal Protection. The Grantor shall not authorize or permit any Person to enter into the Grantor's Streets for the purpose of constructing or operating the Facilities to any part of the Service Area on terms or conditions more favorable or less burdensome to such Person than those applied to the Grantee pursuant to this Permit, in order that one operator not be granted an unfair competitive advantage over another and to provide all parties equal protection under the law.

8.6 Notices. Unless otherwise expressly agreed between the parties, all notices, responses, reports, or demands required to be given under this Permit shall be in writing and shall be deemed to be given when placed in a properly sealed and correctly addressed envelope: a) upon receipt when hand-delivered with receipt/acknowledgement; b) upon

receipt when sent certified mail or registered mail; or c) within five (5) business days after having been posted in the regular mail.

If to the Grantor: City of Shawnee
 Attention: City Manager
 PO Box 1448
 Shawnee, OK 74802

With a copy to: City of Shawnee
 Attention: City Attorney
 PO Box 1448
 Shawnee, OK 74802

If to the Grantee: Dobson Technologies
 Jim Horsburgh, SVP Corp Development
 13900 N. Portland Ave.
 Oklahoma City, OK 73134

8.7 Severability. If any section, subsection, sentence, clause, phrase, or portion of this Permit is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, or by any state or federal regulatory authority, such portion shall be deemed a separate, distinct, and independent provision and such determination shall have no effect on the validity of any other Section sentence, clause, phrase, or portion hereof, all of which will remain in full force and effect for the term of this Permit.

8.8 Entire Agreement. This Permit sets forth the entire agreement between the parties respecting the subject matter hereof. All agreements, covenants, representations, and warranties, express and implied, oral and written, of the parties with regard to the subject matter hereof are contained herein. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants, and warranties with respect to the subject matter hereof are waived, merged herein and therein, and are superseded hereby and thereby.

8.9 Administration of Permit. This Permit is a contract and neither party may take any unilateral action that materially changes the explicit mutual promises and covenants contained herein. Any changes, modifications, or amendments to this Permit must be made in writing, signed by the Grantor and the Grantee.

8.10 Effective Date. The Effective Date of this Permit is ____ day of _____, 2016, pursuant to the provisions of applicable law. Considered and approved this ____ day of _____, 2016.

CITY OF SHAWNEE, OKLAHOMA, GRANTOR

BY: _____
WES MAINORD, MAYOR

ATTEST:

PHYLLIS LOFTIS, CMC, CITY CLERK

(SEAL)

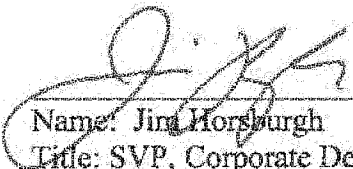
Approved as to form and legality this _____ day of _____, 2016.

MARY ANN KARNS, CITY ATTORNEY

Accepted this 28th day of January, 2016, subject to applicable federal, state, and local law.

DOBSON TECHNOLOGIES, GRANTEE

BY:


Name: Jim Horsburgh

Title: SVP, Corporate Development

Regular Board of Commissioners

9. a.

Meeting Date: 02/01/2016

Admin Rpt - JD

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Zoning Process and Role of Planning Commission - Justin DeBruin, Community Development Director

Attachments

No file(s) attached.

Regular Board of Commissioners

10.

Meeting Date: 02/01/2016

CM Update

Submitted By: Lisa Lasyone, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

City Manager Update

Attachments

No file(s) attached.
