

City Hall, Council Chambers 401 S. Johnstone Avenue Bartlesville, OK 74003

### REGULAR MEETING OF THE BARTLESVILLE CITY COUNCIL Monday, October 3, 2022 7 p.m.

Mayor Dale Copeland 918-338-4282

### **AGENDA**

- 1. Call to order the business meeting of the Bartlesville City Council by Mayor Copeland.
- 2. Roll call and establishment of a quorum.
- 3. The invocation will be provided by Rev. Kelley L. Becker, Senior Minister, Disciples Christian Church.
- 4. Citizens to be heard.
- 5. City Council Announcements and Proclamations.
  - National Colonial Heritage Month October 2022. Presented by Councilmember Roane.
  - Mental Illness Awareness Week October 2-8, 2022. Presented by Mayor Copeland.
  - Arbor Day October 12, 2022. Presented by Vice Mayor Curd.
  - Code Enforcement Officer's Appreciation Week October 10-14, 2022. Presented by Councilmember Dorsey.
  - National Fire Prevention Safety Week October 9-15, 2022. Presented by Councilmember Stuart.
- 6. Authorities, Boards, Commissions and Committee Openings
  - One opening on the White Rose Cemetery Board.
  - One opening on the Bartlesville Area History Museum Trust Authority
- 7. Consent Docket
  - a. Approval of Minutes
    - i. The Regular Meeting Minutes of September 6, 2022
  - b. Approval or Ratification of Appointments to Authorities, Boards, Commissions, and Committees.
    - i. Appointment of Ms. Sara Freeman to a three-year term on the Bartlesville Redevelopment Trust Authority at the recommendation of Councilmember Stuart.
  - c. Approval of Agreements, Contracts, Engagement Letters and Change Orders
    - i. Contract between the Oklahoma Department of Libraries and the Bartlesville Public Library/City of Bartlesville for the Health Literacy Grant, #F-23-075 in the amount of \$9,000 to host exercise classes and monthly healthy cooking classes.

- ii. Planned Maintenance Program Contract between the City of Bartlesville/Bartlesville Public Library and Dormakaba in the amount of \$478.80 for inspections, adjustments and service on the three automatic entrance doors into the Library.
- iii. Professional Service Contract with Freese and Nichols, Inc. for design services on the Sunset Boulevard over Butler Creek Bridge Rehabilitation and Repair Project in the amount of \$208,560.00.
- iv. Professional Services Contract with Guy Engineering Services, Inc. for design services on the Tuxedo Boulevard Bridges over the Caney River and Overflow/pond Rehabilitation and Repair Project in the amount of \$175,415.00.
- v. Professional Service Contract with Freese & Nichols (FNI) for design services on the Minnesota Avenue Rehabilitation Project and a Water Feasibility Study along Minnesota Avenue and Madison Boulevard in the amount of \$82,468.00.
- vi. Lease Agreement between the City of Bartlesville and Legacy Church of Christ for lease of the north portion of the 1<sup>st</sup> floor of the First Christian Church Building.

### d. Approval of Engineering Reports

i. Reports for the Chickasaw Wastewater Treatment Plant Expansion and Collection System Improvements Limestone-Chickasaw Corridor.

### e. Approval of Plat Amendments

- i. Amendment to the Plat of Lot 1 through 12, Block 1, Foxtail Villas of Bison Trails.
- ii. Amendment to the Plat of Lot 5, Block 3, Park Place Addition, Also known as 3117 SE Stonewall Drive.
- iii. Amendment to the Plat of Lot 27, Block 1, Park Place Addition, also known as 3022 SE Talbot Circle.

### f. Receipt of Financials

- i. Interim Financials for two months ending August 31, 2022.
- 8. Public Hearing for the purpose of obtaining citizen views on proposed modifications to the FY 2021 Community Development Block Grant-Coronavirus Relief (CDBG-CV) Grant, and possible approval of a resolution modifying the scope and budget of the FY 2021 Community Development Block Grant-Coronavirus Relief (CDBG-CV) Grant. Presented by Nancy E. Warring, Planner II, Community Development.
- 9. A public hearing to consider and take possible action on an application from Jim Swezey of Swezey Realty Services to allow rezoning from C-2/PUD (Neighborhood Shopping/Planned Unit Development) to C-5/PUD (General Commercial/Planned Unit Development), as well as approval of a Planned Unit Development and Site Development Plan at 102 and 106 SW Kaw Ave., legally described as Lots 23 and 24, Block 3, George B. Keeler 1st Addition, Bartlesville, Washington County, Oklahoma. Presented by Greg Collins, Assistant Director, Community Development.
- 10. Discuss and take possible action to adopt an ordinance granting a non-exclusive permit to Clarity Telecom, LLC for the Construction and Operation of a Cable system. Presented by Alicia Shelton, Accountant.
- 11. New Business.
- 12. City Manager and Staff Reports.
- 13. City Council Comments and Inquiries.

### 14. Adjournment.

The Agenda was received and filed in the Office of the City Clerk and posted in prominent public view at City Hall at 5:00 p.m. on Thursday, September 29, 2022.

Jason Muninger

/s / Elaine Banes

by Elaine Banes, Deputy City Clerk

Jason Muninger, City Clerk/CFO by Elaine Banes, D

City of Bartlesville Website: <a href="https://www.cityofbartlesville.org/city-government/city-council/meeting-agendas/">https://www.cityofbartlesville.org/city-government/city-council/meeting-agendas/</a> Live Streaming: <a href="https://www.cityofbartlesville.org/city-government/city-council/webcast/">https://www.cityofbartlesville.org/city-government/city-council/webcast/</a>

Sparklight: Channel 56

Open Meetings Act Compliance (25 O.S. Sec. 301 et seq.): all discussion items are subject to possible action by the City Council. Official action can only be taken on items which appear on the agenda. The City Council may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item. When more information is needed to act on an item, the City Council may refer the matter to the City Manager, Staff or City Attorney, or back to a committee or other recommending body. Under certain circumstance, items are deferred to a specific later date or stricken from the agenda entirely. Agenda items requiring a public hearing as required by law will be so noted. The City Council may at their discretion change the order of the business agenda items. City of Bartlesville encourages participation from all its citizens. If participation at any public meeting is not possible due to a disability, notification to the City Clerk at least one working day prior to the scheduled meeting is encouraged to make the necessary accommodations. The City may waive this rule if signing is not the necessary accommodation.



### Official Proclamation

## National Colonial Heritage Month October 2022

**WHEREAS**, the John Plumb Chapter of the National Society Colonial Dames XVII Century of Tulsa is locally sponsoring National Colonial Heritage Month during the month of October 2022; and

**WHEREAS,** National Colonial Heritage Month brings to mind the first courageous settlers who arrived in America and who determined the direction for the formation of our country; and

**WHEREAS,** the members of this Society, by virtue of their lineal descent from those early arrivals, feel an obligation to work for the preservation of the priceless legacy that these early arrivals left to all American citizens; and

**WHEREAS,** they continue to convey the true meaning of the inheritance by reminding us that our privilege to live in a free country has stemmed from "loving our country, obeying its laws, respecting its flag and defending it against all enemies."

**NOW THEREFORE**, I, Councilmember Billie Roane, City of Bartlesville City Council, do hereby officially proclaim October, 2022 as "National Colonial Heritage Month" and encourage all citizens of the City of Bartlesville to observe this month as a means of reinforcing the priceless legacy that we inherit with our citizenship in order to help preserve our rich culture and heritage with deep respect for the principles upon which our great country was founded.

*IN WITNESS WHEREOF,* I hereunto set my hand and caused the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3<sup>rd</sup> day of October, in the year of our Lord two thousand and twenty-two.

Billie Roane, City Council, Ward 4



### Official Proclamation

## MENTAL ILLNESS AWARENESS WEEK OCTOBER 2-8, 2022

**WHEREAS**, one in four adults experience mental illness every year and approximately half of chronic mental illness begins by the age of 14 and three-quarters by age 24; and

**WHEREAS**, mental illness include major depression, bipolar disorder, schizophrenia, anxiety disorders, posttraumatic stress disorder (PTSD), attention-deficit hyperactivity disorder (ADHA) and borderline personality disorder; and

**WHEREAS**, mental illness is a highly treatable medical illness affecting the brain and requiring the same concern as cancer, heart disease, diabetes and other illnesses; and

**WHEREAS,** scientific research is constantly working toward breakthroughs in the understanding of mental illness, resulting in more effective treatments to allow people to reclaim full and productive lives; and

**WHEREAS**, misunderstandings exist about many mental illnesses and our social culture often wrongly imposes stigma on mental illness that discourages people from seeking help when they need it; and

**WHEREAS**, every citizen and community can make a difference in helping to improve the lives of individuals and families affected by mental illness.

**NOW THEREFORE**, I, Mayor Dale Copeland, do hereby officially proclaim October 2 through October 8, 2022 as "Mental Illness Awareness Week", and to announce and invite the public to a special event on Saturday, October 8<sup>th</sup> starting at 5pm with silent auction and chili supper at 5:30 pm and at 6pm featuring Special Guest Speaker Susie Stapp Gurley at the Redeemer Lutheran Church.

**IN WITNESS WHEREOF,** I hereunto set my hand and cause the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3rd day of October, in the year of our Lord Two Thousand and Twenty-two.

Dale Copeland, Mayor & City Council Ward 1



# Official Proclamation Arbor Day October 12, 2022

**Whereas,** in 1872, J. Sterling Morton proposed to the Nebraska Board of Agriculture that a special day be set aside for the planting of tree; and

Whereas, this holiday, called Arbor Day, was first observed with the planting of more than a million trees in Nebraska; and

Whereas, trees can reduce the erosion of our precious topsoil by wind and water, cut heating and cooling costs, moderate the temperature, clean the air, produce oxygen, and provide habitat for wildlife; and

Whereas, trees in our city increase property values, enhance the economic vitality of business areas, and beautify our community; and

Whereas, trees, wherever they are planted, are a source of joy and spiritual renewal; and

**Whereas,** Bartlesville has been recognized as a Tree City USA by the National Arbor Day Foundation and desires to continue its tree-planting practices.

**Therefore,** I, Vice Mayor Curd, do hereby proclaim October 12, 2022 as Arbor Day in the City of Bartlesville and urge all citizens to support efforts to protect trees and woodlands and to support our city's urban forestry program. Further, we urge all citizens to plant trees to gladden the hearts and promote the well being of present and future generations.

**IN WITNESS WHEREOF,** I hereunto set my hands and caused the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3<sup>rd</sup> day of October, in the year of our Lord two thousand and nineteen.

Jim Curd, Jr., Vice Mayor & City Council Ward 3



### Official Proclamation

Code Enforcement Officers' Appreciation Week
October 10-14, 2022

**WHEREAS**, City of Bartlesville Code Enforcement Officers provide for the safety, health and welfare of the citizens in this community through the enforcement of property maintenance, public nuisance, fire safety, environmental and other codes and ordinances; and

**WHEREAS**, Code Enforcement Officers are often not credited for the jobs that they do in saving lives and improving neighborhoods; and

**WHEREAS**, every day they are committed to provide quality customer service to the public for the betterment of the community; and

WHEREAS, too many times their efforts go unnoticed, even after code compliance has been accomplished due to their efforts and expertise; and

WHEREAS, Code Enforcement Officers are dedicated, well trained, and highly responsible individuals who are committed to preventing neighborhood deterioration, enhancing and ensuring public health and safety, and preserving property values by responding to over 2,500 requests each year from local citizens on a wide variety of nuisances, including tall grass and week, trash and debris, inoperable vehicles, parking on the grass, dilapidated structures, and other neighborhood concerns; and

**WHEREAS**, the American Association of Code Enforcement encourages all communities to recognize and honor Code Enforcement Officers and Professionals all across the United States and bring awareness of the importance of Code Enforcement to the communities in which they serve.

**NOW THEREFORE**, I, Trevor Dorsey of the Bartlesville City Council, do hereby officially proclaim the week of October 10-14, 2022 as "Code Enforcement Officers' Appreciation Week" and encourages citizens of the City of Bartlesville to join in expressing thanks and appreciation for the dedication and commitment that is provided by the individuals who serve as our Code Enforcement Officers.

**IN WITNESS WHEREOF**, I hereunto set my hand and cause the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3rd day of October, in the year of our Lord two thousand and twenty-two.

Trevor Dorsey, City Council Ward 5



### Official Proclamation

### National Fire Prevention Safety Week October 9-15, 2022 "Celebrating One Hundred Years"

**WHEREAS**, the Bartlesville Fire Department has as part of their mission, to protect life, property and the environment, and their passion, the education of the public regarding fire prevention; and

**WHEREAS,** Fire Prevention Safety Week was started by the National Fire Protection Association (NFPA) in 1922 to commemorate the Great Chicago Fire of 1871; and

**WHEREAS**, Fire Prevention Safety Week teaches children and adults how to stay safe in the event of a fire; and

**WHEREAS,** the Bartlesville City Government shares the desire of the Bartlesville Fire Department, to convey to the citizens the importance of Fire Prevention and the proper use of smoke alarms; and

**WHEREAS,** fire is a serious public safety concern both locally and nationally, and homes are the locations were people are at greatest risk from fire.

**NOW THEREFORE**, I, Paul Stuart, City of Bartlesville City Council, do hereby officially proclaim the week of October 9, 2022 as "National Fire Prevention Safety Week".

IN WITNESS WHEREOF, I hereunto set my hands and cause the Official Seal of the City of Bartlesville, Oklahoma, to be affixed this 3rd day of October, in the year of our Lord two thousand and twenty-two.

Paul Stuart, City Council Ward 3



City Hall, Council Chambers 401 S. Johnstone Avenue Bartlesville. OK 74003

### MINUTES OF THE REGULAR MEETING OF THE BARTLESVILLE CITY COUNCIL Tuesday, September 6, 2022 7 p.m.

Mayor Dale Copeland 918-338-4282

### **MINUTES**

(The Notice of Meeting was posted December 15, 2021 and the Agenda was posted September 1, 2022 at 5:00 p.m.)

Present were Mayor Dale Copeland, Vice Mayor Jim Curd, Jr., Councilmembers Trevor Dorsey, Paul Stuart, and Billie Roane.

City staff present were Mike Bailey, City Manager, Jason Muninger, City Clerk/CFO; Tommy Brown, Acting City Attorney; Terry Lauritsen, Director of Water Utilities; Keith Henry, Director of Public Works; Shellie McGill, Director of the Library; Kelli Williams, Chief Communications Officer; Mike Richardson, Director of the Municipal Airport; Greg Collins, Assistant Community Development Director; Shelley Charles, Engineering; Capt. Troy Newell; Deputy Chief Rocky Bevard; Capt. Jay Hastings, Security; and Elaine Banes, Executive Assistant.

- 1. The business meeting of the Bartlesville City Council was called to order at 7:00 p.m. by Mayor Copeland.
- 2. Roll call was held and a quorum established.
- 3. The invocation was provided by Mayor Copeland.
- 4. Citizens to be heard.

Mary McCormick spoke in favor of the Natural Landscape Ordinance and offered some insight into natural landscaping.

Shawn Barker thanked the City Council and staff for researching and developing a solution regarding natural landscape yards.

- 5. City Council Announcements and Proclamations.
  - Councilmember Roane read the Constitution Week September 17-23, 2022
     Proclamation.
  - Mayor Copeland read the Homeless Awareness Month September 2022 Proclamation.

### 6. Authorities, Boards, Commissions and Committee Openings

• One opening on the White Rose Cemetery Board.

Mayor Copeland read the openings and encouraged citizens to volunteer on City Committees. Applications can be found at <a href="https://www.cityofbartlesville.org">www.cityofbartlesville.org</a> or at City Hall in the City Manager's Office.

### 7. Consent Docket

### a. Approval of Minutes

- i. The Regular Meeting Minutes of August 1, 2022.
- ii. The Special Meeting Minutes of August 15, 2022.
- iii. The Special Meeting Minutes of August 24, 2022.

## b. Approval or Ratification of Appointments to Authorities, Boards, Commissions, and Committees.

- i. Appointment of Ms. Denise Parks to fill an unexpired term on the Bartlesville History Museum Trust authority at the recommendation of Councilmember Roane.
- ii. Appointment of Ms. Rosie Swindell to a three year term on the White Rose Cemetery Board at the recommendation of Mayor Copeland.
- iii. Reappointment of Mr. Jay Webster to an additional term of three years on the Community Center Trust Authority at the recommendation of Mayor Copeland.
- iv. Reappointment of Ms. Jessica Rovenstine to an additional term of three years on the Bartlesville History Museum Trust Authority at the recommendation of Councilmember Roane.

### c. Approval of Agreements, Contracts, Engagement Letters and Change Orders

- Amended Washington County SPCA contract with the City of Bartlesville including the adoption of the proposed ordinance amending Chapter 3, Section 3-25 of the Bartlesville Municipal Code.
- ii. Contract between the Bartlesville Pubic Library Literacy Services/City of Bartlesville and the Oklahoma Department of Libraries for grant funds that provides the annual salary of the Immigration & Citizenship Literacy Assistant.
- iii. Contract between the City of Bartlesville/Bartlesville Public Library Literacy Services and the Oklahoma Department of Libraries for grant funding for literacy technology in the amount of \$2,542.00.
- iv. Grant Agreement for Airport Improvement Program (AIP) Project No. 3-40-0007-017-2022 at the Bartlesville Municipal Airport.
- v. Airport Hangar Lease Agreement between the City of Bartlesville/Bartlesville Municipal Airport and Travis Reese for hangar space for one RV aircraft and one conference room in the NW corner of Hangar 8 in the amount of \$300.00 per month.
- vi. Statement of Work Agreement between the City of Bartlesville and NorthStar Utilities Solutions for database extracts as part of the transition to the new Utility Billing software purchased from Tyler Technologies in the amount of \$38,000.
- vii. Professional service agreement with Craig and Keithline, Inc. for engineering services to relocate water and sanitary sewer facilities required by ODOT's rehabilitation of US 60 between SH 123 and US 75.
- viii. Agreement between Truth Tabernacle of Bartlesville, Inc., and the City of Bartlesville, for the Completion of Required Site Development Improvements and Dedication of Right-of-Way along property addressed as 4011 NE Nebraska Street, legally described as a part of the West Half of the Southeast Quarter of the Southwest Quarter of the Northwest Quarter of Section 4, Township 26 North, Range 13 East of the Indian Base and Meridian, Washington County, Oklahoma.
- ix. Agreement concerning deferment of platting and construction of public improvements, between John E. and Kimberly K. Thompson, and the City of Bartlesville, regarding property legally described as a part of the Southwest Quarter of the Southwest Quarter of Section 3, Township 26 North, Range 13 East of the Indian Base and Meridian, Washington County, Oklahoma.

### d. Receipt of Financials

i. Interim Financials for one month ending July 31, 2022.

### e. Receipt of Bids

i. Bid No. 2022-2023-008 for M.J. Lee Lake Area Parking & Soccer Field Additions

Mayor Copeland read the consent docket in its entirety. Ms. Roane pulled Items 7.b.i-iv. and Item 7.c.iv., and Mr. Stuart pulled Item 7.c.i. from the consent docket for further discussion.

Mr. Stuart moved to approve the consent docket with the exception of Item 7.b.i-iv., 7.c.iv. and 7.c.i., seconded by Ms. Roane.

Aye: Ms. Roane, Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Mayor Copeland

Nay: None Motion: Passed

## 7.b. Approval or Ratification of Appointments to Authorities, Boards, Commissions, and Committees.

- i. Appointment of Ms. Denise Parks to fill an unexpired term on the Bartlesville History Museum Trust authority at the recommendation of Councilmember Roane.
- ii. Appointment of Ms. Rosie Swindell to a three year term on the White Rose Cemetery Board at the recommendation of Mayor Copeland.
- iii. Reappointment of Mr. Jay Webster to an additional term of three years on the Community Center Trust Authority at the recommendation of Mayor Copeland.
- iv. Reappointment of Ms. Jessica Rovenstine to an additional term of three years on the Bartlesville History Museum Trust Authority at the recommendation of Councilmember Roane.

Ms. Roane recognized and appreciated each volunteer who was appointed and reappointed.

### 7.c. Approval of Agreements, Contracts, Engagement Letters and Change Orders

 Amended Washington County SPCA contract with the City of Bartlesville including the adoption of the proposed ordinance amending Chapter 3, Section 3-25 of the Bartlesville Municipal Code.

Mr. Stuart pointed out that the first sentence in Sec. 3-25.D.1. may be confusing, so he suggested it be edited from "Pet owners may apply for and purchase license tags or microchips at the Washington County S.P.C.A." to "Pet owners may apply for microchips at the Washington County S.P.C.A." The confusion lying in the fact that license tags can only be purchased at the Bartlesville Police Department which is set out in the second sentence of Sec. 3-25.D.1.

### 7.c. Approval of Agreements, Contracts, Engagement Letters and Change Orders

iv. Grant Agreement for Airport Improvement Program (AIP) Project No. 3-40-0007-017-2022 at the Bartlesville Municipal Airport.

Ms. Roane wanted to bring attention to the grant provided by the FAA in the amount of \$504,038 for airport development, and thank the FAA for their generous grant.

Mr. Stuart moved to approve Items 7.b.i-iv, 7.c.i. and 7.c.iv., with the amendment to the animal ordinance included in Item 7.c.i., seconded by Vice Mayor Curd.

Aye: Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mayor Copeland

Nay: None Motion: Passed

8. Discuss and take possible action to award Bid No. 2021-2022-005 for Concrete. Presented by Councilmember Dorsey.

Mr. Dorsey reported there were no bids received from vendors for concrete. Concrete is available from local vendors at current market price as needed.

Mr. Dorsey moved to authorize staff to purchase concrete from local vendors as needed, seconded by Vice Mayor Curd.

Aye: Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mr. Stuart, Mayor Copeland

Nay: None Motion: Passed

9. Discuss and take possible action to award Bid No. 2022-2023-006 Part I for Asphaltic Concrete & Part II for Aggregate Base. Presented by Councilmember Dorsey.

Mr. Dorsey moved to award Bid No. 2022-2023-006 Part 1 to APAC-Central, Inc., Tulsa, OK, in the amounts provided on the attached form, seconded by Mr. Stuart.

Aye: Vice Mayor Curd, Ms. Roane, Mr. Stuart, Mr. Dorsey, Mayor Copeland

Nay: None Motion: Passed

Mr. Dorsey moved to award Bid No. 2022-2023-006 Part II to Bison Materials, LLC, Bartlesville, OK, in the amounts provided on the attached form, seconded by Vice Mayor Curd..

Aye: Ms. Roane, Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Mayor Copeland

Nay: None Motion: Passed

10. Discuss and take possible action to award Bid No. 2022-2023-008 for M.J. Lee Lake Area Parking and Soccer Field Additions. Presented by Councilmember Roane.

Ms. Roane moved to award Bid No. 2022-2023-008 base bid with no alternates to Paragon Contractors, Tulsa, OK, in the amount of \$588,501, seconded by Mr. Stuart.

Aye: Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mayor Copeland

Nay: None Motion: Passed

11. Discuss and take possible action on a recommendation from the Bartlesville Development Authority to allocate \$500,000 from the Economic Development Fund to expand the *Resident Recruitment Program* to include all primary industry employers within the City of Bartlesville for up to 18 months or until funds are depleted. Presented by David Wood, President, Bartlesville Development Authority.

Mr. Wood reported that in 2020, the Bartlesville Development Authority (BDA) tentatively stepped out of their traditional box by redirecting employer incentives that were traditionally \$10,000 per net/new job, to the employee upon purchasing a home in Bartlesville. The Resident Recruitment Program (RRP) has been successful, thus far resulting in 17 new, well-employed residents contributing to our sales tax base. The 17th employee stated that the RRP was the deciding factor in establishing their residence in Bartlesville. With the acute labor shortage, staff proposes consideration of expanding the RRP to include all primary industry employers within the City of Bartlesville. Conversations with major employers suggests that this employee benefit would provide a competitive advantage for recruiting employees to Bartlesville industries, and each recipient would become a resident sales tax generator. Qualifications are largely the same as with Concho, PAA, Phoenix Rising, etc. with some initial proposed modifications relocating employees will be offered such as: 1) \$10,000 cash upon the purchase of a primary residence within the City of Bartlesville; 2) \$20,000 cash assistance for new custom construction of a primary residence within the City of Bartlesville; or 3) \$10,000 cash assistance for new custom construction of a primary residence outside the city limits but within the Bartlesville School District.

Mr. Wood continued by that additional considerations suggested by local employers are offering existing employees who currently do not reside in Bartlesville eligibility if they were to purchase or rent a primary residence and move to Bartlesville. While this is a departure from incentivizing new jobs, the cost/benefit remains the same for Bartlesville's sales tax collections. A significant number of new hires are young, single, and not in a position to purchase a home immediately upon job acceptance. With this in mind, BDA proposes scaling back the incentive commensurate with the commitment and extending a benefit of up to 25% (\$2,500) to new or existing primary industry employees that elect to move to Bartlesville and rent their primary residence, with a minimum six-month lease commitment. Further, to drive resident retention, staff recommends that \$7,500 in relocation incentive be carried forward should the renter wish to convert to a Bartlesville homeowner, or for renters which then contract for the construction a new, custom home, \$17,500 in carry forward incentive, provided the allocated funds and remain available.

BDA staff proposes a one-time allocation of \$500,000 from the Economic Development Fund to support the program, available on a first-come/first-served basis for an 18 month period, or until the funds are exhausted, whichever comes first. This would, minimally, represent 50 new homeowner households, or at maximum, 200 new residential tenants. For proforma purposes, BDA estimates 100 new residents at a cost of \$5,000 each vs. Bartlesville's historical job-creation incentive (with or without capturing a resident) of \$10,000 per job.

Continuing, Mr. Wood reported that unlike BDA's previous engagement in residential relocation involving individual companies with ten or more anticipated new hires, this proposed expansion will involve scores of Bartlesville primary industries with, potentially, hundreds of new-resident applicants. BDA is ill-equipped to administer this level of volume without substantially impairing performance of its primary mission of primary industry and retail recruitment. While BDA will facilitate the funding and provide operational oversight, the Bartlesville Chamber of Commerce has volunteered to handle the daily administration as a value-added service to their qualified membership. He added that contrary to rumor, the relationship between the BDA and Bartlesville Chamber of Commerce is one of cooperation and shared goals which focus on the success of Bartlesville. He stated his respect for and appreciation of Sherri Wilt, President of the Bartlesville Chamber of Commerce, and her staff.

Given the structure, expanding the Resident Recruitment Program appears to have very little financial risk as every recipient of RRP funds will become a contributing resident. In this regard, the redirection of our traditional \$10,000 incentive for new job creation reduces the risk of receiving little to no value from incentivizing a pool of non-resident employees.

Discussion covered the great opportunity this will provide; remote workers and if they would qualify, which could be a possibility at a later date; how the program is innovative in anchoring new hires; and how it may assist in building the City's committee's volunteer pool.

Vice Mayor Curd moved to approve allocating \$500,000 from the Economic Development fund to expand the Resident Recruitment Program for up to 18 months or until funds are depleted, seconded by Ms. Roane.

Aye: Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mr. Stuart, Mayor Copeland

Nay: None Motion: Passed

12. Discuss and take possible action to adopt an Ordinance amending Chapter 11 of the Bartlesville Municipal Code as it pertains to nuisances and property enhancement for the purposes of allowing and regulating managed natural landscape areas. Presented by Mike Bailey, City Manager.

Mr. Bailey reported that over a year ago, the City Council heard a presentation by Councilmember Stuart on possible amendments to the municipal code that would permit and create rules for citizens wishing to convert all or most of their yard from turf grass to a managed natural landscape. During this presentation, Mr. Stuart discussed the many advantages of natural landscape including reduced irrigation and chemical needs, lower maintenance costs, soil improvement, increased runoff absorption, and various other benefits. The City Council and the City's Community Development Director, Lisa Beeman, discussed the existing rules for yards. Ms. Beeman explained that there were currently no rules prohibiting the replacement of turf grass with natural landscape, so the citizens of Bartlesville would be within their rights to convert their yards as proposed by Mr. Stuart without an amendment to the Code. The Council and Ms. Beeman agreed to utilize Mr. Stuart's yard as a pilot project to gather more information about these types of conversions and their impact on neighborhoods. During the intervening months, staff received input from our community on this pilot. As it had been in existence for over a year, the Council elected to meet on Monday, August 15 to hear the results of the pilot project and conduct a discussion about possible amendments to the municipal code that would best address the concerns of all parties. Despite significant input from the public prior to the meeting, only one citizen attended the meeting to speak on this issue. During the meeting, the Council, staff, and one citizen who spoke on the issue, identified a number of concerns with the existing municipal code and offered suggestions.

The draft ordinance that Council considered on August 15 has been amended to address the concerns that were raised at and subsequent to that meeting. The changes are summarized as follows: 1) clarified that the amendment dealing with "managed natural landscaping area" only applies to yards if all or most of the yard is being converted to this turf grass alternative; 2) this does not impact traditional yards, landscape beds, gardens, flower beds, trees, shrubs, or bushes; 3) expanded the list of plants that may be used in a managed natural landscape area to include all plants that are identified by the OSU extension as appropriate for Oklahoma as well as adding a section that allows the Community Development Director to make exceptions to the authorized plant list; 4) granted Community Development Director discretion to deal with unique circumstances not contemplated in the ordinance such as working with property owners on time allowed for yards to be brought into compliance,

grandfather existing managed natural landscape areas that do not meet regulations if the yards do not have a history of code complaints, make exceptions to transition areas for unusual sidewalk locations, or other unique features of the yard not contemplated herein; and 5) clarified existing language relating to agricultural exemptions and the measurement of the required buffer area.

Using a PowerPoint presentation, Mr. Bailey illustrated the current rules allowing for landscaping, as well as the proposed rules, including a recap of the significant features included in the proposed ordinance as follows:

- Added definition of managed natural landscaping area-made clear that this was only intended to regulate an area that occupied most or all of a yard.
- Added various other definitions for clarity but did not change regulations on any of the defined terms
- Provided that a managed natural landscape area is exempt from the section of the code that defines "unmanaged vegetation growth" thus allowing them to be grown greater than twelve inches (similar to other landscaping, gardens, shrubs, bushes, and trees)
- Required any part of a managed natural landscaping area that is visible from the street, sidewalk, or alley to meet the following requirements: eliminate all turf grass; clearly define the boundaries of the area with growth greater than 12" to be defined by a durable border of some sort that could include edging, rock, brick, fence, etc.; maintain a transition area that is at least 10' from the street or 5' from the sidewalk, whichever is greater, that cannot contain plantings taller than 12"; maintain a transition area that is at least 5' from the side and rear lot lines that cannot contain plantings taller than 12" (some exceptions to this rule are allowed); the managed natural landscape area that contains plantings taller than 12" cannot occupy more than 50% of the visible yard; Plantings taller than 4' must be planted within 15' of a building or house; must be cut at least once annually to a height no greater than 12"; and contains only approved plants

Mr. Bailey concluded that after lengthy discussions between City Staff, City Council, and the public, Staff feels that the proposed ordinance provides a balance that preserves the interests of all property owners. It is important to remember that conversion of turf grass yards to a managed natural landscape area is permitted under our current code. However, our existing rules do not provide guidance on the items that the public has expressed an interest in seeing addressed. The ordinance maintains the freedom of residents to convert their yards to managed natural landscape areas, and it also provides rules for these areas that attempt to preserve the aesthetic integrity of our neighborhoods. If passed, the Community Development Director will begin addressing yards to ensure they are compliant and whether or not grandfather status can be granted (no code violations reported prior to date). He also added that Ms. McCormick has offered to consolidate the plant list on the OSU extension into a Bartlesville plan. Her assistance is appreciated as is input from anyone who has an interest in this program.

Discussion ensued covering how there are existing natural landscape yards that are in compliance; the ordinance can be amended if needed as the project proceeds; Ms. Roane had received several (41) emails, calls and conversations regarding the project where all 41 were not in favor of passing the ordinance; Ms. Roane made her statement that there are many natural landscape yards in Bartlesville but they do not look like Mr. Stuart's pilot project yard; Vice Mayor Curd suggested a more clearly defined bordering material in Section 3.b. with the Mayor suggesting adding verbiage "impermeable border"; Vice Mayor Curd also recommended changing Section 3.e. to 40% from 50%; changing the coverage from 40% to 50% is not very equitable according to Mr. Stuart; the Home Owners Association rules are

to be followed; and that the proposed ordinance does not affect Home Owners Associations rules.

Vice Mayor Curd moved to adopt the ordinance amending Chapter 11 as presented with the edit on 3.e. "Any natural landscape area exceeding twelve inches (12%) in height may occupy no more than <u>forty percent (40%)</u> fifty percent (50%) of the existing yard area visible from the public right-of-way", seconded by Mr. Dorsey.

Aye: Vice Mayor Curd, Mr. Dorsey,

Nay: Ms. Roane, Mr. Stuart, Mayor Copeland

Motion: Failed

Vice Mayor Curd moved to adopt the ordinance amending Chapter 11 as presented with an edit to include the underlined verbiage to 3.b. as follows: "Is clearly defined by a <u>solid, impermeable barrier such as landscape</u> border, edging, rock, brick, fence or similar material", seconded by Mr. Dorsey.

Ms. Roane stated her appreciation of Mr. Stuart for doing the pilot program with his yard.

Aye: Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Mayor Copeland

Nay: Ms. Roane Motion: Passed

## 13. Presentation and discussion on the Conference Center Feasibility Study. Presented by Vice Mayor Curd.

Vice Mayor Curd reported In December 2021, the City Council executed a non-binding letter of intent between the City of Bartlesville and the First Christian Church (FCC). The intent of this letter was to set the terms of a possible, future agreement between the City and FCC. In short, FCC wished to donate their facility to the City of Bartlesville, but it was their desire that the building be converted into a conference center that would maintain the architectural integrity of the building. This donation by their Church board is respected and greatly appreciated. In June 2022, the City Council executed a lease agreement with FCC and as part of this lease, the City took over operations and maintenance of the facility. The City Council also executed an agreement with Hunden Partners to perform a feasibility study for a possible conference center in Bartlesville with the FCC site to be considered as a possible location.

Using a PowerPoint presentation, Vice Mayor Curd provided Hunden's findings. A summary of the significant findings of the report are: 1) there is an unmet demand for a small to medium sized conference center in Bartlesville with a total function space of 17,000 SF, support space of 17,000 SF and a total gross space of 34,000; 2) The FCC site is preferred based on its location and accessibility to other walkable amenities; 3) a partial demolition that preserves the sanctuary combined with new construction was deemed to be the most cost-effective way to meet all objectives; 4) the cost to convert the FCC building is high at an estimated \$17,000,000 and 5) The new conference center is estimated to run at about a \$200,000 deficit per year that would need to be offset by some other funding source such as lodging tax, general revenues, etc.

Vice Mayor Curd recognized the ad hoc committee comprised of Vice Mayor Curd, City Manager Mike Bailey, Community Development Director Lisa Beeman, Engineering Director Micah Siemers, CFO Jason Muninger, Community Center Director Val Callaghan, Visit Bartlesville Director Maria Swindell-Gus, and former Councilmember Alan Gentges who

reviewed the report and met to discuss recommendations to the Council. The ad hoc committee believes that tax increases for both ad valorem and lodging tax would be necessary to build and operate the facility, and we do not believe that now is the best time to pursue this project. As such, the committee does not recommend building a conference center at this time. However, recognizing the importance of the building to the Community Center, Price Tower, Tower Center campus, and the potential for a future conference center/hotel development, they do believe that there are many possibilities for the FCC site that will contribute to and enhance the Tower Center Arts District at this time.

Continuing, Vice Mayor Curd reported that Staff and the committee members recommend that the City maintain possession of the building and issue a Request for Proposals (RFP) for interested parties who would like to lease the building from the City. Proposals should demonstrate that they meet a community need and that the proposed use of the facility would not hamper or damage the development of Tower Center Arts District. In addition to the previous conditions, the City should include the following conditions in the RFP: 1) City will agree to contribute \$2M to the renovation of the facility pending passage of the next G.O. Bond; 2) Tenant will agree to a triple net lease that covers utilities, operations, insurance, and maintenance of the facility and 3) Tenant will agree to a lease term that matches the repayment term of the G.O. bonds that will be used to renovate the building. It was agreed that this approach will allow the City to explore options for the facility that preserve it for current and future uses while offsetting the City's financial obligation to maintain the facility. If no acceptable proposals are received, then Staff will return to the Council to reexamine all options for the building.

Discussion covered the extensive and thorough study; that study it is posted on the City's website; and appreciation of the ad hoc committee on their diligence as well as their excellent, objective, input for use of the facility.

Mr. Stuart moved to receive the Hunden Partners conference center study, seconded by Mr. Dorsey.

Aye: Mr. Stuart, Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mayor Copeland

Nay: None Motion: Passed

Mr. Stuart commented that allowing others to utilize the property that meet a community need will be good for the upkeep of the property.

Vice Mayor Curd moved to authorize staff to prepare and issue RFP's for potential use of the First Christian Church as presented, seconded by Ms. Roane.

Aye: Mr. Dorsey, Vice Mayor Curd, Ms. Roane, Mr. Stuart, Mayor Copeland

Nay: None Motion: Passed

### 14. New Business.

There was no new business to address.

### 15. City Manager and Staff Reports.

Mr. Bailey thanked the City Council for meeting on August 24 to award the bid on the Fire Truck. It was important, and he appreciated everyone's attendance.

### Mr. Bailey also reported that:

The Johnstone Park entrance from Cherokee will be closed by ODOT to facilitate the bridge construction. Entrance into Johnstone Park during this time can be made using the Johnstone Avenue entrance. The contractor has done a great job of keep the roads open as much as possible;

Fiber installation on Frank Phillips Blvd started today so the outside east side lane of the bridge will be closed temporarily;

He urges citizens to be watchful of school zones and bus stops. Bartlesville Police are watching these areas carefully; and

City Directors met recently to further discuss and develop the goals and objectives of the Strategic Plan. The Plan will bring forward to the City Council later in the year.

### 16. City Council Comments and Inquiries.

Mr. Stuart reported that Monday's trash routes will run tomorrow, Wednesday, September 7. He also added that Bartlesville is the first city in Oklahoma to adopt a Natural Landscape Ordinance. Mr. Stuart added that it appears that there were citizens who thought he may have been given preferential treatment while he developed his natural landscaped yard as the pilot project. He stated that he worked with staff and met with the City's Code Enforcement officers to ensure his yard remained compliant.

Vice Mayor Curd stated his appreciation to citizens who support the City's economic development efforts. Mr. Bailey added his appreciation Mr. Wood for his flexibility over time to create ways to keep Bartlesville moving forward and economically successful.

Mayor Copeland pointed out that Bartlesville is the first city in Oklahoma to develop the water reuse program. G.T. Bynum, Tulsa Mayor, recently commented that if a community does not have a good water system, then it cannot grow. He stated his appreciation of Bartlesville being proactive in many areas.

The Mayor also reported that the majority of calls, emails, etc. is about traffic issues such as speeding, speed traps and the need for more traffic control. He added his comments to be especially watchful of speed through the school zones.

Ms. Roane reminded citizens of Constitution Week, encouraging them to read it and respect the freedoms that the Constitution provides.

17. There being no further busin	ess to address, Mayo	r Copeland adjourned	the meeting at
9:06 p.m.			

	Dale W. Copeland, Mayor
Jason Muninger, CFO/City Clerk	



Agenda Item 7.b.i.

Date Sept. 29, 2022

Prepared by Chris Wilson

President, BRTA Department

### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss and take action to appoint Sara Freeman to a new three-year term on the Bartlesville Redevelopment Trust Authority. The position was vacated by Karen Alton who decided not to seek another term.

Attachments: Application.

### II. STAFF COMMENTS AND ANALYSIS

Karen Alton was appointed in October 2019 for a three-year term ending in September 2022. She decided not to seek a second three-year term.

Sara Freeman brings a wide range of experience to the BRTA as a professional and community volunteer. She served in a professional capacity with the Bartlesville Chamber of Commerce as well as volunteer board positions with United Way, Bartlesville Community Foundation, and Journey Home. She also currently serves on the Bartlesville Planning Commission. Her application is included for your review.

### III. RECOMMENDED ACTION

BRTA Board of Trustees, Staff, and Councilman Paul Stuart recommend the appointment of Sara Freeman for a new three-year term at the next available City Council meeting.

### **Elaine Banes**

rom:

sent:

Thursday, September 22, 2022 9:23 AM (122/22) Elaine Banes

To:

Subject:

New submission from Application for City Boards, Commissions, Committees & Trust

**Authorities** 

CAUTION: External Source. THINK BEFORE YOU CLICK!

### Please check the ones you wish to serve on:

Bartlesville Redevelopment Trust Authority

### Name

Sara Freeman

### **Address**

2325 Windsor Way Bartlesville, OK 74006 Map It

### **Home Phone**

(918) 841-1295

### **Work Phone**

(918) 337-7609

### Cell Phone

(918) 841-1295

### **Email**

sara.freeman@truitycu.org

### **Ward Number**

2

### What in your background qualifies you for service on the committees chosen (volunteer work, education, employment)?

I have been with Truity Credit Union for 16 years and prior to that with the Chamber of Commerce and Bartlesville Radio. As the VP of Business Development I work hard to stay in the loop on community happenings. I believe that Bartlesville is more successful when we collaborate and work together to help others prosper.

### Tell us about your previous community involvement and the duration of your involvement.

I have spent quite a bit of time working on local boards. Currently I serve on the United Way, Community Foundation and Journey Home boards. I'm also on the City Planning Commission.

### What would you like to see this board, commission, committee or authority accomplish?

I believe that Bartlesville is more successful when we collaborate and work together to help others prosper. Anything this board can do to advance that line of thinking is good with me.



Agenda Item 7.c.i.
October 3, 2022
Prepared by Shellie McGill
Library

### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss and approve a contract between the Oklahoma Department of Libraries and the Bartlesville Public Library/City of Bartlesville.

Attachments: Health Literacy Grant, #F-23-075

### II. STAFF COMMENTS AND ANALYSIS

The Bartlesville Public Library is pleased to continue our focus on health and wellness thanks to the annual Health Literacy Grant. The grant, totaling \$9,000, provides the funds needed to host exercise classes and monthly healthy cooking classes. This year several new programs have been added as well. The OSU Extension Service will present a new healthy living series and Ascension St. John will present programs on nutrition and prescription drug safety.

The Library's Literacy Services Department coordinates the program to cover a variety of health and wellness issues. This year has many new programs and classes scheduled for the Bartlesville Community.

### III. RECOMMENDED ACTION

Staff recommends City Council approval of the Health Literacy Grant, #F-23-075.

Contract No: F-23-075 Health Literacy PO430\_3302 Page 1 of 6

## CONTRACT BETWEEN THE OKLAHOMA DEPARTMENT OF LIBRARIES AND THE CITY OF BARTLESVILLE

### I. CONTRACTING PARTIES

The contracting parties are the Oklahoma Department of Libraries (ODL), a state agency (Department) and the City of Bartlesville (Contractor), collectively known as the Parties.

### II. TERM OF THE CONTRACT

This Contract shall begin on the date of execution and shall terminate on September 30, 2023.

- a. In the event the Contractor fails to comply with the terms and conditions of this Contract, the Department may, upon written notice of such non-compliance to the Contractor, cancel the Contract effective upon receipt of notice. Such cancellation shall be in addition to any other rights and remedies provided for by law.
- b. The Parties of this Contract understand and acknowledge any future contracts or renewals are not automatic nor implied by this Contract.

### III. OBLIGATIONS OF THE CONTRACTOR

The Contractor shall render diligently and competently the services as indicated and in the manner set forth herein which shall be binding on the Parties of this Contract.

The Contractor shall:

- a. Use grant funds to provide resources, information, and training to a minimum of 200 individuals as described in the approved health literacy proposal.
- b. Collaborate with a minimum of four (4) community partners such as county health department, hospital, Cooperative Extension Service, or similar organizations.
- c. Agree to and sign the LSTA Terms and Conditions Agreement.
- d. Publicize receipt of LSTA grant and project activities in at least three formats (newspaper, social media, website, presenter, etc.) to reach a minimum of 500 community members.
- e. The Institute of Museum and Library Services (IMLS) and ODL must be referenced in all publicity.
- f. Maintain signed contracts for all presenters and instructors paid with grant funds.
- g. Follow conflict of interest policy when selecting presenters, instructors, and vendors.
- h. Participate in health literacy networking calls, meetings, and training provided by the Department.
- Collect required statistics and maintain copies of all related print information.

Contract No: F-23-075 Health Literacy PO430\_3302 Page 2 of 6

- j. Spend or encumber grant funds by August 4, 2023. Any funding not spent or encumbered must be returned to the Department no later than August 11, 2023.
- k. Project activities should be completed by August 31, 2023.
- I. Submit the Final Report to the Department by September 15, 2023. The report will include a Narrative, Expenditure Report, and Programs and Statistics Report.

### IV. OBLIGATIONS OF THE DEPARTMENT

The Department shall carry out the subsequent administrative responsibilities:

- a. Approve proposal, and provide a contract, LSTA Terms and Conditions Agreement, and claim form to the Contractor.
- b. Process grant payment to the Contractor upon receipt of notarized claim form.
- c. Provide professional development opportunities for health literacy grantees.
- d. Provide technical assistance and resources as needed.
- e. Provide a means for health literacy grantees to network and exchange information.
- f. Review and approve the Final Report.

### V. PROJECT FUNDING

In accordance with the terms of this Contract, the Department will grant **Nine Thousand Dollars** (\$9,000.00) for the provision of health literacy services through Bartlesville Public Library Literacy Services, Bartlesville Public Library.

- a. Expenditures for this project must conform to the approved budget and to applicable local, state, and federal laws and regulations, and are subject to all conditions of this Contract. Any deviations from the approved budget must be approved by the Department.
- b. Grant funds may not be used medical treatment, medication, refreshments, or giveaways.
- c. Payment will be made via electronic deposit within 30 days of receipt of the notarized claim form.
- d. The Contractor assures that expenditures under this Contract will be included in its next regular audit.

### **VI. GENERAL PROVISIONS**

### a. Notices

Any notices to be given herein are deemed to be given when deposited with the United States Postal Service, certified or registered mail, return receipt requested, with sufficient

Contract No: F-23-075 Health Literacy PO430\_3302 Page 3 of 6

postage prepaid, addressed as specified below. Either party may at any time designate any other address by giving written notice to the other party.

As to the Department:

As to the Contractor:

Oklahoma Department of Libraries

**Bartlesville Public Library Literacy Services** 

Attn: Leslie Gelders

Attn: Karen Kerr-McGraw

200 NE 18 Street

600 Johnstone Ave

Oklahoma City, OK 73105-3205

Bartlesville, OK 74003

### b. No Grant of Authority

Nothing herein shall be construed as conferring upon Contractor the authority to assume or incur any liability or obligation of any kind, expressed or implied, in the name of or on behalf of the Department. The Contractor agrees not to assume or incur any such liability without the prior written consent of the Department.

### c. Performance Suspension

Performance may be suspended by either party for any act of God, war, riots, fire, explosion, strike, injunction, inability to obtain fuel, power, labor, or transportation, accident, national defense requirements, or any cause beyond the control of such party, which prevents the performance of such party. An alleged breach of this Contract by either party shall be grounds for immediate suspension of performance.

### d. Liability

The Department shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of the Contractor, its officers, employees, agents, or trustees, in carrying out the activities of this Contract.

### e. Accident or Illness

The Contractor agrees that any accident or illness during the performance of this Contract will not be the responsibility of the Department and in no way holds the Department liable for such accident or illness.

### f. Understanding of Terms

The Parties hereto have read and fully understand the terms of this Contract and the LSTA Terms and Conditions Agreement and agree to be bound by the same.

### VII. RECORDS MAINTENANCE AND ACCESS REQUIREMENTS

The Contractor agrees to keep and maintain appropriate books and records reflecting the services performed and costs and expenses incurred in connection with its performance of the

Contract No: F-23-075 Health Literacy PO430\_3302 Page 4 of 6

services, including accounting procedures, practices or any other items relevant to this Contract, for a period of five (5) years from the ending date of this Contract. Upon reasonable notice, the Department, Office of the Attorney General (OAG), the State Auditor's Office, the State Purchasing Director, or their representatives, shall be entitled to any books, records, and other documents and items for purpose of audit and examination at Contractor's premises during normal business hours. The Contractor further agrees to provide appropriate access by the aforementioned parties to any subcontractor's associated records. In the event any audit, litigation, or other action involving these pertinent records is started before the end of the five (5) year period, the Contractor agrees to retain these records until all issues arising out of the action are resolved or until the end of the five (5) year period, whichever is later.

### VIII. VENUES AND APPLICABLE LAW

If any legal action is taken to enforce the terms of this contract, the Parties agree that the venue for all legal action is Oklahoma City, Oklahoma. This contract shall be governed by and construed in accordance with the laws of the State of Oklahoma.

### IX. ADDITIONAL REQUIRMENTS

- a. It is expressly agreed that the Contractor under this contract is an independent Contractor and under no circumstances shall any owners, officers, employees or volunteers of the Contractor be considered employees of the Department or the State of Oklahoma. The Contractor is responsible for all types of claims due its volunteers, employees, or any third parties. The Contractor will indemnify and hold harmless the Department and the State of Oklahoma from and against any and all claims arising out of the Contractor's, or any of the Contractor's employees' or volunteers' performance, including but not limited to the use of automobiles or other transportation.
- b. Include the following acknowledgment on any publication or presentation resulting from Contractor's participation in this grant: "This activity is supported by the Institute of Museum and Library Services (IMLS) and the Oklahoma Department of Libraries. The opinions and content of activities and materials do not necessarily reflect the position or policy of the Oklahoma Department of Libraries or IMLS, and no official endorsement should be inferred."
- c. In the event the Contractor does not comply with the terms of this contract, including the timetable, budget, and objectives, the Contractor will be given written notification of such noncompliance by the Department. The Contractor may appeal for reconsideration by giving written evidence of compliance within twenty (20) days following receipt of such notification. Should noncompliance be confirmed, the Department may take possession of items purchased under this contract for reassignment to other programs and projects.

Contract No: F-23-075 Health Literacy PO430\_3302 Page 5 of 6

- d. Evidence of failure to comply with the above policies shall result in a hold being placed on pending payments for all future grants until compliance can be assured.
- e. It is expressly agreed that any solicitation for, or receipt of, funds of any type by the Contractor is for the sole benefit of the Contractor and is not a solicitation for, or receipt of, funds for the Department.
- f. The Contractor will comply with regulations under the Open Meetings Act and the Open Records Act.

### X. AMENDMENTS

Any alterations, additions, or deletions to the terms of this Contract shall be in writing and executed by all Parties.

### XI. ENTIRE CONTRACT

This instrument, consisting of six pages, constitutes the entire Contract between the Parties. All oral or written agreements between the Parties relating to the subject matter of this Contract have been reduced to writing and are contained herein.

### XII. EXECUTION OF CONTRACT

The Contractor affirms that all information, documentation, and representations submitted in securing this Contract are true and correct to the best of their knowledge.

The Contractor certifies that neither the Contractor, nor anyone subject to the Contractor's direction or control, has paid, given, or donated, or agreed to pay, give, or donate to any officer or employee of the Department or the State of Oklahoma any money or other thing of value, either directly or indirectly, in procuring this Contract.

Each signatory to this Contract declares that he/she has legal authority for obligating the entity he/she represents for the benefits and/or liabilities resulting under said Contract and accepts liability for any misrepresentation of such authority.

Contract No: F-23-075 Health Literacy PO430\_3302 Page 6 of 6

IN WITNESS WHEREOF, the Contractor and the Department have each caused this Contract to be executed in their behalf.

### **SIGNATURES**

On behalf of the Contractor	On behalf of the Department
Karen Kerr-McGraw, Literacy Director	Natalie Curry, Director (Interim)
Typed name and title of signor	
Signature	Signature
Date	Date
Shellie McGill, Library Director	
Typed name and title of signor	
Signature	
Date	
Dale Copland	
Name of Authorizing Official	
Mayor	
Title	
Signature	
Date	
FOR USE BY THE OKLAHOMA DEPARTMENT of LIBRARIES	
Assurances: Fund LIT -HE 400–22 is encumbered for this Contra	Sep 9, 2022
Lead Officer approval:  MC (1) 500	Date Son 9, 2022
FPO/Business Manager:	Date



Agenda Item 7.c.ii.

October 3, 2022

Prepared by Shellie McGill

Library

### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss and approve a Planned Maintenance Program contract between the City of Bartlesville/Bartlesville Public Library and Dormakaba.

Attachment: Dormakaba Planned Maintenance Contract

### II. STAFF COMMENTS AND ANALYSIS

The Bartlesville Public Library purchased and installed three automatic entrance doors in November 2021. Dormakaba has offered an annual planned maintenance contract. The contract covers inspections, adjustments, and service on all three doors.

The new maintenance contract was planned for and included in the Library's 2023 fiscal year budget. Total annual cost is \$478.80.

This contract has been sent to City Attorney Jess Kane for review. We have received no concerns or contract modification requests.

### III. RECOMMENDED ACTION

Staff recommends City Council approval of this contract.



## Planned Maintenance Program

City of Bartlesville

Opportunity #OP410285



**Date:** September 6, 2022 (This quote is valid for 30 days)

Proposal Number: OP410285

City of Bartlesville 401 S. Johnstone Avenue Bartlesville, OK 74006 Customer #42246



Main Site Location: Bartlesville Public Library 600 S. Johnstone Avenue Bartlesville, OK 74003 Additional Sites listed in Appendix A

#### SILVER

### PLANNED MAINTENANCE PROGRAM

dormakaba is pleased to offer you, the Customer, the dormakaba Planned Maintenance Program ("PMP") with the intent to reduce the frequency of operational failures and help to enhance the life expectancy of the Customer's facility automatic door equipment which may help to lower the cost of ownership. The PMP program will consist of:

- Work will be performed by AAADM certified, factory trained technicians with training in automatic door operating devices.
- Scheduled periodic 25-point inspections for product performance.
- Motor, Operator, Gear-box, Control, Sensors, Function Switches, Belt, Rollers, Bottom Guides, Break-Out Assembly,
- Once annual AAADM (American Association of Automatic Door Manufacturers) safely examination of automatic swinging, sliding or revolving doors,
- Documented safety certificate denoting the compliance status of each of the automatic door devices.
- Essential cleaning & lubrication...
- Minor controller adjustments as may be required; re-program & tune.
- Minor mechanical adjustments as may be required; check fastening; tighten if needed
- Check glass and glazing of the complete unit.
- Priority scheduling for service calls required on non-automatic (manual) doors and hardware.
- Preferred pricing "For Service Calls Outside of Contract" (below) required on non-automatic (manual) doors and hardware,
- Door Opening Inventory Asset Registration & Database creation.
- Unlimited Access to dormakaba Care Center Call Line 24/7,
- \*\* Exclusions sections 3

I, PROGRAM TO INCLUDE		

Openings Covered				
	Swing - Single		Manual Revolver	
	Swing - Pair		Automatic Revolver	
	Slide - Single or Bi-part		ICU	
	Slide - Telescopic Single	3	In-Ground Swing	
	Slide - Telescopic Bipart		*Detailed list provided in App	endix A
	Bifolding			
PM Visits Per Year		Annual		
Waived Service Fees		No		
Agreement Length (in Years)		1 1		
Contract Value Per Year		\$478.80		
Total Contract Value		\$478.80		
Average Cost per Door per Year		\$159.60		
Contract Start Date		10/1/2022		
Contract Expiration Date		9/30/2023		
Contract Invoice Frequency		Annual		
Contract Invoice Amount		\$478.80		
Labor Rate Level		Level 1		
Hourly Rate (Service Outside Plan)		\$119.46	7	
Travel Rate (Service Outside Plan)		\$119.46		
After-Hours/Overtime		\$179.19	For Service (	Dutside of Contract
Sundays & Holidays		\$238.92		
Hourly Rate Applies for Calls Received	Between	8:00 AM - 4:00 PM		

### CUSTOMER SIGNATURE

This contract document consists of the PMP and the Terms & Conditions and any applicable Appendix attached hereto and incorporated herein by reference.

Signature on this page indicates acceptance of the same without alteration,	ACCEPTED AND APPROVED BY:	
	TITLE:	
Sincerely, Michelle Clemens	PRINTED NAME:	
(317) 999-8606	DATE:	
Michelle.Clemens@dormakaba.com		( <del></del>
dormakaba 🚧	P.O. # (IF REQUIRED):	

<sup>\*\*\*</sup>Terms & Conditions continued on next page.

### 2. GENERAL PROGRAM

- A. All PMP scheduled visils included in this program shall take place weekdays during normal dormakaba hours of operation (holidays excluded, list provided upon request).
- B. All maintenance inspections will include testing door speeds and quality of performance, analysis of relays, instrument testing of other electrical functions, tightening of all electrical and mechanical connections, necessary lubrication of mechanical parts, and inspection and minor repair of accessories.
- C. Should it be determined during the PMP program that any repair service or parts replacement is needed, the cost thereof, including installation labor, shall be quoted to you and if approved, billed separately,
- D. Repair Service calls for repair services/parts replacement that are outside this program will be conducted as provided hereafter:
  - 1. Standard service calls will be made on an as requested basis during hours as defined above, and will be billed at our standard hourly service rate plus trip charge as applicable to your location.
  - 2. For emergency calls outside of normal business hours, a trip charge and labor as applicable will be charged to you at 1-1/2 times the standard rate. Charges for Sundays and Holidays shall be billed at two (2) times the standard rate, Modifications to this billing may be made in locations requiring union labor, in those cases, the prevailing labor union agreement will prevail. Emergency repair service calls will be given priority and billed at the prevailing minimums required, at dormakaba's sole discretion at premium of up to four hours (1-hour call could be billed at 4 hours for emergency service call) up to four hours. An emergency repair service call is one in which the situation meets one of the following conditions:
    - A) The door itself is unsafe during your hours of operation,
    - B) The door cannot be closed and secured which results in a security threat
    - C) Any safety device is found to be malfunctioning or inoperative.
- E. Any parts found to be requiring replacement during the course of the program will be quoted to you at manufacturer's suggested list price.

### 3. QUALIFICATIONS & EXCLUSIONS

- A. This contract covers maintenance only and does not cover any repair services and/or parts as may be periodically suggested and/or as may be requested by the customer.
- B. PMP program maintenance services for any door not specifically listed below are not included in this contract.
- C<sub>11</sub> This contract does not cover sensor upgrades if required to meet current ANSI Standards.
- D, Customer is to inspect doors daily for proper operation in accordance with Daily Safety Checklists as defined within AAADM guidelines and provided by the manufacturer at the time of purchase, it is the Customer's responsibility to, among other things, monitor and notify dormakaba if an unsafe condition exists, to disable any door that is operating in an unsafe manner, and to provide dormakaba with the head to provide dormakaba with the provided to the condition of the condit
- E. You, the accepted party, agree not to perform or permit others to make alterations, additions, adjustments, repairs, or replace any component or part of the equipment during the term of this agreement unless expressly authorized to do so in writing by a dormakoba representative.
- F. This contract does not include service and/or parts required as a result of damage caused by abuse, misuse, accident, fire, vandalism, riot, strikes, nor natural disasters.
- G. The scope of this contract pertains only to that of the assets listed above and excludes the scope of any structural, integration and electrical overlaps, door, frame or hardware. This contract does not include damage and parts to the header box.

### 4. WARRANTY

dormakaba agrees to supply only genuine parts which are warranted to be free from defects in material or workmanship for a period of 90 days from their installation. Neither the manufacturer nor dormakaba shall be liable for consequential damage. The manufacturer, its distributors or representatives assume no responsibility for materials provided by others without specific written consent or approval.

### 5. INVOICING & PAYMENT

- A. The charge for this program will be invoiced at the time it is accepted by the Customer and will cover the equipment as designated herein, Invoicing for the program will be in accordance with the terms established with the dormakaba Credit Team.
- B. The charge for any service not covered by this agreement will be at the hourly rate indicated on page One "For Service Outside of Contract" with after-hours, Sunday, or holiday rates as applicable,
- C. In the event legal or other action is instituted by dormakaba to collect any money due under this contract or damages for its breach, it shall be entitled to recover all third party collection expenses, legal fees, and costs incurred by it with interest in conjunction with such action whether or not a lawsuit is filed or concluded.
- D. This contract pricing is based upon all equipment fully functioning and up to current industry standards prior to accepting the doors for contract. Charges for parts and labor not included in this agreement will be billed on an "as needed" basis. Non-payment by the Purchaser of any monies owing under this agreement shall result in the accrual of interest on the delinquent monies at the maximum rate allowable by law.
- $E_{+}$  Periodic adjustment of this pricing may be necessary from year to year. Contract pricing will be held for the initial term of the contract and will increase upon auto renewal thereafter at a rate of 4.5% per year.
- F. dormakaba reserves the right to terminate this contract at any time by written notice should payments not be made in accordance with the terms stated and agreed upon.
- G. Taxes are excluded from contract value, if taxes apply, such amount will be added at the local rate for a total beyond the contract value.

### 6. TERMS & CONTRACT TERMINATION

Contract will commence per the dates identified on page One. This contract may not be terminated by Custamer during this first contract term as indicated in "Agreement Length (in Years)" on page One, except in the event of material breach by dormakaba. This contract will be automatically renewed for successive one (1) year periods, unless either party serves written notice upon the other party of its intention to cancel at least sixty (60) days prior to the end of the term. In the event that the door has a transfer of ownership, the pre-paid contract term shall transfer with the doors covered under this contract until the end of the current period. Transfer of door ownership will void the outomatic renewal.

The provisions, terms and conditions of this contract will govern and supersede any other contracts applicable to the subject matter, including but not limited to the terms of any purchase order issued by Customer or Owner or any other entity,

#### LEGAL

dormakaba agrees to defend, through counsel of our choosing, and indemnify the Owner for claims, damages, or suits for personal injury (including death) or properly damage arising out of damages or claims which occurs during the period that this contract is in effect which involves a door covered by this contract, but only to the extent that the damages or claims were caused by the negligent act or omission of dormakaba's workmen or employees, or by a defect in materials supplied by dormakaba and only if no service, maintenance, or repair has been performed on the automatic door involved in the damages or claims by the Owner or by any person or company other than dormakaba. The Owner shall fully cooperate with dormakaba in the investigation and defense of any claim or lawsuit in which this indemnity provision applies, dormakaba shall not be required to defend or indemnify the Owner for any negligence, act, omission, willful misconduct or other fault of any nature of the Owner or the Owner's employees or agents, dormakaba shall be harmless in respect to any claim made by any employee of dormakaba under worker's compensation laws, dormakaba will indemnify against infringement of any Letters of Patent, Trademarks, or Copyrights regarding products or services provided by dormakaba.

The maximum liability, if any, of dormakaba for all damages, including without limitation contract damages and damages for injuries to persons or property, whether arising from dormakaba's breach of this contract, breach of warranty, negligence, strict liability, or other tort, with respect to the services, is limited to an amount not to exceed the annual amount of the services charged hereunder. The right to recover damages within the limitations specified is Owner's exclusive alternative remedy in the event that any other contractual remedy fails its essential purpose.

Insurance certificates will be provided upon request, Coverage is limited to the types and amounts that will be detailed on darmakaba's certificate, Cost for special insurance requirements such as OCIP, CCIP, is excluded from this contract.

### APPENDIX A - OTHER NOTES



### APPENDIX B - SITE LOCATIONS

Site locations are as follows:

	Street Address	City, State, Zip
Jarllesville Public Library	600 S, Johnstone Avenue	Bartlesville, OK 74003

### APPENDIX C - COVERED EQUIPMENT

Equipment covered under this contract:

Door No.	Door Brief Description	Door Location (In Building)	Model (If known)	Site Location
1	DORMA ESASOO TELESCOPIC	North Entrance - Exterior	ESA300T	Bartlesville Public Library
2	DORMA ESA300 TELESCOPIC	South Entrance - Exterior	ESA300T	Bartlesville Public Library
3	DORMA ESA300 TELESCOPIC	South Entrance - Interior	FSA300T	



Agenda Item <u>7.c.</u>iii.
September 28, 2022
Prepared by Steve Roper
Engineering

### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Approval of a professional service contract with Freese and Nichols, Inc. for design services on the Sunset Boulevard over Butler Creek Bridge Rehabilitation and Repair project.

Attachments:

Contract

### STAFF COMMENTS AND ANALYSIS

One of the priority projects included on the voter approved 2020 General Obligation Bond is the Sunset Boulevard over Butler Creek Bridge Rehabilitation and Repair project. The findings of the bridge inspection report indicate need for rehabilitation of the bridge including deck and approach replacement, pier protection, abutment repairs, and guardrail improvements. The 2020 G.O. Bond allocated \$1,000,000 for the design and rehabilitation of the bridge.

In June, the City of Bartlesville sent Requests for Proposals to ten engineering firms. Three firms responded with responsive Statements of Qualifications. The Engineering Department reviewed the responses and selected Freese and Nichols, Inc. (FNI) for the design of this project. After selection, Engineering met with representatives from FNI to delineate scope for the project and negotiate work to be included in the contract.

The proposed contract includes completing final plans and specifications to meet the recommendations of the inspection report. The proposed contract price for the work is \$208,560.00.

### RECOMMENDED ACTION

Staff recommends approval of the professional service contract with Freese and Nichols, Inc.

### PROFESSIONAL SERVICES AGREEMENT

STATE OF OKLAHOMA

§

### COUNTY OF WASHINGTON §

This Agreement is entered into by City of Bartlesville (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- EMPLOYMENT OF FNI: In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Bridge Rehabilitation – Butler Creek at Sunset Boulevard.
- II. SCOPE OF SERVICES: FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for a lump sum fee of \$169,932.00 and a not to exceed fee of \$38,628.00 for a total fee of \$208,560.00.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. GOVERNING LAW; VENUE: This Agreement shall be administered and interpreted under the laws of the State of Oklahoma. Venue of any legal proceeding involving this Agreement shall be in Washington County, Oklahoma
- VI. EFFECTIVE DATE: The effective date of this Agreement is September 28, 2022.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

This Agreement is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

CITY OF BARTLESVILLE, OKLAHOMA	FREESE AND NICHOLS, INC.
Ву:	Ву:
Name:	Name:
Title:	Title:
Date:	Date:
Attest:	Attest:

### TERMS AND CONDITIONS OF AGREEMENT

- DEFINITIONS: As used herein: (1) City refers to the party named as such in the Agreement between
  the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its
  subcontractors and their employees and agents; and (3) Services refers to the professional services
  performed by FNI pursuant to the Agreement.
- 2. INFORMATION FURNISHED BY CITY: City will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. To the fullest extent permitted by law, City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
- 3. STANDARD OF CARE: The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
- 4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

Commercial General Liability Workers' Compensation

\$2,000,000 General Aggregate Automobile Liability (Any Auto)

Professional Liability

\$1,000,000 Combined Single Limit \$3,000,000 Annual Aggregate

- 5. CHANGES: City, without invalidating the Agreement, may order changes within the general scope of the Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or the time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.
  - FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.
- 6. OPINION OF PROBABLE CONSTRUCTION COSTS: No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the Project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to determine what materials, equipment, component systems, and types of construction are to be

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included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. PAYMENT: Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to City and in acceptance of the Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

- 8. OWNERSHIP OF DOCUMENTS: All drawings, reports, data, and other project information developed in the execution of the Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.
- 9. TERMINATION: The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

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- 10. CONSTRUCTION REPRESENTATION: If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the Project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the Project begins.
- 11. GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT: City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the City is named as an indemnified party.
- 12. POLLUTANTS AND HAZARDOUS WASTES: It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
- 13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
- 14. **PURCHASE ORDERS:** If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.
- 15. CONSEQUENTIAL DAMAGES: In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
- 16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.

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17. SUCCESSORS AND ASSIGNMENTS: City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither City nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be 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. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

#### SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT

The scope set forth herein defines the work to be performed by the FNI in completing the project. Both the Client and FNI have attempted to clearly define the work to be performed and address the needs of the Project.

#### PROJECT UNDERSTANDING

The project objective is the design of the bridge rehabilitation of Sunset Blvd. over Butler Creek. The project will include an assessment to determine the appropriate level of work on the structure that will be summarized in an assessment report, accompanied by an opinion of probable construction cost. Plans for the reconstruction of the existing bridge deck will be designed to be 30 feet, 2 inches wide with a 28-foot clear roadway with TR-4 parapets, new expansion joints, new guardrail and new approach details. Plans will include requirements for cleaning and coating the existing bridge beams. The serviceability of the bearings for their impact on the healthy movement of the beams and joints will be evaluated, and locations for diaphragm and bearing repairs or replacements and locations and details of patching and other repairs for all concrete elements will be included. Abutments will be detailed with flowable fill at voids under the cap and around the piles and slope protection details will be provided. Details will be provided for phased construction consistent with the traffic control plan.

#### **WORK TO BE PERFORMED**

#### **Basic Services**

Task 1.	Conceptual (30%) Design and Assessment Phase
Task 2.	Preliminary (60%) Submittal
Task 3.	Final Design Phase
Task 4.	Bid Phase

#### Special Services

Task 5.	Construction Phase
Task 6.	Survey
Task 7.	<b>Environmental Permitting Evaluation and Section 404 Permitting</b>
Task 8.	Hydrologic and Hydraulic Analysis
Task 9.	Lead-Based Paint Sampling and Testing
Task 10.	Additional Services

#### **ARTICLE I**

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project:

# TASK 1. CONCEPTUAL (30%) DESIGN AND ASSESSMENT PHASE

The Assessment Report shall be submitted to Client per the approved Project Schedule.

The purpose of the conceptual design report is for the FNI to identify, develop, communicate through the defined deliverables and recommend the design concept that successfully addresses the design problem, and to obtain the Client's endorsement of this concept.

FNI will develop the assessment report of the bridge structure as follows.

- 1.1. Data Collection (Provided by the City to the extent possible)
  - 1. Aerials
  - 2. As-built Utility, Bridge, and Roadway Information
  - 3. Topographic Contour Data of the surrounding area encompassing the project area
  - 4. Latest bridge inspection report
  - 5. Previous bridge assessment reports if any
- 1.2. Bridge Field Assessment A site visit will be performed to assess the bridge. The bridge will be assessed and data collected for areas of deterioration in the concrete bridge deck, rail, beams and diaphragms, bearings, and concrete piers and abutments. Inspections will be visual in nature and performed at arms-reach length. FNI will review previous Client provided inspection reports on the bridge structure prior to going on site visit.
- 1.3 Rehabilitation Assessment Report

A bridge rehabilitation Assessment Report will be produced and will contain the following:

- 1. Photo documentation of deteriorated bridge components with proposed improvements
- 2. Proposed types and general locations of rehabilitation improvements
- 3. Itemized estimate for repairs to incorporate into the overall Opinion of Probable Construction Cost (OPCC)
- 1.4 Schematic Design
  - Prepare plan view sheet layout of the proposed improvements for review with City Staff. Improvements will include: limits of pavement replacement, approx. grading limits of roadway, limits of guardrail treatment.
  - 2. Prepare Opinion of Probable Construction Cost (OPCC)
- 1.5 Conceptual Assessment Phase Meeting
  - Attend one (1) meeting with City Staff to review the proposed improvements and assessment report findings.

# TASK 2. PRELIMINARY (60%) SUBMITTAL

- 2.1 Midpoint Plan and OPCC Check-in (60%)
  - 1. Prepare updated Opinion of Probable Construction Cost (OPCC) based on the plan feedback received from the Assessment Phase.
  - 2. Prepare updated plan sheets denoting any changes in the plan from the assessment phase.
  - 3. Determine if additional Right-of-Way is needed for construction of the project.
  - 4. Submit the updated OPCC and plan view sheet (digital PDF) to the City for review and approval prior to moving into the Final Design Phase.
- 2.2 Preliminary Design Plan submittal, plan sheets to include:

- 1. Title sheet
- 2. General notes and Typical Sections
- 3. Pay Quantity Summary and notes
- 4. Survey Data Sheets
- 5. Typical Sections
- 6. Bridge General Plan & Elevation
- 7. Roadway Plan and Profile Sheets
- 8. Construction Sequencing Sheets
- 9. Superstructure Rehabilitation Details
- 10. Substructure Rehabilitation Details
- 11. Approach Slab Plans
- 12. Cross Sections
- 2.3 Submit half-size (11x17) digital PDF of the plan set and one (1) digital PDF of the Construction Cost Estimate (OPCC) to the City for review.

#### **TASK 3. FINAL DESIGN PHASE**

Roadway and Bridge plans will be developed and completed per the City of Bartlesville and ODOT standards. Plans will be developed following current ODOT English Standards and LRFD Specifications.

The project will be designed in accordance with, but not limited to, the following manuals:

- 1. "Oklahoma Department of Transportation Construction Specifications, 2019, and Special Provisions
- 2. "ANSI/AASHTO/AWS D1.5 Bridge Welding Code"
- 3. Oklahoma Department of Transportation "Bridge Plan Directives", Edition 2.0
- 4. "LRFD Bridge Design Specifications for Highway Bridges: AASHTO, 8th Edition and all interim specifications
- 3.1 Prepare engineering design for the following:
  - 1. Design guardrail treatment and extents.
  - 2. Prepare Specifications in accordance with City requirements: City of Bartlesville Contract Documents/General Conditions and ODOT Technical Specifications.
  - 3. Prepare Opinion of Probable Construction Cost Estimate (OPCC)
- 3.2 Final Design Plan submittal, plan sheets to include:
  - 1. Title sheet

- 2. General notes and Typical Sections
- 3. Pay Quantity Summary and notes
- 4. Survey Data Sheets
- 5. Typical Sections
- 6. Removal Plans
- 7. Bridge General Plan & Elevation
- 8. Roadway Plan & Profile
- 9. Construction Sequencing Sheets
- 10. Traffic Control Plans
- 11. Cross Sections
- 12. Superstructure Rehabilitation Details
- 13. Substructure Rehabilitation Details
- 14. Slab Reinforcement Plan
- 15. Approach Slab Plans
- 16. Approach Slab Details
- 3.3 Submit half-size (11x17) digital PDF of the plan set and one (1) digital PDF of the Construction Cost Estimate (OPCC) to the City for review.
- 3.4 FNI will provide CAD format base files and PDF plan files to the Client at the completion of design for Records.
- 3.5 Quality Control Review and Plan Revisions.

#### TASK 4. BID PHASE

- 4.1 FNI will provide two (2) half-size (11x17) copies of the plan set and spec book along with a digital PDF for City use during the bidding process. Additional copies will be provided to Contractors as requested at additional cost.
- 4.2 Assist Client in securing bids. Provide a copy of the notice to bidders for Client to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Client.
- 4.3 Attendance at Pre-Bid Conference (assumed 1 meeting). Additional meetings can be added at the Client's request through supplemental.
- 4.4 At Client request, FNI will assist Client in responding to Requests for Information, in the opening, tabulating, and analyzing the bids received as needed

4.5 Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.

#### **ARTICLE II**

**SPECIAL SERVICES:** FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

#### TASK 5. CONSTRUCTION PHASE

Upon completion of the bid or negotiation phase services, FNI will proceed with the performance of construction phase services as described below. The FNI will endeavor to protect Client in providing these services however, it is understood that the FNI does not guarantee the Contractor's performance, nor is the FNI responsible for supervision of the Contractor's operation and employees. The FNI shall not be responsible for the means, methods, techniques, sequences or procedures of construction selected by the Contractor, or any safety precautions and programs relating in any way to the condition of the premises, the work of the Contractor or any Subcontractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the Project site or otherwise performing any of the work of the Project.

- 5.1 Review contractor's submittals, including, requests for information, modification requests, shop drawings, schedules, and other submittals in accordance with the requirements of the construction contract documents for the projects. Monitor the progress of the contractor in sending and processing submittals to see that documentation is being processed in accordance with schedules.
- 5.2 Conduct, in company with Client's representative, a final review of the Project for conformance with the design concept of the Project and general compliance with the Construction Contract Documents. Prepare a list of deficiencies to be corrected by the contractor before recommendation of final payment. Review and comment on the certificate of completion and the recommendation for final payment to the Contractor(s). Visiting the site to review completed work in excess of two trips are an additional service.
- 5.4 Revise the construction drawings in accordance with the information furnished by construction Contractors(s) reflecting changes in the Project made during construction. One (1) set of prints of "Record Drawings" shall be provided by FNI to Client.

# TASK 6. SURVEY

The FNI will provide survey services in accordance with the following:

- 6.1 Limits of Survey per attached exhibit
- 6.2 Scope of Work:
  - 1. Horizontal and Vertical Control:
    - a. Set a minimum of 2 control points for horizontal and vertical purposes.
    - b. Establish two (2) benchmarks in the project vicinity.
    - c. Run a differential level loop through all control points and benchmarks.

- d. Horizontal Datum will be NAD83 State Plane Coordinates OK North
- e. Vertical Datum will be NAVD88

# 2. Topographic Survey:

- a. Topographical survey will include all the following existing surface features: roads, curbs, drives, sidewalks, bridge deck, bridge abutment, bridge wingwalls, bridge abutment slopes, bridge columns, bridge pier caps, bridge low beams, signs, fences, walls, channel adjacent and under bridge, all visible drainage structures, and visible and/or marked utilities.
- b. All utility companies servicing the project area will be contacted through "OKIE811" 48 hours prior to survey and the locations will be obtained. Private utilities that are not members of "OKIE811" will not be researched and locates will not be requested for these non-members. If utility markers/evidence is found during the survey, we will attempt to contact the corresponding owner to have them located.
- c. Storm sewer manholes, sanitary sewer manholes, water valves and their inverts will be measured for depth (to the connection outside of survey limits).
- d. Cross-Sections at 50' maximum intervals including applicable breaklines

# 3. Right-of-Way Survey:

- a. Research Sections 2, T26N-R12E and Section 34, T27N-R12E of the Indian Meridian to accurately plat existing right-of-way, easements, subdivision plats and property deeds and section lines within the limits of the survey.
- b. Calculate a centerline of survey along Sunset Blvd. throughout the survey limits.
- c. Plot the existing right-of-way along the centerline of survey throughout the survey limits.
- Plot the property deeds and subdivision plats for the properties adjoining the survey limits.

#### 6.3 Deliverables

- Submit a MicroStation CAD file containing all above-described items with proper annotations (per FNI CAD Standards), as well as the following:
  - a. Surface model with contours at a 1.0' interval.
  - b. Control point and benchmark elevation adjustment spreadsheet.

#### 2. Right-of-Way Acquisition Support

- a. Research will be provided to determine current ownership.
- b. Easement support documents (legal descriptions and exhibits) will be created to meet the current City of Bartlesville guidelines for up to four (4) parcels as needed.

# 6.4 Items NOT included in the Scope of Work

1. Property/Boundary Survey(s)

- 2. Right-of-way Acquisition
- 3. Plat of Survey
- 4. ALTA/NSPS Survey
- 5. FEMA Flood Plain Delineation
- 6. Flood Plain Management
- 7. Elevation Certificate(s)
- 8. Construction Staking
- 9. Coordination of locating private utility lines
- 10. Underground/subsurface utility engineering (SUE) services
- 11. Utility Potholing or 4-way sweep locating

#### TASK 7. ENVIRONMENTAL PERMITTING EVALUATION AND SECTION 404 PERMITTING.

For the purposes of this scope of services, it is assumed the proposed project will require Section 404 permit authorization from the U.S. Army Corps of Engineers (USACE), as the action will likely involve the discharge of dredged or fill material into waters of the U.S. It has also been assumed that the proposed project can be designed and constructed to meet the terms and conditions of Nationwide Permit 14 (NWP-14), Linear Transportation Projects, without requiring compensatory mitigation. If archeological surveys, compensatory mitigation, or an Individual Permit are required, those services can be provided as additional services upon written authorization from the City.:

7.1 Review Existing Information and Conduct Site Visit.

FNI will compile and review readily available project site information and prepare GIS materials in preparation for a site visit. An environmental scientist will conduct a site visit and document the existing conditions. FNI will delineate with a handheld GPS the ordinary high water mark or wetland limits within the proposed limits of construction and evaluate the site regarding potential federally listed threatened and endangered species habitat(s).

#### 7.2 Project Team Coordination

An environmental scientist will coordinate with the project team (design team and Client) on the findings of the site visit and environmental permitting evaluation and provide environmental permitting input into the design.

7.3 Prepare Environmental Permitting Evaluation Memorandum

Information gathered during the pedestrian survey and coordination with the design engineers will be used to prepare a draft technical memorandum. The draft memorandum will include discussions of methodologies used, the hydrologic characterization of potential waters of the U.S., an opinion on their jurisdictional status, if the proposed improvements require Section 404 permit authorization, and other environmental permitting requirements. The draft memorandum will be sent to the Client for review and comment. Once comments are received, a final technical memorandum will be prepared for the Client's records.

7.4 Preliminary Jurisdictional Determination and Pre-construction Notification (PCN)

FNI will prepare a Preliminary Jurisdictional Determination (PJD) report and PCN for submittal to the Tulsa District USACE based on the findings of the pedestrian survey. The report will follow standard PJD report format supported by figures and photographs. The draft PCN and PJD will be submitted to OWNER for review and comment. After incorporating the OWNER's comments, FNI will submit a final PJD report and PCN to the USACE.

#### **DELIVERABLES**

- A. Environmental Permitting Evaluation Memorandum
- B. PJD and PCN for NWP 14

#### TASK 8. HYDROLOGIC AND HYDRAULIC ANALYSIS

FNI will perform Hydrologic and Hydraulic Analysis to evaluate whether any adverse impacts will be caused by the project.

- Secure the FEMA model for the corresponding area and update with proposed design parameters. The modeling will be based on the effective model with no additional field survey. Preparation of LOMR/CLOMR documents can be added for an additional fee.
- 2. Analyze scour potential and determine prevention measures in accordance with ODOT and local criteria, as applicable.
- 3. Develop a hydraulic report in accordance with ODOT requirements.

#### TASK 9. LEAD-BASED PAINT SAMPLING AND TESTING.

FNI will mobilize a team of environmental professionals to conduct a lead paint survey to identify lead hazards as required by 29 CFR 1926.62, the OSHA Lead Standard for Construction prior to any work related to construction, alteration, or repair (including painting and decorating). If the existing coating of bridge components include lead-based paint, the design will include lead abatement in the design of the project.

# 9.1 Methodology

Conduct a visual assessment of accessible areas of the subject bridge to identify suspect lead-containing paint (LCP). Representative structure component surfaces that may be sampled include, but are not necessarily limited to, support beams, bridge abutments, railings, striping, etc. Physically assess suspect LCP for friability and evidence of damage or degradation and collect bulk samples of suspect LCP for laboratory analysis.

Collect paint chip samples in general accordance with the sample collection protocols established in ASTM E1729, Standard Practice for Field Collection of Dried Paint Samples for Subsequent Lead Determination and the U.S. Department of Housing and Urban Development (HUD) Guidelines for the Evaluation of Lead-Based Paint Hazards in Housing, Chapter 7: Lead-Based Paint Inspection. Collect up to 15 paint chip samples from representative painted components.

Sample collection will result in some isolated damage (approximately 2 square inches) to the bridge coated surfaces; however, Attempts will be made to limit such damage to only the extent necessary for sample

collection. Repair or touch-up of sample locations is not included. Some materials cannot be sampled without considerable damage to the finish or function of a material (e.g., heat- or fire-resistant coatings, warning signage). Destructive sampling will not be conducted under the scope of this proposal. Suspect LCP that are not sampled will be assumed to contain lead, recorded, and quantified.

# 9.2 Paint Chip Sample Analysis

A National Environmental Laboratory Accreditation Program (NELAP) and American Industrial Hygiene Association (AIHA) accredited laboratory will analyze the paint chip samples by Flame Atomic Absorption Spectrophotometry (FAS) (EPA Method SW846 7000B). The limit of detection (LOD) for this analytical method ranges based on the weight of the samples collected. Sample results reported below the LOD may contain lead at a concentration below the analytically defined LOD

#### 9.3 Limitations

This inspection will be limited to readily observable and accessible materials, surfaces and equipment. Hidden or not readily accessible materials hidden structural components, etc.) may not be assessed in this survey; reasonable effort will be made to access suspect LCP within visible areas of restricted access provided these areas are not determined to be permit-required confined spaces or to pose a health or safety risk to our personnel. Sampling will not include suspect LCP which cannot be safely reached by reasonable means.

## 9.4 Report

A Report will be prepared describing the sampling methodology and the results of the survey, the location of each material sampled, the analytical results, the condition of materials identified or assumed LCP. No drawings depicting sample locations or the location and extent of LCP, and no estimates of LCP removal costs will be provided under the scope of this proposal.

#### 9.5 Deliverables

FNI will submit a PDF-formatted copy of the Report.

#### 9.6 Site Access and Safety

Client shall secure all necessary site related approvals, permits, licenses, and consents necessary to commence and complete the Services and will execute any necessary site access agreement. Consultant will be responsible for supervision and site safety measures for its own employees but shall not be responsible for the supervision or health and safety precautions for any third parties, including Client's contractors, subcontractors, or other parties present at the site.

In addition, Consultant retains the right to stop work without penalty at any time Consultant believes it is in the best interests of Consultant's employees or subcontractors to do so to reduce the risk of exposure to the coronavirus. Client agrees it will respond quickly to all requests for information made by Consultant

related to Consultant's pre-task planning and risk assessment processes. Client acknowledges its responsibility for notifying Consultant of any circumstances that present a risk of exposure to the coronavirus or individuals who have tested positive for COVID-19 or are self-quarantining due to exhibiting symptoms associated with the coronavirus.

#### **ARTICLE III**

**Task 10. ADDITIONAL SERVICES:** Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by Client, are described as follows:

- 1. Geotechnical Investigations and Pavement Design.
- 2. Lead paint abatement inspection—It is assumed the existing bridge does not include lead coating of metal components.
- 3. GIS mapping services or assistance with these services.
- 4. Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Client.
- 5. Providing renderings, model and mock-ups requested by the Client.
- 6. Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction and providing services as may be required in connection with the replacement of such Work.
- 7. Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by Client.
- 8. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- 9. Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- 10. Preparing data and reports for assistance to Client in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- 11. Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- 12. Assisting Client in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- 13. Assisting Client in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- 14. Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- 15. Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.

- 16. Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this Agreement.
- 17. Services required to resolve bid protests or to rebid the projects for any reason.
- 18. Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract completion activities.
- 19. Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- 20. Providing services after the completion of the construction phase not specifically listed in Article II.
- 21. Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- 22. Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- 23. Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services Agreement.
- 24. Provide follow-up professional services during Contractor's warranty period.
- 25. Provide Geotechnical investigations, studies and reports.

#### ADDITIONAL ENVIRONMENTAL SERVICES

- 26. Preparation of an Individual Section 404 permit application for submittal to the USACE
- 27. Preparation of a mitigation plan or conducting functional assessments for streams or wetlands
- 28. Presence/absence surveys for federally listed threatened/endangered species
- 29. Phase I/II Environmental Site Assessment
- 30. Preparation of a Storm Water Pollution Prevention Plan (SWPPP)
- 31. Conducting an Archeological or Historic Resources Survey
- 32. Other environmental services not specifically defined in this scope of services

#### **ARTICLE IV**

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the schedule presented in Exhibit 1.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

# **ARTICLE V**

**RESPONSIBILITIES OF CLIENT:** Client shall perform the following in a timely manner so as not to delay the services of FNI:

A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs not caused by the negligent errors or omissions of FNI. Nothing in this

provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- H. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this Agreement or other services as required.
- J. Bear all costs incident to compliance with the requirements of this Article V.

# **ARTICLE VI**

# **DESIGNATED REPRESENTATIVES:** FNI and Client designate the following representatives:

# **Client's Designated Representative:**

Micah Siemers, PE, CFM Director of Engineering City of Bartlesville 401 S. Johnstone Ave. Bartlesville, OK 74003

Phone: 918-338-4256

E-mail: wmsiemers@cityofbartlesville.org

# FNI's Designated Representative:

David R. Cross, PE, CFM Project Manager Freese and Nichols, Inc. 4200 E Skelly Drive, Suite 410 Tulsa, OK 74135

Phone: 539-302-2706

E-mail: david.cross@freese.com

#### **COMPENSATION**

Compensation to FNI for Basic Services shall be the lump sum of One Hundred Forty-Six Thousand Sixty-Nine Dollars (\$146,069)

#### **BASIC SERVICES**

Task 1: Conceptual (30%) Design and Assessment Phase	\$ 29,729 Lump Sum
Task 2: Preliminary (60%) Submittal	\$ 51,375 Lump Sum
Task 3: Final Design Phase	\$ 56,917 Lump Sum
Task 4: Bid Phase	\$ 8,048 Lump Sum

BASIC SERVICES

\$146,069

Compensation to FNI for Special Services shall be computed on the basis of the following Schedule of Charges, but shall not exceed Sixty-Two Thousand Four Hundred Ninety-One Dollars (\$62,491)

# **SPECIAL SERVICES**

Task 5: Construction Phase		\$8,732 Cost Plus Max
Task 6: Survey		\$21,793 Lump Sum
Task 7: Environmental Permitting Evaluation		\$17,161 Cost Plus Max
Task 8: Hydrologic and Hydraulic Analysis		\$12,735 Cost Plus Max
Task 9: Lead-Based Paint Sampling and Testing	120	\$ 2,070 Lump Sum
Additional Services		By Amendment

SPECIAL SERVICES

\$62,491

PROJECT TOTAL

\$208,560

If the Scope of Services changes so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment A, Scope of Service, FNI will notify Client for Client's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

	Hourly Rat	<u>e</u>
Position	Min	Max
Professional 1	74	130
Professional 2	97	152
Professional 3	93	212
Professional 4	146	220
Professional 5	174	310
Professional 6	188	367
Construction Manager 1	92	119
Construction Manager 2	80	153
Construction Manager 3	117	144
Construction Manager 4	137	188
Construction Manager 5	170	237
Construction Manager 6	209	266
Construction Representative 1	75	77
Construction Representative 2	77	84
Construction Representative 3	88	141
Construction Representative 4	101	161
CAD Technician/Designer 1	61	128
CAD Technician/Designer 2	99	148
CAD Technician/Designer 3	130	188
Corporate Project Support 1	50	104
Corporate Project Support 2	66	165
Corporate Project Support 3	105	246
Intern / Coop	44	75

## Rates for In-House Services and Equipment

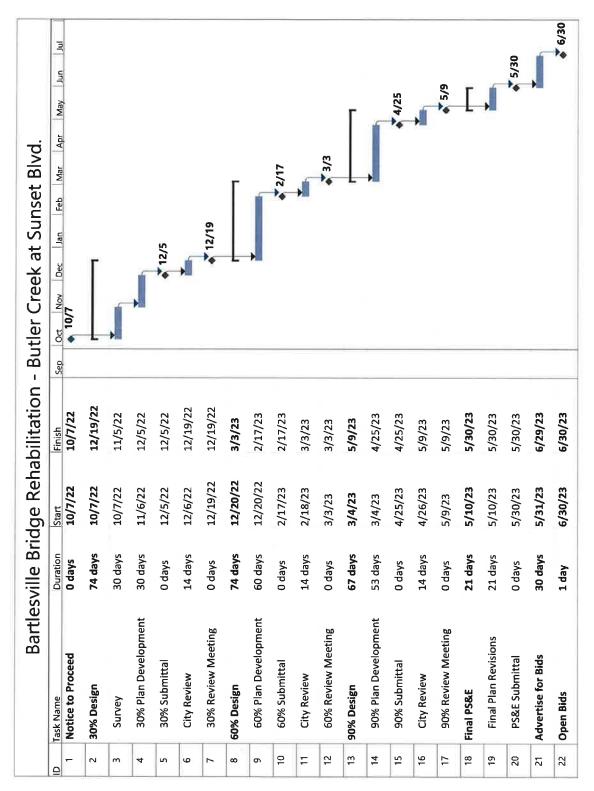
Mileage	<b>Bulk Printing and Reprodu</b>	ction		Equipment		
Standard IRS Rates		B&W	Color	Valve Crew Vehicle	(hour)	\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logg	ger (each)	\$200
Technology Charge	Large Format (per sq. ft.)			Water Quality Met	er (per day)	\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)		\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder	(per day)	\$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness	Guage (per day)	\$275
				Coating Inspection Kit (per day) Flushing / Cfactor (each)		\$275
	Mounting (per sq. ft.)	\$2.00				\$500
	Binding (per binding)	\$0.25		Backpack Electrofisher (each)		\$1,000
					Survey Grade	Standard
				Drone (per day)	\$200	\$100
				GPS (per day)	\$150	\$50

#### **OTHER DIRECT EXPENSES:**

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multipler of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed Inhouse by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2022. 310062022

Exhibit 1 - Project Schedule Bridge Rehabilitation: Butler Creek at Sunset Blvd.





Agenda Item 7.c.iv.
September 28, 2022
Prepared by Steve Roper
Engineering

# I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Approval of a professional service contract with Guy Engineering Services, Inc. for design services on the Tuxedo Boulevard Bridges over the Caney River and overflow/pond Rehabilitation and Repair project.

Attachments:

Contract

#### STAFF COMMENTS AND ANALYSIS

One of the priority projects included on the voter approved 2020 General Obligation Bond is the Tuxedo Boulevard over the Caney River and overflow/pond Bridges Rehabilitation and Repair project. The findings of the bridge inspection reports indicate need for rehabilitation of the bridges. The rehabilitations varied on each bridge, but include deck repair on the overflow/pond and eastbound Caney River Bridges and deck replacement on the westbound Caney River bridges, approach pavement replacement, pier protection, abutment repairs, bank stabilization, and guardrail improvements. The 2020 G.O. Bond allocated \$1,535,000 for the design and rehabilitation of the bridges.

In June, the City of Bartlesville sent Requests for Proposals to ten engineering firms. Three firms responded with responsive Statements of Qualifications. The Engineering Department reviewed the responses and selected Guy Engineering Services, Inc. (Guy) for the design of this project. After selection, Engineering met with representatives from Guy to delineate scope for the project and negotiate work to be included in the contract.

The proposed contract includes completing final plans and specifications to meet the recommendations of the inspection report. The proposed contract price for the work is \$175,415.00.

#### RECOMMENDED ACTION

Staff recommends approval of the professional service contract with Guy Engineering Services, Inc.

#### SERVICES AGREEMENT

	THIS SERVICES	S AGREEMENT (this	"Services /	Agreement" or	"Agreement") i	s entered into	effective as
of the _	day of	20_	(the "I	Effective Date"	) by and between	n GUY ENG	INEERING
<b>SERVIO</b>	CES, INC., an Okla	ahoma corporation ("C	Consultant"	and CITY OF	BARTLESVIL	LE ("Client"	).

#### WITNESSETH:

WHEREAS, Client requires the services of qualified personnel to develop and perform Services, as hereinafter defined;

WHEREAS, Consultant has experience in the business of furnishing professional services for a variety of projects;

WHEREAS, Client and Consultant desire to enter into an agreement for Consultant to perform certain services pursuant to the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the covenants, conditions and undertakings set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Client and Consultant agree as follows:

# SECTION 1 SERVICES TO BE PERFORMED

- 1.1 <u>The Services.</u> The services to be performed by Consultant under this Agreement (the "Services") are outlined in Exhibit B. Any proposed changes to the Services must be approved in writing by Consultant and Client before taking effect.
- 1.2 The Project and the Site. The Services are related to rehabilitation design of Bridges 5, 6 and 9 over Caney River and Caney River Overflow on Tuxedo Avenue (the "*Project*") which is, or is contemplated to be, situated at or near the City of Bartlesville (the "*Site*").

#### SECTION 2 SCHEDULE FOR SERVICES

Consultant shall use commercially reasonable efforts to perform the Services in accordance with the schedule included in Exhibit B (the "Schedule").

# SECTION 3 COMPENSATION FOR SERVICES

3.1 Fee. Client shall pay Consultant, and Consultant agrees to receive as payment for the Services, a lump sum fee in the amount of \$175,415 (the "Compensation"), to be invoiced monthly and paid within 30 days. Any proposed change in the Compensation must be approved in writing by Client and Consultant before taking effect.

# SECTION 4 CONTRACT DOCUMENTS

- 4.1 <u>Contract Documents</u>. Consultant and Client agree that the contract documents (the "Contract Documents") for the Project shall consist of, and the parties shall be bound by:
  - (a) This Agreement and all attachments and exhibits hereto, including, without limitation, the General Terms and Conditions set forth on **Exhibit A** hereto and all attachments and exhibits thereto (the "General Terms and Conditions"); and

Revision Date:
----------------

- (b) All drawings, specifications and all other technical and special terms and conditions and all other documents listed, or referred to, in the foregoing documents, if any (the "Technical Documents".
- 4.2 <u>Definitions; Interpretation</u>. All terms capitalized but not otherwise defined herein shall have the meanings set forth herein and in the General Terms and Conditions. The Contract Documents shall be interpreted together and in harmony with one another. In the event of any inconsistency or conflict between the Contract Documents, such conflict or inconsistency shall be resolved by reference to the Contract Documents in the following order of priority: *first*, the terms of the Agreement (including the General Terms and Conditions attached thereto as **Exhibit A**); and *second*, the Technical Documents.

# SECTION 5 STANDARDS

- Standard of Care; Warranties. Consultant warrants that the Services performed under this Agreement will (a) conform in all material respects to the requirements and specifications set forth in the Contract Documents, and (b) be performed in accordance with applicable Laws and Good Industry Standards. For purposes hereof, "Good Industry Standards" means generally accepted practices and standards of care and diligence normally practiced or approved by persons engaged in performing work similar to the Services. Consultant further agrees that if Client notifies Consultant in writing at any time up to the expiration of 12 months after the date of Consultant's completion of the Services that such Services do not conform in material respects to the foregoing warranties and standards of care, and specifies the nature of the nonconformance, and if the Services do not, in fact, so conform, Consultant will diligently re-perform, at its sole expense, the Services to the extent necessary to make them conform. Notwithstanding the foregoing, Consultant does not warrant or guarantee that any design, engineering, specifications, equipment and/or materials supplied by entities other than Consultant or its subcontractors will produce any intended result or achieve any intended purpose. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS AGREEMENT, CONSULTANT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHETHER ARISING FROM STATE, FEDERAL OR LOCAL STATUTE OR REGULATION, OR COMMON-LAW, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FINANCABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES ARISING FROM COURSE OF DEALING AND/OR USAGE OF TRADE. THE RE-PERFORMANCE OBLIGATIONS STATED IN THIS SECTION SHALL BE CLIENT'S SOLE AND EXCLUSIVE REMEDY FOR ALL LIABILITY OF CONSULTANT ARISING FROM OR RELATED TO NON-CONFORMING OR DEFECTIVE WORK.
- 5.2 <u>Compliance with Laws</u>. Consultant agrees that the Services, and its performance thereof, shall conform with all applicable Laws.

# SECTION 6 PERSONNEL

Consultant agrees that it shall provide and assign experienced personnel, as applicable, in sufficient numbers to support and adequately staff and perform the Services and fulfill Consultant's obligations under the Contract Documents. Consultant shall promptly designate in writing to Client an individual to act as a representative authorized to act on behalf of Consultant with respect to the Project (the "Consultant's Representative"). Consultant may change its Consultant's Representative at any time upon giving written notice of such change to Client.

# SECTION 7 INSURANCE

- 7.1 Required Insurance Coverages. During the performance of the Services under this Agreement, the Consultant shall keep and carry in force policies of insurance in the minimum amount as set forth herein or as required by the laws of the State of Oklahoma, whichever is greater.
  - General Liability Insurance with bodily injury limits of not less than \$1,000,000 for each occurrence and not less than \$1,000,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.

- Automobile Liability Insurance with bodily injury limits of not less than \$1,000,000 for each person
  and not less than \$1,000,000 for each accident and with property damage limits of not less than
  \$100,000 for each accident.
- Worker's Compensation Insurance in accordance with statutory requirements and Employer's Liability Insurance with limits of not less than \$100,000 for each occurrence.
- Professional Liability Insurance with limits of not less than \$500,000 with prior acts endorsement for the insurance to remain in effect for a minimum of two years after acceptance of the Project by the Client.
- 7.2 <u>Additional Insurance Provisions</u>. All insurance maintained by Consultant or any subcontractor in accordance with the terms hereof shall comply with the following:
  - Deductible levels for all required insurance will be commercially reasonable. Consultant shall be solely responsible for the payment of all deductibles (including, without limitation, deductibles for builder's risk policies carried by Consultant or Client) and all self-insured retention amounts retained by Consultant.
  - To the extent of Consultant's indemnification obligations pursuant to Article 7 of Exhibit A to the Agreement, all required insurance policies shall be endorsed to provide that they are primary without right of contribution from Client or any insurance otherwise maintained by Client, and not in excess of any insurance issued to Client.
  - The policies required by the Contract Documents (except worker's compensation and professional liability insurance policies) shall list the following as additional insureds to the extent of Consultant's indemnification obligations pursuant to <u>Article 7</u> of <u>Exhibit A</u> to the Agreement:
    - (a) Client and "all Client affiliated companies"; and
    - (b) All Indemnitees as defined in Exhibit A to the Agreement.
  - Except where prohibited by Law and only to the extent of Consultant's indemnification obligations pursuant to Article 7 of Exhibit A to the Agreement, Consultant waives all rights of subrogation, and Consultant shall cause each insurer, to waive their rights of subrogation as to Client and its respective contractors, consultants, agents and employees.
  - Without limiting the foregoing, Consultant's insurance obligations hereunder may be satisfied in whole or in part by adequately funded self-insurance programs or self-insurance retentions.
  - Unless otherwise agreed in writing by the parties hereto, should any of the work under the Contract Documents be subcontracted, Consultant shall require each of its subcontractors of any tier to carry the aforementioned coverages, or Consultant may insure subcontractors under its own policies.
  - Upon Client's request, Consultant shall provide certificates of insurance certifying that all coverages
    and terms required herein have been obtained. Said certificates shall further provide that said
    insurance will not be cancelled by the insurer without the insurer first giving the Client 30 days'
    written notice of cancellation.
  - Consultant shall provide Client at least 30 days' prior written notice of any cancellation of, non-renewal, or material change as may adversely affect any insurance policy or coverage in force.
  - All coverages shall be issued by insurance companies selected by Consultant and authorized to do
    business in the state in which the Services are to be performed, of recognized good standing and

hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of financial stability that is otherwise approved by Client.

#### **SECTION 8 NOTICES**

All notices, Claims, demands, and other communications of similar import to be given by any party to this Agreement or to any other party hereto shall be in writing, and shall be given by personal delivery, electronic mail (but only if the intended recipient confirms in writing receipt of such electronic mail), receipted delivery service or by registered or certified mail, first class postage prepaid, return receipt requested, and shall be delivered or addressed as follows:

#### To Client at:

City of Bartlesville Attn: Micah Siemers 401 S. Johnstone Ave. Bartlesville, OK 74003 Phone: (918) 338-4256

E-mail: wmsiemers@cityofbartlesville.org

#### To Consultant at:

Guy Engineering Services, Inc. Attn: Rebecca Alvarez 6910 East 14th Street Tulsa, Oklahoma 74112 Phone: (918) 437-0282

E-mail: rebecca@guyengr.com

The above addresses may be changed by giving written notice of such change to the other party. All notices or communications shall be deemed given when actually received or refused at the intended address.

# **SECTION 9 CONFLICTS OF INTEREST**

Neither party will pay any commission, fee or rebate to an employee of the other party, or favor an employee of the other party with any gift or entertainment of significant value in connection with the Contract Documents.

# **SECTION 10** REPRESENTATIONS AND WARRANTIES

- 10.1 Consultant Representations and Warranties. Consultant represents and warrants to Client that:
- Consultant has the full right, power and authority to enter into this Agreement, to grant the rights granted herein, and to perform fully all of its obligations in this Agreement;
- Consultant's execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or other entity action; and
- Consultant entering into this Agreement with Client and its performance of the Services does not and will not conflict with or result in any breach or default under any other agreement to which Consultant is subject.
- 10.2 Client Representations and Warranties. Client hereby represents and warrants to Consultant that:

- (a) Client has the full right, power and authority to enter into this Agreement and to perform its obligations hereunder;
- (b) Client's execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary corporate or other entity action; and
- (c) Client entering into this Agreement with Consultant and its performance of the Services does not and will not conflict with or result in any breach or default under any other agreement to which Client is subject.

WHEREFORE the parties have entered into this Services Agreement as of the Effective Date.

By: By: By: President  Name: Rebecca Alvarez (Print)  Date: September 27, 2022	CLIENT:	CONSULTANT:		
Title: President  Name: Rebecca Alvarez (Print) (Print)  Sontember 27, 2022	CITY OF BARTLESVILLE	GUY ENGINEERING SERVICES, INC	<u>C.</u>	
Name: Rebecca Alvarez (Print) (Print)  Sontomber 27, 2022	Ву:	By: Julieur -	2	
(Print) (Print)	Title:	Title: President		
Date: September 27, 2022		-	<u>z</u>	
	Date:	Date: September 27, 202	2	

# EXHIBIT A TO SERVICES AGREEMENT

#### General Terms and Conditions

#### 1. DEFINITIONS AND CONSULTANT SERVICES.

- 1.1 <u>Definitions</u>. The capitalized terms set forth below shall have the following meanings in this **Exhibit** A and in the Services Agreement to which this **Exhibit** A is attached:
  - "Affiliate" means, with respect to a party, any entity that is a direct or indirect parent or subsidiary of such party or that directly or indirectly (i) owns or controls such party, (ii) is owned or controlled by such party, or (iii) is under common ownership or control with such party. For purposes of this definition, "control" shall mean the power to direct the management or policies of such entity, whether through the ownership of voting securities, by contract, or otherwise. Control of fifty percent (50%) or more of the voting securities of a corporation, either directly or indirectly, shall constitute control of such corporation, but the foregoing shall not preclude a finding that a party may control another corporation through ownership of less than fifty percent (50%) of such voting securities.
  - "Agreement" or "Services Agreement" means that certain Services Agreement between Client and Consultant to which these General Terms and Conditions are attached and of which they are a part.
  - "Claims" means any and all claims, demands, suits, causes of action, legal or administrative proceedings, liabilities, losses, costs or expenses (including, without limitation, court costs, experts' fees and attorneys' fees).
    - "Client" means the entity identified as Client in the preamble to the Agreement.
  - "Client's Representative" means the person designated by Client and authorized to act on behalf of Client with respect to the Services, subject to the limitations in <u>Section 2.2</u> of these General Terms and Conditions, and with whom Consultant may consult at all reasonable times during Consultant's performance of the Services.
  - "Compensation" has the meaning set forth in Section 3 ("Compensation for Services") of the Agreement.
  - "Confidential Information" has the meaning set forth in Section 15 of these General Terms and Conditions.
    - "Consultant" means the entity identified as Consultant in the preamble to the Agreement.
  - "Consultant's Representative" has the meaning set forth in Section 6 ("Personnel") of the Agreement.
  - "Contract Documents" has the meaning set forth in Section 4 ("Contract Documents") of the Agreement.
    - "Deliverables" has the meaning set forth in Section 13 of these General Terms and Conditions.
    - "Effective Date" has the meaning set forth in the preamble to the Agreement.

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"Force Majeure" means any of the following causes to the extent such cause was neither foreseen nor reasonably foreseeable and is beyond the reasonable control of the party affected thereby: acts of war or the public enemy, whether war be declared or not, including terrorism; public disorder, epidemics, insurrection, rebellion, sabotage, riots or violent demonstrations; earthquakes, hurricanes, tornadoes, hail storms, torrents, floods, unusually severe weather or other natural calamities, disasters or acts of God; fire or explosion; strikes, lockouts or other industrial action by workers or employees of Client or of third parties not under the contractual control and supervision of Consultant; acts of the government of the United States, the individual states, county or local governments and regulatory agencies, or acts of any foreign country.

"General Terms and Conditions" means the terms and conditions of this Exhibit A to the Agreement.

"Governmental Authorizations" means all permits, consents, decisions, qualifications, licenses, privileges, approvals, certificates, certifications, confirmations or exemptions from, and all filings with, and notice to, any Governmental Authority.

"Governmental Authority" means any federal, state, county, municipal or foreign government in any jurisdiction having authority over Client, Consultant, the Services, the Project, or the Project site, or any ministry, department, court, commission, board, agency, institution, or similar entity under the direct control thereof.

"Indemnitee" or "Indemnitees" means, with respect to an indemnified party under Section 7.1 of these General Terms and Conditions, any Affiliate of such indemnified party, including without limitation, the directors, officers, managers, members, limited or general partners, shareholders or employees of such indemnified party.

"Law" in the singular, and "Laws" in the plural, means any of the following to the extent applicable to the Contract Documents or the Services: (a) any statute, law, rule, regulation, code, ordinance, judgment, decree, writ, order, concession, grant, franchise, license, agreement, directive, guideline, policy, requirement, or other governmental restriction or any binding interpretation or administration of any of the foregoing by any Government Authority whether now or hereafter in effect, or (b) any requirements or conditions on or with respect to the issuance, maintenance or renewal of any Government Authorization or applications therefor, whether now or hereafter in effect.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Project" means the project defined and identified in <u>Section 1</u> ("Services to be Performed") of the Agreement.

"Reimbursable Expenditures" has the meaning set forth in Section 3 ("Compensation for Services") of the Agreement.

"Schedule" has the meaning set forth in Section 2 ("Schedule for Services") of the Agreement.

"Services" has the meaning set forth in Section 1 ("Services to be Performed") of the Agreement.

"Site" has the meaning set forth in Section 1 ("Services to be Performed") of the Agreement.

"Technical Documents" has the meaning set forth in Section 4 ("Contract Documents") of the Agreement.

#### 1.2 Terminology; Interpretations.

(a) Unless the context otherwise expressly requires, the word "law," whether capitalized or not, has the meaning set forth in Section 1.1 above, the words "consultant," "contractor" and "subcontractor"

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mean any consultant, contractor, subcontractor, supplier, vendor or other person of any tier, as applicable, providing or performing any portion of the Services by, through or under Consultant; the words "herein," "hereto," "hereunder," and other words of similar import refer to the Contract Documents as a whole and not to a particular article or portion thereof; and the word "including" means "including, but not limited to"; the defined phrase "Client" includes any authorized representative of Client; and words which have well-known technical or industry meanings are used in the Contract Documents in accordance with such recognized meanings. References herein to "days" are calendar days unless otherwise stated.

(b) Whenever the context may require, any pronoun used shall include the corresponding masculine, feminine, or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa. A reference to legislation or to a provision of legislation includes a modification or reenactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it. Client and Consultant have participated jointly in the negotiation and drafting of the Contract Documents. In the event an ambiguity or question of intent or interpretation arises, the Contract Documents shall be construed as if drafted jointly by Client and Consultant and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of the Contract Documents.

#### 2. THE CLIENT'S RESPONSIBILITIES.

With respect to any Services under this Agreement:

- 2.1 Client shall furnish, without expense to Consultant and on a timely basis, the data and information reasonably required by Consultant to provide the Services. In performing the Services, Consultant shall be entitled to rely upon the sufficiency, accuracy, and completeness of such data and information furnished by or on behalf of Client and Consultant assumes no responsibility as to the sufficiency, accuracy, and completeness of such data and information.
- 2.2 Client shall promptly designate in writing to Consultant a representative authorized to act on Client's behalf with respect to the Services (the "Client's Representative"), with whom Consultant may consult with at all reasonable times, and whose instructions, approvals, requests and decisions shall be binding upon Client as to all matters pertaining to the Contract Documents and the performance of Client under the Contract Documents (unless Client notifies Consultant, in writing, that the authority of Client's Representative is limited in any manner). Client may change Client's Representative at any time by written notice to Consultant.
- 2.3 Client shall provide prompt written notice to Consultant if Client becomes aware of any fault or defect in the Consultant's provision of the Services.
- 2.4 Client shall furnish information or services to the extent that any such information or service is reasonably required by Consultant or necessary for Consultant to perform the Services.

#### 3. MODIFICATION.

Supplementals. Services not expressly set forth in the Contract Documents are excluded from the scope of the Services. If any new or different requirement, condition, change or anything beyond Consultant's control alters the scope of the Services or otherwise affects the Consultant's costs or schedule to perform the Services, and is the result of (i) any act or omission by Client, (ii) a change in the Services requested by Client, (iii) any change of Law that requires re-performance of Services already completed or becomes applicable to the Services after the parties' execution of the Contract Documents, or (iv) a Force Majeure Event; then Consultant shall be entitled to additional time and compensation in order to complete the Services as mutually agreed upon by the parties in a written change order. Promptly after Consultant becomes aware of facts or circumstances which it believes will cause or constitute a change in the Services, Consultant shall send Client a written notice describing why it believes a change in the Services is necessary and proposing additional time and compensation for such change. If Client and Consultant are unable to reach agreement with respect to whether a change in the Services has occurred or is needed, or as to additional time or compensation needed to complete the Services after a change, within 15 days after the date of Consultant's notice to Client, then Consultant shall not proceed with the change until the matter is resolved as provided

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in <u>Section 10</u> below; provided however, if Client directs Consultant to begin performing the changed Services during the 15-day period, Consultant shall be entitled to reasonable compensation for changed Services performed during said period.

3.2 <u>Differing Site Conditions</u>. Consultant shall be entitled to an equitable adjustment to the Schedule and Consultant's Compensation for conditions that vary from information provided to Consultant in connection with the development of Consultant's pricing or the scope of Services. Such varying conditions may include without limitation, subsurface and latent physical conditions at the site, archeological finds of historical or cultural significance, protected or endangered species of plants and animals, or other conditions that may preclude Consultant from proceeding with the Services for reasons of health, safety, or legal restriction. Without waiving its rights hereunder, Consultant agrees to notify Client of such conditions within a reasonable time after discovery, whereupon Client will promptly investigate the same and issue appropriate orders or instructions to Consultant.

#### 4. COMPENSATION AND PAYMENT.

- 4.1 <u>Compensation</u>. Client shall pay the Compensation to Consultant.
- 4.2 Payment. Consultant shall send an invoice(s) to Client with documentation reasonably satisfactory to Client setting forth hours worked (unless this is a fixed fee Agreement) and/or Reimbursable Expenditures incurred during the applicable period and any other supporting documentation reasonably requested by Client. Unless otherwise required by Law, all undisputed invoices, less any amounts properly withheld by Client under the Contract Documents, shall be due and payable to Consultant within 30 days after the date Client receives the invoice. If Client fails to pay undisputed invoiced amounts within said 30-day period, Consultant may, in addition to any other rights available under this Agreement, by law or in equity, require the payment of interest at the lower of 12% per annum or the maximum rate allowed by law, on all such unpaid amounts. All payments shall be made in US Dollars.

#### 5. SCHEDULE.

- 5.1 <u>Time for Performance</u>. Consultant shall perform the Services diligently and shall make commercially reasonable efforts to perform the Services in accordance with the Schedule and in such manner so as to not delay the progress of the Project.
- 5.2 Force Majeure. Neither Client nor Consultant shall be liable for any delay or failure in the keeping or performance of its obligations under the Contract Documents during the time and to the extent that any such failure arises by reason of Force Majeure. Upon the occurrence of an event of Force Majeure the party affected thereby shall promptly give written notice (setting forth full particulars) to the other party and shall resume the keeping and performance of the respective obligation after the cause of Force Majeure has come to an end. If an event of Force Majeure occurs and continues for a period of 15 days from the date of occurrence of such Force Majeure event, the parties shall meet and make reasonable efforts to resolve the problem. During the existence of a Force Majeure event each party shall bear its own costs resulting therefrom.

#### 6. CONSULTANT PERSONNEL AND SUBCONTRACTORS.

Consultant may utilize subcontractors in connection with its performance of the Services in its discretion. Consultant shall be liable for the performance of Services rendered hereunder by any subcontractors utilized by Consultant.

# 7. INDEMNIFICATION; LIMITATIONS OF LIABILITY.

7.1 <u>Indemnity</u>. Consultant agrees to indemnify, defend, and hold harmless Client and its Indemnitees from and against any and all Claims based upon, in connection with, relating to or arising out of negligent actions or inactions or willful misconduct in connection with performance of the Services by Consultant or its employees, agents or subcontractors. Client agrees to indemnify, defend, and hold harmless Consultant and its Indemnitees from and against any and all Claims based upon, in connection with, relating to or arising out of negligent actions or inactions or willful misconduct in connection with the Services or the Project by Client or its employees, agents or subcontractors (other than Consultant).

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- 7.2 General. The obligations for indemnification herein required are severable. The unenforceability of any portion of the obligation for indemnification hereunder due to the effect of any Law, court decision, or any other reason, shall not nullify, reduce or limit other obligations set forth herein, and all other obligations arising under this Section shall remain in full force and effect.
- 7.3 Notice. The indemnified party shall promptly notify the indemnifying party in writing of any Claims for which the indemnifying party may be responsible under Section 7.1.
- 7.4 <u>Defense of Claims</u>. The indemnifying party under <u>Section 7.1</u>, as applicable, shall provide competent counsel reasonably acceptable to the indemnified party, to defend the indemnified party pursuant to the obligations of the indemnifying party described in <u>Section 7.1</u> within two weeks of notice by the indemnified party; provided, however, that the indemnified party, on behalf of itself and its Indemnitees, shall have the right to be represented in the defense of any suit or proceeding covered by this <u>Section 7</u> (including investigation and resolution) by counsel of its own choice at the indemnified party's expense, in addition to counsel provided by the indemnifying party.
- NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY NOR ITS RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS, MEMBERS, MANAGERS, PARTNERS, AFFILIATES, EMPLOYEES, AGENTS OR SUBCONTRACTORS OF ANY TIER SHALL BE LIABLE TO THE OTHER PARTY OR ITS AFFILIATES OR INDEMNITEES, AND EACH PARTY WAIVES ALL CLAIMS, PAST, PRESENT, AND FUTURE, AGAINST THE SAME, FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, WHETHER OR NOT FORESEEABLE, IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE SERVICES OR THE CONTRACT DOCUMENTS, WHETHER BASED ON BREACH OF CONTRACT OR WARRANTY, THE FAILURE OF ANY REMEDY HEREUNDER FOR WANT OF ITS ESSENTIAL PURPOSE, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHER BASIS OF LIABILITY. SUCH DAMAGES INCLUDE BUT ARE NOT LIMITED TO LOSS OF PROFITS, REVENUE, INTEREST, OPPORTUNITY, GOODWILL, COST OF CAPITAL, OR DIMINUTION OF VALUE, FINANCING COSTS OR CLAIMS OF CUSTOMERS.
- 7.6 Limitation of Liability. THE TOTAL CUMULATIVE, AGGREGATE LIABILITY OF CONSULTANT, ITS SUBSIDIARIES, AFFILIATES, SHAREHOLDERS, DIRECTORS, PARTNERS, OFFICERS, EMPLOYEES AND AGENTS, SUBCONTRACTORS AND VENDORS OF ANY TIER TO CLIENT FOR ALL CLAIMS, LOSSES, LIABILITIES, DAMAGES, COSTS AND EXPENSES ARISING OUT OR RELATING IN ANY WAY TO THE SERVICES PERFORMED UNDER THE AGREEMENT SHALL NOT BE GREATER THAN THE COMPENSATION RECEIVED BY CONSULTANT FROM CLIENT FOR WORK PERFORMED UNDER THE AGREEMENT; PROVIDED, THAT WITH RESPECT TO CLAIMS PERTAINING TO PERSONAL INJURY, DEATH OR PROPERTY DAMAGE FOR WHICH CONSULTANT IS REQUIRED TO INDEMNIFY CLIENT OR ITS INDEMNITEES UNDER SECTION 7.1 ABOVE AND TO THE EXTENT ANY INSURANCE COVERAGE OF CONSULTANT PROVIDES COVERAGE PAYABLE TO CLIENT OR ITS INDEMNITEES AS AN ADDITIONAL INSURED UNDER THE POLICIES REQUIRED TO BE OBTAINED AND MAINTAINED BY CONSULTANT PURSUANT TO THIS AGREEMENT, THE ABOVE CAP ON LIABILITY SHALL BE DEEMED INCREASED TO THE AMOUNT OF SAID COVERAGE WITH RESPECT TO THE COVERED CLAIMS OR LIABILITIES.

#### 8. LIENS.

Consultant agrees not to allow liens to be placed on the Project or Client property for Claims of nonpayment by Consultant or its subcontractors to the extent Consultant has received timely payment from Client as required by the Contract Documents. Provided Consultant has received timely payment from Client as required by the Contract Documents, Consultant shall pay promptly all amounts due for all materials, labor, service and equipment used in or in connection with the performance of the Services, including those of its subcontractors, when bills or Claims become due. Consultant shall within 10 days after discovery or notification from Client or any other party, discharge or bond around any lien filed or Claim asserted against the Project, materials, facility or property of Client by any of Consultant's subcontractors, suppliers or vendors hired in conjunction with the Services to the extent Consultant has received timely payment from Client as required by the Contract Documents. If Consultant fails to discharge or bond

around any such lien or Claim within 10 days after such discovery or notification, then Client may discharge such lien or claim and withhold all costs incurred by Client to discharge such lien or Claim from any amounts owed by Client to Consultant. If Client cannot withhold the amount owed, Client shall invoice Consultant therefor and Consultant shall pay the same to Client within 10 days after the receipt of such invoice.

#### 9. TERMINATION.

- Insolvency; Default. A party may terminate the Agreement effective immediately upon giving written notice of termination to the other party, (i) if any proceeding is instituted against such other party seeking to adjudicate such other party as a bankrupt or insolvent and such proceeding is not dismissed within 30 days of filing, or (ii) if such other party makes a general assignment for the benefit of its creditors, or (iii) if a receiver is appointed on account of the insolvency of such other party, or (iv) if such other party files a petition seeking to take advantage of any other Law relating to bankruptcy, insolvency, reorganization, winding up or composition or readjustment of debts, or (v) if, in the reasonable judgment of one party, such other party is unable to pay its debts when due or as they mature. Furthermore, if a party (the "Breaching Party") fails to observe or perform any of its covenants or agreements contained in the Contract Documents and then fails to correct such condition within 15 days of receiving written notice from the other party (the "Non-breaching Party"), the Non-breaching Party may pursue any or all available rights and remedies available under the Contract Documents or Law and may, without prejudice to any other right or remedy, terminate the Agreement effective immediately upon giving written notice of such termination to the Breaching Party.
- Suspension. Client may, by written notice to Consultant, suspend the Services. Consultant shall, upon receipt of such written notice from Client, suspend the Services or any part thereof and place no further order or subcontracts relating thereto for such time and in such manner as Client may require. If the Services are suspended by Client for reasons other than Consultant's breach or non-performance, Client shall pay Consultant for all Services in progress or performed to the date of termination or suspension, and for all third party suspension or cancellation fees payable by Consultant, if any, plus any of Consultant's demobilization costs and stand-by costs, within 30 days after its receipt of Consultant's invoice therefor. When Services are resumed, Client shall reasonably adjust the Schedule and reasonably compensate Consultant for the cost of remobilization, including increased costs to perform the Services. If a suspension (or the aggregate length of multiple suspensions) exceeds 60 days in the aggregate, Consultant will be entitled to treat such suspension as a termination for Client's convenience and proceed accordingly under Section 9.4 below.
- 9.3 Force Majeure. If a Force Majeure event continues for a period in excess of 30 days from the date of occurrence of such event, either party may terminate the Agreement effective immediately upon giving written notice.
- 9.4 <u>Termination for Convenience</u>. Client may for its convenience, with or without cause, including Force Majeure, terminate the Agreement at any time by 10 days' prior written notice to Consultant. Upon receipt of such notice, Consultant shall, unless the notice otherwise directs:
  - (a) stop all work and place no further orders or subcontracts for the Services; and
  - (b) terminate work orders, purchase orders and subcontracts outstanding.

Upon any such termination for convenience by Client, Client shall pay Consultant for all Services in progress or performed to the effective date of termination or suspension, and third party suspension or cancellation fees payable by Consultant, if any, plus Consultant's demobilization costs and stand-by costs and any other costs incurred as a result of such termination for convenience, within 30 days after its receipt of Consultant's invoice therefor which shall include supporting documentation.

9.5 <u>Effect of Termination</u>. Any termination of the Agreement shall not affect or impair the right of a party to commence legal proceedings for a breach of the Agreement related to actions or inactions occurring prior to or in connection with such termination.

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#### 10. RESOLUTION BY PARTIES.

- 10.1 First Attempt. If a dispute arises under the Contract Documents between the parties, the parties shall attempt in good faith to settle such dispute by mutual discussions within 30 days after the date that a party gives written notice of the dispute to the other party in sufficient detail for the recipient to understand the provider's position; provided, however, that if the dispute involves the amount of an invoice and after 10 days of mutual discussion either party believes in good faith that further discussion will fail to resolve the dispute to its satisfaction, such party may immediately refer the matter to the executive officers of the parties for consideration pursuant to Section 10.2.
- 10.2 <u>Executive Officers</u>. If the dispute is not resolved in accordance with <u>Section 10.1</u>, either party may refer the dispute to executive officers of the respective parties for further consideration. If such individuals are unable to reach agreement within 15 days, or such longer period as they may agree, then either party may pursue such further action as it deems necessary, subject to the provisions of <u>Section 17.2</u> below.
- 10.3 <u>Confidentiality</u>. All discussions conducted pursuant to this <u>Section 10</u> are confidential and shall be treated as compromise and settlement negotiations under the United States Federal Rules of Evidence and applicable state rules of evidence.

#### 11. TAXES.

Unless otherwise required by Law, Client is responsible for and shall pay all sales, use, excise, and other taxes, charges, or contributions with respect to or imposed on any Services performed by Consultant under the Contract Documents, excluding taxes or contributions imposed on the wages, salaries or other payments to persons employed by Consultant in the performance of the Services and taxes on Consultant's net income. Consultant will not charge or collect applicable sales and use taxes as part of the Compensation payable under the Agreement or otherwise if Client and the sale of any Services pursuant to the Agreement are exempt; provided that Client shall provide Consultant with an exemption certificate for the applicable jurisdiction.

#### 12. REQUISITE LICENSURE AND QUALIFICATIONS.

Consultant and all of the subcontractors, entities and individuals acting on Consultant's behalf in connection with the Services shall, prior to commencing Services and at all times during the term of the Agreement, obtain, possess and maintain in good standing, all Governmental Authorizations or other credentials as required by any Governmental Authority and in accordance with all Laws to perform the Services. In the event the results of the Services performed by Consultant in connection therewith is required to be inspected by any Governmental Authority or by Law, Consultant shall (i) give Client timely written notice of the date fixed for such inspection, and (ii) secure all required certificates of inspection and provide copies to Client.

# 13. OWNERSHIP AND USE OF WORK PRODUCT.

Consultant and Client agree that the Services and deliverables resulting from such Services to be produced by Consultant and its personnel and employees and delivered to Client pursuant to the Contract Documents (the "Deliverables") shall be considered a work made for hire and shall be owned by Client upon Consultant's receipt of full payment therefor. Consultant further hereby acknowledges that it will inform its employees, agents and representatives that any Deliverables produced by them pursuant to this Agreement shall be considered a work made for hire and will be owned exclusively by Client upon Consultant's receipt of full payment therefor. Consultant may retain copies of work product for its records, but may not in any way use, show or distribute Client's designs, sketches. working drawings or other information to others without written consent from Client. Notwithstanding the preceding portions of this Section, nothing contained in this Section shall be construed as limiting or depriving Consultant of its right to use its basic knowledge and skill to design or carry out other projects or work for itself or others, whether or not such projects are similar to the work to be performed under this Agreement and Client shall not acquire any rights to any of Consultant's or any subcontractors' proprietary computer software or preexisting intellectual property that may be used in connection with the Services or included in the Deliverables. The Deliverables are not intended or represented to be suitable for reuse by Client or others or for additions, modifications, or renovations on the Project or for any other projects. Any such reuse of the Deliverables without written verification by Consultant for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Consultant. If software is

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intended or expected to be developed under this Agreement, Consultant may require that a software license agreement acceptable to Consultant be executed. All proprietary information, software and processes of Consultant shall remain property of the Consultant. All proprietary information, software and processes of Consultant and any intellectual property of Consultant in existence prior to the parties' execution of the Agreement or developed by Consultant wholly independent of any Services performed pursuant to the Agreement shall be and remain Consultant's sole property.

Client agrees to waive any Claim against Consultant and shall indemnify, defend, and hold harmless Consultant and its Indemnitees from all Claims, damages, losses and expenses, including attorney's fees, arising out of or resulting from the use by Client or any third party by or under the direction of or with the permission of Client of the Deliverables delivered by Consultant to Client pursuant to the Contract Documents other than for the purposes of the Project or as otherwise specifically authorized in writing by Consultant, whether arising in contract, tort (including the negligence of Consultant) or otherwise.

Client shall not, and Client shall not permit Client's other contractors to, change or modify any data or drawings supplied by Consultant to Client in electronic format. Client shall defend, indemnify and hold Consultant and its officers, directors and employees harmless from any loss, expense, Claim, liability, or cause of action arising out of the change to or modification of Consultant's engineering data or drawings. If Consultant for any reason is not allowed to complete the Services, Consultant shall not be held responsible for the accuracy, completeness, or constructability of the Services performed by Consultant or of the Project to the extent it relies on the Consultant's Services.

# 14. BOOKS AND RECORDS; AUDIT RIGHTS.

Consultant shall keep accurate books and records for all Services performed including, without limitation, invoices, receipts, cost information and other supporting documentation as shall readily disclose the basis for and substantiate any charges or credits billed to Client by Consultant or due from Client to Consultant for Services performed on a time and materials, hourly and/or reimbursable basis. Consultant shall make such books and records available for examination, audit, and reproduction by Client for purposes of determining compliance with the terms of the Contract Documents upon Client's request. Such books and records shall be maintained by Consultant and made available to Client for such examination, audit and reproduction at all reasonable times and upon at least 72 hours prior written notice during regular business hours for 36 months after completion or termination of the Services. Any examination or audit shall be performed by Client or on behalf of Client by an Affiliate of Client or a certified public accountant selected by Client.

#### 15. CONFIDENTIALITY.

As used below in this Section, "Disclosing Party" means the party furnishing or disclosing Confidential Information to the other party or whose Confidential Information is obtained by the other party as described in clauses (i) and (ii) below, and "Receiving Party" is the party receiving or obtaining the Disclosing Party's Confidential Information as described below. The Receiving Party agrees that it will keep confidential the terms of the Contract Documents and any information regarding the Disclosing Party's or its Affiliates' operations, facilities, business, business plans, and assets, including but not limited to, plans, designs, drawings, specifications, estimates, field notes. studies, reports, tests, lab results, processes, customer, prospective customer and vendor lists or databases, proposals, data or other confidential or proprietary information (collectively referred to herein as "Confidential Information") which is either: (i) furnished to the Receiving Party by the Disclosing Party or (ii) is obtained by the Receiving Party as a result of the Contract Documents or the Receiving Party's access to the Disclosing Party's facilities. All Confidential Information shall be and remain the property of the Disclosing Party. The Receiving Party agrees not to disclose such Confidential Information to any third parties, and the Receiving Party agrees to use such items and information only in the performance of the Contract Documents for the benefit of the Disclosing Party or, in Client's case, in connection with its receipt, inspection and/or use of the Services and not otherwise without the Disclosing Party's prior written consent (provided, however, that with respect to Client, Client's obligations under this Section shall not apply to any information which is or becomes Client's property pursuant to the terms of Section 13 above in this Exhibit A or limit or affect the rights of Client granted therein). The Receiving Party may disclose Confidential Information to any of its directors, officers, employees, agents, distributors, subcontractors, consultants or advisors (collectively, "Representatives") who are acting on Receiving Party's behalf in connection with the performance of the Contract Documents on a need to know basis. The Receiving Party shall, prior to any such disclosure, inform its

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Representatives of the terms of this Section, including the confidential nature of the Confidential Information and legally require them to comply herewith. The Receiving Party shall be responsible for any breach of this Section by any of its Representatives, which shall be considered a breach by the Receiving Party. Upon completion or termination of the Agreement, or sooner if requested by the Disclosing Party, the Receiving Party shall return all such Confidential Information to the Disclosing Party or make such other disposition thereof as directed or approved by the Disclosing Party (again, however, subject to Client's rights under Section 13 above). This provision shall be inoperative as to such portions of the information that: (a) at the time of disclosure to the Receiving Party is or thereafter becomes generally available to the public other than as a result of a disclosure by Receiving Party or any of its Representatives or any third party acting in concert with any of them; (b) becomes available to the Receiving Party on a nonconfidential basis from a source other than the Disclosing Party, provided that such source is not bound by a confidentiality agreement with the Disclosing Party or otherwise prohibited from transmitting the information to the Receiving Party by a contractual, legal or fiduciary obligation; (c) were known to the Receiving Party on a nonconfidential basis prior to their disclosure to the Receiving Party by the Disclosing Party as shown by the Receiving Party's prior written records; or (d) is required to be disclosed by law or competent authority of any Governmental Authority in the opinion of the Receiving Party's legal counsel (in which case the Receiving Party shall give notice to Disclosing Party and cooperate with the Disclosing Party's efforts to prevent such disclosure and the Receiving Party shall disclose only that portion of the affected Confidential Information which is required to be disclosed in the opinion of its legal counsel).

#### 16. ACCEPTANCE OF SERVICES.

When all Services to be performed pursuant to the Agreement are completed, Consultant shall so notify Client and Client shall have the right to a final review of the Services. Following such review, Client shall either notify Consultant of its acceptance of the Services or issue to Consultant a listing of additional items it believes are required in order for the Services to conform to the terms, conditions and specifications of the Contract Documents. If Client does not so notify Consultant or issue such listing within 7 days after Consultant's notice that the Services have been completed, it shall be deemed to have accepted the Services.

# 17. MISCELLANEOUS PROVISIONS.

- 17.1 Entire Agreement. The Contract Documents (including the attachments and documents referenced therein) constitute the entire agreement and understanding between the parties hereto with respect to the Services performed pursuant to the Agreement and supersede and/or merge all prior agreements, understandings, representations, or conditions between Client and Consultant regarding the subject matter hereof, whether written, oral, or implied. The parties agree that the terms and conditions of the Contract Documents shall prevail, notwithstanding any contrary or additional terms in any of the parties' preprinted documents.
- 17.2 Governing Law, Jurisdiction. The validity, interpretation, and performance of the Contract Documents, including any breach thereof, shall be governed by and construed under the Laws of the State of Oklahoma, without regard to the conflicts or choice of law principles thereof. Unless otherwise required by Law, (a) Consultant and Client hereby consent to the personal jurisdiction of the state and federal courts located in Tulsa, Oklahoma for any dispute involving the Contract Documents, and (b) subject to the provisions of Section 10 above, any action arising out of the Contract Documents shall be commenced and maintained exclusively in the state or federal courts located in Tulsa, Oklahoma, and Consultant and Client waive any objection to the forum on the grounds of venue, forum non-conveniens, or any similar ground. THE PARTIES HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THE CONTRACT DOCUMENTS.
- 17.3 Assignment. The Contract Documents shall inure to the benefit of and shall be binding upon Client and Consultant and their respective successors and permitted assigns. Neither party shall assign the Agreement, or any of its rights or obligations hereunder or thereunder, without the prior written consent of the other party in each instance, which consent shall not be unreasonably withheld. Any purported assignment in violation of this Section shall be null and void.
- 17.4 <u>Waiver</u>. Either party hereto may, by written notice delivered in the manner provided in the Contract Documents, but shall be under no obligation to, waive any of its rights or conditions to its rights hereunder, or any

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duty, obligation, or covenant of the other party hereto. Such waiver must be in a writing signed by the waiving party and shall not affect or alter the other provisions of the Contract Documents.

- 17.5 <u>Third Party Agreement.</u> Nothing contained in the Contract Documents shall create a contractual relationship with or a cause of action in favor of a third party against either Client or Consultant subject to the indemnification rights of an Indemnitee. Furthermore, the Contract Documents are not intended and shall not be construed to create any rights in any parties other than Client, Consultant and Indemnitees and no other person shall have any rights as a third party beneficiary hereunder.
- 17.6 <u>Independent Contractor</u>. Consultant agrees that it is an independent contractor in the performance of any Services under the Contract Documents and that neither it nor its employees shall be considered employees of Client. Client shall not be responsible for the direct payment of any withholding taxes, social security payments, payments under workmen's compensation or other insurance premiums, or other charges of any kind, except as specifically stated herein. Consultant hereby warrants that it will deduct and pay over to the proper Governmental Authority any withholding taxes or similar assessment which an employer is required to deduct and pay over and Consultant accepts exclusive liability for any payroll taxes or contributions imposed by any federal, state or other Governmental Authority, covering its agents or employees.
- Modifications. No change, amendment or modification of any Contract Document shall be valid or binding upon the parties unless such change, amendment or modification shall be in writing and duly executed by both parties, with specific reference to the Contract Document being modified.
- 17.8 <u>Cooperation</u>. Consultant and Client agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary and reasonably requested by the other party that are not inconsistent with the provisions of the Contract Documents and that do not involve the assumption of obligations other than those provided for in Contract Documents, in order to give full effect to the Contract Documents and to carry out the intent of the Contract Documents.
- 17.9 <u>Attorneys' Fees.</u> In the event of legal action between the parties associated with the Contract Documents, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable attorneys' fees and costs incurred therein from the non-prevailing party.
- 17.10 <u>Severability of Provisions</u>. The invalidity, illegality and unenforceability of any provision(s) of the Contract Documents shall in no way affect or impair the validity, legality and enforceability of the remaining provisions thereof.
- 17.11 <u>Counterparts.</u> Any Contract Document may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. In the event that any signature of any Contract Document is delivered by facsimile transmission or by e-mail as an attached, scanned document, such signature shall create a valid and binding obligation of the party executing the same with the same force and effect as if such e-mailed or facsimile signature page were an original thereof.

#### END OF GENERAL TERMS AND CONDITIONS

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# **EXHIBIT B**

# City of Bartlesville

Bridges 5, 6, & 9 over Caney River and Caney River overflow on Tuxedo Ave. 7/29/2022

# **Project Description**

The purpose of the project is to rehabilitate three bridges on Tuxedo Ave that span the Caney River and Caney River overflow. The three bridges and approaches are:

- NBI 14187, Circle Number 5, Bridge Location No. 74E0179N39500N6
- NBI 21121, Circle Number 6, Bridge Location No. 74E0180N39500S6
- NBI 21083, Circle Number 9, Bridge Location No. 74E0180N3950008

The rehabilitation designs will follow the recommendations detailed in the Bridge Rehabilitation & Repair Field Assessment Reports dated October 31, 2019, prepared by NEO Design, LLC. That document is attached for reference.

# **General Scope**

The general scope of work includes meetings, on-site reviews and additional work required for the preparation of studies, reports, surveys, traffic analysis/engineering, roadway design, and permitting assistance, culminating in the delivery of final construction plans and estimates (PS&E). Plans will be based on current ODOT specifications.

The CONSULTANT will prepare plans to replace the bridge and approach roadway, surfacing and drainage. Plan submittals include: 60% Plans, Final Plans, PS&E.

#### The CONSULTANT will:

- Conduct topographic survey; gather utility information
- Prepare 60% plans and cost estimate
- Attend 60% plan field review meeting (if required)
- Prepare updated cost estimates
- Finalize plans, quantities and cost estimates
- Attend final plan field review meeting (if required)
- Perform quality assurance/quality control review
- Attend the pre-bid conference

No public meetings are anticipated and are not included in this scope of work.

# SECTION 1 - Bridge Design

- 1.1. The CONSULTANT will prepare structural design calculations plans for the rehabilitation of bridge 5, 6, & 9 (NBI numbers 14187, 21121 & 21083) respectively. The rehabilitation scopes shall be in general accordance with the Bridge Rehabilitation & Repair Field Assessment Reports dated October 31, 2019 prepared by Neo Design, LLC.
- 1.2. Prepare bridge construction plans, which may include but not be limited to:



# Guy Engineering Services, Inc.

- 1.2.1. General Notes and Summary of Pay Quantities (Bridge)
- 1.2.2. General Plan and Elevation Sheet(s)
- 1.2.3. Abutment Repair Detail Sheet(s)
- 1.2.4. Pier Repair Detail Sheet(s)
- 1.2.5. Superstructure Repair Detail Sheet(s)
- 1.2.6. Beam Repair Detail Sheet(s)
- 1.2.7. Bearing Assembly Detail Sheet(s)
- 1.2.8. Miscellaneous Detail Sheet(s)
- 1.3. Perform quality assurance/quality control reviews, make necessary corrections, and submit final plans.

# SECTION 2 - Roadway Design

- 2.1. Prepare construction plans for roadway approaches. The roadway will be designed to match the bridge deck elevations. The estimated roadway length is 100 ft west of bridges 5 and 6 and 100 ft east and west of bridge 9. The 2019 ODOT Construction Specifications will be used. This shall be in general accordance with the Bridge Rehabilitation & Repair Field Assessment Reports dated October 31, 2019 prepared by Neo Design, LLC.
- 2.2. Incorporate environmental mitigation notes and measures as required in environmental clearance documents.
- 2.3. 404 permitting application and accompanying documentation.
- 2.4. Perform quality assurance/quality control review.
- 2.5. Roadway plans may include, but not be limited to:
  - 2.5.1. Title Sheet
  - 2.5.2. Typical Sections
  - 2.5.3. General Construction Notes
  - 2.5.4. Summary of Pay Quantities and Notes (Roadway)
  - 2.5.5. Summary Sheets
  - 2.5.6. Stormwater Management Plan
  - 2.5.7. Erosion Control Plan
  - 2.5.8. Plan and Profile Sheets
  - 2.5.9. Cross Sections
- 2.6. Pathfinder trail repairs will be noted in the plans within the limits of the bridges utilizing a typical section provided by the City.
- 2.7. Lighting is not included in this scope of work.
- 2.8. No sidewalks or additional trails are included in this scope of work.
- 2.9. No landscape design is included in this scope of work.

# **SECTION 3 - Traffic Studies**

3.1. No traffic studies or turning analyses are included in this scope of work.



#### **SECTION 4 - Traffic Engineering Design**

- 4.1. The roadway is expected to be open to through traffic. Traffic control will utilize closing one bridge at a time to alternate traffic keeping one lane open in each direction. This shall be in general accordance with the Bridge Rehabilitation & Repair Field Assessment Reports dated October 31, 2019 prepared by Neo Design, LLC.
- 4.2. A signing and striping plan will be included.
- 4.3. Traffic control pay items will be itemized.
- 4.4. A traffic signal design is not included in this scope of work.
- 4.5. Traffic plans may include, but not be limited to:
  - 4.5.1. Suggested Sequence of Construction
  - 4.5.2. Construction Traffic Control Layout with Temporary Signal Plans
  - 4.5.3. Permanent Signing and Striping
  - 4.5.4. Summary of Pay Quantities and Notes (Traffic)

#### SECTION 5 - Geotechnical Investigation

5.1. Geotechnical investigation and testing are not included in this scope of work.

#### SECTION 6 - Environmental

6.1. See attached sub-consultant scope for more detailed tasks (Stantec).

#### SECTION 7 - Survey

- 7.1. Survey shall be performed in accordance with State of Oklahoma Department of Transportation Survey Division Survey Specifications for County Roads and Bridges January 2022.
- 7.2. The topographic limits of survey are approximately 150 feet wide by 1500 feet along the roadway and bridge alignments. Coordinates will be collected under the abutments at the Caney River bridges and a cross section will be collected under the east bridge through the overflow pond if feasible.
- 7.3. Benchmarks will be set and measured along the entire length of the project. Check levels will be run between them to ensure the desired precision for vertical control is achieved.
- 7.4. Topographic features marked underground utilities, and surface features will be surveyed and displayed in an AutoCAD digital mapping file (.dwg). Contacts for the utility companies will be compiled and listed in the mapping file. After the mapping file is considered complete, a field check will be performed to ensure that the features are reflected correctly in the mapping file. Note Prior to the topographic collection portion of the survey, a locate request will be submitted through OKIE811. Unmarked underground utilities are not included in this scope of work and Guy Engineering is not responsible for the location of mismarked utilities.
- 7.5. Courthouse research is excluded from the scope.
- 7.6. Boundary survey is excluded from the scope.

#### SECTION 8 - Subsurface Utility Engineering (SUE)

8.1. Subsurface Utility Engineering (SUE) is included in this project.



#### Guy Engineering Services, Inc.

- 8.1.1. Quality Level D is included. This scope includes records research and data collection at the desktop level. Data is approximate. (Included in the survey scope of work.)
- 8.1.2. Quality Level C is included. This level includes all visible utilities and those marked by OKIE811. No additional utility locating is included. (Included in the survey scope of work.)
- 8.1.3. Quality Level B is <u>not</u> included for the utilities not marked by OKIE811. This level includes using SUE technology/equipment to identify the horizontal location. This level of SUE can be added by contract supplemental if needed.
- 8.1.4. Quality Level A is <u>not</u> included. This level includes potholing of specific utilities. This will provide accurate horizontal and vertical depth at the point of potholing. This level of SUE can be added by contract supplemental if needed.

#### SECTION 9 - Right-of-Way

- 9.1. Right-of-way documents are not included in the scope of services.
- 9.2. Right-of-way acquisition is not included in the scope of services.
- 9.3. Right-of-way staking is not included in the scope of services.

#### SECTION 10 - Utility Relocation Coordination

10.1. Utility relocation management is not included in this scope of work.

#### SECTION 11 - City Responsibilities

- 11.1. Advertisement and letting of the construction contract.
- 11.2. Construction management services
- 11.3. Construction inspections services
- 11.4. Providing any documentation necessary to facilitate the environmental and 404 application process.
- 11.5. Obtaining any temporary construction easements necessary.
- 11.6. Provide preferred typical section for Pathfinder Trail repairs

#### **Fee Summary**

Propo	osed Contract Total	\$175,415.00
4.	Environmental (Sub)	\$25,770.00
3.	Survey – (Prime)	\$27,165.00
2.	Roadway Design & Project Management – (Prime)	\$56,341.00
1.	Bridge Design (Sub)	\$66,139.00



Task Name	Milestone	
Plan Development		
Conduct Survey	60 working days from Notice to Proceed	
Submit 60% Plans for Review	150 working days from Notice to Proceed	
Submit Final plans for Review	60 working days from 60% Plan review response	
Submit Approved Final Design Package	30 working days from Final Plan review response and environmental clearance	





Agenda Item 7.c.v. September 28, 2020 Prepared by Micah Siemers Engineering

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Approval of a professional service contract with Freese & Nichols (FNI) for design services on the Minnesota Avenue Rehabilitation project and a Water Feasibility Study along Minnesota Avenue and Madison Boulevard.

Attachments:

Contract

#### STAFF COMMENTS AND ANALYSIS

One of the discretionary projects on the voter approved 2018 General Obligation (GO) Bond ballot is the Minnesota Avenue Rehabilitation project. The funding for this project comes from the last issuance of the 2018 GO Bond which was in the fall of 2021. The project consists of rehabilitating the asphalt pavement on Minnesota Avenue between Highway 75 and Madison Boulevard. While the final scope will be determined during detailed design, the work will likely include some combination of milling, overlaying and full depth replacement along the alignment. The roadway will not be widened and drainage ditches will essentially remain the same. The original planned budget for the project was \$650,000. Unfortunately, the cost of issuing bonds was much higher than anticipated for the 2021 bonds. The available budget after issuing bonds is \$587,000 and includes both engineering and construction costs. The funding for this project was approved as part of the FY 22-23 capital budget.

Another aspect of this project came about in the past year. There are a handful of properties that receive water service from the City of Bartlesville through somewhat of a pseudo water district along Minnesota and Madison. It is not officially a water district, but the properties were served by one meter from the City and through some cooperative agreement the properties were sub-metered and payment was coordinated through one of the property owners. The individual who orchestrated all of this has passed away in the past year which revealed the need to better serve this area. The Water Utilities Department is looking at options to more adequately serve this area. The City does not currently have a water main along Minnesota or the north end of Madison. There is a chance this area may end up falling within the jurisdiction of a rural water district so the City may not have to serve these properties anyway, but it is prudent to come up with a plan and associated cost to serve this area if needed. A waterline feasibility study of Minnesota from Highway 75 to Madison, and Madison

from Minnesota to Tuxedo will be included with the Minnesota Rehabilitation project. The study will evaluate right-of-way needs, utility conflicts, potential alignment and provide cost estimates for providing water service to this area.

Engineering and Water Utility Department staff requested a proposal for services from Freese & Nichols (FNI) for design of the roadway rehabilitation and a water feasibility study. Staff has worked with FNI before on the recent 20" Waterline Reconstruction project along Frank Phillips and had a good experience with that design, thus we thought they would be a good fit for this project as well. Staff has negotiated a contract with FNI for a lump sum price of \$82,468.00. The proposed fees and schedule are in line with what we have seen on other recent design projects. The fees will be divided between the Minnesota GO Bond funds and available Water Utilities Department funding. The breakdown of the water study and roadway design are included in the contract.

#### RECOMMENDED ACTION

Staff recommends approval of the professional service contract with Freese & Nichols.

#### PROFESSIONAL SERVICES AGREEMENT

STATE OF OKLAHOMA §

COUNTY OF WASHINGTON §

This Agreement is entered into by City of Bartlesville (Client) and Freese and Nichols, Inc. (FNI). In consideration of FNI providing professional services for Client and Client utilizing these services, the parties hereby agree:

- I. EMPLOYMENT OF FNI: In accordance with the terms of this Agreement, Client agrees to employ and compensate FNI to perform professional services in connection with the Project. The Project is described as Minnesota Street from US-75 (Washington Boulevard) to Madison Boulevard.
- II. SCOPE OF SERVICES: FNI shall render professional services in connection with the Project as set forth in Attachment SC – Scope of Services and Responsibilities of Client which is attached to and made a part of this Agreement.
- III. **COMPENSATION:** Client agrees to pay FNI for all professional services rendered under this Agreement. FNI shall perform professional services under this Agreement for a lump sum fee of \$82,468.00.
- IV. **TERMS AND CONDITIONS OF AGREEMENT:** The Terms and Conditions of Agreement, as set forth in Attachment TC Terms and Conditions of Agreement, shall govern the relationship between the Client and FNI.
- V. GOVERNING LAW; VENUE: This Agreement shall be administered and interpreted under the laws of the State of Oklahoma. Venue of any legal proceeding involving this Agreement shall be in Washington County, Texas.
- VI. EFFECTIVE DATE: The effective date of this Agreement is September 28, 2022.

Nothing in this Agreement shall be construed to give any rights or benefits under this Agreement to anyone other than the Client and FNI. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and FNI and not for the benefit of any other party. This Agreement constitutes the entire agreement between the Client and FNI and supersedes all prior written or oral understandings.

This Agreement is executed in two counterparts. IN TESTIMONY HEREOF, Agreement executed:

CITY OF BARTLESVILLE	FREESE AND NICHOLS, INC.
Ву:	By: Alm C. Hutor
Name:	Name: ALAN C, HUTSON
Title:	Title: VICE PRESIDENT
Date:	Date: 9/29/2022
Attest:	Attest: The Hyper Attest Attest Attest

#### TERMS AND CONDITIONS OF AGREEMENT

- DEFINITIONS: As used herein: (1) City refers to the party named as such in the Agreement between
  the City and FNI; (2) FNI refers to Freese and Nichols, Inc., its employees and agents, and its
  subcontractors and their employees and agents; and (3) Services refers to the professional services
  performed by FNI pursuant to the Agreement.
- 2. INFORMATION FURNISHED BY CITY: City will assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project. FNI shall have no liability for defects or negligence in the Services attributable to FNI's reliance upon or use of data, design criteria, drawings, specifications, or other information furnished by City. To the fullest extent permitted by law, City agrees to indemnify and hold FNI harmless from any and all claims and judgments, and all losses, costs, and expenses arising therefrom. FNI shall disclose to City, prior to use thereof, defects or omissions in the data, design criteria, drawings, specifications, or other information furnished by City to FNI that FNI may reasonably discover in its review and inspection thereof.
- 3. STANDARD OF CARE: The standard of care for all professional Services performed or furnished by FNI under this Agreement will be the skill and care ordinarily used by members of the subject profession practicing under the same or similar license and circumstances at the same time and in the same locality. FNI makes no warranties, express or implied, under this Agreement or otherwise, in connection with any Services performed or furnished by FNI.
- 4. **INSURANCE:** FNI shall provide City with certificates of insurance with the following minimum coverage:

Commercial General Liability Workers' Compensation

\$2,000,000 General Aggregate As required by Statute

Automobile Liability (Any Auto) Professional Liability

\$1,000,000 Combined Single Limit \$3,000,000 Annual Aggregate

- 5. CHANGES: City, without invalidating the Agreement, may order changes within the general scope of the Services required by the Agreement by altering, adding, and/or deducting from the Services to be performed. If any such change under this clause causes an increase or decrease in FNI's cost or the time required for the performance of any part of the Services, an equitable adjustment will be made by mutual agreement and the Agreement will be modified in writing accordingly.
  - FNI will make changes to the drawings, specifications, reports, documents, or other deliverables as requested by City. However, when such changes differ from prior comments, directions, instructions, or approvals given by City or are due to causes not solely within the control of FNI, FNI shall be entitled to additional compensation and time required for performance of such changes to the Services authorized under this Agreement.
- 6. OPINION OF PROBABLE CONSTRUCTION COSTS: No fixed limit of project construction cost shall be established as a condition of the Agreement, unless agreed upon in writing and signed by the parties hereto. If a fixed limit is established, FNI shall be permitted to include contingencies for design, bidding, and price escalation in the construction contract documents to make reasonable adjustments in the scope of the Project to adjust the project construction cost to the fixed limit. Such contingencies may include bid allowances, alternate bids, or other methods that allow FNI to determine what materials, equipment, component systems, and types of construction are to be

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included in the construction contract documents. Fixed limits, if any, shall be increased by the same amount as any increase in the contract price after execution of the construction contract.

FNI will furnish an opinion of probable construction or program cost based on present day pricing, but does not guarantee the accuracy of such estimates. Opinions of probable cost, financial evaluations, feasibility studies, economic analyses of alternate solutions, and utilitarian considerations of operations and maintenance costs prepared by FNI hereunder will be made on the basis of FNI's experience and qualifications and represent FNI's judgment as an experienced and qualified design professional. It is recognized, however, that FNI does not have control over the cost of labor, material, equipment, or services furnished by others or over market conditions or contractors' methods of determining prices. Accordingly, FNI cannot and does not warrant or represent that bids or cost proposals will not vary from the City's project budget or from any estimate or opinion of probable construction or program cost prepared by or agreed to by FNI.

7. PAYMENT: Progress payments may be requested by FNI based on the amount of Services completed. Payment for the Services of FNI shall be due and payable upon submission of a statement for Services to City and in acceptance of the Services as satisfactory by City. Statements for Services shall not be submitted more frequently than monthly. Any applicable taxes imposed upon Services, expenses, and charges by any governmental body after the execution of this Agreement will be added to FNI's compensation.

If City fails to make any payment due FNI for Services, expenses, and charges within 30 days after receipt of FNI's statement for Services therefore, the amounts due FNI will be increased at the rate of 1 percent per month from said 30th day, and, in addition, FNI may, after giving 7 days' written notice to City, suspend Services under this Agreement until FNI has been paid in full for all amounts due for Services, expenses, and charges.

If FNI's Services are delayed or suspended by City or are extended for more than 60 days through no fault of FNI, FNI shall be entitled to equitable adjustment of rates and amounts of compensation to reflect reasonable costs incurred by FNI in connection with such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

- 8. OWNERSHIP OF DOCUMENTS: All drawings, reports, data, and other project information developed in the execution of the Services provided under this Agreement shall be the property of City upon payment of FNI's fees for Services. FNI may retain copies for record purposes. City agrees such documents are not intended or represented to be suitable for reuse by City or others. Any reuse by City or by those who obtained said documents from City without written verification or adaptation by FNI, will be at the City's sole risk and without liability or legal exposure to FNI, or to FNI's independent associates or consultants. To the fullest extent permitted by law, City shall indemnify and hold harmless FNI and FNI's independent associates and consultants from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any such verification or adaptation will entitle FNI to further reasonable compensation. FNI may reuse all drawings, report data, and other project information in the execution of the Services provided under this Agreement in FNI's other activities. Any reuse by FNI will be at FNI's sole risk and without liability or legal exposure to City, and FNI shall indemnify and hold harmless City from all claims, damages, losses, and expenses including reasonable attorneys' fees arising out of or resulting therefrom.
- 9. **TERMINATION:** The obligation to provide Services under this Agreement may be terminated by either party upon 10 days' written notice. In the event of termination, FNI will be paid for all Services rendered and reimbursable expenses incurred to the date of termination and, in addition, all reimbursable expenses directly attributable to termination.

- 10. CONSTRUCTION REPRESENTATION: If required by the Agreement, FNI will furnish construction representation according to the defined scope for these Services. FNI will observe the progress and the quality of work to determine in general if the work is proceeding in accordance with the construction contract documents. In performing these Services, FNI will report any observed deficiencies to City, however, it is understood that FNI does not guarantee the contractor's performance, nor is FNI responsible for the supervision of the contractor's operation and employees. FNI shall not be responsible for the contractor's means, methods, techniques, sequences, or procedures of construction or the safety precautions and programs incident to the work of the contractor. FNI shall not be responsible for the acts or omissions of any person (except its own employees or agents) at the project site or otherwise performing any of the work of the Project. If City designates a resident project representative that is not an employee or agent of FNI, the duties, responsibilities, and limitations of authority of such resident project representative will be set forth in writing and made a part of this Agreement before the construction phase of the Project begins.
- 11. GENERAL CONDITIONS OF THE CONSTRUCTION CONTRACT: City agrees to include provisions in the general conditions of the construction contract that name FNI: (1) as an additional insured and in any waiver of subrogation rights with respect to such liability insurance purchased and maintained by the contractor for the Project (except workers' compensation and professional liability policies); and (2) as an indemnified party in the indemnification provisions where the City is named as an indemnified party.
- 12. POLLUTANTS AND HAZARDOUS WASTES: It is understood and agreed that FNI has neither created nor contributed to the creation or existence of any hazardous, radioactive, toxic, irritant, pollutant, or otherwise dangerous substance or condition at the project site, if any, and its compensation hereunder is in no way commensurate with the potential risk of injury or loss that may be caused by exposures to such substances or conditions. The parties agree that in performing the Services required by this Agreement, FNI does not take possession or control of the subject site, but acts as an invitee in performing the Services, and is not therefore responsible for the existence of any pollutant present on or migrating from the site. Further, FNI shall have no responsibility for any pollutant during clean-up, transportation, storage or disposal activities.
- 13. **SUBCONTRACTS:** If, for any reason and at any time during the progress of providing Services, City determines that any subcontractor for FNI is incompetent or undesirable, City shall notify FNI accordingly and FNI shall take immediate steps for cancellation of such subcontract. Subletting by subcontractors shall be subject to the same regulations. Nothing contained in the Agreement shall create any contractual relation between any subcontractor and City.
- 14. PURCHASE ORDERS: If a purchase order is used to authorize FNI's Services, only the terms, conditions, and instructions typed on the face of the purchase order shall apply to this Agreement. Should there be any conflict between the purchase order and the terms of this Agreement, then this Agreement shall prevail and be determinative of the conflict.
- 15. CONSEQUENTIAL DAMAGES: In no event shall FNI be liable in contract, tort, strict liability, warranty, or otherwise for any special, indirect, incidental, or consequential damages (such as loss of product, loss of use of equipment or systems, loss of anticipated profits or revenue, non-operation or increased expense of operation), arising out of, resulting from, or in any way related to this Agreement or the Project.
- 16. **ARBITRATION:** No arbitration, arising out of or relating to this Agreement, involving one party to this Agreement may include the other party to this Agreement without their approval.

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17. **SUCCESSORS AND ASSIGNMENTS:** City and FNI and the partners, successors, executors, administrators, and legal representatives of each are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

Neither City nor FNI shall assign, sublet, or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be 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. Nothing contained in this paragraph shall prevent FNI from employing such independent associates and consultants as FNI may deem appropriate to assist in the performance of Services hereunder.

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#### **SCOPE OF SERVICES AND RESPONSIBILITIES OF CLIENT**

The scope set forth herein defines the work to be performed by the FNI in completing the project. Both the Client and FNI have attempted to clearly define the work to be performed and address the needs of the Project.

#### **Project Understanding**

Task 1: The objective of Task 1 is the design of Minnesota St from US-75 (Washington Blvd.) to Madison Blvd. The project will include rehabilitation of a two-lane asphalt roadway by processing and compacting the existing surface and base and overlaying with asphalt pavement. Improvements to improve drainage flow along the existing roadside ditches are not included. Environmental permitting and documentation are assumed to not be needed for this project. Geotechnical investigations will not be performed. The pavement section will be based on the available budget. It is assumed the Client will provide construction inspection services. This contract does not include hydrologic/hydraulic modeling of the stormwater drainage system and the existing drainage structures will remain in place.

<u>Task 2</u>: The objective of Task 2 is to complete a Water Line Feasibility Study to determine proposed location, R/W needs and a cost estimate for a 6" water line along Minnesota St. from US-75 (Washington Blvd.) to Madison Blvd., and along Madison Blvd. from Minnesota St. south approximately 0.5 miles to the existing water tower on the west side of Madison Blvd.

#### WORK TO BE PERFORMED

**Basic Services** 

TASK 1. ROADWAY REHABILITATION DESIGN
TASK 2. WATER LINE FEASIBILTY STUDY

Special Services

TASK 3. SURVEY

TASK 4. ADDITIONAL SERVICES

#### **ARTICLE I**

**BASIC SERVICES:** FNI shall render the following professional services in connection with the development of the Project:

#### TASK 1. ROADWAY REHABILITATION DESIGN

#### Phase 1 – Design Phase

FNI will Deliver Final Plans, Specifications and Estimate to CLIENT for Roadway Rehabilitation of Minnesota St. from US-75 to Madison Blvd.

FNI will develop plans and specifications for the project as follows.

#### 1.1.1. Data Collection & Assessment

- In addition to data obtained from the Client, FNI will research and make efforts to obtain pertinent information to aid in coordination of the proposed improvements with any planned future improvements that may influence the project.
- 1.1.2. FNI will prepare Preliminary (60%) Plans and Opinion of Probable Construction Cost (OPCC) including the following:
  - Proposed typical sections which outline the proposed improvements. Typical sections shall include proposed lane widths and other dimensions.
  - Develop Pay Quantities and Notes using ODOT pay items and Owner's General Construction Notes along with other notes as needed.
  - Produce detour plans for the road to be closed to thru traffic with access to local traffic only during construction.
  - Plans to include:
    - Title Sheet
    - Typical Section
    - General Notes
    - Pay Quantity Summary and Notes
    - Plan Sheets
    - Construction Traffic Control/Detour Plan
  - Opinion of Probable Construction Cost (OPCC)
- 1.1.3. Submit digital half-size (11x17) plan set, Construction Cost Estimate, and Project Manual (Spec Book) in PDF format to Client.
- 1.1.4. Attend meeting with Client to review Plan and Project Manual comments (1 meeting)
- 1.1.5. Address comments from plan review meeting.
- 1.1.6 Submit Final, Plans, Specifications, and Estimate.

#### **ASSUMPTIONS**

- Attend Meeting with Client to review Plan comments for Plan-in-hand meeting (1 meeting)
- Plans will be developed per ODOT Standards and Specifications.
- Environmental Services are assumed to not be needed as part of this project. FNI performance of environmental services can be added through supplemental.

#### **DELIVERABLES**

- 1. Final Plans and Project Manual in digital PDF format
- 2. Opinion of Probable Construction Cost (OPCC) in PDF format.

#### Phase 2 - Bid Phase

- 1.2.1 ENGINEER will provide two (2) half-size (11x17) copies of the plan set and spec book along with a digital PDF for Client use during the bidding process. Additional copies will be provided to Contractors as requested at additional cost.
- 1.2.2 Assist Client in securing bids. Provide a copy of the notice to bidders for Client to use in notifying construction news publications and publishing appropriate legal notice. The cost for publications shall be paid by Client.
- 1.2.3 Attendance at Pre-Bid Conference (assumed 1 meeting). Additional meetings can be added at the Client's request as additional services.
- 1.2.4 At Client request, ENGINEER will assist Client in responding to Requests for Information, in the opening, tabulating, and analyzing the bids received as needed.
- 1.2.5 Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.

#### TASK 2. WATER LINE FEASIBILITY STUDY

ENGINEER will perform a preliminary study, including a preliminary route analysis, and construction cost estimate for the approximate 8,200 linear feet of 6" water line along Minnesota Street and Madison Blvd.

#### Minnesota Street/Madison Blvd. Water Line:

- Water Line starting from the intersection of Hwy 75 and Minnesota Street and terminating at the
  existing water tower along the west side of Madison Blvd approximately 0.5 miles south of
  Minnesota Street.
- Review location of existing utilities and Right-of-Way/Easements
- Route selection and identification of easements that will be needed.

ENGINEER will provide preliminary study of the entire 8,200 linear foot the new Minnesota Street Water Line. An Opinion of Probable Construction Cost (OPCC) will be prepared for the ultimate construction of the entire 8,200 linear foot of 6" water line. The OPCC will be based upon high-level engineering assumptions with considerations for constructability and easement constraints. Estimating the cost for required easements is not part of the scope of this project. Easement acquisition services are not part of the scope of this project.

The Professional Services are defined below:

2.1 Kickoff Meeting. This meeting will be held to introduce project team members, establish protocol and lines of communications, gather all available documents pertinent to the project and discuss project scope and schedule. ENGINEER will document the results of the meeting in the form of meeting minutes.

- 2.2 Review previously prepared construction plans, land records, or other pertinent documents on file in the Engineering Department of the City, or other appropriate agencies. Conduct one (1) field visit to evaluate the proposed water line routes.
- 2.3 Preliminary Alignment: ENGINEER to evaluate up to two (2) alternatives and prepare a proposed alignment along the of the project corridor.
- 2.4 Alternatives Opinion of Probable Construction Cost: ENGINEER will prepare a preliminary opinion of probable construction cost estimate for the alternative alignments with enough detail to evaluate each option based upon anticipated construction cost.
  - The alternative alignments will be sent to the Client for review and concurrence. The alignment will be finalized during a half-day design charrette meeting. ENGINEER will prepare a project layout sheet showing preliminary alignment, general utility, property lines and owners and submit in Client approved electronic format.
- 2.5 Evaluate the impact of the water line on existing utilities, streets, highways, driveways, and traffic. Determine requirements for appurtenances, permanent and construction easement requirements.
- 2.6 Program Opinion of Probable Construction Cost: ENGINEER will prepare a preliminary opinion of probable construction cost estimate for the entire 8,200 linear foot.
- 2.7 Prepare a Water Line Report with a schematic layout of the recommended 8,200 linear foot water line alignment with appropriate exhibits to indicate the recommended alignment assessing force main hydraulics, pipe material alternatives, recommended permanent and temporary construction easement requirements, feasibility and impacts of constructing the water line with existing road right of way, final design criteria, updated design and construction schedule and OPCC.

#### **DELIVERABLES**

- 1. Electronic versions of the alternative and proposed alignment (GIS format)
- 2. Electronic copy of the project OPCC
- 3. Electronic copy of the Draft and Final Route Study Report; Five (5) Hard Copies of Draft and Final Route Study Reports.

#### **ARTICLE II**

**SPECIAL SERVICES:** FNI shall render the following professional services, which are not included in the Basic Services described above, in connection with the development of the Project:

#### TASK 3. SURVEY

The ENGINEER will provide survey services in accordance with the below:

- 3.1 Section Line survey to determine location of North and East lines for Section 4, Township 26, North, Range 13 East.
- 3.2 Complete research to show existing Right-of-Way (statutory and any dedicated R/W).
- 3.3 Survey the location for the edge of pavement on both sides of Madison and Minnesota.

- 3.4 OKIE Ticket will be submitted and marked/visible utility locations will be shown in survey.
- 3.5 Cross Sections at 4 culvert cross -drains on Minnesota Street (including the one across Madison at the south leg of the intersection).
- 3.6 All data provided on Oklahoma State Plane Coordinate System North Zone (3501) NAD 83.
- 3.7 No topographic data will be provided at this time.
- 3.8 Review by Professional Land Surveyor.

#### **DELIVERABLES**

CAD file(s) and any research documents obtained in support of this scope

#### **ARTICLE III**

TASK 4. ADDITIONAL SERVICES: Any services performed by FNI that are not included in the Basic Services or Special Services described above are Additional Services. Additional Services to be performed by FNI, if authorized by Client, are described as follows:

- Services related to development of the Client's project financing and/or budget.
- Performance of miscellaneous and supplemental services related to the project as requested by the Client.
- Easement and/or Right-of-Way acquisition services
- Obtaining additional survey.
- Hydrologic/Hydraulic modeling and/or detailed hydraulic calculations.
- GIS mapping services or assistance with these services.
- Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by Client.
- Providing renderings, model and mock-ups requested by the Client.
- Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction and providing services as may be required in connection with the replacement of such Work.
- Investigations involving consideration of operation, maintenance and overhead expenses, and
  the preparation of rate schedules, earnings and expense statements, feasibility studies,
  appraisals, evaluations, assessment schedules, and material audits or inventories required for
  certification of force account construction performed by Client.
- Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory
  tests of equipment at any site remote to the project or observing tests required as a result of
  equipment failing the initial test.
- Preparing Operation and Maintenance Manuals or conducting operator training.
- Preparing data and reports for assistance to Client in preparation for hearings before regulatory
  agencies, courts, arbitration panels or any mediator, giving testimony, personally or by
  deposition, and preparations therefore before any regulatory agency, court, arbitration panel or
  mediator.

- Assisting Client in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- Assisting Client in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by FNI on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- Design, contract modifications, studies or analysis required to comply with local, State, Federal
  or other regulatory agencies that become effective after the date of this Agreement.
- Services required to resolve bid protests or to rebid the projects for any reason.
- Visits to the site in excess of the number of trips included in the above scope for periodic site visits, coordination meetings, or contract completion activities.
- Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
- Providing services after the completion of the construction phase not specifically listed in the above scope.
- Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
- Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
- · Preparing statements for invoicing or other documentation for billing.
- Provide follow-up professional services during Contractor's warranty period.
- Preparing environmental investigations or studies. Preparing environmental permit applications or documents that may be needed in support of environmental permits.

#### ARTICLE IV

**TIME OF COMPLETION:** FNI is authorized to commence work on the Project upon execution of this Agreement and agrees to complete the services in accordance with the schedule presented in Exhibit 1.

If FNI's services are delayed through no fault of FNI, FNI shall be entitled to adjust contract schedule consistent with the number of days of delay. These delays may include but are not limited to delays in Client or regulatory reviews, delays on the flow of information to be provided to FNI, governmental approvals, etc. These delays may result in an adjustment to compensation as outlined on the face of this Agreement and in Attachment CO.

#### ARTICLE V

**RESPONSIBILITIES OF CLIENT:** Client shall perform the following in a timely manner so as not to delay the services of FNI:

A. Client recognizes and expects that change orders may be required to be issued during construction. The responsibility for the costs of change orders will be determined on the basis of applicable contractual obligations and professional liability standards. FNI will not be responsible for any change order costs due to unforeseen site conditions, changes made by or due to the Client or Contractor, or any change order costs

not caused by the negligent errors or omissions of FNI. Nothing in this provision creates a presumption that, or changes the professional liability standard for determining if, FNI is liable for change order costs. It is recommended that the Client budget a minimum of 5% for new construction and a minimum of 10% for construction that includes refurbishing existing structures.

- B. Designate in writing a person to act as Client's representative with respect to the services to be rendered under this Agreement. Such person shall have contract authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to FNI's services for the Project.
- C. Provide all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the drawings and specifications.
- D. Assist FNI by placing at FNI's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- E. Arrange for access to and make all provisions for FNI to enter upon public and private property as required for FNI to perform services under this Agreement.
- F. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by FNI, obtain advice of an attorney, insurance counselor and other consultants as Client deems appropriate for such examination and render in writing decisions pertaining thereto within a reasonable time so as not to delay, or cause rework in, the services of FNI.
- G. Provide such accounting, independent cost estimating and insurance counseling services as may be required for the Project, such legal services as Client may require or FNI may reasonably request with regard to legal issues pertaining to the Project including any that may be raised by Contractor(s), such auditing service as Client may require to ascertain how or for what purpose any Contractor has used the moneys paid under the construction contract, and such inspection services as Client may require to ascertain that Contractor(s) are complying with any law, rule, regulation, ordinance, code or order applicable to their furnishing and performing the work.
- H. Give prompt written notice to FNI whenever Client observes or otherwise becomes aware of any development that affects the scope or timing of FNI's services, or any defect or nonconformance of the work of any Contractor.
- I. Furnish, or direct FNI to provide, Additional Services as stipulated in Attachment SC, Article III of this agreement or other services as required.
- J. Bear all costs incident to compliance with the requirements of this Article V.

#### **ARTICLE VI**

**DESIGNATED REPRESENTATIVES**: FNI and Client designate the following representatives:

#### **Client's Designated Representative:**

Micah Siemers, PE, CFM Director of Engineering City of Bartlesville 401 S. Johnstone Ave. Bartlesville, OK 74003

Phone: 918-338-4256

E-mail: wmsiemers@cityofbartlesville.org

#### FNI's Designated Representative:

David R. Cross, PE, CFM Project Manager Freese and Nichols, Inc. 4200 E Skelly Drive, Suite 410 Tulsa, OK 74135

Phone: 539-302-2706

E-mail: david.cross@freese.com

#### Compensation

Compensation to FNI for Basic Services shall be the lump sum of Sixty-Nine Thousand Eight Hundred Eighteen Dollars (\$69,818)

#### **BASIC SERVICES**

Task 1: Roadway Rehabilitation Design \$ 32,637 Lump Sum
Task 2: Water Line Feasibility Study \$ 37,181 Lump Sum

BASIC SERVICES \$69,818

Compensation to FNI for Special Services shall be computed on the basis of the following Schedule of Charges, but shall not exceed Twelve Thousand Six Hundred Fifty Dollars (\$12,650)

#### **SPECIAL SERVICES**

Task 3: Survey \$12,650 Lump Sum
Task 4: Additional Services By Amendment

SPECIAL SERVICES \$12,650

PROJECT TOTAL \$82,468

If the Scope of Services changes so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment A, Scope of Service, FNI will notify Client for Client's approval before proceeding.

If FNI sees the Scope of Services changing so that Additional Services are needed, including but not limited to those services described as Additional Services in Attachment SC, FNI will notify OWNER for OWNER's approval before proceeding. Additional Services shall be computed based on the following Schedule of Charges.

	Hourly Ra	<u>ite</u>
Position	Min	<u>Max</u>
Professional 1	74	130
Professional 2	97	152
Professional 3	93	212
Professional 4	146	220
Professional 5	174	310
Professional 6	188	367
Construction Manager 1	92	119
Construction Manager 2	80	153
Construction Manager 3	117	144
Construction Manager 4	137	188
Construction Manager 5	170	237
Construction Manager 6	209	266
Construction Representative 1	75	77
Construction Representative 2	77	84
Construction Representative 3	88	141
Construction Representative 4	101	161
CAD Technician/Designer 1	61	128
CAD Technician/Designer 2	99	148
CAD Technician/Designer 3	130	188
Corporate Project Support 1	50	104
Corporate Project Support 2	66	165
Corporate Project Support 3	105	246
Intern / Coop	44	75

#### Rates for In-House Services and Equipment

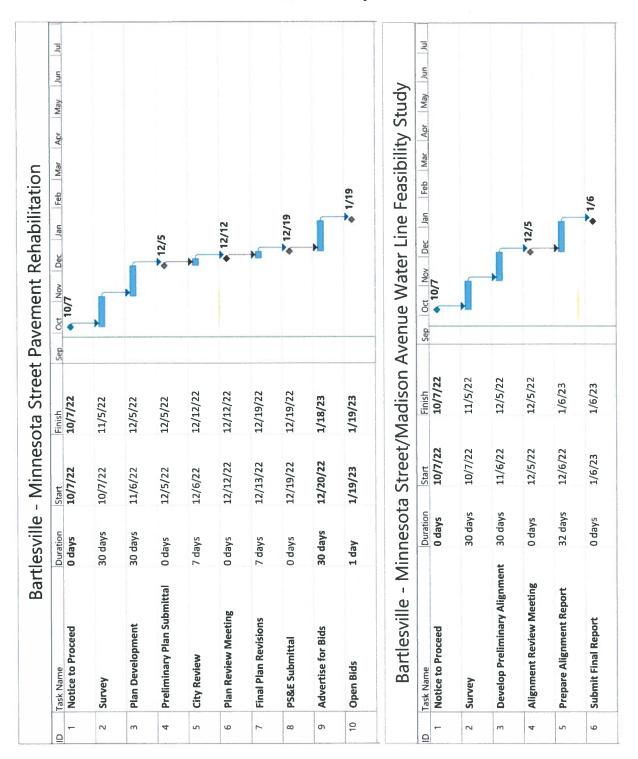
Mileage	<b>Bulk Printing and Reproduction</b>		Equipment			
Standard IRS Rates		B&W	Color	Valve Crew Vehicle (	(hour)	\$75
	Small Format (per copy)	\$0.10	\$0.25	Pressure Data Logge	er (each)	\$200
Technology Charge	Large Format (per sq. ft.)			Water Quality Mete	r (per day)	\$100
\$8.50 per hour	Bond	\$0.25	\$0.75	Microscope (each)		\$150
	Glossy / Mylar	\$0.75	\$1.25	Pressure Recorder (	per day)	\$100
	Vinyl / Adhesive	\$1.50	\$2.00	Ultrasonic Thickness G	Guage (per day)	\$275
				Coating Inspection K	(it (per day)	\$275
	Mounting (per sq. ft.)	\$2.00		Flushing / Cfactor (e	ach)	\$500
	Binding (per binding)	\$0.25		Backpack Electrofish	ner (each)	\$1,000
					Survey Grade	Standard
				Drone (per day)	\$200	\$100
				GPS (per day)	\$150	\$50

#### OTHER DIRECT EXPENSES:

Other direct expenses are reimbursed at actual cost times a multiplier of 1.15. They include outside printing and reproduction expense, communication expense, travel, transportation and subsistence away from the FNI office. For other miscellaneous expenses directly related to the work, including costs of laboratory analysis, test, and other work required to be done by independent persons other than staff members, these services will be billed at a cost times a multipler of 1.15. For Resident Representative services performed by non-FNI employees and CAD services performed Inhouse by non-FNI employees where FNI provides workspace and equipment to perform such services, these services will be billed at cost times a multiplier of 2.0. This markup approximates the cost to FNI if an FNI employee was performing the same or similar services.

These ranges and/or rates will be adjusted annually in February. Last updated 2022. 310062022

Exhibit 1 - Project Schedule





Agenda Item <u>7.c.vi.</u>
September 28, 2022
Prepared by Jason Muninger. CFO/City Clerk
Accounting and Finance

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Discuss and take possible action to approve proposed Lease Agreement between the City of Bartlesville ("City") and Legacy Church of Christ for lease of the north portion of the 1<sup>st</sup> floor of the First Christian Church Building.

Attachments:

Proposed Lease Agreement

#### II. STAFF COMMENTS AND ANALYSIS

City Staff has negotiated a Lease Agreement for the North portion of the 1<sup>st</sup> Floor of Fist Christian Church Building. These agreements terms are from November 1, 2022 through June 30, 2023 and will auto renew at the end of each year, at a rate of \$3.84(\$9,600 annually) per square foot. This space is to be used to conduct church services on the specified days of Sundays and Wednesdays.

#### III. RECOMMENDED ACTION

Staff recommends Council approval of the Proposed Lease Agreement with Legacy Church of Christ.



### **Lease Agreement**

This "Lease Agreement" is made and entered into October 3, 2022, by and between the City of Bartlesville, hereinafter referred to as "Lessor", and Legacy Church of Christ, hereinafter referred to as "Lessee".

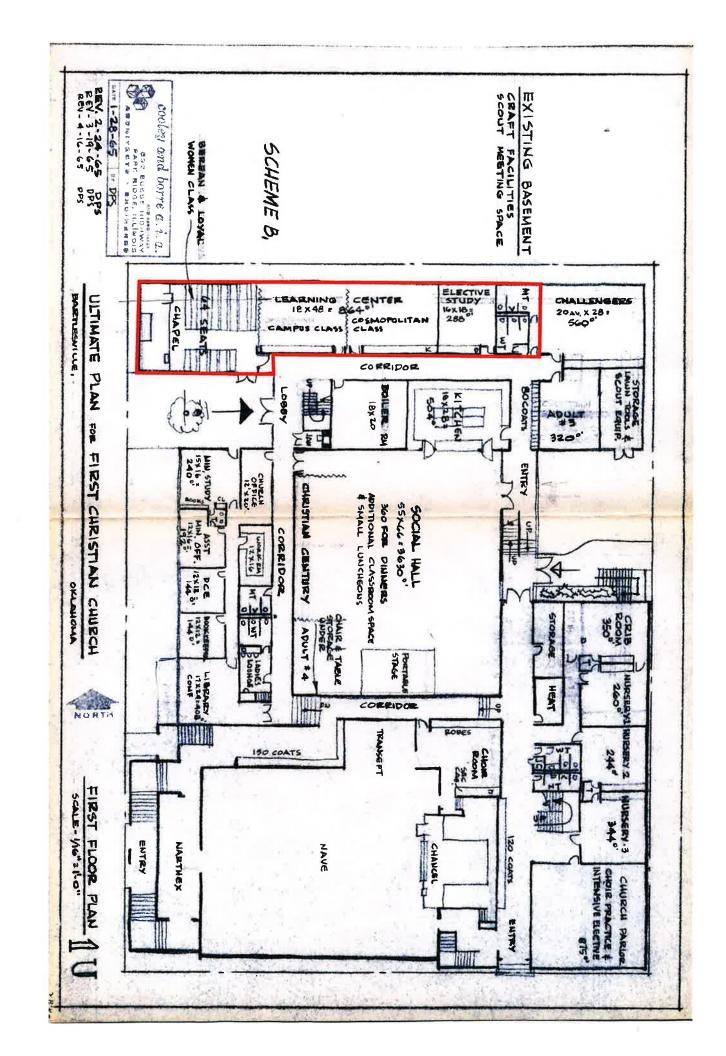
WITNESSETH: Whereas Lessor is a the Lessee of the building located at 510 South Osage Avenue, Bartlesville, Oklahoma, and desires to lease to Lessee a portion of the 1<sup>st</sup> floor of said building "Premises" and Lessee desires to lease said Premises and the Parties hereby agree to the following terms:

- 1. <u>Term</u>: Occupancy shall run from November 1, 2022 through June 30, 2023.
- 2. <u>Renewal:</u> This lease shall automatically renew at the end of each Fiscal year, unless either party gives the other ninety (90) days' notice, in writing, prior to the renewal, that they are cancelling the lease effective at the end of the current term.
- 3. **Cancelation:** This lease shall be cancelable by either party with ninety (90) days' notice in writing.
- 4. **Rental:** The portion of the building leased to Lessee is 2,500 sf, as indicated in the attached map, in the City office building, and is to be utilized on Sundays and Wednesdays. The annual price per square foot is \$3.84. Accordingly, the annual price is \$9,600.00, payable monthly \$800.00 in advance.
- 5. <u>Personal Property:</u> Lessor includes in this lease all furniture currently present, which at the conclusion of the lease shall be returned to Lessor in the same condition in which it was received by the Lessee, reasonable wear and tear accepted.
- 6. <u>Maintenance:</u> Lessee agrees to keep and maintain the property so leased to it in as good condition as the same are turned over to Lessee, reasonable wear and tear accepted.

- 7. <u>Utilities and Cleaning:</u> Lessor shall be responsible for furnishing electric, heating and air conditioning. Lessor will not provide phone service, internet service, or parking. Lessee will be responsible for cleaning the premises.
- 8. <u>Leasehold Improvements:</u> Lessee may make leasehold improvements to the Premises with prior permission of the Lessor. All improvements shall become the property of the Lessor at lease termination unless otherwise agreed in advance. Lessor agrees to paint the walls of the Premises once to the color of the Lessee's choosing.
- 9. <u>Purpose of the Lease:</u> This lease is for the purpose of Lessee operating the Legacy Church of Christ. The purpose of the lease and the use of the property shall not be changed without the prior written permission of Lessor.
- 10. <u>Time of Essence</u>: It is agreed that time is of the essence of this Lease Agreement and should Lessee default in the payment of the rent herein provided, Lessor shall have the option to terminate said Lease after giving Ten (10) business days' notice to cure the default. Further, Lessor shall have the right to collect any unpaid rent required by this lease.

Approved by the Parties hereto the day and year first above written.

Lessor City of Partlesville
City of Bartlesville
City Manager
City Manager
Lessee
Legacy Church of Christ
Chairman





Agenda Item 7.d.i.
September 28, 2022
Prepared by Terry Lauritsen
Water Utilities

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Approval of Engineering Reports for the Chickasaw Wastewater Treatment Plant Expansion and Collection System Improvements Limestone – Chickasaw Corridor.

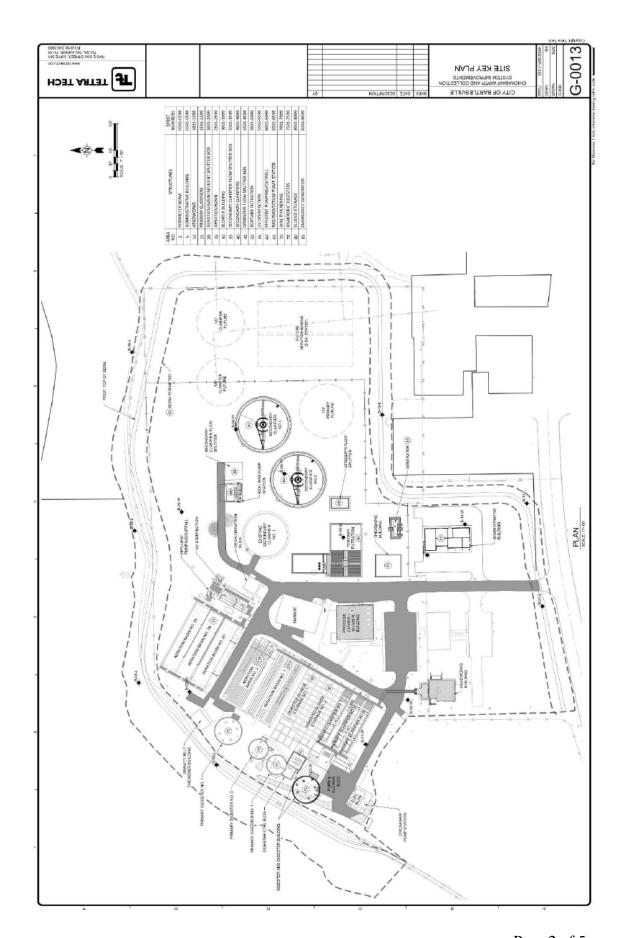
#### Attachments:

Engineering Report – Chickasaw Wastewater Treatment Plant Expansion Engineering Report – Collection System Improvements Limestone – Chickasaw Corridor

#### II. STAFF COMMENTS AND ANALYSIS

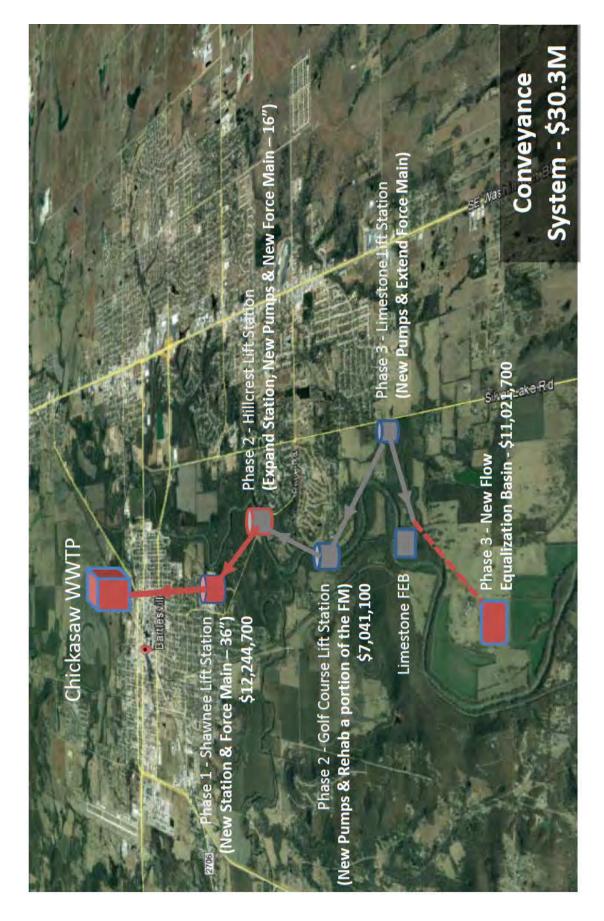
In September 2020, City Council approved a professional service contract with Tetra Tech for the first phase of planning for the wastewater treatment plant expansion and collection system improvements from Limestone to Chickasaw. This phase is to prepare an Engineering Report, which evaluates various improvement options, provides a 35% level of engineering design as well as the environmental review and estimated construction costs. The Engineering Reports are complete and required through a Consent Order by the Oklahoma Department of Environmental Quality (ODEQ). The reports are a result of a two-year effort looking at wastewater samples from different points in the treatment system and available technologies to retrofit and expand the treatment capabilities of the plant as well as collection system improvements to eliminate chronic bypass locations within the system. Highlights of the plant expansion engineering report are summarized below.

- The wastewater treatment plant expansion will increase the capacity of the plant from 7 million gallons per day to 8.2 million gallons per day.
- All the existing structures are being renovated with updated equipment or repurposed for another type of treatment. Additional structures will be built to facilitate the increase in capacity. The only building being demolished is the administration building which has experienced severe foundation problems and is beyond repair.
- A perimeter berm to protect the facility from the 100 year flood event is proposed as well. A layout of the plant improvements is shown on the following page.
- The estimated construction cost is \$55MM.



The collection system improvements from Limestone to Chickasaw are the pump station, force main and storage improvements needed to convey wastewater to the plant. This corridor is currently the bottle neck of the collection system, and improvements will be needed, once the treatment plant expansion is complete. While preparation of the Engineering Report for these corridor improvements is part of the current consent order, construction of these improvements is not currently included in the Consent Order. Staff anticipates, at some future date, the ODEQ will amend the Consent Order to include the proposed dates provided in the engineering report, which are shown below. An overview of the corridor improvements is shown on the following page.

Proposed Project Completion Schedule				
Phase	Project Description	Submit Plans	Start Construction	Complete Construction
1	Shawnee Lift Station Expansion & 30" Force Main	October 1, 2027	June 1, 2028	September 1, 2029
2	Hillcrest and Golf Course Lift Station Improvements & 18" Force Main	June 1, 2028	February 1, 2029	May 1, 2030
3	Limestone Lift Station Expansion & Limestone FEB, Diversion and Return Line Improvements	February 1, 2029	October 1, 2029	January 1, 2031



The tasks associated with the current Consent Order are shown below.

	Task	Date Due
A.	Submit interim plan for bypass management, including a signed standard operating procedure ("SOP") for bypass response and mitigation.	March 1, 2020 APRIL
В.	Hire an engineer licensed to practice in the State of Oklahoma for the purposes of completing Tasks C, D, and E of this Order.	September 1, 2020
C.	Submit an approvable Engineering Report ("ER") for construction of the improvements and rehabilitation to the WWTP.	October 1, 2022
D.	Submit an approvable ER for the construction of improvements to the collection system in the Caney River Corridor, including a schedule for submitting Plans and Specifications ("P&S"), and beginning and completing construction of the improvements.	October 1, 2022
E.	Submit approvable P&S for the construction outlined in the approved ER from Task $\boldsymbol{C}$ .	February 1, 2023
F.	Begin construction of improvements and rehabilitation of the WWTP.	June 1, 2023
G.	Complete construction of improvements and rehabilitation of the WWTP.	April 1, 2027

The submission of the engineering reports will complete tasks C & D. Due to the complexity of the project and considering the ODEQ review timeframes, staff will request an amendment for Tasks E-G per the below schedule.

<b>Task</b>	<b>Description</b>	Original Due	<b>Proposed Due</b>
		<u>Date</u>	<u>Date</u>
D	Engineering Report submittal	October 1, 2022	October 1, 2022 (no change)
	Submit approvable P&S for		
Е	the construction outlined in the	February 1, 2023	February 1, 2024
	approved ER from Task C.		
	Begin construction of		
F	improvements and	June 1, 2023	October 1, 2024
	rehabilitation of the WWTP.		
	Complete construction of		
G	improvements and	April 1, 2027	December 31, 2028
	rehabilitation of the WWTP.		

A special SSIOC meeting was held on September 26, in which the committee unanimously approved the engineering report.

#### III. RECOMMENDED ACTION

Staff recommends approval of the engineering reports.



Agenda Item 7.e.i. September 28, 2022 Prepared by Nancy Warring, Planner II Community Development

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Consider and take action on an Amendment of the Plat and Deed of Dedication and Restrictive Covenants of Lots 1-12, Block 1, Foxtail Villas of Bison Trails.

Attachments: Exhibit D: Foxtail Villas of Bison Trails Plat

Exhibit E: Application & Plat Amendment Document

#### II. STAFF COMMENTS AND ANALYSIS

Applicant	Tanner Consulting, LLC on behalf of D.R. Horton-Texas, Ltd.
Requested Action	Approval of an Amendment of the Plat and Deed of Dedication and Restrictive Covenants of Lots 1-12, Block 1, Foxtail Villas of Bison Trails
Location	North and West of the Intersection of Nowata Rd. and Bison Rd. (Exhibit A)



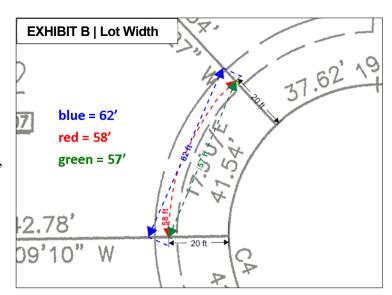
In 2010, the final plat for Foxtail Villas of Bison Trails, a 31-lot single family residential subdivision, was approved by the Bartlesville City Council and later recorded at the Washington County Clerk's Office. Two homes have been constructed in the subdivision thus far. Homebuilder D.R. Horton-Texas has purchased the vacant lots and is requesting approval to reduce the front yard setbacks of 12 lots. The 12 lots are highlighted on the attached recorded plat of Foxtail Villas of Bison Trails. See **Exhibit D**.

Several of those 12 lots have a cul-de-sac in the front and a drainage easement in the back, and this restricts their depth and buildable area. The applicant, Tanner Consulting, on behalf of D.R. Horton, is requesting approval to amend the plat of Foxtail Villas of Bison Trails to decrease the required front setbacks from 25 to 20 feet. The decreased setback is also requested on the remainder of the 12 lots for street view consistency. The applicant's plat amendment application is attached as **Exhibit E**.

During city staff's review of the applicant's request, 3 additional issues were discovered:

#### 1. Lot Width

With a lesser front setback of 20 feet, some lots will have lot widths that may not comply with the minimum required 60-foot width at the front building line. There are 3 possible ways to determine the lot width when the front lot line is curved. It can be measured straight across at the 20-foot marks, it can be measured along the curve of the 20-foot mark, or it can be measured at the tangent of the curve. Each method produces a different number. See **Exhibit B** at right. So, to ensure that the widths of the lots are compliant with any measurement method used, the plat amendment should include the allowance for a reduced lot width.



#### 2. Lot Coverage

With the building layouts as proposed, several of the lots are at or near the maximum lot coverage allowance of 35%. This restricts the ability of a homeowner to place an accessory building, such as a shed, on their lot. The plat amendment should include the allowance for a maximum lot coverage of 40% on lots 1 through 12. However, this increased allowance should only be used for the purposes of adding an accessory building.

#### 3. Nowata Road Sidewalk

The final plat of Foxtail Villas of Bison Trails was approved with the condition that a note be added to the plat regarding sidewalks and ADA ramps. Specifically, the note was to reference the 5-foot sidewalk requirement along Nowata Road and the 4-foot sidewalk requirement along the interior subdivision streets. However, the plat only had the 4-foot sidewalk note. The sidewalk along Nowata Road should have been built at the time of public infrastructure construction of the subdivision, but it was never built. See aerial photo in **Exhibit C** below.



#### III. RECOMMENDED ACTION

At its meeting on September 27, 2022, the Planning Commission considered the Amendment of the Plat and Deed of Dedication and Restrictive Covenants of Lots 1-12, Block 1, Foxtail Villas of Bison Trails to allow 20-foot front yard setbacks. The Planning Commission recommended approval, with the following conditions:

- 1. The following shall be added to the Amendment of the Plat of Foxtail Villas of Bison Trails:
  - a. A reduced minimum lot width shall be allowed on Lots 1 through 12 to reflect the 20-foot front yard setback;
  - b. A maximum lot coverage of 40% shall be allowed on Lots 1 through 12 for the purposes of accessory building placement only; and
  - c. A 5-foot sidewalk shall be constructed along Nowata Road.
- 2. A 5-foot sidewalk with ADA compliant ramps shall be constructed in accordance with the City of Bartlesville Subdivision Regulations along the north side of Nowata Road extending the length of the original subdivision plat, connecting to Bluestem Drive and extending north to the existing sidewalk on Bluestem Drive. Said sidewalk shall be constructed prior to the approval of any further building permits in Foxtail Villas of Bison Trails; and

The Council is requested to take final action at its regular meeting on Monday, October 3, 2022.

97.43

100.03

01°08'04

120.00

120.00

120.00

N 88'51'32"

N 88°51'32" E

N 88'51'32" E

LEGEND

.. UTILITY EASEMENT

DRAINAGE EASEMENT

BUILDING LINE

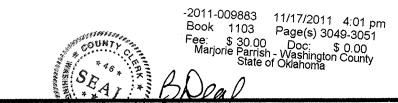
...RIGHT OF WAY

Grace Community

Church

S 88°51'32" W 72.70'-

N 1°08'28" W 20.00'



fk1103P93049



AN ADDITION TO THE CITY OF BARTLESVILLE
BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHEAST QUARTER (E/2, SE/4) OF
SECTION 15, TOWNSHIP 26 NORTH, RANGE 13 EAST, WASHINGTON COUNTY, OKLAHOMA

# PROJECT DATA

▲S 85°07'22" E

stem

89.60

75.00'

61.99' 20.4

62.02' 5 17.5'U/E

65.00' 5'L&W/E 75.03'

70.00'

S 89'09'10" W

11'U/E

65.00'

65.00'

11'U/E

N 88'51'32" E

N 88'51'32" E

Nowata Road

Foxtail Park Drive

Goldenrod Lane

65.00'

62.00'

50.44'

LIMITS OF NO ACCESS

118.22' 5'L&W/E

S 88°51'32" W

N 88°52

CURVE TABLE

NUMBER | DELTA ANGLE | RADIUS | ARC LENGTH

C8 - 87'53'16" 50.00' 249.41'

C9 88\*59'59" 25.00' 13.29'

C10 37'42'50" 50.00' 131.72'

 C11
 52\*17'10"
 25.00'
 13.30'

 C12
 16'06'59"
 25.00'
 39.27'

325.00' 82.41' 13.00' 12.00'

59.15

\_11'U/E\_\_

\_\_\_\_ <u>17.5'U/E (E</u>

Adams-Muir

(Unplatted)

72.10'

## OWNER

BISON PLAINS DEVELOPMENT, L.L.C. 2431 NOWATA PLACE BARTLESVILLE, OK 74006 918.331.0600

# ENGINEER / SURVEYOR COOK & ASSOCIATES ENGINEERING, INC.

121 EAST COLLEGE BROKEN ARROW, OK 74012 918.258.9442 (VOICE) 918.258.9488 (FAX) CA#4479 EXPIRES JUNE 30, 2012

## MUNICIPAL AUTHORITY

THE CITY OF BARTLESVILLE
401 SOUTH JOHNSTONE AVENUE
BARTLESVILLE, OK 74003
ATTN: TERRY LAURITSEN
918.338.4254
TLLAURIT@CITYOFBARTLESVILLE.ORG

# NOTES

A \$2000.00 SANITARY SEWER EXPANSION
FEE SHALL BE PAID BY THE PROPERTY OWNER
PRIOR TO THE ISSUANCE OF A BUILDING PERMIT
FOR ANY LOT WITHIN THIS SUBDIVISION FOR THE
CONSTRUCTION OF A SINGLE—FAMILY RESIDENTIAL
DWELLING UNIT.

FOUR—FOOT SIDEWALKS AND ADA COMPLIANT CURB RAMPS SHALL BE CONSTRUCTED AS EACH HOME IS BUILT, EVENTUALLY CONNECTING EACH SIDE OF ALL STREETS WITH WALKS. SIDEWALK MUST MEET ALL CITY OF BARTLESVILLE REQUIREMENTS.

UNLESS OTHERWISE NOTED
ALL BUILDING SETBACKS SHALL BE AS FOLLOWS:
FRONT YARD — 25 FEET
REAR YARD — 20 FEET

INTERIOR YARD - 7.5 FEET

EXTERIOR YARD - 15 FEET

NO FENCE, WALL, PLANTING, BUILDING, OR OTHER OBSTRUCTION SHALL BE PLACED OR MAINTAINED IN SAID D/E & U/E OR D/E, U/E, & PATHFINDER PARKWAY EASEMENT WITHOUT APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID EASEMENTS WITHOUT

THE APPROVAL OF SAID CITY ENGINEER.

# SITE DATA

# BENCHMARK 🕀

RIM OF EXISTING SANITARY SEWER MANHOLE NO. 2907
LOCATED APPROXIMATELY 294 FEET EAST OF
KINGS DRIVE CENTERLINE AND 43 FEET NORTH
OF SOUTH SECTION LINE OF SECTION 15, T26N,
R13E (NOWATA ROAD) WASHINGTON COUNTY, OKLAHOMA
ELEVATION 768.44 (NAVD 1929)

## BASIS OF BEARINGS

ASSUMED BEARING OF S S88'51'32"W E ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SECTION 15, T-26-N, R-13-E OF THE INDIAN BASE AND MERIDIAN, WASHINGTON COUNTY, STATE OF OKLAHOMA

## LAND AREA

514,387.52 SF± 11.80 AC± THIRTY ONE (31) Lots

## MONUMENTATION

A 3/8" X 18" DEFORMED BAR WITH A ORANGE PLASTIC CAP STAMPED "CA4479" TO BE SET AT ALL PLAT BOUNDARY CORNERS, PRIOR TO RECORDATION UNLESS NOTED OTHERWISE.

A 3/8" X 18" DEFORMED BAR WITH A ORANGE PLASTIC CAP STAMPED "CA4479" TO BE SET AT ALL LOT CORNERS AFTER COMPLETION OF IMPROVEMENTS, UNLESS NOTED OTHERWISE.

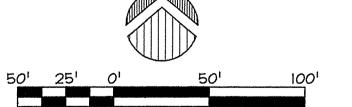
A 3/8" X 18" DEFORMED BAR WITH A ORANGE PLASTIC CAP STAMPED "CA4479" TO BE SET AT ALL STREET CENTERLINE INTERSECTIONS, POINTS OF CURVE, POINTS OF TANGENT, POINTS OF COMPOUND CURVE, POINTS OF REVERSE CURVE, CENTER OF CUL—DE—SACS AND CENTER OF EYEBROWS, AFTER COMPLETION OF IMPROVEMENTS, UNLESS NOTED OTHERWISE.

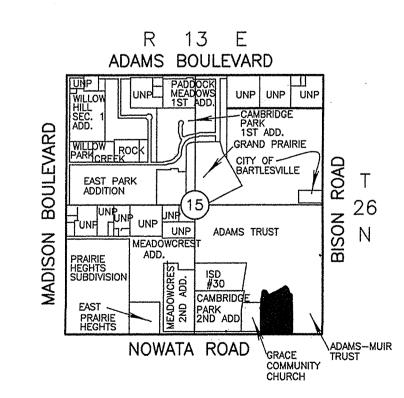
# ADDRESSES

ADRESSES SHOWN ON THIS PLAT WERE ACCURATE AT THE TIME THIS PLAT WAS FILED. ADDRESSES ARE SUBJECT TO CHANGE AND SHOULD NEVER BE RELIED ON IN PLACE OF LEGAL DESCRIPTION.

# SURVEYORS NOTE

THIS PLAT OF SURVEY MEETS THE OKLAHOMA MINIMUM STANDARDS FOR THE PRACTICE OF LAND SURVEYING AS ADOPTED BY THE OKLAHOMA STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS & LAND SURVEYORS.





SE CORNER OF SECTION FIFTEEN (15), TOWNSHIP TWENT-SIX (26) NORTH, RANGE THIRTEEN (13) EAST, OF THE INDIAN BASE AND MERIDIAN, WASHINGTON COUNTY, STATE OF OKLAHOMA

Foxtail Villas of Bison Trails
Sheet 1 of 3

Date Prepared: July 8, 2011

OWNER'S CERTIFICATE AND RESTRICTIONS OF FOXTAIL VILLAS OF BISON TRAILS BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

KNOW ALL MEN BY THESE PRESENTS:

THAT BISON PLAINS DEVELOPMENT, L.L.C. DOES HEREBY CERTIFY THAT IT IS THE OWNER OF THE FOLLOWING DESCRIBED REAL ESTATE LOCATED IN WASHINGTON COUNTY, OKLAHOMA, TO WIT:

A TRACT OF LAND LOCATED IN THE SE/4 OF SECTION FIFTEEN (15), TOWNSHIP TWENT-SIX (26) NORTH, RANGE THIRTEEN (13) EAST, OF THE INDIAN BASE AND MERIDIAN, WASHINGTON COUNTY, STATE OF OKLAHOMA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO-WIT:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION, THENCE S88°51'32"W A DISTANCE OF 660.30'; THENCE NO1°08'35"W A DISTANCE OF 60.00'; TO THE POINT OF BEGINNING; THENCE S88°51'32"W A DISTANCE OF 547.37'; THENCE NO1°08'28"W A DISTANCE OF 20.00'; THENCE S88°51'32"W A DISTANCE OF 72.70'; THENCE NO1°08'04"W A DISTANCE OF 420.00'; THENCE ALONG A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 12°12'14", A RADIUS OF 2000.00', A DISTANCE OF 430.04'; THENCE S78°47'53"E A DISTANCE OF 44.51'; THENCE S28°23'03"E A DISTANCE OF 117.77'; THENCE N63°52'07"E A DISTANCE OF 324.91'; THENCE ALONG A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 12°21'55", A RADIUS OF 475.00', A DISTANCE OF 102.51'; THENCE ALONG A CURVE TO THE RIGHT HAVING A CHORD BEARING OF S16°50'29"E, A CHORD LENGTH OF 164.37', CENTRAL ANGLE OF 41°51'27", A RADIUS OF 225.00', A DISTANCE OF 164.37'; THENCE S85°07'22"E A DISTANCE OF 51.22'; THENCE S01°08'45"E 782.77' TO THE POINT OF BEGINNING.

WHICH REAL ESTATE HAS BEEN SURVEYED AND PLATTED IN LOTS AND BLOCKS UNDER THE NAME OF "FOXTAIL VILLAS OF BISON TRAILS" AS REFLECTED BY THE CERTAIN DEED OF DEDICATION AND PLAT RECORDED IN THE OFFICE OF THE COUNTY CLERK OF WASHINGTON COUNTY, OKLAHOMA.

### ARTICLE ONE - DEFINITIONS

- 1. ASSOCIATION. "ASSOCIATION" SHALL MEAN AND REFER TO FOXTAIL VILLAS OF BISON TRAILS HOMEOWNERS' ASSOCIATION, INC., AN OKLAHOMA NOT FOR PROFIT CORPORATION, AND ITS SUCCESSORS AND ASSIGNS.
- 2. COMMON AREAS. "COMMON AREAS" SHALL MEAN AND REFER TO ALL PROPERTY OWNED BY THE ASSOCIATION AND ALL EASEMENTS RESERVED FOR THE BENEFIT OF OR GRANTED TO THE ASSOCIATION FOR THE COMMON USE AND BENEFIT OF ITS MEMBERS INCLUDING STREETS AND ENTRY WAY, STREET LIGHTS, EXTERIOR FENCES CONSTRUCTED BY DECLARANT, AND IN PARTICULAR STORM DRAINAGE EASEMENTS, WHICH WILL BE LANDSCAPED AND MAINTAINED FOR RECREATIONAL USAGE.
- 3. DECLARANT. "DECLARANT" SHALL MEAN AND REFER TO BISON PLAINS DEVELOPMENT, LLC, AN OKLAHOMA LIMITED LIABILITY COMPANY, AND ITS SUCCESSORS AND ASSIGNS.
- 4. LOT. "LOT" SHALL MEAN AND REFER TO ANY OF THE PLOTS OF LAND ON THE PLAT OF FOXTAIL VILLAS OF BISON TRAILS ADDITION TO THE CITY OF BARTLESVILLE, OKLAHOMA, ON WHICH THERE IS OR WILL BE BUILT A RESIDENTIAL DWELLING.
- 5. MEMBER. "MEMBER" SHALL MEAN AND REFER TO EVERY PERSON OR ENTITY WHO HOLDS MEMBERSHIP IN THE ASSOCIATION.
- 6. OWNER. "OWNER" SHALL MEAN AND REFER TO THE RECORD OWNER, WHETHER ONE OR MORE PERSONS OR ENTITIES, OF THE FEE SIMPLE TITLE TO ANY LOT OR PORTION OF A LOT ON WHICH THERE IS OR WILL BE BUILT A DETACHED SINGLE—FAMILY RESIDENCE, INCLUDING CONTRACT PURCHASERS. UNLESS THE CONTEXT OTHERWISE REQUIRES, THE DECLARANT, BISON PLAINS DEVELOPMENT, LLC, SHALL NOT BE INCLUDED WITHIN THE TERM "OWNER".
- 7. SUBDIVISION. "SUBDIVISION" SHALL MEAN AND REFER TO FOXTAIL VILLAS OF BISON TRAILS ADDITION TO THE CITY OF BARTLESVILLE, OKLAHOMA, ACCORDING TO THE PLAT THEREOF RECORDED IN THE OFFICE OF THE COUNTY CLERK OF WASHINGTON COUNTY, OKLAHOMA.

#### ARTICLE TWO - PURPOSE

THE SUBDIVISION IS HEREBY ENCUMBERED BY THE COVENANTS, CONDITIONS, AND RESTRICTIONS HEREINAFTER SET FORTH TO INSURE THE BEST AND HIGHEST USE AND THE MOST APPROPRIATE DEVELOPMENT AND IMPROVEMENT OF EACH LOT WITHIN THE SUBDIVISION FOR RESIDENTIAL PURPOSES; TO PROTECT THE OWNERS OF LOTS AGAINST THE IMPROPER USE OF SURROUNDING LOTS; TO PRESERVE, SO FAR AS PRACTICABLE, THE NATURAL BEAUTY OF THE SUBDIVISION; TO GUARD AGAINST THE ERECTION OF POORLY DESIGNED OR POORLY PROPORTIONED STRUCTURES OF IMPROPER OR UNSUITABLE MATERIALS; TO ENCOURAGE AND SECURE THE ERECTION OF ATTRACTIVE, APPROPRIATELY LOCATED IMPROVEMENTS ON EACH LOT; TO PREVENT HAPHAZARD AND INHARMONIOUS IMPROVEMENT OF THE LOTS; TO SECURE AND MAINTAIN THE PROPER USE OF EASEMENTS WITHIN THE SUBDIVISION; TO PRESERVE THE LINES OF SIGHT AND VIEW FROM THE LOTS AND THE PROPERTIES; AND, IN GENERAL, TO PROVIDE FOR DEVELOPMENT OF THE HIGHEST QUALITY TO ENHANCE THE VALUE OF THE INVESTMENT MADE BY OWNERS IN PURCHASING LOTS IN THE SUBDIVISION.

# ARTICLE THREE - FOXTAIL VILLAS AT BISON TRAILS HOMEOWNERS' ASSOCIATION, INC.

- 1. CREATION. THE ASSOCIATION SHALL BE INCORPORATED AS AN OKLAHOMA NOT FOR PROFIT CORPORATION AND SHALL BE ESTABLISHED AS A HOMEOWNERS' ASSOCIATION PURSUANT TO SECTION 851 ET SEQ. OF TITLE 60 OF THE OKLAHOMA STATUTES (THE "ACT"). THE ASSOCIATION SHALL BE FORMED FOR THE PURPOSES, CHARGED WITH THE DUTIES AND VESTED WITH THE POWERS AND PRIVILEGES PRESCRIBED BY THE ACT OR AS SET FORTH IN THE CERTIFICATE OF INCORPORATION AND BY—LAWS THEREOF. NEITHER THE CERTIFICATE NOR THE BY—LAWS OF THE ASSOCIATION SHALL, FOR ANY REASON, BE INCONSISTENT WITH THE PROVISIONS OF THIS DECLARATION. IN THE EVENT OF INCONSISTENCY BETWEEN THIS DECLARATION AND THE CERTIFICATE OF INCORPORATION AND/OR BY—LAWS OF THE ASSOCIATION, THE TERMS OF THIS DECLARATION SHALL BE CONTROLLING.
- 2. MEMBERSHIP.
- (A) EVERY OWNER (INCLUDING THE DECLARANT) OF A LOT WITHIN THE SUBDIVISION SHALL AUTOMATICALLY BECOME A MEMBER OF THE ASSOCIATION.
- (B) MEMBERSHIP SHALL BE APPURTENANT TO AND SHALL NOT BE SEPARATED FROM LOT OWNERSHIP. MEMBERSHIP SHALL BE IN ACCORDANCE WITH THE ARTICLES AND BY-LAWS OF THE ASSOCIATION.
- VOTING RIGHTS.
- (A) EACH LOT SHALL BE ENTITLED TO ONE (1) VOTE ON ALL MATTERS SUBJECT TO VOTING APPROVAL OF THE MEMBERS OF SUCH ASSOCIATION; PROVIDED, HOWEVER, THAT IN THE EVENT OF THE RESUBDIVISION OF ANY LOT, THE NUMBER OF VOTES TO WHICH SUCH LOT IS ENTITLED SHALL BE INCREASED AS NECESSARY TO RETAIN THE RATIO OF ONE (1) VOTE FOR EACH LOT RESULTING FROM SUCH RESUBDIVISION. NO RESUBDIVISION SHALL BE EFFECTIVE, FOR PURPOSES OF THESE RESTRICTIONS, UNLESS THE SAME IS APPROVED BY THE APPROPRIATE GOVERNMENTAL ENTITY. IN THE EVENT OF THE CONSOLIDATION OF TWO (2) OR MORE LOTS FOR PURPOSES OF CONSTRUCTION OF A SINGLE RESIDENCE THEREON, VOTING RIGHTS SHALL CONTINUE TO BE DETERMINED ACCORDING TO THE NUMBER OF ORIGINAL LOTS CONTAINED IN SUCH CONSOLIDATED LOT.
- (B) WHEN MORE THAN ONE PERSON OR ENTITY HOLDS AN INTEREST IN ANY LOT, ALL SUCH PERSONS OR ENTITIES SHALL BE MEMBERS. THE VOTE FOR SUCH LOT MAY BE EXERCISED AS THE OWNERS THEREOF MUTUALLY AGREE, BUT IN NO EVENT SHALL THE VOTE FOR SUCH LOT EXCEED THE TOTAL SHARE VOTE TO WHICH EACH LOT IS ENTITLED AS HEREIN PROVIDED.
- (C) ANY MEMBER IN DEFAULT IN THE PAYMENT OF ANY ASSESSMENT OR THE PERFORMANCE OF ANY OBLIGATION IMPOSED BY THIS DECLARATION SHALL NOT BE ENTITLED TO VOTE AT ANY MEETING OF THE ASSOCIATION AS LONG AS SUCH DEFAULT REMAINS IN EXISTENCE.

# ARTICLE FOUR - ASSESSMENTS

- 1. ASSESSMENTS ESTABLISHED. EACH OWNER OF ANY LOT IN THE SUBDIVISION, BY ACCEPTANCE OF A DEED AND/OR CONTRACT FOR DEED THEREFORE, WHETHER OR NOT IT SHALL BE SO EXPRESSED IN SUCH DEED AND/OR CONTRACT, IS DEEMED TO COVENANT AND AGREE TO PAY TO THE ASSOCIATION: (1) MONTHLY ASSESSMENTS OR CHARGES, (2) SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS, AND (3) ANY ADDITIONAL ASSESSMENTS WHICH MAY BE LEVIED AS THE RESULT OF ANY MAINTENANCE EXPENSE INCURRED BY THE ASSOCIATION PURSUANT TO ARTICLE EIGHT OF THIS DECLARATION. SUCH ASSESSMENTS SHALL BE ESTABLISHED AND COLLECTED AS HEREINAFTER PROVIDED.
- 2. PURPOSES OF MONTHLY ASSESSMENTS. THE REGULAR MONTHLY ASSESSMENTS LEVIED BY THE ASSOCIATION SHALL BE USED EXCLUSIVELY TO MAINTAIN, PRESERVE AND OPERATE THE ASSOCIATION'S COMMON AREAS FOR THE BENEFIT OF ITS MEMBERS. SUCH PURPOSES SHALL INCLUDE, BUT NOT BE LIMITED TO, PROVIDING UTILITY SERVICES TO COMMON AREAS, PAYING AD VALOREM TAXES, IF ANY, ON COMMON AREAS, PROVIDING FOR THE MAINTENANCE OF STREETS, STREET LIGHTS AND EXTERIOR FENCES WHICH ARE CONSIDERED A PART OF THE COMMON AREAS, PROVIDING ELECTRICITY FOR STREET LIGHTS, MAINTAINING AND PRESERVING COMMON AREAS, AND CREATING REASONABLE RESERVES FOR THE FUTURE MAINTENANCE, PRESERVATION AND OPERATION OF COMMON AREAS.
- 3. AMOUNT OF MONTHLY ASSESSMENTS. THE DECLARANT SHALL ESTABLISH AN INITIAL BUDGET FOR THE ASSOCIATION; THEREAFTER, THE ASSOCIATION SHALL MAKE A REASONABLE EFFORT TO ESTABLISH A BUDGET ON OR BEFORE DECEMBER 1ST OF EACH YEAR FOR THE FOLLOWING CALENDAR YEAR. SUCH BUDGET SHALL INCLUDE AN ESTIMATE OF ALL EXPENSES AND RESERVES FOR WHICH SUCH ASSOCIATION SHALL BE RESPONSIBLE. A MONTHLY BUDGET SHALL THEN BE OBTAINED BY DIVIDING THE TOTAL ESTIMATED AMOUNT BY TWELVE (12) MONTHS AND THE RESULTING MONTHLY BUDGET SHALL BE PRORATED AMONG THE MEMBERS OF SUCH ASSOCIATION BY WAY OF MONTHLY ASSESSMENTS IN ACCORDANCE WITH THE PROVISIONS OF THIS DECLARATION.

# FOXTAIL VILLAS OF BISON TRAILS

AN ADDITION TO THE CITY OF BARTLESVILLE
BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHEAST QUARTER (E/2, SE/4) OF
SECTION 15, TOWNSHIP 26 NORTH, RANGE 13 EAST, WASHINGTON COUNTY, OKLAHOMA

#### ARTICLE FOUR - ASSESSMENTS CONTINUED

- 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. IN ADDITION TO MONTHLY ASSESSMENTS, THE ASSOCIATION MAY LEVY, IN ANY CALENDAR YEAR, SPECIAL ASSESSMENT(S) APPLICABLE TO THAT YEAR ONLY FOR THE PURPOSE OF DEFRAYING, IN WHOLE OR IN PART, THE COST OF ANY CONSTRUCTION, RECONSTRUCTION, REPAIR OR REPLACEMENT OF A CAPITAL IMPROVEMENT UPON THE COMMON AREAS, INCLUDING FIXTURES AND PERSONAL PROPERTY RELATED THERETO. SUCH SPECIAL ASSESSMENT MAY INCLUDE CHARGES BY THE CITY OF BARTLESVILLE FOR MAINTENANCE OF ANY RESTRICTED DRAINAGEWAY EASEMENTS OF THE SUBDIVISION, AS FURTHER DESCRIBED IN ARTICLE 9, SECTION 4 BELOW. A MEETING OF THE ASSOCIATION SHALL BE CALLED REGARDING ANY SPECIAL ASSESSMENT. FOR ANY ASSESSMENT OTHER THAN ONE ASSOCIATED WITH MAINTENANCE OF RESTRICTED DRAINAGEWAY EASEMENT, THERE SHALL BE REQUIRED TO HAVE THE ASSENT OF THE NUMBER VOTES EQUAL TO A MAJORITY OF VOTES ELIGIBLE TO BE CAST, IN PERSON OR BY PROXY, AT A MEETING DULY CALLED FOR THAT PURPOSE.
- 5. NOTICE AND QUORUM. WRITTEN NOTICE OF ANY MEETING CALLED FOR THE PURPOSE OF TAKING ANY ACTION AUTHORIZED UNDER THE PRECEDING PARAGRAPH 4 OF THIS ARTICLE SHALL BE SENT TO ALL MEMBERS OF THE ASSOCIATION WHO WOULD BE AFFECTED BY SUCH SPECIAL ASSESSMENT, NOT LESS THAN FIFTEEN (15) DAYS NOR MORE THAN FIFTY (50) DAYS IN ADVANCE OF THE MEETING. THE PRESENCE OF MEMBERS ENTITLED TO CAST THIRTY PERCENT (30%) OF ALL OF THE VOTES OF THE MEMBERS WHO WOULD BE AFFECTED BY SUCH SPECIAL ASSESSMENT, OR THEIR PROXIES, SHALL CONSTITUTE A QUORUM. IF THE REQUIRED QUORUM IS NOT PRESENT, ANOTHER MEETING MAY BE CALLED SUBJECT TO THE SAME NOTICE AND QUORUM REQUIREMENTS.
- 6. UNIFORM BASIS OF ASSESSMENTS. BOTH MONTHLY AND SPECIAL ASSESSMENTS SHALL BE FIXED AT A UNIFORM BASIS FOR ALL LOTS SUBJECT THERETO IN ACCORDANCE WITH PARAGRAPH 11 HEREOF AND AS SET FORTH IN THE ASSOCIATIONS=S BYLAWS AND MAY BE COLLECTED ON A MONTHLY BASIS. DIFFERENT ASSESSMENT AMOUNT MAY CHARGED FOR DEVELOPED LOTS VERSUS UNDEVELOPED LOTS.
- 7. DATE OF COMMENCEMENT OF MONTHLY ASSESSMENTS; DUE DATES. THE MONTHLY ASSESSMENTS PROVIDED FOR HEREIN SHALL COMMENCE AS TO EACH LOT SUBJECT TO SUCH ASSESSMENT ON THE FIRST DAY OF THE FIRST MONTH FOLLOWING THE CONVEYANCE OF SUCH LOT FROM DECLARANT TO AN OWNER, AS EVIDENCED BY DEED OR CONTRACT FOR DEED, AND SHALL CONTINUE THEREAFTER AT THE DISCRETION OF THE ASSOCIATION. THE INITIAL MONTHLY ASSESSMENT TO BE LEVIED BY THE ASSOCIATION SHALL BE FIXED BY DECLARANT; THEREAFTER, THE ASSOCIATION'S BOARD OF DIRECTORS SHALL FIX THE AMOUNT OF THE MONTHLY ASSESSMENT AGAINST EACH LOT SUBJECT THERETO AT LEAST THIRTY (30) DAYS PRIOR TO JANUARY 1ST OF EACH CALENDAR YEAR AND WRITTEN NOTICE OF THE AMOUNT OF THE MONTHLY ASSESSMENT AND THE DUE DATES WHICH ARE ESTABLISHED BY THE ASSOCIATION'S BOARD OF DIRECTORS SHALL BE SENT TO THE OWNER OF EVERY LOT SUBJECT THERETO. THE ASSOCIATION SHALL, UPON DEMAND AND FOR A REASONABLE CHARGE, FURNISH A CERTIFICATE SIGNED BY AN OFFICER OF THE ASSOCIATION STATING WHETHER OR NOT THE ASSESSMENTS ON A LOT HAVE BEEN PAID.
- 8. PERSONAL OBLIGATION AND LIEN; REMEDIES OF THE ASSOCIATION FOR NONPAYMENT. THERE IS HEREBY IMPOSED A CONTINUING LIEN ON EACH LOT IN THE SUBDIVISION TO SECURE THE PAYMENT OF ANY ASSESSMENT AUTHORIZED HEREUNDER, INCLUDING ANY ASSESSMENT RESULTING FROM MAINTENANCE EXPENSE INCURRED BY THE DECLARANT OR THE COMMITTEE PURSUANT TO ARTICLE EIGHT HEREOF, AND SUCH LIEN SHALL, TO THE FULLEST EXTENT PERMITTED BY LAW, BIND SUCH LOT OR LOTS IN THE HANDS OF THE THEN OWNER, AND SUCH OWNER'S HEIRS, DEVISEES, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS. ANY ASSESSMENT AUTHORIZED HEREUNDER, INCLUDING ANY ASSESSMENT RESULTING FROM MAINTENANCE EXPENSE INCURRED BY THE DECLARANT OR THE COMMITTEE PURSUANT TO ARTICLE EIGHT HEREOF, BUT NOT PAID ON OR BEFORE THE DATE DUE SHALL BE DEEMED DELINQUENT. EACH SUCH ASSESSMENT, TOGETHER WITH INTEREST, COSTS, AND REASONABLE ATTORNEY'S FEES SHALL ALSO BE THE PERSONAL OBLIGATION OF THE OWNER OF SUCH PROPERTY AT THE TIME WHEN SUCH ASSESSMENT FALLS DUE. IF AN ASSESSMENT IS NOT PAID WITHIN THIRTY (30) DAYS AFTER THE DUE DATE, THE ASSESSMENT SHALL BEAR INTEREST FROM THE DUE DATE AT THE RATE OF TEN PERCENT (10%) PER ANNUM, AND THE ASSOCIATION MAY EITHER (1) BRING AN ACTION AT LAW AGAINST THE OWNER PERSONALLY OBLIGATED TO PAY THE SAME, OR (2) FORECLOSE SAID LIEN AGAINST THE LOT, OR (3) BOTH; AND, IN SUCH EVENT, THERE SHALL BE ADDED TO THE AMOUNT OF SUCH ASSESSMENT INTEREST AS PROVIDED HEREIN AND ALL COSTS OF COLLECTION, INCLUDING REASONABLE ATTORNEYS' FEES. NO OWNER MAY WAIVE OR OTHERWISE ESCAPE LIABILITY FOR THE ASSESSMENTS PROVIDED FOR HEREIN BY NON—USE OF ANY COMMON AREA OR BY ABANDONMENT OF SUCH OWNER'S LOT.
- 9. SUBORDINATION OF THE LIEN TO MORTGAGEES. THE LIEN TO SECURE PAYMENT OF THE ASSESSMENTS PROVIDED FOR HEREIN SHALL BE SUBORDINATE BY THE LIEN OF ANY FIRST MORTGAGE ON A LOT. SALE OR TRANSFER OF ANY LOT SHALL NOT AFFECT THE VALIDITY OF AN ASSESSMENT LIEN HEREUNDER. NO FORECLOSURE SALE OR TRANSFER SHALL RELIEVE THE PURCHASER OF SUCH LOT FROM LIABILITY FOR ANY ASSESSMENTS THEREAFTER BECOMING DUE OR FROM THE LIEN SECURING THE PAYMENT THEREOF. NO FORECLOSURE SALE OR TRANSFER SHALL RELIEVE THE DELINQUENT OWNER FROM HIS PERSONAL OBLIGATION AND LIABILITY FOR PAYMENT OF THE ASSESSMENTS THEREFORE SECURED BY THAT LIEN.
- 10. EXEMPT PROPERTY. THE FOLLOWING PROPERTY SUBJECT TO THIS DECLARATION SHALL BE EXEMPT FROM THE ASSESSMENTS, CHARGES, AND LIENS CREATED HEREIN:
- (A) ALL PROPERTY DEDICATED AND ACCEPTED BY ANY LOCAL GOVERNMENTAL AUTHORITY AND DEVOTED TO PUBLIC USE; AND
- (B) ALL COMMON AREAS.
- 11. CALCULATION OF ASSESSMENTS BY LOT. THE ASSOCIATION MAY CHANGE THE PERCENTAGE PORTION OF THE TOTAL ASSESSMENT TO BE BORNE BY EACH LOT IN ORDER TO REFLECT ANY SUBSEQUENT RESUBDIVISION OF THE ORIGINAL LOTS AS PROVIDED IN ARTICLE THREE, PARAGRAPH 3(A) OF THESE RESTRICTIONS, OR CHARGE A DIFFERENT AMOUNT FOR DEVELOPED AND UNDEVELOPED LOTS. AN OWNER MAY CONSOLIDATE TWO (2) OR MORE LOTS FOR THE PURPOSE OF CONSTRUCTING ONE SINGLE FAMILY RESIDENCE THEREON; PROVIDED, HOWEVER, THAT IN THE EVENT OF THE CONSOLIDATION OF ANY TWO OR MORE OF THE ORIGINAL LOTS, SUCH CONSOLIDATION SHALL IN NO EVENT HAVE THE EFFECT OF REDUCING THE ASSESSMENT DUE THEREON, AND SUCH ASSESSMENT SHALL CONTINUE TO BE BASED UPON THE FRACTIONAL SHARE FOR EACH OF THE ORIGINAL LOTS AS HEREIN SET FORTH. NO DIMINUTION OR ABATEMENT OF ASSESSMENTS SHALL BE ALLOWED OR CLAIMED FOR INCONVENIENCE OR DISCOMFORT ARISING FROM THE MAKING OF REPAIRS OR IMPROVEMENTS TO THE COMMON AREAS OR FROM ANY ACTION TAKEN TO COMPLY WITH ANY LAW, ORDINANCE, OR ORDER OF A GOVERNMENTAL AUTHORITY.

# ARTICLE FIVE - MAINTENANCE BY AND SERVICES OF THE ASSOCIATION

THE ASSOCIATION SHALL MAINTAIN, PRESERVE AND OPERATE THE ASSOCIATION'S COMMON AREAS TO THE EXTENT AND THE EFFECT THAT THE ASSOCIATION'S BOARD OF DIRECTORS DEEMS APPROPRIATE FROM TIME TO TIME. THE ASSOCIATION'S RESPONSIBILITY TO PRESERVE COMMON AREAS SHALL INCLUDE, WITHOUT LIMITATION, AN OBLIGATION TO PAY ALL TAXES ASSESSED AGAINST SUCH COMMON AREAS. TO THE EXTENT ANY ENTRANCES, FENCES OR COMMON AREAS ARE SHARED WITH OTHER ADDITIONS, THE ASSOCIATION MAY DETERMINE WHAT PERCENTAGE OF SUCH COSTS SHALL BE PAID BY THE ASSOCIATION.

# ARTICLE SIX — ARCHITECTURAL CONTROL COMMITTEE

1. ARCHITECTURAL CONTROL COMMITTEE. AN ARCHITECTURAL CONTROL COMMITTEE (HEREINAFTER SOMETIMES REFERRED TO AS THE "COMMITTEE")
SHALL BE DESIGNATED AND COMPOSED OF THREE (3) MEMBERS, AT LEAST TWO (2) OF WHOM SHALL BE A LOT OWNER, WITH THE INITIAL COMMITTEE
TO BE APPOINTED BY DECLARANT. THE FOLLOWING PERSONS ARE HEREBY DESIGNATED AS THE INITIAL MEMBERS OF THE COMMITTEE: STEPHEN S.
ADAMS, KENNETH G. ADAMS, AND GARY L. PETTUS. UNTIL SUCH TIME AS 60% OF THE LOTS ARE SOLD TO OWNERS, THE DECLARANT SHALL APPOINT
THE MEMBERS OF THE ARCHITECTURAL CONTROL COMMITTEE. EACH MEMBER OF THE COMMITTEE SHALL SERVE FOR A TERM OF THREE (3) YEARS,
UNLESS SUCH MEMBER SOONER RESIGNS BY GIVING WRITTEN NOTICE OF RESIGNATION TO THE REMAINING MEMBERS OF THE COMMITTEE, OR IS
REMOVED AT THE DIRECTION OF DECLARANT OR THEIR SUCCESSORS AND ASSIGNS. THE COMMITTEE SHALL SERVE AT THE PLEASURE OF THE
DECLARANT, THEIR SUCCESSORS AND ASSIGNS, AND A MEMBER OF THE COMMITTEE MAY BE REMOVED FOR ANY REASON OR NO REASON AT ALL. WHEN
ONE HUNDRED PERCENT (100%) OF THE LOTS IN THE SUBDIVISION ARE SOLD, DECLARANT SHALL DELEGATE THE AUTHORITY TO APPOINT MEMBERS OF
THE COMMITTEE TO THE ASSOCIATION BY WRITTEN NOTICE. THEREAFTER, THE ASSOCIATION, ACTING BY AND THROUGH ITS DULY AUTHORIZED BOARD OF
DIRECTORS, AND ITS SUCCESSORS AND ASSIGNS SHALL HAVE THE RIGHT TO APPOINT AND REMOVE MEMBERS OF THE COMMITTEE.

#### ARTICLE SIX - ARCHITECTURAL CONTROL COMMITTEE CONTINUED

- 2. SUBMISSION AND APPROVAL OF PLANS AND SPECIFICATIONS. A COPY OF THE CONSTRUCTION PLANS AND SPECIFICATIONS, INCLUDING EXTERIOR VIEWS. EXTERIOR MATERIALS, COLORS AND ELEVATION; A DRAINAGE PLAN; A SITE PLAN SHOWING THE LOCATION OF ANY PROPOSED STRUCTURE OR IMPROVEMENTS: FENCING: A LANDSCAPING PLAN: A DRIVEWAY CONSTRUCTION PLAN: AND ANY OTHER INFORMATION OR DOCUMENTS WHICH MAY BE REQUIRED BY THE COMMITTEE SHALL BE DELIVERED, TOGETHER WITH ANY REVIEW FEE WHICH IS IMPOSED BY THE COMMITTEE IN ACCORDANCE WITH PARAGRAPH 3 OF THIS ARTICLE, TO THE COMMITTEE AT 2431 NOWATA PLACE, BARTLESVILLE, OK 74006, OR SUCH OTHER ADDRESS AS MAY HEREAFTER BE DESIGNATED IN WRITING FROM TIME TO TIME. NOT LESS THAN THIRTY (30) DAYS PRIOR TO THE DATE CONSTRUCTION OF A LOT IS TO BE COMMENCED. NO STRUCTURE OR IMPROVEMENT, INCLUDING, BUT NOT LIMITED TO, BUILDINGS, FENCES, WALLS, LANDSCAPING, POOLS, EXTERIOR LIGHTING FIXTURES, SECURITY AND EMERGENCY COMMUNICATIONS SYSTEMS AND RADIO-TELEVISION ANTENNAS, SHALL BE PLACED OR ALTERED ON ANY LOT UNTIL THE PLANS AND SPECIFICATIONS THEREFORE AND THE BUILDER WHICH THE OWNER INTENDS TO USE TO CONSTRUCT THE PROPOSED STRUCTURE OR IMPROVEMENT HAVE BEEN APPROVED IN WRITING BY A MAJORITY OF THE MEMBERS OF THE COMMITTEE. THE COMMITTEE MAY, IN REVIEWING SUCH PLANS AND SPECIFICATIONS, CONSIDER ANY INFORMATION WHICH IT DEEMS PROPER, INCLUDING, WITHOUT LIMITATION, ANY PERMITS, ENVIRONMENTAL IMPACT STATEMENTS OR PERCOLATION TESTS WHICH MAY BE REQUIRED BY THE COMMITTEE OR ANY OTHER ENTITY; INFORMATION RELATING TO THE QUESTION OF WHETHER ANY PROPOSED IMPROVEMENT WOULD UNREASONABLY OBSTRUCT THE VIEW FROM THE PROPERTIES OR NEIGHBORING LOTS: HARMONY OF EXTERNAL DESIGN AND LOCATION IN RELATION TO SURROUNDING STRUCTURES, TOPOGRAPHY AND FINISHED GRADE ELEVATION; AND THE IDENTITY OF THE BUILDER WHICH AN OWNER PROPOSES TO USE TO CONSTRUCT THE PROPOSED STRUCTURE OR IMPROVEMENT. THE COMMITTEE MAY POSTPONE ITS REVIEW OF ANY PLANS AND SPECIFICATIONS SUBMITTED FOR APPROVAL PENDING RECEIPT OF ANY INFORMATION OR MATERIAL WHICH THE COMMITTEE, IN ITS SOLE DISCRETION, MAY REQUIRE. A COPY OF THE CONSTRUCTION PLANS AND SPECIFICATIONS AND A SITE PLAN SHOWING THE LOCATION OF THE PROPOSED STRUCTURE OR IMPROVEMENT, IF APPROVED, SHALL REMAIN IN THE POSSESSION OF THE COMMITTEE UNTIL THE SUBDIVISION IS BUILT OUT IN ITS ENTIRETY. SITE PLANS MUST BE APPROVED BY THE COMMITTEE PRIOR TO THE CLEARING OF ANY LOT OR THE CONSTRUCTION OF ANY IMPROVEMENTS THEREON. THE COMMITTEE MAY REFUSE TO APPROVE PLANS AND SPECIFICATIONS FOR PROPOSED IMPROVEMENTS ON ANY GROUND WHICH, IN THE SOLE AND ABSOLUTE DISCRETION OF THE COMMITTEE, ARE DEEMED SUFFICIENT. INCLUDING. BUT NOT LIMITED TO, PURELY AESTHETIC GROUNDS. IN REVIEWING PLANS AND SPECIFICATIONS, THE COMMITTEE SHALL CONSIDER, BUT NOT BE LIMITED BY, THE PURPOSES SET FORTH IN ARTICLE TWO OF THIS DECLARATION.
- 3. ADOPTION OF RULES AND REGULATIONS. THE COMMITTEE SHALL HAVE THE AUTHORITY TO ADOPT SUCH PROCEDURAL AND SUBSTANTIVE RULES, NOT IN CONFLICT WITH THIS DECLARATION, AS IT MAY DEEM NECESSARY OR APPROPRIATE FOR THE PERFORMANCE OF ITS DUTIES HEREUNDER. IN ADDITION, THE COMMITTEE SHALL HAVE THE POWER AND AUTHORITY TO IMPOSE SUCH REASONABLE CHARGES AS IT DEEMS NECESSARY OR CONVENIENT FOR THE REVIEW OF PLANS, SPECIFICATIONS AND OTHER DOCUMENTS AND INFORMATION SUBMITTED TO IT PURSUANT TO THE TERMS OF THIS DECLARATION. SUCH CHARGES SHALL BE HELD BY THE COMMITTEE AND USED TO DEFRAY THE ADMINISTRATIVE EXPENSES INCURRED BY THE COMMITTEE IN PERFORMING ITS DUTIES HEREUNDER; PROVIDED, HOWEVER, THAT ANY EXCESS FUNDS HELD BY THE COMMITTEE SHALL BE DISTRIBUTED TO THE ASSOCIATION AT THE END OF EACH CALENDAR YEAR.
- 4. ACTIONS OF THE COMMITTEE. THE COMMITTEE MAY, BY RESOLUTION, UNANIMOUSLY ADOPTED IN WRITING, DESIGNATE ONE OR TWO OF ITS MEMBERS OR AN AGENT ACTING ON ITS BEHALF TO TAKE ANY ACTION OR PERFORM ANY DUTIES FOR AND ON BEHALF OF THE COMMITTEE, EXCEPT THE GRANTING OF VARIANCES AS HEREINAFTER PROVIDED. IN THE ABSENCE OF SUCH DESIGNATION, THE VOTE OF A MAJORITY OF ALL OF THE MEMBERS OF THE COMMITTEE TAKEN WITHOUT A MEETING SHALL CONSTITUTE AN ACT OF THE COMMITTEE.
- 5. FAILURE TO ACT. IN THE EVENT THAT ANY PLANS AND SPECIFICATIONS ARE SUBMITTED TO THE COMMITTEE AS PROVIDED HEREIN, AND THE COMMITTEE SHALL FAIL EITHER TO APPROVE OR REJECT SUCH PLANS AND SPECIFICATIONS FOR A PERIOD OF TWENTY—ONE (21) DAYS FOLLOWING SUCH SUBMISSION, NO APPROVAL BY THE COMMITTEE SHALL BE REQUIRED, AND APPROVAL OF SUCH PLANS AND SPECIFICATIONS SHALL BE PRESUMED; PROVIDED, HOWEVER, THAT SUCH TWENTY—ONE (21) DAY PERIOD SHALL NOT BEGIN TO RUN UNTIL ALL INFORMATION REQUIRED TO BE SUBMITTED BY THE COMMITTEE TO ASSIST IN ITS REVIEW OF ANY PLANS OR SPECIFICATIONS HAS BEEN RECEIVED BY THE COMMITTEE. ANY FAILURE OF THE COMMITTEE TO ACT UPON A REQUEST FOR A VARIANCE HEREUNDER SHALL NOT BE DEEMED A CONSENT TO SUCH VARIANCE, AND THE COMMITTEE'S WRITTEN APPROVAL OF ALL REQUESTS FOR VARIANCES SHALL BE EXPRESSLY REQUIRED.
- 6. VARIANCES. THE COMMITTEE MAY GRANT VARIANCES FROM COMPLIANCE WITH ANY OF THE PROVISIONS OF THIS DECLARATION OR ANY SUPPLEMENTAL DECLARATION HEREINAFTER PLACED OF RECORD, INCLUDING, BUT NOT LIMITED TO, RESTRICTIONS UPON HEIGHT, SIZE, SHAPE, FLOOR AREAS, LAND AREA, PLACEMENT OF STRUCTURES, SET—BACKS, BUILDING ENVELOPES, COLORS, MATERIALS, OR LAND USE, WHEN, IN THE OPINION OF THE COMMITTEE, IN ITS SOLE AND ABSOLUTE DISCRETION, SUCH VARIANCE WILL NOT BE ADVERSE TO THE OVERALL DEVELOPMENT PLAN FOR THE SUBDIVISION AND THE PROPERTIES, AND SUCH VARIANCE IS JUSTIFIED DUE TO VISUAL OR AESTHETIC CONSIDERATIONS OR UNUSUAL CIRCUMSTANCES. ALL VARIANCES MUST BE EVIDENCED IN WRITING AND MUST BE SIGNED BY AT LEAST A MAJORITY OF THE MEMBERS OF THE COMMITTEE. IF A VARIANCE IS GRANTED, NO VIOLATION OF THE COVENANTS, CONDITIONS, OR RESTRICTIONS CONTAINED IN THIS DECLARATION OR ANY SUPPLEMENTAL DECLARATION SHALL BE DEEMED TO HAVE OCCURRED WITH RESPECT TO THE MATTER FOR WHICH THE VARIANCE WAS GRANTED. THE GRANTING OF SUCH VARIANCE SHALL NOT OPERATE TO WAIVE OR AMEND ANY OF THE TERMS AND PROVISIONS OF THIS DECLARATION OR ANY SUPPLEMENTAL DECLARATION FOR ANY PURPOSE EXCEPT AS TO THE PARTICULAR PROPERTY AND IN THE PARTICULAR INSTANCE COVERED BY THE VARIANCE, AND SUCH VARIANCE SHALL NOT BE CONSIDERED TO ESTABLISH A PRECEDENT FOR ANY FUTURE WAIVER, MODIFICATION, OR AMENDMENT OF THE TERMS AND PROVISIONS HEREOF.
- 7. DURATION OF APPROVAL. THE APPROVAL OR CONSENT OF THE COMMITTEE OF ANY PLANS AND SPECIFICATIONS, WHETHER BY ACTION OR INACTION, AND ANY VARIANCES GRANTED BY THE COMMITTEE SHALL BE VALID FOR A PERIOD OF THREE (3) MONTHS ONLY. IN THE EVENT CONSTRUCTION IN ACCORDANCE WITH SUCH PLANS AND SPECIFICATIONS OR VARIANCE IS NOT COMMENCED ON A LOT WITHIN SUCH THREE (3) MONTH PERIOD, THE OWNER OF THE LOT SHALL BE REQUIRED TO RESUBMIT SUCH PLANS AND SPECIFICATIONS OR REQUEST FOR A VARIANCE TO THE COMMITTEE, AND THE COMMITTEE SHALL HAVE THE AUTHORITY TO RE—EVALUATE SUCH PLANS AND SPECIFICATIONS IN ACCORDANCE WITH THIS ARTICLE AND MAY, IN ADDITION, CONSIDER ANY CHANGE IN CIRCUMSTANCES WHICH MAY HAVE OCCURRED SINCE THE TIME OF THE ORIGINAL APPROVAL THEREOF.
- 8. NO WAIVER OF FUTURE APPROVALS. THE APPROVAL OR CONSENT OF THE COMMITTEE TO ANY PLANS OR SPECIFICATIONS FOR ANY WORK DONE OR PROPOSED IN CONNECTION WITH ANY OTHER MATTER REQUIRING THE APPROVAL OR CONSENT OF THE COMMITTEE SHALL NOT BE DEEMED TO CONSTITUTE A WAIVER OF ANY RIGHT TO WITHHOLD APPROVAL OR CONSENT AS TO ANY PLANS AND SPECIFICATIONS, NOR OTHER MATTER WHATEVER, SUBSEQUENTLY OR ADDITIONALLY SUBMITTED FOR APPROVAL BY THE SAME OR A DIFFERENT PERSON, NOR SHALL SUCH APPROVAL OR CONSENT BE DEEMED TO ESTABLISH A PRECEDENT FOR FUTURE APPROVALS BY THE COMMITTEE.
- 9. NON-LIABILITY OF COMMITTEE MEMBERS. NEITHER THE COMMITTEE, NOR ANY MEMBER THEREOF, SHALL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE COMMITTEE'S DUTIES UNDER THIS DECLARATION, UNLESS SUCH LOSS, DAMAGE, OR INJURY IS DUE TO THE WILLFUL MISCONDUCT OR BAD FAITH OF THE COMMITTEE OR ITS MEMBER, AS THE CASE MAY BE

# ARTICLE SEVEN - USE RESTRICTIONS

- 1. LAND USE AND BUILDING TYPES. ALL LOTS SHALL BE USED FOR SINGLE—FAMILY RESIDENTIAL PURPOSES ONLY, AND NO BUILDING OR IMPROVEMENT SHALL BE ERECTED, ALTERED, PLACED OR PERMITTED TO REMAIN ON ANY LOT EXCEPT AS AUTHORIZED UNDER THE TERMS AND CONDITIONS HEREOF. ALL BUILDINGS SHALL BE SUBJECT TO SUCH HEIGHT LIMITATIONS AS THE COMMITTEE MAY JUDGE NECESSARY TO PRESERVE LINES OF SIGHT AND VIEW FROM NEIGHBORING LOTS AND THE PROPERTIES.
- 2. MINIMUM FLOOR AREA, EXTERIOR MATERIALS, AND ROOFS. ANY DWELLING CONSTRUCTED MUST HAVE A FLOOR AREA OF NOT LESS THAN 1,800 SQUARE FEET OF LIVING SPACE, WITH ALL SUCH MINIMUM FLOOR AREAS TO BE EXCLUSIVE OF OPEN AND CLOSED PORCHES, TERRACES. PATIOS. BALCONIES, DRIVEWAYS AND GARAGES.
- UNLESS SUCH REQUIREMENT IS EXPRESSLY WAIVED IN WRITING BY THE COMMITTEE, EIGHTY PERCENT (80%) OF THE EXTERIOR OF EACH SINGLE FAMILY DWELLING SHALL BE OF MASONRY CONSTRUCTION BELOW THE ROOF LINE. ALL ROOFS ON IMPROVEMENTS CONSTRUCTED ON THE LOTS SHALL CONSIST OF HERITAGE? 30 OR GREATER COMPOSITION SHINGLES, TILE, CONCRETE OR WOOD SHINGLES. NO METAL SHINGLES SHALL BE PERMITTED.
- 3. SETBACKS. NO BUILDING SHALL BE LOCATED ON ANY OF THE LOTS NEARER TO THE FRONT OR SIDE LOT LINES THAN THE MINIMUM SETBACK LINES SHOWN ON THE DEED OF DEDICATION AND PLAT FOR THE SUBDIVISION FILED IN THE OFFICE OF THE COUNTY CLERK OF WASHINGTON COUNTY, OKLAHOMA.
- 4. GARAGES AND DRIVEWAYS. ALL GARAGES SHALL COMPLY WITH ALL OTHER RESTRICTIONS, COVENANTS, CONDITIONS AND LIMITATIONS ON USAGE HEREIN PROVIDED FOR OTHER IMPROVEMENTS IN THE SUBDIVISION. ALL GARAGES SHALL BE SUITABLE FOR NOT LESS THAN TWO AUTOMOBILES NOR MORE THAN THREE AUTOMOBILES. ALL GARAGES SHALL CONSIST OF ENCLOSED STRUCTURES AND NO CARPORTS SHALL BE PERMITTED ON ANY LOT. THE LOCATION OF ALL DRIVEWAY CUTS SHALL BE APPROVED IN CONJUNCTION WITH THE HOUSE PLANS BY THE COMMITTEE. ALL DRIVEWAYS SHALL BE CONSTRUCTED OF CONCRETE.
- 5. UNFINISHED STRUCTURES. NO HOUSE OR OTHER STRUCTURE SHALL REMAIN UNFINISHED FOR MORE THAN ONE (1) YEAR AFTER THE SLAB HAS BEEN COMMENCED.

Sheet 2 of 3

# (Cont.) OWNER'S CERTIFICATE AND RESTRICTIONS OF FOXTAIL VILLAS OF BISON TRAILS BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

## ARTICLE SEVEN - USE RESTRICTIONS CONTINUED

6. PROHIBITED STRUCTURES. EXCEPT AS PERMITTED IN ARTICLE SEVEN, PARAGRAPH 10 HEREOF, NO STRUCTURE OF A TEMPORARY CHARACTER, TRAILER, BASEMENT, TENT, SHACK, CARPORT, BARN OR OTHER OUTBUILDING SHALL BE ERECTED AND/OR USED ON ANY LOT AT ANY TIME, EITHER TEMPORARILY OR PERMANENTLY. NO RESIDENTIAL BUILDING MAY BE REMOVED FROM ANY LOT IN THE SUBDIVISION. NO STRUCTURE ERECTED ELSEWHERE, INCLUDING, BUT NOT LIMITED TO, OLD HOUSES AND PREFABRICATED STRUCTURES, SHALL BE MOVED ONTO ANY LOT. NO HOUSE TRAILER OR MOBILE HOME SHALL BE PLACED ON ANY LOT IN THE SUBDIVISION.

7. BUTANE AND FUEL TANKS. NO BUTANE OR FUEL TANK OR OTHER STRUCTURE OR FACILITY FOR THE STORAGE OF COMBUSTIBLE FUELS SHALL BE PLACED OR MAINTAINED ON ANY LOT, EXCEPT ONE TANK WITH A MAXIMUM VOLUME OF 5 POUNDS OF FUEL MAY BE ALLOWED IN THE BACKYARD OF A RESIDENCE FOR USE WITH A GRILLE.

8. FENCES. ANY FENCE, WALL, HEDGE OR OTHER SIMILAR STRUCTURE OR IMPROVEMENT MUST BE APPROVED BY THE COMMITTEE WITH RESPECT TO LOCATION, HEIGHT, TYPE AND MATERIALS. NO CHAIN LINK PERIMETER FENCING OR VINYL PERIMETER FENCING SHALL BE PERMITTED. WOOD OR WROUGHT IRON FENCING IS PREFERRED. FOR THOSE LOTS IN BLOCK 1 BORDERING THE COMMON AREA / DRAINAGE EASEMENT (LOTS 1,2, 9–18) FENCING SHALL BE A BLACK WROUGHT IRON FENCE FIVE (5) FEET IN HEIGHT OF THE FOLLOWING TYPE: FIVE FOOT, BLACK, 3–RAIL AMERISTAR MONTAGE CLASSIC ORNAMENTAL IRON (OR UPGRADES THEREOF), WITH A SWING GATE OF SAME STYLE AND TYPE PERMISSIBLE FOR ACCESS TO THE COMMON AREA / DRAINAGE EASEMENT. NO FENCING SHALL EXCEED SIX (6) FEET IN HEIGHT. ALL FENCES SHALL HAVE AT LEAST ONE GATE EQUAL OR GREATER THAN FOUR FEET WIDE, EXCEPT THAT FOR THOSE LOTS WHICH ADJOIN NOWATA ROAD (LOTS 18–23, BLOCK 1) A COMMON FENCE WILL BE CONSTRUCTED WHICH WILL HAVE NO GATE AND NO ACCESS TO SUCH PUBLIC ROADWAY.

9. SIGNS. NO SIGNS OF ANY CHARACTER SHALL BE ALLOWED ON ANY LOT EXCEPT ONE PROFESSIONAL SIGN FOR LOT IDENTIFICATION PURPOSES AND ONE POLITICAL SIGN PER CANDIDATE PER ELECTION, NO LARGER THAN THREE FOOT BY THREE FOOT, AND ERECT NO EARLIER THAN THREE WEEKS PRIOR TO ELECTION. HOWEVER, THE DECLARANT AND ANY OTHER PERSON OR ENTITY ENGAGED IN THE CONSTRUCTION AND/OR SALE OF RESIDENCES WITHIN THE SUBDIVISION SHALL HAVE THE RIGHT, DURING THE PERIOD OF DEVELOPMENT, CONSTRUCTION AND SALE OF HOUSES IN THE SUBDIVISION, TO CONSTRUCT AND MAINTAIN SUCH FACILITIES AS MAY BE REASONABLY NECESSARY OR CONVENIENT FOR SUCH CONSTRUCTION AND SALE, INCLUDING, BUT NOT LIMITED TO, SIGNS, SALES OFFICES, STORAGE AREAS, AND MODEL UNITS.

10. IDENTIFICATION OF LOTS. THE HOUSE NUMBER FOR EACH RESIDENCE SHALL BE DISPLAYED ON THE STREET—SIDE MAILBOX STRUCTURE, WHICH SHALL HAVE A BRICK OR ROCK VENEER, OR A COMBINATION THEREOF.

11. TRUCKS, BUSES, TRAILERS AND BOATS. NO BUS, SEMI-TRAILER, TRACTOR, MACHINERY, EQUIPMENT, OR TRUCK LARGER THAN A 3/4 TON PICKUP SHALL BE KEPT, PLACED, MAINTAINED, CONSTRUCTED, OR REPAIRED ON OR IN THE STREET IN FRONT OF ANY LOT, EXCEPT FOR CONSTRUCTION AND REPAIR VEHICLES DURING THE PERIOD OF CONSTRUCTION ON A LOT. NO MOTOR VEHICLE OF ANY TYPE SHALL BE CONSTRUCTED OR REPAIRED ON, IN FRONT OF OR IN THE GARAGE OF ANY

MOTOR HOMES, RECREATIONAL HOUSE TRAILERS, HORSE TRAILERS, TRUCK CAMPERS, BOATS, BOAT TRAILERS AND RECREATIONAL VEHICLES OF ANY TYPE SHALL NOT BE PARKED OR KEPT ON THE STREET IN FRONT OF ANY LOT AT ANY TIME; PROVIDED, HOWEVER, THE SAME MAY BE PARKED FOR NOT MORE THAN 24 HOURS ON DRIVEWAYS. SUCH VEHICLES MAY NOT BE KEPT, PLACED, OR MAINTAINED ON ANY UNDEVELOPED LOT AT ANY TIME. NO MOTORIZED VEHICLE OF ANY KIND SHALL BE OPERATED IN ANY MANNER WHICH IS DANGEROUS, NOISY OR CREATES A NUISANCE IN THE OPINION OF THE COMMITTEE.

12. PARKING. ON-STREET PARKING FOR PERIODS IN EXCESS OF SIX (6) HOURS SHALL NOT BE PERMITTED.

13. DUMPING, RUBBISH, GARBAGE AND STORAGE. NO LOT SHALL BE USED OR MAINTAINED AS A DUMPING GROUND FOR RUBBISH OR TRASH, AND ALL GARBAGE OR OTHER WASTE SHALL BE KEPT IN SANITARY CONTAINERS. NO INCINERATOR SHALL BE KEPT OR MAINTAINED ON ANY LOT. ALL GARBAGE, STORAGE, AND DISPOSAL CONTAINERS SHALL BE KEPT IN A CLEAN AND SANITARY CONDITION.

14. ANIMALS AND LIVESTOCK. NO ANIMALS, LIVESTOCK OR POULTRY OF ANY KIND SHALL BE RAISED, BRED, OR KEPT ON ANY LOT, EXCEPT THAT DOGS, CATS, AND OTHER HOUSEHOLD PETS MAY BE KEPT, PROVIDED THAT THEY ARE NOT KEPT, BRED OR MAINTAINED FOR COMMERCIAL PURPOSES. NO MORE THAN TWO (2) DOGS, (2) CATS, AND NO OTHER OUTDOOR HOUSEHOLD PETS SHALL BE KEPT ON ANY ONE LOT AT ANY TIME. NO ANIMALS SHALL BE ALLOWED TO RUN AT LARGE WITHIN THE SUBDIVISION. ALL ANIMALS SHALL BE KEPT WITHIN AN ENCLOSED AREA WHICH MUST BE CLEAN. SANITARY AND REASONABLY FREE OF WASTE AT ALL TIMES.

15. FIREARMS. NO FIREARMS OR EXPLOSIVES SHALL BE DISCHARGED ON ANY LOT, AND ONLY FIREARMS FOR THE PROTECTION OF AN OWNER'S FAMILY AND PROPERTY AND FIREARMS FOR SPORTING OR RECREATIONAL PURPOSES ALLOWED. NO EXPLOSIVES OR FIREWORKS OF ANY TYPE SHALL BE DISCHARGED WITHIN THE SUBDIVISION OR THE PROPERTIES. NO HUNTING, INCLUDING HUNTING WITH BOW AND ARROW, SHALL BE PERMITTED WITHIN THE SUBDIVISION OR THE PROPERTIES, AND NO FIREARMS OF ANY TYPE SHALL BE DISCHARGED WITHIN THE SUBDIVISION UNLESS NECESSARY IN ORDER TO PROTECT AN OWNER'S PERSON, FAMILY OR PROPERTY.

16. PROHIBITED ACTIVITIES. NO BUSINESS, PROFESSIONAL, COMMERCIAL, OR TRADE VENTURE OR ACTIVITY SHALL BE CONDUCTED ON ANY OF THE LOTS; PROVIDED, HOWEVER, THAT MODEL HOMES AND/OR SALES OFFICES MAY BE CONSTRUCTED AND MAINTAINED BY DECLARANT, THEIR SUCCESSORS AND ASSIGNS, IN CONNECTION WITH THE DEVELOPMENT OF AND THE CONSTRUCTION AND SALE OF HOUSES AND LOTS IN THE SUBDIVISION. AFTER COMPLETION OF PROJECT CONSTRUCTION, NO COMMERCIAL VEHICLE SHALL BE PARKED OVERNIGHT ON ANY DRIVEWAY OR STREET. SUBJECT TO THE PRIOR WRITTEN CONSENT OF THE COMMITTEE, WHICH CONSENT IS AND SHALL BE EXPRESSLY REQUIRED, HOME OFFICES TO WHICH THE GENERAL PUBLIC IS INVITED, INCIDENTAL TO AN OWNER'S BUSINESS, MAY BE MAINTAINED WITHIN SUCH OWNER'S RESIDENCE, SO LONG AS ACTIVITIES CONDUCTED IN CONNECTION WITH SUCH HOME OFFICES DO NOT BECOME AN ANNOYANCE OR NUISANCE TO THE NEIGHBORHOOD, IN THE SOLE AND ABSOLUTE DISCRETION OF THE COMMITTEE.

17. ANNOYANCE OR NUISANCE. NO NOXIOUS OR OFFENSIVE ACTIVITY SHALL BE CARRIED ON UPON ANY LOT, NOR SHALL ANYTHING BE DONE THEREON WHICH IS OF MAY BECOME AN ANNOYANCE OR NUISANCE TO THE NEIGHBORHOOD, IN THE SOLE DISCRETION OF THE COMMITTEE. NO CLOTHESLINES OR AIR CONDITIONER WINDOW UNITS SHALL BE VISIBLE FROM ANY PUBLIC STREET. NO UNSIGHTLY OR ELABORATE RADIO OR TELEVISION ANTENNA SHALL BE PERMITTED; PROVIDED, HOWEVER, THAT CONVENTIONAL ANTENNA FOR NORMAL HOUSEHOLD RADIO AND TELEVISION VIEWING PURPOSES MAY BE MAINTAINED. NO OFFENSIVE EXTERIOR LIGHTING SHALL BE

18. SHRUBS AND TREES. NO FENCE, WALL, HEDGE, SHRUB OR TREE PLANTING WHICH OBSTRUCTS SIGHT LINES AT ELEVATIONS BETWEEN THREE FEET (3') AND SIX FEET (6') ABOVE THE SURFACE OF ANY STREET OR ROADWAY SHALL BE PLANTED OR PERMITTED TO REMAIN ON ANY CORNER LOT WITHIN THE TRIANGULAR AREA FORMED BY THE CURBLINES OF SUCH INTERSECTING STREETS AND A LINE CONNECTING SUCH CURBLINES AT POINTS TWENTY—FIVE FEET (25') FROM THEIR INTERSECTION, OR, IN THE CASE OF A ROUNDED CORNER, FROM THE INTERSECTION OF THE CURBLINES AS EXTENDED. THE SAME SIGHT LINE LIMITATIONS SHALL APPLY ON ANY LOT WITHIN TEN FEET (10') OF THE INTERSECTION OF A STREET CURBLINE AND THE EDGE OF A DRIVEWAY OR ALLEY. NO TREES SHALL BE PERMITTED TO REMAIN WITHIN SUCH DISTANCE OF SUCH INTERSECTIONS UNLESS THE FOLIAGE LINE IS MAINTAINED AT A HEIGHT OF MORE THAN SIX FEET (6') ABOVE GROUND LEVEL.

19. RESUBDIVISION AND CONSOLIDATION. NONE OF THE LOTS IN THE SUBDIVISION SHALL BE RESUBDIVIDED UNLESS SUCH RESUBDIVISION IS EXPRESSLY APPROVED IN WRITING BY THE COMMITTEE. ONLY ONE SINGLE FAMILY DWELLING SHALL BE ERECTED ON ANY ONE LOT. THE CREATION OF ADEQUATE UTILITY EASEMENTS AND NORMAL GOVERNMENTAL APPROVALS FROM THE CITY OF BARTLESVILLE, OKLAHOMA SHALL BE A PREREQUISITE TO THE APPROVAL OF ANY RESUBDIVISION BY THE COMMITTEE. NO RESUBDIVISION SHALL RESULT IN A LOT OR LOTS SMALLER IN AREA THAN THE SMALLEST ORIGINAL LOT IN THE SUBDIVISION, AS SHOWN ON THE DEED OF DEDICATION AND PLAT. AN OWNER MAY CONSOLIDATE TWO OR MORE LOTS FOR THE PURPOSE OF CONSTRUCTING ONE SINGLE FAMILY DWELLING THEREON.

20. SOLAR EQUIPMENT. ALL USAGE OF SOLAR EQUIPMENT MUST BE APPROVED IN WRITING BY THE COMMITTEE.

21. POOLS. NO ABOVEGROUND TYPE SWIMMING POOLS SHALL BE PERMITTED. ALL SWIMMING POOLS SHALL BE FENCED AND ALL HOT TUBS SHALL BE FENCED OR OTHERWISE ADEQUATELY SCREENED, ALL IN ACCORDANCE WITH CITY REQUIREMENTS AND THE OTHER PROVISIONS OF THE DECLARATION. ALL POOLS AND HOT TUBS SHALL BE KEPT CLEAN AND MAINTAINED IN OPERABLE CONDITION AT ALL TIMES.

22. LIGHTS. EXTERIOR HOLIDAY LIGHTS SHALL BE PERMITTED ONLY BETWEEN NOVEMBER 15 AND JANUARY 31. EXCEPT FOR SUCH HOLIDAY LIGHTS, ALL EXTERIOR LIGHTING SHALL BE LANDSCAPE/LOW VOLTAGE LIGHTING, RECESSED ACCENT LIGHTING (NO EXPOSED OR UP-LIGHTING) TO AVOID FLOOD-EFFECT AND SHALL USE ONLY WHITE OR CLEAR (NOT COLORED) LOW VOLTAGE BULBS.

23. LAWN, LANDSCAPING AND GARDENS. WITHIN 30 DAYS AFTER THE ISSUANCE OF ANY PERMANENT OR TEMPORARY CERTIFICATE OF OCCUPANCY FOR THE RESIDENCE, ALL LAWNS, INCLUDING ALL AREAS BETWEEN EACH RESIDENCE AND ANY ADJACENT STREET, REGARDLESS OF THE EXISTENCE AND LOCATION OF ANY FENCE, MONUMENT, BOUNDARY WALL, BERM, SIDEWALK OR RIGHT-OF-WAY LINE, SHALL BE FULLY SODDED AND SHALL REMAIN FULLY SODDED AT ALL TIMES THEREAFTER; PROVIDED, HOWEVER, THAT THE OWNER OF A LOT MAY LEAVE A PORTION OF THE LOT AS A NATURAL AREA WITH THE EXPRESS WRITTEN PERMISSION OF THE COMMITTEE.

WITHIN 30 DAYS AFTER THE ISSUANCE OF ANY PERMANENT OR TEMPORARY CERTIFICATE OF OCCUPANCY FOR THE RESIDENCE, THE OWNER THEREOF SHALL LANDSCAPE THE LOT TO THE SAME STANDARDS AS THAT GENERALLY PREVAILING THROUGHOUT THE SUBDIVISION, WHICH SHALL INCLUDE, BUT NOT BE LIMITED TO, A MINIMUM EXPENDITURE OF \$800.00 ON FOUNDATION PLANTINGS IN THE FRONT YARD USING A PROFESSIONAL LANDSCAPER (IN ADDITION TO ANY TREES PLANTED BY THE DECLARANT OR DEVELOPER). ALL LANDSCAPING SHALL BE INSTALLED IN ACCORDANCE WITH THE LANDSCAPING PLANS APPROVED BY THE COMMITTEE.

WITHIN 60 DAYS AFTER THE ISSUANCE OF A PERMANENT OR TEMPORARY CERTIFICATE OF OCCUPANCY FOR THE RESIDENCE, EACH LOT SHALL HAVE A SPRINKLER SYSTEM WITH A RAIN SENSOR INSTALLED. EACH OWNER SHALL USE THE SPRINKLER SYSTEM AS NECESSARY OR APPROPRIATE DURING THE LATE SPRING, SUMMER AND EARLY FALL MONTHS. NO OWNER SHALL WATER THE LOT SUCH THAT THERE IS SIGNIFICANT RUNOFF ONTO ANY ADJACENT LOT OR COMMON AREA.

TO THE EXTENT ANY OF THE FOREGOING ITEMS ARE NOT COMPLETED PRIOR TO OCCUPANCY, THE OWNER SHALL ESCROW FUNDS, IN AN AMOUNT (IF ANY) AND MANNER DETERMINED BY THE DEVELOPER, TO ASSURE SUCH INSTALLATION WHEN WEATHER PERMITS.

24. EXTERIOR ANTENNAS AND POLES. NO TELEVISION, RADIO, CITIZENS BAND, SHORT WAVE OR OTHER ANTENNA, SATELLITE DISH (OTHER THAN AS PROVIDED BELOW), SOLAR PANEL, CLOTHES LINE OR POLE, PERMANENT BASKETBALL BACKBOARD, OR OTHER UNSIGHTLY PROJECTION SHALL BE ATTACHED TO THE EXTERIOR OF

# FOXTAIL VILLAS OF BISON TRAILS

AN ADDITION TO THE CITY OF BARTLESVILLE

BEING A SUBDIVISION OF PART OF THE EAST HALF OF THE SOUTHEAST QUARTER (E/2, SE/4) OF SECTION 15, TOWNSHIP 26 NORTH, RANGE 13 EAST, WASHINGTON COUNTY, OKLAHOMA

## ARTICLE SEVEN - USE RESTRICTIONS CONTINUED

ARTICLE EIGHT - EXTERIOR MAINTENANCE

ANY RESIDENCE OF EXTERIOR STRUCTURE OR ERECTED IN ANY YARD. SHOULD ANY PART OR ALL OF THE RESTRICTION SET FORTH IN THE PRECEDING SENTENCE BE UNENFORCEABLE BECAUSE IT VIOLATES A STATUTE OR FIRST AMENDMENT OR ANY OTHER PROVISION OF THE UNITED STATES CONSTITUTION, THE ASSOCIATION SHALL HAVE THE RIGHT TO ESTABLISH RULES AND REGULATIONS REGARDING THE LOCATION, SIZE, LANDSCAPING AND OTHER AESTHETIC ASPECTS OF SUCH PROJECTIONS SO AS TO REASONABLY CONTROL THE IMPACT OF SUCH PROJECTIONS ON THE SUBDIVISION, AND ALL PARTS THEREOF, AND ANY SUCH RULES AND REGULATIONS SHALL BE BINDING UPON ALL OF THE LOTS. NOTWITHSTANDING ANY PROVISION IN THIS DECLARATION TO THE CONTRARY, SMALL SATELLITE DISHES (MAXIMUM 39 INCHES IN DIAMETER) MAY BE INSTALLED ON THE BACKSIDE OF THE RESIDENCE SO AS TO RENDER THE INSTALLATION AS INOFFENSIVE AS POSSIBLE TO OTHER OWNERS.

25. NO UNSIGHTLY MECHANICAL APPARATUS OR PROJECTION SHALL BE ATTACHED OR AFFIXED TO THE FRONT, OR WITHIN VIEW FROM THE FRONT, OF ANY RESIDENCE. AIR CONDITIONING UNITS SHALL EITHER BE AFFIXED IN THE BACKYARD, OR ON SIDE OF RESIDENCE BUT BEHIND FENCING OR OTHER AESTHETIC AND PERMANENT OBSTRUCTION THAT WILL HIDE THE VIEW OF SUCH UNIT(S).

#### 1. MAINTENANCE REQUIREMENTS:

(A) IN THE EVENT THE OWNER OF ANY LOT SHALL FAIL TO MAINTAIN SUCH LOT AND THE IMPROVEMENTS SITUATED THEREON IN A NEAT AND ORDERLY MANNER, THE ASSOCIATION, ACTING THROUGH THE COMMITTEE, ITS AGENTS AND EMPLOYEES, SHALL HAVE THE RIGHT TO ENTER UPON SAID LOT AND TO REPAIR, MAINTAIN, AND RESTORE THE LOT AND EXTERIOR OF ANY AND ALL BUILDINGS AND OTHER IMPROVEMENTS ERECTED THEREON, ALL AT THE EXPENSE OF OWNER.

(B) ALL PLANTS, SHRUBS, TREES, GRASS AND LANDSCAPING ON A LOT SHALL BE MAINTAINED IN A TRIMMED AND NEAT CONDITION AT ALL TIMES. IN THE EVENT THE OWNER OF A LOT FAILS TO PROPERLY MAINTAIN SUCH LANDSCAPING, THE ASSOCIATION SHALL BE ENTITLED TO DO SO, ALL AT OWNER'S EXPENSE.

2. ACCEPTABILITY OF MAINTENANCE. THE COMMITTEE SHALL HAVE THE SOLE AUTHORITY TO MAKE A DETERMINATION AS TO THE ACCEPTABILITY OF THE MAINTENANCE AND APPEARANCE OF ANY LOT, AND THE COMMITTEE SHALL HAVE THE ABSOLUTE DISCRETION AND AUTHORITY TO DETERMINE THE NECESSITY FOR REQUIRED MAINTENANCE OF LOTS WITHIN THE SUBDIVISION. NO UNSIGHTLY LOTS SHALL BE PERMITTED AT ANY TIME.

3. MAINTENANCE EXPENSE. IN THE EVENT THAT THE ASSOCIATION OR THE COMMITTEE INCURS ANY EXPENSE IN MAINTAINING ALL OR ANY PORTION OF A LOT, THE COSTS THEREOF SHALL BE CHARGED TO AND PAID BY THE OWNER OF SUCH LOT. IF SUCH OWNER FAILS TO PAY SUCH COSTS UPON DEMAND, THE ASSOCIATION SHALL HAVE THE RIGHT TO MAINTAIN AN ACTION IN A COURT OF APPROPRIATE JURISDICTION TO RECOVER ANY SUMS SO EXPENDED. IN ADDITION, THE ASSOCIATION SHALL BE ENTITLED TO PURSUE THE REMEDIES SET FORTH IN ARTICLE FOUR, PARAGRAPH 8 OF THIS DECLARATION.

#### ARTICLE NINE - STREETS, EASEMENTS AND UTILITIES

1. STREETS AND GENERAL UTILITY EASEMENTS: AREAS IDENTIFIED ON THIS PLAT AS A STREET ARE GRANTED TO PUBLIC USE AND SHALL NOT BE THE RIGHT OF ACCESS TO ANY SUCH STREETS SHALL NOT BE LIMITED OR RESTRICTED EXCEPT AS APPROVED BY THE CITY OF BARTLESVILLE. AREAS IDENTIFIED ON THIS PLAT AS "EASEMENT" OR "UTILITY EASEMENT" OR "U/E" ARE HEREBY GRANTED TO AND RESERVED FOR USE BY THE VARIOUS UTILITY COMPANIES AND PRIVATE CORPORATIONS FOR THE PROVISION OF WATER, SANITARY SEWER, STORM SEWER, ELECTRIC, GAS, TELEPHONE, AND CABLE SERVICE TO THE STRUCTURES WITHIN THIS SUBDIVISION AS FOLLOWS: 1) THE RIGHT TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, UPGRADE, OR REBUILD ANY AND ALL OVERHEAD OR UNDERGROUND UTILITIES; 2) THE RIGHT OF INGRESS AND EGRESS OVER ALL LOTS FROM SAID EASEMENTS INDICATED AS IS NECESSARY TO CONSTRUCT, OPERATE, MAINTAIN, REPLACE, UPGRADE, OR REBUILD SUCH FACILITIES; 3) THE RIGHT TO TRIM OR REMOVE ANY TREE NECESSARY TO MAINTAIN PROPER SERVICE; 4) THE RIGHT TO KEEP SAID EASEMENTS FREE OF ANY STRUCTURES OR OBSTACLES THAT THE COMPANY DEEMS A HAZARD TO THE UTILITY COMPANY; 5) THE RIGHT TO PROHIBIT ANY EXCAVATION WITHIN FIVE (5) FEET OF ANY UNDERGROUND UTILITY OR CHANGE OF GRADE THAT INTERFERES WITH OVERHEAD OR UNDERGROUND LINES.

OWNERS OF LOTS IN THIS SUBDIVISION SHALL TAKE THEIR TITLES SUBJECT TO THE RIGHTS OF THE UTILITY COMPANIES. LOT OWNERS MAY USE AND ENJOY SAID LAND INCLUDED IN THE EASEMENTS SHOWN HEREON BY THE RIGHT HEREIN GRANTED TO THE COMPANIES, INCLUDING THE USE OF THE LAND FOR PLANTING, CULTIVATING, AND MAINTENANCE OF SHRUBBERY AND OTHER SMALL PLANTS AND PLANTINGS, CONSTRUCTION AND MAINTENANCE OF HARD SURFACED STREETS, SIDEWALKS, DRIVEWAYS, ROADS, PARKING LOTS OR AREA, OR OF PRIVATE OR PUBLIC FACILITIES AND DRAINS ON, ACROSS, OR THROUGH THE ABOVE DESCRIBED EASEMENT AREAS, BUT MAY NOT CONSTRUCT ANY BUILDINGS OR SIMILAR STRUCTURES UPON THE EASEMENT AREAS.

THE OWNER OF EACH LOT IN THE SUBDIVISION SHALL BE RESPONSIBLE FOR THE REPAIR AND REPLACEMENT OF ANY LANDSCAPING AND PAVING LOCATED WITHIN THEIR LOT IN THE EVENT IT IS NECESSARY TO INSTALL OR REPAIR ANY UNDERGROUND WATER OR SEWER MAINS, ELECTRIC, NATURAL GAS, COMMUNICATIONS OR TELEPHONE SERVICES.

# 2. UNDERGROUND ELECTRIC AND COMMUNICATION SERVICE

(A) ALL ELECTRIC SUPPLY AND COMMUNICATION LINES SHALL BE LOCATED UNDERGROUND IN THE UTILITY EASEMENTS DEDICATED FOR GENERAL UTILITY SERVICES. SERVICE PEDESTALS AND TRANSFORMERS, AS SOURCES OF SUPPLY AT SECONDARY VOLTAGES, MAY ALSO BE LOCATED IN SAID UTILITY EASEMENTS. STREET LIGHT POLES OR STANDARDS MAY BE SERVED BY UNDERGROUND CABLE.

(B) UNDERGROUND SERVICE CABLES TO ALL STRUCTURES WHICH MAY BE LOCATED ON ALL LOTS IN THE SUBDIVISION MAY BE RUN FROM THE NEAREST SERVICE PEDESTAL OR TRANSFORMER TO THE POINT OF USAGE DETERMINED BY THE LOCATION AND CONSTRUCTION OF SUCH STRUCTURE AS MAY BE LOCATED UPON EACH SAID LOT; PROVIDED, THAT UPON THE INSTALLATION OF SUCH A SERVICE CABLE TO A PARTICULAR STRUCTURE, THE SUPPLIER OF ELECTRIC OR COMMUNICATION SERVICE SHALL THEREAFTER BE DEEMED TO HAVE A DEFINITIVE, PERMANENT AND EFFECTIVE RIGHT OF WAY EASEMENT ON SAID LOT, COVERING A GIVE—FOOT STRIP EXTENDING TWO AND ONE—HALF (2.5) FEET ON EACH SIDE OF SUCH SERVICE CABLE, EXTENDING FROM THE SERVICE PEDESTAL OR TRANSFORMER TO THE SERVICE ENTRANCE ON SAID STRUCTURE.

(C) THE SUPPLIER OF ELECTRIC OR COMMUNICATION SERVICE, THROUGH ITS PROPER AGENTS AND EMPLOYEES, SHALL AT ALL TIMES HAVE RIGHT OF ACCESS TO ALL SUCH UTILITY EASEMENTS PROVIDED FOR IN THIS DECLARATION OF RESTRICTIONS, COVENANTS AND CONDITIONS FOR THE PURPOSE OF INSTALLING, MAINTAINING, REMOVING OR REPLACING ANY PORTION OF SAID UNDERGROUND ELECTRIC OR COMMUNICATION FACILITIES SO INSTALLED BY IT.

(D) THE OWNER OF EACH LOT SHALL BE RESPONSIBLE FOR THE PROTECTION OF THE UNDERGROUND ELECTRIC OR COMMUNICATION FACILITIES LOCATED ON HIS PROPERTY AND SHALL PREVENT THE ALTERATION OF GRADE OR ANY CONSTRUCTION ACTIVITY WHICH MAY INTERFERE WITH SAID ELECTRIC OR COMMUNICATION FACILITIES. THE SUPPLIER OF ELECTRIC AND/OR COMMUNICATIONS SERVICES SHALL BE RESPONSIBLE FOR ORDINARY MAINTENANCE OF UNDERGROUND ELECTRIC OR COMMUNICATION FACILITIES, BUT THE OWNER OF A LOT SHALL PAY FOR DAMAGE OR RELATION OF SUCH FACILITIES CAUSED OR NECESSITATED BY ACTS OF THE OWNER OR HIS AGENTS OR CONTRACTORS.

(E) THE FOREGOING COVENANTS CONCERNING UNDERGROUND ELECTRIC AND COMMUNICATION FACILITIES SHALL BE ENFORCEABLE BY THE SUPPLIER OF ELECTRIC AND COMMUNICATION SERVICE, AND THE OWNER OF EACH LOT AGREES TO BE BOUND HEREBY.

3. LIMITS OF NO ACCESS. AS SET FORTH ON THE PLAT, ALL RIGHTS OF INGRESS AND EGRESS TO THE PROPERTY WITHIN THE BOUNDS DESIGNATED THEREON AS "LIMITS OF NO ACCESS" (LNA) IS PROHIBITED. THIS PROVISION CAN BE RELEASED, CHANGED OR ALTERED BY THE BARTLESVILLE METROPOLITAN AREA PLANNING COMMISSION OR ITS SUCCESSORS, WITH THE CONCURRING APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, OKLAHOMA, AND THE ASSOCIATION.

4. RESTRICTIVE DRAINAGEWAY EASEMENT. CERTAIN AREAS OF THE SUBDIVISION ARE DESIGNATED AS "RESTRICTIVE DRAINAGEWAY", WHICH SHALL BE A PERPETUAL RESTRICTIVE EASEMENT FOR THE PURPOSE OF PERMITTING THE FLOW, CONVEYANCE, STORAGE AND DISCHARGE OF STORM WATER RUNOFF FROM THE VARIOUS LOTS WITHIN THIS SUBDIVISION AND FROM PROPERTIES OUTSIDE THIS SUBDIVISION. DRAINAGE FACILITIES CONSTRUCTED IN SAID RESTRICTIVE DRAINAGEWAY AREAS SHALL BE IN ACCORDANCE WITH STANDARDS PRESCRIBED BY THE CITY OF BARTLESVILLE AND PLANS AND SPECIFICATIONS APPROVED BY THE CITY ENGINEER OF THE CITY OF BARTLESVILLE. SUCH PROPERTY SHALL BE CONSIDERED A PART OF THE SUBDIVISION'S COMMON AREAS. AND MAINTENANCE OF SAID RESTRICTIVE DRAINAGEWAY AREA AND FACILITIES SHALL BE THE RESPONSIBILITY OF THE ASSOCIATION. IN THE EVENT SAID ASSOCIATION SHOULD FAIL TO ADEQUATELY AND PROPERLY MAINTAIN SAID DRAINAGEWAY AREA AND FACILITIES, THE CITY OF BARTLESVILLE IS GRANTED A LIMITED POWER OF ATTORNEY ON BEHALF OF THE ASSOCIATION TO ENTER UPON SAID AREA, PERFORM SAID MAINTENANCE, AND THE COST OF PERFORMING SAID MAINTENANCE SHALL BE AN EXPENSE OF THE ASSOCIATION AND PAID BY THE LOT OWNERS PURSUANT TO THE TERMS OF THE ASSOCIATION'S BYLAWS (A PRO RATA BASIS). THE LIMITED POWER OF ATTORNEY SHALL INCLUDE THE POWER TO CALL A MEETING OF THE ASSOCIATION FOR THE PURPOSE OF ENFORCING THE PAYMENT BY LOT OWNERS OF THEIR RESPECTIVE SHARE OF ANY SUCH MAINTENANCE COSTS. THE CITY OF BARTLESVILLE SHALL GIVE THE LOT OWNERS AND THE ASSOCIATION 30 DAYS WRITTEN NOTICE BEFORE COMMENCING SUCH MAINTENANCE OR IN EXERCISING ITS AUTHORITY UNDER THE LIMITED POWER OF ATTORNEY TO CALL SUCH SPECIAL MEETING OF THE ASSOCIATION. IN THE EVENT SAID LOT OWNERS FAIL TO PAY THEIR SHARE OF THE COST OF SAID MAINTENANCE, SUCH SHALL BE A LIEN AGAINST LOT(S). NO FENCE, WALL, PLANTING, BUILDING OR OTHER OBSTRUCTION MAY BE PLACED OR MAINTAINED IN SAID RESTRICTIVE DRAINAGEWAY AREAS THAT CAN OBSTRUCT THE FLOW OF WATER WITHOUT APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID RESTRICTIVE DRAINAGEWAY AREAS WITHOUT THE APPROVAL OF SAID CITY ENGINEER. SAID RESTRICTIVE DRAINAGEWAY EASEMENT OR ANY PART THEREOF MAY BE TERMINATED, RELEASED AND CANCELLED UPON RESOLUTION BEING ADOPTED BY NOTARY PUBLIC THE BARTLESVILLE CITY COUNCIL PROVIDING SUCH, BUT SHALL REMAIN A COMMON AREA OF THE SUBDIVISION. DESIGNATION OF SAID DRAINAGEWAY DOES NOT IMPLY THAT OTHER AREAS OF PROPERTY WILL NOT FLOOD. THE CITY OF BARTLESVILLE ASSUMES NO LIABILITY FOR PROPERTY DAMAGE BECAUSE OF STORM WATER.

#### ARTICLE TEN - GENERAL PROVISIONS

1. ENFORCEMENT. THE DECLARANT OR ANY OWNER SHALL HAVE THE RIGHT TO ENFORCE, BY ANY PROCEEDING AT LAW OR IN EQUITY, ALL RESTRICTIONS, CONDITIONS, AND RESERVATIONS NOW OR HEREAFTER IMPOSED BY THE PROVISIONS OF THIS DECLARATION OR ANY SUPPLEMENTAL DECLARATION. ANY FAILURE TO ENFORCE THE COVENANTS AND RESTRICTIONS HEREIN CONTAINED SHALL IN NO EVENT BE DEEMED A WAIVER OF THE RIGHT TO DO SO THEREAFTER, AND ANY VIOLATION OF THESE COVENANTS SHALL NOT AFFECT THE LIEN OF ANY MORTGAGE OR DEED OF TRUST OR OF ANY SECURED PARTY. ANY PERSON OR ENTITY FOUND, BY A COURT OF APPROPRIATE JURISDICTION, TO BE IN VIOLATION OF THIS DECLARATION SHALL BE LIABLE TO THE PARTY SEEKING TO ENFORCE THIS DECLARATION FOR ALL COSTS, EXPENSES AND REASONABLE ATTORNEYS' FEES INCURRED IN CONNECTION WITH THE ENFORCEMENT HEREOF.

2. SEVERABILITY. INVALIDATION OF ANY ONE OR MORE OF THESE COVENANTS OR RESTRICTIONS BY JUDGMENT OR COURT ORDER SHALL IN NO WAY AFFECT THE VALIDITY OF ANY OTHER PROVISION HEREOF, AND ALL SUCH OTHER PROVISIONS SHALL REMAIN IN FULL FORCE AND FFFECT.

3. AMENDMENT AND DURATION. THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THIS DECLARATION MAY BE AMENDED OR CHANGED BY WRITTEN INSTRUMENT DULY RECORDED IN THE OFFICE OF THE COUNTY CLERK OF WASHINGTON COUNTY, OKLAHOMA AND SIGNED BY NOT LESS THAN FIFTY—ONE PERCENT (51%) OF THE THEN OWNERS OF THE LOTS IN THE SUBDIVISION. THE COVENANTS, CONDITIONS AND RESTRICTIONS OF THIS DECLARATION SHALL RUN WITH AND BIND THE LAND AND SHALL INURE TO THE BENEFIT OF AND BE ENFORCEABLE BY THE DECLARANT OR THE OWNER OF ANY LOT SUBJECT TO THIS DECLARATION AND THEIR RESPECTIVE LEGAL REPRESENTATIVES, HEIRS, SUCCESSORS AND ASSIGNS AND, UNLESS AMENDED AS PROVIDED HEREIN, SHALL BE EFFECTIVE FOR A TERM OF THIRTY (30) YEARS FROM THE DATE THIS DECLARATION IS RECORDED AFTER SUCH THIRTY (30) YEAR PERIOD, SAID COVENANTS, CONDITIONS AND RESTRICTIONS SHALL BE AUTOMATICALLY EXTENDED FOR SUCCESSIVE PERIODS OF TEN (10) YEARS EACH UNLESS AMENDED AS PROVIDED HEREIN.

HAS EXECUTED THIS 31 DAY OF COLORS 2011.

BISON PLAINS DEVELOPMENT, LLC "DECLARANT"

Le la Destaro

IN WITNESS WHEREOF: GARY PETTUS, HAS EXECUTED THIS INSTRUMENT THIS 31 DAY OF OCTOBER. 2011.

STATE OF OKLAHOMA )

) S COUNTY OF WASHINGTON )

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR SAID COUNTY AND STATE, ON THIS 31 DAY OF OCTOBER, 2011 PERSONALLY APPEARED GARY PETTUS TO ME KNOWN TO BE THE IDENTICAL PERSON(S) WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE (THEY) EXECUTED THE SAME AS HIS (THEIR) FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES THEREIN SET FORTH.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL, THE DAY AND YEAR LAST WRITTEN ABOVE.

NOTARY PUBLIC
MY COMMISSION EXPIRES: 1/27/2015

# CERTIFICATE OF THE METROPOLITAN AREA PLANNING COMMISSION

SECRETARY

Beth Greacy

# COUNTY TREASURER'S CERTIFICATION:

THE LAND DESCRIBE ON THE PLAT OF FOXTAIL VILLAS OF BISON TRAILS IN FULL FOR 2010 AND ALL PREVIOUS YEARS. IN WITNESS WHEREOF, HAVE SET MY HAND AND AFFIXED MY OFFICIAL, SEAL THIS 17 DAY OF 10 years 2011.

TREASURER OF WASHINGTON COUNTY

CERTIFICATE OF CITY COUNCIL CERTIFICATION:

THE CITY COUNCIL OF THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA, DOES HEREBY APPROVE THE PLAT OF FOXTAIL VILLAS OF BISON TRAILS AND ACCEPT ALL PUBLIC EASEMENTS, WAYS AND LAND CONTAINED THEREON THIS 10 DAY OF Sept.

MAYOR ...

ATTEST: Mi Bail
CITY CLERK

\*46

CERTIFICATE OF SURVEY

I, DAVID L. CANTRELL, A REGISTERED LAND SURVEYOR IN THE STATE OF OKLAHOMA, BY HEREBY CERTIFY THAT I HAVE AT THE REQUEST OF THE OWNER DESIGNATED ABOVE, CAUSED THE ABOVE DESCRIBED SURVEY PERFORMED UNDER MY SUPERVISION AND THAT THE ACCOMPANYING PLAT IS A TRUE AND ACCURATE REPRESENTATION OF SAID SURVEY.

SEAL

SIGNED AND SEALED THIS \_\_\_\_ DAY OF \$2, 20

DAVID L. CANTRELL REGISTERED LAND SURVEYOR #351

STATE OF OKLAHOMA )
) S.S.
COUNTY OF TULSA )

DAVID L. CANTRELL L.S. 351

IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THE DAY AND YEAR LAST WRITTEN ABOVE.

KATHLEEN CHURCH
NOTARY PUBLIC—STATE OF OKLAHOMA
TULSA COUNTY
My COMMISSION EXPIRES NOV 06, 2012
COMMISSION #08011369

FOXTAIL VILLAS OF BISON TRAILS
Sheet 3 of

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# 03001574

EXP. 01/27/15

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Oklahoma .

MAP(

EXHIBIT E | Application



## Final Plat Application and Checklist

FEE SCHEDULE		OFFICE USE ONLY		
Number of Lots	Fee	Fee Paid:	\$	
1-50	\$50 plus \$1.00 per lot	Date Paid		
51+	\$100 plus \$0.50 for each lot over 50	Case Number: PLAT-	0872-0010	
For recording purposes, the following minimum original copies are required:  City: 1 mylar and 3 paper copies  County: 2 mylar and 3 paper copies		Date of Preliminary Plat Approval by Planning Commission:		
All applications are due no later than by 12:00 noon     15 days prior to the next regularly scheduled City Council meeting.		City Council Meeting Date:		

SUBDIVISON NAME Foxtail Villas at Bison Trails **Request for approval of Amendment to Plat only**					
LOCATION North and west of Nowata Rd. & Bison Rd. intersection					
size (IN ACRES) approximately 3 acres	NUMBER OF LOTS 12	CURRENT ZONING RS-7/PUD			

APPLICANT	FIRM Tanner Consulting, LLC	CONTACT	Erik Enyart		
AT LICANT	ADDRESS 5323 S. Lewis Ave.				
	<sub>CITY</sub> Tulsa	STATE	OK ZIP	74105	
	PHONE (918) 745-9929	_E-MAIL	eenyart@tanner	baitshop.com	
OWNER	NAME D.R. Horton - Texas, Ltd.  ADDRESS 3863 S. 103rd East Ave.	CONTACT	Carolyn Back		
	<sub>CITY</sub> Tulsa	STATE	OK ZIP	74146	
	PHONE (918) 740-1750		cmback@drhorto	on.com	
ARCHITECT	FIRM N/A ADDRESS	9			
	CITY				
	PHONE				
ENGINEER	FIRM N/A ADDRESS				
	CITY	_STATE	ZIP		
	PHONE	_E-MAIL			



## Final Plat Application and Checklist

Erik Enyart for Tanner Consul	ting, LLC , (Contact Person's Name), hereby
certify the attached and completed application contains the infe I understand the submission of incomplete or inaccurate infor application and may be subject to other penalties provided by law	mation may result in a delay in processing and action on this
	08/26/2022
Signature of Contact Person	Date

Note: The following items apply to all applications for final plat approval. The Applicant is strongly encouraged to work closely with Staff in advance of an actual application submittal. Please submit ONLY THOSE DRAWINGS necessary to provide information required by this checklist. Submission of construction drawings or other nonessential drawings may delay the review process.

#### **Final Plats**

1. A final plat for record shall be prepared and submitted to the Department of Community Development for review and recommendation by the Planning Commission and acceptance by the City Council. The original plat shall be in sheets of such materials, dimensions and scale as meets the current requirements for the County official in whose office the plats are required to be filed; provided, that when more than one sheet is required, an index sheet of the same size shall be filed showing the entire subdivision on one sheet with block and lot numbers. Plat dimensions shall be drawn to a minimum scale of one hundred (100) feet to an inch, except that plats in which all lots contain an area in excess of 40,000 square feet, the plat may be drawn to a scale of two hundred (200) feet to an inch. The scale must be shown on the plat.

#### General Requirements for all Final Plat Applications and Documents

- 1. Plat application form, filled out completely and accurately with all required contact information, signatures, etc.
- All files must be electronic. A PDF file shown as 24" x 36" pages to include all required information shall be provided with sufficient information included as to allow for an appropriate review by the City. The plat must be sealed by a licensed land surveyor as required.
- 3. A digital copy of the final plat shall be submitted in a CAD .dxf file format. The .dxf file should have text located on a different layer than the projects line work.
- 4. All data collected for the project shall use the City of Bartlesville Horizontal Control System. All data files submitted to the City of Bartlesville shall abide by the Oklahoma State Plane North coordinate system, NAD83 using datum and feet as the unit of measure and Mean Seal Level Elevations (NGVD88).

#### Contents of the Final Plat. The final plat shall show:

- 1. A key map showing the location of the subdivision referenced to government survey section lines and major streets. If more than two (2) sheets are required the key map shall show the street number for each area.
- 2. The location and description of all section corners and permanent survey monuments in or near the tract, to at least one (1) of which the subdivision shall be referenced.
- 3. The length of all required lines dimensioned in feet and hundredths thereof, and the value of all required true bearings and angles dimensioned in degrees and minutes, as hereafter specified.
- 4. The boundary lines of the land being subdivided fully dimensioned by length and bearings, and the location of boundary lines of adjoining lands, with adjacent subdivisions identified by official names.
- 5. The lines of all proposed streets fully dimensioned by lengths and bearings or angles.
- The radii, arcs, points of tangency, points of intersection and central angles for curvilinear streets and radii for all property returns.



## Final Plat Application and Checklist

- 7. The lines of all proposed alleys. Where the length or direction of an alley is not readily discernible from data given for lot and block lines, the length and bearing shall be given.
- 8. The widths and names, where appropriate, of all proposed street rights-of-way and alleys, and of all adjacent streets, alleys and easements which shall be properly located.
- 9. The lines of all proposed lots fully dimensioned by lengths and bearings or angles, except that where a lot line meets a street line at right angles, the angle or bearing value may be omitted.
- 10. The outline of any property which is offered for dedication to public use fully dimensioned by lengths and bearings with the area marked "Public."
- 11. The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block, with areas to be excluded from platting marked "Reserved" or "Not a Part."
- 12. The location of all building lines, setback lines and easements for public services or utilities with dimensions showing their locations.
- 13. The location of the 100-year floodplain as shown on the current effective Flood Insurance Rate Map (FIRM).
- 14. The following which shall be made and shown on the original:
  - a. Owner's certificate and dedication, signed.
  - b. Registered land surveyor's certificate of survey, signed and his seal.
  - c. Certificate for release of mortgage for any portion dedicated to the public.
  - Reference to any separate instruments, including restrictive covenants, filed in the office of the County Recorder of deeds which directly affect the land being subdivided.
  - e. Certificate of Planning Commission approval.
  - f. Certificate of governing body acceptance of ways, easements and public land dedications.
  - g. Treasurer's certificate.
- 15. A title which shall include:
  - a. Name of the subdivision.
  - b. Name of city, county and state.
  - c. Location and description of the subdivision referenced to section, range, township.
- 16. When individual sewage disposal devices have been installed, the certificate of the County Health Department shall accompany the plat.

**Recording.** No Final Plat or other land subdivision instrument shall be filed in the office of the County Clerk until it shall have been approved by the City Planning Commission and City Council as required. All Final Plats shall be filed within two (2) years of the date of approval, and no lots may be sold from such plat until recorded.

Revised 08.2015 Page 3 of 3

## AMENDMENT OF THE PLAT AND DEED OF DEDICATION & RESTRICTIVE COVENANTS OF FOXTAIL VILLAS OF BISON TRAILS

	This	An	nendment	of	the	Plat	and	Deed	of	Ded	ication,	Declaration	on, and	Own	er's
Certifi	cate	and	Restriction	ons	of l	FOXT	AIL	<b>VILL</b>	AS	OF	<b>BISON</b>	<b>TRAILS</b>	(herein	after,	the
"Amer	ndme	nt")	is entered	into	thi.	s	da	ay of _		A	, 202	22, and sha	all be ef	fective	e as
hereina	after	provi	ided.												

WHEREAS, D.R. Horton – Texas, Ltd., a Texas Limited Partnership which is qualified to transact business in Oklahoma as D.R. Horton – Texas, Ltd., LP, is the owner of all of the Lots concerned by these presents located within the residential subdivision commonly known as FOXTAIL VILLAS OF BISON TRAILS, an Addition to the City of Bartlesville, Washington County, State of Oklahoma (hereinafter, the "Subdivision") by virtue of that certain Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions, filed of record in the Office of the Washington County Clerk on November 17, 2011 in Book 1103 on Pages 3049 through 2051, inclusive, County of Washington records; and

WHEREAS, the Subdivision was platted and developed as a residential addition and on the face of the Plat thereof are depicted certain building setback lines; and

WHEREAS, it is in the best interest of the Owner to amend the Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions to reduce the building lines for the concerned lots as hereinafter provided; and

**WHEREAS**, the Lots concerned by these presents are Lots One (1) through Twelve (12), inclusive, Block One (1) of said Subdivision; and

WHEREAS, Article Seven – Use Restrictions, Section 3. Setbacks of said Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions provides that "No building shall be located on any of the lots nearer to the front or side lot lines than the minimum setback lines shown on the Deed of Dedication and Plat for the Subdivision filed in the office of the County Clerk of Washington County, Oklahoma"; and

WHEREAS, Title 11 Oklahoma Statutes Section 42-106.1.A.1. provides that any restrictive covenant on property contained in a residential addition may be amended if the restrictive covenant has been in existence for at least ten (10) years and the amendment is approved by the owners of at least seventy percent (70%) of the parcels contained in the addition or the amount specified in the restrictive covenant, whichever is less, and provides no express requirement for the approval of the City of Bartlesville; and

WHEREAS, Article Ten - General Provisions, Section 3. Amendment and Duration of

said Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions provides that the Covenants, Conditions and Restrictions contained within the "Declaration" may be Amended or changed by written instrument duly recorded in the office of the County Clerk of Washington County, Oklahoma and signed by not less than fifty-one percent (51%) of the then owners of the lots in the Subdivision, and provides no express requirement for the approval of the City of Bartlesville; and

WHEREAS, D.R. Horton – Texas, Ltd. is the owner not less seventy percent (70%) of all of the parcels contained within the Subdivision as of the effective date hereof, and the owner of not less than fifty-one percent (51%) of the owners of the lots in the Subdivision as of the effective date hereof, and the owner of all lots within the Subdivision concerned by these presents as of the effective date hereof; and

**WHEREAS**, it is the desire of the Owner that this Amendment of the Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions of FOXTAIL VILLAS OF BISON TRAILS be approved by the City of Bartlesville; and

**WHEREAS**, the Subdivision is located within a Planned Unit Development ("PUD") of approximately 302.45 acres which was approved December 27, 1977 per Ordinance # 2153, an amendment to which PUD, "PC-06-17-RZ/PUD" was approved along with RS-7 Single-Family Residential District zoning on or about May 15, 2006; and

WHERE	CAS, an Amendment to the PUD, "	", reducing the front yard building	g
setback for the c	oncerned lots, was affirmatively recomn	nended by the Bartlesville City Planning	g
Commission on	September 27, 2022 and approved by	Council of the City of Bartlesville or	n
October 03, 202	2, the implementing Ordinance No.	being adopted on	,
published	, and effective	and	

**WHEREAS**, it is the desire of the Owner to incorporate into the Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions the provisions of the approved PUD Amendment; and

**NOW, THEREFORE**, the Owner hereby amends the Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions of the Subdivision as follows:

 ARTICLE SEVEN – USE RESTRICTIONS, Subsection 3. "Setbacks" of the Plat and Deed of Dedication, Declaration, and Owner's Certificate and Restrictions is hereby amended to be as follows:

"No building shall be located on any of the lots nearer to the front or side lot lines than the minimum setback lines shown on the Deed of Dedication and Plat for the Subdivision filed in the office of the County Clerk of Washington County, Oklahoma. Notwithstanding the foregoing, for Lots One (1) through Twelve (12), inclusive, Block One (1), the front building lines designated on the face of the plat

as "25'B/L" have been amended by the owners thereof and by the City of Bartlesville, Oklahoma, of an Amendment to the Planned Unit Development and shall be twenty (20) feet, or as may be further amended upon subsequent Amendment to the Planned Unit Development."

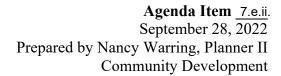
- 2. Except as expressly amended hereby, the Plat and Deed of Dedication shall remain in full force and effect.
- 3. This Amendment shall be effective from and after the date it is properly recorded (the "effective date").

**IN WITNESS WHEREOF**, the undersigned executed this Amendment the year and day first above written.

D.R. HORTON – TEXAS, LTD., a Texas Limited Partnership

	By: [SIGNATORY NAME], [TITLE]
APPROVED BY BARTLESVILLE	CITY COUNCIL:
Date:	by: Mayor or Vice-Mayor
ATTEST:	[Seal]
City Clerk	
APPROVED AS TO FORM:	
City Attorney	

STATE OF)	
) SS	CORPORATE ACKNOWLEDGEMENT
COUNTY OF )	
Before me, the undersigned, a	Notary Public in and for said County and State, this
	022, personally appeared [SIGNATORY NAME] , to
	who executed the foregoing instrument, as[TITLE]
and the second s	as Limited Partnership, and acknowledged to me that
	ntary act and deed, and as the free and voluntary act and
deed of such Limited Partnership for the	· ALCONOMY
acca of such <u>similed I distribute</u> for the	uses and purposes increm set form
IN WITNESS WHEREOF I he	reunto set my official signature and affixed my notarial
seal the day and year last above written.	reality set my efficial signature and arrived my notarial
sear the day and year last above written.	
My Commission Expires:	
Commission No.:	Notary Public





#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

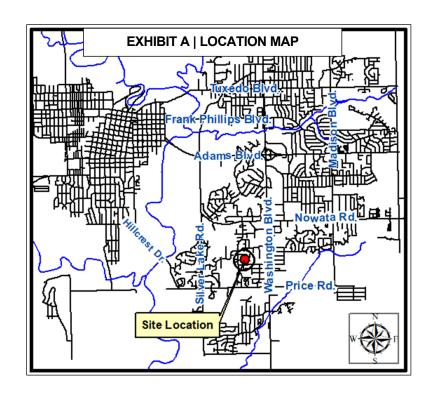
Consider and take action on an Amendment to the Plat of Lot 5, Block 3, Park Place Addition, also known as 3117 SE Stonewall Drive.

Attachments: Exhibit D: Park Place Addition Plat

Exhibit E: Plat Amendment Document & Lot Fit Plan

#### II. STAFF COMMENTS AND ANALYSIS

Applicant	Tanner Consulting, LLC on behalf of D.R. Horton-Texas, Ltd.
Requested Action	Approval of an Amendment to the Plat of Lot 5, Block 3, Park Place Addition
Location	On the south side of Stonewall Drive, east of Jefferson Place, aka 3117 SE Stonewall Drive ( <b>Exhibit A</b> )



The final plat of Park Place Addition was approved and recorded in 2006, and several homes have been constructed in the subdivision. Homebuilder D.R. Horton is currently planning to build a single family dwelling on Lot 5, Block 3, which is the lot on the south side of Stonewall Drive, east of Jefferson Place. See the aerial photo in **Exhibit B**.

According to the recorded plat of Park Place Addition, which is attached as **Exhibit D**, access to the lot must come off the adjacent street knuckle on Stonewall Drive due to Limits of No Access (LNA)



along the rest of Stonewall Drive that fronts the lot. Limits of No Access are put in place to limit the number of curb cuts onto a more heavily traveled street such as a collector.



However, Lot 5's subsurface rock and elevation above the street, shown in **Exhibit C**, make it difficult to construct and use a driveway in the knuckle location. Therefore, Tanner Consulting, on behalf of D.R. Horton, is requesting approval to modify the Limits of No Access that are shown on the recorded plat to allow the driveway to be located on Stonewall Drive. Their proposed plat amendment document and plot plan are attached as **Exhibit E**.

The applicant's plot plan shows the proposed placement of the new dwelling, with the driveway coming off the main Stonewall Drive rather than the knuckle. The document entitled, *Change of and Consent to Limits of Access as Shown on Recorded Plat*, removes the Limits of No Access along the Stonewall Drive frontage of Lot 5.

The applicant's plot plan in **Exhibit E** shows the dwelling's front setback to be 20 feet rather than 25 feet as required by the Zoning Regulations. Several Park Place lots that are on cul-de-sacs were allowed lesser setbacks, and a note listing those lots was written on the recorded plat. However, Lot 5 was not listed; therefore, a 25-foot front setback will be required. A potential remedy for the applicant is to go before the Board of Adjustment to request a Variance to allow the 20-foot setback. Staff can support this Variance request due to the conditions of the lot, namely its irregular shape and its topography.

#### III. RECOMMENDED ACTION

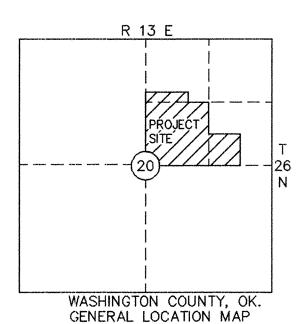
At its meeting on September 27, 2022, the Planning Commission considered the Amendment of the Plat of Lot 5, Block 3, Park Place Addition to remove the Limits of No Access along the Stonewall Drive frontage of Lot 5, Block 3, Park Place Addition. The Planning Commission recommended approval of the attached document entitled, *Change of and Consent to Limits of Access as Shown on Recorded Plat*, with the following condition:

The plot plan attached with the Plat Amendment document shall be amended to show a 25-foot front setback, unless a Variance allowing a 20-foot front setback is approved by the Board of Adjustment.

The Council is requested to take final action at its regular meeting on Monday, October 3, 2022.

## **EXHIBIT D | Recorded Plat**

SCALE 1" = 100'



EXISTING 1/2" IRON ROD WITH CORNERSTONE CAP (UNLESS OTHERWISE NOTED) DRAINAGE EASEMENT

# PARK PLACE ADDITION

THE FINAL PLAT FOR AN ADDITION TO BARTLESVILLE, OKLAHOMA SHEET 1 OF 2

IN A PORTION OF THE NE/4 OF SECTION 20, TOWNSHIP 26 NORTH, RANGE 13 EAST

34.16 65.00 56.66 C

3213 10' U/E 3217 LOT 12 10T 13

BLOCK 6 | -20' U/E

1911

10'U/E 2006

ROMAN CIRCLE (50' ROW)

10'U/E /34.051 65.00' 1 56.64'

LOT 10 5 8992 S.FB 9457 S.F. 10711 S.F. 1071

72.50' 65.00' 65.00' 75.00'

C33 14.23 65.00' 120.00'

OUTLOT 'A-1' 50 3202 to 3206 to 3206 to 3200 to 3206 to 3200 t

74.42' 65.00' 65

OUTLOT 'A'

└ 20'U/E

└ 20'U/E

15'U/E-

STONEWALL DRIVE LNA

3017

8568 S.F.8 8280 S.F.8 8280 S.F.8

BLOCK

74.53' 72.00' 72.00' 15' U/E 3018 © 3022 ©

LOT 6 6 7869 S.F. 7888 S.F.

SW CORNER NE/4

EXISTING 1/2" IRON ROD

WITH CORNERSTONE CAP

或LOT 1 的 LOT 2 的 LOT 3

6.24 140.33

7.5'U/E

15'U/E 3013

74.49' 72.00'

78.12'

- 10' U/E

S 88'39'57" W

LOT 1 F LOT 2 F

8516 S.F. 7438 S.F

- 10'X10' SIGNAGE EASEMENT

3109 LOT 3

WAYSIDE ADDITION

CIRCLE

C44 C43 61.26

STORM WATER

DETENTION AREA

Q 22385 S.F.

S 88'39'57" W OUTLOT 'F'

LOT 8 = 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8

80.00' 80.00' 80.00' S 88'39'57" W

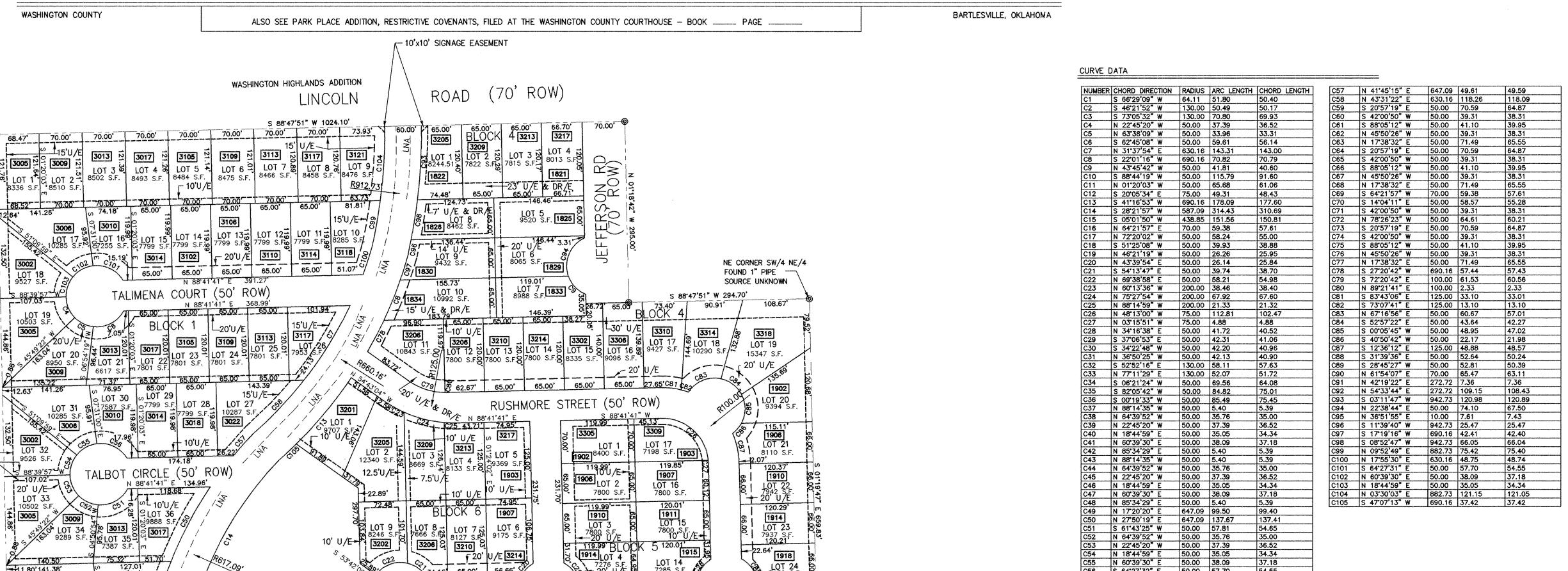
1918 LOT 5 7281 S.

10'U/E-

1926 LOT 7

119.99

96.29' 1919 LOT 13



10' U/E 10' U/E

NW CORNER

SW/4 SE/4 NE/4

FOUND 1" IRON PIPE

SOURCE UNKNOWN

14'U/E 8683 S.F. B OCK

15' DR/E 1999 2015

| 119.89' | 77.50' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' | 65.00' |

S 88'41'41" W

← 20'U/E

2018 LOT 32 9522 S.F.

11674 S.F.

20'U/E →

130.07

2002 LOT 36 & 8679 S.F. 10'U/E

8041 S.F. 15' DR/E

OUTLOT "C"

**FUTURE** 

APARTMEN<sup>-</sup>

- UTILITY EASEMENT

COMPLEX

147671 S.F.

-22.40'7142 S.F.

120.05

+ 20' U/E

LNA STONEWALL DRIVE (60' ROW) LNA

OUTLOT "B"

STORM WATER

z 64194 S.F.

DETENTION AREA

SPACE AND

OPEN SPACE/GREEN

9741 S.F. \_\_\_\_\_

68.34' 112.28'

**JEFFERSON** 

ROAD

S 88'39'57" W

120.01'

\_20'DR & U/E

PK NAIL

NW CORNER

WAYSIDE HEIGHTS 3RD ADDITION

S 88'46'40" W 1979.71'

119.97'

SW/4 SE/4 NE/4 EXISTING 1/2" IRON BAR ORIGIN UNKNOWN STREET RIGHT-OF-WAY DEDICATION FILED AT THE WASHINGTON COUNTY COURTHOUSE - BOOK 1045 PAGE 0481 SIDEWALK NOTE: FOUR-FOOT CONCRETE SIDEWALKS AND ADA COMPLIANT RAMPS SHALL BE CONSTRUCTED AS EACH HOME IS BUILT, EVENTUALLY CONNECTING EACH SIDE OF ALL STREETS WITH WALKS. SIDEWALKS MUST MEET ALL CITY OF BARTLESVILLE REQUIREMENTS. BUILDING SETBACKS
BUILDING SETBACKS ARE HEREBY ESTABLISHED AS FOLLOWS, BETWEEN WHICH LINES AND THE PROPERTY LINES, NO BUILDING OR STRUCTURES SHALL BE BUILT; FRONT YARD SETBACK - 25' REAR YARD SETBACK - 20' INTERIOR YARD SETBACK - 7.5' EXTERIOR SIDE YARD SETBACK - 15' EXCEPT 20' FRONT BUILDING LINES AT THE FOLLOWING LOTS: LOTS 16 - 21, LOTS 30 - 35, LOTS 38 - 41, LOTS 44 - 47 OF BLOCK 1; LOTS 3 - 4, LOTS 8 - 12, LOTS 17 - 21, LOTS 28 - 32 AND LOTS 37 AND 38 OF BLOCK 3; LOTS 18-20, LOTS 24 AND 25 OF BLOCK 4; LOTS 4 AND 5, LOTS 13 AND 14 OF BLOCK 5;

LOTS 8 - 11 OF BLOCK 6.

SE CORNER

SW/4 SE/4 NE/4

EXISTING 1/2" IRON BAR ORIGIN UNKNOWN

Doc + 2006007172

8k 1045 Pa 1639-1639

DATE 07/07/06 15:34:16 Filins Fee \$30.00 Documentary Tax \$0.00

County of WASHINGTON WASHINGTON County Clerk

## PARK PLACE ADDITION

### THE FINAL PLAT FOR AN ADDITION TO BARTLESVILLE, OKLAHOMA SHEET 2 OF 2

IN A PORTION OF THE NE/4 OF SECTION 20, TOWNSHIP 26 NORTH, RANGE 13 EAST

WASHINGTON COUNTY

AREAS IDENTIFIED ON THIS PLAT AS "EASEMENT" OR "UTILITY EASEMENT" OR "U/E" ARE HEREBY GRANTED TO AND RESERVED FOR USE BY VARIOUS

UTILITY COMPANIES AND PRIVATE CORPORATIONS FOR THE PROVISION OF WATER, SANITARY SEWER, STORM SEWER, ELECTRIC, GAS, TELEPHONE, AND CABLE SERVICE TO THE STRUCTURES WITHIN THIS SUBDIVISION AS FOLLOWS: 1) THE RIGHT TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, UPGRADE, OR REBUILD

NECESSARY TO CONSTRUCT, OPERATE, MAINTAIN, REPLACE, UPGRADE, OR REBUILD SUCH FACILITIES; 3) THE RIGHT TO TRIM OR REMOVE ANY TREES NECESSARY

OWNERS OF THE LOTS IN THIS SUBDIVISION SHALL TAKE THEIR TITLES SUBJECT TO THE RIGHTS OF THE UTILITY COMPANIES. LOT OWNERS MAY USE AND ENJOY

ROADS, PARKING LOT AREAS, OR OF PRIVATE OR PUBLIC FACILITIES AND DRAINS ON, ACROSS, OR THROUGH THE ABOVE DESCRIBED EASEMENT AREAS, BUT MAY

SAID LAND INCLUDED IN THE EASEMENTS SHOWN HEREON BY THE RIGHT GRANTED TO THE COMPANIES, INCLUDING THE USE OF THE LAND FOR PLANTING, CULTIVATING,

AND MAINTENANCE OF SHRUBBERY AND OTHER SMALL PLANTS AND PLANTINGS, CONSTRUCTION AND MAINTENANCE OF HARD SURFACED STREETS, SIDEWALKS, DRIVEWAYS,

TO MAINTAIN PROPER SERVICE: 4) THE RIGHT TO KEEP SAID EASEMENTS FREE OF ANY STRUCTURES OR OBSTACLES THAT THE COMPANY DEEMS A HAZARD

TO THE UTILITY COMPANY; 5) THE RIGHT TO PROHIBIT ANY EXCAVATION WITHIN FIVE (5) FEET OF ANY UNDERGROUND UTILITY OR CHANGE THE GRADE THAT

ANY AND ALL OVERHEAD OR UNDERGROUND UTILITIES; 2) THE RIGHT OF INGRESS AND EGRESS OVER ALL LOTS FROM SAID EASEMENTS INDICATED AS IS

ALSO SEE PARK PLACE ADDITION, RESTRICTIVE COVENANTS, FILED AT THE WASHINGTON COUNTY COURTHOUSE - BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

BARTLESVILLE, OKLAHOMA

PRIVATELY-OWNED DETENTION AREA:

AREAS DESIGNATED ON THIS PLAT AS "DETENTION AREA" ARE

DEDICATION OF UTILITY EASEMENTS:

INTERFERES WITH OVERHEAD OR UNDERGROUND LINES.

NOT CONSTRUCT ANY BUILDINGS OR SIMILAR STRUCTURES UPON THE EASEMENT AREAS.

HEREBY ESTABLISHED BY GRANT OF A PERPETUAL RESTRICTIVE EASEMENT TO THE CITY OF BARTLESVILLE FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING (STRUCTURAL ONLY), OPERATING, REMOVING AND REPLACING STORM WATER DETENTION FACILITIES IN ACCORDANCE WITH STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE AND WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE CITY ENGINEER OF THE CITY OF BARTLESVILLE. NO FENCE, WALL, PLANTING, BUILDING OR OTHER OBSTRUCTION MAY BE PLACED OR MAINTAINED IN SAID DETENTION AREA WITHOUT APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID DETENTION AREAS WITHOUT THE APPROVAL OF SAID CITY ENGINEER. SAID EASEMENT OR ANY PART THEREOF MAY BE TERMINATED, RELEASED AND CANCELED UPON RESOLUTION BEING ADOPTED BY THE BARTLESVILLE CITY COUNCIL

PROVIDING SUCH. DESIGNATION OF SAID DETENTION AREA DOES NOT IMPLY THAT OTHER AREAS OF PROPERTY WILL NOT FLOOD. THE CITY OF BARTLESVILLE ASSUMES NO LIABILITY FOR PROPERTY DAMAGE BECAUSE OF STORM WATER.

MOWING, MAINTENANCE OF THE SLOPES, NORMAL POOL AND MITIGATION FOR SILTATION, SHALL BE IN THE RESPONSIBILITY OF THE UNDERSIGNED GRANTOR. IN THE EVENT SAID DETENTION AREA IS NOT SO MAINTAINED, THE CITY OF BARTLESVILLE MAY ENTER UPON SAID AREA, PERFORM SAID MAINTENANCE, AND THE COST OF PERFORMING SAID MAINTENANCE SHALL BE PAID BY SAID GRANTOR, IN THE EVENT SAID GRANTOR FAILS TO PAY THE COST OF SAID MAINTENANCE WITHIN THIRTY (30) DAYS AFTER COMPLETION OF SAID MAINTENANCE, SAID COST SHALL BE A LIEN UPON THE PROPERTY WHICH MAY BE FORECLOSED BY THE CITY OF BARTLESVILLE. THIS RESPONSIBILITY SHALL BIND THE UNDERSIGNED GRANTOR, HIS/HER SUCCESSORS IN INTEREST AND ALL ASSIGNS.

LEGAL DESCRIPTION

SW 1/4 NE 1/4 (39.94 ACRES) AND SW 1/4 SE 1/4 NE1/4 (9.99 ACRES) OF SECTION 20, TOWNSHIP 26 NORTH, RANGE 13 EAST OF THE INDIAN BASE AND MERIDIAN, WASHINGTON COUNTY, OKLAHOMA, LESS ANY RIGHT OF WAY;

TRACTS 24, 25, 26 (6.15 ACRES) OF WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

PLUS A TRACT OF LAND NOTED AS "RESERVED" AND LOCATED WITHIN THE WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED AS

COMMENCING AT THE NW CORNER OF THE NE 1/4 OF SECTION 20; THENCE S 0178'42"E A DISTANCE OF 1319.26 FEET (MEASURED) 1319.8 FEET (PLATTED) TO THE TRUE POINT OF BEGINNING, WHICH IS ALSO THE SW CORNER OF WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE: THENCE ALONG THE SOUTH LINE OF WASHINGTON HIGHLANDS ADDITION, S 89'58' E (P) A DISTANCE OF 954.10 FEET (P); THENCE N 00'02' W (P) A DISTANCE OF 15.00 FEET (P) TO THE SE CORNER OF TRACT 26; THENCE ALONG THE SOUTH LOT LINE OF TRACTS 24, 25, 26, N 89'58' W (P) A DISTANCE OF 939.1 FEET (P) TO THE SW CORNER OF TRACT 24; THENCE N 89'58" W (P) A DISTANCE OF 15.00 FEET (P) TO A POINT ON THE WEST LINE OF THE NE 1/4 OF SECTION 20; THENCE S 00°02' E (P) ALONG SAID WEST LINE A DISTANCE OF 15.00' (P) TO THE TRUE POINT OF BEGINNING, CONTAINING 0.425 ACRES MORE OR

DRAINAGE WAY MAINTAINED BY LOT OWNERS OF THE ENTIRE

AREAS DESIGNATED ON THIS PLAT AS "RESTRICTIVE DRAINAGE WAY" AREA HEREBY ESTABLISHED BY GRANT OF A PERPETUAL RESTRICTIVE EASEMENT TO THE PUBLIC FOR THE PURPOSE OF PERMITTING THE FLOW, STORAGE, CONVEYANCE AND DISCHARGE OF STORM WATER RUNOFF FROM VARIOUS LOTS WITHIN THIS SUBDIVISION AND FROM PROPERTIES OUTSIDE THIS SUBDIVISION. DRAINAGE FACILITIES CONSTRUCTED IN SAID RESTRICTIVE DRAINAGE WAY AREAS SHALL BE IN ACCORDANCE WITH STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE AND WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE CITY ENGINEER OF THE CITY OF BARTLESVILLE. MAINTENANCE OF SAID RESTRICTIVE DRAINAGE AREA AND FACILITIES SHALL BE SHARED RESPONSIBILITY OF THE LOT OWNERS OF THIS SUBDIVISION AT THEIR COST IN ACCORDANCE WITH THE STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE. IN THE EVENT SAID LOT OWNERS SHOULD FAIL TO ADEQUATELY AND PROPERLY MAINTAIN SAID DRAINAGE WAY AREAS AND FACILITIES, THE CITY OF BARTLESVILLE MAY ENTER UPON SAID AREA, PERFORM SAID MAINTENANCE. AND THE COST OF PERFORMING SAID MAINTENANCE SHALL BE PAID BY SAID LOT OWNERS PROPORTIONATELY ON THE BASIS OF LOT OWNERSHIP. IN THE EVENT SAID LOT OWNERS FAIL TO PAY THE COST OF SAID MAINTENANCE OR ANY PART THEREOF WITHIN THIRTY (30) DAYS AFTER COMPLETION OF SAID MAINTENANCE, SAID COST SHALL BE A LIEN AGAINST ALL LOTS IN THE SUBDIVISION FOR WHICH PROPORTIONATE PAYMENT HAS NOT BEEN MADE WHICH LIEN MAY BE FORECLOSED BY THE CITY OF BARTLESVILLE. NO FENCE, WALL, PLANTINGS, BUILDING OR OTHER OBSTRUCTION MAY BE PLACED OR MAINTAINED IN SAID RESTRICTIVE DRAINAGE WAY AREAS. WITHOUT THE APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID DRAINAGE WAY AREAS WITHOUT THE APPROVAL OF THE CITY ENGINEER. SAID EASEMENT OR ANY PART THEREOF MAY BE TERMINATED, RELEASED AND CANCELED UPON RESOLUTION BEING ADOPTED BY THE BARTLESVILLE CITY COUNCIL PROVIDING SUCH. DESIGNATION OF SAID DRAINAGE WAY DOES NOT IMPLY THAT OTHER AREAS OF THE PROPERTY WILL NOT FLOOD. THE CITY OF BARTLESVILLE ASSUMES NO

LIABILITY FOR PROPERTY DAMAGE BECAUSE OF STORM WATER.

LIMITS OF NO ACCESS (LNA):

THE UNDERSIGNED OWNER HEREBY RELINQUISHES ANY AND ALL RIGHTS OF INGRESS OR EGRESS TO THE ABOVE-DESCRIBED PROPERTY WITHIN THE BOUNDS DESIGNATED AS "LIMITS OF NO ACCESS (LNA)". THIS PROVISION CAN BE RELEASED, CHANGED OR ALTERED BY THE BARTLESVILLE METROPOLITAN AREA PLANNING COMMISSION OR ITS SUCCESSORS, WITH THE CONCURRING APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, OKLAHOMA.

DEDICATION:

KNOW ALL PERSONS BY THESE PRESENTS:

THAT S. HARBOR DEVELOPMENT COMPANY, OWNER OF THE HEREIN DESCRIBED REAL ESTATE AS PARTS OF THE SW/4 OF NE/4, THE S1/2 OF THE NET/4, AND SW 1/4 SET/4 NET/4 OF SECTION 28, TOWNSHIP 26 NORTH, RANGE 13 EAST, WASHINGTON COUNTY, STATE OF OKLAHOMA; DO HEREBY CERTIFY THAT THEY HAVE CAUSED THE SAME TO BE SURVEYED INTO LOTS, BLOCKS, STREETS AND EASEMENTS ON SAID PLAT, WHICH PLAT IS HEREBY ADOPTED AS THE OFFICIAL PLAT, OF THE ABOVE-DESCRIBED LAND UNDER THE NAME OF PARK PLACE ADDITION, AND ALL STREETS, RIGHTS-OF-WAY, AND PUBLIC LANDS AS SHOWN ON SAID PLAT ARE HEREBY DEDICATED TO PUBLIC USED AND TO HAVE CAUSED THE SAME TO BE RELEASED FROM ALL RIGHTS, EASEMENTS AND ENCUMBRANCES

THE RESTRICTIVE COVENANTS, OWNER'S CERTIFICATE OF DEDICATION AND LIMITATIONS FOR THE DEVELOPMENT OF THIS LAND ARE SET OUT IN SHEETS OF TYPEWRITTEN PAPER DATED THIS DAY OF TOLY, 2006, AND WILL BE FILED SEPARATELY.

(CORPORATE SEAL)

CORPORATION ACKNOWLEDGMENT

STATE OF OKLAHOMA;

COUNTY OF WASHINGTON;

THAT HE EXECUTED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED AND AS THE FREE AND VOLUNTARY ACT AND DEED OF SUCH CORPORATION, FOR THE USES AND PURPOSES GIVEN UNDER MY HAND AND SEAL THIS S DAY OF TUL

July 21, 2008 MY COMMISSION EXPIRES: Comm. #04006578

CERTIFICATE OF SURVEY

I, R. GARY WALKER, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, IN THE STATE OF OKLAHOMA AND AT THE INSISTENCE OF THE OWNER MADE THE ABOVE-DESCRIBED SURVEY AND THAT THE PLAT IS A TRUE AND ACCURATE REPRESENTATION OF THE LOTS, BLOCKS AND STREETS AS SURVEYED BY ME.\_

> . GARY WALKER REGISTERED LAND SURVEYOR CO OKLAHOMA No. 1443

STATE OF OKLAHOMA

COUNTY OF WASHINGTON

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE SAID COUNTY AND STATE, ON THIS 5th DAY OF 4 1, 2006, APPEARED PERSONALLY R. GARY WALKER, TO ME KNOWN TO BE THE IDENTICAL PERSON WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES SET FORTH.

GIVEN UNDER MY HAND AND SEAL THIS 54 DAY OF

Guly 21,2008 Comm #04004578

COUNTY TREASURER'S CERTIFICATE

I, STAN STEVENS, TREASURER OF WASHINGTON COUNTY, OKLAHOMA DO HEREBY CERTIFY THAT ALL TAXES ARE PAID ON THE LAND DESCRIBED ON THE PLAT OF PARK PLACE ADDITION IN FULL FOR 2000 AND ALL PREVIOUS YEARS. IN WITNESS WHEREOF, I HAVE SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS DAY OF \_\_\_\_\_\_\_\_\_, 2006.

> 3000 STAN STEVENS, TREASURER WASHINGTON COUNTY, OK

CERTIFICATE OF CITY COUNCIL:

THE CITY COUNCIL OF THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA, DOES HEREBY APPROVE THE PLAT OF PARK PLACE ADDITION, AND ACCEPT ALL PUBLIC EASEMENTS, WAYS AND LAND CONTAINED THEREON THIS LEY DAY OF MICE

CERTIFICATE OF THE METROPOLITAN AREA PLANNING COMMISSION

THE PLAT OF PARK PLACE ADDITION IN BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA HAS BEEN FOUND TO COMPLY WITH THE CITY OF BARTLESVILLE SUBDIVISION REGULATIONS, WITH THE EXCEPTION OF VARIANCES AS SET OUT ON THIS PLAT, AND THAT THIS PLAT WAS SUBMITTED TO AND APPROVED BY THE BARTLESVILLE METROPOLITAN AREA PLANNING COMMISSION ON THIS DAY OF DECEMBER

LISA BEEMAN SECRETARY

#### CHANGE OF AND CONSENT TO LIMITS OF ACCESS AS SHOWN ON RECORDED PLAT

WHEREAS, <u>D.R. Horton – Texas, Ltd., a Texas Limited Partnership</u> is the owner of <u>the following described real property and premises</u> in the City of Bartlesville, Washington County, State of Oklahoma:

ALL OF LOT FIVE (5), BLOCK THREE (3), "PARK PLACE ADDITION", AN ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF FILED OF RECORD JULY 07, 2006 IN BOOK 1045 ON PAGE 1639, COUNTY OF WASHINGTON RECORDS; and

WHEREAS, <u>due to the lot elevation above the street and subsurface rock</u>, said owner desires to remove the Limits of No Access to <u>Southeast Stonewall Drive</u> along the entire frontage of the above described property; and

WHEREAS, such change of access restrictions requires approval of the Bartlesville City Planning Commission, successor to the Bartlesville Metropolitan Area Planning Commission, or its successors, with the concurrent approval of the City Engineer of the City of Bartlesville, pursuant to the specific provisions of the plat of "Park Place Addition" pertaining thereto; and

NOW THEREFORE, the undersigned owner of the above-described property in the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof, does hereby remove all limits of no access from their present location(s) as shown on the above named plat as recorded in the office of the County Clerk of Washington County, State of Oklahoma, filed of record July 07, 2006 in Book 1045 on Page 1639, County of Washington Records.

The Bartlesville City Planning Commission, by affixing its approval to this instrument, does hereby stipulate and agree to such changes and, from and after the date of this consent, ingress, egress, and regress shall be permitted over, through, and across the above-described real property. The limits of no access previously existing but now permitted by this change and consent is (are) hereby expressly released, vacated, annulled, and held for naught.

	ESS WHEREOF, the parties have day of		nds and affixed their
FOR THE OWNER D.R. HORTON – TE	XAS, LTD., A TEXAS LIMITE	ED PARTNERSHIP	
[NAME],			

#### APPROVED BY BARTLESVILLE CITY PLANNING COMMISSION:

Date:	by:
different is fillered in	Chair or Vice-Chair
ATTEST:	
Secretary APPROVED:	
STATE OF ) SS COUNTY OF )	CORPORATE ACKNOWLEDGEMENT
Before me, the undersigned, a Nota day of, 2022, personally apperson who executed the foregoing instrumed Texas Limited Partnership, and acknowledges.	eared NAME of the identical of the identical ent, as TITLE of D.R. Horton – Texas, Ltd., ged to me that executed the same as free and voluntary act and deed of such Limited Partnership for
IN WITNESS WHEREOF, I hereun	nto set my official signature and affixed my notarial sea
the day and year last above written.	no set my official signature and affixed my notatial set



Approved, 1/31/2022 Holly Wayhow



Structural Options:

1. ROOFING - 30 YEAR 6:12 ROOF PITCH

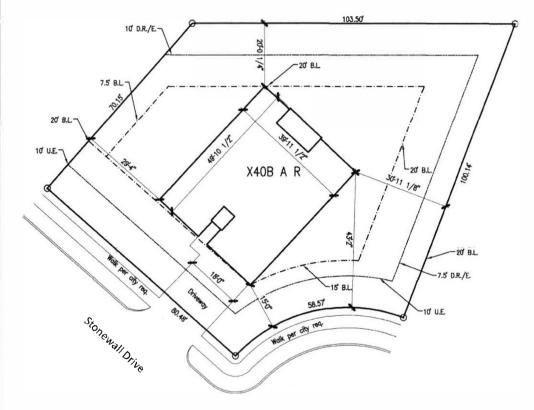
2. BRICK SIDES

Lot Coverage Calculations:		
Lot Area	10294	Sq. Ft.
Slab Area	1957	Sq. Ft. Sq. Ft.
Coverage Ratio	19	%
Fence	0	Lin. Ft.
Side/Lead Walk	532	Sq. Ft.
Driveway	595	Sq. Ft.
Front and Side Sod	5697	Sa. Ft.
Sod	8843	Sq. Ft.

#### Legend: Fence Lot Building Line Easement Drive/Walk/Patio Grade Beam Retaining Wall Pad Area Slab/Porch

#### General Notes:

- 1. The purpose of this plan is ta show the proposed building footprint as defined by the metes and bounds of the recorded plat.
- 2. Dimensions, setbacks, easements, plan selection, and any other information shown here in shall be verified at permitting and prior to construction for accuracy and compliance with all applicable codes and ordinances.
- 3. Builder is solely responsible for ensuring that the footprint is contained within the prepared building pad. The building pad shall be set high enough to allow for adequate drainage.
- 4. All calculations are approximate. They must be verified prior to permitting, purchasing, and/or construction.



DATE	1/28/22
SCALE	1"=30'
DR'N	C.S

PL 1 STRAND 2151440R2 BUILDER SUBD. LOT

DR Horton Tulsa Park Place Addition

5

**BLOCK** 3

ADDRESS 3117 SE Stonewall Drive CITY

PLAN

Bartlesville, Oklahoma

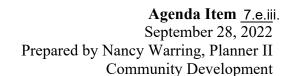
X40B A R

VER. 6



#### STRAND

10003 Technology Blvd. West Dallas, TX, 75220 972-620-8204 Cert. of Auth. No: 2390 PE





#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

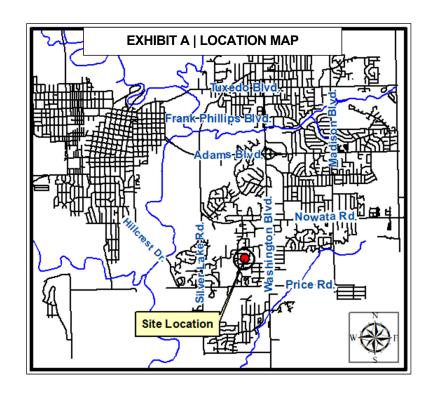
Consider and take action on an Amendment to the Plat of Lot 27, Block 1, Park Place Addition, also known as 3022 SE Talbot Circle.

Attachments: Exhibit D: Park Place Addition Plat

Exhibit E: Plat Amendment Document & Lot Fit Plan

#### II. STAFF COMMENTS AND ANALYSIS

Applicant	Tanner Consulting, LLC on behalf of D.R. Horton-Texas, Ltd.
Requested Action	Approval of an Amendment to the Plat of Lot 27, Block 1, Park Place Addition
Location	Northeast Corner of Jefferson Place and Talbot Circle, aka 3022 SE Talbot Circle ( <b>Exhibit A</b> )



The final plat of Park Place Addition was approved and recorded in 2006, and several homes have been constructed in the subdivision. Homebuilder D.R. Horton is currently planning to build a single family dwelling on Lot 27, Block 1, which is the lot at the northeast corner of Talbot Circle and Jefferson Place. See the aerial photo in **Exhibit B**.

According to the recorded plat of Park Place Addition, which is attached as **Exhibit D**, access to the lot must come off Talbot Circle due to Limits of No Access (LNA) all along Jefferson Place. Limits of No Access are put in place to limit the



number of curb cuts onto a more heavily traveled street such as a collector.



However, a large storm sewer inlet on Talbot Circle, shown in **Exhibit C**, leaves no room for a driveway. Therefore, Tanner Consulting, on behalf of D.R. Horton, is requesting approval to modify the Limits of No Access that are shown on the recorded plat to allow the driveway to be located on Jefferson Place. Their proposed plat amendment document and plot plan are attached as **Exhibit E**.

The applicant's plot plan shows the proposed placement of the new dwelling, with the driveway coming off Jefferson Place. The document

entitled, Change of and Consent to Limits of Access as Shown on Recorded Plat, removes the Limits of No Access along the entire Jefferson Place frontage of Lot 27.

#### III. RECOMMENDED ACTION

At its meeting on September 27, 2022, the Planning Commission considered the Amendment of the Plat of Lot 27, Block 1, Park Place Addition to remove the Limits of No Access along the Jefferson Place frontage of Lot 27, Block 1, Park Place Addition. The Planning Commission recommended approval of the attached document entitled, *Change of and Consent to Limits of Access as Shown on Recorded Plat.* 

The Council is requested to take final action at its regular meeting on Monday, October 3, 2022.

## **EXHIBIT D** | Recorded Plat

# PARK PLACE ADDITION

THE FINAL PLAT FOR AN ADDITION TO BARTLESVILLE, OKLAHOMA

10'U/E-

119.99

LOT 8 = 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8876 | 8

80.00' 80.00' 80.00' S 88'39'57" W

72.50' 65.00' 65.00' 75.00'

C33 14.23 65.00' 120.00'

OUTLOT 'A-1' 50 3202 5 3206 5 LOT 15 1919 5 100 HOUSE 30 3206 5 3

74.42' 65.00' 65

z & POOL

Q 22385 S.F.

- 10' U/E

S 88'39'57" W

- 10'X10' SIGNAGE EASEMENT

WAYSIDE ADDITION

└ 20'U/E

15'U/E-

STONEWALL DRIVE LNA

3017

8568 S.F.8 8280 S.F.8 8280 S.F.8

74.53' 72.00' 72.00' 15' U/E 3018 © 3022 ©

LOT 6 6 7869 S.F. 7888 S.F.

SW CORNER NE/4

EXISTING 1/2" IRON ROD WITH CORNERSTONE CAP

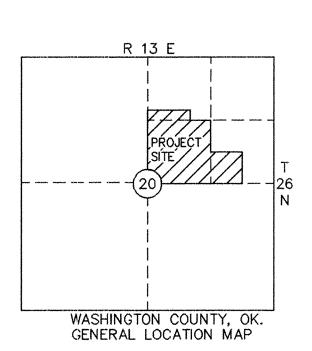
可LOT 1 同 LOT 2 同 LOT 3

15'U/E 3013

7.5'U/E

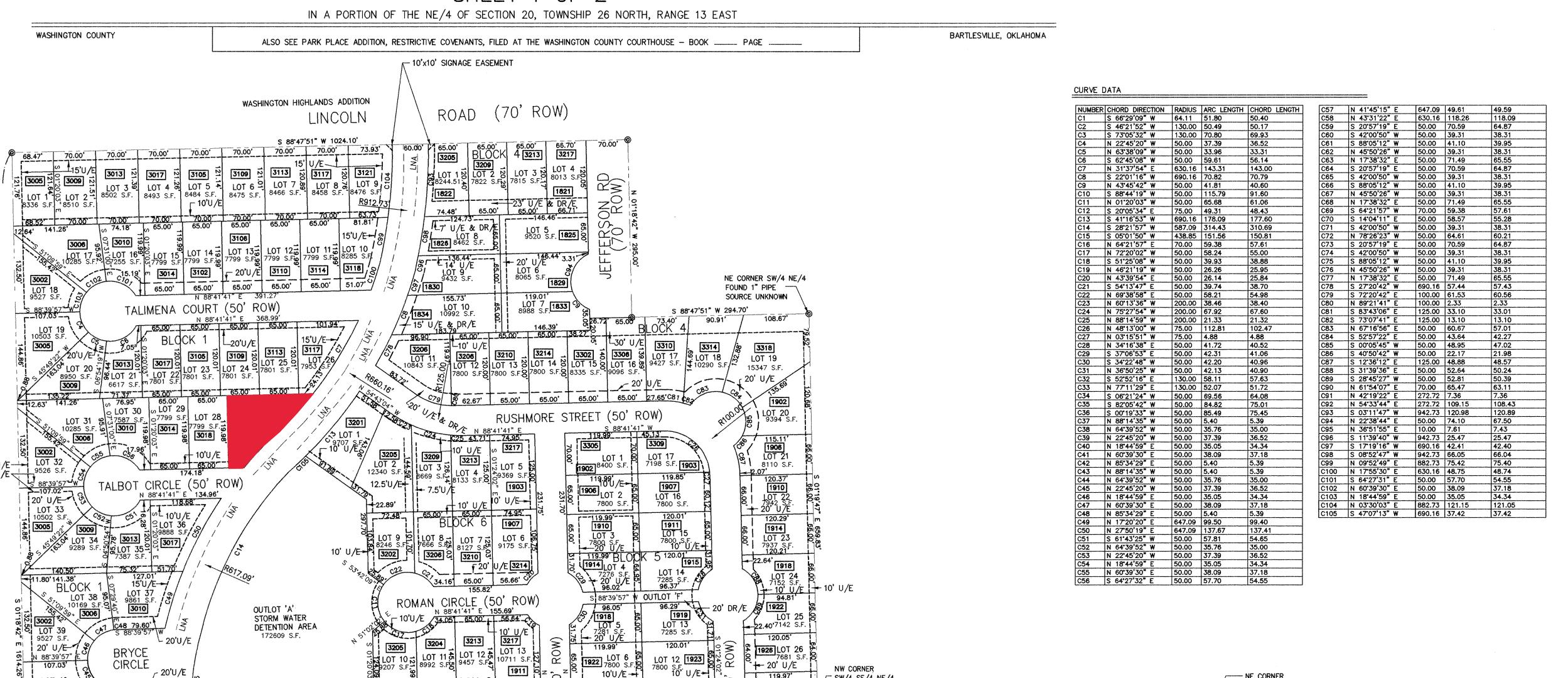
78.12'

8k 1045 Pa 1639-1639 DATE 07/07/06 15:34:16 Filins Fee \$30.00 Documentary Tax \$0.00 WASHINGTON County Clerk



SCALE 1" = 100'

EXISTING 1/2" IRON ROD WITH CORNERSTONE CAP (UNLESS OTHERWISE NOTED)



119.97'

LNA STONEWALL DRIVE (60' ROW) LNA

OPEN SPACE/GREEN

9741 S.F.

68.34' 112.28'

**JEFFERSON** 

ROAD

SPACE AND

STORM WATER

z 64194 S.F.

DETENTION AREA

S 88'39'57" W

120.01'

\_20'DR & U/E

NW CORNER

WAYSIDE HEIGHTS 3RD ADDITION

S 88'46'40" W 1979.71'

SW/4 SE/4 NE/4 FOUND 1" IRON PIPE

15' DR/E 1999 2015

SOURCE UNKNOWN

S 88'41'41" W

2002 LOT 36 & 8679 S.F. 10'U/E

2018 LOT 32 9522 S.F.

OUTLOT "C"

**FUTURE** 

APARTMEN<sup>-</sup>

- UTILITY EASEMENT

COMPLEX

147671 S.F.

SIDEWALK NOTE: FOUR-FOOT CONCRETE SIDEWALKS AND ADA COMPLIANT RAMPS SHALL BE CONSTRUCTED AS EACH HOME IS BUILT, EVENTUALLY CONNECTING EACH SIDE OF ALL STREETS WITH WALKS. SIDEWALKS MUST MEET ALL CITY OF BARTLESVILLE REQUIREMENTS.

FILED AT THE WASHINGTON COUNTY COURTHOUSE - BOOK 1045 PAGE 0481

BUILDING SETBACKS
BUILDING SETBACKS ARE HEREBY ESTABLISHED AS FOLLOWS, BETWEEN WHICH LINES AND THE PROPERTY LINES, NO BUILDING OR STRUCTURES SHALL BE BUILT; FRONT YARD SETBACK - 25' REAR YARD SETBACK - 20' INTERIOR YARD SETBACK - 7.5' EXTERIOR SIDE YARD SETBACK - 15' EXCEPT 20' FRONT BUILDING LINES AT THE FOLLOWING LOTS: LOTS 16 - 21, LOTS 30 - 35, LOTS 38 - 41, LOTS 44 - 47 OF BLOCK 1; LOTS 3 - 4, LOTS 8 - 12, LOTS 17 - 21, LOTS 28 - 32 AND LOTS 37 AND 38 OF BLOCK 3; LOTS 18-20, LOTS 24 AND 25 OF BLOCK 4;

LOTS 4 AND 5, LOTS 13 AND 14 OF BLOCK 5; LOTS 8 - 11 OF BLOCK 6.

STREET RIGHT-OF-WAY DEDICATION

SE CORNER SW/4 SE/4 NE/4 EXISTING 1/2" IRON BAR ORIGIN UNKNOWN

SW/4 SE/4 NE/4 EXISTING 1/2" IRON BAR

# PARK PLACE ADDITION

### THE FINAL PLAT FOR AN ADDITION TO BARTLESVILLE, OKLAHOMA SHEET 2 OF 2

IN A PORTION OF THE NE/4 OF SECTION 20, TOWNSHIP 26 NORTH, RANGE 13 EAST

WASHINGTON COUNTY

AREAS IDENTIFIED ON THIS PLAT AS "EASEMENT" OR "UTILITY EASEMENT" OR "U/E" ARE HEREBY GRANTED TO AND RESERVED FOR USE BY VARIOUS

UTILITY COMPANIES AND PRIVATE CORPORATIONS FOR THE PROVISION OF WATER, SANITARY SEWER, STORM SEWER, ELECTRIC, GAS, TELEPHONE, AND CABLE SERVICE TO THE STRUCTURES WITHIN THIS SUBDIVISION AS FOLLOWS: 1) THE RIGHT TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, UPGRADE, OR REBUILD

NECESSARY TO CONSTRUCT, OPERATE, MAINTAIN, REPLACE, UPGRADE, OR REBUILD SUCH FACILITIES; 3) THE RIGHT TO TRIM OR REMOVE ANY TREES NECESSARY

OWNERS OF THE LOTS IN THIS SUBDIVISION SHALL TAKE THEIR TITLES SUBJECT TO THE RIGHTS OF THE UTILITY COMPANIES. LOT OWNERS MAY USE AND ENJOY

ROADS, PARKING LOT AREAS, OR OF PRIVATE OR PUBLIC FACILITIES AND DRAINS ON, ACROSS, OR THROUGH THE ABOVE DESCRIBED EASEMENT AREAS, BUT MAY

SAID LAND INCLUDED IN THE EASEMENTS SHOWN HEREON BY THE RIGHT GRANTED TO THE COMPANIES, INCLUDING THE USE OF THE LAND FOR PLANTING, CULTIVATING,

AND MAINTENANCE OF SHRUBBERY AND OTHER SMALL PLANTS AND PLANTINGS, CONSTRUCTION AND MAINTENANCE OF HARD SURFACED STREETS, SIDEWALKS, DRIVEWAYS,

TO MAINTAIN PROPER SERVICE: 4) THE RIGHT TO KEEP SAID EASEMENTS FREE OF ANY STRUCTURES OR OBSTACLES THAT THE COMPANY DEEMS A HAZARD

TO THE UTILITY COMPANY; 5) THE RIGHT TO PROHIBIT ANY EXCAVATION WITHIN FIVE (5) FEET OF ANY UNDERGROUND UTILITY OR CHANGE THE GRADE THAT

ANY AND ALL OVERHEAD OR UNDERGROUND UTILITIES; 2) THE RIGHT OF INGRESS AND EGRESS OVER ALL LOTS FROM SAID EASEMENTS INDICATED AS IS

ALSO SEE PARK PLACE ADDITION, RESTRICTIVE COVENANTS, FILED AT THE WASHINGTON COUNTY COURTHOUSE - BOOK \_\_\_\_\_ PAGE \_\_\_\_\_

BARTLESVILLE, OKLAHOMA

PRIVATELY-OWNED DETENTION AREA:

AREAS DESIGNATED ON THIS PLAT AS "DETENTION AREA" ARE

DEDICATION OF UTILITY EASEMENTS:

INTERFERES WITH OVERHEAD OR UNDERGROUND LINES.

NOT CONSTRUCT ANY BUILDINGS OR SIMILAR STRUCTURES UPON THE EASEMENT AREAS.

HEREBY ESTABLISHED BY GRANT OF A PERPETUAL RESTRICTIVE EASEMENT TO THE CITY OF BARTLESVILLE FOR THE PURPOSE OF CONSTRUCTING, MAINTAINING (STRUCTURAL ONLY), OPERATING, REMOVING AND REPLACING STORM WATER DETENTION FACILITIES IN ACCORDANCE WITH STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE AND WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE CITY ENGINEER OF THE CITY OF BARTLESVILLE. NO FENCE, WALL, PLANTING, BUILDING OR OTHER OBSTRUCTION MAY BE PLACED OR MAINTAINED IN SAID DETENTION AREA WITHOUT APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID DETENTION AREAS WITHOUT THE APPROVAL OF SAID CITY ENGINEER. SAID EASEMENT OR ANY PART THEREOF MAY BE TERMINATED, RELEASED AND CANCELED UPON RESOLUTION BEING ADOPTED BY THE BARTLESVILLE CITY COUNCIL

PROVIDING SUCH. DESIGNATION OF SAID DETENTION AREA DOES NOT IMPLY THAT OTHER AREAS OF PROPERTY WILL NOT FLOOD. THE CITY OF BARTLESVILLE ASSUMES NO LIABILITY FOR PROPERTY DAMAGE BECAUSE OF STORM WATER.

MOWING, MAINTENANCE OF THE SLOPES, NORMAL POOL AND MITIGATION FOR SILTATION, SHALL BE IN THE RESPONSIBILITY OF THE UNDERSIGNED GRANTOR. IN THE EVENT SAID DETENTION AREA IS NOT SO MAINTAINED, THE CITY OF BARTLESVILLE MAY ENTER UPON SAID AREA, PERFORM SAID MAINTENANCE, AND THE COST OF PERFORMING SAID MAINTENANCE SHALL BE PAID BY SAID GRANTOR, IN THE EVENT SAID GRANTOR FAILS TO PAY THE COST OF SAID MAINTENANCE WITHIN THIRTY (30) DAYS AFTER COMPLETION OF SAID MAINTENANCE, SAID COST SHALL BE A LIEN UPON THE PROPERTY WHICH MAY BE FORECLOSED BY THE CITY OF BARTLESVILLE. THIS RESPONSIBILITY SHALL BIND THE UNDERSIGNED GRANTOR, HIS/HER SUCCESSORS IN INTEREST AND ALL ASSIGNS.

LEGAL DESCRIPTION

SW 1/4 NE 1/4 (39.94 ACRES) AND SW 1/4 SE 1/4 NE1/4 (9.99 ACRES) OF SECTION 20, TOWNSHIP 26 NORTH, RANGE 13 EAST OF THE INDIAN BASE AND MERIDIAN, WASHINGTON COUNTY, OKLAHOMA, LESS ANY RIGHT OF WAY;

TRACTS 24, 25, 26 (6.15 ACRES) OF WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

PLUS A TRACT OF LAND NOTED AS "RESERVED" AND LOCATED WITHIN THE WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA MORE PARTICULARLY DESCRIBED AS

COMMENCING AT THE NW CORNER OF THE NE 1/4 OF SECTION 20; THENCE S 0178'42"E A DISTANCE OF 1319.26 FEET (MEASURED) 1319.8 FEET (PLATTED) TO THE TRUE POINT OF BEGINNING, WHICH IS ALSO THE SW CORNER OF WASHINGTON HIGHLANDS ADDITION TO THE CITY OF BARTLESVILLE: THENCE ALONG THE SOUTH LINE OF WASHINGTON HIGHLANDS ADDITION, S 89'58' E (P) A DISTANCE OF 954.10 FEET (P); THENCE N 00'02' W (P) A DISTANCE OF 15.00 FEET (P) TO THE SE CORNER OF TRACT 26; THENCE ALONG THE SOUTH LOT LINE OF TRACTS 24, 25, 26, N 89'58' W (P) A DISTANCE OF 939.1 FEET (P) TO THE SW CORNER OF TRACT 24; THENCE N 89'58" W (P) A DISTANCE OF 15.00 FEET (P) TO A POINT ON THE WEST LINE OF THE NE 1/4 OF SECTION 20; THENCE S 00°02' E (P) ALONG SAID WEST LINE A DISTANCE OF 15.00' (P) TO THE TRUE POINT OF BEGINNING, CONTAINING 0.425 ACRES MORE OR

DRAINAGE WAY MAINTAINED BY LOT OWNERS OF THE ENTIRE

AREAS DESIGNATED ON THIS PLAT AS "RESTRICTIVE DRAINAGE WAY" AREA HEREBY ESTABLISHED BY GRANT OF A PERPETUAL RESTRICTIVE EASEMENT TO THE PUBLIC FOR THE PURPOSE OF PERMITTING THE FLOW, STORAGE, CONVEYANCE AND DISCHARGE OF STORM WATER RUNOFF FROM VARIOUS LOTS WITHIN THIS SUBDIVISION AND FROM PROPERTIES OUTSIDE THIS SUBDIVISION. DRAINAGE FACILITIES CONSTRUCTED IN SAID RESTRICTIVE DRAINAGE WAY AREAS SHALL BE IN ACCORDANCE WITH STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE AND WITH THE PLANS AND SPECIFICATIONS APPROVED BY THE CITY ENGINEER OF THE CITY OF BARTLESVILLE. MAINTENANCE OF SAID RESTRICTIVE DRAINAGE AREA AND FACILITIES SHALL BE SHARED RESPONSIBILITY OF THE LOT OWNERS OF THIS SUBDIVISION AT THEIR COST IN ACCORDANCE WITH THE STANDARDS ADOPTED BY THE CITY OF BARTLESVILLE. IN THE EVENT SAID LOT OWNERS SHOULD FAIL TO ADEQUATELY AND PROPERLY MAINTAIN SAID DRAINAGE WAY AREAS AND FACILITIES, THE CITY OF BARTLESVILLE MAY ENTER UPON SAID AREA, PERFORM SAID MAINTENANCE. AND THE COST OF PERFORMING SAID MAINTENANCE SHALL BE PAID BY SAID LOT OWNERS PROPORTIONATELY ON THE BASIS OF LOT OWNERSHIP. IN THE EVENT SAID LOT OWNERS FAIL TO PAY THE COST OF SAID MAINTENANCE OR ANY PART THEREOF WITHIN THIRTY (30) DAYS AFTER COMPLETION OF SAID MAINTENANCE, SAID COST SHALL BE A LIEN AGAINST ALL LOTS IN THE SUBDIVISION FOR WHICH PROPORTIONATE PAYMENT HAS NOT BEEN MADE WHICH LIEN MAY BE FORECLOSED BY THE CITY OF BARTLESVILLE. NO FENCE, WALL, PLANTINGS, BUILDING OR OTHER OBSTRUCTION MAY BE PLACED OR MAINTAINED IN SAID RESTRICTIVE DRAINAGE WAY AREAS. WITHOUT THE APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, AND THERE SHALL BE NO ALTERATION OF THE GRADES OR CONTOURS IN SAID DRAINAGE WAY AREAS WITHOUT THE APPROVAL OF THE CITY ENGINEER. SAID EASEMENT OR ANY PART THEREOF MAY BE TERMINATED, RELEASED AND CANCELED UPON RESOLUTION BEING ADOPTED BY THE BARTLESVILLE CITY COUNCIL PROVIDING SUCH. DESIGNATION OF SAID DRAINAGE WAY DOES NOT IMPLY THAT OTHER AREAS OF THE PROPERTY WILL

LIMITS OF NO ACCESS (LNA):

THE UNDERSIGNED OWNER HEREBY RELINQUISHES ANY AND ALL RIGHTS OF INGRESS OR EGRESS TO THE ABOVE-DESCRIBED PROPERTY WITHIN THE BOUNDS DESIGNATED AS "LIMITS OF NO ACCESS (LNA)". THIS PROVISION CAN BE RELEASED, CHANGED OR ALTERED BY THE BARTLESVILLE METROPOLITAN AREA PLANNING COMMISSION OR ITS SUCCESSORS, WITH THE CONCURRING APPROVAL OF THE CITY ENGINEER OF THE CITY OF BARTLESVILLE, OKLAHOMA.

NOT FLOOD. THE CITY OF BARTLESVILLE ASSUMES NO

LIABILITY FOR PROPERTY DAMAGE BECAUSE OF STORM WATER.

DEDICATION:

KNOW ALL PERSONS BY THESE PRESENTS:

THAT S. HARBOR DEVELOPMENT COMPANY, OWNER OF THE HEREIN DESCRIBED REAL ESTATE AS PARTS OF THE SW/4 OF NE/4, THE S1/2 OF THE NET/4, AND SW 1/4 SET/4 NET/4 OF SECTION 28, TOWNSHIP 26 NORTH, RANGE 13 EAST, WASHINGTON COUNTY, STATE OF OKLAHOMA; DO HEREBY CERTIFY THAT THEY HAVE CAUSED THE SAME TO BE SURVEYED INTO LOTS, BLOCKS, STREETS AND EASEMENTS ON SAID PLAT, WHICH PLAT IS HEREBY ADOPTED AS THE OFFICIAL PLAT, OF THE ABOVE-DESCRIBED LAND UNDER THE NAME OF PARK PLACE ADDITION, AND ALL STREETS, RIGHTS-OF-WAY, AND PUBLIC LANDS AS SHOWN ON SAID PLAT ARE HEREBY DEDICATED TO PUBLIC USED AND TO HAVE CAUSED THE SAME TO BE RELEASED FROM ALL RIGHTS, EASEMENTS AND ENCUMBRANCES

THE RESTRICTIVE COVENANTS, OWNER'S CERTIFICATE OF DEDICATION AND LIMITATIONS FOR THE DEVELOPMENT OF THIS LAND ARE SET OUT IN SHEETS OF TYPEWRITTEN PAPER DATED THIS DAY OF TOLY, 2006, AND WILL BE FILED SEPARATELY.

(CORPORATE SEAL)

CORPORATION ACKNOWLEDGMENT

STATE OF OKLAHOMA;

COUNTY OF WASHINGTON;

THAT HE EXECUTED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED AND AS THE FREE AND VOLUNTARY ACT AND DEED OF SUCH CORPORATION, FOR THE USES AND PURPOSES GIVEN UNDER MY HAND AND SEAL THIS S DAY OF TUL

July 21, 2008 MY COMMISSION EXPIRES: Comm. #04006578

CERTIFICATE OF SURVEY

I, R. GARY WALKER, DO HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, IN THE STATE OF OKLAHOMA AND AT THE INSISTENCE OF THE OWNER MADE THE ABOVE-DESCRIBED SURVEY AND THAT THE PLAT IS A TRUE AND ACCURATE REPRESENTATION OF THE LOTS, BLOCKS AND STREETS AS SURVEYED BY ME.\_

> . GARY WALKER REGISTERED LAND SURVEYOR CO OKLAHOMA No. 1443

STATE OF OKLAHOMA

COUNTY OF WASHINGTON

BEFORE ME, THE UNDERSIGNED, A NOTARY PUBLIC IN AND FOR THE SAID COUNTY AND STATE, ON THIS 5th DAY OF 4 1, 2006, APPEARED PERSONALLY R. GARY WALKER, TO ME KNOWN TO BE THE IDENTICAL PERSON WHO EXECUTED THE WITHIN AND FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME AS HIS FREE AND VOLUNTARY ACT AND DEED FOR THE USES AND PURPOSES SET FORTH.

GIVEN UNDER MY HAND AND SEAL THIS 54 DAY OF

Guly 21,2008 Comm #04004578

COUNTY TREASURER'S CERTIFICATE

I, STAN STEVENS, TREASURER OF WASHINGTON COUNTY, OKLAHOMA DO HEREBY CERTIFY THAT ALL TAXES ARE PAID ON THE LAND DESCRIBED ON THE PLAT OF PARK PLACE ADDITION IN FULL FOR 2000 AND ALL PREVIOUS YEARS. IN WITNESS WHEREOF, I HAVE SET MY HAND AND AFFIXED MY OFFICIAL SEAL THIS DAY OF \_\_\_\_\_\_\_\_\_, 2006.

> 3000 STAN STEVENS, TREASURER WASHINGTON COUNTY, OK

CERTIFICATE OF CITY COUNCIL:

THE CITY COUNCIL OF THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA, DOES HEREBY APPROVE THE PLAT OF PARK PLACE ADDITION, AND ACCEPT ALL PUBLIC EASEMENTS, WAYS AND LAND CONTAINED THEREON THIS LEY DAY OF MICE

CERTIFICATE OF THE METROPOLITAN AREA PLANNING COMMISSION

THE PLAT OF PARK PLACE ADDITION IN BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA HAS BEEN FOUND TO COMPLY WITH THE CITY OF BARTLESVILLE SUBDIVISION REGULATIONS, WITH THE EXCEPTION OF VARIANCES AS SET OUT ON THIS PLAT, AND THAT THIS PLAT WAS SUBMITTED TO AND APPROVED BY THE BARTLESVILLE METROPOLITAN AREA PLANNING COMMISSION ON THIS DAY OF DECEMBER

LISA BEEMAN SECRETARY

#### CHANGE OF AND CONSENT TO LIMITS OF ACCESS AS SHOWN ON RECORDED PLAT

WHEREAS, <u>D.R. Horton – Texas, Ltd., a Texas Limited Partnership</u> is the owner of <u>the following described real property and premises</u> in the City of Bartlesville, Washington County, State of Oklahoma:

ALL OF LOT TWENTY-SEVEN (27), BLOCK ONE (1), "PARK PLACE ADDITION", AN ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, STATE OF OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF FILED OF RECORD JULY 07, 2006 IN BOOK 1045 ON PAGE 1639, COUNTY OF WASHINGTON RECORDS; and

WHEREAS, <u>due to the stormsewer inlet on Talbot Circle</u>, said owner desires to remove the Limits of No Access to <u>Southeast Jefferson Place</u> along the entire frontage of the above described property; and

WHEREAS, such change of access restrictions requires approval of the Bartlesville City Planning Commission, successor to the Bartlesville Metropolitan Area Planning Commission, or its successors, with the concurrent approval of the City Engineer of the City of Bartlesville, pursuant to the specific provisions of the plat of "Park Place Addition" pertaining thereto; and

NOW THEREFORE, the undersigned owner of the above-described property in the City of Bartlesville, Washington County, State of Oklahoma, according to the recorded plat thereof, does hereby remove all limits of no access from their present location(s) as shown on the above named plat as recorded in the office of the County Clerk of Washington County, State of Oklahoma, filed of record July 07, 2006 in Book 1045 on Page 1639, County of Washington Records.

The Bartlesville City Planning Commission, by affixing its approval to this instrument, does hereby stipulate and agree to such changes and, from and after the date of this consent, ingress, egress, and regress shall be permitted over, through, and across the above-described real property. The limits of no access previously existing but now permitted by this change and consent is (are) hereby expressly released, vacated, annulled, and held for naught.

seals this	IN WITNESS WHEREOF, the parties have hereunto set their day of, 2022.	hands and affixed their
	E OWNER RTON – TEXAS, LTD., A TEXAS LIMITED PARTNERSHIP	
[NAME], [TITLE]		

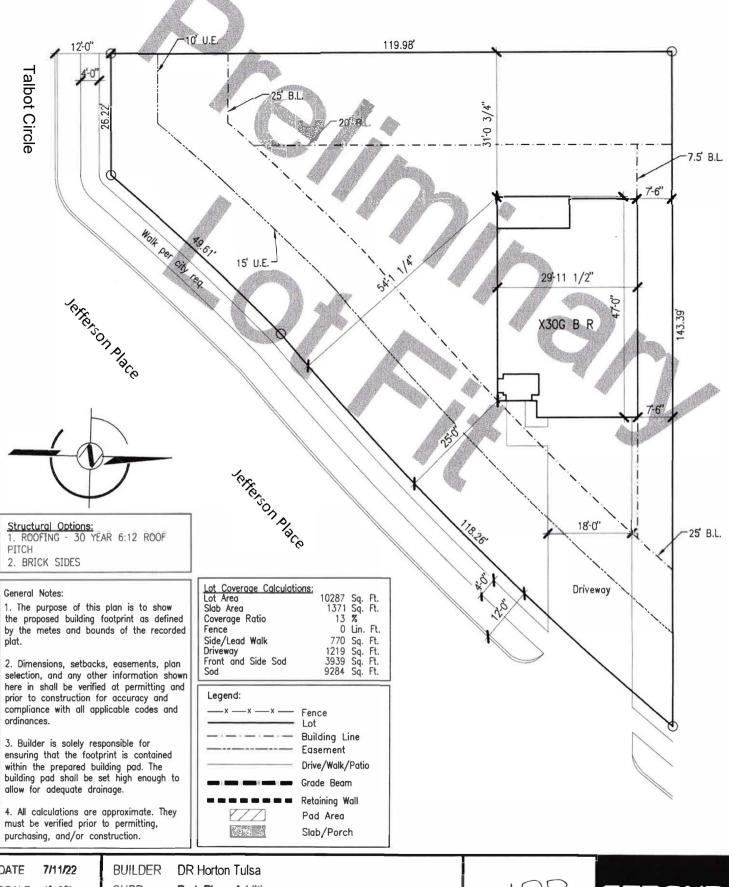
### APPROVED BY BARTLESVILLE CITY PLANNING COMMISSION: by: \_\_\_\_\_ Chair or Vice-Chair Date: ATTEST: Secretary APPROVED: Micah Siemers, Director of Engineering, City Engineer STATE OF \_\_\_\_\_\_ ) SS COUNTY OF \_\_\_\_\_ ) CORPORATE ACKNOWLEDGEMENT Before me, the undersigned, a Notary Public in and for said County and State, this day of \_\_\_\_\_\_, 2022, personally appeared NAME , to me known to be the identical person who executed the foregoing instrument, as TITLE of D.R. Horton – Texas, Ltd., a Texas Limited Partnership, 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 such Limited Partnership for the uses and purposes therein set forth. IN WITNESS WHEREOF, I hereunto set my official signature and affixed my notarial seal the day and year last above written.

Notary Public

My Commission Expires: \_\_\_\_\_

Commission No.:





DATE SCALE 1"=20" DR'N S.E.R.

STRAND 2134816R3

SUBD. LOT

CITY

Park Place Addition

27 **BLOCK ADDRESS** TBD Jefferson Place

Bartlesville, Oklahoma **PLAN** X30GBR

VER. 5

7/11/22

#### STRAND

10003 Technology Blvd. West Dallas, TX, 75220 972-620-8204 Cert. of Auth. No: 2390 PE



Agenda Item 7.f.i.
September 27, 2022
Prepared by Jason Muninger, CFO/City Clerk
Accounting and Finance

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

Receipt of Interim Financials for the two months ending August 31, 2022.

Attachments:

Interim Financials for August 31, 2022

#### II. STAFF COMMENTS AND ANALYSIS

Staff has prepared the condensed Interim Financial Statements for August 2022; these should provide sufficient information for the City Council to perform its fiduciary responsibility. All supplementary, detailed information is available for the Council's use at any time upon request. All information is subject to change pending audit.

#### III. RECOMMENDED ACTION

Staff recommends the approval the Interim Financials for August 31, 2022.



## REPORT OF REVENUE, EXPENDITURES AND CHANGES IN FUND BALANCES

For The Two Months Ended August 31, 2022

#### **CITY COUNCIL**

Ward 1 - Dale Copeland, Mayor

Ward 2 - Paul Stuart

Ward 3 - Jim Curd, Vice Mayor

Ward 4 - Billie Roane

Ward 5 - Trevor Dorsey

City Manager Mike Bailey

Prepared by:

Jason Muninger Finance Director

Alicia Shelton Accountant

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WATER OPERATING/BMA WATER FUNDS
SANITATION

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REVENUE BUDGET STATUS
EXPENDITURE BUDGET STATUS
CHANGE IN FUND BALANCE

#### **EXPLANATORY MEMO**

#### FINANCIAL STATEMENT REVENUE HIGHLIGHTS

(Dashed line represents average percent of year for 4 preceding fiscal years)



#### **GENERAL FUND**

Statement of Revenue, Expenditures, and Changes in Fund Balances

	2022-23 Fiscal Year					2021-22 Fiscal Year		
						% of		% Total
	Total Budget	YTD Budget	YTD Actual	YTD Encum	YTD Total	Budget	YTD Total	Year
Revenue:								
Sales Tax	\$ 16,407,122	\$ 2,734,520	\$ 2,969,835	\$ -	\$ 2,969,835	18.1%	\$ 2,930,384	18.5%
Gross Receipt Tax	1,851,300	308,550	246,982	-	246,982	13.3%	205,702	16.6%
Licenses and Permits	266,700	44,450	122,652	-	122,652	46.0%	144,043	63.3%
Intergovernmental	739,100	123,183	141,514	-	141,514	19.1%	75,442	2.2%
Charges for Services	521,300	86,883	84,245	-	84,245	16.2%	158,592	31.2%
Court Costs	139,800	23,300	41,741	-	41,741	29.9%	26,545	21.0%
Police/Traffic Fines	525,000	87,500	85,705	-	85,705	16.3%	79,529	15.5%
Parking Fines	54,800	9,133	10,450	-	10,450	19.1%	9,630	15.4%
Other Fines	67,000	11,167	14,799	-	14,799	22.1%	14,275	21.6%
Investment Income	100,000	16,667	16,667	-	16,667	16.7%	16,667	10.0%
Miscellaneous Income	396,400	66,067	56,941	-	56,941	14.4%	75,443	12.1%
Transfers In	9,170,941	1,528,490	1,528,501		1,528,501	16.7%	862,770	17.7%
Total	\$ 30,239,463	\$ 5,039,910	\$ 5,320,033	<u>\$ -</u>	\$ 5,320,033	17.6%	\$ 4,599,022	16.6%
Expenditures:								
General Government	\$ 8,138,777	\$ 1,356,463	\$ 1,484,195	\$ 291,671	\$ 1,775,866	21.8%	\$ 1,626,040	22.9%
Public Safety	15,764,748	2,627,458	2,802,447	218,147	3,020,594	19.2%	2,705,770	22.4%
Street	1,843,488	307,248	390,738	(47,893)	342,845	18.6%	297,113	19.8%
Culture and Recreation	3,494,816	582,469	583,606	35,804	619,410	17.7%	612,984	22.2%
Transfers Out	4,011,107	668,518	668,557	-	668,557	16.7%	571,632	19.4%
Reserves	910,925	151,821				0.0%		N.A.
Total	\$ 34,163,861	\$ 5,693,977	\$ 5,929,542	\$ 497,729	\$ 6,427,272	18.8%	\$ 5,813,539	22.0%
	<del>y 0 1/100/001</del>	<del> </del>	<del>- 3,323,312</del>	<del>* 137,123</del>	<del>y 0,127,272</del>	20.070	<del>y 3,013,333</del>	22.070
Changes in Fund Balance:								
Fund Balance 7/1			\$ 4,261,660					
Net Revenue (Expense)			(609,509)					
Ending Fund Balance			\$ 3,652,151					

#### **COMBINED WASTEWATER OPERATING & BMA WASTEWATER FUNDS**

Statement of Revenue, Expenditures, and Changes in Fund Balances

17% of Year Lapsed

			2022-23 Fisc	al Year			2021-22 Fisca	al Year
						% of		% Total
	Total Budget	YTD Budget	YTD Actual	YTD Encum	YTD Total	Budget	YTD Total	Year
Revenue: Wastewater Fees Investment Income Debt Proceeds Miscellaneous	\$ 5,499,094 - 45,000,000 30,800	\$ 916,516 - 7,500,000 5,133	\$ 987,022 - - 150	\$ - - - -	\$ 987,022 - - 150	17.9% N.A. 0.0% 0.5%	\$ 895,216 - - - 7,734	18.0% 0.0% N.A. 38.0%
Total	\$ 50,529,894	\$ 8,421,649	\$ 987,172	\$ -	\$ 987,172	2.0%	\$ 902,950	18.0%
Expenditures: Wastewater Plant Wastewater Maint BMA Expenses Transfers Out Reserves  Total	\$ 2,704,296 902,048 28,400 1,647,574 83,049 \$ 5,365,367	\$ 450,716 150,341 4,733 274,596 13,842 \$ 894,228	\$ 463,959 119,286 13,954 273,774 - \$ 870,973	\$ 2,206,483 10,725 - - - - \$ 2,217,209	\$ 2,670,442 130,012 13,954 273,774 	98.7% 14.4% 49.1% 16.6% 0.0%	\$ 2,388,607 126,384 - 254,342 - \$ 2,769,333	97.0% 19.3% N.A. 17.7% N.A.
Changes in Fund Balance: Fund Balance 7/1 Net Revenue (Expense)			\$ 1,859,443 116,198					

\$ 1,975,641

**Ending Fund Balance** 

#### **COMBINED WATER OPERATING & BMA WATER FUNDS**

Statement of Revenue, Expenditures, and Changes in Fund Balances

17% of Year Lapsed

	2022-23 Fiscal Year					2021-22 Fisca	2021-22 Fiscal Year	
						% of		% Total
	Total Budget	YTD Budget	YTD Actual	YTD Encum	YTD Total	Budget	YTD Total	Year
Revenue: Water Fees Investment Income Debt Proceeds Miscellaneous	\$ 11,339,739 - 7,500,000 	\$ 1,889,957 - 1,250,000 -	\$ 2,478,567 - -	\$ - - -	\$ 2,478,567 - -	21.9% N.A. 0.0% N.A.	\$ 2,099,442 - - -	20.0% 0.0% N.A. 0.0%
Total	\$ 18,839,739	\$ 3,139,957	\$ 2,478,567	<u>\$ -</u>	\$ 2,478,567	13.2%	\$ 2,099,442	20.0%
Expenditures: Water Plant Water Administration Water Distribution BMA Expenses Transfers Out Reserves	\$ 3,379,179 385,958 2,088,999 2,847,970 2,569,382 174,039	\$ 563,197 64,326 348,167 474,662 428,230 29,007	\$ 690,019 67,283 298,662 18,336 428,242	\$ 235,681 19,465 72,384 - -	\$ 925,700 86,748 371,046 18,336 428,242	27.4% 22.5% 17.8% 0.6% 16.7% 0.0%	\$ 512,020 101,008 286,379 52,678 396,770	18.4% 29.9% 21.2% 1.8% 17.7% N.A.
Total	\$ 11,445,527	\$ 1,907,589	\$ 1,502,542	\$ 327,530	\$ 1,830,072	16.0%	\$ 1,348,855	13.9%
Changes in Fund Balance: Fund Balance 7/1			\$ 9,871,860					
Net Revenue (Expense)			976,025					

\$ 10,847,885

**Ending Fund Balance** 

#### **SANITATION FUND**

Statement of Revenue, Expenditures, and Changes in Fund Balances

	2022-23 Fiscal Year					2021-22 Fiscal Year	
					% of		% Total
	Total Budget	YTD Budget	YTD Actual	YTD Encum YTD Total	Budget	YTD Total	Year
Revenue:							
Collection Fees Investment Income	\$ 5,614,957	\$ 935,826	\$ 933,717	\$ - \$ 933,717	16.6% N.A.	\$ 835,297 -	19.0% N.A.
Miscellaneous	181,103	45,669	21,274	- 21,274	11.7%	24,680	17.7%
Transfers In					N.A.		0.0%
Total	\$ 5,796,060	\$ 981,495	\$ 954,991	\$ - \$ 954,991	16.5%	\$ 859,977	18.9%
Expenditures:							
Sanitation	\$ 3,449,968	\$ 574,995	\$ 520,717	\$ 309,486 \$ 830,203	24.1%	\$ 786,793	26.8%
Transfers Out	2,647,446	441,241	441,246	- 441,246	16.7%	376,540	21.4%
Reserves	118,724	19,787			0.0%		N.A.
Total	\$ 6,216,138	\$ 1,036,023	\$ 961,963	\$ 309,486 \$ 1,271,449	20.5%	\$ 1,163,333	24.7%
Changes in Fund Balance:							
Fund Balance 7/1			\$ 271,101				
Net Revenue (Expense)			(6,971)				
Ending Fund Balance			\$ 264,130				

#### ALL OTHER FUNDS

Revenue Budget Report - Budget Basis

	Budget	Actuals	Percent of Budget
Special Revenue Funds:			
Economic Development Fund	1,830,242	332,935	18%
E-911 Fund	1,207,233	198,528	16%
Special Library Fund	88,000	4,293	5%
Special Museum Fund	-	30,619	N/A
Municipal Airport Fund	-	-	N/A
Harshfield Library Donation Fund	-	-	N/A
Restricted Revenue Fund	106,006	13,526	13%
Golf Course Memorial Fund	, -	, -	N/A
CDBG-COVID	-	14,918	N/A
	3,186,219	-	0%
Justice Assistance Grant Fund	-	_	N/A
Neighborhood Park Fund	_	_	N/A
Cemetery Care Fund	3,000	544	18%
·	•		
Debt Service Fund	4,156,550	17,066	0%
Capital Project Funds:			
Sales Tax Capital Improvement Fund	3,095,683	595,262	19%
Park Capital Improvement Fund	-	-	N/A
Wastewater Capital Improvement Fund	-	6,000	N/A
Wastewater Regulatory Capital Fund	-	-	N/A
City Hall Capital Improvement Fund	11,400	47,880	420%
Storm Drainage Capital Improvement Fund	-	1,049	N/A
Community Development Block Grant Fund	196,000	-	0%
2008B G.O. Bond Fund	-	-	N/A
2009 G.O. Bond Fund	-	-	N/A
2010 G.O. Bond Fund	-	-	N/A
2012 G.O. Bond Fund	-	-	N/A
2014 G.O. Bond Fund	-	-	N/A
2014B G.O. Bond Fund	-	-	N/A
2015 G.O. Bond Fund	-	-	N/A
2017 G.O. Bond Fund	-	-	N/A
2018A G.O. Bond Fund	-	-	N/A
2018B G.O. Bond Fund	-	-	N/A
2018C G.O. Bond Fund	_	-	N/A
2019A G.O. Bond Fund	-	-	N/A
2019B G.O. Bond Fund	-	_	N/A
2021A G.O. Bond Fund	-	_	N/A
2022 G.O. Bond Fund	-	-	N/A
Proprietary Funds:			
Adams Golf Course Operating Fund	543,441	114,377	21%
Sooner Pool Operating Fund	49,871	24,435	49%
Frontier Pool Operating Fund	60,921	32,500	53%
Municipal Airport Operating	391,174	95,364	24%
Internal Service Funds:			
Worker's Compensation Fund	100,287	21,986	22%
Health Insurance Fund	3,781,152	633,010	17%
Auto Collision Insurance Fund	75,000	12,510	17%
Stabilization Reserve Fund	1,722,643	287,123	17%
Capital Improvement Reserve Fund	7,296,227	1,351,549	19%
Mausoleum Trust Fund	· · ·	- -	N/A
			•

#### ALL OTHER FUNDS

#### Expenditure Budget Report - Budget Basis

	Rudget	Actuals	Dorcont of Budget
	Budget	Actuals	Percent of Budget
Special Revenue Funds:			
Economic Development Fund	4,536,236	1,080,430	24%
E-911 Fund	1,228,358	208,676	17%
Special Library Fund	226,500	26,385	12%
Special Museum Fund	41,500	6,287	15%
Municipal Airport Fund	241,443	-	0%
Harshfield Library Donation Fund	451,492	5,210	1%
Restricted Revenue Fund	346,646	821	0%
Golf Course Memorial Fund	34,307	17,183	50%
CDBG-COVID	<del>-</del>	<del>-</del>	N/A
	3,609,713	601,623	17%
Justice Assistance Grant Fund	7,619	-	0%
Neighborhood Park Fund	27,653	-	0%
Cemetery Care Fund	12,147	934	8%
Debt Service Fund	4,156,550	-	0%
Capital Project Funds:			
Sales Tax Capital Improvement Fund	4,494,810	692,803	15%
Park Capital Improvement Fund	-	-	N/A
Wastewater Capital Improvement Fund	60,000	43,479	72%
Wastewater Regulatory Capital Fund	784,684	-	0%
City Hall Capital Improvement Fund	75,594	1,600	2%
Storm Drainage Capital Improvement Fund	51,963	-	0%
Community Development Block Grant Fund	196,000	-	0%
2008B G.O. Bond Fund	-	-	N/A
2009 G.O. Bond Fund	2,636	-	0%
2010 G.O. Bond Fund	-	-	N/A
2012 G.O. Bond Fund	-	-	N/A
2014 G.O. Bond Fund	-	-	N/A
2014B G.O. Bond Fund	3,885	-	0%
2015 G.O. Bond Fund	-	-	N/A
2017 G.O. Bond Fund	-	-	N/A
2018A G.O. Bond Fund	-	-	N/A
2018B G.O. Bond Fund	32,031	-	0%
2018C G.O. Bond Fund	317,014	-	0%
2019A G.O. Bond Fund	669,535	199	0%
2019B G.O. Bond Fund	385,860	-	0%
2021A G.O. Bond Fund	2,109,080	-	0%
2022 G.O. Bond Fund	9,345,050	113	0%
Proprietary Funds:			
Adams Golf Course Operating Fund	628,362	199,816	32%
Sooner Pool Operating Fund	51,041	25,512	50%
Frontier Pool Operating Fund	64,020	28,501	45%
Municipal Airport Operating	622,990	138,331	22%
Internal Service Funds:			
Worker's Compensation Fund	430,000	34,834	8%
Health Insurance Fund	4,155,209	743,037	18%
Auto Collision Insurance Fund	443,559	- 13,037	0%
Stabilization Reserve Fund	10,211,008	_	0%
Capital Improvement Reserve Fund	7,736,297	885,802	11%
Mausoleum Trust Fund	8,185	-	0%

#### ALL OTHER FUNDS

#### Fund Balance Report - Modified Cash Basis

27,7001.10	a. <u>Lapoca</u>		
	Beginning of Year	Change	Current
Special Revenue Funds:			
Economic Development Fund	2,976,150	40,005	3,016,155
E-911 Fund	42,136	1,878	44,014
Special Library Fund	300,317	(23,215)	277,102
Special Museum Fund	129,805	24,332	154,137
Municipal Airport Fund	258,862	-	258,862
Harshfield Library Donation Fund	611,905	(6,039)	605,866
Restricted Revenue Fund	371,829	13,485	385,314
Golf Course Memorial Fund	31,449	(7,360)	24,089
CDBG-COVID	-	14,918	14,918
Justice Assistance Grant Fund	7,619	-	7,619
Neighborhood Park Fund	27,722	-	27,722
Cemetery Care Fund	8,234	(390)	7,844
Debt Service Fund	3,383,622	17,066	3,400,688
Capital Project Funds:		•	
Sales Tax Capital Improvement Fund	3,179,987	(374,192)	2,805,795
Park Capital Improvement Fund	5,175,507	(374,132)	2,003,733
Wastewater Capital Improvement Fund	125,314	6,000	131,314
Wastewater Regulatory Capital Fund	805,587	-	805,587
City Hall Capital Improvement Fund	74,009	46,515	120,524
Storm Drainage Capital Improvement Fund	52,981	1,049	54,030
Community Development Block Grant Fund	140,432	_,0 .5	140,432
2008B G.O. Bond Fund	-	_	- 10,152
2009 G.O. Bond Fund	_	_	_
2010 G.O. Bond Fund	_	_	_
2012 G.O. Bond Fund	22,372	_	22,372
2014 G.O. Bond Fund	7,686	_	7,686
2014B G.O. Bond Fund	3,886	_	3,886
2015 G.O. Bond Fund	12,444	_	12,444
2017 G.O. Bond Fund	72,338	_	72,338
2018A G.O. Bond Fund	52,547	_	52,547
2018B G.O. Bond Fund	46,204	_	46,204
2018C G.O. Bond Fund	152,711	(77,325)	75,386
2019A G.O. Bond Fund	657,231	(8,179)	649,052
2019B G.O. Bond Fund	397,717	-	397,717
2021A G.O. Bond Fund	1,079,080	_	1,079,080
2022A G.O. Bond Fund	9,370,025	(113)	9,369,912
B : 1 5 1	2,5: 2,5=5	(/	2,232,222
Proprietary Funds:	=====	(44.404)	
Adams Golf Course Operating Fund	56,999	(11,194)	45,805
Sooner Pool Operating Fund	23,650	(22,388)	1,262
Frontier Pool Operating Fund	14,708	(13,658)	1,050
Municipal Airport Operating	246,207	(17,227)	228,980
Internal Service Funds:			
Worker's Compensation Fund	248,341	5,672	254,013
Health Insurance Fund	291,251	(17,683)	273,568
Auto Collision Insurance Fund	477,623	(26,865)	450,758
Stabilization Reserve Fund	10,211,008	287,123	10,498,131
Capital Improvement Reserve Fund	12,762,925	601,892	13,364,817
Mausoleum Trust Fund	7,813	-	7,813
	•		•



**FROM:** Jason Muninger, CFO/City Clerk

**SUBJECT:** Financial Statement Explanatory Information

#### **GENERAL INFORMATION**

The purpose of this memo is to provide some insight as to the construction of the attached financial statements and to provide some guidance as to their use.

The format of the attached financial statements is intended to highlight our most important revenue sources, provide sufficient detail on major operating funds, and provide a high level overview of all other funds. The level of detail presented is sufficient to assist the City Council in conducting their fiduciary obligations to the City without creating a voluminous document that made the execution of that duty more difficult.

This document provides three different types of analyses for the Council's use. The first is an analysis of revenue vs budgeted expectations. This allows the Council to see how the City's revenues are performing and to have a better idea if operational adjustments are necessary.

The second analysis compares expenditures to budget. This allows the Council to ensure that the budgetary plan that was set out for the City is being followed and that Staff is making the necessary modifications along the way.

The final analysis shows the fund balance for each fund of the City. This is essentially the "cash" balance for most funds. However, some funds include short term receivables and payables depending on the nature of their operation. With very few exceptions, all funds must maintain positive fund balance by law. Any exceptions will be noted where they occur.

These analyses are presented in the final manner:

#### **Highlights:**

The Highlights section presents a 5 year snap shot of the performance of the City's 4 most important revenue sources. Each bar represents the actual amounts earned in each year through the period of the report. Each dash represents the percent of the year's revenue that had been earned through that period. The current fiscal year will always represent the percent of the budget that has been earned, while all previous fiscal years will always represent the percent of the actual amount earned. This analysis highlights and compares not only amounts earned, but gives a better picture of how much should have been earned in order to meet budget for the year.

#### Major Operating Funds:

The City's major operating funds are presented in greater detail than the remainder of the City's funds. These funds include the General, Wastewater Operating, BMA – Wastewater, Water Operating, BMA – Water, and Sanitation. Due to the interrelated nature of the Wastewater Operating/BMA – Wastewater and the Water Operating/BMA – Water funds, these have been combined into Wastewater Combined and Water Combined funds. This should provide a better picture of the overall financial condition of these operating segments by combining revenues, operating expenses, and financing activities in a single report.

#### Other Funds:

All other funds of the City are reported at a high level. These funds are often created for a limited purpose, limited duration, and frequently contain only a one-time revenue source. This high level overview will provide Council with sufficient information for a summary review. Any additional information that is required after that review is available.

These condensed financial statement should provide sufficient information for the City Council to perform its fiduciary responsibility while simplifying the process. All supplementary, detailed information is available for the Council's use at any time upon request. Additionally, any other funds that the Council chooses to classify as a Major Operating fund can be added to that section to provide greater detail in the future.



Agenda Item 8. September 28, 2022
Prepared by Nancy Warring, Planner II
Community Development

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

- Hold a Public Hearing for the purpose of obtaining citizen views on proposed modifications to the FY 2021 Community Development Block Grant – Coronavirus Relief (CDBG-CV) Grant.
- Consider and take action to approve a Resolution modifying the scope and budget of the FY 2021 CDBG-CV Grant.

Attachment: Resolution

#### II. STAFF COMMENTS AND ANALYSIS

In April 2021, the City Council accepted the FY 2021 CDBG-CV Grant Award from the Oklahoma Department of Commerce to fund activities that address the health and economic challenges brought on by the COVID-19 pandemic. Specifically, the grant funds rent, utility, and mental health assistance to low and moderate income Bartlesville residents who have been affected by COVID-19.

Much of the grant has been expended. The mental health assistance portion of the project is complete, and there are no funds remaining in that line item. However, there are substantial funds remaining for rent and utility assistance, and the demand for that assistance has consistently declined over time. As of August 31, 2022, there are \$513,045.36 in grant funds remaining. See the table below:

<u>Activity</u>	Grant Amount	Funds Expended as of 8/31/2022	Remaining Funds
Mental Health Assistance	\$333,333.33	\$333,333.33	\$0
Rent & Utility Assistance	\$602,856.00	\$89,810.64	\$513,045.36

The staff at Concern have been administering the rent and utility assistance portion of the project. They anticipate needing approximately \$27,667.02 through the end of the grant period which is March 2023. This will cover rent and utility assistance, plus their administrative costs which are also eligible under the grant but were not originally included in the budget.

This still leaves \$485,378.34 remaining. Rather than returning the unspent funds in March, staff is proposing to put them towards a new eligible activity that has been added to the CDBG-CV Grant Program: *Rehabilitation Assistance*. This involves the rehabilitation of a commercial building or public facility (but not buildings for the general conduct of

government) to improve indoor air quality and ventilation to prevent the spread of Coronavirus and similar airborne illness or disease. This could include, but is not limited, replacing the HVAC system, replacing other systems that affect air quality, or adding operable windows. The facilities must either serve low to moderate income clientele or be located in a low to moderate income area.

In order to change the scope and budget of the existing CDBG-CV Grant project and put funds toward Rehabilitation Assistance, the City of Bartlesville must submit a Grant Modification to the Oklahoma Department of Commerce for approval. As part of that process, the City Council must hold a public hearing to solicit public input and adopt a Resolution approving the modifications.

#### III. RECOMMENDED ACTION

The City Council is requested to hold a public hearing on October 3, 2022 to receive public input on the proposed modifications. The City Council is also requested to approve the attached Resolution which modifies the scope and budget of the FY 2021 CDBG-CV Grant.

|--|

A RESOLUTION MODIFYING THE SCOPE AND BUDGET OF THE CITY OF BARTLESVILLE'S FY 2021 COMMUNITY DEVELOPMENT BLOCK GRANT – CORONAVIRUS RELIEF GRANT.

WHEREAS, Title I of the Housing and Community Development Act of 1974, Public Law 93-383, as amended, authorized by the Secretary of Housing and Urban Development, as representative of the United States of America, to grant to the State of Oklahoma funds and administrative responsibility for the "Community Development Block Grant-Coronavirus Response (CDBG-CV)" program; and

WHEREAS, the Oklahoma Department of Commerce, pursuant to designation by the Governor as the administering agency of the Community Development Block Grant Program for Small Cities in Oklahoma, is directed to further the purposes of community development in the State, and is authorized and empowered to accept funds from the Federal Government or its agencies and to enter into such contracts and agreements as are necessary to carry out the functions of the Department; and

**WHEREAS**, the City of Bartlesville is a local unit of general purpose government that will provide opportunity for input by residents in determining and prioritizing community development needs through its written Citizen Participation Plan.

# NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:

1. The City Manager is authorized to prepare and submit a request for grant modification to Grant Number 18111 CDBG CR 20 and to execute and administer the resultant grant, including requisite general administration and project management, contracts, and agreements pursuant to regulations of the Oklahoma Department of Commerce and the United States Department of Housing and Urban Development.

2. The City Council of Bartlesville, Oklahoma hereby commits to modifying the scope and budget of the CDBG-CV project as follows:

Activity	Original Grant Budget	Modified Budget
Administration	\$2,856.00	\$17,438.79
Rent Assistance	\$450,000.00	\$72,372.62
Utility Assistance	\$150,000.00	\$27,666.25
Mental Health Assistance	\$333,333.33	\$333,333.33
Rehabilitation of one or more commercial or public facilities to improve indoor air quality and ventilation to prevent the spread of Coronavirus and other airborne illness or disease	\$0.0	\$485,378.34
TOTAL	\$936,189.33	\$936,189.33

# ADOPTED BY THE CITY COUNCIL AND APPROVED BY THE MAYOR OF THE CITY OF BARTLESVILLE THIS $3^{\rm RD}$ DAY OF OCTOBER, 2022.

	Mayor Dale Copeland
Attest:	
Jason Muninger, City Clerk	



Agenda Item <u>9.</u>
September 29, 2022
Prepared by Greg Collins, Assistant Director
Holly Mayhew, Planner I
Community Development Department

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

**CASE NO. RZ-0822-0007 /PUD-0822-0021/22** - A public hearing to consider and take action on an application from Jim Swezey of Swezey Realty Services to allow rezoning from C-2/PUD (Neighborhood Shopping/Planned Unit Development) to C-5/PUD (General Commercial/Planned Unit Development), as well as approval of a Planned Unit Development and Site Development Plan at 102 and 106 SW Kaw Ave., legally described as Lots 23 and 24, Block 3, George B. Keeler 1st Addition, Bartlesville, Washington County, Oklahoma.

#### Attachments:

- Exhibit D Application, Site Development Plan, & Neighborhood Meeting Documentation
- **Exhibit E** Ordinance

#### II. STAFF COMMENTS AND ANALYSIS

#### **GENERAL INFORMATION:**

	Applicant	Jim Swezey of Swezey Realty	
	• • • • • • • • • • • • • • • • • • • •	Services	EXHIBIT A
Requ	ested Action	Approval of a Rezoning, PUD,	
_		& Site Development Plan	
	Location	102 and 106 SW Kaw Avenue	
		(Exhibit A and Exhibit B)	Site Location Divergible Volume 1977
Cur	rrent Zoning	C-2/PUD (Neighborhood	
		Shopping- Planned Unit	Frank-Phillips Blyd
		Development (Exhibit C)	
Prop	osed Zoning	C-5/PUD (General Commercial-	Adams-Bivid
		Planned Unit Development)	
A	rea of Tract	2 lots totaling 13,000 square feet	
Prese	ent Land Use	Vacant	
Pro	oposed Land	Contractor or construction	
	Use	offices with Enclosed Storage	
		and Professional offices	
	North /	RS-5 (Single Family	Variation Price Rd. →
and	Northwest	Residential) /	
		M-1 (Limited Industrial)	
onin Use	South	RS-5 (Single Family	
7 p		Residential)	
ent Zo Land	West	RS-5 (Single Family	
Adjacent Zoning Land Use		Residential)	
l dja	East /	RS-5 (Single Family	
Ā	Northeast	Residential) / C-3/PUD (Major	
		Shopping/PUD)	

RE: RZ-0822-0007/PUD-0822-0021/22

#### **SUPPLEMENTAL INFORMATION:**

#### **Current Application Proposal:**

The applicant proposes rezoning two lots at the southwest corner of Hensley Blvd. and Kaw Ave, from C-2/PUD (Major Shopping / Planned Unit Development), to C-5/PUD (General Commercial / Planned Unit Development). The applicant proposes to construct an approximately 3,200 square foot commercial building on the site (see Exhibit B). The building would have three (3) units. The applicant's proposed uses are contractors' offices with accessory enclosed storage, and professional offices. The uses as listed in Table 6.2 of the Zoning Regulations are:



- 1. Contractor or construction offices and shops (e.g. air conditioning, building, cement, electrical, heating, masonry, painting, plumbing, refrigeration, roofing and ventilation), with accessory storage or warehousing (enclosed only).
- 2. Office: architectural, engineering, legal, or other professional; real estate, insurance.

These uses are not allowed by right under the current base zoning, C-2 (Major Shopping). They are allowed under C-5 (General Commercial) base zoning.

The current zoning of the area is shown in **Exhibit C**. The applicant's application is attached in **Exhibit D**.



RE: RZ-0822-0007/PUD-0822-0021/22

*Land Use & Zoning History:* This vacant property was previously rezoned from RS-5 (Single-Family Residential-5) to C-2/PUD (Neighborhood Commercial/Planned Unit Development) by Ordinance 3409 (September 16, 2013) (Case No. PC-13-13-RZ/PUD/SDP). The previous developer's proposal was the construction of a self-service laundromat and parking lot on the vacant site. This project was never built, and the site has remained vacant since at least August 2010.

(During its prior zoning as RS-5, according to historical Google Earth aerial images and historical Google Street View images, houses previously occupied both the north and south lots, fronting on Kaw Avenue, with an additional two-story accessory building or dwelling unit in the back of the north lot (east end of the north lot) as well. However, by August 2010, those homes and accessory building were removed and the lots have been vacant since that time).

#### SITE REQUIREMENTS

<u>Bulk Regulations – Yard Setbacks:</u> Under Zoning Table 5.2, the requested C-5 base zoning district requires

- a 50-foot setback from Hensley Blvd. (exterior yard abutting an arterial street),
- a 25-foot setback from Kaw Ave. (exterior yard abutting a non-arterial street),
- a 40-foot setback from the south lot line (interior yard abutting residential district), and
- a 40-foot setback from the alley (interior yard abutting residential district).

The source for these setbacks is shown below in Zoning Table 5.2.

Table 5.2 - Commercial District Bulk Regulations: No lot or yard shall be established in any Commercial district that does not meet the minimum requirements set forth in the following table. No building or structure shall be erected or enlarged in any residential district that does not meet the minimum requirements for such district as set forth in the following table. MAXIMUM REQUIRED YARDS, MINIMUM (FEET) FLOOR AREA EXTERIOR 2/ INTERIOR LOT RATION WIDTH AT LOT AREA, AND/OR WHERE WHERE FRONT ZONING DISTRICTS MINIMUM MAXIMUN WHERE WHERE BUILDING ABUTTING ABUTTING (Sq. Ft.) GROSS ABUTTIN ABUTTING A PROPERTY IN A LINE PROPERTY IN FLOOR AN (FEET) NON-ARTERIAL AREA FOR ARTERIAL RESIDENTIAL RESIDENTIAL STREET ANY STREET DISTRICT DISTRICT BUILDING C-5 General Commercial 5,000 50 0.5 50 25 0 40

TABLE 5.2 – COMMERCIAL DISTRICT BULK REGULATIONS

The proposed site development plan shows setback and other dimensions as listed below, by comparison. Deviations from a required dimension or standard are shaded in gray:

Lot 24 (north) and	13,000	130	0.25	20	25	25	N/A
Lot 23 (south),			(3,200 sf				
Block 3, George			÷13,000 s.f.				
Keeler 1st Addn			= 0.25				

In this proposed PUD and Site Development Plan, the applicant is requesting

<sup>&</sup>lt;sup>1</sup> Commercial yard setbacks in Zoning Table 5.2 are based on whether the yard is "exterior" or "interior." Exterior means abutting a *street*. "Street" is defined in Zoning Regulation Section 13, page 144 as "[a]ny thoroughfare *other than an alley*." Therefore, commercial yards abutting alleys are deemed to be "*interior*" yards, not "exterior," and are deemed to be "abutting" the land on the opposite side of the alley. The land on the east side of the alley is zoned residential RS-5, therefore the subject site's east side is deemed an *interior yard abutting residential*, and so the 40-foot setback rather than the 25-foot setback applies.

- a deviation from the required Hensley Blvd setback, from 50 feet to 20 feet; and
- a deviation from the required east alley setback, from 40 feet to 25 feet (both shown on the Site Development Plan).

<u>Access</u>: The property is proposed to be accessed from one driveway off of Hensley Blvd., one driveway off of Kaw Ave., and a driveway off of the alley.

<u>Water/Sewer</u>: The property is currently served by city water and sewer with sufficient capacity to serve the development. Mapping shows an 8-inch in diameter water line and an 8-inch sewer line in the Hensley Blvd. right-of-way. Mapping also shows an 8-inch diameter sewer line in the alley right of way.

<u>Fire</u>: Fire protection requirements for the building will need to be reviewed and approved at the building permit application stage of development, when the final uses and building dimensions are known.

<u>Parking</u>: Under Zoning Table 6.2, "Contractor or construction offices and shops" use requires one (1) parking space per 400 square feet of public occupancy area.

"Office: architectural, engineering, legal, or other professional; real estate, insurance" use requires one (1) parking space per 300 square feet of public occupancy area. The applicant's Site Development plan shows six (6) parking spaces, including one (1) ADA space. The six parking spaces will comply so long as the public occupancy area of the building for the respective uses meets these standards.

For example, if all three units are contractor offices with enclosed accessory storage space, then so long as the *public customer area* is 2,400 square feet or less (which is likely, given the total square footage is around 3,200 square feet) then the six spaces comply. If one or more of the units is a professional office, then additional parking might be needed depending on the public customer area of those units. Parking will be evaluated at the building permit application and site plan stage of development and at the business license application stage of occupancy, and the landowner and tenants will be required to comply with Table 6.2 of the Zoning Regulations.

#### **Street Landscaping:**

**Zoning Regulations Section 7.4.3:** The Zoning Regulations require street landscaping within a minimum 5-foot landscape strip along street frontages.

- North lot line (Hensley Blvd.)- 52 landscaping point are required, 41 of those points must be achieved by tree planting; all within a 5 foot landscaping strip. The applicant's revised site plan showing four (4) large trees (48 points), one (1) small tree (8 points), and three (3) small evergreen shrubs (4 points) (60 points) satisfies this requirement.
- West lot line (Kaw Ave.)- City staff is deeming the street landscaping requirement along Kaw Ave. to be satisfied by the residential protection screening requirements described below.

<u>Residential Protection Screening Landscaping</u>: The Zoning Regulations require the screening of non-residential developments from residential developments. This property is adjacent to a single family residential zoning to the south, and faces residential with an intervening public right of way to the west (Kaw Ave.), east (alley) and north (Hensley Blvd).

O **South lot line-Plantings and Fence.** The applicant's revised Site Development Plan (submitted since the Planning Commission meeting on September 27<sup>th</sup>) nearly complies with requirements. Sixty-five (65) landscaping points are required to be satisfied by plantings reaching minimum 8 feet in height at

maturity; all planted within 20 feet of the property line. Applicant shows 64 points: four (4) existing large trees (48 points) and two (2) new additional small trees (16 points) for a total of 64 points.

<u>Staff recommends</u> planting one (1) additional small shrub along the south lot line to satisfy the requirement. Also, the site development plan shows a 6-foot solid fence that is required to be installed, reduced to 4 feet in height in line with the front build line of the south neighboring house. This complies with requirements.

• West lot line (Kaw Ave.)- 40 landscaping points are required. Applicant shows 27 points, from one existing large tree, one new additional large tree (24 point tree total) and three small shrubs (3 points).

<u>Staff recommends</u> one additional large tree along Kaw Ave, and a 3-4 foot tall continuous dense evergreen hedge along the westernmost parking space, in addition to the three small shrubs, to achieve the required points.

• East lot line (Alley)- The applicant is requesting a deviation from the residential protection screening landscaping requirements to allow no landscaping/screening along the east lot line (alley).

<u>Staff recommends</u> approval of this deviation. The properties east of the alley face Seminole Ave and not the alley, and have accessory buildings in their back yards that screen the site from view.

o **North lot line (Hensley Ave)**-The applicant shows no residential protection screening landscaping along Hensley, only street landscaping.

<u>Staff recommends</u> approval of this deviation, based on the street landscaping provided along Hensley Ave described above.

Stormwater: A fee in lieu of storm water detention will be required.

<u>Streets</u>: <u>City staff is requiring a traffic study</u> from the applicant prior to issuance of a building permit to confirm there is adequate capacity of streets on Kaw Ave. to support this development impact, to the satisfaction of City staff.

<u>Sidewalks</u>: The Zoning Regulations and Ordinance 3555 (May 2, 2022) require sidewalks along all public streets at the time of development of a vacant commercially-zoned property. There is an existing sidewalk along Hensley Blvd. and Kaw Ave. Sidewalks will be required to be repaired and/or replaced as needed and subject to review by city staff.

<u>Signage:</u> A sign plan and sign permit submittal will be required at the building permit stage. City staff will review this sign submittal based on standard Zoning Regulations regarding street classification and sign size. Internally lit, LED and EMC signs will not be allowed.

<u>Lighting:</u> A lighting plan will be required at the building permit stage. This plan will be reviewed by city staff based on the standard the Zoning Regulations.

<u>NZOD:</u> The property is within the National Zinc Overlay District. Access was granted for soil testing. According to mapping and city records, these lots were previously sampled for constituents of concern. Levels of constituents exceeded limits on lot 24 (102 SW Kaw Ave.), and the lot was remediated. Levels of constituents did not exceed limits on lot 23 (106 SW Kaw Ave.) Both lots are considered uncontaminated. An NZOD permit application will be required at the building permit stage.

RE: RZ-0822-0007/PUD-0822-0021/22

<u>Architectural Style and Finishes</u>: The applicant proposes to use the style and finishes for the exterior of the building as described and depicted in his application attachment in **Exhibit D**.

<u>Platting</u>: The two lots in question are already platted. However, a lot combination application to combine the two lots will be required prior to a building permit application. The lot combination application can be approved administratively by City staff. Staff recommends this be a condition to approval of these Rezoning, PUD, and Site Development applications.

Application. The application, with attached Site Development Plan, is attached as Exhibit D.

**Public Participation:** In accordance with the Zoning Regulations, property owners within 300 feet of the site were notified of this request, a yellow notification sign was posted on the site, and a public hearing notice was placed in the Examiner-Enterprise. At the time of this staff report, no surrounding property owners had expressed opposition to the application. Also, in accordance with the regulations, the applicant invited surrounding property owners to a citizen participation meeting. It was held on Tuesday, September 20, 2022 at 5:00 p.m., the results of that meeting are attached with the application in **Exhibit D**.

#### STAFF COMMENTS AND PLANNING COMMISSION RECOMMENDATION:

An analysis of this rezoning request must consider the following factors in Zoning Regulation 7.6.5.5 in determining whether to recommend approval of the rezoning and PUD application:

- A. Whether the proposal is consistent with, and promotes the intent and purpose of the Comprehensive Plan.
- B. Whether the proposal is compatible with and harmonizes with existing and expected development of surrounding areas, the natural environment, and the planned capacities of public services and facilities affected by the proposed land use.
- C. Whether the proposal is a unified treatment of the development possibilities of the project site.
- D. Whether the proposal would benefit orderly and proper development of the metropolitan area.
- E. Whether the sidewalks and streets provide a traffic flow compatible with the development and surrounding street pattern.
- F. Whether the proposal is consistent with the public health, safety, and welfare of the community.

Staff has reviewed this application and finds that these factors are satisfied, or will be satisfied upon the applicants'/landowners' completion of any remaining conditions, and that the proposed development is appropriate at this location and is compatible with the surrounding area.

Planning Commission, at its September 27, 2022 regular meeting, adopted Staff's recommendation, and recommends to City Council approval of the requested Rezoning, PUD, and Site Development Plan, subject to conditions as presented by City staff.

#### III. RECOMMENDED ACTION

Planning Commission, at its September 27, 2022 regular meeting, by a vote of 6-0, adopted Staff's recommendation, and recommends to City Council conditional approval of the applications for Rezoning, Planned Unit Development, and Site Development Plan, as presented by City staff, with the following remaining conditions:

- 1. The applicant must submit a revised Site Development Plan at the building permit application stage and it must include:
  - a. A lighting plan;

- b. A completed landscape plan (as described in this memo);
- c. Public floor area of the building to confirm compliance with parking requirements;
- d. Dumpster enclosure location with screening.
- 2. Land uses permitted for this site shall be specifically limited to those proposed by the applicant:
  - a. Contractor or construction offices and shops (e.g. air conditioning, building, cement, electrical, heating, masonry, painting, plumbing, refrigeration, roofing and ventilation), with accessory storage or warehousing (enclosed only)
  - b. Office: architectural, engineering, legal, or other professional; real estate, insurance.
- 3. The applicant must receive administrative approval of a Lot Combination before a building permit will be issued for any development that crosses a platted lot line.
- 4. Sidewalks on Hensley Blvd. and Kaw Ave. are required to be repaired and/or replaced as needed and subject to review by City staff.
- 5. A traffic study required at the building permit stage to confirm there is adequate capacity of streets on Kaw Ave. to support this development impact, to the satisfaction of city staff.
- 6. The applicant shall apply for and obtain approval of a National Zinc Overlay District (NZOD) / Soil Disturbance Activity Permit prior to building permit issuance.
- 7. The applicant shall use the style and finishes for the exterior of the building as described in his application attachment.

A public hearing to consider this request for approval of a Rezoning, Planned Unit Development, and Site Development Plan has been scheduled for the Bartlesville City Council on Monday, October 3, 2022. The City Council is requested to hold this public hearing and make a final decision on this request.

RE: RZ-0822-0007/PUD-0822-0021/22

## **EXHIBIT D**



Case No: RZ-0822-000	7
Date Received:	8/29/22
BCPC Hearing Date:	
City Council Hearing Date:	

### APPLICATION FOR REZONING OF PROPERTY

NAME OF APPLICANT: Jim Swezey	Daytime Phone:
	918-331-501
Address of Applicant: 530 S. Keeler Ave. Bartlesville, OK 74003	
Location of area to be rezoned (address and legal description or legal description and gene	ral location)
102 & 106 S. Kaw Ave.; Lots 23 & 24, Block 3, George B. Keeler Addition, City of Bartlesville	
NATURE OF ZONING CHANGE REQUESTED:	
Present Zoning C-2 PUD Proposed Zoning C-5 PUD Adjacent Zoning RS-5	Single Family
Present Land Use Vacant Proposed Land Use Office-Storage Adjacent Land Use	Single Family
ADDITIONAL INFORMATION REQUIRED:	
1. Is the tract within the corporate limits of Bartlesville?	Yes× No
2. Is the tract within an established flood hazard area? (If yes, a Flood Plain	163. 140
Development Permit Application will be required to accompany application.)	Yes_Nox_
3. Does the tract contain a natural / man made watercourse?	Yes_Nox
THE EQUI OWNER PURISON AND APPLACED	
THE FOLLOWING ITEMS ARE ATTACHED:	Attached
1. Application fee of \$100.00	P
2. Site Plan - Vicinity sketch showing boundary lines and dimensions, adjoining	2
streets, rights-of-ways, existing and proposed utilities within existing and proposed	
easements and rights-of-way, and the location of existing and proposed structures  3. Name and address of legal owner(s) of property to be rezoned	
4. Two (2) sets of self-stick mailing labels, either typed or legibly printed, of names ar	nd 🗆
addresses of all property owners within 300-feet of the property to be rezoned	
CHONATURE ( I Was I ) Aures Ou	
SIGNATURE (Applicant)	
SIGNATURE (Of Property Owner if not Applicant)	
1800 NW Lupy St. (Marling: 109 Holly)	
1000 NOW LUPA ST. (Mailing: 109 Holly )	ane
Bartlesnille, O	K 74003



Case No: PhD-0822-002	
Date Received: 8/30/22	
BCPC Hearing Date:	9/27/22
City Council Hearing Date:	

## APPLICATION FOR PLANNED UNIT DEVELOPMENT

NAME OF APPLICANT: Jim Swezey Daytime Phone: 918-331-50
GENERAL INFORMATION AND REQUIREMENTS: ATTACH THE FOLLOWING INFORMATION WITH THE APPLICATION EITHER IN SUPPLEMENTAL TEXT OR DRAWING FORM:  Acres General Surrounding Area General Location of Streets Proposed Land Uses, Building and Structures  SITE LOCATION SE Corner of Development Topographic Information  SITE LOCATION SE Corner of Development Topographic Information  Hensley Blyd, + Kaw Ave.  LEGAL DESCRIPTION LOTS 23+24 Block 3 of
RECORD OWNER Cheek Owens  PRESENT ZONING C-2 PUD PROPOSED ZONING C-5 PUD  PRESENT USE VACANT / AND PROPOSED USE OFFICE - Watchouse  AS APPLICANT, WHAT IS YOUR INTEREST IN THIS PROPERTY?  Present Owner Purchaser Attorney for Owner Other  I certify that the submitted information is true and correct.  NAME: JM SWEZEY  ADDRESS 530 5 - Keeler Ave.  SIGNATURE (APPLICANT) JM AWEZEY  SIGNATURE (PROPERTY OWNER IF NOTAPPLICANT)
THE FOLLOWING ITEMS ARE ATTACHED:  1. Application fee of \$100.00  2. Name and address of legal owner(s) of property to be included within the PUD  3. Two (2) sets of self-stick mailing labels, either typed or legibly printed, of names and addresses of all property owners within 300-feet of



Case No: PND-0822-0022	
Date Received:	8/30/22
BCPC Hearing Date:	9/27/22
City Council Hearing Date:	

## APPLICATION FOR SITE DEVELOPMENT PLAN APPROVAL

APPLICANT INFORMATION
Name of Applicant
SITE INFORMATION
General Location SE Corner of Hensley Blvd, + Kaw Address and Legal Description 102 + 106 SW Kaw AVe.
Total acreage 6,000 59.Ft.  Present Use Vacant Proposed Use(s) Office - Storage  Adjacent Zoning: North South East West  Adjacent Land Use: North Vacant South 5, Family East 5. Family
THE FOLLOWING ITEMS ARE ATTACHED:
<ol> <li>Two (2) copies of the Site Development Plan on 24" x 36" paper, drawn to scale,</li> <li>Two (2) copies of the Plan no larger than 11" x 17" in size for reproduction purposes,</li> <li>An electronic copy of the plan in PDF file format,</li> <li>Application fee of \$100.00, and</li> <li>One (1) set of self-stick mailing labels, either typed or legibly printed, of names and addresses of all property owners within 300-feet (or greater as may be required by Community Development Director) of the perimeter boundary of the property.</li> </ol>
SIGNATURE (Applicant) Jun welzey
SIGNATURE (Property Owner if not Applicant)

#### SPECIAL CERTIFICATE

STATE OF OKLAHOMA	)	
	)	SS
COUNTY OF WASHINGTO	N)	

We hereby certify that the records in the Office of the City Clerk in and for Bartlesville, Washington County, State of Oklahoma, show the following holders of a franchise of special right or privilege granted by the City of Bartlesville to use the following described property:

# LOTS 23 & 24, BLOCK 3 OF GEORGE B. KEELER ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

Gas Service Company, franchise number 2054, granted February 23, 1976. Public Service Company of Oklahoma, by franchise number 2962, granted March 10, 1998.

WITNESS our hand and seal this 29th day of August, 2022.

The Musselman Abstract Company

Andrew M. Ihrig, Abstract Lic. #4605

#### SPECIAL CERTIFICATE

STATE OF OKLAHOMA	)	
	)	SS
COUNTY OF WASHINGTON	1)	

We hereby certify that the attached and foregoing is a true, correct and complete list of all owners as shown by the **2021** Ad Valorem Tax Rolls in the Office of the County Treasurer and in the Office of the County Clerk in and for Washington County, State of Oklahoma, of property abutting and within <u>300</u> feet in each direction from the following described property:

# LOTS 23 & 24, BLOCK 3 OF GEORGE B. KEELER ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

WITNESS our hand and seal this 29th day of August, 2022.

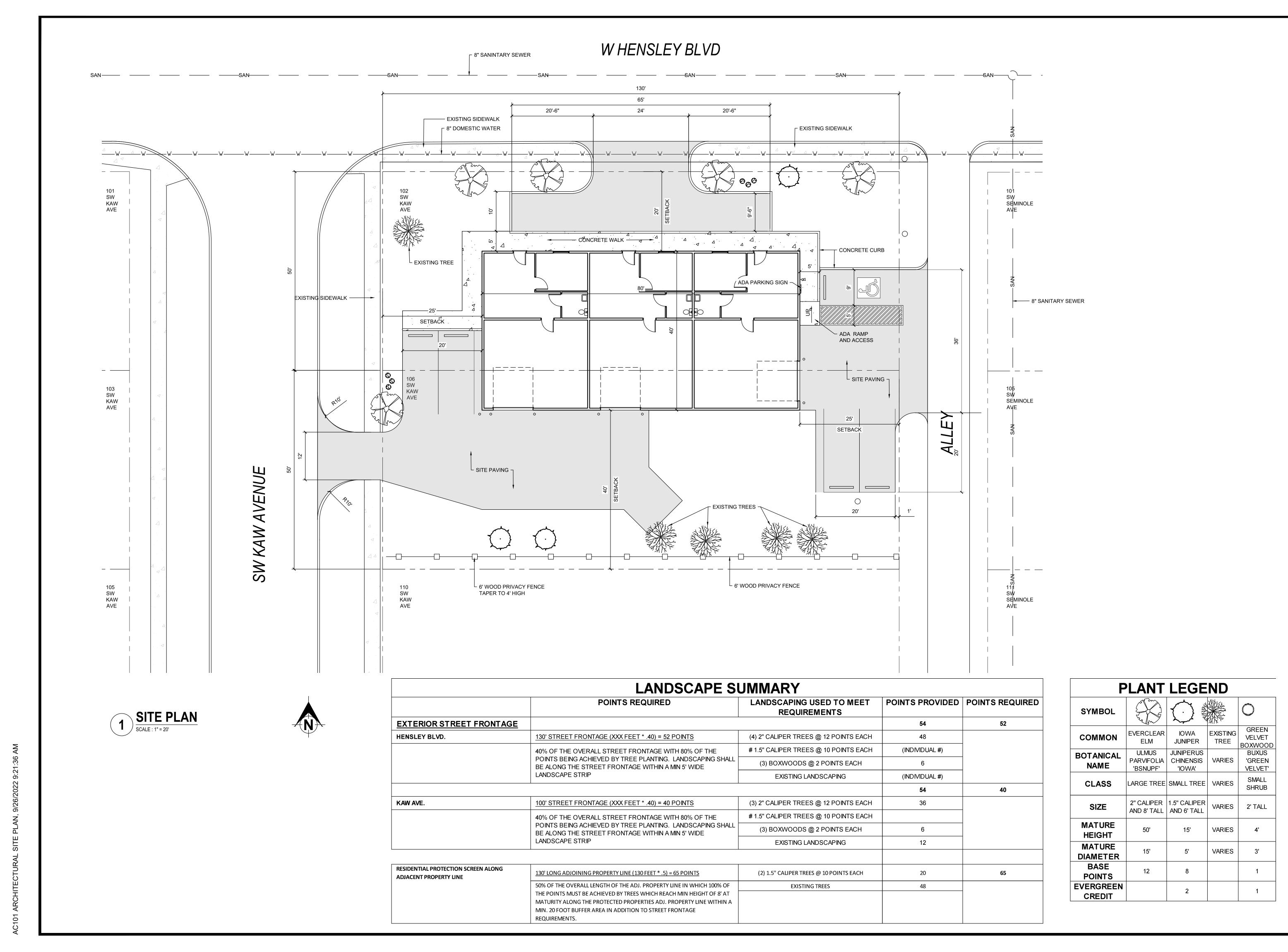
The Musselman Abstract Company

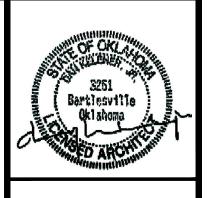
Andrew M. Ihrig, President, OAB # 4605

### **OWNERSHIP CERTIFICATE**

LOTS 23 & 24, BLOCK 3 OF GEORGE B. KEELER ADDITION TO THE CITY OF BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA

Ordered by: SWEZEY REALTY SERVICES 530 S. KEELER BARTLESVILLE, OK 74003





SHEET DATA: ARCHITECTURAL SITE PLAN INITIALS

**AC101** 

Checked By

9/22/2022



Representation of style and finishes for the front of a proposed building at the SE corner of Hensley Ave and Kaw Ave. There will be three lease spaces, with three entry doors (single, not double as shown) and three windows facing Hensley Ave. Each entry will have an awning above with a sign strip for the tenant. Most of the walls will be covered with steel siding (two colors as above). There will be a masonry (brick or decorative block) three feet up on the front. The west side (along Kaw Ave.) will have a contrasting color up three feet. The roof will be steel panels, either single slope to the back or with a ridge east to west. Maximum height on the front will be 17' and maximum on the back (south) will be 12 1/2'. There will be three overhead doors (two on the back and one on the east side (alley). Landscaping will be similar to that shown on the site plan, as designed by Dan Keleher.

Current addresses: 102 and 106 SW Kaw Ave. (new addresses on Hensley Ave.)

For more information, contact Jim Swezey, 918-331-5010.



#### COMMERCIAL REAL ESTATE

Sales • Property Management Leasing • Market Analysis www.swezeyrealty.com

September 20, 2022

Sent by Email

Mr. Greg Collins Assistant City Planner City of Bartlesville

#### RE: Neighborhood meeting, Proposed re-zoning & new building, 102 & 106 SW Kaw Ave.

#### Greg,

We held our neighborhood meeting last night at Virginia Ave. Baptist Church (see copy of attendance attached). I hope my invitation letter had enough good information that most people didn't see a need to attend. We had three people attend from 5:00 until 5:45 and had good discussion. The only questions involved what type of tenants we expected and how much traffic in and out was expected. The couple who attended live across the alley on the third lot south of Hensley. They have a garage with access to the alley but didn't seem to think our proposed use will impact them. The other attendee was the pastor at the church. They are within the 300' radius of the property and he was happy to see a nice building proposed for the area.

As discussed, our proposed use of the 3,200 square foot building will primarily be for leasing to small contractors who need one or two offices, a restroom and a place to keep equipment and supplies. At some point, I may want to relocate my real estate office to one of the three spaces in the building as I transition more toward managing my own properties and not dealing with clients and tenants as much. We plan to limit the space to a maximum of 50% office space (1,600 SF) with 50% or more used for storage and shop space for the office tenants. There will not be any long-term storage of materials outside.

If you have questions or discussion items, please let me know.

Thank you,

### Jim Swezey

Jim Swezey Broker, Owner

### **EXHIBIT E**

<b>ORDINAN</b>	CE NO	
ONDINAN	ICE INC.	

AN ORDINANCE AMENDING THE LAND USE AND ZONING MAP OF THE CITY OF BARTLESVILLE, AND AMENDING THE ZONING MAP ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF BARTLESVILLE BY CHANGING THE BOUNDARY OF THE USE DISTRICT SO THAT CERTAIN AREAS HEREIN DESCRIBED AND LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF BARTLESVILLE, OKLAHOMA SHALL BE CHANGED FROM C-2/PUD TO C-5/PUD AND ACKNOWLEDGING THE APPROVAL OF A SUPPLEMENTAL DESIGNATION PLANNED UNIT DEVELOPMENT (CASE NO. RZ-0822-0007 and PUD-0822-0021/22).

WHEREAS, a petition was heretofore filed with the Planning Commission of the City of Bartlesville requesting that the real estate hereinafter described, located in the City of Bartlesville, be rezoned from C-2/PUD to C-5/PUD and materials were submitted relative to a certain supplemental designation Planned Unit Development and Site Development Plan relative to all of the real property hereinafter described; and

**WHEREAS,** the Bartlesville City Planning Commission considered said request at a public hearing on September 27, 2022, and following public input and discussion, submitted its report to the City Council with a recommendation for approval of C-5/PUD zoning and supplemental designation Planned Unit Development; and

**WHEREAS,** after receipt of said report recommending approval of the request with conditions, the City Council thereafter gave due public notice of hearing to be held relative to said proposed changes, which notice stated the nature and purpose of said proposed changes, gave the time and place of said hearing and stated where copies of the proposed changes were available for inspection prior to the time of said hearing; and

WHEREAS, on October 3, 2022, said hearing was duly held by the City Council; and

**WHEREAS,** on October 3, 2022 said City Council approved said rezoning and supplemental designation planned unit development.

## NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF BARTLESVILLE, OKLAHOMA:

Section 1. That the land use and zoning map of the City of Bartlesville approved by the City Council on December 19, 1966, on file in the office of the City Clerk of the City of Bartlesville, Oklahoma, be and the same is hereby amended by re-establishing the boundary of the use districts so that the following described real estate located in the City of Bartlesville, County of Washington, Oklahoma, containing 0.3 acres, more or less, be rezoned from C-2/PUD to C-5/PUD:

## LOTS 23 AND 24, BLOCK 3, GEORGE B. KEELER 1<sup>ST</sup> ADDITION, BARTLESVILLE, WASHINGTON COUNTY, OKLAHOMA.

<u>Section 2</u>. That the PUD pertaining to Case No. RZ-0822-0007 and PUD-0822-0021/22 relative to all of the real property heretofore described is hereby approved with the following conditions:

- 1. The applicant must submit a revised Site Development Plan at the building permit application stage and it must include:
  - a. A lighting plan;
  - b. A completed landscape plan (as described in the City Staff Report and Council Memorandum);
  - c. Public floor area of the building to confirm compliance with parking requirements;

- d. Dumpster enclosure location with screening.
- 2. Land uses permitted for this site shall be specifically limited to those proposed by the applicant:
  - a. Contractor or construction offices and shops (e.g. air conditioning, building, cement, electrical, heating, masonry, painting, plumbing, refrigeration, roofing and ventilation), with accessory storage or warehousing (enclosed only)
  - b. Office: architectural, engineering, legal, or other professional; real estate, insurance.
- 3. The applicant must receive administrative approval of a Lot Combination before a building permit will be issued for any development that crosses a platted lot line.
- 4. Sidewalks on Hensley Blvd. and Kaw Ave. are required to be repaired and/or replaced as needed and subject to review by City staff.
- 5. A traffic study required at the building permit stage to confirm there is adequate capacity of streets on Kaw Ave. to support this development impact, to the satisfaction of city staff.
- 6. The applicant shall apply for and obtain approval of a National Zinc Overlay District (NZOD) / Soil Disturbance Activity Permit prior to building permit issuance.
- 7. The applicant shall use the style and finishes for the exterior of the building as described in his application attachment.

<u>Section 3</u>. That the materials submitted in connection with the case are hereby approved and adopted and are incorporated herein by reference.

<b>PASSED</b> by the City Council and <b>APPROVED</b> by 3rd day of October, 2022.	by the Mayor of the City of Bartlesville, Oklahoma this
ATTEST:	Dale Copeland, Mayor
Jason Muninger, CFO/City Clerk	



Agenda Item <u>10.</u>
June 30, 2022
Prepared by Jason Muninger. CFO/City Clerk
Accounting and Finance

#### I. SUBJECT, ATTACHMENTS, AND BACKGROUND

An Ordinance granting a non-exclusive permit to Clarity Telecom, LLC for the Construction and Operation of a Cable system (Franchise Agreement)

#### Attachments:

An Ordinance of the City of Bartlesville, Granting a non-exclusive permit to Clarity Telecom, LLC for the construction and operation of a cable system

#### II. STAFF COMMENTS AND ANALYSIS

Dobson Fiber had contacted the City of Bartlesville, for interests in establishing competition in the Internet Market within the City of Bartlesville. Staff was presented with projects currently under development and recently completed projects demonstrating their experience with cities of like size and population. The language contained in this agreement is standard language used across the State of Oklahoma and very similar to our current active Cable Franchise agreements. Franchise fee is set at 5% of the gross revenues that Dobson would collect if and when they provide Cable service and 5% of the portion of gross revenues from advertising, which are defined as a permit fee. At this time, there is no plan by Dobson to provide cable service only Internet packages. This agreement has been sent to the City Attorney for review, but utilizes standard language utilized around the state of Oklahoma for such agreements.

#### III. RECOMMENDED ACTION

Staff Recommends approval of the Ordinance.

#### ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE CITY OF BARTLESVILLE, OKLAHOMA GRANTING A NON-EXCLUSIVE PERMIT TO DOBSON TECHNOLOGIES, INC FOR THE CONSTRUCTION AND OPERATION OF A CABLE SYSTEM.

WHEREAS, the City's role as manager of public rights-of-way and easements and as a regulator of cable service requires it to maintain a fair and level playing field for all such service providers; and

WHEREAS, City and Dobson have determined that it is in the best interest of all parties, including the citizens of City, that Dobson be granted the right to construct and operate a cable system to provide cable services within the City; and

WHEREAS, the City Council of the City of Bartlesville has relied on Dobson's representations and has considered all information presented to it by Dobson, by City staff, and the public, and has determined that Dobson has the technical, legal and financial ability to construct and operate a cable system and to provide cable services; and

WHEREAS, based upon such representations, the City Council of the City of Bartlesville has determined that it would be in the best interests of the City to grant Dobson a non-exclusive permit to construct, install, maintain and operate a cable system in the City, subject to the terms and conditions set forth herein and applicable federal, state, and municipal statutes, regulations and ordinances, is consistent with the public interest.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BARTLESVILLE THAT THE FOLLOWING ORDINANCE BE ENACTED:

#### **SECTION 1: Definition of Terms**

For the purpose of this ordinance (the "Ordinance"), the following terms, phrases, words and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number:

- (A) "Affiliate" means an entity which owns or controls, is owned or controlled by, or is under common ownership or control with Dobson.
- (B) "Basic Cable" means the tier of Cable Service regularly provided to all Subscribers that includes the retransmission of local broadcast television signals.
- (C) ""Cable Service" means services provided over any Internet based protocol such as voice over Internet protocol and over-the-top video content like what is provided by Netflix, Amazon Prime, Hulu, HBO Max, etc..
- (D) "Cable System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment or other equipment that

is designed to provide Cable Service or other service to Subscribers. Dobson's cable system will be a fiber to the home/business network within the City utilizing the latest GPON/XGS PON infrastructure. In addition, the Cable System will be capable of delivering high speed, symmetrical, bi-directional Internet to business and residential customers ranging from 80 Mbps to 10 Gbps.

- (E) "City" means the City of Bartlesville, Oklahoma, a municipal corporation.
- (F) "Dobson" means Dobson Technologies, Inc. dba Dobson Fiber, or the lawful successor, transferee, or assignee thereof.
- (G) "FCC" means Federal Communications Commission, or successor governmental entity thereto.
- (H) "Permit" means the initial authorization, or renewal thereof, issued by the City, regardless of whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate, or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.
- (I) "Person" means an individual, partnership, association, joint stock company, trust corporation, or governmental entity.
- (J) "Public Way" means the surface of, and the space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, public way, drive, circle, or other public right-of-way, including, but not limited to, public utility easements, dedicated utility strips, or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held by City in the Service Area which shall entitle City and Dobson to the use thereof for the purpose of installing, operating, repairing, and maintaining the Cable System. "Public Way" also means any easement now or hereafter held by City within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights-of-way as shall within their proper use and meaning entitle City and Dobson to the use thereof for the purposes of installing or transmitting Dobson's Cable Service or other service over poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System.
- (K) "Service Area" means the present municipal boundaries of the City and all areas annexed into the City in the future.
- (L) "Subscriber" means a user of the Cable System who lawfully receives Cable Service with Dobson's express permission.
- (M) "Video Programming" means programming provided by, or generally considered comparable to programming provided by, a television broadcast station.

#### **SECTION 2: Grant of Permit**

- 2.1 **Grant**; **Build-Out Requirements**. City hereby grants to Dobson a nonexclusive Permit which authorizes Dobson to construct and operate a Cable System and offer Cable Service and other service in, along, among, upon, across, above, over, under, or in any manner connected with Public Ways within the Service Area and for that purpose to erect, install, construct, repair, replace, reconstruct, maintain, or retain in, on, over, under, upon, across, or along any Public Way and all extensions thereof and additions thereto, such poles, wires, cables, conductors, ducts, conduits, vaults, manholes, pedestals, amplifiers, appliances, attachments, and other related property or equipment as may be necessary or appurtenant to the Cable System. Nothing in this Permit shall be construed to prohibit Dobson from offering any service over its Cable System that is not prohibited by applicable law. Dobson shall build out the Cable System over a reasonable period of time, and provided that the City timely issues permits and other owners and users of critical infrastructure (such as utility poles) do not cause delay, not less than 50% build-out in two years and 90% build-out in three years to every residence (provided that there is a request for Cable Service from Dobson in such area and excluding any home subscribing to any satellite service) within the Service Area where there is a minimum density of at least thirty (30) residences per linear strand mile of cable as measured from Dobson's closest commercially reasonable tie-in point that is actively delivering Cable Service as of the date of such request for service. If such residence is located within one hundred twenty-five (125) feet of Dobson's feeder cable, the Cable Service will be provided at Dobson's published rate for standard installations. Cable Service offered to Subscribers pursuant to this Article shall be conditioned upon Dobson having legal access to any such Subscriber's dwelling unit or other units wherein such Cable Service is provided. Nothing herein shall be construed to limit Dobson's ability to offer or provide bulk rate discounts or promotions.
- 2.2 <u>Term.</u> The Permit granted pursuant to this Ordinance shall be for a term of ten (10) years from the passed and adopted date of the Permit unless otherwise lawfully terminated in accordance with the terms of this Ordinance.
- 2.3 <u>Acceptance</u>. Dobson shall accept the Permit granted pursuant hereto by signing this Ordinance and filing same with the City Clerk within sixty (60) days after the passage and final adoption of this Ordinance.
- 2.4 <u>Favored Nations</u>. In the event City enters into or has entered into a Permit of any kind with any Person other than Dobson to enter into the Public Ways for the purpose of constructing or operating a Cable System or providing Cable Service or video service to any part of the Service Area, the material provisions thereof shall be reasonably comparable to those contained herein, in order that one operator not be granted an unfair competitive advantage over another, and to provide all parties equal protection under the law.

If another provider of Cable Services, video services or other television services utilizing any system or technology requiring use of the Public Way in the Service Area, is lawfully authorized by any governmental entity or otherwise exempt from obtaining a permit as provided for in this Ordinance in order to provide such services, City hereby agrees that, upon a request from Dobson, as a matter of law, Dobson's Permit will be modified within thirty (30) days of the granting of such authorization or exemption for the purpose of establishing the same terms and

conditions as such person(s) on a competitively neutral basis. Except as specifically provided in this paragraph, neither City nor Dobson shall be permitted to take any unilateral action that materially changes the explicit mutual promises and covenants contained in this Permit, and any changes, modifications or amendments to this Permit must be made in writing, signed by City and Dobson.

- 2.5 <u>Change of Law</u>. In the event the federal, state or local law, rules or regulations are amended, modified or created that have the effect of modifying the terms and conditions of this Permit during the Term or any extension thereof, Dobson has the sole option to terminate this Permit upon ninety (90) days' notice to City. Nothing in this Permit shall impair the right of Dobson to terminate this Permit and, at Dobson's option, negotiate a renewal or replacement franchise, license, consent, certificate or other authorization with any appropriate government entity (such as the State of Oklahoma). To the extent that Dobson obtains an authorization to operate a network and serve customers under applicable laws in lieu of this Permit, Dobson shall have the right to terminate this Permit upon 90 days prior written notice to City.
- 2.6 **Renewal of Permit**. Prior to the end of the Permit term, City and Dobson agree to enter into good faith negotiations regarding the renewal, modification, and/or extension of this Permit.

#### **SECTION 3: Standards of Service**

- Conditions of Street Occupancy. All transmission and distribution structures, poles, other lines, and equipment installed or erected by Dobson pursuant to the terms hereof shall be located so as to cause a minimum of interference with the proper use of Public Ways and with the rights and reasonable convenience of property owners who own property that adjoins any of such Public Ways. Dobson shall comply with all right-of-way and easement management ordinances and/or regulations enacted by City, including such ordinances and/or regulations enacted after the effective date of this Permit.
- 3.2 <u>Restoration of Public Ways</u>. If during the course of Dobson's construction, operation, or maintenance of the Cable System there occurs a disturbance of any Public Way by Dobson, it shall, at its expense, replace and restore such Public Way to a condition reasonably comparable to the condition of the Public Way existing immediately prior to such disturbance.
- 3.3 Relocation at Request of Permitting Authority. Upon its receipt of reasonable advance notice, Dobson shall, at its own expense, protect, support, temporarily disconnect, relocate in the Public Way, or remove from the Public Way, any property of Dobson when lawfully required by City by reason of traffic conditions, public safety, street abandonment, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, or any other type of structures or improvements by; City; but, Dobson shall in all cases have the right of abandonment of its property. If public funds are available to any company using such street, easement, or right of way for the purpose of defraying the cost of any of the foregoing, such funds shall also be made available to Dobson.
- 3.4 <u>Relocation at Request of Third Party</u>. Dobson shall, on the request of any Person holding a building or other structure moving permit issued by City, temporarily raise or lower its

wires to permit the moving of such building or other structure, provided: (a) the expense of such temporary raising or lowering of wires is paid by such Person, including, if required by Dobson, making such payment in advance; and (b) Dobson is given not fewer than ten (10) business days' advance written notice to arrange for such temporary wire changes.

- 3.5 <u>Trimming of Trees and Shrubbery</u>. Dobson shall have the authority to trim trees or other natural growth overhanging any of its Cable System in the Service Area so as to prevent branches from coming in contact with Dobson wires, cables, or other equipment. Dobson shall reasonably compensate City or property owner for any damages caused by such trimming.
- 3.6 <u>Safety Requirements</u>. Construction, installation, and maintenance of the Cable System shall be performed in an orderly and workmanlike manner. All such work shall be performed in substantial accordance with applicable FCC or other federal, state, and local regulations. The Cable System shall not unreasonably endanger or interfere with the safety of persons or property in the Service Area.
- Aerial and Underground Construction. In those areas of the Service Area where 3.7 all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are underground, Dobson likewise shall construct, operate, and maintain all of its transmission and distribution facilities underground; provided that such facilities are actually capable of receiving Dobson's cable and other equipment without technical degradation of the Cable System's signal quality. In those areas of the Service Area where the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are both aerial and underground, Dobson shall have the sole discretion to construct, operate, and maintain all of its transmission and distribution facilities, or any part thereof, aerially or underground. Nothing contained in this paragraph shall require Dobson to construct, operate, and maintain underground any ground-mounted appurtenances such as subscriber taps, line extenders, system passive devices (splitters, directional couplers), amplifiers, power supplies, pedestals, or other related equipment. Notwithstanding anything to the contrary contained in this paragraph, in the event that all of the transmission or distribution facilities of the respective public utilities providing telephone communications and electric services are placed underground after the effective date of this Ordinance, Dobson shall only be required to construct, operate, and maintain all of its transmission and distribution facilities underground if it is given reasonable notice and access to the public utilities' facilities at the time that such are placed underground.
- 3.8 <u>Subscriber Charges for Extensions of Service</u>. No Subscriber shall be refused service arbitrarily. However, if an area does not meet the density requirements of this Ordinance, Dobson shall only be required to extend the Cable System to Subscribers in that area if the Subscribers are willing to pay the capital costs of extending the Cable System. Dobson may require that such Subscribers pay the capital contribution for construction in advance. Subscribers also shall be responsible for any standard/non-standard installation charges to extend the Cable System from the tap to the residence.
- 3.9 <u>Pole Attachments</u>. Utility poles owned by City or an affiliated entity shall be available for use by Dobson. Dobson shall pay City the maximum cable services pole rental rate as determined by the rules of the FCC for the use of poles owned by City or its affiliate, but not to

exceed the amount paid by any other Cable Service provider attaching to such poles pursuant to a current and effective pole agreement.

#### **SECTION 4: Revelation by Permitting Authority**

- 4.1 <u>Permit Fee</u>. During the term of this Permit, Dobson shall pay to City a fee equal to five percent (5%) of the gross revenues that Dobson and its affiliates collected from each subscriber to Dobson's Cable Services, and five percent (5%) of the portion of gross revenues from advertising which are defined below the fee ("Permit Fee"). The Permit Fee may be identified and passed through on any subscriber bill by Dobson, and all such fees collected will be forwarded to City quarterly and shall be due forty-five (45) days after the end of each calendar quarter.
  - (A) For purposes of this Permit, gross revenues are limited to the following:
    - (1) recurring charges for Cable Services;
  - (2) event-based charges for Cable Services, including but not limited to pay-per-view and video-on-demand charges;
    - (3) rental of set top boxes and other Cable Services equipment;
  - (4) service charges related to the provision of Cable Services, including, but not limited to, activation, installation, and repair;
  - (5) administrative charges related to the provision of Cable Services, including, but not limited to, service order and service termination charges; and
  - (6) amounts billed to Cable Services subscribers to recover the Permit Fee authorized by this section.
    - (B) For purposes of this Permit, gross revenues do not include:
  - (1) uncollectible fees, provided that all or part of uncollectible fees which is written off as bad debt but subsequently collected, less expenses of collection, shall be included in gross revenues in the period collected;
    - (2) late payment fees;
  - (3) revenues from contracts for in-home maintenance service unless they relate solely to maintenance on equipment used only for the provisioning of Cable Services and not for the provisioning of any other service provided by Dobson or its affiliates:
  - (4) amounts billed to Cable Services subscribers to recover taxes, fees or surcharges imposed upon Cable Services subscribers in connection with the provision of Cable Services, other than the Permit Fee authorized by this section;

- (5) revenue from the sale of capital assets or surplus equipment; or
- (6) charges, other than those described in subsection (A), that are aggregated or bundled with amounts billed to Cable Services subscribers.
- (C) Gross revenues which are subject to the Permit Fee paid by Dobson additionally include a pro rata portion of all revenue collected by Dobson pursuant to compensation arrangements for advertising (less any commissions Dobson receives from any third parties for advertising) and home-shopping sales derived from the operation of Dobson's Cable System within the Service Area. Advertising commissions paid to third parties (excluding any refunds, rebates, or discounts the Company may make to advertisers) shall not be deducted from advertising revenue included in gross revenue. The allocation of advertising and home-shopping revenue referred to above shall be based on the number of subscribers in City divided by the total number of subscribers in relation to the relevant regional or national compensation arrangement.
- (D) Bundling discounts shall be apportioned fairly among video and other services. Dobson shall not apportion revenue in such a manner as to avoid the Permit Fee.
- (E) The Permit Fee shall not apply to Internet access or Internet-based telephone services offered by Dobson. If the FCC or any other federal or state governmental authority with jurisdiction to do so authorizes the collection of such a fee during the term of this Permit, then Dobson shall, upon reasonable notice of the imposition of such a fee by City that applies equally to all Internet access or Internet-based telephone service providers within the Service Area, commence remittance of a fee in the amount of not more than five percent (5%) of the gross revenues collected from the sale of such Internet access or Internet-based telephone services during the remaining term of this Permit; provided that City and Dobson agree to the specific amount in an amendment to this Ordinance/Permit. This exclusion shall not apply to the payment of statutory "911" fees; such fees shall be collected and remitted by Dobson beginning the effective date of this Permit as required by applicable law.
- (F) In the event that any other video services provider, including but not limited to a cable operator or open video service provider, enters into any agreement or makes any arrangement with City during the term of this Permit whereby it is required or allowed to pay a fee to City that is similar to the Permit Fee described herein, this Permit shall be amended to allow Dobson to substitute the definition of "gross revenue" set forth in that agreement or arrangement for the definition of "gross revenue" set forth in this Permit immediately upon request of Dobson.

Dobson and City agree that the Permit Fee shall be in lieu of all other concessions, charges, excises, franchise, license, privilege, permit fees, taxes, or assessments except sales taxes, personal or real property taxes, and act valorem taxes.

4.2 <u>Rates and Charges</u>. City may not regulate the rates for the provision of Cable Service or other service, including, but not limited to, ancillary charges relating thereto, except as expressly provided herein and except as may be authorized pursuant to federal and state law. From time to time, and at any time, Dobson has the right to modify its rates and charges, at its discretion and without consent of City, including, but not limited to, the implementation of additional charges

and rates; provided, however, that Dobson shall give notice to City of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

4.3 <u>Conditions of Sale</u>. Except to the extent expressly required by federal or state law, if a renewal or extension of the Permit is denied or the Permit is lawfully terminated, and City either lawfully acquires ownership of the Cable System or by its actions lawfully effects a transfer of ownership of the Cable System to another party, any such acquisition or transfer shall be at a fair market value, determined on the basis of the Cable System valued as a going concern.

Dobson and City agree that in the case of a lawful revocation of the Permit, at Dobson's request, which shall be made in its sole discretion, Dobson shall be given a reasonable opportunity to effectuate a transfer of its Cable System to a qualified third party. City further agrees that during such a period of time, it shall authorize Dobson to continue to operate pursuant to the terms of its prior Permit; however, in no event shall such authorization exceed a period of time greater than six (6) months from the effective date of such revocation. If, at the end of that time, Dobson is unsuccessful in procuring a qualified transferee or assignee of its Cable System which is reasonably acceptable to City, Dobson and City may avail themselves of any rights they may have pursuant to federal or state law; it being further agreed that City's continued operation of its Cable System during the six (6)-month period shall not be deemed to be a waiver, nor an extinguishment of; any rights of either City or Dobson. Notwithstanding anything to the contrary set forth in this paragraph, neither City nor Dobson shall be required to violate federal or state law.

4.4 <u>Transfer of Permit</u>. All of the rights and privileges and all of the obligations, duties and liabilities created by this Permit shall pass to and be binding upon the successors of City and the successors and assigns of Dobson and the same shall not be assigned or transferred without the written approval of the City Council, which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that this Section shall not prevent the assignment or hypothecation of the Permit by Dobson as security for debt without such approval; and provided further that transfers or assignments of this Permit between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons, or entities which are controlled or managed by the same person, persons, or entities, shall be permitted without the prior approval of City ("intracompany transfers"). Dobson shall notify City in writing within thirty (30) days of the closing of such intracompany transfer.

#### **SECTION 5: Compliance and Monitoring**

Books and Records. Dobson agrees that City may review such of Dobson's books and records, during normal business hours and on a nondisruptive basis, as are reasonably necessary to monitor compliance with the financial terms hereof. Such records include, but are not limited to, any public records required to be kept by Dobson pursuant to the rules and regulations of the FCC. Notwithstanding anything to the contrary set forth herein, Dobson shall not be required to disclose information which it reasonably deems to be proprietary or confidential in nature. City agrees to treat any information disclosed to it by Dobson as confidential, to the extent not prohibited by law, and to disclose it only to employees, representatives, and agents of City that have a need to know, or in order to enforce the provisions hereof.

#### **SECTION 6: Insurance. indemnification. and Bonds or Other Surety**

- 6.1 <u>Insurance Requirements</u>. Dobson shall maintain in full force and effect during the term of the Permit, at its own cost and expense, Comprehensive General Liability Insurance in the amount of at least \$1,000,000. Such insurance shall designate City as an additional insured to the liability limits imposed by the Oklahoma Governmental Tort Claims Act, 51 O.S. §151, et seq.
- 6.2 <u>Indemnification</u>. Dobson agrees to indemnify, save and hold harmless, and defend City, its officers, boards and employees, from and against any liability for damages and for any liability or claims, in each case resulting from property damage or bodily injury (including accidental death) which arise out of Dobson's construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorneys' fees and costs.
- Bonds and other Surety. Except as expressly provided herein, Dobson shall not be required to obtain or maintain bonds or other surety as a condition of being awarded the Permit or continuing its existence. City acknowledges that the legal, financial, and technical qualifications of Dobson are sufficient to afford compliance with the terms of the Permit and the enforcement thereof. Dobson and City recognize that the costs associated with bonds and other surety may ultimately be borne by the Subscribers in the form of increased rates for Cable Service or other service. In order to minimize such costs, City agrees to require bonds and other surety only in such amounts and during such times as there is a reasonably demonstrated need therefor. City agrees that in no event, however, shall it require a bond or other related surety in an aggregate amount greater than \$100,000 conditioned upon the substantial performance of the material terms, covenants, and conditions of the Permit. Initially, no bond or other surety shall be required. In the event that one is required in the future, City agrees to give Dobson at least sixty (60) days' prior written notice thereof stating the exact reason for the requirement. Such reason must demonstrate a change in Dobson's legal, financial, or technical qualifications which would materially prohibit or impair its ability to comply with the terms of the Permit or afford compliance therewith.

#### SECTION 7: Internet Access Service for Public Buildings; Emergency Alert

Internet Access for Public Buildings. In lieu of any public, educational or 7.1 governmental video channels (PEG channels), during the term of this Permit, Dobson shall provide to City, at no charge, its fiber-based, bi-directional, symmetrical Internet service with speeds of up to 1 Gbps x 1 Gbps upload to one municipal public building that is located within Dobson's targeted serving area that has been shared with the City and is designated by the City in writing to Dobson (the "Public Building Service"). Installation costs and equipment charges relating to the Public Building Service shall be paid by Dobson up to a maximum of \$25,000. The Public Building Service shall be used solely for Internet access and not for any business or commercial use, any emergency system use, or any mission critical use. Accordingly, while Dobson shall use commercially reasonable efforts to ensure that the Public Building Service is available 24 hours per day, 7 days per week, consistent with its own network availability, Dobson shall have no liability whatsoever to the City or otherwise under this Permit for any failure or unavailability of the Public Building Service. Buildout and availability of the Public Building Service shall occur concurrently with Dobson's planned buildout of the Cable System, but in any event, as quickly as commercially practicable, once the Cable System has been constructed in the immediate vicinity of such locations.

7.2 <u>Emergency Alert</u>. Dobson shall comply with the federal Emergency Alert System regulations (47 C.F.R. Part 11).

#### **SECTION 8: Miscellaneous Provisions**

- 8.1 **Preemption**. If the FCC or any other federal or state body or agency shall now or hereafter exercise any paramount jurisdiction over the subject matter of the Permit, then, to the extent such jurisdiction shall preempt and supersede or preclude the exercise of the like jurisdiction by City, the jurisdiction of City shall cease and no longer exist.
- 8.2 <u>Employment Requirements</u>. Dobson shall afford equal opportunity in employment to all qualified persons. No person shall be discriminated against in employment because of race, color, sex, religion, gender, national origin, age, familial status or disability. Dobson shall maintain and carry out a continuing program of specific practices designed to assure equal opportunity in every aspect of its employment policies and practices.
- 8.3 Notice. Unless otherwise provided by federal, state or local law, all notices, reports or demands pursuant to this Ordinance/Permit shall be in writing and shall be deemed to be sufficiently given upon delivery to a Person at the address set forth below, or by U.S. certified mail, return receipt requested, or by nationally or internationally recognized courier service (such as Federal Express). If questioned, the party sending a notice shall have the burden to prove receipt or rejection. Rejected notices shall be deemed delivered. The parties may designate such other address or addresses from time to time by giving notice to the other in the manner provided for in this section.

If to City: City Clerk

City of Bartlesville 401 S. Johnstone Ave. Bartlesville, OK 74003

If to Dobson: Dobson Technologies, Inc.

14101 Wireless Way

STE 300

Oklahoma City, OK 73134

Attn: Legal Notices

- 8.4 <u>Descriptive Headings</u>. The captions to Sections contained herein are intended solely to facilitate the reading thereof. Such captions shall not affect the meaning or interpretation of the text herein.
- 8.5 <u>Severability</u>. If any Section, sentence, paragraph, term, or provision hereof is determined to be illegal, invalid, or unconstitutional, by any court of competent jurisdiction or by any state or federal regulatory authority having jurisdiction thereof, such determination shall have no effect on the validity of any other Section, sentence, paragraph, term or provision hereof, all of which shall remain in full force and effect for the term of the Permit or any renewal or renewals thereof.

8.6 **Force Majeure**. Dobson shall not be held in default under, or in noncompliance with, the provisions of the Permit, nor suffer any enforcement or penalty relating to noncompliance or default, where such noncompliance or alleged defaults occurred or were caused by circumstances reasonably beyond the ability of Dobson to control. This provision includes, but is not limited to, severe or unusual weather conditions, fire, flood, or other acts of God, strikes, work delays caused by failure of utility providers to service, maintain or monitor their utility poles to which Dobson's Cable System is attached, as well as unavailability of materials and/or qualified labor to perform the work necessary.

PASSED, APPROVED AND AD	OPTED BY THE CITY OF BARTLESVILLE CITY
COUNCIL THIS DAY OF	, 2022.
	By:
(CDAI)	Title: Mayor
(SEAL) ATTEST:	
By: Jason Muninger, City Clerk	
APPROVED AS TO FORM AND	D LEGALITY THIS DAY OF,
2022.	, LEGALIT THIS DAT OF,
	By:
	Title: City Attorney

### ACCEPTANCE BY PERMIT HOLDER

Accepted this and local law.	day of	, 2022, subject to applicable federal, state
		DOBSON TECHNOLOGIES, INC
		By:
		Name: Jim Horsburgh
		Title: Chief Strategy Officer