

AGENDA
BOARD OF CITY COMMISSIONERS
October 4, 2021 AT 6:00 P.M.
COMMISSION CHAMBERS AT CITY HALL
16 WEST 9TH STREET
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

INVOCATION

FLAG SALUTE

1. Citizens Participation

(A three minute limit per person)
(A twelve minute limit per topic)
2. Consider approval of Consent Agenda:
 - a. Minutes from the September 20, 2021 Special Call meeting, September 20, 2021 regular meeting, and the September 21, 2021 Special Call meeting.
 - b. Acknowledge the following minutes:
 - Shawnee Community Beautification Committee Minutes from the May 20, 2021 regular meeting.
 - c. Lake Lease Transfers:

TRANSFERS:
Lot 11 Belcher Tract, 15609 Nickens Road
From: Bob and Kellianne Weaver
To: Mark H. and Mary Jane Cannon

Lot 1 Magnino A Tract, 16816 Magnino Road
From: Jose and Jennifer Massey
To: Sutton Ryan Petz Irrevocable Trust C/O Jordan Monk Reber, PC
3. Presentation by Animal Control to present the Pet of the Week.
4. Discussion and consideration of a contract with Andrea Weckmueller-Behringer as City Manager.

5. Consideration of a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that establishes and provides compensation of the City Manager pursuant to Article V, Section 3 of the City Charter.
6. Swearing in of Andrea Weckmueller-Behringer as City Manager. *(This item only occurs if a contract is approved during Agenda Item No. 4.)*
7. Presentation by Peggy Cook, Pioneer Library Systems, regarding a Story Walk at Boy Scout Park.
8. Discussion and consideration of a contract with Meshek & Associates, LLC for the Right-of-Way Acquisition for the following projects:
 - Kickapoo Street
 - Independence Street
 - Highland Street
9. Discussion and consideration of a Real Property Exchange Agreement and approval of deeds ancillary thereto, between Shawnee Public Schools (Independent School District No. 93) and the City of Shawnee; and authorizing the Mayor to execute the Real Property Exchange Agreement and Deeds on behalf of the City of Shawnee.
10. Discussion and consideration of an ordinance relating to shopping carts, amending Chapter 8 of the Shawnee Municipal Code by creating Article XI of Chapter 8, shopping carts; providing for repeal; providing for severability; providing for codification; and providing for emergency clause. *(Deferred from the September 20, 2021 City Commission meeting.)*
11. Consideration of the following budget amendments for Fiscal Year 2021-2022:
 - a. Fund 001 General Fund – To fund Lake Survey contract.
 - b. Fund 001 General Fund – To fund Radio Maintenance contract.
 - c. Fund 706 Gifts and Contributions – To fund expenditures for Fire Clown Program using prior year donations.
12. Consider Bids:
 - a. Fence Removal and Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D1 (Award)
13. Administrative Reports
 - a. Heart of Oklahoma Exposition Center Progress – Katy Fleming, Heart of Oklahoma Exposition Center General Manager

14. Discussion and presentations of City Commissioner Ward 2 applicants:
 - Cami Engles
 - Elliot Shuler
 - Frank Sims
15. Discussion, consideration, and possible action to appoint a City Commissioner to the Ward 2 position to fill the open position left by the resignation of Ward 2 Commissioner Bob Weaver, to complete the remainder of term, expiring 2024.
16. Swearing in of Ward 2 Commissioner. *(This item only occurs if a Commissioner for Ward 2 is appointed during Agenda Item No. 15.)*
17. Discussion and consideration of Mayor's appointments to the Lake Advisory Committee.
18. New Business

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

Respectfully submitted,

Lisa Lasyone, 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**2. a.**

Meeting Date: 10/04/2021

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Minutes from the September 20, 2021 Special Call meeting, September 20, 2021 regular meeting, and the September 21, 2021 Special Call meeting.

Attachments

09-20-2021 Special Call

09-20-2021 Regular Meeting

09-21-2021 Special Call

BOARD OF CITY COMMISSIONERS
CITY OF SHAWNEE
SPECIAL CALLED SESSION
SEPTEMBER 20, 2021

The Board of City Commissioners of the City of Shawnee met in Special Called Session at the Shawnee Commission Chambers, 16 West 9th Street, Shawnee, Oklahoma Monday, September 20th, 2021 at 4:30 p.m., pursuant to notice duly posted as prescribed by law. Mayor Bolt presided and called the meeting to order. The following members were in attendance and a quorum was declared.

Ed Bolt
Mayor

Daniel Matthews
Commissioner Ward 1

Bob Weaver
Commissioner Ward 2

Travis Flood
Commissioner Ward 3

Darren Rutherford
Commissioner Ward 4-Vice Mayor

Mark Sehorn
Commissioner Ward 5

Ben Salter
Commissioner Ward 6

Absent: None

The Call for said meeting was entered upon the records by the City Clerk, said Call being as follows:

NOTICE OF A CALLED SPECIAL SESSION OF THE BOARD OF CITY
COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA

TO THE BOARD OF COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA:

You and each of you are hereby notified that by virtue of a call issued by me on this 15th day of September, 2021, a Special Called Session will be held of the Board of Commissioners of the City of Shawnee, Oklahoma in the Shawnee Commission Chambers, 16 West 9th Street, Shawnee, Oklahoma at 4:30 p.m. on the 20th day of September, 2021, and you are hereby notified to be present at said meeting.

The purpose of said meeting will be to receive governing body training from Oklahoma Municipal Assurance Group (OMAG).

Witness my hand this 15th day of September, 2021.

(SEAL)

ATTEST:

/s/ Lisa Lasyone

LISA LASYONE, CMC
CITY CLERK

/s/ S. Eric Benson

S. ERIC BENSON
CITY MANAGER

STATE OF OKLAHOMA, COUNTY OF POTTAWATOMIE, SS.

I received this notice on the 15th day of September, 2021 at 12:44 p.m., and executed the same by delivering a true and correct copy thereof to the Mayor and to each of the Commissioners of the Board of City Commissioners for the City of Shawnee, Oklahoma:

A read verification was received from Mayor Ed Bolt at 1:48 p.m. on September 15, 2021.

A read verification was not received from Commissioner Daniel Matthews.

A read verification was not received from Commissioner Bob Weaver.

A read verification was received from Commissioner Travis Flood at 7:13 a.m. on September 16, 2021.

A read verification was not received from Vice Mayor Darren Rutherford.

A read verification was not received from Commissioner Mark Sehorn.

A read verification was received from Commissioner Ben Salter at 6:54 p.m. on September 15, 2021.

LISA LASYONE, CMC
CITY CLERK

CALL FOR SPECIAL SESSION OF THE SHAWNEE BOARD OF CITY COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA TO BE HELD ON THE 20TH DAY OF SEPTEMBER, 2021 AT 4:30 P.M. AT THE SHAWNEE COMMISSION CHAMBERS, 16 WEST NINTH STREET, SHAWNEE, OKLAHOMA. THE PURPOSE OF SAID MEETING WILL BE TO RECEIVE GOVERNING BODY TRAINING FROM OKLAHOMA MUNICIPAL ASSURANCE GROUP (OMAG).

By virtue of the authority vested in me by Section 4, Article IV of the Charter of the City of Shawnee, Oklahoma, a Special Session of the Board of City Commissioners of the City of Shawnee, Oklahoma is hereby called to meet at the City Commission Chambers, 16 West 9th Street, Shawnee, Oklahoma at 4:30 p.m. on the 20th day of September, 2021 to receive governing body training from Oklahoma Municipal Assurance Group (OMAG).

Witness my hand this 15th day of September, 2021.

/s/ S. Eric Benson

S. ERIC BENSON
CITY MANAGER

(SEAL)

ATTEST:

/s/ Lisa Lasyone

LISA LASYONE, CMC
CITY CLERK

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN SPECIAL CALLED SESSION IN THE SHAWNEE COMMISSION CHAMBERS, 16 WEST 9TH STREET, SHAWNEE, OKLAHOMA MONDAY, SEPTEMBER 20, 2021 AT 4:30 P.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. MAYOR BOLT PRESIDED AND CALLED THE MEETING TO ORDER. THE FOLLOWING MEMBERS WERE IN ATTENDANCE.

CALL TO ORDER AT 4:30 P.M.

PRESENT AT ROLL CALL: Matthews, Weaver, Flood, Bolt, Rutherford, Sehorn, Salter
ABSENT AT ROLL CALL: None

DECLARATION OF A QUORUM

AGENDA ITEM NO. 1: Receive governing body training from Oklahoma Municipal Assurance Group (OMAG).

Ms. Dorie Spitler, OMAG, and Mr. David Weatherford, Birmingham, Morley, Weatherford & Priore, presented governing body training to the Mayor and Commissioners.

AGENDA ITEM NO. 2: ADJOURNMENT

There being no further business to be considered, the meeting was adjourned by power of the Chair at 5:50 p.m.

ED BOLT, MAYOR

(SEAL)

ATTEST:

LISA LASYONE, CMC
CITY CLERK

BOARD OF CITY COMMISSIONERS PROCEEDINGS

SEPTEMBER 20, 2021 AT 6:00 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, 16 West 9th Street, Shawnee, Oklahoma on, Monday, September 20, 2021 at 6:00 p.m., pursuant to notice duly posted as prescribed by law at 9:29 a.m. on September 17, 2021. Mayor Bolt presided and Mr. Aiden Muller called the meeting to order. Upon roll call, the following members were in attendance.

Ed Bolt
Mayor

Daniel Matthews
Commissioner Ward 1

Bob Weaver
Commissioner Ward 2

Travis Flood
Commissioner Ward 3

Darren Rutherford
Commissioner Ward 4-Vice Mayor

Mark Sehorn
Commissioner Ward 5

Ben Salter
Commissioner Ward 6

ABSENT: None

INVOCATION

Chairman John “Rocky” Barrett
Citizen Potawatomi Nation

FLAG SALUTE

AGENDA ITEM NO. 1:

Citizens Participation
(A three-minute limit per person)
(A twelve-minute limit per topic)

Mr. Paul Bass, President of First United Bank of Shawnee, read a collective statement from the bank presidents of First United Bank, Arvest Bank, BancFirst, First National Bank, and Vision Bank regarding their collective support for the Joint Resolution between the City of Shawnee and Citizen Potawatomi Nation.

Ms. Judith Michener addressed questions she had regarding the proposed de-annexation.

Mr. Darrin Lofton provided an update on KSNL Aero business activities.

Mr. Rob Morris provided a handout to the Mayor, Commissioners, and Staff. Mr. Morris spoke regarding, but not limited to, the proposed de-annexation, Shawnee Lake Advisory Committee, proposals with Elevation Land Survey and Latham Consulting, and the Shawnee Civic and Cultural Development Authority.

Ms. Teresa Burnett expressed concerns regarding the Joint Agreement with the City of Shawnee and Citizen Potawatomi Nation.

Mr. Rich Rudebock provided a handout to the Mayor, Commissioners, and Staff. Mr. Rudebock spoke regarding the shoreline erosion at Shawnee Twin Lakes.

Mr. Brandon Dyer, Director of Community Renewal for Pottawatomie County, expressed his support for the Joint Resolution with Citizen Potawatomi Nation.

AGENDA ITEM NO. 2:

Consider approval of Consent Agenda:

- a. Acknowledge staff will proceed in the instant meeting with the opening and consideration of bids as set forth in Agenda Item Nos. 27(a-b).
- b. Minutes from the September 7, 2021 regular meeting.
- c. Acknowledge the following reports and minutes:
 - License Payment Report for August 2021
 - Project Payment Report for August 2021
 - Planning Commission Minutes from the July 7, 2021 and August 4, 2021 regular meetings.
- d. Acceptance of the public improvements for Cardinal Point Development and place maintenance bonds into effect.

- e. Acknowledge the resignation of Lisa Hair from the Shawnee Community Beautification Committee.
- f. Acknowledge the resignation of Mindy Palmer from the Shawnee Civic and Cultural Development Authority.
- g. Approve renewal of the Pottawatomie County Public Safety Center Jail Services Agreement.
- h. Lake Lease Transfer:

TRANSFER:

Lot 12 Eckel Tract, 15105 Eckel Road
From: Cannon Revocable Living Trust
To: CC Cannon, LLC

Lot 16 Johnson Tract, 16614 Stevens Road
From: Howard Tommie
To: LeLand Prewitt and Rhonda Renee Berry

Lots 14 and 15 Johnson Tract, 16618 Stevens Road
From: Howard Tommie
To: LeLand Prewitt and Rhonda Renee Berry

- i. Mayor's Appointments:

Shawnee Arts and Culture Commission

Sha'kiya Morris 1st Partial Term Expires: May 1, 2024
Replaces LeAnne Henry Wright – Resigned

Shawnee Civic and Cultural Development Authority

Stacy Cramer Moore 1st Partial Term Expires: December 31, 2023
Replaces Mindy Palmer – Resigned

Shawnee Hospital Authority

Mark Finley 3rd Full Term Expires: December 31, 2027
Reappointment

Kathleen Laster 3rd Full Term Expires: December 31, 2027
Reappointment

Stephen Trotter
Reappointment

3rd Full Term

Expires: December 31, 2027

Commissioner Salter asked that Consent Agenda Item No. 2(b) be pulled for separate consideration.

A motion was made by Commissioner Flood, seconded by Commissioner Weaver, to approve Consent Agenda Item Nos. 2(a-i), less item 2(b). Motion carried 7-0.

AYE: Flood, Weaver, Bolt, Rutherford, Sehorn, Salter, Matthews

NAY: None

Regarding Agenda Item No. 2(b), Commissioner Salter he would abstain from voting since he did not attend the September 7, 2021 City Commission Meeting.

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to approve Consent Agenda Item No. 2(b). Motion carried 6-0-1.

AYE: Matthews, Rutherford, Sehorn, Weaver, Flood, Bolt

NAY: None

ABSTAIN: Salter

AGENDA ITEM NO. 3:

Presentation by Animal Control to present the Pet of the Week.

Animal Control Officers Wendy Cole and Brandy Spoon introduced Moe, a six-month-old male cat. Moe is up for adoption.

Officer Cole advised that the Animal Shelter currently has twenty-three dogs, one cat, and one pig.

AGENDA ITEM NO. 4:

Discussion, consideration, and possible action to enter into executive session in accordance with 25 O.S. § 307(B)(4) to discuss confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a

pending investigation, litigation, or proceeding in the public interest, specifically regarding Pottawatomie County Case No. CV-2014-128.

A motion was made by Commissioner Matthews, seconded by Commissioner Weaver, to enter into executive session in accordance with 25 O.S. § 307(B)(4) to discuss confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest, specifically regarding Pottawatomie County Case No. CV-2014-128. Motion carried 7-0.

AYE: Matthews, Weaver, Flood, Bolt, Rutherford, Sehorn, Salter
NAY: None

COMMISSION ENTERED INTO EXECUTIVE SESSION AT 6:33 P.M. WITH ALL MEMBERS PRESENT.

COMMISSION RECONVENED FROM EXECUTIVE SESSION AT 7:05 P.M. WITH ALL MEMBERS PRESENT.

AGENDA ITEM NO. 5:

Consider matters discussed in executive session in accordance with 25 O.S. § 307(B)(4) to discuss confidential communications between a public body and its attorney concerning a pending investigation, claim, or action if the public body, with the advice of its attorney, determines that disclosure will seriously impair the ability of the public body to process the claim or conduct a pending investigation, litigation, or proceeding in the public interest, specifically regarding Pottawatomie County Case No. CV-2014-128.

There was no action taken.

AGENDA ITEM NO. 6:

Acknowledgment of Citizen Potawatomi Nation approval of the Joint Resolution and Cooperation Agreement.

City Attorney Joe Vorndran advised that Citizen Potawatomi Nation has reviewed and approved the Joint Resolution and Cooperation Agreement.

There was no action taken.

AGENDA ITEM NO. 7:

Discussion and consideration regarding the Cooperation Agreement between the City of Shawnee, Oklahoma and the Citizen Potawatomi Nation; approving the Cooperation Agreement; and authorizing the Mayor to execute the Cooperation Agreement on behalf of the City of Shawnee.

A motion was made by Commissioner Flood, seconded by Commissioner Sehorn, to approve the Cooperation Agreement between the City of Shawnee, Oklahoma and the Citizen Potawatomi Nation; and authorizing the Mayor to execute the Cooperation Agreement on behalf of the City of Shawnee. Motion carried 7-0.

AYE: Flood, Sehorn, Salter, Matthews, Weaver, Bolt, Rutherford

NAY: None

AGENDA ITEM NO. 8:

Discussion and consideration of a Joint Resolution of the City of Shawnee and the Citizen Potawatomi Nation committing to continued partnership for the growth and strength of the respective entities; approving the Joint Resolution; and authorizing the Mayor to execute the Cooperation Agreement on behalf of the City of Shawnee.

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to approve a Joint Resolution of the City of Shawnee and the Citizen Potawatomi Nation committing to continued partnership for the growth and strength of the respective entities; approving the Joint Resolution; and authorizing

the Mayor to execute the Cooperation Agreement on behalf of the City of Shawnee.

Resolution was introduced.

JOINT RESOLUTION BY AND BETWEEN THE CITIZEN POTAWATOMI NATION AND THE CITY OF SHAWNEE, OKLAHOMA COMMITTING TO CONTINUED PARTNERSHIP FOR THE GROWTH AND STRENGTH OF THE RESPECTIVE ENTITIES.

Motion carried 7-0.

AYE: Matthews, Rutherford, Sehorn, Salter, Weaver, Flood, Bolt

NAY: None

AGENDA ITEM NO. 9:

Consideration of an ordinance relating to amending the boundaries of the City of Shawnee, Oklahoma by de-annexing/detaching certain real property within the City of Shawnee, Pottawatomie County to-wit: All or part of Sections 25, 35, 36, Township 10 North, Range 3 East of the Indian Meridian; and all or part of Sections 28, 29, 30, 31, Township 10 North, Range 4 East of the Indian Meridian, all lying within Pottawatomie County, State of Oklahoma, and more fully described within the Ordinance attached hereto; providing for repeal; providing for severability; and providing for emergency clause.

City Attorney Joe Vorndran advised that a correction was made on the original legal to the proposed ordinance and a copy was provided to the Mayor and Commissioners.

A motion was made by Commissioner Flood, seconded by Commissioner Matthews, to approve an ordinance with the amended Exhibit A relating to amending the boundaries of the City of Shawnee, Oklahoma by de-annexing/detaching certain real property within the City of Shawnee, Pottawatomie County to-wit: All or part of Sections 25, 35, 36, Township 10 North, Range 3 East of the Indian Meridian; and all or part of Sections 28, 29, 30, 31, Township 10 North, Range 4 East of the Indian Meridian, all lying within Pottawatomie County,

State of Oklahoma, and more fully described within the Ordinance attached hereto; providing for repeal; providing for severability; and providing for emergency clause.

Ordinance No. 2726NS was introduced.

AN ORDINANCE AMENDING THE BOUNDARIES OF THE CITY OF SHAWNEE, OKLAHOMA, BY DE-ANNEXING/DETACHING CERTAIN PROPERTY WITHIN THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, TO-WIT: ALL OR PART OF SECTIONS 25, 35, 36, TOWNSHIP 10 NORTH, RANGE 3 EAST OF THE INDIAN MERIDIAN; AND ALL OR PART OF SECTIONS 28, 29, 30, 31, TOWNSHIP 10 NORTH, RANGE 4 EAST OF THE INDIAN MERIDIAN, ALL LYING WITHIN POTTAWATOMIE COUNTY, STATE OF OKLAHOMA, AND MORE FULLY DESCRIBED HEREIN; AND DECLARING AND EMERGENCY.

Motion carried 7-0.

AYE: Flood, Matthews, Weaver, Bolt, Rutherford, Sehorn, Salter

NAY: None

Ordinance No. 2726NS was adopted by the City Commission

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to approve the emergency clause relating to Ordinance No. 2726NS. Motion carried 7-0.

AYE: Matthews, Rutherford, Sehorn, Salter, Weaver, Flood, Bolt

NAY: None

RECESS CITY COMMISSION MEETING BY THE POWER OF THE CHAIR FOR TEN MINUTE BREAK (7:14 p.m.)

RECONVENE CITY COMMISSION MEETING BY THE POWER OF THE CHAIR (7:24 P.M.)

AGENDA ITEM NO. 10:

Acknowledgement of the resignation of Ward 2 Commissioner Bob Weaver, effective 11:59 p.m. September 21, 2021.

Commissioner Weaver stated that he will be moving outside of Ward 2 and therefore is resigning as Ward 2 Commissioner.

There was no action taken.

AGENDA ITEM NO. 11:

Discussion and consideration of possible appointment for Ward 2 Commissioner to complete remainder of term, expiring 2024.

City Attorney Joe Vorndran advised of the options that the Commission could take to appoint a Commissioner for Ward 2. If the Commission does appoint a replacement, the appointee would only serve until the next general election, which is June 2022. If elected in June 2022, that term would be for the remaining two years of the term, which would expire in 2024.

A motion was made by Mayor Bolt, seconded by Commissioner Matthews, to advertise the position for Ward 2 Commissioner to complete remainder of term, expiring 2024. Motion carried 7-0.

AYE: Bolt, Matthews, Weaver, Flood, Rutherford, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 12:

Discussion and consideration of an appointment of a City Commissioner to the Parks and Recreation Committee.

City Attorney Joe Vorndran advised that Commissioner Weaver currently sits on the Parks and Recreation Committee as the Commission representative. Due to his resignation of Ward 2 Commissioner, Staff is requesting that the Commission appoint another Commissioner to sit on the Parks and Recreation Committee.

Commissioner Flood volunteered to serve on the Parks and Recreation Committee.

A motion was made by Commissioner Weaver, seconded by Commissioner Sehorn, to ratify the Mayoral appointment of Commissioner Flood to serve on the Parks and Recreation Committee. Motion carried 6-0-1.

AYE: Weaver, Sehorn, Salter, Matthews, Bolt, Rutherford

NAY: None

ABSTAIN: Flood

AGENDA ITEM NO. 13:

Discussion and consideration of a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma amending the Committee make-up of the Lake Advisory Committee, pursuant to Chapter Two, Section 35 of the Shawnee Code of Ordinances.

City Attorney Joe Vorndran advised that Commissioner Weaver currently sits on the Lake Advisory Committee as the Commission representative. Due to his resignation of Ward 2 Commissioner, it would reduce the number of Commissioners serving on the Committee to one. The proposed resolution amends the number of members from twelve (12) to thirteen (13), with two members reserved for City Commissioners and one (1) for the City Attorney.

Discussion was held between the Commission and Staff.

A motion was made by Commissioner Matthews, seconded by Commissioner Flood, to approve a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma amending the Committee make-up of the Lake Advisory Committee, pursuant to Chapter Two, Section 35 of the Shawnee Code of Ordinances.

Resolution No. 6642 was introduced.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA AMENDING THE COMMITTEE MAKE-UP OF THE LAKE ADVISORY COMMITTEE, PURSUANT TO CHAPTER TWO, SECTION 35 OF THE SHAWNEE CODE OF ORDINANCES.

Motion carried 7-0.

AYE: Matthews, Flood, Bolt, Rutherford, Sehorn, Salter, Weaver

NAY: None

AGENDA ITEM NO. 14:

Discussion and consideration to lease a 2022 Freightliner Asphalt Patch Truck from JR Equipment, at the total annual cost of \$56,722.48.

Public Works Director Brad Schmidt advised that the proposed lease is for 36-months and would provide for a new patch truck.

A motion was made by Commissioner Sehorn, seconded by Vice Mayor Rutherford, to approve to lease a 2022 Freightliner Asphalt Patch Truck from JR Equipment, at the total annual cost of \$56,722.48. Motion carried 7-0.

AYE: Sehorn, Rutherford, Salter, Matthews, Weaver, Flood, Bolt

NAY: None

AGENDA ITEM NO. 15:

Discussion and consideration of a proposal with Elevation Land Surveying to provide Professional Survey Services at Shawnee Twin Lakes.

City Engineer Seth Barkhimer gave a Staff report.

A motion was made by Commissioner Weaver, seconded by Commissioner Sehorn, to approve a proposal with Elevation Land Surveying to provide Professional Survey Services at Shawnee Twin Lakes. Motion carried 7-0.

AYE: Weaver, Sehorn, Salter, Matthews, Flood, Bolt, Rutherford

NAY: None

AGENDA ITEM NO. 16:

Discussion and consideration of a proposal with Latham Consulting Group and Dunnington Consulting for governmental and community affairs.

Interim City Manager Eric Benson gave a Staff report and introduced Mr. Matt Latham and Mr. Jason Dunnington with Latham Consulting Group.

Mr. Matt Latham and Mr. Jason Dunnington answered questions from the Mayor and Commissioners.

A motion was made by Commissioner Matthews, seconded by Commissioner Flood, to approve a proposal with Latham Consulting Group and Dunnington Consulting for governmental and community affairs. Motion carried 7-0.

AYE: Matthews, Flood, Bolt, Rutherford, Sehorn, Salter, Weaver

NAY: None

AGENDA ITEM NO. 17:

Discussion and consideration of an amended contract with Safe Events for Families (SEFF) for Fiscal Year 2021-2022.

City Attorney Joe Vorndran stated that the proposed contract amends a contract with Safe Events for Families approved by the Commission on June 7, 2021. The proposed amended contract amends Paragraph 8 to allow the City Manager or designee the right of inspection of pertinent financial documentation which supports or evidences a reimbursement request made by SEFF to the City.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Flood, to approve an amended contract with Safe Events for Families (SEFF) for Fiscal Year 2021-2022. Motion carried 7-0.

AYE: Rutherford, Flood, Bolt, Sehorn, Salter, Matthews, Weaver

NAY: None

AGENDA ITEM NO. 18:

Discussion and consideration of a resolution adopting the Pottawatomie County Hazard Mitigation Plan for the City of Shawnee.

Emergency Management Director Rachelle Erickson gave a Staff report.

A motion was made by Commissioner Matthews, seconded by Commissioner Weaver, to approve a resolution adopting the Pottawatomie County Hazard Mitigation Plan for the City of Shawnee.

Resolution No. 6643 was introduced.

A RESOLUTION ADOPTING THE POTTAWATOMIE COUNTY HAZARD MITIGATION PLAN FOR THE CITY OF SHAWNEE.

Motion carried 7-0.

AYE: Matthews, Weaver, Flood, Bolt, Rutherford, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 19:

Discussion and consideration of a resolution adopting the Emergency Operation Plan for the City of Shawnee.

Emergency Management Director Rachelle Erickson gave a Staff report.

A motion was made by Commissioner Weaver, seconded by Vice Mayor Rutherford, to approve a resolution adopting the Emergency Operation Plan for the City of Shawnee.

Resolution No. 6644 was introduced.

A RESOLUTION ADOPTING THE EMERGENCY OPERATIONS PLAN FOR THE CITY OF SHAWNEE.

Motion carried 7-0.

AYE: Weaver, Rutherford, Sehorn, Salter, Matthews, Flood, Bolt

NAY: None

AGENDA ITEM NO. 20:

Discussion and consideration of an ordinance of the City of Shawnee, Oklahoma amending Chapter 22 [Planning and Development], Article I [In General], of the City Code establishing a Land Disturbance Permit; providing for severability, codification, repealer, and emergency clause.

City Engineer Seth Barkhimer stated that the proposed ordinance is to protect existing infrastructure.

A motion was made by Commissioner Sehorn, seconded by Commissioner Matthews, to approve an ordinance of the City of Shawnee, Oklahoma amending Chapter 22 [Planning and Development], Article I [In General], of the City Code establishing a Land Disturbance Permit; providing for severability, codification, repealer, and emergency clause.

Ordinance No. 2727NS was introduced.

AN ORDINANCE OF THE CITY OF SHAWNEE, OKLAHOMA AMENDING CHAPTER 22 [PLANNING AND DEVELOPMENT], ARTICLE I [IN GENERAL], OF THE CITY CODE, ESTABLISHING A LAND DISTURBANCE PERMIT; PROVIDING FOR SEVERABILITY, CODIFICATION, REPEALER, AND EMERGENCY CLAUSE.

Motion carried 7-0.

AYE: Sehorn, Matthews, Weaver, Flood, Bolt, Rutherford, Salter

NAY: None

Ordinance No. 2727NS was adopted by the City Commission

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to approve the emergency clause relating to Ordinance No. 2727NS. Motion carried 7-0.

AYE: Matthews, Rutherford, Sehorn, Salter, Weaver, Flood, Bolt
NAY: None

AGENDA ITEM NO. 21:

Discussion and consideration of a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that sets a fee for a land disturbance permit; and providing for the re-adoption of the City Fee Schedule in whole.

City Engineer Seth Barkhimer advised that the proposed resolution establishes the fee for Agenda Item No. 20.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Flood, to approve a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that sets a fee for a land disturbance permit; and providing for the re-adoption of the City Fee Schedule in whole.

Resolution No. 6645 was introduced.

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA THAT SETS A FEE FOR A LAND DISTURBANCE PERMIT; AND PROVIDING FOR THE RE-ADOPTION OF THE CITY FEE SCHEDULE IN WHOLE.

Motion carried 7-0.

AYE: Rutherford, Flood, Bolt, Sehorn, Salter, Matthews, Weaver
NAY: None

AGENDA ITEM NO. 22:

Discussion and consideration of a final plat for Trails End Phase I subdivision, located on the east side of North Kickapoo Avenue and north of County Road 112, in the southwest quarter of Section 30, Township 11 North, Range 4 East, containing approximately 46.20 acres. Case No. PL05-

21, Applicant: Joel Harrison, PE (Crafton Tull) for Live Orange, LLC.

City Planner Rachel Clyne gave a Staff report. Ms. Clyne advised that the Planning Commission and Staff recommend approval.

A motion was made by Commissioner Weaver, seconded by Vice Mayor Rutherford, to approve a final plat for Trails End Phase I subdivision, located on the east side of North Kickapoo Avenue and north of County Road 112, in the southwest quarter of Section 30, Township 11 North, Range 4 East, containing approximately 46.20 acres.

Motion carried 7-0.

AYE: Wear, Rutherford, Sehorn, Salter, Matthews, Flood, Bolt
NAY: None

AGENDA ITEM NO. 23:

Public hearing and consideration of an ordinance to rezone property located at 15413 Nickens Road from A-1 (Rural Agricultural District) to A-1 (Rural Agricultural District) with LPZ (Lake Protection Zone) overlay and a CUP (Conditional Use Permit) for the purpose of operating a Bed and Breakfast/Airbnb (short-term rental). Case No. CUP03-21, Applicants: Zachary and Jennifer Grinnell and Sheri and Greg Rhodes. *(Deferred by the Planning Commission to the October 13, 2021 meeting.)*

City Planner Rachel Clyne advised that the Planning Commission deferred to the item to its October 13, 2021 meeting. Ms. Clyne requested that the City Commission defer the item to a future meeting.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Weaver, to defer this item to a future City Commission meeting. Motion carried 7-0.

AYE: Rutherford, Weaver, Flood, Bolt, Sehorn, Salter, Matthews
NAY: None

AGENDA ITEM NO. 24:

Public hearing and consideration of an ordinance to rezone property located southwest of the intersection of North Kickapoo Avenue and East Highland Street, specifically Lots 1 through 16; Lots 23 through 28; and Lots 31 and 32, in Block 1 of the Fairgrounds Addition subdivision, from C-1 (Neighborhood Commercial District), C-3 (Highway Commercial District), and C-4 (Central Business District) to C-3 (Highway Commercial District) with a PUD (Planned Unit Development) for the purpose of mixed-use development. Case No. PUD01-21, Applicant: Michael San Pedro.

City Planner Rachel Clyne gave a Staff report.

A motion was made by Commissioner Matthews, seconded by Mayor Bolt, to approve the ordinance to rezone property located southwest of the intersection of North Kickapoo Avenue and East Highland Street, specifically Lots 1 through 16; Lots 23 through 28; and Lots 31 and 32, in Block 1 of the Fairgrounds Addition subdivision, from C-1 (Neighborhood Commercial District), C-3 (Highway Commercial District), and C-4 (Central Business District) to C-3 (Highway Commercial District) with a PUD (Planned Unit Development).

Commissioner Matthews withdrew his previous motion, and Mayor Bolt withdrew the second, to allow for a public hearing.

Mayor Bolt declared a public hearing in session to consider an ordinance to rezone property located southwest of the intersection of North Kickapoo Avenue and East Highland Street, specifically Lots 1 through 16; Lots 23 through 28; and Lots 31 and 32, in Block 1 of the Fairgrounds Addition subdivision, from C-1 (Neighborhood Commercial District), C-3 (Highway Commercial District), and C-4 (Central Business District) to C-3 (Highway Commercial District) with a PUD (Planned Unit Development) for the purpose of mixed-use development. No one appeared in favor or against said rezoning. The public hearing was closed.

A motion was made by Commissioner Matthews, seconded by Mayor Bolt, to approve the ordinance to rezone property located southwest of the intersection of North Kickapoo Avenue and East Highland Street, specifically Lots 1 through 16; Lots 23 through 28; and Lots 31 and 32, in Block 1 of the Fairgrounds Addition subdivision, from C-1 (Neighborhood Commercial District), C-3

(Highway Commercial District), and C-4 (Central Business District) to C-3 (Highway Commercial District) with a PUD (Planned Unit Development).

Ordinance No. 2728NS 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: LOTS 1-16; LOTS 23-28; AND LOTS 31-32, BLOCK 1 FAIRGROUNDS ADDITION OF SHAWNEE, POTTAWATOMIE, OKLAHOMA FROM ZONING CLASSIFICATION C-1 (NEIGHBORHOOD COMMERCIAL DISTRICT), C-3 (HIGHWAY COMMERCIAL DISTRICT), AND C-4 (CENTRAL BUSINESS DISTRICT) TO C-3 (HIGHWAY COMMERCIAL DISTRICT) WITH A PUD (PLANNED UNIT DEVELOPMENT) AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SHAWNEE ACCORDINGLY.

Motion carried 7-0.

AYE: Matthews, Bolt, Rutherford, Sehorn, Salter, Weaver, Flood
NAY: None

Ordinance No. 2728NS was adopted by the City Commission.

AGENDA ITEM NO. 25:

Discussion and consideration of an ordinance relating to shopping carts, amending Chapter 8 of the Shawnee Municipal Code by creating Article XI of Chapter 8, shopping carts; providing for repeal; providing for severability; providing for codification; and providing for emergency clause.

Interim City Manager Eric Benson gave a Staff report. He stated that there was currently no mechanism for manage shopping carts and the proposed ordinance would provide an opportunity. Discussion was held between the Mayor and Commissioners and Staff.

A motion was made by Vice Mayor Rutherford to defer this item to a future City Commission meeting.

Vice Mayor Rutherford amended his previous motion, seconded by Commissioner Matthews, to defer this item to the October 4, 2021 City Commission meeting. Motion carried 7-0.

AYE: Rutherford, Matthews, Weaver, Flood, Bolt, Sehorn, Salter

NAY: None

AGENDA ITEM NO. 26:

Discussion and consideration regarding the Shawnee Civic and Cultural Development Authority (SCCDA) Trust.

City Attorney Joe Vorndran stated that Staff is requesting that up to three (3) Commissioners be appointed to accompany the City Manager and City Attorney to a mediation process that will involve the SCCDA Trust and their representatives and Pottawatomie County and their designated representative. The proposed mediation is to address and attempt to resolve issues at the Heart of Oklahoma Exposition Center.

Commissioner Matthews, Vice Mayor Rutherford, and Commissioner Salter volunteered to accompany the City Manager and City Attorney in mediation with Pottawatomie County and the Shawnee Civic and Cultural Development Authority.

A motion was made by Commissioner Weaver, seconded by Commissioner Sehorn, to ratify the volunteerism of Commissioner Matthews, Vice Mayor Rutherford, and Commissioner Salter to accompany the City Manager and the City Attorney to formal mediation process involving Pottawatomie County and Shawnee Civic and Cultural Development Authority. Motion carried 7-0.

AYE: Weaver, Sehorn, Salter, Matthews, Flood, Bolt, Rutherford

NAY: None

AGENDA ITEM NO. 27:

Consider Bids:

- a. HOOEC Metal Roof Restoration and Insulation Removal and Spray Foam Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D (Open)

BIDDER

AMOUNT

Draper Construction
Oklahoma City, OK

Metal Restoration: \$496,862.07
Foam & Coating: \$782,208.56

Expo General Manager Katy Fleming read one (1) bid into the record and requested that the bid award be deferred to a future City Commission meeting.

Mr. Trace Bailey, owner of Draper Construction, answered questions from the Mayor and Commissioners.

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Sehorn, to defer the bid award to a future City Commission meeting. Motion carried 7-0.

AYE: Rutherford, Sehorn, Salter, Matthews, Weaver, Flood, Bolt

NAY: None

- b. Fence Removal and Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D1 (Open)

BIDDER

AMOUNT

RJ Fence
Wellston, OK

\$266,032.50

Expo General Manager Katy Fleming read one (1) bid into the record and requested that the bid award be deferred to a future City Commission meeting.

A motion was made by Commissioner Matthews, seconded by Vice Mayor Rutherford, to defer the bid award to a future City Commission meeting. Motion carried 7-0.

AYE: Matthews, Rutherford, Sehorn, Salter, Weaver, Flood, Bolt

NAY: None

AGENDA ITEM NO. 28:

Acknowledge monthly Sales Tax and Budget Reports.

Assistant Finance Director Jacob Bussell reported sales tax is up \$918,275.00, or 16.99%, over the projected budget year-to-date. He stated that use tax collections are up approximately \$170,600.00, or 28.86%, over the projected budget year-to-date.

AGENDA ITEM NO. 29:

Administrative Report

- a. 45th Street Update – Seth Barkhimer, P.E., City Engineer

City Engineer Seth Barkhimer provided an update on 45th Street. He answered questions from the Mayor and Commissioners.

- b. Grant Updates – Lauren Craig, Homeless Service Coordinator

Homeless Service Coordinator Lauren Craig gave an update on the Love Your Block Grant, Community Development Block Grant and Emergency Solutions Grant awards. She answered questions from the Mayor and Commissioners.

AGENDA ITEM NO. 30:

Consideration of the following budget amendments for Fiscal Year 2021 – 2022:

- a. Fund 001 General Fund – To fund Love Your Block Grant
- b. Fund 191 CDBG-CV-ODOC – To fund new CDBG CV ODOC Program
- c. Fund 192 ESG-ODOC – To fund new ESG-ODOC Grant Program

A motion was made by Vice Mayor Rutherford, seconded by Commissioner Flood, to approve the budget amendments listed in Agenda Item Nos. 30 (a-c). Motion carried 7-0.

AYE: Rutherford, Flood, Bolt, Sehorn, Salter, Matthews, Weaver

NAY: None

AGENDA ITEM NO. 31:

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

Interim City Manager Eric Benson advised that State law has increased the amount from \$50,000.00 to \$100,000.00 without having to competitively bid. He advised that Staff will bring to the Commission an opportunity to improve the Commission Chambers with new technology and furniture.

AGENDA ITEM NO. 32:

Commissioners Comments

Commissioner Matthews stated that he wholeheartedly supports the agreement with Citizen Potawatomi Nation.

Commissioner Weaver stated that he will continue to be involved in the community and appreciates the public, Commission and Staff.

Commissioner Flood stated that he is amazed at seeing the individuals who attended tonight's meeting to support the agreement with Citizen Potawatomi Nation.

He stated that he had the privilege of reading the Recovery Day Proclamation at Gateway Prevention.

Vice Mayor Rutherford thanked Commissioner Weaver for serving on the Commission.

Commissioner Sehorn thanked Staff for the 45th Street presentation.

Commissioner Salter welcomed Ms. Andrea Weckmueller-Behringer and wished Commissioner Weaver good luck.

Mayor Bolt thanked Commissioner Weaver for his service.

AGENDA ITEM NO. 33:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair. (9:34 p.m.)

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

BOARD OF CITY COMMISSIONERS
CITY OF SHAWNEE
SPECIAL CALLED SESSION
SEPTEMBER 21, 2021

The Board of City Commissioners of the City of Shawnee met in Special Called Session in the Citizen Potawatomi Nation Cultural Heritage Center, 1899 Gordon Cooper Drive, Shawnee, Oklahoma at 10:00 a.m., pursuant to notice duly posted as prescribed by law. Mayor Bolt presided and called the meeting to order. The following members were in attendance and a quorum was declared.

Ed Bolt
Mayor

Daniel Matthews
Commissioner Ward 1

Bob Weaver
Commissioner Ward 2

Travis Flood
Commissioner Ward 3

Darren Rutherford
Commissioner Ward 4-Vice Mayor

Mark Sehorn
Commissioner Ward 5

Ben Salter
Commissioner Ward 6

Absent: None

The Call for said meeting was entered upon the records by the City Clerk, said Call being as follows:

NOTICE OF A CALLED SPECIAL SESSION OF THE BOARD OF CITY
COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA

TO THE BOARD OF COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA:

You and each of you are hereby notified that by virtue of a call issued by me on this 16th day of September, 2021, a Special Called Session will be held of the Board of Commissioners of the City of Shawnee, Oklahoma in the Citizen Potawatomi Nation Cultural Heritage Center, 1899 Gordon Cooper Drive, Shawnee, Oklahoma at 10:00 a.m. on the 21st day of September, 2021, and you are hereby notified to be present at said meeting.

The purpose of said meeting is for remarks by Mayor Ed Bolt and Chairman John “Rocky” Barrett; and to execute a Cooperation Agreement and Joint Resolution between the City of Shawnee, Oklahoma and the Citizen Potawatomi Nation by Mayor Bolt and Chairman Barrett.

Witness my hand this 16th day of September, 2021.

(SEAL)

ATTEST:

/s/ Lisa Lasyone
LISA LASYONE, CMC
CITY CLERK

/s/ Andrea Weckmueller-Behringer
ANDREA WECKMUELLER-BEHRINGER
ASSISTANT CITY MANAGER

STATE OF OKLAHOMA, COUNTY OF POTTAWATOMIE, SS.

I received this notice on the 16th day of September, 2021 and executed the same by delivering a true and correct copy thereof to the Mayor and to each of the Commissioners of the Board of City Commissioners for the City of Shawnee, Oklahoma:

A read verification was not received from Mayor Ed Bolt.

A read verification was not received from Commissioner Daniel Matthews.

A read verification was not received from Commissioner Bob Weaver.

A read verification was received from Commissioner Travis Flood via e-mail at 2:29 p.m. on September 18, 2021.

A read verification was received from Vice Mayor Darren Rutherford via email at 9:59 a.m. on September 17, 2021.

A read verification was not received from Commissioner Mark Sehorn.

A read verification was received from Commissioner Ben Salter via e-mail at 10:44 a.m. on September 17, 2021.

LISA LASYONE, CMC
CITY CLERK

CALL FOR SPECIAL SESSION OF THE SHAWNEE BOARD OF CITY COMMISSIONERS OF THE CITY OF SHAWNEE, OKLAHOMA TO BE HELD ON THE 21ST DAY OF SEPTEMBER, 2021 AT 10:00 A.M. AT THE CITIZEN POTAWATOMI NATION CULTURAL HERITAGE CENTER, 1899 GORDON COOPER DRIVE, SHAWNEE, OKLAHOMA. THE PURPOSE OF SAID MEETING IS FOR REMARKS BY MAYOR ED BOLT AND CHAIRMAN JOHN "ROCKY" BARRETT; AND TO EXECUTE A COOPERATION AGREEMENT AND JOINT RESOLUTION BETWEEN THE CITY OF SHAWNEE, OKLAHOMA AND THE CITIZEN POTAWATOMI NATION BY MAYOR BOLT AND CHAIRMAN BARRETT.

By virtue of the authority vested in me by Section 4, Article IV of the Charter of the City of Shawnee, Oklahoma, a Special Session of the Board of City Commissioners of the City of Shawnee, Oklahoma is hereby called to meet at the Citizen Potawatomi Nation Cultural Heritage Center, 1899 Gordon Cooper Drive, Shawnee, Oklahoma at 10:00 a.m. on the 21st day of September, 2021 for remarks by Mayor Ed Bolt and Chairman John "Rocky" Barrett; and to execute a Cooperation Agreement and Joint Resolution between the City of Shawnee, Oklahoma and the Citizen Potawatomi Nation by Mayor Bolt and Chairman Barrett.

Witness my hand this 16th day of September, 2021.

/s/ Andrea Weckmueller-Behringer

ANDREA WECKMUELLER-BEHRINGER
ASSISTANT CITY MANAGER

(SEAL)

ATTEST:

/s/ Lisa Lasyone

LISA LASYONE, CMC
CITY CLERK

THE BOARD OF CITY COMMISSIONERS OF THE CITY OF SHAWNEE, COUNTY OF POTTAWATOMIE, STATE OF OKLAHOMA, MET IN SPECIAL CALLED SESSION IN THE CITIZEN POTAWATOMI NATION CULTURAL HERITAGE CENTER, 1899 GORDON COOPER DRIVE, SHAWNEE, OKLAHOMA MONDAY, SEPTEMBER 20, 2021 AT 10:00 A.M., PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. MAYOR BOLT PRESIDED AND CALLED THE MEETING TO ORDER. THE FOLLOWING MEMBERS WERE IN ATTENDANCE.

CALL TO ORDER AT 10:00 A.M.

PRESENT AT ROLL CALL: Matthews, Weaver, Flood, Bolt, Rutherford, Sehorn, Salter
ABSENT AT ROLL CALL: None

DECLARATION OF A QUORUM
INVOCATION

Commissioner Daniel Matthews

AGENDA ITEM NO. 1:

Remarks from Mayor Ed Bolt.

Mayor Bolt gave opening remarks. Commissioner Flood read the Joint Resolution.

AGENDA ITEM NO. 2:

Formal execution of the Cooperation Agreement and Joint Resolution between the City of Shawnee, Oklahoma and the Citizen Potawatomi Nation by Mayor Bolt and Chairman Barrett.

Mayor Bolt and Chairman Barrett signed the Cooperation Agreement and Joint Resolution. Gifts were exchanged between the City of Shawnee and the Citizen Potawatomi Nation.

AGENDA ITEM NO. 3:

Remarks from Chairman John "Rocky" Barret.

Chairman Barrett gave remarks.

AGENDA ITEM NO. 4:

Video Presentation

The video was presented after the meeting was adjourned.

AGENDA ITEM NO. 5:

Adjournment

There being no further business to be considered, the meeting was adjourned by power of the Chair at 10:42 a.m.

ED BOLT, MAYOR

(SEAL)

ATTEST:

LISA LASYONE, CMC
CITY CLERK

DRAFT

Regular Board of Commissioners

2. b.

Meeting Date: 10/04/2021

Minutes

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Acknowledge the following minutes:

- Shawnee Community Beautification Committee Minutes from the May 20, 2021 regular meeting.
-

Attachments

Minutes



Minutes
Shawnee Community Beautification Committee
May 20th, 2021

The Shawnee Community Beautification Committee met at Shawnee Forward, 231 N. Bell Ave

Roll Call was taken showing the following members present:

		Present	Absent
Member	Sherry Lankford	<u> X </u>	<u> </u>
Member	Debi Renegar	<u> X </u>	<u> </u>
Member	Sue Nelson	<u> X </u>	<u> </u>
Member	Kevin Huddleston	<u> </u>	<u> X </u>
Member	Ethan Birdwell	<u> </u>	<u> X </u>
Member	Carla Smith	<u> X </u>	<u> </u>
Member	Clif Harden	<u> X </u>	<u> </u>
Member	Ian Hayes	<u> X </u>	<u> </u>
Member	Travis Flood	<u> </u>	<u> X </u>
Member	Lisa Hair	<u> X </u>	<u> </u>
City Staff	Brad Schmidt	<u> </u>	<u> X </u>
City Staff	Cody Ellis	<u> X </u>	<u> </u>
City Staff	Clint Bowen	<u> X </u>	<u> </u>
City Staff	Mikaylia Stewart	<u> X </u>	<u> </u>

- AGENDA NO 1** **Call to Order.** Meeting was called to order at 4:02 pm.
- AGENDA NO 2** **Roll Call and Declaration of a Quorum.** Roll was called and a quorum was declared.
- AGENDA NO 3** **Approval of March 18th, 2021 Minutes.** A motion to approve was made by Sue Nelson. It was 2nd by Clif Harden. Motion carried 6-0.
- Roll Call: Aye: Lankford, Renegar, Nelson, Smith, Harden, Hayes.
Nay: None.
- AGENDA NO 4** **Swearing in of Committee Member, Lisa Hair.** Lisa Hair was sworn in by Mikaylia Stewart.
- AGENDA NO 5** **Swearing in of Committee Member, Sarah Murphy.** Sally Murphy was not able to be sworn in due to nonattendance.
- AGENDA NO 6** **Discuss Workday May 22nd, 2021 from 8:00am to 12:00pm.** Sherry Lankford discussed changing the Workday to May 29th, 2021 from 8:00am to 12:00pm due to rain.
- AGENDA NO 7** **Consideration and approval of cost for replacing the pansies in front of Centennial Clock with periwinkles, plant large pots on 9th and Bell, two small pots in front of the 9th streets entrance to City Hall, and pots in the 400 block of east Main. Estimated cost is \$200.** A motion to approve was made by Debi Renegar. It was 2nd by Sue Nelson. Motion carried 7-0.
- Roll Call: Aye: Lankford, Renegar, Nelson, Smith, Harden, Hayes, Hair.
Nay: None.
- AGENDA NO 8** **Discuss Blue Zones presentation on Park Adoption Program.** Lindsay Goodson presented and discussed the Blue Zones Park Adoption Program. Carla Smith discussed developing an app for the Adoption Program.
- AGENDA NO 9** **New Business.** Sherry Lankford discussed the balance of the Beautification Committee flow account through Finley and Cook. Sherry Lankford discussed the Keep Oklahoma Beautiful Environment Celebration on November 19, 2021.
- AGENDA NO 10** **Committee Comments.** Sherry Lankford thanked attendees.
- AGENDA NO 11** **Public Comments.** Public recommended Preerna Goupta to help develop an app for the Park Adoption Program. Public recommended for Adopt a Park to use a park that is not maintained by South Central Industries through the City of Shawnee.

AGENDA NO 12 **Adjournment.** Meeting was adjourned at 4:56 p.m. A motion was made by Ian Hayes. It was 2nd by Debi Renegar. Motion carried 7-0.

Roll Call: Aye: Lankford, Renegar, Nelson, Smith, Harden, Hayes, Hair.
Nay: None.

Date 9/6/21
Chairman Sherry J Lankford

Regular Board of Commissioners

2. c.

Meeting Date: 10/04/2021

Lake Lease

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Lake Lease Transfers:

TRANSFERS:

Lot 11 Belcher Tract, 15609 Nickens Road

From: Bob and Kellianne Weaver

To: Mark H. and Mary Jane Cannon

Lot 1 Magnino A Tract, 16816 Magnino Road

From: Jose and Jennifer Massey

To: Sutton Ryan Petz Irrevocable Trust C/O Jordan Monk Reber, PC

Attachments

Nickens Road

Magnino Road

Community
Development
Department



222 N Broadway
Shawnee, OK
74801
405-878-1666

**SHAWNEE TWIN LAKES CABIN SITE LEASES
SUMMARY / INSPECTION REPORT – FOR RENEWLS / TRANSFERS**

Date: 10/04/2021	License No. 5189
Type	☐ Renewal ☒ Transfer
Commission Meeting Date	10/04/2021
Property Address	15609 Nickens Rd
Lake Site Location	Belcher Tract, Lot 11
Lease Dates	10/04/2021 - 10/04/2051
Lease Fee (changes annually)	\$746.00
Inspection Fee	\$75.00 Applicable: ☒ Yes ☐ No
Lessee (Transfer To)	
Name(s)	Mark H & Mary Jane Cannon
Address	5 Creek Dr, Shawnee, OK 74801
Phone	405.760.9071 / 405.760.9072
Current Lessee (Transfer From)	
Name(s)	Bob & Kellianne Weaver
Address	15609 Nickens Rd, Shawnee, OK 74801
Phone	
Inspection Information	
Inspection Required	☒ Yes ☐ No
DEQ Report on File	☒ Yes ☐ No
Type of Septic	☒ Conventional ☐ Aerobic
Last Inspected/Pumped	06/22/2020
Miscellaneous Comments:	Inspection Fee - \$75.00 Transfer Fee - \$1000.00 Lease Fee - \$746.00 Inspection fee and 1/2 of transfer fee paid by current lease holder
Fees Collected	\$1821.00 - Ck 1055, 1056, 1321 - Rec No 629



Cabin Site Lease

PLEASE READ CAREFULLY

THIS LEASE IS NOT TRANSFERABLE AND IS SUBJECT TO CANCELLATION BY THE CITY FOR ANY VIOLATIONS OF THE TERMS THEREOF AS MORE SPECIFICALLY SET FORTH IN SECTION 16-326 OF THE SHAWNEE MUNICIPAL CODE:

LEASE # 5189 TRACT NAME Belcher LOT # 11

STATE OF OKLAHOMA, POTTAWATOMIE COUNTY, SS:

This Lease was made and entered into in duplicate this date of 10/04/2021 by and between the CITY OF SHAWNEE, a municipal Corporation, PARTY OF THE FIRST PART, and

MARK H & MARY JANE CANNON,
5 CREEK DR
SHAWNEE, OK 74801

PARTY OF THE SECOND PART.

WITNESSETH: That the first party in consideration of the sum of **\$746.00** dollars for **2021**, does hereby acknowledge receipt of the applicable rental fee, and other good and valuable considerations, does by these presents demise, lease and let unto the second party the following described real estate situated on, and part of the site, owned by the first party as a City Reservoir and known as Shawnee Twin lake No. 1, in the County of Pottawatomie State of Oklahoma, to-wit:

15609 NICKENS RD

TO HAVE AND TO HOLD SAME UNTO the second party for a term of thirty (30) years from the date hereof.

IT IS FURTHER mutually understood and agreed by and between the parties hereto as follows:

The said party of the second part shall and will and does hereby agree to pay to the first party annual lease payments as set forth in "Exhibit A", payable yearly in advance. The City shall retain the right to adjust the lease rate schedule at the termination of the original 30-year lease or at such time that a transfer is approved in accordance with Section 16-321 of the Shawnee Municipal Code (hereafter "SMC").

That at the expiration of the primary term hereof, the lessee shall have the right and option to renew said lease for an additional period of thirty (30) years under the terms and conditions set forth in Section 16-321 SMC. There is no limit to the number of times a lease can be renewed.

The premises of all lots leased by the City shall at all times be kept clean and maintained in a sanitary condition by the lessee. There is a 25-foot lakeshore buffer that extends landward of the ordinary high water mark on all leased lots for the purpose of watershed protection. This area shall not be used by the general public, except during an emergency situation. Within this buffer, leaseholders are encouraged to preserve existing native vegetation. Docks and other approved structures may be located within the buffer area. Fertilizers and other chemicals shall not be used within the buffer area. All other applicable City regulations and rules apply.

That in addition to the possession of the property so leased, the lessee shall have the right and privilege of a site for a boat house and boat dock on the land owned by the City adjoining and immediately in front of a lot leased, which said boat house shall be erected and maintained by and at the cost of the lessee on ground not to exceed

an area of thirty (30) feet by thirty (30) feet, which said boat house shall never be used as a place of human habitation, and which said boat house or boat dock shall conform to the provisions of Section 16-325 SMC, and that said boat dock or boat house shall be the private property of the lessee, who shall have the right of ingress and egress to and from the same, subject to the rights of the public as set forth herein. The lessee shall agree to keep said lot and boat house and dock in a clean and sanitary condition, and to maintain the same in a safe condition, and the City as lessor shall in no manner be liable to lessee for any damages suffered by lessee to said lot or boat house or dock, or the improvements thereon on account of the rise and fall of the water line of said lake, or for the enlargement or decrease by the City of the size of said lake, or on account of any rules or regulation that may hereafter be adopted by lessor, governing the regulations of said lake, and lessee agrees to hold the lessor free and harmless from all damages suffered by him or by any other person, on account of personal injuries or loss of property that may incur upon said lot, boat house, or boat dock.

That the lessee agrees to lease the premises **AS IS** from the lessor with the knowledge and understanding that the lessor does not guarantee access to lots. Should the Lessee determine that an access road is necessary to reach his/her lot from a road already in existence, lessee agrees to use his/her own funds to create said access road. Lessee further agrees that upon access road completion it shall not be a private road, but rather, will be available for public use, including, but not limited to, allowing neighbor lots to connect to it to improve access to their lots or to allow joint access to bordering lots upon the one access road. The location of any access road to be constructed by the lessee must be approved by the City Engineer of the City of Shawnee prior to the beginning of construction.

That should the lessee construct any building or other structure, said construction will be in accordance with City of Shawnee development regulations. Lessee agrees that prior to commencing construction on any structure on the leased premises he/she will obtain an approved building permit from the City.

That lessee is solely responsible for determining the flood elevation on the leased premises and is required to satisfy lessor that prior to any construction on the leased premises the determination of the flood elevation has been done correctly and that any structure or building to be constructed on the leased premises be above the flood elevation. **LESSOR EXPRESSLY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO SAFETY FROM FLOODING ON THE LEASED PREMISES AND LESSEE EXPRESSLY RELEASES THE LESSOR FROM ANY LIABILITY DUE TO FLOOD DAMAGE, BOTH PERSONAL AND PROPERTY, OCCURRING ON THE LEASED PREMISES FROM ANY CAUSE OR CONDITION.**

That all sanitary facilities to be constructed on the premises shall be wholly contained on the leased premises. Sanitary facilities, include, but are not limited to, septic tanks and lateral lines.

All septic systems and waste disposal systems on leased lake lots shall be inspected and subject to the standards set forth in Chapter 16 SMC. The leaseholder shall have sixty (60) days to correct any defects found in the system. Corrections not made within the allotted time shall be grounds for the City to cancel the lease of the leaseholder.

That no lease shall be assigned or sublet, but lessee may at any time during the term of his/her lease, sell and transfer to other parties the improvements on the lot leased by him/her.

That in the event of the sale of the improvements by the lessee, the transfer shall not become effective until approved by the Board of Commissioners of the City of Shawnee at a regular or adjourned meeting held for that purpose and the City as lessor reserves the right to reject and disapprove any transfer when in its opinion it would be to the best interests of the City and its inhabitants to do so. If the transfer is approved, a new lease shall be entered into between the purchaser and the City, and a transfer charge is hereby fixed and established in the sum of one-thousand dollars (\$1000.00) to be paid to the City prior to said transfer in accordance with Section 16-322 SMC.

That the lessee shall be the owner of all improvements which may be placed by him or her, said improvements including cabins or other buildings and boat houses constitute personal property and lessee shall have the right to remove same from the lot at the termination of the lease, subject to the following: whenever a lease has been cancelled by the City as provided herein or by ordinance, the lessee or owner of said improvements shall remove the same within sixty (60) days of the date of the said cancellation of the lease and upon failure to do so, said improvements shall revert to and become the property of the City of Shawnee. And it shall have the right, without further notice or demand to take immediate possession of all said improvements and these will belong to the first party or its assigns, as liquidated damages for the non-fulfillment of the lease by the lessee and for the use and rental thereof.

That the said second party does hereby release the City of Shawnee of any claim or claims for damages by reason of the cancellation of the said lease aforesaid.

That the second party shall at all times during the term of this lease be subject to and does hereby agree to abide by and conform to any rules, regulations or ordinances now in force, or that may hereafter be adopted by the City of Shawnee, governing the regulation of said lake and within the described premises, as to fishing, hunting, boating and other recreational activities upon and around said water reservoir, and to conform to and abide by all further rules, regulations and ordinances now in force, or that hereafter may be adopted by the City of Shawnee, Oklahoma, governing the regulations of said premises and lake.

The City Commission may upon a showing of intentional disregard for the terms of the lease and this division of other city ordinance pertaining to the lake, cancel the city lease upon 30 days notice to the lessee by mailing a copy of such notice to the lessee at his/her last known address. If a lease is cancelled either by the city or the lessee of a city-owned lot prior to the expiration of the lease term, the lessee shall pay the city an early termination fee of \$1,000 in exchange for a release of liability from the remaining term.

That this lease shall be binding upon the representatives, heirs, and assigns and successors in interest of the parties hereto.

It is understood by the parties hereto that a failure to comply with the terms of said Cabin Site Lease shall constitute a misdemeanor and any person, firm, or corporation convicted of such violation shall be punished by a fine not exceeding five hundred dollars (\$500.00) plus costs, or imprisonment for a term not exceeding thirty (30) days, or by such fine and imprisonment.

IN WITNESS WHEREOF, party of the first part has caused its name to be affixed hereto by the Mayor of the City of Shawnee, Oklahoma, and attested by the City Clerk, and the party of the second part hereunto affixed his/her name the day and year first above written.

CITY OF SHAWNEE, OKLAHOMA
A Municipal Corporation,

BY: _____

MAYOR
PARTY OF THE FIRST PART



PARTY OF THE SECOND PART



PARTY OF THE SECOND PART

ATTEST:

CITY CLERK

Community
Development
Department



222 N Broadway
Shawnee, OK
74801
405-878-1666

**SHAWNEE TWIN LAKES CABIN SITE LEASES
SUMMARY / INSPECTION REPORT – FOR RENEWLS / TRANSFERS**

Date: 09/03/2021	License No. 5176
Type	☐ Renewal ☒ Transfer
Commission Meeting Date	20 September 2021
Property Address	16816 Magnino Rd
Lake Site Location	Magnino A Tract / Lot 1
Lease Dates	09/20/2021 - 09/20/2051
Lease Fee (changes annually)	\$746.00
Inspection Fee	\$75.00 Applicable: ☒ Yes ☐ No
Lessee (Transfer To)	
Name(s)	Sutton Ryan Petz Irrevocable Trust C/O Jordan Monk Reber, PC
Address	17300 Dallas Parkway Suite 2050, Dallas TX 75248
Phone	405.478.3508 / 972.392.1123
Current Lessee (Transfer From)	
Name(s)	Jose & Jennifer Massey
Address	16816 Magnino Rd, Shawnee, OK 74801
Phone	405.567.5355
Inspection Information	
Inspection Required	☒ Yes ☐ No
DEQ Report on File	☒ Yes ☐ No
Type of Septic	☐ Conventional ☒ Aerobic
Last Inspected/Pumped	05/22/2018
Miscellaneous Comments:	Inspection Fee - \$75.00 Lease Payment - \$746.00 Transfer Fee - \$1000.00
Fees Collected	\$1821.00 - Ck 3615 - Rec No. 600



Cabin Site Lease

PLEASE READ CAREFULLY

THIS LEASE IS NOT TRANSFERABLE AND IS SUBJECT TO CANCELLATION BY THE CITY FOR ANY VIOLATIONS OF THE TERMS THEREOF AS MORE SPECIFICALLY SET FORTH IN SECTION 16-326 OF THE SHAWNEE MUNICIPAL CODE:

LEASE #5176 **TRACT NAME**Magnino A **LOT #**1

STATE OF OKLAHOMA, POTTAWATOMIE COUNTY, SS:

This Lease was made and entered into in duplicate this date of 09/20/2021 by and between the CITY OF SHAWNEE, a municipal Corporation, PARTY OF THE FIRST PART, and

SUTTON RYAN PETZ IRREVOCABLE TRUST, C/O JORDAN MONK REBER, PC
17300 DALLAS PARKWAY SUITE 2050
DALLAS, TX 75248

PARTY OF THE SECOND PART.

WITNESSETH: That the first party in consideration of the sum of \$746.00 dollars for 2021, does hereby acknowledge receipt of the applicable rental fee, and other good and valuable considerations, does by these presents demise, lease and let unto the second party the following described real estate situated on, and part of the site, owned by the first party as a City Reservoir and known as Shawnee Twin lake No. 1, in the County of Pottawatomie State of Oklahoma, to-wit:

16816 MAGNINO RD

TO HAVE AND TO HOLD SAME UNTO the second party for a term of thirty (30) years from the date hereof.

IT IS FURTHER mutually understood and agreed by and between the parties hereto as follows:

The said party of the second part shall and will and does hereby agree to pay to the first party annual lease payments as set forth in "Exhibit A", payable yearly in advance. The City shall retain the right to adjust the lease rate schedule at the termination of the original 30-year lease or at such time that a transfer is approved in accordance with Section 16-321 of the Shawnee Municipal Code (hereafter "SMC").

That at the expiration of the primary term hereof, the lessee shall have the right and option to renew said lease for an additional period of thirty (30) years under the terms and conditions set forth in Section 16-321 SMC. There is no limit to the number of times a lease can be renewed.

The premises of all lots leased by the City shall at all times be kept clean and maintained in a sanitary condition by the lessee. There is a 25-foot lakeshore buffer that extends landward of the ordinary high water mark on all leased lots for the purpose of watershed protection. This area shall not be used by the general public, except during an emergency situation. Within this buffer, leaseholders are encouraged to preserve existing native vegetation. Docks and other approved structures may be located within the buffer area. Fertilizers and other chemicals shall not be used within the buffer area. All other applicable City regulations and rules apply.

That in addition to the possession of the property so leased, the lessee shall have the right and privilege of a site for a boat house and boat dock on the land owned by the City adjoining and immediately in front of a lot leased, which said boat house shall be erected and maintained by and at the cost of the lessee on ground not to exceed

an area of thirty (30) feet by thirty (30) feet, which said boat house shall never be used as a place of human habitation, and which said boat house or boat dock shall conform to the provisions of Section 16-325 SMC, and that said boat dock or boat house shall be the private property of the lessee, who shall have the right of ingress and egress to and from the same, subject to the rights of the public as set forth herein. The lessee shall agree to keep said lot and boat house and dock in a clean and sanitary condition, and to maintain the same in a safe condition, and the City as lessor shall in no manner be liable to lessee for any damages suffered by lessee to said lot or boat house or dock, or the improvements thereon on account of the rise and fall of the water line of said lake, or for the enlargement or decrease by the City of the size of said lake, or on account of any rules or regulation that may hereafter be adopted by lessor, governing the regulations of said lake, and lessee agrees to hold the lessor free and harmless from all damages suffered by him or by any other person, on account of personal injuries or loss of property that may incur upon said lot, boat house, or boat dock.

That the lessee agrees to lease the premises **AS IS** from the lessor with the knowledge and understanding that the lessor does not guarantee access to lots. Should the Lessee determine that an access road is necessary to reach his/her lot from a road already in existence, lessee agrees to use his/her own funds to create said access road. Lessee further agrees that upon access road completion it shall not be a private road, but rather, will be available for public use, including, but not limited to, allowing neighbor lots to connect to it to improve access to their lots or to allow joint access to bordering lots upon the one access road. The location of any access road to be constructed by the lessee must be approved by the City Engineer of the City of Shawnee prior to the beginning of construction.

That should the lessee construct any building or other structure, said construction will be in accordance with City of Shawnee development regulations. Lessee agrees that prior to commencing construction on any structure on the leased premises he/she will obtain an approved building permit from the City.

That lessee is solely responsible for determining the flood elevation on the leased premises and is required to satisfy lessor that prior to any construction on the leased premises the determination of the flood elevation has been done correctly and that any structure or building to be constructed on the leased premises be above the flood elevation. **LESSOR EXPRESSLY MAKES NO WARRANTIES OR REPRESENTATIONS AS TO SAFETY FROM FLOODING ON THE LEASED PREMISES AND LESSEE EXPRESSLY RELEASES THE LESSOR FROM ANY LIABILITY DUE TO FLOOD DAMAGE, BOTH PERSONAL AND PROPERTY, OCCURRING ON THE LEASED PREMISES FROM ANY CAUSE OR CONDITION.**

That all sanitary facilities to be constructed on the premises shall be wholly contained on the leased premises. Sanitary facilities, include, but are not limited to, septic tanks and lateral lines.

All septic systems and waste disposal systems on leased lake lots shall be inspected and subject to the standards set forth in Chapter 16 SMC. The leaseholder shall have sixty (60) days to correct any defects found in the system. Corrections not made within the allotted time shall be grounds for the City to cancel the lease of the leaseholder.

That no lease shall be assigned or sublet, but lessee may at any time during the term of his/her lease, sell and transfer to other parties the improvements on the lot leased by him/her.

That in the event of the sale of the improvements by the lessee, the transfer shall not become effective until approved by the Board of Commissioners of the City of Shawnee at a regular or adjourned meeting held for that purpose and the City as lessor reserves the right to reject and disapprove any transfer when in its opinion it would be to the best interests of the City and its inhabitants to do so. If the transfer is approved, a new lease shall be entered into between the purchaser and the City, and a transfer charge is hereby fixed and established in the sum of one-thousand dollars (\$1000.00) to be paid to the City prior to said transfer in accordance with Section 16-322 SMC.

That the lessee shall be the owner of all improvements which may be placed by him or her, said improvements including cabins or other buildings and boat houses constitute personal property and lessee shall have the right to remove same from the lot at the termination of the lease, subject to the following: whenever a lease has been cancelled by the City as provided herein or by ordinance, the lessee or owner of said improvements shall remove the same within sixty (60) days of the date of the said cancellation of the lease and upon failure to do so, said improvements shall revert to and become the property of the City of Shawnee. And it shall have the right, without further notice or demand to take immediate possession of all said improvements and these will belong to the first party or its assigns, as liquidated damages for the non-fulfillment of the lease by the lessee and for the use and rental thereof.

That the said second party does hereby release the City of Shawnee of any claim or claims for damages by reason of the cancellation of the said lease aforesaid.

That the second party shall at all times during the term of this lease be subject to and does hereby agree to abide by and conform to any rules, regulations or ordinances now in force, or that may hereafter be adopted by the City of Shawnee, governing the regulation of said lake and within the described premises, as to fishing, hunting, boating and other recreational activities upon and around said water reservoir, and to conform to and abide by all further rules, regulations and ordinances now in force, or that hereafter may be adopted by the City of Shawnee, Oklahoma, governing the regulations of said premises and lake.

The City Commission may upon a showing of intentional disregard for the terms of the lease and this division of other city ordinance pertaining to the lake, cancel the city lease upon 30 days notice to the lessee by mailing a copy of such notice to the lessee at his/her last known address. If a lease is cancelled either by the city or the lessee of a city-owned lot prior to the expiration of the lease term, the lessee shall pay the city an early termination fee of \$1,000 in exchange for a release of liability from the remaining term.

That this lease shall be binding upon the representatives, heirs, and assigns and successors in interest of the parties hereto.

It is understood by the parties hereto that a failure to comply with the terms of said Cabin Site Lease shall constitute a misdemeanor and any person, firm, or corporation convicted of such violation shall be punished by a fine not exceeding five hundred dollars (\$500.00) plus costs, or imprisonment for a term not exceeding thirty (30) days, or by such fine and imprisonment.

IN WITNESS WHEREOF, party of the first part has caused its name to be affixed hereto by the Mayor of the City of Shawnee, Oklahoma, and attested by the City Clerk, and the party of the second part hereunto affixed his/her name the day and year first above written.

CITY OF SHAWNEE, OKLAHOMA
A Municipal Corporation,

BY: _____

MAYOR
PARTY OF THE FIRST PART

N. J. Reber, Trustee
PARTY OF THE SECOND PART



PARTY OF THE SECOND PART

ATTEST:

CITY CLERK

Regular Board of Commissioners

4.

Meeting Date: 10/04/2021

Contract

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of a contract with Andrea Weckmueller-Behringer as City Manager.

Attachments

Contract

CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT is made effective October 4, 2021, by and between the City of Shawnee, Oklahoma, a municipal corporation, hereinafter referred to as the "City", and Andrea Weckmueller-Behringer, hereinafter referred to as "Andrea" or "Appointee" (collectively referred to herein as the "Parties").

WITNESSETH:

WHEREAS, the City has adopted a Charter and ordinances establishing the Council Manager form of government in the City of Shawnee and setting forth the duties and responsibilities of the City Manager; and

WHEREAS, the Parties desire to enter into an agreement wherein Appointee is an employee of the City as of the contract effective date to perform such terms of appointment as contained within this Agreement, and the Parties hereto desire to commit their agreement to writing and to be legally bound thereby.

NOW, THEREFORE, in consideration of their mutual promises and covenants contained herein, all Parties hereto agree as follows:

1. Effective Date. This Agreement shall become effective on the date it is executed by the Appointee and duly approved by the City Commission. Appointee shall start work on October 4, 2021 at 6:00 PM.

2. Term. The term of this Agreement shall be three (3) years. Notwithstanding the same, pursuant to the City Charter, the City Manager shall hold office at the discretion of the City Commissioners and shall be subject to removal at any time by a majority vote. Agreement shall remain in effect until terminated by either party as provided in Sections 16, 17, and 18.

3. Duties; Hours of Work. This Agreement is contemplated by the parties to be contingent upon the following stipulations that represent compliance with applicable state law and City Code:

- a. Appointee shall perform those functions and duties specified by State and Federal law, the City of Shawnee Municipal Code, and formal direction from the City Commission.
- b. Appointee shall perform her obligations and responsibilities diligently, applying the highest degree of professionalism, ethics, integrity, and competency to the discharge of every aspect of her obligations.
- c. During the course of Appointee's tenure, she will not engage in, or be involved in, any act, situation, or occurrence, which tends to subject Appointee or the City to any ridicule, contempt or embarrassment, or which reflects unfavorably upon either the City, or the Appointee.

- d. During the term of the Agreement, Appointee shall be exclusively employed by the City unless the City Commission grants prior authorization, which authorization will not be unreasonably withheld.
- e. Appointee shall maintain a regular work schedule consistent with that of other management employees of the City. Appointee's duties may involve greater than eight (8) hours per day and forty (40) hours per week of service to the City. Additionally, the duties may require time outside of normal business hours for the attendance of various events and meetings whereas Appointee shall not be entitled to additional compensation for such time.

4. Compensation. The Appointee's annual salary shall be \$138,000.00 (One Hundred Thirty-Eight Thousand Dollars), reviewed a minimum of annually in connection with the annual review required in Section 15 below, or more frequently at the discretion of the City Commission.

5. Group Health Insurance; Dental Insurance; Vision Insurance. City shall pay full premium of health insurance, dental insurance and vision insurance for Appointee, spouse, and dependents.

6. Short- and Long-Term Disability. Appointee is entitled to participate in short- and long-term disability programs as offered by the City in accordance with the terms and conditions of the Plan(s).

7. Life Insurance. City shall provide term life insurance of one times the Appointee's annual salary. The policy purchased may be provided by the carrier insuring other City employees or by a carrier of the City's choosing.

8. Discretionary Leave. The Appointee may accumulate hours worked over forty (40) hours and use as time off on a discretionary basis. Accumulated Discretionary Leave may not be paid-out upon termination of this Agreement.

9. Vacation Leave. The Appointee is entitled to twenty (20) days of annual vacation leave. Vacation Leave hours may be accumulated to the maximum as set forth for other City employees. Unused Vacation Leave shall be paid-out upon termination of this Agreement. Appointee shall provide a minimum notice of one (1) week to City Commission prior to use of Vacation Leave.

10. Other Leave. The Appointee is entitled to all other leave types, such as funeral and sick leave, as provided to all other management employees of the City. All other benefits provided to Appointee as provided to other management employees of the City shall be on the same terms as provided to those employees, except as otherwise expressly set forth in this Agreement.

11. Allowances. Due to the requirement for frequent use of the Appointee's personal vehicle, the Appointee shall be entitled to \$600 (Six Hundred Dollars) per month as an automobile allowance in-lieu of reimbursement for mileage or other expenses incurred for use of automobile. Appointee is responsible for costs of maintaining vehicle, maintaining acceptable minimum insurance coverage per City policy, and paying annual vehicle motor tax. Additionally, City shall

provide \$60 (Sixty Dollars) per month as a cell phone allowance for frequent use of personal cell phone for purposes of conducting City business.

12. Professional Memberships & Meetings; Relocation and Other Expenses.

- a. City shall pay for Appointee's memberships in the City Managers Association of Oklahoma and International City / County Management Association, and American Institute of Certified Planners. City shall pay for Appointee to attend conferences, continuing education seminars, and other professional memberships as budgeted by the City Commission.
- b. City agrees to pay an amount not to exceed \$10,000 (Ten Thousand Dollars) for Appointee's moving and relocation expenses supported by expense receipts, statements, or personal affidavits. If the Appointee voluntarily terminates their employment with the City prior to one (1) year of service, the Appointee must repay the City the gross amount of the moving and relocation expenses, i.e., actual payment received by the Appointee. The amount to be repaid is prorated on a monthly basis, such that for each full month during which the Appointee remains in the employ of the City, the amount is reduced by one-twelfth (1/12) of the gross amount.
- c. The City recognizes the Appointee may incur expenses of non-personal and job-related nature while conducting City business. City agrees to reimburse Appointee for reasonable expenses which are authorized by the City budget and supported by expense receipts, statements, or personal affidavits.

13. Retirement Program. City shall provide same Oklahoma Municipal Retirement Fund (OkMRF) benefits to Appointee as provided to other department head employees of the City.

14. 457 Deferred Compensation Plan. Appointee shall be entitled to participate, at Appointee's sole expense, in the City's 457 deferred compensation plan in accordance with the terms and conditions of the Plan(s). In addition, City shall contribute an annual amount of 5% of the Appointee's annual compensation, paid incrementally on a bi-weekly basis on regular payroll cycles.

15. Annual Performance Evaluation. The City Commission shall evaluate Appointee's performance at least once annually. The City Commission and Appointee shall develop reasonable and mutually agreeable performance goals and standards which the City Commission shall use in reviewing the Appointee's performance in the preceding year. Appointee shall be afforded adequate opportunity to discuss each evaluation with the City Commission.

16. Termination Without Cause. The City Commission may terminate Appointee's employment at any time and without cause, subject to thirty (30) days written notice to Appointee. In the event of such termination without cause, Appointee shall be entitled to a severance benefit, as follows:

- a. Three months of the Appointee's current salary. Such payments shall be made on same payroll schedule as other City employees. Upon payment of severance compensation and accrued vacation leave, City shall have no other obligation to Appointee.

17. Termination For Cause. The City Commission may terminate Appointee's employment for cause. In the event of termination for cause, City shall have no obligation to continue employment of Appointee or pay severance to Appointee. Appointee is entitled to accrued vacation leave and accrued unpaid salary upon last day of service. For the purposes of this agreement, "cause" may include but is not limited to:

- a. Use of alcohol or drugs that impedes performance duties; or
- b. Conviction of a felony, or misdemeanor involving moral turpitude; or
- c. Willful and repeated failure to honor City policies; or
- d. Willful and repeated failure to carry out lawful directives or policy decisions of the City Commission; or
- e. Willful abandonment of the position or continued and unexcused absence from duty.

18. Voluntary Termination. Appointee may voluntarily terminate employment, by resignation or retirement, at any time during the term of this Agreement subject to at least sixty (60) days written notice to the City Commission. City reserves right to accept resignation immediately or at any point prior to expiration of sixty (60) day written notice. In such case, City shall have no further obligation to provide payments and benefits, including severance benefits, upon the effective date of termination of employment. Appointee is entitled to payment for all accrued unpaid salary and accrued vacation time at date of final service.

19. Form of Government. In the event the City of Shawnee changes its form of government from Council-Manager during the term of this Agreement, this contract shall remain in full force and effect.

20. Holidays. Appointee shall be entitled to same holiday leave days as approved for other City employees. Appointee's salary includes holiday pay and Appointee shall not be entitled to additional salary or compensation for working on a holiday.

21. Technology. City shall provide Appointee with necessary technology to conduct City business, including but not limited to access to internet, laptop computer, and printing equipment.

22. Severability. Invalidity of any one or more of the provisions of this Agreement shall not invalidate or affect any of the other provisions hereof, and this Agreement shall be construed, interpreted and enforced in all respects as though such invalid or unenforceable provisions were omitted.

23. Amendment. This Agreement may be amended or modified only by written consent of the Parties.

24. Entire Agreement. This Agreement supersedes any and all prior agreements regarding the matters contained herein.

25. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors, and assigns.

26. Litigation. If any litigation is initiated by either party to this agreement, the prevailing party shall be entitled to recover its fees and costs incurred therein, including attorney fees and all costs of litigation.

27. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Oklahoma.

28. Bonding. The City shall bear the full cost of any fidelity or other bonds required on the Appointee under any law or ordinance.

29. Indemnification. The City does hereby agree to defend, hold harmless, and indemnify the Appointee from any and all demands, claims, suits, actions, judgments, expenses, and attorneys' fees incurred in any legal proceedings brought against her as a result of action taken or not taken while serving in her individual or official capacity for the City, providing the incident(s), which is (are) the basis of any such demand, claim, suit, actions, judgments, expenses, and attorneys' fees, arose or does arise in the future from an act or omission of the Appointee of City acting within the course and scope of the Appointee's engagement with City; excluding, however, any such demand, claim, suit, action, judgment, expense, and attorneys' fees for those claims or any causes of action where it is determined that the Appointee committed a willful or unlawful act or omission; and excluding any insurance contract, held either by City. The provisions of this paragraph shall survive the termination, expiration, or other end of this agreement and/or the Appointee's engagement with City.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

CITY OF SHAWNEE, OKLAHOMA,
A municipal corporation

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

ANDREA WECKMUELLER-BEHRINGER

ATTEST:

KACIE ECK, NOTARY

APPROVED AS TO FORM:

JOE M. VORNDRAN, CITY ATTORNEY

Regular Board of Commissioners

5.

Meeting Date: 10/04/2021

Resolution

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Consideration of a resolution of the Mayor and City Commission of the City of Shawnee, Oklahoma that establishes and provides compensation of the City Manager pursuant to Article V, Section 3 of the City Charter.

Attachments

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE MAYOR AND CITY COMMISSION OF THE CITY OF SHAWNEE, OKLAHOMA THAT ESTABLISHES AND PROVIDES COMPENSATION OF THE CITY MANAGER PURSUANT TO ARTICLE V, SECTION 3 OF THE CITY CHARTER.

WHEREAS, the City Commission has offered Andrea Weckmueller-Behringer the position of City Manager effective October 4, 2021, at 6:00 PM;

WHEREAS, the appointment of City Manager is provided for in Article IV, Section 5 of the City Charter;

WHEREAS, Article V, Section 3 of the City Charter, provides that the salary as may be agreed upon and fixed by the Board of Commissioners, shall be fixed and recited by resolution;

AND WHEREAS, it is understood by all, and expressed herein, that Andrea Weckmueller-Behringer will be undertaking and performing the vast majority of the responsibilities, duties, and work associated with the position of City Manager;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Commission of Shawnee, Oklahoma that:

- A. Andrea Weckmueller-Behringer has been appointed the City Manager for the City of Shawnee, Oklahoma, effective October 4, 2021;
- B. Andrea Weckmueller-Behringer's salary as City Manager shall be \$138,000.00 (One Hundred Thirty-Eight Thousand Dollars) annually, not to include other benefits and allowances as allowed by policy.

PASSED AND APPROVED this 4th day of October, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CITY CLERK

(SEAL)

Regular Board of Commissioners

8.

Meeting Date: 10/04/2021

Contract

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of a contract with Meshek & Associates, LLC for the Right-of-Way Acquisition for the following projects:

- Kickapoo Street
 - Independence Street
 - Highland Street
-

Attachments

Memo

Contract



Office of Engineering
MEMORANDUM

DATE: Monday, October 4, 2021
TO: Honorable Mayor and Members of the City Commission
FROM: Seth Barkhimer, City Engineer
RE: Meshek & Associates ROW acquisition contract

As you know, the city has been in design on several sidewalk projects as part of our efforts with the Avedis foundation's grant. Those three projects, Kickapoo, Independence and Highland, have reached the point where right-of-way (ROW) acquisition is necessary to progress the projects to construction. While an attempt was made to minimize ROW acquisition in our design, some acquisition is unavoidable given the existing ROW and its relationship to the existing street. In an effort to acquire the necessary ROW in a timely manner, Meshek and Associates, LLC was contacted to prepare a contract for these services.

A summary of the contract pricing can be found below:

Price per Parcel:

- ROW Staking: \$300
- Acquisition Project Management: \$1,000
- ROW Acquisition Negotiation: \$2,500
- Title Investigation: \$200

Price per Project:

- Kickapoo – 28 parcels: \$112,000
- Independence – 4 parcels: \$16,000
- Highland – 33 parcels: \$132,000

Staff has reviewed Meshek's proposed contract and recommends award.



SERVICE AGREEMENT BETWEEN OWNER AND CONSULTANT

OWNER INFORMATION:

Owner name: City of Shawnee

Address: 222 N. Broadway

City: Shawnee State: Oklahoma Zip: 74802

Contact: Seth Barkhimer Title: City Engineer

Telephone: 405-878-1760 Fax: N/A Email: seth.barkhimer@shawneeok.org

Nature of Owner:

☐ Individual/Sole Proprietorship ☐ Corporation ☐ Limited Liability Company ☐ Limited Partnership ☐ Partnership ☒ Other: City

State of formation (if an entity) or residence (if an individual): Oklahoma

Tax ID/SSN: _____

CONSULTANT INFORMATION:

Consultant (company) name: Meshek & Associates, LLC

Address 1437 South Boulder Avenue, Suite 1550

City: Tulsa State: OK Zip: 74119

Contact: Gretchin Fisher Title: ROW Project Manager

Telephone: 918-392-5620 Fax: 918-392-5621 Email: gfisher@meshekengr.com

Nature of Consultant:

☐ Individual/Sole Proprietorship ☐ Corporation ☒ Limited Liability Company ☐ Limited Partnership ☐ Partnership ☐ Other: _____

State of formation (if an entity) or residence (if an individual): Oklahoma

Tax ID/SSN: 73-1322397

All invoices must be addressed and delivered to "Attn: Accounts Payable" at the appropriate address.

TERM/TERMINATION:

THIS IS AN AGREEMENT effective as of _____ (“Effective Date”) between
City of Shawnee _____ (“Owner”) and
Meshek & Associates, LLC _____ (“Consultant”).

Owner's Project, of which Consultant's services under this Agreement are a part, is generally identified as follows:

21602300; Pottawatomie County; Highland Street Sidewalk

210011; Pottawatomie County; Independence Street Sidewalk

2021.40; Pottawatomie County; Kickapoo Street Sidewalk

Consultant's Services under this Agreement are generally identified as follows:

Project Management; Acquisition, Appraisal, Title Research, ROW staking

AGREEMENT:

Owner and Consultant further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Consultant shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Consultant shall furnish services in addition to those set forth above and in Exhibit “A”, any additional work agreed upon shall be approved in writing. Owner shall pay Consultant for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Consultant shall complete its services within a reasonable time.

2.01 *Payment Procedures*

- A. *Invoices:* Consultant shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a milestone basis. Invoices are due and payable within 30 days of receipt. Milestones shall include: Invoice shall be submitted to the Owner after each task is complete with the exception of Acquisition, for which 50% of fee shall be submitted following offer presentation per parcel and balance submitted upon completion and submission of packet. If Owner fails to make any payment due Consultant for services and expenses within 90 days after receipt of Consultant's invoice, Consultant may, after giving seven days written notice to Owner, suspend services under this Agreement until Consultant

has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all claims against Consultant for any such suspension.

3.01 ***Termination***

A. The obligation to continue performance under this Agreement may be terminated:

1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
- b. By Consultant:
 - 1) upon seven days written notice if Owner demands that Consultant furnish or perform services contrary to Consultant's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Consultant's services for the Project are delayed for more than 90 days for reasons beyond Consultant's control.

Consultant shall have no liability to Owner on account of a termination by Consultant under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon Consultant's receipt of written notice from Owner.

B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Consultant to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

C. In the event of any termination under Paragraph 3.01, Consultant will be entitled to invoice Owner and to receive just payment for all services performed and furnished in accordance with this Agreement and all reimbursable expenses incurred through the effective date of termination.

4.01 ***Successors, Assigns, and Beneficiaries***

A. Owner and Consultant are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Consultant (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Consultant) are hereby bound to the other party to this Agreement and to the successors, executors,

administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

- B. Neither Owner nor Consultant may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Consultant to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Consultant and not for the benefit of any other party.

5.01 ***General Considerations***

- A. The standard of care for all professional consulting and related services performed or furnished by Consultant under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Consultant makes no warranties, express or implied, under this Agreement or otherwise, in connection with Consultant's services. Subject to the foregoing standard of care, Consultant and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- C. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to receipt by Consultant of just payment for all services relating to preparation of the documents and subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Consultant, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Consultant; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Consultant, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Consultant or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Consultant and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written

verification, completion, or adaptation by Consultant; and (4) such limited license to Owner shall not create any rights in third parties.

- D. To the fullest extent permitted by law, Owner and Consultant (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Consultant's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Consultant, whichever is greater.
- E. The parties acknowledge that Consultant's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Consultant or any other party encounters a Hazardous Environmental Condition, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- F. Owner and Consultant agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 **Total Agreement**

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Consultant and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 **Basis of Payment—Milestones**

Milestones shall include: Invoice shall be submitted to the Owner after each task is complete with the exception of Acquisition, for which 50% of fee shall be submitted following offer presentation per parcel and the remaining balance to be submitted upon completion of the parcel packet.

Total compensation for services and reimbursable expenses is estimated to be \$260,000.00

- 7.02 **Additional Services:** For additional services of Consultant's employees engaged directly on the Project, Owner shall pay Consultant an amount to be determined dependent on the additional service and with prior approval in writing.

SIGNATURES:

By signing below, each undersigned acknowledges that it has read and understands, and agrees to be legally bound by this Professional Services Agreement. If a person is signing below on behalf of an entity or another person, the person signing represents and warrants that he or she has been properly authorized and empowered to sign this Professional Services Agreement on behalf of that entity or other person and to bind that entity or other person to this Professional Services Agreement. This Agreement may be executed in any number of counterparts, each of which will be considered an original but all of which will constitute one and the same instrument.

City of Shawnee**Meshek & Associates, LLC**

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Consultant's License No: _____

Consultant's License No.: 1487 (OK)

Exhibit A Consultant's Rates

Bid Form

Independence Street - Project No. 210011

Services	No. of Parcels	Fee per Parcel	Total
R/W Staking	4	\$ 300.00	\$1,200.00
Appraisal	*	\$3,200.00	*
Acquisition Project Management	4	\$1,000.00	\$4,000.00
R/W Acquisition	4	\$2,500.00	\$10,000.00
Personal Property Moves	*	\$3,200.00	*
Title Investigation Report	4	\$ 200.00	\$800.00

*The number of appraisals could vary. The price per appraisal is based on bid from Appraiser and is at cost.

*Appraisals and Personal Property move not determined, costs are provided in the event they are needed.

TOTAL: \$16,000.00

Exhibit A Consultant's Rates

Bid Form

Kickapoo Street - Project No. 2021.40

Services	No. of Parcels	Fee per Parcel	Total
R/W Staking	28	\$ 300.00	\$8,400.00
Appraisal	*	\$3,200.00	*
Acquisition Project Management	28	\$1,000.00	\$28,000.00
R/W Acquisition	28	\$2,500.00	\$70,000.00
Personal Property Moves	*	\$3,200.00	*
Title Investigation Report	28	\$ 200.00	\$5,600.00

*The number of appraisals could vary. The price per appraisal is based on bid from Appraiser and is at cost.

*Appraisals and Personal Property move not determined, costs are provided in the event they are needed.

TOTAL: \$112,000.00

Exhibit A Consultant's Rates

Bid Form

Highland Street - Project No. 21602300

Services	No. of Parcels	Fee per Parcel	Total
R/W Staking	33	\$ 300.00	\$9,900.00
Appraisal	*	\$3,200.00	*
Acquisition Project Management	33	\$1,000.00	\$33,000.00
R/W Acquisition	33	\$2,500.00	\$82,500.00
Personal Property Moves	*	\$3,200.00	*
Title Investigation Report	33	\$ 200.00	\$6,600.00

*The number of appraisals could vary. The price per appraisal is based on bid from Appraiser and is at cost.

*Appraisals and Personal Property move not determined, costs are provided in the event they are needed.

TOTAL: \$132,000.00

Exhibit B

Required Insurance Limits and Coverages for Consultants

Before commencing work, Consultants must provide a Certificate of Insurance certifying that the insurance limits and coverages, with the appropriate endorsements, all as outlined below are in effect.

Commercial General Liability	\$1,000,000 Each Occurrence \$1,000,000 General Aggregate * Must include coverage for blanket contractual liability for the obligations assumed under contract
Comprehensive Automobile Liability	\$1,000,000 Combined Single Limit Each Occurrence * Coverage must extend to all owned, non-owned, leased, hired or borrowed vehicles and must include coverage for blanket contractual liability for the obligations assumed under contract
Workers' Compensation	Statutory Limits where Services are to be performed * Must include coverage for Longshoremen's and Harbor Workers' Compensation, if applicable, and coverage for Federal Employers' Liability Act, if applicable
Employer's Liability	\$1,000,000 Each Occurrence \$1,000,000 Disease per Employee * * An Umbrella liability policy, which follows form, may be used to obtain the aforementioned limits
Professional Liability (If applicable)	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate

Certificate Holder and Endorsement Requirements

- Owner shall be listed as Certificate Holder.
- Consultant and the Consultants identified in the Purchase Order for a Specific Project shall be listed on Owner's general liability policies of insurance as additional insureds.

Other Requirements

- All policies required shall be written by a reputable insurance company reasonably acceptable to Company or with a Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which Consultant is performing for Company.
- Failure to provide evidence as required shall entitle, but not require, Owner to terminate immediately. Acceptance of a certificate that does not comply with this document shall not operate as a waiver of Consultant's obligations hereunder.

Regular Board of Commissioners

9.

Meeting Date: 10/04/2021

Agreement

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of a Real Property Exchange Agreement and approval of deeds ancillary thereto, between Shawnee Public Schools (Independent School District No. 93) and the City of Shawnee; and authorizing the Mayor to execute the Real Property Exchange Agreement and Deeds on behalf of the City of Shawnee.

Attachments

Contract

REAL PROPERTY EXCHANGE AGREEMENT

THIS EXCHANGE AGREEMENT ("**Agreement**") is entered on the ____ day of _____, 2021, by the City of Shawnee, with its business office located at 16 West 9th Street, Shawnee, Oklahoma 74801 ("**City**"), and Independent School District No. 93 of Pottawatomie County, Oklahoma a/k/a Shawnee Public Schools, 326 North Union Street, Shawnee, OK 74801, ("**District**") (collectively, the "**Parties**", and individually, a "**Party**").

WHEREAS, City is the owner of real property formerly known as the Kickapoo Motel located at the Northeast Corner of North Kickapoo Avenue and West Dill Street in Shawnee, Pottawatomie County, Oklahoma, described more specifically as West 25 feet of Lots 17 through 20 and Lots 21 through 24 in Dills Block 5 ("**City Property**");

WHEREAS, District is the owner of real property located at 214 South Pennsylvania, Shawnee, Oklahoma, described more specifically as Lots 5 through 17, Block 2, Seminole Addition consisting of approximately 1.5 acres which is commonly referred to as the Franklin Property ("**District Property**");

WHEREAS, City and District desire to engage in a real property exchange of their respective real properties that are of relatively equal value;

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Exchange and Conveyance: Subject to the exceptions and reservations contained in this Agreement, City shall exchange the City Property described above to District for receipt of fee simple title of District's full interest in District Property described above. District shall exchange District Property for receipt of fee simple title of City's full interest in City Property.

At Closing, City will execute and deliver a Quit Claim Deed conveying title of City Property to District, and District will execute and deliver a Quit Claim Deed conveying title of District Property to City. All conveyances shall be free and clear of all recorded liens and special assessments levied or assessed. The Parties agree that all right, title and interest in and to all minerals and substances of value of every kind and character, including without limitation all oil, gas, casing head gas, coal, all rock, sand, water, iodine, metallic ores, and other minerals, and other substances of value in, on or under City Property or District Property, shall be reserved and excepted from the conveyance of either property.

2. Valuation: City and District acknowledge and agree that the value of each Property is of equal value compared to the other property.
3. Condition of Properties: City and District are exchanging the Properties "as is, and neither makes any representations and warranties with respect to the condition of the Properties. City and District fully understand the conditions of the Properties

and have conducted any and all inspections desired by either. Upon Closing or taking possession of the Properties, each party shall be deemed to have accepted the Properties in their then condition, including fixtures, equipment, and appliances, if any. No warranties, express or implied, by either party with reference to the condition of the Properties or any fixtures, equipment, or appliances shall be deemed to survive the Closing.

4. Taxes and Prorations: City and District are not subject to taxes.
5. Expenses: The Parties shall share equally any costs associated with recording fees, and all other funds required as set forth in this Agreement. Both Parties are exempt from documentary stamps per 68 O.S. § 3201(11).
6. Closing: The parties anticipate that closing will occur on or before October 15, 2021, at a location as the parties may determine.
7. Transfer of Possession: Unless otherwise agreed in writing, each Party shall transfer possession of its respective Property at Closing.
8. Real Estate Broker: Neither City nor District has used the services of a real estate broker for this transaction.
9. Breach or Failure to Close: If, a Party has performed its obligations under this Agreement, and if within five (5) days after the date specified for Closing, the other Party fails to perform its obligations under this Agreement, then the Agreement shall terminate. Neither Party shall be entitled to pursue any legal or equitable remedy for the breach of this Agreement by the other Party.
10. Covenants, Representations, and Warranties: Each Party makes the following covenants, representations, and warranties to the other Party as of the date of this Agreement and as of the Closing Date (unless otherwise indicated below):
 - a. Neither Party has granted and/or will not grant to any person any right or option to purchase the Property or any part thereof while this Agreement remains in effect.
 - b. No insurance company insuring the Property has given to the Party any notice of any violations of the terms of any policies or setting forth any alterations, improvements, repairs, or requirements which have not been fully remedied or complied with, and if the Party receives such notice prior to Closing, the Party receiving such notice shall notify the other Party of such notice.

c. To the best of the Party's knowledge and belief, there are no existing, pending or threatened litigation, suit, action, claim, judgment, arbitration, or legal, administrative, or other proceeding or governmental investigation against or affecting the Property. Each Party shall promptly notify the other Party if so notified of any such litigation, suit, action, claim, judgment, arbitration, or legal, administrative, or other proceeding or governmental investigation regarding the Property. Neither Party is aware of any violations of any zoning, building, fire, health, or other codes or governmental requirements related to its respective Property.

d. Neither Party has received notice that its ownership, use, maintenance, or operation of its Property does not currently comply with any applicable federal, state, county, or local statutes, regulations, rules, ordinances, codes, licenses, or permits of any governmental authority, including those relating to environmental matters and, to each Party's knowledge, neither the Property nor its use is in violation of any governmental statute, regulation, rule, ordinance, or code.

e. The execution, delivery, and performance of this Agreement is a duly authorized, valid, and legally binding obligation of each Party, enforceable in accordance with its terms. The execution and performance of this Agreement will not result in a breach or default of any material agreement, instrument, order, judgment, or decree to which either Party is a party or by which the Property is bound. Nor, to the best of each Party's knowledge and belief, will execution and performance of this Agreement violate any provision of any applicable law which materially affects the Property or any anticipated business or operations of the Party.

f. No other consent is required from any court, governmental entity, or other person in connection with the execution and performance of this Agreement except those consents and approvals described in this Agreement.

11. Notice: Any notice provided for herein shall be given in writing, sent by personal delivery or United States mail, postage prepaid, with copies to the other parties, addressed as follows:

TO District:

April Grace, Superintendent
Shawnee Public Schools
326 North Union Street
Shawnee, OK 74801-7053

With a copy to:
Laura L. Holmes, Attorney
The Center for Education Law, P.C.
900 North Broadway, Suite 300
Oklahoma City, OK 73102
Lholmes@cfel.com

TO City:

Andrea Weckmueller-Behringer, City Manager
City of Shawnee
16 West 9th Street
Shawnee, OK 74801

With a copy to:
Joseph M. Vorndran, City Attorney
130 North Broadway Avenue, Suite 100
Shawnee, OK 74801

or such other address as shall hereafter be designated in writing. Any such notice shall be deemed to have been given upon receipt by the other party.

12. Effect: This Agreement shall be executed in duplicate originals. When executed by both Parties, this Agreement shall be binding upon and inure to the benefit of each Party, their heirs, legal representatives, successors, and assigns. This Agreement sets forth the complete understanding of the Parties and supersedes all previous negotiations, representations, and agreements between them and their agents.
13. Timing: All parties agree time is of the essence.
14. Amendments: This Agreement is the entire agreement of the Parties and may be amended only by a written document executed by the Parties.
15. Successors: This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.
16. Assignment: Neither Party may assign this Agreement without the express written consent of the other Party.

[Signature page to follow.]

ACCEPTED AND AGREED TO BY SHAWNEE PUBLIC SCHOOLS BOARD OF
EDUCATION on the _____ day of _____, 2021.

SHAWNEE PUBLIC SCHOOLS
INDEPENDENT SCHOOL DISTRICT NO. 93
OF POTTAWATOMIE COUNTY, OKLAHOMA

DR. APRIL GRACE,
SUPERINTENDENT

ATTEST:

SECRETARY

ACCEPTED AND AGREED TO BY THE CITY OF SHAWNEE BOARD OF CITY
COMMISSIONERS on the _____ day of _____, 2021.

THE CITY OF SHAWNEE, OKLAHOMA
A MUNICIPAL CORPORATION

ANDREA WECKMUELLER-BEHRINGER,
CITY MANAGER

(SEAL)
ATTEST:

LISA LASYONE, CMC, CITY CLERK

Approved as to form and legality on this _____ day of _____, 2021

JOSEPH M. VORNDRAN,
CITY ATTORNEY

Regular Board of Commissioners

10.

Meeting Date: 10/04/2021

Ordinance

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and consideration of an ordinance relating to shopping carts, amending Chapter 8 of the Shawnee Municipal Code by creating Article XI of Chapter 8, shopping carts; providing for repeal; providing for severability; providing for codification; and providing for emergency clause. (*Deferred from the September 20, 2021 City Commission meeting.*)

Attachments

Ordinance

ORDINANCE NO. _____

AN ORDINANCE RELATING TO SHOPPING CARTS, AMENDING CHAPTER 8 OF THE SHAWNEE MUNICIPAL CODE BY CREATING ARTICLE XI OF CHAPTER 8, SHOPPING CARTS; PROVIDING FOR REPEAL; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; AND PROVIDING FOR EMERGENCY CLAUSE.

BE IT ORDAINED BY THE COMMISSIONERS OF THE CITY OF SHAWNEE:

SECTION 1. That Article XI of Chapter 8 of the Shawnee Municipal Code is hereby created to read as follows:

CHAPTER 8

ARTICLE XI

§ 8-620 - Identification of shopping carts.

On and after the effective date of this section each owner of a retail establishment providing three or more shopping carts for use by the patrons of the retail establishment, and the manager or person in charge of any retail establishment which provides three or more shopping carts for use by the patrons of the retail establishment, shall permanently affix to all shopping carts under the ownership and control of such owner, manger or person in charge the notification required under this section, specifically described in Shawnee Municipal Code § 8-622.

§ 8-621- Definitions

As used in this chapter:

(a)"Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(b) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

§ 8-622 - Application; permanently affixed sign required; contents

Each shopping cart shall have a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of local law; and lists a telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

§ 8-623 - Unlawful acts

It is unlawful to do any of the following acts:

(a) To remove a shopping cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(c) To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(f) To be in possession of any shopping cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

§ 8-624 - Violations; misdemeanor; application of other laws

Any person who violates any of the provisions of this Article is guilty of a misdemeanor. The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

§ 8-625 Consent from owner

This chapter shall not apply to the owner of a shopping cart, or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of the shopping cart or the retailer to be in possession of the shopping cart or to remove the shopping cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 8-623.

§ 8-626 Presumption and interference; ownership of carts

In any criminal proceeding, it may be inferred that any shopping cart which has a sign affixed to it pursuant to Section 8-622 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

§ 8-627 - Recovery of shopping carts by city forces.

To the extent otherwise permitted by law, law enforcement personnel may enter onto any public or private property in the City to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the City of Shawnee pursuant to any provision of this Article may be performed by any law enforcement personnel. Any law enforcement personnel are authorized to issue an administrative citation upon any owner whom they have reasonable cause to believe has violated any provision of this chapter.

§ 8-628 - Notification for retrieval of abandoned shopping carts.

The City shall notify the owner of any abandoned carts owned or used by the business establishment that have been located within the City of Shawnee. The owner shall have thirty days from the date the notification is given, to retrieve the carts from the city.

§ 8-629 - Disposition of shopping carts after thirty days.

Any cart not reclaimed from the City within thirty days after notification to the owner shall be sold or otherwise disposed of by the city. Any cart that fails to have the identification required by state law or this chapter may be sold or otherwise immediately disposed of at the discretion of the city.

SECTION 2: REPEALER. All sections, subsections, clauses, and sentences of existing law in conflict with this ordinance are repealed.

SECTION 3: CODIFICATION. This Ordinance shall be codified in the Shawnee Municipal Code, and the codifier is authorized to set out the ordinance as appropriate.

SECTION 4: SEVERABILITY. The provisions of this ordinance are severable and, if any sentence, provision, or other part of this Ordinance shall be held invalid, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this ordinance.

SECTION 5: EMERGENCY. It being immediately necessary for the preservation of the peace, health, safety and public good of the City of Shawnee, Oklahoma and the inhabitants thereof that the provisions of this Ordinance be put into full force and effect, an emergency is hereby declared to exist, by reason whereof, this ordinance shall take effect and be in full force and effect after its passage, as provided by law.

PASSED AND APPROVED this ____ day of _____, 2021

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CMC, CITY CLERK

(SEAL)

PASSED AND APPROVED and the emergency clause voted on separately this ____ day of _____, 2021.

ED BOLT, MAYOR

ATTEST:

LISA LASYONE, CITY CLERK

(SEAL)

Approved as to form and legality this ____ day of _____, 2021.

JOSEPH M. VORNDRAN
CITY ATTORNEY

Regular Board of Commissioners

11. a.

Meeting Date: 10/04/2021

Budget Amendment

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Fund 001 General Fund – To fund Lake Survey contract.

Attachments

Fund 001

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

Regular Board of Commissioners

11. b.

Meeting Date: 10/04/2021

Budget Amendment

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Fund 001 General Fund – To fund Radio Maintenance contract.

Attachments

Fund 001

City of Shawnee
2021-2022 Budget Amendment
General Fund

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
				Total	-	-	-

Appropriations

Fund Number	Account Number	Project Code	Line Item	Description	Balance Before Amendment	Amount of Amendment Increase (Decrease)	Balance After Amendment
001	5-0610-51010			REGULAR SALARIES	393,902.22	(48,911.46)	344,990.76
001	5-0610-51150			OMRF RETIREMENT	42,453.01	(4,924.81)	37,528.20
001	5-0610-51110			SOCIAL SECURITY	21,439.13	(3,042.11)	18,397.02
001	5-0610-51120			MEDICARE	6,507.20	(711.03)	5,796.17
001	5-0610-51040			LONGEVITY	7,633.60	(699.40)	6,934.20
001	5-0610-51500			OTHER BENEFITS	2,160.00	(525.18)	1,634.82
001	5-0610-51140			LIFE INSURANCE	889.20	(110.92)	778.28
001	5-0610-53390			OTHER CONTRACTUAL SERVICES	2,000.00	43,200.00	45,200.00
					-	-	-
					476,984.36	(15,724.91)	461,259.45

Approved by the City Commission this

Explanation of Budget Amendment:
To fund Radio Maintenance Contract

Approved:

Mayor _____

Attest:

City Clerk _____

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

Regular Board of Commissioners

11. c.

Meeting Date: 10/04/2021

Budget Amendment

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Fund 706 Gifts and Contributions – To fund expenditures for Fire Clown Program using prior year donations.

Attachments

Fund 706

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

Regular Board of Commissioners

12. a.

Meeting Date: 10/04/2021

Bid Award

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Fence Removal and Replacement Project Heart of Oklahoma Exposition Center Project No. C-21-03D1
(Award)

Attachments

Memo

Specs

Guide

Plan Holders List

Bid Tabulation



Date: September 30, 2021
To: Mayor and Commissioners
From: Katy Fleming, General Manager
RE: Fence Removal and Replacement Project

On September 3, 2021, the Expo General Manager advertised the RFQ for the Fence Removal and Replacement Project at the Heart of Oklahoma Expo Center. The RFQ was advertised in the newspaper, Expo web site, and multiple phone calls were placed to several fencing companies. The RFQ was due back in on September 20, 2020 at 4:00 pm.

Staff received 1 qualified RFQ:
RJ Fencing & Decks, Wellston, OK.

The General Manager has reviewed the RFQ and has decided that RJ Fencing & Decks has the qualifications to conduct the fencing project.

The Heart of Oklahoma Expo Center is a hub for activities in this area and constantly growing. We struggle with keeping the property secure as well as the overall image. This project is a bit unique due to the different types of fencing and the clients using the fence area. This project came in under budget and is meeting our requested needs security and image wise.

Spectra is requesting authorization to award the Fence Removal and Replacement Project to RJ Fence out of Wellston, Oklahoma, in the amount of \$266,032.50.

SPECIFICATIONS AND CONTRACT DOCUMENTS

FOR

Fence Removal and Replacement Project Heart of Oklahoma Expo Center Project No. C-21-03D1

CITY OF SHAWNEE,
POTTAWATOMIE COUNTY, OKLAHOMA

Prepared By
Katy Fleming

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NOTICE TO BIDDERS

Notice is hereby given that the City of Shawnee will receive sealed bids at the City Hall, 16 West 9th, Shawnee, Oklahoma, 74801, up to 4:00 p.m. on September 20, 2021 and publicly read aloud at the Commission Meeting being held at 6:00 p.m. on Tuesday, September 20, 2021 for furnishing all labor and materials and performing all work necessary for:

Project No. C-21-03D1

Fence Removal and Replacement Project - Heart of Oklahoma Expo Center

The proposal will include a special provision with reference to Contractor's Non-Collusion Affidavit and a 5% bid bond in a certified or cashier's check or surety bond shall accompany the sealed proposal of each bidder. Evidence of having proper workmen's compensation coverage for employees as provided by Title 85 of the Oklahoma Statutes Section 61 shall be required prior to issuance of a work order.

Examination of plans, specifications, special provisions, and site of work is required. Plans, forms of proposals, contracts and specifications may be examined at the following locations:

ShawneeExpo.org
www.shawneeexpo.org

Published in the Shawnee News-Star
Weeks of September 9 & 16

IMPORTANT: ALL CONTRACTORS SUBMITTING A BID FOR THIS CONTRACT MUST HAVE DOWNLOADED PROJECT PLANS AS SET FORTH BELOW. THIS IS A MATERIAL REQUIREMENT OF THIS BID NOTICE. FAILURE TO COMPLY WILL CAUSE THE BID TO BE CONSIDERED NONRESPONSIVE. A complete set of Plans and Specifications to prospective bidders must be obtained on the Heart of Oklahoma Expo Center's website. Any prospective bidders must join the plan holder's email list upon downloading the documents to receive addendums and submit a bid. Contact Katy Fleming at katy.fleming@spectraxe.com to inquire about the project. Upon award of contract to a successful bidder, the contract will be completely executed within ten (10) working days from the date of award by the successful bidder and the City of Shawnee.

The City of Shawnee hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex or national origin in consideration for an award.

The City of Shawnee reserves the right to reject any or all bids. The City of Shawnee reserves the right to accept the bid determined to best serve the needs of the City.

CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA

DocuSigned by:

1D24DAB8FE3C4B1...
Eric Benson City Manager

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AND
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INSTRUCTIONS TO BIDDERS

EXAMINATION OF SITE: Each bidder by making his bid represents that he had visited the site(s) and familiarized themselves with all the conditions under which the work is to be performed. No extra compensation will be allowed by reason of any matters or things concerning which the bidder did not inform themselves prior to bidding.

EXAMINATION OF BIDDING DOCUMENTS: Each bidder by making their bid represents they have read and understand the bidding documents. The bidder shall include in his bid prices any and all costs that may be necessary to complete the work in accordance with the requirements of the contract documents.

INTERPRETATION OF CONTRACT DOCUMENTS: Questions regarding documents, discrepancies, omissions, or intent of the specifications or drawings shall be submitted in writing to Katy Fleming at least seven days prior to opening of bids to provide time for issuing and forwarding an addendum. Any interpretation of the contract documents will be made only by addendum duly issued or delivered by the Owner to each person receiving a set of documents. The Owner will not be responsible for any other explanations or interpretation of the contract documents.

MATERIAL SUBSTITUTION: Each bidder shall base their bid upon the materials and equipment as described in the bidding documents. The successful contractor will not be allowed to make any substitutions on their own initiative, but in each instance will be required to obtain authorization from the Owner before installing any work in variance with the requirements of the contract documents.

QUALIFICATIONS OF BIDDERS: In determining the lowest responsible bid, the following elements will be considered: whether the bidder involved (a) maintains a permanent place of business; (b) has adequate equipment to do the work properly and expeditiously; (c) has a suitable financial status to meet obligations incident to the work; and (d) has appropriate technical experience.

Each bidder must complete the attached "Qualification Statement of Bidders & Qualifications Statement of Bidder's Surety".

Each bidder may be required to show that former work performed by them has been handled in such a manner that there are no just, or proper claims pending against such work. No bidder will be acceptable if they are engaged on any other work which impairs their ability to finance this contract or provide proper equipment for the proper execution of the same. Each bidder shall demonstrate their ability by meeting all requirements herein stipulated, if asked of them.

BID SECURITY. No bid will be considered unless accompanied by a cashier's check, a certified check or a bidder's bond in the amount of five percent (5%) of the bid, as a guarantee that if the

bid is accepted, the bidder will execute the agreement and file bonds and insurance as required by the contract documents within ten (10) days from the date of the award of the contract.

RETURN OF BID SECURITIES. The security of all bidders will be returned after the execution of the agreement with the successful bidder and the approval of his bonds and insurance. If all bids are rejected, the securities will be returned at the time of rejection.

AGREEMENT, BONDS, AND INSURANCE. The attention of bidders is specifically directed to the forms of agreement and bonds to be executed and the type of insurance to be taken out in the event a contract award is made.

BID SUBMITTAL. Each bid, properly signed, together with the bid security and all documents bound herewith, shall be enclosed in a sealed envelope addressed and entitled as specified in the Invitation to Bid. All addenda issued shall be included with the documents at the time of bid submittal.

WITHDRAWAL OF BID. Any bid may be withdrawn at any time prior to the hour fixed in the Invitation to Bid for the opening of bids, provided that a request in writing, executed by the bidder, or his duly authorized representative, for the withdrawal of such bid is filed with the Owner prior to the time specified for opening of bids. The withdrawal of such bid will not prejudice the right of a bidder to file a new bid.

PENALTY FOR COLLUSION. If at any time it shall be found that the person, firm or corporation to whom the contract has been awarded has, in presenting any bid or bids, colluded with any other party or parties, then the contract so awarded shall be null and void, and the contractor and his sureties shall be liable to the Owner for all loss or damage which the Owner may suffer thereby, and the Owner may advertise for new bids for said work.

LICENSE. Each bidder shall possess State and local licenses as are required by law and shall furnish satisfactory proof to the Owner upon request that the licenses are in effect during the entire period of the contract.

LATE BIDS. Any bid received by the awarding public agency or an officer or employee thereof more than ninety-six (96) hours excluding Saturdays, Sundays and holidays before the time set for the opening of bids, or any bid so received after the time set for opening of bids, shall not be considered by the awarding public agency and shall be returned unopened to the bidder submitting same.

BID OPENING. Bids will be opened and recorded at the time and place indicated in the Notice to Bidders. Bidders or their agents are invited to be present.

AWARD OF CONTRACT. The award of any contract or contracts will be made to the lowest responsible bidder or bidders. The Owner reserves the right to reject any or all bids, or to waive irregularities or informalities at its discretion.

It is anticipated that approval will be received within thirty (30) days of opening of bids. In the event that the approvals are not received, or the Owner cannot award or reject said proposals within sixty (60) days from the date of opening of bids, bidders shall have the right to withdraw their bids on written notice to the Owner.

EFFECTIVE DATE OF AWARD. If a contract is awarded by the Owner, such award shall be effective when formal notice of such award, signed by the authorized representative of the Owner, has been delivered to the intended awardee, or mailed to him at the main business address shown on his bid, by some office or agent of the Owner duly authorized to give such notice.

EXECUTION OF AGREEMENT. Copies of the agreement in the number stated in the form of agreement, shall be executed by the successful bidder, and returned, together with the required bonds and insurance, within ten (10) days from and after the date of the award of the contract. Effective date of bonds shall be the same or later than the date of the agreement.

FAILURE TO EXECUTE AGREEMENT AND FILE BONDS AND INSURANCE. Failure of a successful bidder to execute the agreement and file required bonds and insurance within the required time shall be just cause for the annulment of the award. On failure of a successful bidder to execute the agreement and file the required bonds and insurance within the required time, he shall forfeit his bid security as agreed herein before. Upon annulment of an award as aforesaid, the Owner may then award the contract to the next lowest responsible bidder.

PAYMENT FOR EXCESS COSTS AND LIQUIDATED DAMAGES. The successful bidder will be required to pay for the excess cost of field engineering and inspection and liquidated damages as defined in the Special Provisions, if extensions of time are not granted by Owner because of avoidable delays as therein defined.

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Owner and Contractor hereby agree as follows:

Project No. C-21-03D1
Fence Removal and Replacement Project - Heart of Oklahoma Expo Center

The work described above is part of the HOOEC's Capital Improvement Plan.

3.01 The Project has been designed by the HOOEC's General Manager, which is to act as Owner's representative, assume all duties and responsibilities, and have the rights and authority assigned in the Contract Documents in connection with the completion of the Work in accordance with the Contract Documents.

A. The Work will be substantially completed as described in the Special Provisions and as provided in Paragraph 14.04 of the General Conditions and completed and ready for final

payment as described in the Special Provisions and in accordance with Paragraph 14.07 of the General Conditions.

4.03 Liquidated Damages

Reference the Special Provisions

ARTICLE 5 - CONTRACT PRICE

5.01 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents an amount in current funds equal to the sum of the amounts determined pursuant to Paragraphs 5.01.A below:

A. For all Work, at the prices stated in Contractor's Bid, attached hereto as an exhibit.

ARTICLE 6 – PAYMENT PROCEDURES

6.01 Submittal and Processing of Payments

A. Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by Owner as provided in the General Conditions.

6.02 Progress Payments; Retainage

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment on or about the 1st day of each month during performance of the Work as provided in Paragraph 6.02.A.1 below. All such payments will be measured by the schedule of values established as provided in Paragraph 2.07.A of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

1. Prior to Substantial Completion, progress payments will be made in an amount equal to the percentage indicated below but, in each case, less the aggregate of payments previously made and less such amounts as Owner may determine or Owner may withhold, including but not limited to liquidated damages, in accordance with Paragraph 14.02 of the General Conditions.

a. 10 percent of Work completed (with the balance being retainage). If the Work has been 50 percent completed as determined by Owner's Representative, and if the character and progress of the Work have been satisfactory to Owner, then as long as the character and progress of the Work remain satisfactory to Owner, there will be no additional retainage; and

- b. 5 percent of cost of materials and equipment not incorporated in the Work (with the balance being retainage).
- B. Upon Substantial Completion, Owner shall pay an amount sufficient to increase total payments to Contractor to 100 percent of the Work completed, less such amounts as Owner's Representative shall determine in accordance with Paragraph 14.02.B.5 of the General Conditions and less 200 percent of Engineer's estimate of the value of Work to be completed or corrected as shown on the tentative list of items to be completed or corrected attached to the certificate of Substantial Completion.

6.03 *Final Payment*

- A. Upon final completion and acceptance of the Work in accordance with Paragraph 14.07 of the General Conditions, Owner shall pay the remainder of the Contract Price as recommended by Engineer as provided in said Paragraph 14.07.

ARTICLE 7 – CONTRACTOR'S REPRESENTATIONS

- 7.01 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:
- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents.
 - B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
 - C. Contractor is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
 - D. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities), if any, that have been identified in Section 4.02 of the General Conditions as containing reliable "technical data," and (2) reports and drawings of Hazardous Environmental Conditions, if any, at the Site that have been identified in Section 4.02 of the General Conditions as containing reliable "technical data."
 - E. Contractor has considered the information known to Contractor; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including any specific means, methods, techniques, sequences, and procedures of

construction expressly required by the Contract Documents; and (3) Contractor's safety precautions and programs.

- F. Based on the information and observations referred to in Paragraph 8.01.E above, Contractor does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
- H. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

ARTICLE 8 – CONTRACT DOCUMENTS

8.01 *Contents*

- A. The Contract Documents consist of the following:
 - 1. Instructions to Bidders
 - 2. This Agreement
 - 3. Maintenance Bond
 - 4. Performance Bond
 - 5. Special Provisions
 - 6. Standard General Conditions of the Construction Contract
 - 7. Qualification Statement of Bidders
 - 8. Qualification Statement of Bidder's Surety
 - 9. Bid Proposal
 - 10. Bid Form
 - 11. Bid Affidavits
 - 12. Certificate of Nondiscrimination

13. Status Verification Systems Affidavit

14. Specifications

15. Plan Drawings

16. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:

- a. Notice to Proceed
 - b. Work Change Directives.
 - c. Change Orders.
- B. The documents listed in Paragraph 9.01.A are attached to this Agreement (except as expressly noted otherwise above).
- C. There are no Contract Documents other than those listed above in this Article 9.
- D. The Contract Documents may only be amended, modified, or supplemented as provided in Paragraph 3.04 of the General Conditions.

ARTICLE 9 – MISCELLANEOUS

9.01 Terms

- A. Terms used in this Agreement will have the meanings stated in the General Conditions and the Supplementary Conditions.

9.02 Assignment of Contract

- A. No assignment by a party hereto of any rights under or interests in the Contract will be binding on another party hereto without the written consent of the party sought to be bound; and, specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under the Contract Documents.

9.03 Successors and Assigns

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.04 *Severability*

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.05 *Contractor's Certifications*

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract. For the purposes of this Paragraph 10.05:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of anything of value likely to influence the action of a public official in the bidding process or in the Contract execution;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process or the execution of the Contract to the detriment of Owner, (b) to establish Bid or Contract prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish Bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

9.06 *Other Provisions*

- A. None.

IN WITNESS WHEREOF, Owner and Contractor have signed this Agreement. Counterparts have been delivered to Owner and Contractor. All portions of the Contract Documents have been signed or have been identified by Owner and Contractor or on their behalf.

This Agreement will be effective on _____ (which is the Effective Date of the Agreement).

OWNER:

City of Shawnee

By: _____

Title: _____

Attest

. _____

Title: _____

Address for giving notices:

16 West 9th

Shawnee, OK 74801

(If Owner is a corporation, attach evidence of authority to sign. If Owner is a public body, attach evidence of authority to sign and resolution or other documents authorizing execution of this Agreement.)

CONTRACTOR

By: _____

Title: _____

(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest: _____

Title: _____

Address for giving notices:

License No.: _____

(Where applicable)

NOTE TO USER: Use in those states or other jurisdictions where applicable or required.

Agent for service of process:

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MAINTENANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, _____, as principal, and _____, as Surety, are held and firmly bound unto the CITY OF SHAWNEE, of the State of Oklahoma, in the full and just sum of _____ Dollars (\$ _____), such sum being equal to the contract price for a period of one (1) year, such sum being not less than 100% of the contract price, for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, and assigns, themselves, and its successors and assigns, joint and severally, firmly by these presents.

Dated this _____ day of _____, 20 _____. The conditions of this obligation are such that whereas, said Principal has by a certain contract between _____, and the CITY OF SHAWNEE, dated this _____ day of _____, 20- _____. Agreed to construct in the CITY OF SHAWNEE:

all in compliance with the plans and specifications therefore, make a part of said contract and on file in the Office of the City Clerk of the CITY OF SHAWNEE; and to maintain the said improvement in the amounts set forth above against any failure due to workmanship or material for a period of 1 year from the date of acceptance of the project by the City of Shawnee.

NOW THEREFORE, if said Principal shall pay or cause to be paid to the City, all damage, loss, and expense which may result by reason of defective materials and/or workmanship in connection with said work occurring within a period 1 year for all projects for the construction of roads, streets, highways, and utilities from and after acceptance of said project by the City of Shawnee, then this obligation shall be null and void, otherwise to be and remain in full force and effect.

It is further agreed that if the said Principal or Surety herein shall fail to maintain said improvements against failure due to defective workmanship and/or material for a period of 1 year and at any time repairs shall be necessary that the cost of making said repairs shall be determined by the CITY OF SHAWNEE, or some person or persons designated by them to ascertain the same, and if, upon thirty (30) days notice, the said amount ascertained shall not be paid by the Principal or Surety herein, or if the necessary repairs are not made, the said amount shall become due upon the expiration of thirty (30) days and suit may be maintained to recover the amount so determined in any Court of competent jurisdiction. And that the amount so determined shall be

conclusive upon the parties as to the amount due on this bond for the repair or repairs included therein, and that the cost of all repairs shall be so determined from time to time during the life of this bond as the condition of the improvements may require.

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

IN WITNESS WHEREOF, the said Principal has caused these presents to be executed in its 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.

ATTEST:

_____	BY _____
Secretary/Witness	Principal

Surety	

ATTEST:

_____	BY _____
Secretary/Witness	

APPROVED as to form this _____ day of _____, 20 _____

Title:

REVIEWED and APPROVED by the CITY OF SHAWNEE this _____ day of _____, 20 _____.

Title:

ATTEST:

Title:

PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS:

That We, _____, s Principal, and _____ as Surety, are held and firmly bound unto the CITY OF SHAWNEE, of the State of Oklahoma, in the full and just sum of _____ DOLLARS (\$ _____), such sum being equal to 100% of the contract price for the payment of which, well and truly to be made, we, and each of us, bind ourselves, our heirs, executors and assigns, themselves, and its successors and assigns, jointly and severally, firmly by these presents.

Dated this _____ day of _____, 20 _____. The conditions of this obligation are such, that whereas, said Principal is the lowest and best bidder for the making of the following improvement:

_____ and has entered into a certain written contract with the CITY OF SHAWNEE on the ____ day of _____, 20 ____, for the erection and construction of said work and improvement all the compliance with the plans and specifications therefore, make a part of said contract and on file in the Office of the City Clerk of the CITY OF SHAWNEE, and said contract is hereby made a part of parcel of this bond as it literally written herein.

NOW, THEREFORE, if the said _____, Principal, shall fully and faithfully execute the work and perform said contract according to it terms, conditions, and covenants, and in exact accordance with the bid of said Principal, and according to certain plans and specifications heretofore made, adopted, and placed on file in the Office of the City Clerk of the CITY OF SHAWNEE, and shall promptly pay or cause to be paid, all labor, material and/or repairs and all bids for labor performed on said work, whether by subcontract or otherwise, and shall protest and save harmless the said City and all interested property owners against all claims, demands, causes of action, losses or damage, and expense to life or property suffered or sustained by any person firm, or corporation by reason of negligence of the Contractor or his or its agents, servants, or employees in the construction of said work, or by or in consequence of any improper execution of the work or act of omission or use of inferior materials by said Contractor or his or its agents, servants, or employees, and shall protect and save the City harmless from all suits and claims of infringement or alleged infringement of patent rights or processes, then this obligation shall be void; otherwise, this obligation shall remain in full force and effect.

It is further expressly agreed and understood by the parties hereto that no changes 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 the, from the obligations of this bond.

In witness whereof, THE SAID principal has caused these presents to be executed in its name; and its corporate seal to be hereunto affixed by its duly authorized officer, 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.

ATTEST:

Secretary/Witness

BY _____
Principal

Surety

ATTEST:

Secretary/Witness

BY _____

APPROVED as to form this _____ day of _____, 20 _____.

Title:

REVIEWED and APPROVED by the CITY OF SHAWNEE this _____ day of _____, 20 _____.

Title:

ATTEST:

Title:

SPECIAL PROVISIONS

These Special Provisions are included in and are part of the Bidding Documents and Agreement/Contract Documents for this project.

0100 Definitions

The following words and phrases, when used in the Special Provisions, shall have the meanings respectively ascribed to them throughout this Agreement:

Liquidated Damages –or– Liquidated Damages Rate: A dollar value that will be charged to CONTRACTOR for each calendar day that the CONTRACTOR requires to achieve a specific milestone in excess of the Contract Times.

0200 - Liquidated Damages

CONTRACTOR and OWNER recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work and Milestones are not completed within the times specified. The parties also recognize the delays, expense, and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not completed on time.

Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall be assessed the rate(s) stipulated in Table 1 for each day that expires in excess of the Contract Times until each milestone, Substantial Completion, and Final Completion is achieved.

Liquidated Damages may be charged against each Pay Application.

0300 - Rates

Liquidated damages will be assessed at the following rates (reference Table 1).

TABLE 1	
Liquidated Damage Rates	
Milestone	Rate
Final Completion	\$1,000.00/calendar day

0400 - Project Milestones

The following project milestones shall apply for computation of Liquidated Damages:

TABLE 2	
Project Milestones – Base Bid Only	
Milestone Description	Calendar Days
Substantial Completion	30 calendar days from NTP
Final Completion	14 calendar days from Substantial Completion
Project Milestones – Base Bid + Add Alternate	
Milestone Description	Calendar Days
Substantial Completion	60 calendar days from NTP
Final Completion	14 calendar days from Substantial Completion

0500 – Insurance Requirements

Commercial General Liability in the minimum amount of \$1,000,000/\$2,000,000.

Automobile Liability in the minimum amount of \$1,000,000.

Workers Compensation as required by the laws of the State of Oklahoma.

STANDARD GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT

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ARTICLE 1 – DEFINITIONS AND TERMINOLOGY

1.01 *Defined Terms*

- A. Wherever used in the Bidding Requirements or Contract Documents and printed with initial capital letters, the terms listed below will have the meanings indicated which are applicable to both the singular and plural thereof. In addition to terms specifically defined, terms with initial capital letters in the Contract Documents include references to identified articles and paragraphs, and the titles of other documents or forms.
1. *Addenda*—Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Requirements or the proposed Contract Documents.
 2. *Agreement*—The written instrument which is evidence of the agreement between Owner and Contractor covering the Work.
 3. *Application for Payment*—The form acceptable to Engineer which is to be used by Contractor during the course of the Work in requesting progress or final payments and which is to be accompanied by such supporting documentation as is required by the Contract Documents.
 4. *Asbestos*—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
 5. *Bid*—The offer or proposal of a Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.
 6. *Bidder*—The individual or entity who submits a Bid directly to Owner.
 7. *Bidding Documents*—The Bidding Requirements and the proposed Contract Documents (including all Addenda).
 8. *Bidding Requirements*—The advertisement or invitation to bid, Instructions to Bidders, Bid security of acceptable form, if any, and the Bid Form with any supplements.
 9. *Change Order*—A document recommended by Engineer which is signed by Contractor and Owner and authorizes an addition, deletion, or revision in the Work or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Agreement.
 10. *Claim*—A demand or assertion by Owner or Contractor seeking an adjustment of Contract Price or Contract Times, or both, or other relief with respect to the terms of the Contract. A demand for money or services by a third party is not a Claim.
 11. *Contract*—The entire and integrated written agreement between the Owner and Contractor concerning the Work. The Contract supersedes prior negotiations, representations, or agreements, whether written or oral.

12. *Contract Documents*—Those items so designated in the Agreement. Only printed or hard copies of the items listed in the Agreement are Contract Documents. Approved Shop Drawings, other Contractor submittals, and the reports and drawings of subsurface and physical conditions are not Contract Documents.
13. *Contract Price*—The moneys payable by Owner to Contractor for completion of the Work in accordance with the Contract Documents as stated in the Agreement (subject to the provisions of Paragraph 11.03 in the case of Unit Price Work).
14. *Contract Times*—The number of days or the dates stated in the Agreement to: (i) achieve Milestones, if any; (ii) achieve Substantial Completion; and (iii) complete the Work so that it is ready for final payment as evidenced by Engineer's written recommendation of final payment.
15. *Contractor*—The individual or entity with whom Owner has entered into the Agreement.
16. *Cost of the Work*—See Paragraph 11.01 for definition.
17. *Drawings*—That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings and other Contractor submittals are not Drawings as so defined.
18. *Effective Date of the Agreement*—The date indicated in the Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
19. *Engineer*—The individual or entity named as such in the Agreement.
20. *Field Order*—A written order issued by Engineer which requires minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
21. *Final Completion* – Achieved after all punchlist items provided by the City of Shawnee have been completed.
22. *General Requirements*—See Specifications.
23. *Hazardous Environmental Condition*—The presence at the Site of Asbestos, PCBs, Petroleum, Hazardous Waste, or Radioactive Material in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto.

24. *Hazardous Waste*—The term Hazardous Waste shall have the meaning provided in Section 1004 of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.
25. *Laws and Regulations; Laws or Regulations*—Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
26. *Liens*—Charges, security interests, or encumbrances upon Project funds, real property, or personal property.
27. *Milestone*—A principal event specified in the Contract Documents relating to an intermediate completion date or time prior to Substantial Completion of all the Work.
28. *Notice of Award*—The written notice by Owner to the Successful Bidder stating that upon timely compliance by the Successful Bidder with the condition's precedent listed therein, Owner will sign and deliver the Agreement.
29. *Notice to Proceed*—A written notice given by Owner to Contractor fixing the date on which the Contract Times will commence to run and on which Contractor shall start to perform the Work under the Contract Documents.
30. *Owner*—The individual or entity with whom Contractor has entered into the Agreement and for whom the Work is to be performed.
31. *PCBs*—Polychlorinated biphenyls.
32. *Petroleum*—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
33. *Progress Schedule*—A schedule, prepared and maintained by Contractor, describing the sequence and duration of the activities comprising the Contractor's plan to accomplish the Work within the Contract Times.
34. *Project*—The total construction of which the Work to be performed under the Contract Documents may be the whole, or a part.
35. *Project Manual*—The bound documentary information prepared for bidding and constructing the Work. A listing of the contents of the Project Manual, which may be bound in one or more volumes, is contained in the table(s) of contents.

- 36. *Radioactive Material*—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 37. *Resident Project Representative*—The authorized representative of Engineer who may be assigned to the Site or any part thereof.
- 38. *Samples*—Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the standards by which such portion of the Work will be judged.
- 39. *Schedule of Submittals*—A schedule, prepared and maintained by Contractor, of required submittals and the time requirements to support scheduled performance of related construction activities.
- 40. *Schedule of Values*—A schedule, prepared and maintained by Contractor, allocating portions of the Contract Price to various portions of the Work and used as the basis for reviewing Contractor's Applications for Payment.
- 41. *Shop Drawings*—All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to illustrate some portion of the Work.
- 42. *Site*—Lands or areas indicated in the Contract Documents as being furnished by Owner upon which the Work is to be performed, including rights-of-way and easements for access thereto, and such other lands furnished by Owner which are designated for the use of Contractor.
- 43. *Specifications*—That part of the Contract Documents consisting of written requirements for materials, equipment, systems, standards and workmanship as applied to the Work, and certain administrative requirements and procedural matters applicable thereto.
- 44. *Subcontractor*—An individual or entity having a direct contract with Contractor or with any other Subcontractor for the performance of a part of the Work at the Site.
- 45. *Substantial Completion*—The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of Engineer, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the Work (or a specified part thereof) can be utilized for the purposes for which it is intended. The terms "substantially complete" and "substantially completed" as applied to all or part of the Work refer to Substantial Completion thereof.
- 46. *Successful Bidder*—The Bidder submitting a responsive Bid to whom Owner makes an award.

47. *Supplementary Conditions*—That part of the Contract Documents which amends or supplements these General Conditions.
48. *Supplier*—A manufacturer, fabricator, supplier, distributor, materialman, or vendor having a direct contract with Contractor or with any Subcontractor to furnish materials or equipment to be incorporated in the Work by Contractor or Subcontractor.
49. *Underground Facilities*—All underground pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or attachments, and any encasements containing such facilities, including those that convey electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, water, wastewater, storm water, other liquids or chemicals, or traffic or other control systems.
50. *Unit Price Work*—Work to be paid for on the basis of unit prices.
51. *Work*—The entire construction or the various separately identifiable parts thereof required to be provided under the Contract Documents. Work includes and is the result of performing or providing all labor, services, and documentation necessary to produce such construction, and furnishing, installing, and incorporating all materials and equipment into such construction, all as required by the Contract Documents.
52. *Work Change Directive*—A written statement to Contractor issued on or after the Effective Date of the Agreement and signed by Owner and recommended by Engineer ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change ordered or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.

1.02 Terminology

- A. The words and terms discussed in Paragraph 1.02.B through F are not defined but, when used in the Bidding Requirements or Contract Documents, have the indicated meaning.
- B. *Intent of Certain Terms or Adjectives:*
 1. The Contract Documents include the terms “as allowed,” “as approved,” “as ordered,” “as directed” or terms of like effect or import to authorize an exercise of professional judgment by Engineer. In addition, the adjectives “reasonable,” “suitable,” “acceptable,” “proper,” “satisfactory,” or adjectives of like effect or import are used to describe an action or

determination of Engineer as to the Work. It is intended that such exercise of professional judgment, action, or determination will be solely to evaluate, in general, the Work for compliance with the information in the Contract Documents and with the design concept of the Project as a functioning whole as shown or indicated in the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective is not intended to and shall not be effective to assign to Engineer any duty or authority to supervise or direct the performance of the Work, or any duty or authority to undertake responsibility contrary to the provisions of Paragraph 9.09 or any other provision of the Contract Documents.

C. *Day:*

1. The word “day” means a calendar day of 24 hours measured from midnight to the next midnight.

D. *Defective:*

1. The word “defective,” when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:
 - a. does not conform to the Contract Documents; or
 - b. does not meet the requirements of any applicable inspection, reference standard, test, or approval referred to in the Contract Documents; or
 - c. has been damaged prior to Engineer’s recommendation of final payment (unless responsibility for the protection thereof has been assumed by Owner at Substantial Completion in accordance with Paragraph 14.04 or 14.05).

E. *Furnish, Install, Perform, Provide:*

1. The word “furnish,” when used in connection with services, materials, or equipment, shall mean to supply and deliver said services, materials, or equipment to the Site (or some other specified location) ready for use or installation and in usable or operable condition.
2. The word “install,” when used in connection with services, materials, or equipment, shall mean to put into use or place in final position said services, materials, or equipment complete and ready for intended use.
3. The words “perform” or “provide,” when used in connection with services, materials, or equipment, shall mean to furnish and install said services, materials, or equipment complete and ready for intended use.

4. When “furnish,” “install,” “perform,” or “provide” is not used in connection with services, materials, or equipment in a context clearly requiring an obligation of Contractor, “provide” is implied.
- F. Unless stated otherwise in the Contract Documents, words or phrases that have a well-known technical or construction industry or trade meaning are used in the Contract Documents in accordance with such recognized meaning.

ARTICLE 2 – PRELIMINARY MATTERS

2.01 *Delivery of Bonds and Evidence of Insurance*

- A. When Contractor delivers the executed counterparts of the Agreement to Owner, Contractor shall also deliver to Owner such bonds as Contractor may be required to furnish.
- B. *Evidence of Insurance:* Before any Work at the Site is started, Contractor and Owner shall each deliver to the other, with copies to each additional insured, certificates of insurance (and other evidence of insurance which either of them or any additional insured may reasonably request) which Contractor and Owner respectively are required to purchase and maintain in accordance with Article 5.

2.02 *Copies of Documents*

- A. Owner shall furnish to Contractor up to ten printed or hard copies of the Drawings and Project Manual. Additional copies will be furnished upon request at the cost of reproduction.

2.03 *Commencement of Contract Times; Notice to Proceed*

- A. The Contract Times will commence to run on the thirtieth day after the Effective Date of the Agreement or, if a Notice to Proceed is given, on the day indicated in the Notice to Proceed. A Notice to Proceed may be given at any time within 30 days after the Effective Date of the Agreement. In no event will the Contract Times commence to run later than the sixtieth day after the day of Bid opening or the thirtieth day after the Effective Date of the Agreement, whichever date is earlier.

2.04 *Starting the Work*

- A. Contractor shall start to perform the Work on the date when the Contract Times commence to run. No Work shall be done at the Site prior to the date on which the Contract Times commence to run.

2.05 Before Starting Construction

A. *Preliminary Schedules:* Within 10 days after the Effective Date of the Agreement (unless otherwise specified in the Specifications), Contractor shall submit to Engineer for timely review:

1. a preliminary Progress Schedule indicating the times (numbers of days or dates) for starting and completing the various stages of the Work, including any Milestones specified in the Contract Documents;
2. a preliminary Schedule of Submittals; and
3. a preliminary Schedule of Values for all of the Work which includes quantities and prices of items which when added together equal the Contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work.

2.06 Preconstruction Conference; Designation of Authorized Representatives

- A. Before any Work at the Site is started, a conference attended by Owner, Contractor, Engineer, and others as appropriate will be held to establish a working understanding among the parties as to the Work and to discuss the schedules referred to in Paragraph 2.05.A, procedures for handling Shop Drawings and other submittals, processing Applications for Payment, and maintaining required records.
- B. At this conference Owner and Contractor each shall designate, in writing, a specific individual to act as its authorized representative with respect to the services and responsibilities under the Contract. Such individuals shall have the authority to transmit instructions, receive information, render decisions relative to the Contract, and otherwise act on behalf of each respective party.

2.07 Initial Acceptance of Schedules

- A. At least 10 days before submission of the first Application for Payment a conference attended by Contractor, Engineer, and others as appropriate will be held to review for acceptability to Engineer as provided below the schedules submitted in accordance with Paragraph 2.05.A. Contractor shall have an additional 10 days to make corrections and adjustments and to complete and resubmit the schedules. No progress payment shall be made to Contractor until acceptable schedules are submitted to Engineer.
1. The Progress Schedule will be acceptable to Engineer if it provides an orderly progression of the Work to completion within the Contract Times. Such acceptance will not impose on Engineer responsibility for the Progress Schedule, for sequencing, scheduling, or progress

of the Work, nor interfere with or relieve Contractor from Contractor's full responsibility therefor.

2. Contractor's Schedule of Submittals will be acceptable to Engineer if it provides a workable arrangement for reviewing and processing the required submittals.
3. Contractor's Schedule of Values will be acceptable to Engineer as to form and substance if it provides a reasonable allocation of the Contract Price to component parts of the Work.

ARTICLE 3 – CONTRACT DOCUMENTS: INTENT, AMENDING, REUSE

3.01 Intent

- A. The Contract Documents are complementary; what is required by one is as binding as if required by all.
- B. It is the intent of the Contract Documents to describe a functionally complete project (or part thereof) to be constructed in accordance with the Contract Documents. Any labor, documentation, services, materials, or equipment that reasonably may be inferred from the Contract Documents or from prevailing custom or trade usage as being required to produce the indicated result will be provided whether or not specifically called for, at no additional cost to Owner.
- C. Clarifications and interpretations of the Contract Documents shall be issued by Engineer as provided in Article 9.

3.02 Reference Standards

- A. Standards, Specifications, Codes, Laws, and Regulations
 1. Reference to standards, specifications, manuals, or codes of any technical society, organization, or association, or to Laws or Regulations, whether such reference be specific or by implication, shall mean the standard, specification, manual, code, or Laws or Regulations in effect at the time of opening of Bids (or on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated in the Contract Documents.
 2. No provision of any such standard, specification, manual, or code, or any instruction of a Supplier, shall be effective to change the duties or responsibilities of Owner, Contractor, or Engineer, or any of their subcontractors, consultants, agents, or employees, from those set forth in the Contract Documents. No such provision or instruction shall be effective to assign to Owner, Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, any duty or authority to supervise or direct the performance of the Work or any duty or authority to undertake responsibility inconsistent with the provisions of the Contract Documents.

3.03 *Reporting and Resolving Discrepancies*

A. *Reporting Discrepancies:*

1. *Contractor's Review of Contract Documents Before Starting Work:* Before undertaking each part of the Work, Contractor shall carefully study and compare the Contract Documents and check and verify pertinent figures therein and all applicable field measurements. Contractor shall promptly report in writing to Engineer any conflict, error, ambiguity, or discrepancy which Contractor discovers, or has actual knowledge of, and shall obtain a written interpretation or clarification from Engineer before proceeding with any Work affected thereby.
2. *Contractor's Review of Contract Documents During Performance of Work:* If, during the performance of the Work, Contractor discovers any conflict, error, ambiguity, or discrepancy within the Contract Documents, or between the Contract Documents and (a) any applicable Law or Regulation, (b) any standard, specification, manual, or code, or (c) any instruction of any Supplier, then Contractor shall promptly report it to Engineer in writing. Contractor shall not proceed with the Work affected thereby (except in an emergency as required by Paragraph 6.16.A) until an amendment or supplement to the Contract Documents has been issued by one of the methods indicated in Paragraph 3.04.
3. Contractor shall not be liable to Owner or Engineer for failure to report any conflict, error, ambiguity, or discrepancy in the Contract Documents unless Contractor had actual knowledge thereof.

B. *Resolving Discrepancies:*

1. Except as may be otherwise specifically stated in the Contract Documents, the provisions of the Contract Documents shall take precedence in resolving any conflict, error, ambiguity, or discrepancy between the provisions of the Contract Documents and:
 - a. the provisions of any standard, specification, manual, or code, or the instruction of any Supplier (whether or not specifically incorporated by reference in the Contract Documents); or
 - b. the provisions of any Laws or Regulations applicable to the performance of the Work (unless such an interpretation of the provisions of the Contract Documents would result in violation of such Law or Regulation).

3.04 Amending and Supplementing Contract Documents

- A. The Contract Documents may be amended to provide for additions, deletions, and revisions in the Work or to modify the terms and conditions thereof by either a Change Order or a Work Change Directive.
- B. The requirements of the Contract Documents may be supplemented, and minor variations and deviations in the Work may be authorized, by one or more of the following ways:
 - 1. A Field Order;
 - 2. Engineer's approval of a Shop Drawing or Sample (subject to the provisions of Paragraph 6.17.D.3); or
 - 3. Engineer's written interpretation or clarification.

3.05 Reuse of Documents

- A. Contractor and any Subcontractor or Supplier shall not:
 - 1. have or acquire any title to or ownership rights in any of the Drawings, Specifications, or other documents (or copies of any thereof) prepared by or bearing the seal of Engineer or its consultants, including electronic media editions; or
 - 2. reuse any such Drawings, Specifications, other documents, or copies thereof on extensions of the Project or any other project without written consent of Owner and Engineer and specific written verification or adaptation by Engineer.
- B. The prohibitions of this Paragraph 3.05 will survive final payment, or termination of the Contract. Nothing herein shall preclude Contractor from retaining copies of the Contract Documents for record purposes.

3.06 Electronic Data

- A. Unless otherwise stated in the Supplementary Conditions, the data furnished by Owner or Engineer to Contractor, or by Contractor to Owner or Engineer, that may be relied upon are limited to the printed copies (also known as hard copies). Files in electronic media format of text, data, graphics, or other types are furnished only for the convenience of the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- B. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees

that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the transferring party.

- C. When transferring documents in electronic media format, the transferring party makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the data's creator.

ARTICLE 4 – AVAILABILITY OF LANDS; SUBSURFACE AND PHYSICAL CONDITIONS; HAZARDOUS ENVIRONMENTAL CONDITIONS; REFERENCE POINTS

4.01 Availability of Lands

- A. Owner shall furnish the Site. Owner shall notify Contractor of any encumbrances or restrictions not of general application but specifically related to use of the Site with which Contractor must comply in performing the Work. Owner will obtain in a timely manner and pay for easements for permanent structures or permanent changes in existing facilities. If Contractor and Owner are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, as a result of any delay in Owner's furnishing the Site or a part thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.
- B. Upon reasonable written request, Owner shall furnish Contractor with a current statement of record legal title and legal description of the lands upon which the Work is to be performed and Owner's interest therein as necessary for giving notice of or filing a mechanic's or construction lien against such lands in accordance with applicable Laws and Regulations.
- C. Contractor shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.02 Subsurface and Physical Conditions

- A. *Reports and Drawings:* The Supplementary Conditions identify:
1. those reports known to Owner of explorations and tests of subsurface conditions at or contiguous to the Site; and
 2. those drawings known to Owner of physical conditions relating to existing surface or subsurface structures at the Site (except Underground Facilities).
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and

drawings are not Contract Documents. Such “technical data” is identified in the Supplementary Conditions. Except for such reliance on such “technical data,” Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:

1. the completeness of such reports and drawings for Contractor’s purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, and safety precautions and programs incident thereto; or
2. other data, interpretations, opinions, and information contained in such reports or shown or indicated in such drawings; or
3. any Contractor interpretation of or conclusion drawn from any “technical data” or any such other data, interpretations, opinions, or information.

4.03 Differing Subsurface or Physical Conditions

A. *Notice:* If Contractor believes that any subsurface or physical condition that is uncovered or revealed either:

1. is of such a nature as to establish that any “technical data” on which Contractor is entitled to rely as provided in Paragraph 4.02 is materially inaccurate; or
2. is of such a nature as to require a change in the Contract Documents; or
3. differs materially from that shown or indicated in the Contract Documents; or
4. is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract Documents; then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except as aforesaid) until receipt of written order to do so.

B. *Engineer’s Review:* After receipt of written notice as required by Paragraph 4.03.A, Engineer will promptly review the pertinent condition, determine the necessity of Owner’s obtaining additional exploration or tests with respect thereto, and advise Owner in writing (with a copy to Contractor) of Engineer’s findings and conclusions.

C. Possible Price and Times Adjustments:

1. The Contract Price or the Contract Times, or both, will be equitably adjusted to the extent that the existence of such differing subsurface or physical condition causes an increase or decrease in Contractor's cost of, or time required for, performance of the Work; subject, however, to the following:
 - a. such condition must meet any one or more of the categories described in Paragraph 4.03.A; and
 - b. with respect to Work that is paid for on a unit price basis, any adjustment in Contract Price will be subject to the provisions of Paragraphs 9.07 and 11.03.
2. Contractor shall not be entitled to any adjustment in the Contract Price or Contract Times if:
 - a. Contractor knew of the existence of such conditions at the time Contractor made a final commitment to Owner with respect to Contract Price and Contract Times by the submission of a Bid or becoming bound under a negotiated contract; or
 - b. the existence of such condition could reasonably have been discovered or revealed as a result of any examination, investigation, exploration, test, or study of the Site and contiguous areas required by the Bidding Requirements or Contract Documents to be conducted by or for Contractor prior to Contractor's making such final commitment; or
 - c. Contractor failed to give the written notice as required by Paragraph 4.03.A.
3. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times, or both, a Claim may be made therefor as provided in Paragraph 10.05. However, neither Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.

4.04 Underground Facilities

- A. *Shown or Indicated:* The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the Site is based on information and data furnished to Owner or Engineer by the owners of such Underground

Facilities, including Owner, or by others. Unless it is otherwise expressly provided in the Supplementary Conditions:

1. Owner and Engineer shall not be responsible for the accuracy or completeness of any such information or data provided by others; and
2. the cost of all of the following will be included in the Contract Price, and Contractor shall have full responsibility for:
 - a. reviewing and checking all such information and data;
 - b. locating all Underground Facilities shown or indicated in the Contract Documents;
 - c. coordination of the Work with the owners of such Underground Facilities, including Owner, during construction; and
 - d. the safety and protection of all such Underground Facilities and repairing any damage thereto resulting from the Work.

B. *Not Shown or Indicated:*

1. If an Underground Facility is uncovered or revealed at or contiguous to the Site which was not shown or indicated, or not shown or indicated with reasonable accuracy in the Contract Documents, Contractor shall, promptly after becoming aware thereof and before further disturbing conditions affected thereby or performing any Work in connection therewith (except in an emergency as required by Paragraph 6.16.A), identify the owner of such Underground Facility and give written notice to that owner and to Owner and Engineer. Engineer will promptly review the Underground Facility and determine the extent, if any, to which a change is required in the Contract Documents to reflect and document the consequences of the existence or location of the Underground Facility. During such time, Contractor shall be responsible for the safety and protection of such Underground Facility.
2. If Engineer concludes that a change in the Contract Documents is required, a Work Change Directive or a Change Order will be issued to reflect and document such consequences. An equitable adjustment shall be made in the Contract Price or Contract Times, or both, to the extent that they are attributable to the existence or location of any Underground Facility that was not shown or indicated or not shown or indicated with reasonable accuracy in the Contract Documents and that Contractor did not know of and could not reasonably have been expected to be aware of or to have anticipated. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment in

Contract Price or Contract Times, Owner or Contractor may make a Claim therefor as provided in Paragraph 10.05.

4.05 Reference Points

- A. Owner shall provide engineering surveys to establish reference points for construction which in Engineer's judgment are necessary to enable Contractor to proceed with the Work. Contractor shall be responsible for laying out the Work, shall protect and preserve the established reference points and property monuments, and shall make no changes or relocations without the prior written approval of Owner. Contractor shall report to Engineer whenever any reference point or property monument is lost or destroyed or requires relocation because of necessary changes in grades or locations and shall be responsible for the accurate replacement or relocation of such reference points or property monuments by professionally qualified personnel.

4.06 Hazardous Environmental Condition at Site

- A. *Reports and Drawings:* The Supplementary Conditions identify those reports and drawings known to Owner relating to Hazardous Environmental Conditions that have been identified at the Site.
- B. *Limited Reliance by Contractor on Technical Data Authorized:* Contractor may rely upon the accuracy of the "technical data" contained in such reports and drawings, but such reports and drawings are not Contract Documents. Such "technical data" is identified in the Supplementary Conditions. Except for such reliance on such "technical data," Contractor may not rely upon or make any claim against Owner or Engineer, or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors with respect to:
 - 1. the completeness of such reports and drawings for Contractor's purposes, including, but not limited to, any aspects of the means, methods, techniques, sequences and procedures of construction to be employed by Contractor and safety precautions and programs incident thereto; or
 - 2. other data, interpretations, opinions and information contained in such reports or shown or indicated in such drawings; or
 - 3. any Contractor interpretation of or conclusion drawn from any "technical data" or any such other data, interpretations, opinions or information.
- C. Contractor shall not be responsible for any Hazardous Environmental Condition uncovered or revealed at the Site which was not shown or indicated in Drawings or Specifications or identified in the Contract Documents to be within the scope of the Work. Contractor shall be responsible

for a Hazardous Environmental Condition created with any materials brought to the Site by Contractor, Subcontractors, Suppliers, or anyone else for whom Contractor is responsible.

- D. If Contractor encounters a Hazardous Environmental Condition or if Contractor or anyone for whom Contractor is responsible creates a Hazardous Environmental Condition, Contractor shall immediately: (i) secure or otherwise isolate such condition; (ii) stop all Work in connection with such condition and in any area affected thereby (except in an emergency as required by Paragraph 6.16.A); and (iii) notify Owner and Engineer (and promptly thereafter confirm such notice in writing). Owner shall promptly consult with Engineer concerning the necessity for Owner to retain a qualified expert to evaluate such condition or take corrective action, if any. Promptly after consulting with Engineer, Owner shall take such actions as are necessary to permit Owner to timely obtain required permits and provide Contractor the written notice required by Paragraph 4.06.E.
- E. Contractor shall not be required to resume Work in connection with such condition or in any affected area until after Owner has obtained any required permits related thereto and delivered written notice to Contractor: (i) specifying that such condition and any affected area is or has been rendered safe for the resumption of Work; or (ii) specifying any special conditions under which such Work may be resumed safely. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of any adjustment in Contract Price or Contract Times, or both, as a result of such Work stoppage or such special conditions under which Work is agreed to be resumed by Contractor, either party may make a Claim therefor as provided in Paragraph 10.05.
- F. If after receipt of such written notice Contractor does not agree to resume such Work based on a reasonable belief it is unsafe, or does not agree to resume such Work under such special conditions, then Owner may order the portion of the Work that is in the area affected by such condition to be deleted from the Work. If Owner and Contractor cannot agree as to entitlement to or on the amount or extent, if any, of an adjustment in Contract Price or Contract Times as a result of deleting such portion of the Work, then either party may make a Claim therefor as provided in Paragraph 10.05. Owner may have such deleted portion of the Work performed by Owner's own forces or others in accordance with Article 7.
- G. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition, provided that such Hazardous Environmental Condition: (i) was not shown or indicated in the Drawings or Specifications or identified in the Contract Documents to be included within the

scope of the Work, and (ii) was not created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.G shall obligate Owner to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.

- H. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to a Hazardous Environmental Condition created by Contractor or by anyone for whom Contractor is responsible. Nothing in this Paragraph 4.06.H shall obligate Contractor to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence.
- I. The provisions of Paragraphs 4.02, 4.03, and 4.04 do not apply to a Hazardous Environmental Condition uncovered or revealed at the Site.

ARTICLE 5 – BONDS AND INSURANCE

5.01 *Performance, Payment, and Other Bonds*

- A. Contractor shall furnish performance and payment bonds, each in an amount at least equal to the Contract Price as security for the faithful performance and payment of all of Contractor's obligations under the Contract Documents. These bonds shall remain in effect until one year after the date when final payment becomes due or until completion of the correction period specified in Paragraph 13.07, whichever is later, except as provided otherwise by Laws or Regulations or by the Contract Documents. Contractor shall also furnish such other bonds as are required by the Contract Documents.
- B. All bonds shall be in the form prescribed by the Contract Documents except as provided otherwise by Laws or Regulations, and shall be executed by such sureties as are named in the list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570 (amended) by the Financial Management Service, Surety Bond Branch, U.S. Department of the Treasury. All bonds signed by an agent or attorney-in-fact must be accompanied by a certified copy of that individual's authority to bind the surety. The evidence of authority shall show that it is effective on the date the agent or attorney-in-fact signed each bond.
- C. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent or its right to do business is terminated in any state where any part of the Project is located or it ceases to meet the requirements of Paragraph 5.01.B, Contractor shall promptly notify Owner and Engineer and shall, within 20 days after the event giving rise to such notification, provide

another bond and surety, both of which shall comply with the requirements of Paragraphs 5.01.B and 5.02.

5.02 Licensed Sureties and Insurers

- A. All bonds and insurance required by the Contract Documents to be purchased and maintained by Owner or Contractor shall be obtained from surety or insurance companies that are duly licensed or authorized in the jurisdiction in which the Project is located to issue bonds or insurance policies for the limits and coverages so required. Such surety and insurance companies shall also meet such additional requirements and qualifications as may be provided in the Supplementary Conditions.

5.03 Certificates of Insurance

- A. Contractor shall deliver to Owner, with copies to each additional insured and lost payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Owner or any other additional insured) which Contractor is required to purchase and maintain.
- B. Owner shall deliver to Contractor, with copies to each additional insured and loss payee identified in the Supplementary Conditions, certificates of insurance (and other evidence of insurance requested by Contractor or any other additional insured) which Owner is required to purchase and maintain.
- C. Failure of Owner to demand such certificates or other evidence of Contractor's full compliance with these insurance requirements or failure of Owner to identify a deficiency in compliance from the evidence provided shall not be construed as a waiver of Contractor's obligation to maintain such insurance.
- D. Owner does not represent that insurance coverage and limits established in this Contract necessarily will be adequate to protect Contractor.
- E. The insurance and insurance limits required herein shall not be deemed as a limitation on Contractor's liability under the indemnities granted to Owner in the Contract Documents.

5.04 Contractor's Insurance

- A. Contractor shall purchase and maintain such insurance as is appropriate for the Work being performed and as will provide protection from claims set forth below which may arise out of or result from Contractor's performance of the Work and Contractor's other obligations under the Contract Documents, whether it is to be performed by Contractor, any Subcontractor or Supplier,

or by anyone directly or indirectly employed by any of them to perform any of the Work, or by anyone for whose acts any of them may be liable:

1. claims under workers' compensation, disability benefits, and other similar employee benefit acts;
2. claims for damages because of bodily injury, occupational sickness or disease, or death of Contractor's employees;
3. claims for damages because of bodily injury, sickness or disease, or death of any person other than Contractor's employees;
4. claims for damages insured by reasonably available personal injury liability coverage which are sustained:
 - a. by any person as a result of an offense directly or indirectly related to the employment of such person by Contractor, or
 - b. by any other person for any other reason;
5. claims for damages, other than to the Work itself, because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom; and
6. claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle.

B. The policies of insurance required by this Paragraph 5.04 shall:

1. with respect to insurance required by Paragraphs 5.04.A.3 through 5.04.A.6 inclusive, be written on an occurrence basis, include as additional insureds (subject to any customary exclusion regarding professional liability) Owner and Engineer, and any other individuals or entities identified in the Supplementary Conditions, all of whom shall be listed as additional insureds, and include coverage for the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of all such additional insureds, and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby;
2. include at least the specific coverages and be written for not less than the limits of liability provided in the Supplementary Conditions or required by Laws or Regulations, whichever is greater;
3. include contractual liability insurance covering Contractor's indemnity obligations under Paragraphs 6.11 and 6.20;

4. contain a provision or endorsement that the coverage afforded will not be canceled, materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other additional insured identified in the Supplementary Conditions to whom a certificate of insurance has been issued (and the certificates of insurance furnished by the Contractor pursuant to Paragraph 5.03 will so provide);
5. remain in effect at least until final payment and at all times thereafter when Contractor may be correcting, removing, or replacing defective Work in accordance with Paragraph 13.07; and
6. include completed operations coverage:
 - a. Such insurance shall remain in effect for two years after final payment.
 - b. Contractor shall furnish Owner and each other additional insured identified in the Supplementary Conditions, to whom a certificate of insurance has been issued, evidence satisfactory to Owner and any such additional insured of continuation of such insurance at final payment and one year thereafter.

5.05 Owner's Liability Insurance

- A. In addition to the insurance required to be provided by Contractor under Paragraph 5.04, Owner, at Owner's option, may purchase and maintain at Owner's expense Owner's own liability insurance as will protect Owner against claims which may arise from operations under the Contract Documents.

5.06 Property Insurance

- A. Unless otherwise provided in the Supplementary Conditions, Owner shall purchase and maintain property insurance upon the Work at the Site in the amount of the full replacement cost thereof (subject to such deductible amounts as may be provided in the Supplementary Conditions or required by Laws and Regulations). This insurance shall:
 1. include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee;
 2. be written on a Builder's Risk "all-risk" policy form that shall at least include insurance for physical loss or damage to the Work, temporary buildings, falsework, and materials and

equipment in transit, and shall insure against at least the following perils or causes of loss: fire, lightning, extended coverage, theft, vandalism and malicious mischief, earthquake, collapse, debris removal, demolition occasioned by enforcement of Laws and Regulations, water damage (other than that caused by flood), and such other perils or causes of loss as may be specifically required by the Supplementary Conditions.

3. include expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of engineers and architects);
 4. cover materials and equipment stored at the Site or at another location that was agreed to in writing by Owner prior to being incorporated in the Work, provided that such materials and equipment have been included in an Application for Payment recommended by Engineer;
 5. allow for partial utilization of the Work by Owner;
 6. include testing and startup; and
 7. be maintained in effect until final payment is made unless otherwise agreed to in writing by Owner, Contractor, and Engineer with 30 days written notice to each other loss payee to whom a certificate of insurance has been issued.
- B. Owner shall purchase and maintain such equipment breakdown insurance or additional property insurance as may be required by the Supplementary Conditions or Laws and Regulations which will include the interests of Owner, Contractor, Subcontractors, and Engineer, and any other individuals or entities identified in the Supplementary Conditions, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them, each of whom is deemed to have an insurable interest and shall be listed as a loss payee.
- C. All the policies of insurance (and the certificates or other evidence thereof) required to be purchased and maintained in accordance with this Paragraph 5.06 will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 30 days prior written notice has been given to Owner and Contractor and to each other loss payee to whom a certificate of insurance has been issued and will contain waiver provisions in accordance with Paragraph 5.07.
- D. Owner shall not be responsible for purchasing and maintaining any property insurance specified in this Paragraph 5.06 to protect the interests of Contractor, Subcontractors, or others in the Work to the extent of any deductible amounts that are identified in the Supplementary Conditions. The risk of loss within such identified deductible amount will be borne by Contractor, Subcontractors, or others suffering any such loss, and if any of them wishes property insurance coverage within the limits of such amounts, each may purchase and maintain it at the purchaser's own expense.

- E. If Contractor requests in writing that other special insurance be included in the property insurance policies provided under this Paragraph 5.06, Owner shall, if possible, include such insurance, and the cost thereof will be charged to Contractor by appropriate Change Order. Prior to commencement of the Work at the Site, Owner shall in writing advise Contractor whether or not such other insurance has been procured by Owner.

5.07 Waiver of Rights

- A. Owner and Contractor intend that all policies purchased in accordance with Paragraph 5.06 will protect Owner, Contractor, Subcontractors, and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) in such policies and will provide primary coverage for all losses and damages caused by the perils or causes of loss covered thereby. All such policies shall contain provisions to the effect that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or loss payees thereunder. Owner and Contractor waive all rights against each other and their respective officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for all losses and damages caused by, arising out of or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work; and, in addition, waive all such rights against Subcontractors and Engineer, and all other individuals or entities identified in the Supplementary Conditions as loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) under such policies for losses and damages so caused. None of the above waivers shall extend to the rights that any party making such waiver may have to the proceeds of insurance held by Owner as trustee or otherwise payable under any policy so issued.
- B. Owner waives all rights against Contractor, Subcontractors, and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them for:
1. loss due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to Owner's property or the Work caused by, arising out of, or resulting from fire or other perils whether or not insured by Owner; and
 2. loss or damage to the completed Project or part thereof caused by, arising out of, or resulting from fire or other insured peril or cause of loss covered by any property insurance maintained on the completed Project or part thereof by Owner during partial utilization pursuant to Paragraph 14.05, after Substantial Completion pursuant to Paragraph 14.04, or after final payment pursuant to Paragraph 14.07.

- C. Any insurance policy maintained by Owner covering any loss, damage or consequential loss referred to in Paragraph 5.07.B shall contain provisions to the effect that in the event of payment of any such loss, damage, or consequential loss, the insurers will have no rights of recovery against Contractor, Subcontractors, or Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them.

5.08 Receipt and Application of Insurance Proceeds

- A. Any insured loss under the policies of insurance required by Paragraph 5.06 will be adjusted with Owner and made payable to Owner as fiduciary for the loss payees, as their interests may appear, subject to the requirements of any applicable mortgage clause and of Paragraph 5.08.B. Owner shall deposit in a separate account any money so received and shall distribute it in accordance with such agreement as the parties in interest may reach. If no other special agreement is reached, the damaged Work shall be repaired or replaced, the moneys so received applied on account thereof, and the Work and the cost thereof covered by an appropriate Change Order.
- B. Owner as fiduciary shall have power to adjust and settle any loss with the insurers unless one of the parties in interest shall object in writing within 15 days after the occurrence of loss to Owner's exercise of this power. If such objection be made, Owner as fiduciary shall make settlement with the insurers in accordance with such agreement as the parties in interest may reach. If no such agreement among the parties in interest is reached, Owner as fiduciary shall adjust and settle the loss with the insurers and, if required in writing by any party in interest, Owner as fiduciary shall give bond for the proper performance of such duties.

5.09 Acceptance of Bonds and Insurance; Option to Replace

- A. If either Owner or Contractor has any objection to the coverage afforded by or other provisions of the bonds or insurance required to be purchased and maintained by the other party in accordance with Article 5 on the basis of non-conformance with the Contract Documents, the objecting party shall so notify the other party in writing within 10 days after receipt of the certificates (or other evidence requested) required by Paragraph 2.01.B. Owner and Contractor shall each provide to the other such additional information in respect of insurance provided as the other may reasonably request. If either party does not purchase or maintain all of the bonds and insurance required of such party by the Contract Documents, such party shall notify the other party in writing of such failure to purchase prior to the start of the Work, or of such failure to maintain prior to any change in the required coverage. Without prejudice to any other right or remedy, the other party may elect to obtain equivalent bonds or insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and a Change Order shall be issued to adjust the Contract Price accordingly.

5.10 Partial Utilization, Acknowledgment of Property Insurer

- A. If Owner finds it necessary to occupy or use a portion or portions of the Work prior to Substantial Completion of all the Work as provided in Paragraph 14.05, no such use or occupancy shall commence before the insurers providing the property insurance pursuant to Paragraph 5.06 have acknowledged notice thereof and in writing effected any changes in coverage necessitated thereby. The insurers providing the property insurance shall consent by endorsement on the policy or policies, but the property insurance shall not be canceled or permitted to lapse on account of any such partial use or occupancy.

ARTICLE 6 – CONTRACTOR’S RESPONSIBILITIES

6.01 Supervision and Superintendence

- A. Contractor shall supervise, inspect, and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Contractor shall not be responsible for the negligence of Owner or Engineer in the design or specification of a specific means, method, technique, sequence, or procedure of construction which is shown or indicated in and expressly required by the Contract Documents.
- B. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who shall not be replaced without written notice to Owner and Engineer except under extraordinary circumstances.

6.02 Labor; Working Hours

- A. Contractor shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. Contractor shall at all times maintain good discipline and order at the Site.
- B. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours. Contractor will not permit the performance of Work on a Saturday, Sunday, or any legal holiday without Owner’s written consent (which will not be unreasonably withheld) given after prior written notice to Engineer.

6.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction

equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start-up, and completion of the Work.

- B. All materials and equipment incorporated into the Work shall be as specified or, if not specified, shall be of good quality and new, except as otherwise provided in the Contract Documents. All special warranties and guarantees required by the Specifications shall expressly run to the benefit of Owner. If required by Engineer, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind, and quality of materials and equipment.
- C. All materials and equipment shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable Supplier, except as otherwise may be provided in the Contract Documents.

6.04 Progress Schedule

- A. Contractor shall adhere to the Progress Schedule established in accordance with Paragraph 2.07 as it may be adjusted from time to time as provided below.
 - 1. Contractor shall submit to Engineer for acceptance (to the extent indicated in Paragraph 2.07) proposed adjustments in the Progress Schedule that will not result in changing the Contract Times. Such adjustments will comply with any provisions of the Specifications applicable thereto.
 - 2. Proposed adjustments in the Progress Schedule that will change the Contract Times shall be submitted in accordance with the requirements of Article 12. Adjustments in Contract Times may only be made by a Change Order.

6.05 Substitutes and "Or-Equals"

- A. Whenever an item of material or equipment is specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular Supplier, the specification or description is intended to establish the type, function, appearance, and quality required. Unless the specification or description contains or is followed by words reading that no like, equivalent, or "or-equal" item or no substitution is permitted, other items of material or equipment or material or equipment of other Suppliers may be submitted to Engineer for review under the circumstances described below.
 - 1. *"Or-Equal" Items:* If in Engineer's sole discretion an item of material or equipment proposed by Contractor is functionally equal to that named and sufficiently similar so that no change in related Work will be required, it may be considered by Engineer as an "or-equal" item, in which case review and approval of the proposed item may, in Engineer's sole

discretion, be accomplished without compliance with some or all of the requirements for approval of proposed substitute items. For the purposes of this Paragraph 6.05.A.1, a proposed item of material or equipment will be considered functionally equal to an item so named if:

- a. in the exercise of reasonable judgment Engineer determines that:
 - 1) it is at least equal in materials of construction, quality, durability, appearance, strength, and design characteristics;
 - 2) it will reliably perform at least equally well the function and achieve the results imposed by the design concept of the completed Project as a functioning whole; and
 - 3) it has a proven record of performance and availability of responsive service.
- b. Contractor certifies that, if approved and incorporated into the Work:
 - 1) there will be no increase in cost to the Owner or increase in Contract Times; and
 - 2) it will conform substantially to the detailed requirements of the item named in the Contract Documents.

2. *Substitute Items:*

- a. If in Engineer's sole discretion an item of material or equipment proposed by Contractor does not qualify as an "or-equal" item under Paragraph 6.05.A.1, it will be considered a proposed substitute item.
- b. Contractor shall submit sufficient information as provided below to allow Engineer to determine if the item of material or equipment proposed is essentially equivalent to that named and an acceptable substitute therefor. Requests for review of proposed substitute items of material or equipment will not be accepted by Engineer from anyone other than Contractor.
- c. The requirements for review by Engineer will be as set forth in Paragraph 6.05.A.2.d, as supplemented by the Specifications, and as Engineer may decide is appropriate under the circumstances.
- d. Contractor shall make written application to Engineer for review of a proposed substitute item of material or equipment that Contractor seeks to furnish or use. The application:
 - 1) shall certify that the proposed substitute item will:
 - a) perform adequately the functions and achieve the results called for by the general design,

b) be similar in substance to that specified, and

c) be suited to the same use as that specified;

2) will state:

a) the extent, if any, to which the use of the proposed substitute item will prejudice Contractor's achievement of Substantial Completion on time,

b) whether use of the proposed substitute item in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with Owner for other work on the Project) to adapt the design to the proposed substitute item, and

c) whether incorporation or use of the proposed substitute item in connection with the Work is subject to payment of any license fee or royalty;

3) will identify:

a) all variations of the proposed substitute item from that specified, and

b) available engineering, sales, maintenance, repair, and replacement services; and

4) shall contain an itemized estimate of all costs or credits that will result directly or indirectly from use of such substitute item, including costs of redesign and claims of other contractors affected by any resulting change.

B. *Substitute Construction Methods or Procedures:* If a specific means, method, technique, sequence, or procedure of construction is expressly required by the Contract Documents, Contractor may furnish or utilize a substitute means, method, technique, sequence, or procedure of construction approved by Engineer. Contractor shall submit sufficient information to allow Engineer, in Engineer's sole discretion, to determine that the substitute proposed is equivalent to that expressly called for by the Contract Documents. The requirements for review by Engineer will be similar to those provided in Paragraph 6.05.A.2.

C. *Engineer's Evaluation:* Engineer will be allowed a reasonable time within which to evaluate each proposal or submittal made pursuant to Paragraphs 6.05.A and 6.05.B. Engineer may require Contractor to furnish additional data about the proposed substitute item. Engineer will be the sole judge of acceptability. No "or equal" or substitute will be ordered, installed or utilized until Engineer's review is complete, which will be evidenced by a Change Order in the case of a substitute and an approved Shop Drawing for an "or equal." Engineer will advise Contractor in writing of any negative determination.

- D. *Special Guarantee:* Owner may require Contractor to furnish at Contractor's expense a special performance guarantee or other surety with respect to any substitute.
- E. *Engineer's Cost Reimbursement:* Engineer will record Engineer's costs in evaluating a substitute proposed or submitted by Contractor pursuant to Paragraphs 6.05.A.2 and 6.05.B. Whether or not Engineer approves a substitute so proposed or submitted by Contractor, Contractor shall reimburse Owner for the reasonable charges of Engineer for evaluating each such proposed substitute. Contractor shall also reimburse Owner for the reasonable charges of Engineer for making changes in the Contract Documents (or in the provisions of any other direct contract with Owner) resulting from the acceptance of each proposed substitute.
- F. *Contractor's Expense:* Contractor shall provide all data in support of any proposed substitute or "or-equal" at Contractor's expense.

6.06 *Concerning Subcontractors, Suppliers, and Others*

- A. Contractor shall not employ any Subcontractor, Supplier, or other individual or entity (including those acceptable to Owner as indicated in Paragraph 6.06.B), whether initially or as a replacement, against whom Owner may have reasonable objection. Contractor shall not be required to employ any Subcontractor, Supplier, or other individual or entity to furnish or perform any of the Work against whom Contractor has reasonable objection.
- B. If the Supplementary Conditions require the identity of certain Subcontractors, Suppliers, or other individuals or entities to be submitted to Owner in advance for acceptance by Owner by a specified date prior to the Effective Date of the Agreement, and if Contractor has submitted a list thereof in accordance with the Supplementary Conditions, Owner's acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the Bidding Documents or the Contract Documents) of any such Subcontractor, Supplier, or other individual or entity so identified may be revoked on the basis of reasonable objection after due investigation. Contractor shall submit an acceptable replacement for the rejected Subcontractor, Supplier, or other individual or entity, and the Contract Price will be adjusted by the difference in the cost occasioned by such replacement, and an appropriate Change Order will be issued. No acceptance by Owner of any such Subcontractor, Supplier, or other individual or entity, whether initially or as a replacement, shall constitute a waiver of any right of Owner or Engineer to reject defective Work.
- C. Contractor shall be fully responsible to Owner and Engineer for all acts and omissions of the Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work just as Contractor is responsible for Contractor's own acts and omissions. Nothing in the Contract Documents:

1. shall create for the benefit of any such Subcontractor, Supplier, or other individual or entity any contractual relationship between Owner or Engineer and any such Subcontractor, Supplier or other individual or entity; nor
 2. shall create any obligation on the part of Owner or Engineer to pay or to see to the payment of any moneys due any such Subcontractor, Supplier, or other individual or entity except as may otherwise be required by Laws and Regulations.
- D. Contractor shall be solely responsible for scheduling and coordinating the Work of Subcontractors, Suppliers, and other individuals or entities performing or furnishing any of the Work under a direct or indirect contract with Contractor.
- E. Contractor shall require all Subcontractors, Suppliers, and such other individuals or entities performing or furnishing any of the Work to communicate with Engineer through Contractor.
- F. The divisions and sections of the Specifications and the identifications of any Drawings shall not control Contractor in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.
- G. All Work performed for Contractor by a Subcontractor or Supplier will be pursuant to an appropriate agreement between Contractor and the Subcontractor or Supplier which specifically binds the Subcontractor or Supplier to the applicable terms and conditions of the Contract Documents for the benefit of Owner and Engineer. Whenever any such agreement is with a Subcontractor or Supplier who is listed as a loss payee on the property insurance provided in Paragraph 5.06, the agreement between the Contractor and the Subcontractor or Supplier will contain provisions whereby the Subcontractor or Supplier waives all rights against Owner, Contractor, Engineer, and all other individuals or entities identified in the Supplementary Conditions to be listed as insureds or loss payees (and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them) for all losses and damages caused by, arising out of, relating to, or resulting from any of the perils or causes of loss covered by such policies and any other property insurance applicable to the Work. If the insurers on any such policies require separate waiver forms to be signed by any Subcontractor or Supplier, Contractor will obtain the same.

6.07 Patent Fees and Royalties

- A. Contractor shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product, or device is specified in the Contract Documents for use in the performance of the Work and if, to the actual knowledge of Owner or Engineer, its use is

subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by Owner in the Contract Documents.

- B. To the fullest extent permitted by Laws and Regulations, Owner shall indemnify and hold harmless Contractor, and its officers, directors, members, partners, employees, agents, consultants, and subcontractors from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device specified in the Contract Documents, but not identified as being subject to payment of any license fee or royalty to others required by patent rights or copyrights.
- C. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any infringement of patent rights or copyrights incident to the use in the performance of the Work or resulting from the incorporation in the Work of any invention, design, process, product, or device not specified in the Contract Documents.

6.08 Permits

- A. Unless otherwise provided in the Supplementary Conditions, Contractor shall obtain and pay for all construction permits and licenses. Owner shall assist Contractor, when necessary, in obtaining such permits and licenses. Contractor shall pay all governmental charges and inspection fees necessary for the prosecution of the Work which are applicable at the time of opening of Bids, or, if there are no Bids, on the Effective Date of the Agreement. Owner shall pay all charges of utility owners for connections for providing permanent service to the Work.

6.09 Laws and Regulations

- A. Contractor shall give all notices required by and shall comply with all Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. If Contractor performs any Work knowing or having reason to know that it is contrary to Laws or Regulations, Contractor shall bear all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all

court or arbitration or other dispute resolution costs) arising out of or relating to such Work. However, it shall not be Contractor's responsibility to make certain that the Specifications and Drawings are in accordance with Laws and Regulations, but this shall not relieve Contractor of Contractor's obligations under Paragraph 3.03.

- C. Changes in Laws or Regulations not known at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids) having an effect on the cost or time of performance of the Work shall be the subject of an adjustment in Contract Price or Contract Times. If Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

6.10 Taxes

- A. Contractor shall pay all sales, consumer, use, and other similar taxes required to be paid by Contractor in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work.

6.11 Use of Site and Other Areas

A. Limitation on Use of Site and Other Areas:

1. Contractor shall confine construction equipment, the storage of materials and equipment, and the operations of workers to the Site and other areas permitted by Laws and Regulations, and shall not unreasonably encumber the Site and other areas with construction equipment or other materials or equipment. Contractor shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof, or of any adjacent land or areas resulting from the performance of the Work.
2. Should any claim be made by any such owner or occupant because of the performance of the Work, Contractor shall promptly settle with such other party by negotiation or otherwise resolve the claim by arbitration or other dispute resolution proceeding or at law.
3. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to any claim or action, legal or equitable, brought by any such owner or occupant against Owner, Engineer, or any other party indemnified hereunder to the extent caused by or based upon Contractor's performance of the Work.

- B. *Removal of Debris During Performance of the Work:* During the progress of the Work Contractor shall keep the Site and other areas free from accumulations of waste materials, rubbish, and other debris. Removal and disposal of such waste materials, rubbish, and other debris shall conform to applicable Laws and Regulations.
- C. *Cleaning:* Prior to Substantial Completion of the Work Contractor shall clean the Site and the Work and make it ready for utilization by Owner. At the completion of the Work Contractor shall remove from the Site all tools, appliances, construction equipment and machinery, and surplus materials and shall restore to original condition all property not designated for alteration by the Contract Documents.
- D. *Loading Structures:* Contractor shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

6.12 *Record Documents*

- A. Contractor shall maintain in a safe place at the Site one record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with all approved Samples and a counterpart of all approved Shop Drawings will be available to Engineer for reference. Upon completion of the Work, these record documents, Samples, and Shop Drawings will be delivered to Engineer for Owner.

6.13 *Safety and Protection*

- A. Contractor shall be solely responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. Such responsibility does not relieve Subcontractors of their responsibility for the safety of persons or property in the performance of their work, nor for compliance with applicable safety Laws and Regulations. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss to:
 1. all persons on the Site or who may be affected by the Work;
 2. all the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
 3. other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and Underground Facilities not designated for removal, relocation, or replacement in the course of construction.

- B. Contractor shall comply with all applicable Laws and Regulations relating to the safety of persons or property, or to the protection of persons or property from damage, injury, or loss; and shall erect and maintain all necessary safeguards for such safety and protection. Contractor shall notify owners of adjacent property and of Underground Facilities and other utility owners when prosecution of the Work may affect them, and shall cooperate with them in the protection, removal, relocation, and replacement of their property.
- C. Contractor shall comply with the applicable requirements of Owner's safety programs, if any. The Supplementary Conditions identify any Owner's safety programs that are applicable to the Work.
- D. Contractor shall inform Owner and Engineer of the specific requirements of Contractor's safety program with which Owner's and Engineer's employees and representatives must comply while at the Site.
- E. All damage, injury, or loss to any property referred to in Paragraph 6.13.A.2 or 6.13.A.3 caused, directly or indirectly, in whole or in part, by Contractor, any Subcontractor, Supplier, or any other individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, shall be remedied by Contractor (except damage or loss attributable to the fault of Drawings or Specifications or to the acts or omissions of Owner or Engineer or anyone employed by any of them, or anyone for whose acts any of them may be liable, and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor or any Subcontractor, Supplier, or other individual or entity directly or indirectly employed by any of them).
- F. Contractor's duties and responsibilities for safety and for protection of the Work shall continue until such time as all the Work is completed and Engineer has issued a notice to Owner and Contractor in accordance with Paragraph 14.07.B that the Work is acceptable (except as otherwise expressly provided in connection with Substantial Completion).

6.14 Safety Representative

- A. Contractor shall designate a qualified and experienced safety representative at the Site whose duties and responsibilities shall be the prevention of accidents and the maintaining and supervising of safety precautions and programs.

6.15 Hazard Communication Programs

- A. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

6.16 *Emergencies*

- A. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor is obligated to act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

6.17 *Shop Drawings and Samples*

- A. Contractor shall submit Shop Drawings and Samples to Engineer for review and approval in accordance with the accepted Schedule of Submittals (as required by Paragraph 2.07). Each submittal will be identified as Engineer may require.
 - 1. *Shop Drawings:*
 - a. Submit number of copies specified in the Specifications or as directed by the Owner.
 - b. Data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials, and similar data to show Engineer the services, materials, and equipment Contractor proposes to provide and to enable Engineer to review the information for the limited purposes required by Paragraph 6.17.D.
 - 2. *Samples:*
 - a. Submit number of Samples specified in the Specifications.
 - b. Clearly identify each Sample as to material, Supplier, pertinent data such as catalog numbers, the use for which intended and other data as Engineer may require to enable Engineer to review the submittal for the limited purposes required by Paragraph 6.17.D.
- B. Where a Shop Drawing or Sample is required by the Contract Documents or the Schedule of Submittals, any related Work performed prior to Engineer's review and approval of the pertinent submittal will be at the sole expense and responsibility of Contractor.
- C. *Submittal Procedures:*
 - 1. Before submitting each Shop Drawing or Sample, Contractor shall have:

- a. reviewed and coordinated each Shop Drawing or Sample with other Shop Drawings and Samples and with the requirements of the Work and the Contract Documents;
 - b. determined and verified all field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information with respect thereto;
 - c. determined and verified the suitability of all materials offered with respect to the indicated application, fabrication, shipping, handling, storage, assembly, and installation pertaining to the performance of the Work; and
 - d. determined and verified all information relative to Contractor's responsibilities for means, methods, techniques, sequences, and procedures of construction, and safety precautions and programs incident thereto.
2. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review and approval of that submittal.
 3. With each submittal, Contractor shall give Engineer specific written notice of any variations that the Shop Drawing or Sample may have from the requirements of the Contract Documents. This notice shall be both a written communication separate from the Shop Drawings or Sample submittal; and, in addition, by a specific notation made on each Shop Drawing or Sample submitted to Engineer for review and approval of each such variation.

D. Engineer's Review:

1. Engineer will provide timely review of Shop Drawings and Samples in accordance with the Schedule of Submittals acceptable to Engineer. Engineer's review and approval will be only to determine if the items covered by the submittals will, after installation or incorporation in the Work, conform to the information given in the Contract Documents and be compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
2. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction (except where a particular means, method, technique, sequence, or procedure of construction is specifically and expressly called for by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions.

3. Engineer's review and approval shall not relieve Contractor from responsibility for any variation from the requirements of the Contract Documents unless Contractor has complied with the requirements of Paragraph 6.17.C.3 and Engineer has given written approval of each such variation by specific written notation thereof incorporated in or accompanying the Shop Drawing or Sample. Engineer's review and approval shall not relieve Contractor from responsibility for complying with the requirements of Paragraph 6.17.C.1.

E. Resubmittal Procedures:

1. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of Shop Drawings and submit, as required, new Samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.

6.18 Continuing the Work

- A. Contractor shall carry on the Work and adhere to the Progress Schedule during all disputes or disagreements with Owner. No Work shall be delayed or postponed pending resolution of any disputes or disagreements, except as permitted by Paragraph 15.04 or as Owner and Contractor may otherwise agree in writing.

6.19 Contractor's General Warranty and Guarantee

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on representation of Contractor's warranty and guarantee.
- B. Contractor's warranty and guarantee hereunder excludes defects or damage caused by:
 1. abuse, modification, or improper maintenance or operation by persons other than Contractor, Subcontractors, Suppliers, or any other individual or entity for whom Contractor is responsible;
or
 2. normal wear and tear under normal usage.
- C. Contractor's obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. None of the following will constitute an acceptance of Work that is not in accordance with the Contract Documents or a release of Contractor's obligation to perform the Work in accordance with the Contract Documents:
 1. observations by Engineer;

2. recommendation by Engineer or payment by Owner of any progress or final payment;
3. the issuance of a certificate of Substantial Completion by Engineer or any payment related thereto by Owner;
4. use or occupancy of the Work or any part thereof by Owner;
5. any review and approval of a Shop Drawing or Sample submittal or the issuance of a notice of acceptability by Engineer;
6. any inspection, test, or approval by others; or
7. any correction of defective Work by Owner.

6.20 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts any of them may be liable .
- B. In any and all claims against Owner or Engineer or any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors by any employee (or the survivor or personal representative of such employee) of Contractor, any Subcontractor, any Supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work, or anyone for whose acts any of them may be liable, the indemnification obligation under Paragraph 6.20.A shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any such Subcontractor, Supplier, or other individual or entity under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- C. The indemnification obligations of Contractor under Paragraph 6.20.A shall not extend to the liability of Engineer and Engineer's officers, directors, members, partners, employees, agents, consultants and subcontractors arising out of:

1. the preparation or approval of, or the failure to prepare or approve maps, Drawings, opinions, reports, surveys, Change Orders, designs, or Specifications; or
2. giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage.

6.21 *Delegation of Professional Design Services*

- A. Contractor will not be required to provide professional design services unless such services are specifically required by the Contract Documents for a portion of the Work or unless such services are required to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law.
- B. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of Contractor by the Contract Documents, Owner and Engineer will specify all performance and design criteria that such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly licensed professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Engineer.
- C. Owner and Engineer shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided Owner and Engineer have specified to Contractor all performance and design criteria that such services must satisfy.
- D. Pursuant to this Paragraph 6.21, Engineer's review and approval of design calculations and design drawings will be only for the limited purpose of checking for conformance with performance and design criteria given and the design concept expressed in the Contract Documents. Engineer's review and approval of Shop Drawings and other submittals (except design calculations and design drawings) will be only for the purpose stated in Paragraph 6.17.D.1.
- E. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

ARTICLE 7 – OTHER WORK AT THE SITE

7.01 *Related Work at Site*

- A. Owner may perform other work related to the Project at the Site with Owner's employees, or through other direct contracts therefor, or have other work performed by utility owners. If such other work is not noted in the Contract Documents, then:
 - 1. written notice thereof will be given to Contractor prior to starting any such other work; and
 - 2. if Owner and Contractor are unable to agree on entitlement to or on the amount or extent, if any, of any adjustment in the Contract Price or Contract Times that should be allowed as a result of such other work, a Claim may be made therefor as provided in Paragraph 10.05.
- B. Contractor shall afford each other contractor who is a party to such a direct contract, each utility owner, and Owner, if Owner is performing other work with Owner's employees, proper and safe access to the Site, provide a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such other work, and properly coordinate the Work with theirs. Contractor shall do all cutting, fitting, and patching of the Work that may be required to properly connect or otherwise make its several parts come together and properly integrate with such other work. Contractor shall not endanger any work of others by cutting, excavating, or otherwise altering such work; provided, however, that Contractor may cut or alter others' work with the written consent of Engineer and the others whose work will be affected. The duties and responsibilities of Contractor under this Paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of Contractor in said direct contracts between Owner and such utility owners and other contractors.
- C. If the proper execution or results of any part of Contractor's Work depends upon work performed by others under this Article 7, Contractor shall inspect such other work and promptly report to Engineer in writing any delays, defects, or deficiencies in such other work that render it unavailable or unsuitable for the proper execution and results of Contractor's Work. Contractor's failure to so report will constitute an acceptance of such other work as fit and proper for integration with Contractor's Work except for latent defects and deficiencies in such other work.

7.02 *Coordination*

- A. If Owner intends to contract with others for the performance of other work on the Project at the Site, the following will be set forth in Supplementary Conditions:
 - 1. the individual or entity who will have authority and responsibility for coordination of the activities among the various contractors will be identified;

2. the specific matters to be covered by such authority and responsibility will be itemized; and
3. the extent of such authority and responsibilities will be provided.

B. Unless otherwise provided in the Supplementary Conditions, Owner shall have sole authority and responsibility for such coordination.

7.03 *Legal Relationships*

A. Paragraphs 7.01.A and 7.02 are not applicable for utilities not under the control of Owner.

B. Each other direct contract of Owner under Paragraph 7.01.A shall provide that the other contractor is liable to Owner and Contractor for the reasonable direct delay and disruption costs incurred by Contractor as a result of the other contractor's wrongful actions or inactions.

C. Contractor shall be liable to Owner and any other contractor under direct contract to Owner for the reasonable direct delay and disruption costs incurred by such other contractor as a result of Contractor's wrongful action or inactions.

ARTICLE 8 – OWNER'S RESPONSIBILITIES

8.01 *Communications to Contractor*

- i. Except as otherwise provided in these General Conditions, Owner shall issue all communications to Contractor through Engineer.

8.02 *Replacement of Engineer*

A. In case of termination of the employment of Engineer, Owner shall appoint an engineer to whom Contractor makes no reasonable objection, whose status under the Contract Documents shall be that of the former Engineer.

8.03 *Furnish Data*

A. Owner shall promptly furnish the data required of Owner under the Contract Documents.

8.04 *Pay When Due*

A. Owner shall make payments to Contractor when they are due as provided in Paragraphs 14.02.C and 14.07.C.

8.05 *Lands and Easements; Reports and Tests*

- A. Owner's duties with respect to providing lands and easements and providing engineering surveys to establish reference points are set forth in Paragraphs 4.01 and 4.05. Paragraph 4.02 refers to Owner's identifying and making available to Contractor copies of reports of explorations and tests of subsurface conditions and drawings of physical conditions relating to existing surface or subsurface structures at the Site.

8.06 Insurance

- A. Owner's responsibilities, if any, with respect to purchasing and maintaining liability and property insurance are set forth in Article 5.

8.07 Change Orders

- A. Owner is obligated to execute Change Orders as indicated in Paragraph 10.03.

8.08 Inspections, Tests, and Approvals

- A. Owner's responsibility with respect to certain inspections, tests, and approvals is set forth in Paragraph 13.03.B.

8.09 Limitations on Owner's Responsibilities

- A. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

8.10 Undisclosed Hazardous Environmental Condition

- A. Owner's responsibility in respect to an undisclosed Hazardous Environmental Condition is set forth in Paragraph 4.06.

8.11 Evidence of Financial Arrangements

- A. Upon request of Contractor, Owner shall furnish Contractor reasonable evidence that financial arrangements have been made to satisfy Owner's obligations under the Contract Documents.

8.12 Compliance with Safety Program

- A. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed pursuant to Paragraph 6.13.D.

ARTICLE 9 – ENGINEER’S STATUS DURING CONSTRUCTION

9.01 *Owner’s Representative*

- A. Engineer will be Owner’s representative during the construction period. The duties and responsibilities and the limitations of authority of Engineer as Owner’s representative during construction are set forth in the Contract Documents.

9.02 *Visits to Site*

- A. Engineer will make visits to the Site at intervals appropriate to the various stages of construction as Engineer deems necessary in order to observe as an experienced and qualified design professional the progress that has been made and the quality of the various aspects of Contractor’s executed Work. Based on information obtained during such visits and observations, Engineer, for the benefit of Owner, will determine, in general, if the Work is proceeding in accordance with the Contract Documents. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work. Engineer’s efforts will be directed toward providing for Owner a greater degree of confidence that the completed Work will conform generally to the Contract Documents. On the basis of such visits and observations, Engineer will keep Owner informed of the progress of the Work and will endeavor to guard Owner against defective Work.
- B. Engineer’s visits and observations are subject to all the limitations on Engineer’s authority and responsibility set forth in Paragraph 9.09. Particularly, but without limitation, during or as a result of Engineer’s visits or observations of Contractor’s Work, Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor’s means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work.

9.03 *Project Representative*

- A. If Owner and Engineer agree, Engineer will furnish a Resident Project Representative to assist Engineer in providing more extensive observation of the Work. The authority and responsibilities of any such Resident Project Representative and assistants will be as provided in the Supplementary Conditions, and limitations on the responsibilities thereof will be as provided in Paragraph 9.09. If Owner designates another representative or agent to represent Owner at the Site who is not Engineer’s consultant, agent or employee, the responsibilities and authority and limitations thereon of such other individual or entity will be as provided in the Supplementary Conditions.

1.04 Authorized Variations in Work

A. Engineer may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Times and are compatible with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. These may be accomplished by a Field Order and will be binding on Owner and also on Contractor, who shall perform the Work involved promptly. If Owner or Contractor believes that a Field Order justifies an adjustment in the Contract Price or Contract Times, or both, and the parties are unable to agree on entitlement to or on the amount or extent, if any, of any such adjustment, a Claim may be made therefor as provided in Paragraph 10.05.

9.05 Rejecting Defective Work

A. Engineer will have authority to reject Work which Engineer believes to be defective, or that Engineer believes will not produce a completed Project that conforms to the Contract Documents or that will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Engineer will also have authority to require special inspection or testing of the Work as provided in Paragraph 13.04, whether or not the Work is fabricated, installed, or completed.

9.06 Shop Drawings, Change Orders and Payments

- A. In connection with Engineer's authority, and limitations thereof, as to Shop Drawings and Samples, see Paragraph 6.17.
- ii. In connection with Engineer's authority, and limitations thereof, as to design calculations and design drawings submitted in response to a delegation of professional design services, if any, see Paragraph 6.21.
 - iii. In connection with Engineer's authority as to Change Orders, See /articles 10, 11 and 12.
 - iv. In connection with Engineer's authority as to Applications for Payment see Article 14.

9.07 Determinations for Unit Price Work

A. Engineer will determine the actual quantities and classifications of Unit Price Work performed by Contractor. Engineer will review with Contractor the Engineer's preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise). Engineer's written decision thereon will be final and binding (except as modified by Engineer to reflect changed factual conditions or more accurate data) upon Owner and Contractor, subject to the provisions of Paragraph 10.05.

9.08 Decisions on Requirements of Contract Documents and Acceptability of Work

- A. Engineer will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. All matters in question and other matters between Owner and Contractor arising prior to the date final payment is due relating to the acceptability of the Work, and the interpretation of the requirements of the Contract Documents pertaining to the performance of the Work, will be referred initially to Engineer in writing within 30 days of the event giving rise to the question.
- B. Engineer will, with reasonable promptness, render a written decision on the issue referred. If Owner or Contractor believes that any such decision entitles them to an adjustment in the Contract Price or Contract Times or both, a Claim may be made under Paragraph 10.05. The date of Engineer's decision shall be the date of the event giving rise to the issues referenced for the purposes of Paragraph 10.05.B.
- C. Engineer's written decision on the issue referred will be final and binding on Owner and Contractor, subject to the provisions of Paragraph 10.05.
- D. When functioning as interpreter and judge under this Paragraph 9.08, Engineer will not show partiality to Owner or Contractor and will not be liable in connection with any interpretation or decision rendered in good faith in such capacity.

9.09 Limitations on Engineer's Authority and Responsibilities

- A. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract Documents nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any Subcontractor, any Supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- B. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- C. Engineer will not be responsible for the acts or omissions of Contractor or of any Subcontractor, any Supplier, or of any other individual or entity performing any of the Work.

- D. Engineer's review of the final Application for Payment and accompanying documentation and all maintenance and operating instructions, schedules, guarantees, bonds, certificates of inspection, tests and approvals, and other documentation required to be delivered by Paragraph 14.07.A will only be to determine generally that their content complies with the requirements of, and in the case of certificates of inspections, tests, and approvals that the results certified indicate compliance with, the Contract Documents.
- E. The limitations upon authority and responsibility set forth in this Paragraph 9.09 shall also apply to the Resident Project Representative, if any, and assistants, if any.

9.10 Compliance with Safety Program

- A. While at the Site, Engineer's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Engineer has been informed pursuant to Paragraph 6.13.D.

ARTICLE 10 – CHANGES IN THE WORK; CLAIMS

10.01 Authorized Changes in the Work

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work by a Change Order, or a Work Change Directive. Upon receipt of any such document, Contractor shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).
- B. If Owner and Contractor are unable to agree on entitlement to, or on the amount or extent, if any, of an adjustment in the Contract Price or Contract Times, or both, that should be allowed as a result of a Work Change Directive, a Claim may be made therefor as provided in Paragraph 10.05.

10.02 Unauthorized Changes in the Work

- A. Contractor shall not be entitled to an increase in the Contract Price or an extension of the Contract Times with respect to any work performed that is not required by the Contract Documents as amended, modified, or supplemented as provided in Paragraph 3.04, except in the case of an emergency as provided in Paragraph 6.16 or in the case of uncovering Work as provided in Paragraph 13.04.D.

10.03 Execution of Change Orders

- A. Owner and Contractor shall execute appropriate Change Orders recommended by Engineer covering:

1. changes in the Work which are: (i) ordered by Owner pursuant to Paragraph 10.01.A, (ii) required because of acceptance of defective Work under Paragraph 13.08.A or Owner's correction of defective Work under Paragraph 13.09, or (iii) agreed to by the parties;
2. changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive; and
3. changes in the Contract Price or Contract Times which embody the substance of any written decision rendered by Engineer pursuant to Paragraph 10.05; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and Regulations, but during any such appeal, Contractor shall carry on the Work and adhere to the Progress Schedule as provided in Paragraph 6.18.A.

10.04 Notification to Surety

- A. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

10.05 Claims

- A. *Engineer's Decision Required:* All Claims, except those waived pursuant to Paragraph 14.09, shall be referred to the Engineer for decision. A decision by Engineer shall be required as a condition precedent to any exercise by Owner or Contractor of any rights or remedies either may otherwise have under the Contract Documents or by Laws and Regulations in respect of such Claims.
- B. *Notice:* Written notice stating the general nature of each Claim shall be delivered by the claimant to Engineer and the other party to the Contract promptly (but in no event later than 30 days) after the start of the event giving rise thereto. The responsibility to substantiate a Claim shall rest with the party making the Claim. Notice of the amount or extent of the Claim, with supporting data shall be delivered to the Engineer and the other party to the Contract within 60 days after the start of such event (unless Engineer allows additional time for claimant to submit additional or more accurate data in support of such Claim). A Claim for an adjustment in Contract Price shall be prepared in accordance with the provisions of Paragraph 12.01.B. A Claim for an adjustment in Contract Times shall be prepared in accordance with the provisions of Paragraph 12.02.B. Each Claim shall be accompanied by claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant believes it is entitled as a result of said event. The

opposing party shall submit any response to Engineer and the claimant within 30 days after receipt of the claimant's last submittal (unless Engineer allows additional time).

C. *Engineer's Action:* Engineer will review each Claim and, within 30 days after receipt of the last submittal of the claimant or the last submittal of the opposing party, if any, take one of the following actions in writing:

1. deny the Claim in whole or in part.
2. Approve the claim in whole; or
3. notify the parties that the Engineer is unable to resolve the Claim if, in the Engineer's sole discretion, it would be inappropriate for the Engineer to do so. For purposes of further resolution of the Claim, such notice shall be deemed a denial.

D. In the event that Engineer does not take action on a Claim within said 30 days, the Claim shall be deemed denied.

E. Engineer's written action under Paragraph 10.05.C or denial pursuant to Paragraphs 10.05.C.3 or 10.05 D will be final and binding upon Owner and Contractor, unless Owner or Contractor invoke the dispute resolution procedure set forth in Article 16 within 30 days of such action or denial.

F. No Claim for an adjustment in Contract Price or Contract Times will be valid if not submitted in accordance with this Paragraph 10.05.

ARTICLE 11 – COST OF THE WORK; ALLOWANCES; UNIT PRICE WORK

11.01 Cost of the Work

A. *Costs Included:* The term Cost of the Work means the sum of all costs, except those excluded in Paragraph 11.01.B, necessarily incurred and paid by Contractor in the proper performance of the Work. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, the costs to be reimbursed to Contractor will be only those additional or incremental costs required because of the change in the Work or because of the event giving rise to the Claim. Except as otherwise may be agreed to in writing by Owner, such costs shall be in amounts no higher than those prevailing in the locality of the Project, shall not include any of the costs itemized in Paragraph 11.01.B, and shall include only the following items:

1. Payroll costs for employees in the direct employ of Contractor in the performance of the Work under schedules of job classifications agreed upon by Owner and Contractor. Such employees shall include, without limitation, superintendents, foremen, and other personnel employed full time on the Work. Payroll costs for employees not employed full time on the

Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits, which shall include social security contributions, unemployment, excise, and payroll taxes, workers' compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. The expenses of performing Work outside of regular working hours, on Saturday, Sunday, or legal holidays, shall be included in the above to the extent authorized by Owner.

2. Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to Contractor unless Owner deposits funds with Contractor with which to make payments, in which case the cash discounts shall accrue to Owner. All trade discounts, rebates and refunds and returns from sale of surplus materials and equipment shall accrue to Owner, and Contractor shall make provisions so that they may be obtained.
3. Payments made by Contractor to Subcontractors for Work performed by Subcontractors. If required by Owner, Contractor shall obtain competitive bids from subcontractors acceptable to Owner and Contractor and shall deliver such bids to Owner, who will then determine, with the advice of Engineer, which bids, if any, will be acceptable. If any subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work plus a fee, the Subcontractor's Cost of the Work and fee shall be determined in the same manner as Contractor's Cost of the Work and fee as provided in this Paragraph 11.01.
4. Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys, and accountants) employed for services specifically related to the Work.
5. Supplemental costs including the following:
 - a. The proportion of necessary transportation, travel, and subsistence expenses of Contractor's employees incurred in discharge of duties connected with the Work.
 - b. Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office, and temporary facilities at the Site, and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost, less market value, of such items used but not consumed which remain the property of Contractor.
 - c. Rentals of all construction equipment and machinery, and the parts thereof whether rented from Contractor or others in accordance with rental agreements approved by Owner with the advice of Engineer, and the costs of transportation, loading, unloading, assembly,

dismantling, and removal thereof. All such costs shall be in accordance with the terms of said rental agreements. The rental of any such equipment, machinery, or parts shall cease when the use thereof is no longer necessary for the Work.

- d. Sales, consumer, use, and other similar taxes related to the Work, and for which Contractor is liable, as imposed by Laws and Regulations.
 - e. Deposits lost for causes other than negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.
 - f. Losses and damages (and related expenses) caused by damage to the Work, not compensated by insurance or otherwise, sustained by Contractor in connection with the performance of the Work (except losses and damages within the deductible amounts of property insurance established in accordance with Paragraph 5.06.D), provided such losses and damages have resulted from causes other than the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of Owner. No such losses, damages, and expenses shall be included in the Cost of the Work for the purpose of determining Contractor's fee.
 - g. The cost of utilities, fuel, and sanitary facilities at the Site.
 - h. Minor expenses such as telegrams, long distance telephone calls, telephone service at the Site, express and courier services, and similar petty cash items in connection with the Work.
 - i. The costs of premiums for all bonds and insurance Contractor is required by the Contract Documents to purchase and maintain.
- B. *Costs Excluded:* The term Cost of the Work shall not include any of the following items:
- 1. Payroll costs and other compensation of Contractor's officers, executives, principals (of partnerships and sole proprietorships), general managers, safety managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks, and other personnel employed by Contractor, whether at the Site or in Contractor's principal or branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in Paragraph 11.01.A.1 or specifically covered by Paragraph 11.01.A.4, all of which are to be considered administrative costs covered by the Contractor's fee.
 - 2. Expenses of Contractor's principal and branch offices other than Contractor's office at the Site.

3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work and charges against Contractor for delinquent payments.
 4. Costs due to the negligence of Contractor, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied, and making good any damage to property.
 5. Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in Paragraphs 11.01.A.
- C. *Contractor's Fee:* When all the Work is performed on the basis of cost-plus, Contractor's fee shall be determined as set forth in the Agreement. When the value of any Work covered by a Change Order or when a Claim for an adjustment in Contract Price is determined on the basis of Cost of the Work, Contractor's fee shall be determined as set forth in Paragraph 12.01.C.
- D. *Documentation:* Whenever the Cost of the Work for any purpose is to be determined pursuant to Paragraphs 11.01.A and 11.01.B, Contractor will establish and maintain records thereof in accordance with generally accepted accounting practices and submit in a form acceptable to Engineer an itemized cost breakdown together with supporting data.

11.02 Allowances

- A. It is understood that Contractor has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be performed for such sums and by such persons or entities as may be acceptable to Owner and Engineer.
- B. *Cash Allowances:*
1. Contractor agrees that:
 - a. the cash allowances include the cost to Contractor (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the Site, and all applicable taxes; and
 - b. Contractor's costs for unloading and handling on the Site, labor, installation, overhead, profit, and other expenses contemplated for the cash allowances have been included in the Contract Price and not in the allowances, and no demand for additional payment on account of any of the foregoing will be valid.
- C. *Contingency Allowance:*

1. Contractor agrees that a contingency allowance, if any, is for the sole use of Owner to cover unanticipated costs.
- D. Prior to final payment, an appropriate Change Order will be issued as recommended by Engineer to reflect actual amounts due Contractor on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

11.03 Unit Price Work

- A. Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the unit price for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement.
- B. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by Contractor will be made by Engineer subject to the provisions of Paragraph 9.07.
- C. Each unit price will be deemed to include an amount considered by Contractor to be adequate to cover Contractor's overhead and profit for each separately identified item.
- D. Owner or Contractor may make a Claim for an adjustment in the Contract Price in accordance with Paragraph 10.05 if:
 1. the quantity of any item of Unit Price Work performed by Contractor differs materially and significantly from the estimated quantity of such item indicated in the Agreement; and
 2. there is no corresponding adjustment with respect to any other item of Work; and
 3. Contractor believes that Contractor is entitled to an increase in Contract Price as a result of having incurred additional expense or Owner believes that Owner is entitled to a decrease in Contract Price and the parties are unable to agree as to the amount of any such increase or decrease.

ARTICLE 12 – CHANGE OF CONTRACT PRICE; CHANGE OF CONTRACT TIMES

12.01 Change of Contract Price

- A. The Contract Price may only be changed by a Change Order. Any Claim for an adjustment in the Contract Price shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. The value of any Work covered by a Change Order or of any Claim for an adjustment in the Contract Price will be determined as follows:
 - 1. where the Work involved is covered by unit prices contained in the Contract Documents, by application of such unit prices to the quantities of the items involved (subject to the provisions of Paragraph 11.03); or
 - 2. where the Work involved is not covered by unit prices contained in the Contract Documents, by a mutually agreed lump sum (which may include an allowance for overhead and profit not necessarily in accordance with Paragraph 12.01.C.2); or
 - 3. where the Work involved is not covered by unit prices contained in the Contract Documents and agreement to a lump sum is not reached under Paragraph 12.01.B.2, on the basis of the Cost of the Work (determined as provided in Paragraph 11.01) plus a Contractor's fee for overhead and profit (determined as provided in Paragraph 12.01.C).
- C. *Contractor's Fee:* The Contractor's fee for overhead and profit shall be determined as follows:
 - 1. a mutually acceptable fixed fee; or
 - 2. if a fixed fee is not agreed upon, then a fee based on the following percentages of the various portions of the Cost of the Work:
 - a. for costs incurred under Paragraphs 11.01.A.1 and 11.01.A.2, the Contractor's fee shall be 15 percent;
 - b. for costs incurred under Paragraph 11.01.A.3, the Contractor's fee shall be five percent;
 - c. where one or more tiers of subcontracts are on the basis of Cost of the Work plus a fee and no fixed fee is agreed upon, the intent of Paragraphs 12.01.C.2.a and 12.01.C.2.b is that the Subcontractor who actually performs the Work, at whatever tier, will be paid a fee of 15 percent of the costs incurred by such Subcontractor under Paragraphs 11.01.A.1 and 11.01.A.2 and that any higher tier Subcontractor and Contractor will each be paid a fee of five percent of the amount paid to the next lower tier Subcontractor;

- d. no fee shall be payable on the basis of costs itemized under Paragraphs 11.01.A.4, 11.01.A.5, and 11.01.B;
- e. the amount of credit to be allowed by Contractor to Owner for any change which results in a net decrease in cost will be the amount of the actual net decrease in cost plus a deduction in Contractor's fee by an amount equal to five percent of such net decrease; and
- f. when both additions and credits are involved in any one change, the adjustment in Contractor's fee shall be computed on the basis of the net change in accordance with Paragraphs 12.01.C.2.a through 12.01.C.2.e, inclusive.

12.02 Change of Contract Times

- A. The Contract Times may only be changed by a Change Order. Any Claim for an adjustment in the Contract Times shall be based on written notice submitted by the party making the Claim to the Engineer and the other party to the Contract in accordance with the provisions of Paragraph 10.05.
- B. Any adjustment of the Contract Times covered by a Change Order or any Claim for an adjustment in the Contract Times will be determined in accordance with the provisions of this Article 12.

12.03 Delays

- A. Where Contractor is prevented from completing any part of the Work within the Contract Times due to delay beyond the control of Contractor, the Contract Times will be extended in an amount equal to the time lost due to such delay if a Claim is made therefor as provided in Paragraph 12.02.A. Delays beyond the control of Contractor shall include, but not be limited to, acts or neglect by Owner, acts or neglect of utility owners or other contractors performing other work as contemplated by Article 7, fires, floods, epidemics, abnormal weather conditions, or acts of God.
- B. If Owner, Engineer, or other contractors or utility owners performing other work for Owner as contemplated by Article 7, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an equitable adjustment in the Contract Price or the Contract Times, or both. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.
- C. If Contractor is delayed in the performance or progress of the Work by fire, flood, epidemic, abnormal weather conditions, acts of God, acts or failures to act of utility owners not under the control of Owner, or other causes not the fault of and beyond control of Owner and Contractor,

then Contractor shall be entitled to an equitable adjustment in Contract Times, if such adjustment is essential to Contractor's ability to complete the Work within the Contract Times. Such an adjustment shall be Contractor's sole and exclusive remedy for the delays described in this Paragraph 12.03.C.

- D. Owner, Engineer, and their officers, directors, members, partners, employees, agents, consultants, or subcontractors shall not be liable to Contractor for any claims, costs, losses, or damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Contractor on or in connection with any other project or anticipated project.
- E. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delays within the control of Contractor. Delays attributable to and within the control of a Subcontractor or Supplier shall be deemed to be delays within the control of Contractor.

ARTICLE 13 – TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

13.01 Notice of Defects

- A. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor. Defective Work may be rejected, corrected, or accepted as provided in this Article 13.

13.02 Access to Work

- A. Owner, Engineer, their consultants and other representatives and personnel of Owner, independent testing laboratories, and governmental agencies with jurisdictional interests will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access and advise them of Contractor's safety procedures and programs so that they may comply therewith as applicable.

13.03 Tests and Inspections

- A. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections, tests, or approvals and shall cooperate with inspection and testing personnel to facilitate required inspections or tests.
- B. Owner shall employ and pay for the services of an independent testing laboratory to perform all inspections, tests, or approvals required by the Contract Documents except:
 - 1. for inspections, tests, or approvals covered by Paragraphs 13.03.C and 13.03.D below;

2. that costs incurred in connection with tests or inspections conducted pursuant to Paragraph 13.04.B shall be paid as provided in Paragraph 13.04.C; and
 3. as otherwise specifically provided in the Contract Documents.
- C. If Laws or Regulations of any public body having jurisdiction require any Work (or part thereof) specifically to be inspected, tested, or approved by an employee or other representative of such public body, Contractor shall assume full responsibility for arranging and obtaining such inspections, tests, or approvals, pay all costs in connection therewith, and furnish Engineer the required certificates of inspection or approval.
 - D. Contractor shall be responsible for arranging and obtaining and shall pay all costs in connection with any inspections, tests, or approvals required for Owner's and Engineer's acceptance of materials or equipment to be incorporated in the Work; or acceptance of materials, mix designs, or equipment submitted for approval prior to Contractor's purchase thereof for incorporation in the Work. Such inspections, tests, or approvals shall be performed by organizations acceptable to Owner and Engineer.
 - E. If any Work (or the work of others) that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation.
 - F. Uncovering Work as provided in Paragraph 13.03.E shall be at Contractor's expense unless Contractor has given Engineer timely notice of Contractor's intention to cover the same and Engineer has not acted with reasonable promptness in response to such notice.

13.04 Uncovering Work

- A. If any Work is covered contrary to the written request of Engineer, it must, if requested by Engineer, be uncovered for Engineer's observation and replaced at Contractor's expense.
- B. If Engineer considers it necessary or advisable that covered Work be observed by Engineer or inspected or tested by others, Contractor, at Engineer's request, shall uncover, expose, or otherwise make available for observation, inspection, or testing as Engineer may require, that portion of the Work in question, furnishing all necessary labor, material, and equipment.
- C. If it is found that the uncovered Work is defective, Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such uncovering, exposure, observation, inspection, and testing, and of satisfactory replacement or reconstruction (including but not limited to all costs of repair or replacement of work of others); and Owner shall be entitled to an appropriate decrease in the

Contract Price. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05.

- D. If the uncovered Work is not found to be defective, Contractor shall be allowed an increase in the Contract Price or an extension of the Contract Times, or both, directly attributable to such uncovering, exposure, observation, inspection, testing, replacement, and reconstruction. If the parties are unable to agree as to the amount or extent thereof, Contractor may make a Claim therefor as provided in Paragraph 10.05.

13.05 Owner May Stop the Work

- A. If the Work is defective, or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of Owner to stop the Work shall not give rise to any duty on the part of Owner to exercise this right for the benefit of Contractor, any Subcontractor, any Supplier, any other individual or entity, or any surety for, or employee or agent of any of them.

13.06 Correction or Removal of Defective Work

- A. Promptly after receipt of written notice, Contractor shall correct all defective Work, whether or not fabricated, installed, or completed, or, if the Work has been rejected by Engineer, remove it from the Project and replace it with Work that is not defective. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or removal (including but not limited to all costs of repair or replacement of work of others).
- B. When correcting defective Work under the terms of this Paragraph 13.06 or Paragraph 13.07, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.

13.07 Correction Period

- A. If within one year after the date of Substantial Completion (or such longer period of time as may be prescribed by the terms of any applicable special guarantee required by the Contract Documents) or by any specific provision of the Contract Documents, any Work is found to be defective, or if the repair of any damages to the land or areas made available for Contractor's use by Owner or permitted by Laws and Regulations as contemplated in Paragraph 6.11.A is found to be defective, Contractor shall promptly, without cost to Owner and in accordance with Owner's written instructions:

1. repair such defective land or areas; or
 2. correct such defective Work; or
 3. if the defective Work has been rejected by Owner, remove it from the Project and replace it with Work that is not defective, and
 4. satisfactorily correct or repair or remove and replace any damage to other Work, to the work of others or other land or areas resulting therefrom.
- B. If Contractor does not promptly comply with the terms of Owner's written instructions, or in an emergency where delay would cause serious risk of loss or damage, Owner may have the defective Work corrected or repaired or may have the rejected Work removed and replaced. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to such correction or repair or such removal and replacement (including but not limited to all costs of repair or replacement of work of others) will be paid by Contractor.
- C. In special circumstances where a particular item of equipment is placed in continuous service before Substantial Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications.
- D. Where defective Work (and damage to other Work resulting therefrom) has been corrected or removed and replaced under this Paragraph 13.07, the correction period hereunder with respect to such Work will be extended for an additional period of one year after such correction or removal and replacement has been satisfactorily completed.
- E. Contractor's obligations under this Paragraph 13.07 are in addition to any other obligation or warranty. The provisions of this Paragraph 13.07 shall not be construed as a substitute for, or a waiver of, the provisions of any applicable statute of limitation or repose.

13.08 Acceptance of Defective Work

- A. If, instead of requiring correction or removal and replacement of defective Work, Owner (and, prior to Engineer's recommendation of final payment, Engineer) prefers to accept it, Owner may do so. Contractor shall pay all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) attributable to Owner's evaluation of and determination to accept such defective Work (such costs to be approved by Engineer as to reasonableness) and for the diminished value of the Work to the extent not otherwise paid by

Contractor pursuant to this sentence. If any such acceptance occurs prior to Engineer's recommendation of final payment, a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work, and Owner shall be entitled to an appropriate decrease in the Contract Price, reflecting the diminished value of Work so accepted. If the parties are unable to agree as to the amount thereof, Owner may make a Claim therefor as provided in Paragraph 10.05. If the acceptance occurs after such recommendation, an appropriate amount will be paid by Contractor to Owner.

13.09 Owner May Correct Defective Work

- A. If Contractor fails within a reasonable time after written notice from Engineer to correct defective Work, or to remove and replace rejected Work as required by Engineer in accordance with Paragraph 13.06.A, or if Contractor fails to perform the Work in accordance with the Contract Documents, or if Contractor fails to comply with any other provision of the Contract Documents, Owner may, after seven days written notice to Contractor, correct, or remedy any such deficiency.
- B. In exercising the rights and remedies under this Paragraph 13.09, Owner shall proceed expeditiously. In connection with such corrective or remedial action, Owner may exclude Contractor from all or part of the Site, take possession of all or part of the Work and suspend Contractor's services related thereto, take possession of Contractor's tools, appliances, construction equipment and machinery at the Site, and incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere. Contractor shall allow Owner, Owner's representatives, agents and employees, Owner's other contractors, and Engineer and Engineer's consultants access to the Site to enable Owner to exercise the rights and remedies under this Paragraph.
- C. All claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred or sustained by Owner in exercising the rights and remedies under this Paragraph 13.09 will be charged against Contractor, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and Owner shall be entitled to an appropriate decrease in the Contract Price. If the parties are unable to agree as to the amount of the adjustment, Owner may make a Claim therefor as provided in Paragraph 10.05. Such claims, costs, losses and damages will include but not be limited to all costs of repair, or replacement of work of others destroyed or damaged by correction, removal, or replacement of Contractor's defective Work.
- D. Contractor shall not be allowed an extension of the Contract Times because of any delay in the performance of the Work attributable to the exercise by Owner of Owner's rights and remedies under this Paragraph 13.09.

ARTICLE 14 – PAYMENTS TO CONTRACTOR AND COMPLETION

14.01 Schedule of Values

- A. The Schedule of Values established as provided in Paragraph 2.07.A will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to Engineer. Progress payments on account of Unit Price Work will be based on the number of units completed.

14.02 Progress Payments

A. Applications for Payments:

1. At least 20 days before the date established in the Agreement for each progress payment (but not more often than once a month), Contractor shall submit to Engineer for review an Application for Payment filled out and signed by Contractor covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the Site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice, or other documentation warranting that Owner has received the materials and equipment free and clear of all Liens and evidence that the materials and equipment are covered by appropriate property insurance or other arrangements to protect Owner's interest therein, all of which must be satisfactory to Owner.
2. Beginning with the second Application for Payment, each Application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior Applications for Payment.
3. The amount of retainage with respect to progress payments will be as stipulated in the Agreement.

B. Review of Applications:

1. Engineer will, within 10 days after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to Owner or return the Application to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. In the latter case, Contractor may make the necessary corrections and resubmit the Application.

2. Engineer's recommendation of any payment requested in an Application for Payment will constitute a representation by Engineer to Owner, based on Engineer's observations of the executed Work as an experienced and qualified design professional, and on Engineer's review of the Application for Payment and the accompanying data and schedules, that to the best of Engineer's knowledge, information and belief:
 - a. the Work has progressed to the point indicated;
 - b. the quality of the Work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, the results of any subsequent tests called for in the Contract Documents, a final determination of quantities and classifications for Unit Price Work under Paragraph 9.07, and any other qualifications stated in the recommendation); and
 - c. the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work.
3. By recommending any such payment Engineer will not thereby be deemed to have represented that:
 - a. inspections made to check the quality or the quantity of the Work as it has been performed have been exhaustive, extended to every aspect of the Work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in the Contract Documents; or
 - b. there may not be other matters or issues between the parties that might entitle Contractor to be paid additionally by Owner or entitle Owner to withhold payment to Contractor.
4. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment, including final payment, will impose responsibility on Engineer:
 - a. to supervise, direct, or control the Work, or
 - b. for the means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs incident thereto, or
 - c. for Contractor's failure to comply with Laws and Regulations applicable to Contractor's performance of the Work, or

- d. to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or
 - e. to determine that title to any of the Work, materials, or equipment has passed to Owner free and clear of any Liens.
5. Engineer may refuse to recommend the whole or any part of any payment if, in Engineer's opinion, it would be incorrect to make the representations to Owner stated in Paragraph 14.02.B.2. Engineer may also refuse to recommend any such payment or, because of subsequently discovered evidence or the results of subsequent inspections or tests, revise or revoke any such payment recommendation previously made, to such extent as may be necessary in Engineer's opinion to protect Owner from loss because:
- a. the Work is defective, or completed Work has been damaged, requiring correction or replacement;
 - b. the Contract Price has been reduced by Change Orders;
 - c. Owner has been required to correct defective Work or complete Work in accordance with Paragraph 13.09; or
 - d. Engineer has actual knowledge of the occurrence of any of the events enumerated in Paragraph 15.02.A.

C. Payment Becomes Due:

- 1. Ten days after presentation of the Application for Payment to Owner with Engineer's recommendation, the amount recommended will (subject to the provisions of Paragraph 14.02.D) become due, and when due will be paid by Owner to Contractor.

D. Reduction in Payment:

- 1. Owner may refuse to make payment of the full amount recommended by Engineer because:
 - a. claims have been made against Owner on account of Contractor's performance or furnishing of the Work;
 - b. Liens have been filed in connection with the Work, except where Contractor has delivered a specific bond satisfactory to Owner to secure the satisfaction and discharge of such Liens;
 - c. there are other items entitling Owner to a set-off against the amount recommended; or

- d. Owner has actual knowledge of the occurrence of any of the events enumerated in Paragraphs 14.02.B.5.a through 14.02.B.5.c or Paragraph 15.02.A.
2. If Owner refuses to make payment of the full amount recommended by Engineer, Owner will give Contractor immediate written notice (with a copy to Engineer) stating the reasons for such action and promptly pay Contractor any amount remaining after deduction of the amount so withheld. Owner shall promptly pay Contractor the amount so withheld, or any adjustment thereto agreed to by Owner and Contractor, when Contractor remedies the reasons for such action.
3. Upon a subsequent determination that Owner's refusal of payment was not justified, the amount wrongfully withheld shall be treated as an amount due as determined by Paragraph 14.02.C.1 and subject to interest as provided in the Agreement.

14.03 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to Owner no later than the time of payment free and clear of all Liens.

14.04 Substantial Completion

- A. When Contractor considers the entire Work ready for its intended use Contractor shall notify Owner and Engineer in writing that the entire Work is substantially complete (except for items specifically listed by Contractor as incomplete) and request that Engineer issue a certificate of Substantial Completion.
- B. Promptly after Contractor's notification, Owner, Contractor, and Engineer shall make an inspection of the Work to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete, Engineer will deliver to Owner a tentative certificate of Substantial Completion which shall fix the date of Substantial Completion. There shall be attached to the certificate a tentative list of items to be completed or corrected before final payment. Owner shall have seven days after receipt of the tentative certificate during which to make written objection to Engineer as to any provisions of the certificate or attached list. If, after considering such objections, Engineer concludes that the Work is not substantially complete, Engineer will, within 14 days after submission of the tentative certificate to Owner, notify Contractor in writing, stating the reasons therefor. If, after consideration of Owner's objections, Engineer considers the Work substantially complete, Engineer will, within said 14

days, execute and deliver to Owner and Contractor a definitive certificate of Substantial Completion (with a revised tentative list of items to be completed or corrected) reflecting such changes from the tentative certificate as Engineer believes justified after consideration of any objections from Owner.

- D. At the time of delivery of the tentative certificate of Substantial Completion, Engineer will deliver to Owner and Contractor a written recommendation as to division of responsibilities pending final payment between Owner and Contractor with respect to security, operation, safety, and protection of the Work, maintenance, heat, utilities, insurance, and warranties and guarantees. Unless Owner and Contractor agree otherwise in writing and so inform Engineer in writing prior to Engineer' issuing the definitive certificate of Substantial Completion, Engineer's aforesaid recommendation will be binding on Owner and Contractor until final payment.
- E. Owner shall have the right to exclude Contractor from the Site after the date of Substantial Completion subject to allowing Contractor reasonable access to remove its property and complete or correct items on the tentative list.

14.05 Partial Utilization

- A. Prior to Substantial Completion of all the Work, Owner may use or occupy any substantially completed part of the Work which has specifically been identified in the Contract Documents, or which Owner, Engineer, and Contractor agree constitutes a separately functioning and usable part of the Work that can be used by Owner for its intended purpose without significant interference with Contractor's performance of the remainder of the Work, subject to the following conditions:
 - 1. Owner at any time may request Contractor in writing to permit Owner to use or occupy any such part of the Work which Owner believes to be ready for its intended use and substantially complete. If and when Contractor agrees that such part of the Work is substantially complete, Contractor, Owner, and Engineer will follow the procedures of Paragraph 14.04.A through D for that part of the Work.
 - 2. Contractor at any time may notify Owner and Engineer in writing that Contractor considers any such part of the Work ready for its intended use and substantially complete and request Engineer to issue a certificate of Substantial Completion for that part of the Work.
 - 3. Within a reasonable time after either such request, Owner, Contractor, and Engineer shall make an inspection of that part of the Work to determine its status of completion. If Engineer does not consider that part of the Work to be substantially complete, Engineer will notify Owner and Contractor in writing giving the reasons therefor. If Engineer considers that part of

the Work to be substantially complete, the provisions of Paragraph 14.04 will apply with respect to certification of Substantial Completion of that part of the Work and the division of responsibility in respect thereof and access thereto.

4. No use or occupancy or separate operation of part of the Work may occur prior to compliance with the requirements of Paragraph 5.10 regarding property insurance.

14.06 Final Inspection

- A. Upon written notice from Contractor that the entire Work or an agreed portion thereof is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

14.07 Final Payment

A. Application for Payment:

1. After Contractor has, in the opinion of Engineer, satisfactorily completed all corrections identified during the final inspection and has delivered, in accordance with the Contract Documents, all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, marked-up record documents (as provided in Paragraph 6.12), and other documents, Contractor may make application for final payment following the procedure for progress payments.
2. The final Application for Payment shall be accompanied (except as previously delivered) by:
 - a. all documentation called for in the Contract Documents, including but not limited to the evidence of insurance required by Paragraph 5.04.B.6;
 - b. consent of the surety, if any, to final payment;
 - c. a list of all Claims against Owner that Contractor believes are unsettled; and
 - d. complete and legally effective releases or waivers (satisfactory to Owner) of all Lien rights arising out of or Liens filed in connection with the Work.
3. In lieu of the releases or waivers of Liens specified in Paragraph 14.07.A.2 and as approved by Owner, Contractor may furnish receipts or releases in full and an affidavit of Contractor that: (i) the releases and receipts include all labor, services, material, and equipment for which a Lien could be filed; and (ii) all payrolls, material and equipment bills, and other

indebtedness connected with the Work for which Owner might in any way be responsible, or which might in any way result in liens or other burdens on Owner's property, have been paid or otherwise satisfied. If any Subcontractor or Supplier fails to furnish such a release or receipt in full, Contractor may furnish a bond or other collateral satisfactory to Owner to indemnify Owner against any Lien.

B. Engineer's Review of Application and Acceptance:

1. If, on the basis of Engineer's observation of the Work during construction and final inspection, and Engineer's review of the final Application for Payment and accompanying documentation as required by the Contract Documents, Engineer is satisfied that the Work has been completed and Contractor's other obligations under the Contract Documents have been fulfilled, Engineer will, within ten days after receipt of the final Application for Payment, indicate in writing Engineer's recommendation of payment and present the Application for Payment to Owner for payment. At the same time Engineer will also give written notice to Owner and Contractor that the Work is acceptable subject to the provisions of Paragraph 14.09. Otherwise, Engineer will return the Application for Payment to Contractor, indicating in writing the reasons for refusing to recommend final payment, in which case Contractor shall make the necessary corrections and resubmit the Application for Payment.

C. Payment Becomes Due:

1. Thirty (30) days after the presentation to Owner of the Application for Payment and accompanying documentation, the amount recommended by Engineer, less any sum Owner is entitled to set off against Engineer's recommendation, including but not limited to liquidated damages, will become due and will be paid by Owner to Contractor.

14.08 Final Completion Delayed

- A. If, through no fault of Contractor, final completion of the Work is significantly delayed, and if Engineer so confirms, Owner shall, upon receipt of Contractor's final Application for Payment (for Work fully completed and accepted) and recommendation of Engineer, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by Owner for Work not fully completed or corrected is less than the retainage stipulated in the Agreement, and if bonds have been furnished as required in Paragraph 5.01, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Engineer with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

14.09 Waiver of Claims

A. The making and acceptance of final payment will constitute:

1. a waiver of all Claims by Owner against Contractor, except Claims arising from unsettled Liens, from defective Work appearing after final inspection pursuant to Paragraph 14.06, from failure to comply with the Contract Documents or the terms of any special guarantees specified therein, or from Contractor's continuing obligations under the Contract Documents; and
2. a waiver of all Claims by Contractor against Owner other than those previously made in accordance with the requirements herein and expressly acknowledged by Owner in writing as still unsettled.

ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION

15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 90 consecutive days by notice in writing to Contractor and Engineer which will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be granted an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension if Contractor makes a Claim therefor as provided in Paragraph 10.05.

15.02 Owner May Terminate for Cause

1. Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule established under Paragraph 2.07 as adjusted from time to time pursuant to Paragraph 6.04);
 2. Contractor's disregard of Laws or Regulations of any public body having jurisdiction;
 3. Contractor's repeated disregard of the authority of Engineer; or
 4. Contractor's violation in any substantial way of any provisions of the Contract Documents.
- B. If one or more of the events identified in Paragraph 15.02.A occur, Owner may, after giving Contractor (and surety) seven days written notice of its intent to terminate the services of Contractor:
1. exclude Contractor from the Site, and take possession of the Work and of all Contractor's tools, appliances, construction equipment, and machinery at the Site, and use the same to

the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion);

2. incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere; and
 3. complete the Work as Owner may deem expedient.
- C. If Owner proceeds as provided in Paragraph 15.02.B, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) sustained by Owner arising out of or relating to completing the Work, such excess will be paid to Contractor. If such claims, costs, losses, and damages exceed such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this Paragraph, Owner shall not be required to obtain the lowest price for the Work performed.
- D. Notwithstanding Paragraphs 15.02.B and 15.02.C, Contractor's services will not be terminated if Contractor begins within seven days of receipt of notice of intent to terminate to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of said notice.
- E. Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Owner will not release Contractor from liability.
- F. If and to the extent that Contractor has provided a performance bond under the provisions of Paragraph 5.01.A, the termination procedures of that bond shall supersede the provisions of Paragraphs 15.02.B and 15.02.C.

15.03 Owner May Terminate For Convenience

- A. Upon seven days written notice to Contractor and Engineer, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

1. completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
 2. expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
 3. all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) incurred in settlement of terminated contracts with Subcontractors, Suppliers, and others; and
 4. reasonable expenses directly attributable to termination.
- B. Contractor shall not be paid on account of loss of anticipated profits or revenue or other economic loss arising out of or resulting from such termination.

15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (i) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (ii) Engineer fails to act on any Application for Payment within 30 days after it is submitted, or (iii) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner and Engineer, and provided Owner or Engineer do not remedy such suspension or failure within that time, terminate the Contract and recover from Owner payment on the same terms as provided in Paragraph 15.03.
- B. In lieu of terminating the Contract and without prejudice to any other right or remedy, if Engineer has failed to act on an Application for Payment within 30 days after it is submitted, or Owner has failed for 30 days to pay Contractor any sum finally determined to be due, Contractor may, seven days after written notice to Owner and Engineer, stop the Work until payment is made of all such amounts due Contractor, including interest thereon. The provisions of this Paragraph 15.04 are not intended to preclude Contractor from making a Claim under Paragraph 10.05 for an adjustment in Contract Price or Contract Times or otherwise for expenses or damage directly attributable to Contractor's stopping the Work as permitted by this Paragraph.

ARTICLE 16 – DISPUTE RESOLUTION

16.01 Methods and Procedures

- A. Either Owner or Contractor may request mediation of any Claim submitted to Engineer for a decision under Paragraph 10.05 before such decision becomes final and binding. The mediation will be governed by the Construction Industry Mediation Rules of the American Arbitration Association in effect as of the Effective Date of the Agreement. The request for mediation shall be submitted in writing to the American Arbitration Association and the other party to the Contract. Timely submission of the request shall stay the effect of Paragraph 10.05.E.
- B. Owner and Contractor shall participate in the mediation process in good faith. The process shall be concluded within 60 days of filing of the request. The date of termination of the mediation shall be determined by application of the mediation rules referenced above.
- C. If the Claim is not resolved by mediation, Engineer's action under Paragraph 10.05.C or a denial pursuant to Paragraphs 10.05.C.3 or 10.05.D shall become final and binding 30 days after termination of the mediation unless, within that time period, Owner or Contractor:
 - 1. elects in writing to invoke any dispute resolution process provided for in the Supplementary Conditions; or
 - 2. agrees with the other party to submit the Claim to another dispute resolution process; or
 - 3. gives written notice to the other party of the intent to submit the Claim to a court of competent jurisdiction.

ARTICLE 17 – MISCELLANEOUS

17.01 Giving Notice

- A. Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if:
 - 1. delivered in person to the individual or to a member of the firm or to an officer of the corporation for whom it is intended; or
 - 2. delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

17.02 Computation of Times

- A. When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

17.03 Cumulative Remedies

- A. The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract Documents. The provisions of this Paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract Documents, as well as all continuing obligations indicated in the Contract Documents, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

QUALIFICATION STATEMENT OF BIDDERS

SUBMITTED TO:

Katy Fleming

Reviewed by: _____

Date

Date Received: _____

CONTRACTOR: _____

CIRCLE ONE: Sole Proprietor Partnership Corporation Joint Venture

NAME: _____ PARTNER: _____

ADDRESS: _____ ADDRESS: _____

CITY: _____ CITY: _____

PHONE: _____ PHONE: _____

PRINCIPAL PLACE OF BUSINESS: _____ PRINCIPAL PLACE OF BUSINESS: _____

COUNTY STATE COUNTY STATE

IF THE CONTRACTOR IS A CORPORATION, FILL OUT THE FOLLOWING:

STATE OF INCORPORATION: _____

LOCATION OF PRINCIPAL OFFICE: _____

CONTACT PERSONS AT OFFICE: _____

PERSON EXECUTING CONTRACTS ON BEHALF OF CORPORATION: _____

NAME: _____ ADDRESS: _____

TITLE: _____

CITY STATE ZIP

PHONE: _____

NAMES OF OFFICERS: (IF APPLICABLE) _____

LIST NUMBER OF EMPLOYEES WORKING FOR CONTRACTOR: _____

LIST ALL EQUIPMENT TO BE USED ON THIS PROJECT: (PLEASE USE ATTACHMENT)

NUMBER OF YEARS IN BUSINESS AS A GENERAL CONTRACTOR ON PROJECTS SIMILAR TO THIS PROJECT:

TYPE(S) OF WORK DONE: (CIRCLE)

Wood

Metal

Vinyl

Composite

Plastic

Brick

Concrete

Chain Link

Other:
COMMENTS:

GREATEST NUMBER OF THIS TYPE CONSTRUCTION CONTRACTS IN EXCESS OF \$100,000.00 UNDER CONSTRUCTION AT ONE TIME IN COMPANY'S HISTORY: _____

GREATEST NUMBER OF THIS TYPE CONSTRUCTION CONTRACTS IN EXCESS OF \$200,000.00 UNDER CONSTRUCTION AT ONE TIME IN COMPANY'S HISTORY: _____

APPROXIMATE AVERAGE OF DOLLAR VOLUME OF INCOMPLETE WORK OUTSTANDING UNDER CONTRACT AT ANY ONE TIME: _____

A LIST OF RECENTLY COMPLETED PROJECTS OF THE TYPE OF WORK QUALIFYING FOR OR SIMILAR WORK, PLUS THE FOLLOWING INFORMATION FOR EACH PROJECT:

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

(USE ATTACHMENTS IF NECESSARY)

LIST INCOMPLETE PROJECTS, PLUS THE FOLLOWING INFORMATION FOR EACH PROJECT LISTED:

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

PROJECT: _____
OWNER/ENGINEER: _____
YEAR BUILT: _____ CONTRACT PRICE: _____
CONTACT PERSON: _____ PHONE: _____

(USE ATTACHMENTS IF NECESSARY)

IF COMPANY IS UNDER NEW MANAGEMENT, PLEASE LIST NAMES OF STAFF AND QUALIFICATION AND/OR EXPERIENCE OF SAID PERSONS. (PLEASE USE ATTACHMENT.)

HAVE YOU OR ANY PRESENT PARTNER(S) OR OFFICER(S) FAILED TO COMPLETE A CONTRACT?

_____. IF SO, NAME OF OWNER AND/OR SURETY: _____
CONTACT PERSON: _____ PHONE: _____

ARE THERE ANY UNSATISFIED DEMANDS UPON YOU AS TO YOUR ACCOUNTS PAYABLE?

IF SO, GIVE NAMES, AMOUNTS, AND EXPLANATIONS: _____

BANK REFERENCE: Bank: _____
Address: _____
City: _____ State: _____ Zip: _____
Contact Person: _____ Phone: _____

MUNICIPALITY REFERENCE: City: _____
Contact Person: _____ Position: _____

Address: _____ Phone: _____

OTHER CREDIT REFERENCES:

Name: _____	Name: _____
Address: _____	Address: _____
_____	_____
Phone: _____	Phone: _____
_____	_____

_____ In compliance with Notice to Bidders for above mentioned types of projects, the undersigned is submitting the information as required with the understanding that the purpose is only to assist in determining the qualifications for this organization to perform the type and magnitude of work designated, and further, guarantee the truth and accuracy of all statements made, and will accept your determination of qualifications without prejudice. The surety herein named, any other bonding company, bank, sub-contractor, supplier, or any other person(s), firm(s) or corporation with whom I (we) have done business, or who have extended any credit to me (us) are hereby authorized to furnish you with any information you may request concerning performance on previous work and my (our) credit standing with any of them; and I (we) hereby release any and all such parties from any legal responsibility whatsoever on account of having furnished such information to you.

Signed: _____	Title: _____
Company: _____	Date: _____

COPY TO LOCAL UNDERWRITING OFFICE OF PROPOSED SURETY

Name: _____	Phone: _____
Address: _____	City: _____ State: _____

QUALIFICATION STATEMENT OF BIDDER'S SURETY

SUBMITTED TO: _____
BIDDER: _____
ADDRESS: _____

- 1. Has this surety furnished contract bonds on contracts now complete? _____
- 2. Has this surety furnished contract bonds on contracts now incomplete? _____
- 3. What is the maximum bonding capacity of this Contractor? _____
- 4. Is the current financial information on this Contractor satisfactory? _____
- 5. Does information obtained indicate accounts are paid when due? _____. If not, give details: _____

- 6. Is it your opinion that the bidder has sufficient experience and financial resources to satisfactory perform the contract? _____
- 7. Provided this bidder does not assume the commitments or that you do not acquire further information that in your opinion will materially affect the bidder's capacity to perform this contract, will you furnish the bonds as specified? _____

REMARKS:

SURETY: _____
SIGNED: _____
BY: _____

TITLE: _____
ADDRESS: _____
CITY STATE ZIP

(IN DUPLICATE)

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BID PROPOSAL

PLACE: City of Shawnee, Pottawatomie County, Oklahoma

DATE: _____

PROJECT NO.: Fence Removal and Replacement Project - Heart of
Oklahoma Expo Center

Proposal of _____
(hereinafter called "BIDDER") a corporation/a partnership/and individual (strike out inapplicable terms) doing
business in the State of _____.

To: The City Manager, City of Shawnee, Pottawatomie County, Oklahoma

The undersigned, as the Bidder, declares that before preparing his bid, he read carefully the notice to bidder, instructions to bidders, the general conditions, special provisions, and the specifications, examined the form of the Contract and the several bonds and the information blanks to be submitted, and that he is familiar with all the provisions of the same and with all the requirements of the complete Contract to be entered into, and the necessary bonds to be executed; that he has carefully examined the specifications for the proposed work on file with the City Clerk that he/she has visited the site of the work, has examined carefully all local conditions, has informed himself by his independent research and soundings of all the difficulties to be encountered, has judged for himself of the accessibility of the work, and the quantities and character of the materials to be encountered or excavated and all attending circumstances affecting the cost of doing the work and the time required for its completion and that this bid is made with full knowledge of the difficulties that may be encountered and the kinds, quantity, and quality of the plant work, and materials required or to be encountered, and with full knowledge of all specifications and estimated and all provisions of the Contract and bonds, gained by the independent research of the Bidder.

Said Bidder proposes and agrees that if his proposal is accepted, he will enter into a Contract with the City of Shawnee, within ten (10) days after the acceptance of his bid, for the furnishing of all necessary machinery, equipment, tools, labor, and materials of construction and to perform all work necessary to erect, construct and install the structure and appurtenances complete in place in the manner and under conditions required by the Contract and by the specifications therefore, on file in the Office of the City Clerk of the City of Shawnee, for the following amounts of:

Total Base Bid: _____ Dollars (\$ _____)
(In words)

The Contractor hereby agrees to commence work within five (5) days following issuance of a written NOTICE-TO-PROCEED from the Engineer and to complete Project No. C-21-03D1 Fence Removal and Replacement Project - Heart of Oklahoma Expo Center within 10 calendar days.

If partnership, give name
and address of each member.

Signed: _____
(Contractor)

By: _____
(Agent)

Address: _____

Incorporated under the laws of

(State)

STATE OF _____)

CITY OF _____)

_____ lawful age, being first duly sworn, upon his oath deposes and says:
That he executed the accompanying bid on behalf of the Bidder therein named for the construction of the above improvement in the CITY OF SHAWNEE, Oklahoma, and that he had lawful authority to do so and said Bidder has not directly nor indirectly entered into any agreement, expressed or implied, with any Bidder or Bidders, having for its object the controlling of the price or amount of such bid or bids, the paying to anyone any money for promotion out to any Bidder or Bidders or other persons of any part of the Contract or any part of the subject matter the bid or bids of the profits thereof, and that he has not and will not divulge the sealed bid on such public improvements to any persons whatsoever, except those having partnership or other financial interest with him in said bid or bids, until after the said sealed bid or bids are opened.

SIGNED: _____

Subscribed and sworn to before me, a Notary Public, in and for the State of _____, County of _____ this _____ day of _____, 2021.

Notary Public

My Commission Expires: _____

BID FORM

Project No. C-21-03D1

Fence Removal and Replacement Project - Heart of Oklahoma Expo Center

Base Bid

<u>DESCRIPTION</u>	<u>UNIT</u>	<u>UNIT PRICE</u> <u>(NUMERALS)</u>	<u>QUANTITY</u>	<u>TOTAL PRICE</u>
REMOVAL FENCE IN CONFLICT WITH PROPOSED FENCE	LSUM		1	
INSTALLATION OF BLACK CHAIN LINK FENCE IN DESIGNATED AREAS	LF		5,575	
INSTALLATION OF APPROVED, COMMERCIAL, HEAVY DUTY ENTRYWAY FENCING	LF		1,100	
24' OPENING – DOUBLE 12' SWING CLF GATE	EA		3	
18' OPENING - SLIDING CLF GATE	EA		2	
16' SLIDING GATE	EA		2	
5' OPENING ORNAMENTAL GATE	EA		3	
30' OPENING – DOUBLE 15' SWING CLF GATE	EA		1	
INSTALLATION OF LARGE ANIMAL GRADE FENCING	EA		1,280	
MOBILIZATION	LSUM		1	

Total Base Bid \$_____**Total Base Bid in words \$**_____

Name and Address of Responsible Bidder: _____

BID AFFIDAVITS

The following affidavits are to accompany the bid:

A. Non-Collusion Affidavit

STATE OF _____)

CITY OF _____)

_____, of lawful age, being first duly sworn on oath says that (s)he is the Agent authorized by the Bidder to submit the attached bid. Affiant further states that the Bidder has not been a party to any collusion among Bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any government official or employee as to quantity, quality, or price in the prospective Contract, of any other terms of said prospective Contract; or in any discussions between Bidders and any City official concerning exchange of money or other thing of value for special consideration in the letting of a Contract.

SIGNED: _____

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public (or Clerk of Judge)

My Commission Expires:

(SEAL)

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B. Business Relationships Affidavit

STATE OF _____)

CITY OF _____)

_____, of lawful age, being first duly sworn, on oath says that (s)he is the Agent authorized by the Bidder to submit the attached bid. 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 the architect, engineer, or other party to the project is as follows:

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 bidding company and any officer or director of the architectural or engineering firm or other party to the project is as follows:

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

(If none of the business relationships hereinabove mentioned exist, Affiant should so state.)

Subscribed and sworn to before me this _____ day of _____, 2021.

Notary Public (or Clerk of Judge)

My Commission Expires:

(SEAL)

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CERTIFICATE OF NONDISCRIMINATION

In connection with the performance of work under this contract, the Contractor agrees as follows:

- A. The Contractor agrees not to discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, or ancestry. The Contractor shall take affirmative action to ensure that employees are treated without regard to their race, creed, color, sex, national origin, or ancestry. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruiting or recruitment, advertising, lay-off or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Contractor and Sub-Contractor shall agree to make this information to all employees and applicants for employment notices and to post in a conspicuous place where required by law.
- B. In the event of the Contractor's noncompliance with this nondiscrimination clause, the contract may be canceled or terminated by the City. The Contractor may be declared by the City ineligible for further contracts with the said agency until satisfactory proof of intent to comply shall be made by the Contractor.
- C. The Contractor agrees to include this nondiscrimination clause in any subcontracts connected with the performance of this agreement.

I have read the above stated clause and agree to abide by its requirements.

(seal)

(Contractor)

Secretary

(Signature)

(Title)

STATE OF _____)
CITY OF _____)

On this ____ day of _____, 20__, before me, the undersigned, a Notary Public in and for the City and State aforesaid, personally appeared _____, to me known to be the identical person who signed the name of the maker thereof to the within and foregoing instrument as its _____ and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed, and as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

Given under my hand and seal the day and year last above written.

Notary Public

My Commission Expires: _____

My Commission No.: _____

STATUS VERIFICATION SYSTEM AFFIDAVIT

STATE OF _____)
) SS:
CITY OF _____)

I, _____, of lawful age, and having been first duly sworn, on oath states:

1. That I am the agent authorized by the Contractor to submit the attached contract to the State of Oklahoma. I am fully aware of the facts and circumstances surrounding the making of the contract to which this statement is attached and have been personally and directly involved in the procurement of this contract.

2. That the Contractor has registered and fully participates in the Status Verification System, as required by Title 25 O.S. § 1313(B)(1), to verify the work eligibility status of all new employees of the Contractor.

FURTHER AFFIANT SAITH NOT.

AFFIANT _____

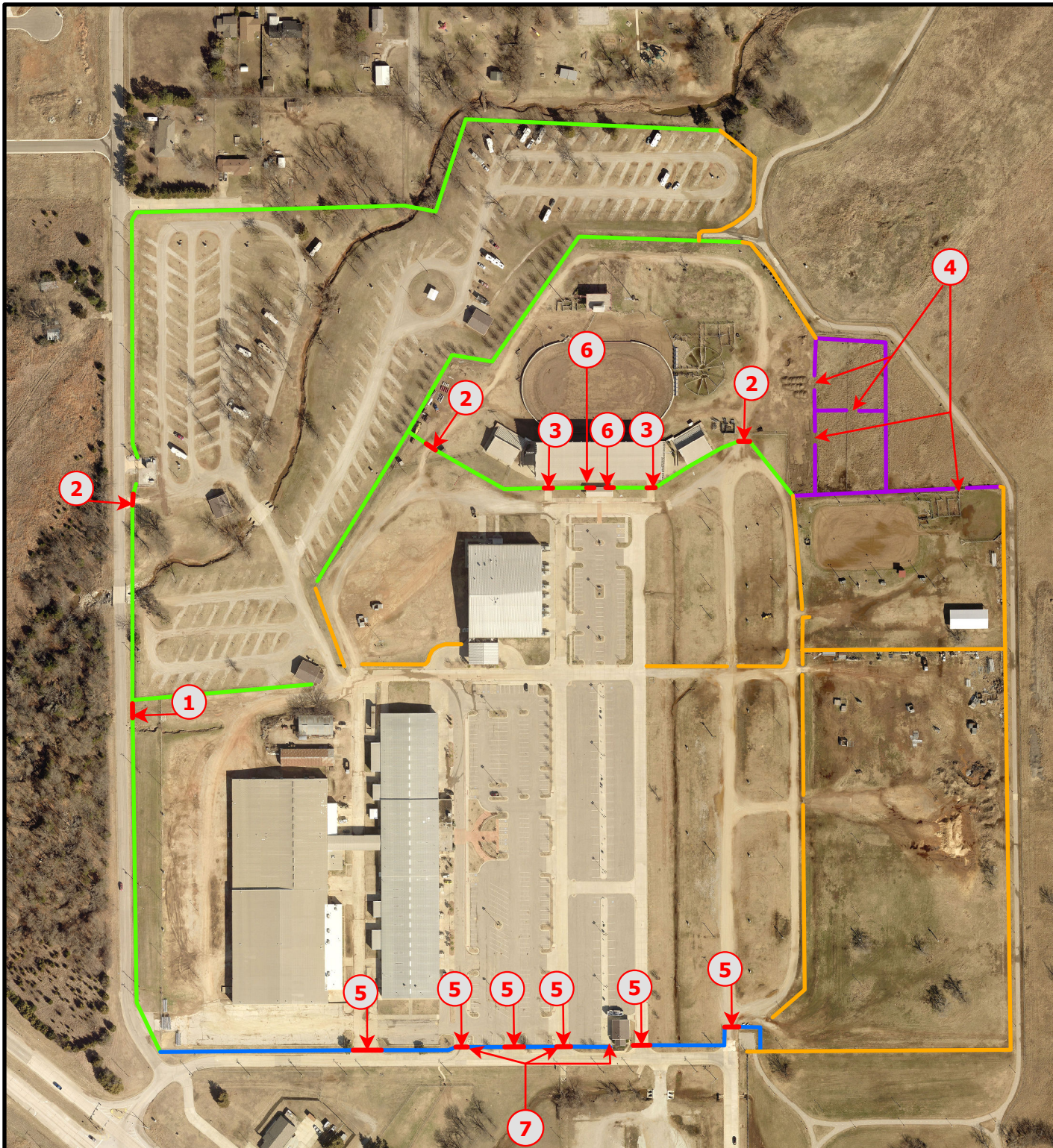
Subscribed and sworn before me this _____ day of _____, 20____.

Notary Public

My Commission Expires: _____

My Commission Number: _____

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1	30' Opening - Double 15' Swing CLF Gate
2	24' Opening - Double 12' Swing CLF Gate
3	18' Opening - Sliding CLF Gate
4	16' Opening - Without Gate
5	Approved, commercial, heavy duty entryway fencing
6	16' Sliding Gate
7	5' Opening - Ornamental Gate

Expo Center Proposed Fencing

-  Gates (Total: 14)
-  Chain Link Fence (5,575 Ft)
-  Approved, Commercial, Heavy Duty Entryway Fencing (1,100 Ft)
-  Existing Fence
-  Large Animal Grade Fencing (1,280 Ft)

Fence Removal and Replacement Project Heart of Oklahoma Exposition Center Project No. C-21

Plan Holders List

<u>Email address</u>	<u>First name</u>	<u>Last name</u>	<u>Company</u>
landr99@gmail.com	Randy	Rosenbaum	L&R Logistics LMC
rjfencemike@gmail.com	Michael	Janes	RJ Fence & Decks

.-03D1

BID TABULATION SHEET

Fence Removal and Replacement Project
Heart of Oklahoma Exposition Center
Project No. C-21-03D1

September 20, 2021

BIDDER

AMOUNT

RJ Fence
Wellston, OK

\$ 266,032.50

\$ _____

\$ _____

Regular Board of Commissioners**14.**

Meeting Date: 10/04/2021

Applications

Submitted By: Kacie Eck, City Clerk

Department: City Clerk

Information

Title of Item for Agenda

Discussion and presentations of City Commissioner Ward 2 applicants:

- Cami Engles
 - Elliot Shuler
 - Frank Sims
-

Attachments

Cami Engles

Elliot Shuler

Frank Sims



CITY COMMISSION
WARD 2
APPLICATION TO SERVE

Deadline to Apply: September 30, 2021
3:00 pm

Boards, Committees, and Commissions

Name: <u>Cami Engles</u>	Application Date: <u>10-21-21</u>
Address: <u>1936 N. Broadway Avenue Shawnee OK 74804</u>	
Mailing Address: <u>1936 N. Broadway Ave.</u>	
Daytime Phone: <u>405-312-6151</u>	Email: <u>Cami.engles@gmail.com</u>
Profession: <u>Business owner</u>	
Business Name: <u>Theopolis Social Club</u>	
Business Address: <u>419 East Main Street Shawnee OK 74801</u>	
Business Phone: <u>788-4404</u>	Fax: <u> </u> Email: <u> </u>

Do you live within Ward 2 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? 6 years

Why are you interested in serving as Ward 2 Commissioner on the City Commission?

I'm excited about the current momentum in our city, and I'd like to be a part of creating positive change for my community. I'd love to be involved in setting the stage for success for future generations.

What will make you a good Commissioner and what skills or knowledge do you have that would be relevant to this Commission?

As a business owner and planning commissioner, I believe I bring a focus on economic development. As a young professional, I provide insight into the attraction and retention of young professionals. Being an entrepreneur in Shawnee provides me with knowledge of how to best relate to our business owners and to highlight areas in which the city could be more accommodating to growth.

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

Board of Directors Community Market,
Board of Directors Shawnee Forward, SME Committee
Shawnee Forward

List education, including degree(s) earned:

Oklahoma State University, Bachelor of Arts, Journalism

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

Yes. Planning Commission 2020 - present
Lake Advisory Committee present,

Please include up to three personal or professional references:

Name:	Relationship:	Phone Number:
Rachael Melot	Friend / fellow (former) planning commissioner	(405) 410-3554
Angi Mohr	fellow board member	(405) 412-3240
George Wright	Friend	(405) 201-2779

PLEASE READ CAREFULLY:

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 Cami Engles Date: 10-21-21

Applicants are encouraged to include a letter of interest and/or resume with this application.
Thank you for your interest in serving the City of Shawnee.

Send application for to:

Shawnee City Clerk
16 W. 9th Street / P.O. Box 1448
Shawnee, OK 74802
Phone: (405) 878-1604
Fax: (405) 878-1581
CityClerk@ShawneeOK.org

CAMI ENGLER

SHAWNEE, OK

405.312.6151 | camengles@gmail.com

September 22, 2021

City Of Shawnee

RE: Ward 2 Commissioner

Dear Mayor and Commissioners,

I'm enthusiastically submitting my application to fill the recently vacated Ward 2 Commissioner seat. During my time in Shawnee, I have witnessed some truly inspirational growth. I believe the city has wonderful leadership in place, and I'm inspired by the momentum the community is experiencing. It is my desire to assist in the furthering of the current commissioner's leadership.

During my time in Shawnee, I have dedicated my efforts to revitalizing downtown by not only opening a full-service restaurant, but also by investing in the development of additional properties. I have worked to attract multiple business owners to the downtown area, and several businesses that have opened are a direct result of my efforts.

I believe I can bring unique perspectives regarding the attraction and retention of young professionals to our community. I also provide a background in the arts, which allows me to creatively problem solve and focus on quality of life issues from various angles. I am truly dedicated to the success and growth of Shawnee, and my actions as a commissioner would directly reflect my desire to improve and serve my community.

I look forward to the opportunity to discuss this further. Please feel free to contact me at the number above.

Sincerely,
Cami Engler



Cami Engles

Shawnee, United States 74804 (405) 312-6151

cami.engles@gmail.com

PROFESSIONAL SUMMARY

Enthusiastic business leader with dynamic experience planning, leading and improving activities to support successful business operations. Strategic in developing policies, managing staff and developing new revenue streams. Focused on motivating staff and working with diverse personality types to drive improvements.

ACCOMPLISHMENTS

Completed Dare to Lead Leadership Workshop June 2021
Certificate of Completion in Stagen Leadership 18-week course in 2021.
Awarded an Honorable Mention for Best New Restaurant by Oklahoma Department of Tourism in 2019
Featured on the front page of the Daily Oklahoman for work in revitalization of downtown Shawnee.
Awarded Shawnee Forward 15 Business Achievement Award 2019
Won Two Edward R. Murrow Awards while at KOSU

SKILLS

- Team Oversight
- Partnership development
- Strategic planning
- Business planning
- Relationship building

WORK HISTORY

OWNER AND OPERATOR

01/2019 to CURRENT

Theopolis Social Club | Shawnee, OK

- Applied performance data to evaluate and improve operations, target current business conditions and forecast needs.
- Reduced personnel turnover and promoted employee development by recruiting team-oriented candidates and implementing new training practices.
- Monitored market conditions to set accurate product pricing and take advantage of emerging trends.
- Generated revenues yearly and effectively capitalized on industry growth.
- Remained up-to-date on current trends and attended industry trade shows and markets to view and order inventory.
- Developed key operational initiatives to drive and maintain substantial business growth.

PROFESSOR

01/2009 to 01/2019

University Of Central Oklahoma | Oklahoma City , OK

- Shifted between informal and formal methods of teaching to create multi-layered web of learning incorporating experiments, practical activities, discussions and projects into lessons.
- Encouraged class discussions by building discussions into lessons, actively soliciting input, asking open-ended questions and using techniques to track student participation.
- Used variety of learning modalities and support materials to facilitate learning process and accentuate presentations.
- Collaborated with faculty and community stakeholders for program improvement.

STUDENT REPORTER/STAFF REPORTER

01/2005 to 12/2008

KOSU Radio | Stillwater, OK

- Delivered local news and feature reports in public radio style for NPR news programs.
- Conducted interviews, recorded sound and edited stories for radio
- Completed assigned pieces and developed independent stories.

EDUCATION

Bachelor of Arts | Journalism, Broadcast

05/2007

Oklahoma State University, Stillwater, OK

AFFILIATIONS

Planning Commissioner, Community Market Board of Directors,
Shawnee Forward Board of Directors, Lake Advisory Commission



CITY COMMISSION
WARD 2
APPLICATION TO SERVE

Deadline to Apply: September 30, 2021
3:00 pm

Boards, Committees, and Commissions

Name: _____ Elliot Shuler _____	Application Date: _____ 9-27-21 _____
Address: _____ 15101 Eckel Rd Shawnee _____	
Mailing Address: _____ 15101 Eckel Rd Shawnee _____	
Daytime Phone: _____ 405-473-8508 _____	Email: _____ ers0028@yahoo.com _____
Profession: Educator _____	
Business Name: _____ None _____	
Business Address: _____	
Business Phone: _____	Fax: _____ Email: _____

Do you live within Ward 2 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? _____ 27 Years _____

Why are you interested in serving as Ward 2 Commissioner on the City Commission?

I ran for the Ward 2 Seat during the last election cycle and I still wish to hold the seat. I have wanted to serve in City Government for some time now and I feel that I have much to offer.

What will make you a good Commissioner and what skills or knowledge do you have that would be relevant to this Commission?

I have lived in Shawnee for 27 years now and I feel that I know our community well. I have seen the great work we have done in the last 10 years and I hope to continue with this progress. I am a small business owner, educator, and a member of our cities manufacturing community. I have a Masters Degree in Leadership and I care about my City and its progress. I have attended and watched our City Commission meetings for many years now and know the needs of our city.

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

Shawnee and I am a member of Shawnee Forward. I am part of Gordon Cooper's Foundation Scholarship

Committee and help with First Robotics at GCTC.

List education, including degree(s) earned: _Bachelors of Science from St Gregory's University. Masters in

Leadership from East Central University.

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:
Dempsey Taylor	Co-Worker	405-695-0511
Rodney Storey	Friend	405-206-5088
Thomas Kelough	Friend	405-438-9864

PLEASE READ CAREFULLY:

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 Elliot Smith Date: 9-27-21

Applicants are encouraged to include a letter of interest and/or resume with this application.

Thank you for your interest in serving the City of Shawnee.

Send application for to:

Shawnee City Clerk
16 W. 9th Street / P.O. Box 1448
Shawnee, OK 74802
Phone: (405) 878-1604
Fax: (405) 878-1581
CityClerk@ShawneeOK.org



CITY COMMISSION
WARD 2
APPLICATION TO SERVE

Deadline to Apply: September 30, 2021
3:00 pm

Boards, Committees, and Commissions

Name: <u>Frank Sims</u>	Application Date: <u>9/30/2021</u>
Address: <u>15111 Eckel Road</u>	
Mailing Address: <u>Shawnee, OK. 74801</u>	
Daytime Phone: <u>405-659-0733</u>	Email: <u>Frank@franksims.com</u>
Profession: <u>Self Employed</u>	
Business Name: <u>KEY of Oklahoma, Inc.</u>	
Business Address: <u>25 S. Oklahoma. OKC 73104</u>	
Business Phone: _____	Fax: _____ Email: <u>fsims@keyokc.com</u>

Do you live within Ward 2 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? 63 years - 4th generation

Why are you interested in serving as Ward 2 Commissioner on the City Commission?

I continue to believe our old COC motto: Shawnee is the Place
to be! I feel that our community has a bright future, vision and
the staff in place to make it happen.

What will make you a good Commissioner and what skills or knowledge do you have that would be relevant to this Commission?

I served as a commissioner (2008-2012); knowledgeable of our
community assets and liabilities; familiar with most facets of our
community; ready to hit the road running; Served as a State
Tourism Commissioner; worked with the Oklahoma Film
Commission in that capacity. First Class of Leadership Shawnee.

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

Member Sustain/Community Renewal through Avedis
Home Shawnee Homeless initiative; Shawnee Public Library;
Adopt a class with Shawnee Public Schools.

List education, including degree(s) earned:

Bachelor of Science - Organizational Management

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

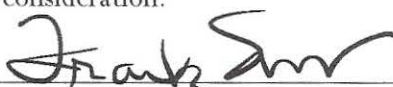
Ward 2 City Commissioner 2008-2012.
Member Shawnee Lake Advisory Committee 2021-current

Please include up to three personal or professional references:

Name:	Relationship:	Phone Number:
Kathy Laster	Family Friend	(405) 570-7264
David Rainbolt	Family Friend	(405) 550-7282
Bill Ford	Family Friend	(405) 997-8599

PLEASE READ CAREFULLY:

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  Date: 9-30-2021

Applicants are encouraged to include a letter of interest and/or resume with this application.
Thank you for your interest in serving the City of Shawnee.

Send application for to:

Shawnee City Clerk
16 W. 9th Street / P.O. Box 1448
Shawnee, OK 74802
Phone: (405) 878-1604
Fax: (405) 878-1581
CityClerk@ShawneeOK.org