

AMENDED

AGENDA
BOARD OF CITY COMMISSIONERS
December 3, 2012 AT 6:30 P.M.
COMMISSION CHAMBERS AT CITY HALL
SHAWNEE, OKLAHOMA

CALL TO ORDER

DECLARATION OF A QUORUM

INVOCATION

REV. AMY PERKINS
UNITED PRESBYTERIAN CHURCH

FLAG SALUTE

1. Consider approval of Agenda:
2. Consider approval of Consent Agenda:
 - a. Acknowledge staff will proceed in the instant meeting with the opening and consideration of bids/proposals as set forth in Shawnee Municipal Authority Agenda Item No. 2 a.
 - b. Minutes from the November 19, 2012 regular meeting.
 - c. Budget Amendment
Money was budgeted last year for finishing wood floors at the senior center - did not complete - need to bring money up from fund balance
 - d. Acknowledge the following minutes:
 - Shawnee Civic and Cultural Development Authority minutes from October 18, 2012
 - e. Approve Board of Commissioners and Authorities meeting schedule for 2013.
 - f. Acknowledge Oklahoma Municipal Retirement Fund Normal Retirement for Elaine Shrum.
 - g. Approve agreement with the Shawnee Youth Athletic Association for operation of the youth sports program at Lions Club Park.
 - h. Approve agreement with the YMCA for operation of the Dockery Park ball fields.

i. Mayor's appointments:

Shawnee Public Library Board

David Houghton – 1st Full Term Expires 6-30-15
Replaces Nancy Cook-Senn termed out

Kevin Huddleston – 1st Full Term Expires 6-30-15
Replaces Bob Perry moved to Pioneer Library Systems Board

Alfonso Nieves – 1st Full Term Expires 6-30-15
Replaces Keith Whitmore termed out

Robert Currie – 1st Partial Term Expires 6-30-14
Replaces Michael Affentranger

Tourism Advisory Committee

Randy Floyd – 2nd Full Term Expires 12-31-15
Re-appointment

Traffic Commission

Ron Duffell - 1st Full Term Expires 1-01-2016
Re-appointment

3. Citizens Participation

(A three minute limit per person)
(A twelve minute limit per topic)

4. City Manager's Presentation of Oklahoma Municipal League certificates to employees with 25 or more years of service with the City of Shawnee.

Russell Frantz
Rick Greenland
Freeland Wood

5. Consideration and possible action on a Supplemental and Modification Agreement with the Oklahoma Department of Transportation on the Kickapoo Street Project, from Kickapoo Spur north to MacArthur Street.

6. New Business

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

7. Administrative Reports

8. Commissioners Comments

9. Adjournment

Respectfully submitted

Phyllis Loftis, CMC, City Clerk

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

Regular Board of Commissioners

2. a.

Meeting Date: 12/03/2012

Open Bids

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Acknowledge staff will proceed in the instant meeting with the opening and consideration of bids/proposals as set forth in Shawnee Municipal Authority Agenda Item No. 2 a.

Regular Board of Commissioners

2. b.

Meeting Date: 12/03/2012

Minutes

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Minutes from the November 19, 2012 regular meeting.

Attachments

Minutes

BOARD OF CITY COMMISSIONERS PROCEEDINGS
NOVEMBER 19, 2012 AT 6:30 P.M.

The Board of City Commissioners of the City of Shawnee, County of Pottawatomie, State of Oklahoma, met in Regular Session in the Commission Chambers at City Hall, 9th and Broadway, Shawnee, Oklahoma, Monday, November 19, 2012 at 6:30 p.m., pursuant to notice duly posted as prescribed by law. Mayor Mainord presided and called the meeting to order. Upon roll call, the following members were in attendance.

Wes Mainord

Mayor

Absent

Commissioner Ward 1

Linda Agee

Commissioner Ward 2

James Harrod

Commissioner Ward 3-Vice Mayor

Keith Hall

Commissioner Ward 4

John Winterringer

Commissioner Ward 5

Steve Smith

Commissioner Ward 6

ABSENT: Pam Stephens

INVOCATION

Rev. David Henry

Calvary Baptist Church

FLAG SALUTE

AGENDA ITEM NO. 1:

Consider approval of Agenda.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Agee, to approve the Agenda. Motion carried 6-0.

AYE: Harrod, Agee, Mainord, Hall, Winterringer, Smith

NAY: None

AGENDA ITEM NO. 2:

Consider approval of Consent Agenda:

- a. Minutes from the November 5, 2012 regular meeting.
- b. Budget Amendment – Capital Fund 301
To bring monies from fund balance to current year – this is the remaining money that was not spent last year and it went into fund balance and it needs to be brought back up into current year
- c. Budget Amendment – General Fund
Monies not spent last year and need to be brought up from fund balance - /Ammo was on backorder
- d. Budget Amendment – General Fund
Use donated monies to purchase logo sign for station 1
- e. Acknowledge the following minutes and reports:
 - Planning Commission minutes from regular meeting October 3, 2012.
 - Project Payment Report for October 2012
 - License Payment Report for October 2012
- f. Acknowledge Oklahoma Municipal Retirement Fund refund of contributions from the Defined Contribution plan for MiChell Gibson.

A motion was made by Commissioner Hall, seconded by Commissioner Winterringer, to approve the Consent Agenda Items a-f. Motion carried 6-0.

AYE: Hall, Winterringer, Smith, Agee, Harrod, Mainord

NAY: None

AGENDA ITEM NO. 3:

Citizens Participation

(A three minute limit per person)

(A twelve minute limit per topic)

Tina Hannah came forward to request the Commission support Agenda Item No. 14, regarding the moratorium on boarding or rooming houses. This moratorium would give the staff and commission time to research other types of shelters.

AGENDA ITEM NO. 4:

Mayor's Proclamation:

"Winter Weather Awareness Day"
November 20, 2012

Emergency Manager Don Lynch accepted the Mayor's Proclamation for "Winter Weather Awareness Day" presented by Mayor Mainord.

AGENDA ITEM NO. 5:

Presentation and update regarding the YMCA by Theresa Hendrix, new Chief Executive Officer of the YMCA.

Mr. Casey Bell, YMCA Chairman, introduced Ms. Theresa Hendrix, new Chief Executive Officer of the YMCA. Ms. Hendrix gave a brief summary of her experience and stated that she looks forward to working in Shawnee.

AGENDA ITEM NO. 6:

A public hearing and consideration of an ordinance to rezone property from R-1; Residential, Single Family Dwelling to R-3; Multi-Family Dwelling for property located at 3300 North Union.
Case #P16-12 Applicant: Mike Little
Construction
Deferred from the October 15, 2012 meeting.

Mayor Mainord asked for a staff report from Community Development Director Justin Erickson. Mr. Erickson gave the report and asked for questions. Mayor Mainord, then, declared a public hearing in session to consider an ordinance to rezone property from R-1; Residential, Single Family Dwelling to R-3; Multi-Family Dwelling for property located at 3300 North Union. No one appeared to speak in favor or against the proposed rezoning and the public hearing was closed.

A motion was made by Commissioner Agee, seconded by Commissioner Smith, to approve the ordinance to rezone property from R-1; Residential, Single Family Dwelling to R-3; Multi-Family Dwelling for property located at 3300 North Union.

Ordinance No. 2492NS was introduced and the title read aloud.

AN ORDINANCE CONCERNING THE ZONING CLASSIFICATION OF THE FOLLOWING DESCRIBED PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF SHAWNEE, OKLAHOMA, TO-WIT: A TRACT OF LAND DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF LOT TWENTY-TWO {22}, KELLY'S ADDITION, TO THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA; THENCE S88°57'23"E ALONG THE NORTH LINE OF SAID LOT 22 A DISTANCE OF 320.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING S88°57'23"E ALONG THE NORTH LINE OF LOT 22 A DISTANCE OF 239.00 FEET; THENCE S00°00'22" W A DISTANCE OF 331.76 FEET; THENCE N88°46'32"W ALONG THE SOUTH LINE OF LOT 22 A DISTANCE OF 397.00 FEET; THENCE N00°00'00"E A DISTANCE OF 194.51 FEET; THENCE S88°57'23"E A DISTANCE OF 158.01 FEET; THENCE N00°00'00"E A DISTANCE OF 136.00 FEET TO THE POINT OF BEGINNING, ACCORDING TO THE RECORDED PLAT THEREOF, REZONING SAID PROPERTY FROM R-1 ; RESIDENTIAL, SINGLE FAMILY DWELLING TO R-3; MULTI-FAMILY DWELLING; AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SHAWNEE ACCORDINGLY.

Motion carried 6-0.

AYE: Agee, Smith, Harrod, Mainord, Hall, Winterringer

NAY: None

AGENDA ITEM NO. 7:

Consideration of approval of a final plat for Shawnee Medical Center located at Kethley Road and MacArthur Street.

Case #S12-12 Applicant: Shawnee Real Estate Holdings, LLC

Deferred from the October 15, 2012 meeting.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Winterringer, to approve the final plat for Shawnee Medical Center located at Kethley Road and MacArthur Street. Motion carried 6-0.

AYE: Harrod, Winterringer, Smith, Agee, Mainord, Hall

NAY: None

AGENDA ITEM NO. 8:

A public hearing and consideration of approval of a Conditional Use Permit in C-3; Automotive, Commercial and Recreational district to allow the sale of beer and alcohol for on premise consumption and off premise consumption for property located at 4420 North Kickapoo.

Case #P18-12 Applicant: Dao and Cynthia Nguyen (Nelmon Brauning – Agent)

Mayor Mainord asked for a staff report. Community Development Director Justin Erickson reported the reason for on premise consumption and off premise consumption was a strip mall is going in and a restaurant requested on premise consumption and a liquor store was requesting off premise consumption Conditional Use Permits. One protest letter, signed by several residents on the street behind the strip mall was received. The Mayor declared a public hearing in session to consider approval of a Conditional Use Permit in C-3; Automotive, Commercial and Recreational district to allow the sale of beer and alcohol for on premise consumption and off premise consumption for property located at 4420 North Kickapoo. No one appeared to speak in favor or against the proposed rezoning and the public hearing was closed.

A motion was made by Commissioner Hall, seconded by Vice Mayor Harrod, to approve a Conditional Use Permit in C-3; Automotive, Commercial and Recreational district to allow the sale of beer and alcohol for on premise consumption and off premise consumption for property located at 4420 North Kickapoo with the following conditions.

1. On-premise consumption of alcohol as part of an eating place or other permitted use.
2. Establishment of a liquor store and the sale of alcohol and beer for off-premise consumption.

Ordinance No. 2493NS was introduced and the title read aloud.

AN ORDINANCE CONCERNING THE ZONING CLASSIFICATION OF THE FOLLOWING DESCRIBED PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF SHAWNEE, OKLAHOMA, TO-WIT: LOTS EIGHT (8) AND NINE (9), BLOCK TWO (2), COLLEGE VIEW ADDITION TO THE CITY OF SHAWNEE, POTTAWATOMIE COUNTY, OKLAHOMA, ACCORDING TO THE RECORDED PLAT THEREOF, LESS AND EXCEPT THE NORTH FORTY (40) FEET OF THE WEST TWENTY (20) FEET OF LOT NINE (9), REZONING SAID PROPERTY FROM C-3 ; AUTOMOTIVE, COMMERCIAL AND RECREATIONAL TO C-3P; AUTOMOTIVE, COMMERCIAL & RECREATION DISTRICT WITH CONDITIONAL USE PERMIT; AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SHAWNEE ACCORDINGLY.

Motion carried 6-0.

AYE: Hall, Harrod, Mainord, Winterringer, Smith, Agee

NAY: None

AGENDA ITEM NO. 9:

Consideration of approval of a preliminary plat for G. E. Oil and Gas Addition located at 14311 Highway 177.
Case #S15-12 Applicant: Landes Engineering

A motion was made by Commissioner Winterringer, seconded by Commissioner Hall, to approve the preliminary plat for G. E. Oil and Gas, Addition located at 14311 Highway 177. Motion carried 6-0.

AYE: Winterringer, Hall, Smith, Agee, Harrod, Mainord

NAY: None

AGENDA ITEM NO. 10:

Consideration of approval of a final plat for G.E. Oil and Gas Addition located at 14311 Highway 177.
Case #S16-12 Applicant: Landes Engineering

A motion was made by Commissioner Winterringer, seconded by Commissioner Agee, to approve the final plat for G.E. Oil and Gas, Addition located at 14311 Highway 177 with the following conditions:

1. Final infrastructure and construction plans (including an engineered drainage plan) shall be submitted by the applicant and approved by the City and the City Engineer prior to construction.
2. A 20-foot utility easement shall be indicated on the final plat along with the Highway 177 frontage to incorporate the existing City waterline.
3. Prior to filing the final plat, the applicant shall commence with making the required and proposed public site improvements in accordance with construction plans approved by the City Engineer or otherwise bond the project in accordance with City code.
4. All other applicable City standards apply.

Motion carried 6-0.

AYE: Winterringer, Agee, Harrod, Mainord, Hall, Smith

NAY: None

AGENDA ITEM NO. 11:

A public hearing and consideration of an ordinance to approve a Conditional Use Permit to allow a mobile home for property located at 31909 Lake Road.

Case #P19-12 Applicant: Chelsey Beauchamp

Mayor Mainord asked for a staff report which was given by Community Development Director Justin Erickson. The Mayor then declared a public hearing in session to consider an ordinance to approve a Conditional Use Permit to allow a mobile home for property located at 31909 Lake Road. The applicant, Chelsey Beauchamp appeared in favor of the Conditional Use Permit. Julie Ackerman and Joe Crall appeared against the Conditional Use Permit.

After all parties had an opportunity to speak, Mayor Mainord closed the public hearing.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Hall, to approve a Conditional Use Permit to allow a mobile home for property located at 31909 Lake Road with the following conditions:

1. The manufactured home must meet the zoning setback requirements for the A-1 Zone.
2. The manufactured home must be no older model than 1995.
3. The Conditional Use Permit is non-transferable.
4. The structure must be attached with skirting allowing the home style to fit the neighborhood.

Ordinance No. 2494 NS was introduced and the title read aloud.

AN ORDINANCE CONCERNING THE ZONING CLASSIFICATION OF THE FOLLOWING DESCRIBED PROPERTY LOCATED WITHIN THE CORPORATE LIMITS OF THE CITY OF SHAWNEE, OKLAHOMA, TO-WIT: A TRACT OF LAND DESCRIBED AS BEGINNING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER OF SECTION TWENTY-ONE (21), TOWNSHIP TEN (10) NORTH, RANGE TWO (2) EAST OF THE INDIAN MERIDIAN, POTTAWATOMIE COUNTY, OKLAHOMA; THENCE WEST 165 FEET; THENCE SOUTH 264 FEET; THENCE EAST 165 FEET; THENCE NORTH 264 FEET TO THE POINT OF BEGINNING; REZONING SAID PROPERTY FROM A-1; AGRICULTURAL TO A-1P AGRICULTURAL WITH CONDITIONAL USE PERMIT; AND AMENDING THE OFFICIAL ZONING MAP OF THE CITY OF SHAWNEE ACCORDINGLY.

Motion carried 6-0.

AYE: Harrod, Hall, Winterringer, Smith, Agee, Mainord

NAY: None

AGENDA ITEM NO. 12:

A public hearing for consideration of approval of a Hardship Request for temporary placement of a mobile home on property located at 31909 Lake Road. Case #P20-12 Applicant: Chelsey Beauchamp

Mayor Mainord declared a public hearing in session to consider approval of a Hardship Request for temporary placement of a mobile home on property located at 31909 Lake Road. No one appeared in favor/against the Conditional Use Permit.

A motion was made by Commissioner Smith to approve a Hardship Request for temporary placement of a mobile home on property located at 31909 Lake Road. Motion died for lack of a second.

A motion was made by Commissioner Agee, seconded by Vice Mayor Harrod, to deny the request for temporary placement of a mobile home on property located at 31909 Lake Road. Motion carried. 5-1

AYE: Agee, Harrod, Mainord, Hall, Winterringer
NAY: Smith

AGENDA ITEM NO. 13: Consider acceptance of public easements and dedications associated with the Final Plat of Graystone Addition and authorizing recording of the final plat and obtainment of signatures and placing maintenance bonds into effect.

A motion was made by Commissioner Winterringer, seconded by Commissioner Smith, to accept the public easements and dedications associated with the Final Plat of Graystone Addition and authorizing recording of the final plat and obtainment of signatures and placing maintenance bonds into effect. Motion carried 6-0.

AYE: Winterringer, Smith, Agee, Harrod, Mainord, Hall
NAY: None

AGENDA ITEM NO. 14: Discuss and consider a resolution establishing a moratorium on boarding or rooming houses in all zoning districts.

Community Development Director Justin Erickson reported that this resolution would not affect any other housing except boarding or rooming houses, also known as shelters. No apartments, duplexes or dormitories would be affected.

Resolution No. 6437 was introduced.

A RESOLUTION ESTABLISHING A
MORATORIUM ON BOARDING OR ROOMING
HOUSES IN ALL ZONING DISTRICTS.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Agee, to approve a resolution establishing a moratorium on boarding or rooming houses in all zoning districts. Motion carried 5-1.

AYE: Harrod, Agee, Mainord, Hall, Winterringer

NAY: Smith

AGENDA ITEM NO. 15: Acknowledge Sales Tax report received November 2012.

Finance Director Cynthia Sementelli reported that sales tax was down 2.79% from the budget but that other areas of revenues were up enough to cover the amount sales tax was down.

AGENDA ITEM NO. 16: Consider Bids:

a. Airport Pedestrian Trail Contract COS-PW-12-01 (Award)

City Engineer John Krywicki announced that eight bids were received and after review and consideration it was staff's recommendation to award the bid to Bishop Paving Co. Inc. of Oklahoma City, Oklahoma in the amount of \$633,409.90.

Amount budgeted for this project was \$400,000.00. Cindy Sementelli reported that this was one of the four projects submitted on the refinancing of bonds in December 2011. There are enough funds left from the previous two projects to cover the amount over budget for the Airport Pedestrian Trail project.

A motion was made by Vice Mayor Harrod, seconded by Commissioner Hall, to accept staff's recommendation and award the bid to Bishop Paving Co. Inc. in the amount of \$633,409.90. Motion carried 6-0.

AYE: Harrod, Hall, Winterringer, Smith, Agee, Mainord

NAY: None

AGENDA ITEM NO. 17: New Business (Any matter not known about or which could not have been reasonably foreseen prior to the posting of the agenda)

There was no New Business.

AGENDA ITEM NO. 18:

Administrative Reports

City Engineer John Krywicki reported that ODOT had opened bids on the Kickapoo Street Project on November 15. All bids came in significantly over the engineering estimate provided by the ODOT. The ODOT board will meet to decide if the bids were good and the engineering estimate was low. They will then decide if there is a need to re-bid the project. The City of Shawnee may be requested to provide additional funding. The City will know more after ODOT meets.

The overlay project on 45th Street is not acceptable after independent testing showed the grinding re-work still has unacceptable smoothness. The additional projects on this agreement have been cancelled and the projects will be put out for bids in the future.

AGENDA ITEM NO. 19:

Commissioners Comments

Commissioner Smith reminded everyone that the City of Shawnee needs your sales tax money. He suggested that the citizens take advantage of price matching at several local stores on sales ads from stores outside our sales tax area. Commissioner Smith would also like to see the use tax enforced.

Commissioner Winterringer thanked Justin Erickson, Community Development Director, for the work he has done on the Christmas Parade this year. Also, the Municipal Pool Committee has interviewed four companies and the plans are looking good. The committee will be bringing something back to the Commission soon.

Vice Mayor Harrod stated he believes the property located just north of MacArthur and Union should be paying property taxes. Even though the property is owned by a tribe, it is not in Trust for the tribe.

Commissioner Agee requested information on the mineral rights lease from Texoma Land for the lake leases. Don Lynch advised he would be checking.

AGENDA ITEM NO. 19:

Adjournment

There being no further business to be considered, a motion was made by Vice Mayor Harrod, seconded by Commissioner Winterringer, that the meeting be adjourned. Motion carried 6-0. (8:20 p.m.)

AYE: Harrod, Winterringer, Smith, Agee, Mainord, Hall

NAY: None

WES MAINORD, MAYOR

ATTEST:

DONNA MAYO, DEPUTY CITY CLERK

Regular Board of Commissioners

2. c.

Meeting Date: 12/03/2012

Budget Amendment

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Budget Amendment

Money was budgeted last year for finishing wood floors at the senior center - did not complete - need to bring money up from fund balance

Attachments

Budget Amendment

Regular Board of Commissioners

2. d.

Meeting Date: 12/03/2012

Board/Committee Minutes

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Acknowledge the following minutes:

- Shawnee Civic and Cultural Development Authority minutes from October 18, 2012
-

Attachments

SCCDA Minutes

A MEETING OF THE SHAWNEE
CIVIC AND CULTURAL DEVELOPMENT AUTHORITY
OCTOBER 18, 2012
12:30 P.M.
HEART OF OKLAHOMA EXPOSITION CENTER

THE TRUSTEES OF THE SHAWNEE CIVIC AND CULTURAL DEVELOPMENT AUTHORITY MET FOR THEIR REGULAR MEETING THURSDAY, OCTOBER 18, 2012 AT 12:30 PM AT HEART OF OKLAHOMA EXPOSITION CENTER, PURSUANT TO NOTICE DULY POSTED AS PRESCRIBED BY LAW. NOTICE WAS FILED AT CITY HALL ON 10/15/2012 AT 2:30PM.

AGENDA ITEM NO.1

CALL TO ORDER.

THE MEETING WAS CALLED TO ORDER AT 12:40 PM BY MR. KARL KOZEL, CHAIRMAN.

AGENDA ITEM NO.2

ROLL CALL

TRUSTEES PRESENT: MR. KARL KOZEL
MR. BRIAN MCDUGAL
MR. LANCE WORTHAM
MR. RANDY GILBERT
MR. CARL PACKWOOD
MR. JIM LOWE

TRUSTEES ABSENT: MR. CASEY BELL

ALSO IN ATTENDANCE: MICHAEL JACKSON, OPERATIONS MANAGER; MIKE CLOVER, STUART & CLOVER, SHELLY WELCH OF FINLEY & COOK, MICHAEL MCCORMICK OF THE SHAWNEE NEWS STAR, AND LINDA AGEE CITY COMMISSIONER.

AGENDA ITEM NO.3

DECLARATION OF A QUORUM

CHAIRMAN MR. KARL KOZEL, DECLARED A QUORUM.

AGENDA ITEM NO.4

APPROVAL OF MINUTES OF REGULAR MEETING OF SEPTEMBER 2012.

THE MOTION MADE BY TRUSTEE LOWE, SECONDED BY TRUSTEE GILBERT, THAT THE MINUTES OF THE REGULAR MEETING OF SEPTEMBER 2012 ARE APPROVED. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN:

AGENDA ITEM NO. 6

APPROVAL OF MONTHLY FINANCIALS

THE MOTION MADE BY TRUSTEE GILBERT, SECONDED BY TRUSTEE LOWE THAT THE MINUTES OF THE MONTHLY FINANCIALS OF SEPTEMBER 2012 ARE APPROVED. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN:

AGENDA ITEM NO.7

APPROVAL OF GENERAL CLAIMS

THE MOTION MADE BY TRUSTEE LOWE, SECONDED BY TRUSTEE PACKWOOD THAT THE GENERAL CLAIMS BE APPROVED. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN:

GENERAL CLAIMS

A. CLEMENCE TIRE EQUIPMENT MAINTENANCE	#10.00
B. HUNZICKER BROTHERS EQUIPMENT MAINTENANCE	#75.74
C. VISION BANK LOAN PAYMENT	#1,031.02
D. INS TECH SUPPORT MONTHLY	#665.00
E. BACK 40 DESIGNS WEB HOSTING	#50.00
F. WHITES ACE BLDG CENTER BLDG & GRNDS MAINTENANCE	#19.99
G. GRIMSLEY'S MONTHLY UTILITIES	#1,157.93
H. PERSONAL PLUMBING GROUNDS MAINTENANCE	#909.50
I. OKLAHOMA NATURAL GAS MONTHLY UTILITIES	#563.91
J. BANKERS CREDIT CARD SERVICES MONTHLY UTILITIES	#994.80
K. PITNEY BOWES EQUIPMENT MAINTENANCE	#153.00
L. OKLAHOMA NATURAL GAS MONTHLY UTILITIES	#232.86
M. ARVEST MONTHLY PAYMENT	#502.69
N. CITY OF SHAWNEE MONTHLY UTILITIES	#617.65
O. AT&T MONTHLY UTILITIES	#1,450.79
P. HUNZICKER BLDG & GROUNDS MAINTENANCE	#38.80
Q. LOWES BLDG & GROUNDS MAINTENANCE	#50.45
R. CHUCK JONES GROUNDS MAINTENANCE	#100.00
S. CINTAS UNIFORMS	#168.17
T. STUART & CLOVER LEGAL FEES	#250.00
U. AT&T MOBILITY MONTHLY UTILITIES	#46.95

Y. SHAWNEE OFFICE SYSTEMS EQUIPMENT MAINTENANCE	\$228.51
W. FUELMAN MONTHLY UTILITIES	\$967.81
X. CONSTELLATION ENERGY MONTHLY UTILITIES	\$42.12
Y. BOBCAT OF OKLAHOMA EQUIPMENT MAINTENANCE	\$278.63
Z. OK DEPT OF LABOR EQUIPMENT MAINTENANCE	\$100.00
AA. CITY OF SHAWNEE SURCHARGE	\$2548.00
BB. OKLAHOMA TAX COMMISSION TAXES DUE	\$3,729.61
CC. JOHN DEERE FINANCIAL EQUIPMENT MAINTENANCE	\$893.58

*ADD ON'S

GENERAL

A. BUFORD WHITES GROUNDS MAINTENANCE	\$30.77
B. OKLAHOMA NATURAL GAS MONTHLY UTILITIES	\$246.40

AGENDA ITEM NO. 8

APPROVAL OF SPECIAL EVENT CLAIMS

THE MOTION MADE BY TRUSTEE LOWE, SECONDED BY TRUSTEE PACKWOOD THAT THE SPECIAL EVENT CLAIMS BE APPROVED. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDOUGAL, KOZEL

NAY: NONE

ABSTAIN:

SPECIAL EVENTS:

SPECIAL EVENT CLAIMS

A. MIKE MCCORMICK IFYR 2012	\$300.00
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AGENDA ITEM NO. 9

APPROVAL OF SHAVINGS CLAIMS

THE MOTION MADE BY TRUSTEE PACKWOOD, SECONDED BY TRUSTEE WORTHAM THAT THE SHAVINGS CLAIMS BE APPROVED. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN:

AGENDA ITEM NO.10

DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO ACCEPT BIDS ON COMFORT STATIONS RE-MODEL

THE MOTION MADE BY TRUSTEE LOWE , SECONDED BY TRUSTEE PACKWOOD TO ACCEPT PATTERSON ROOFINGS BID FOR THE REMODEL OF THE SAID COMFORT STATIONS. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN: NONE

AGENDA ITEM NO.11

DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO ACCEPT SC&CDA 2013 MEETING SCHEDULE.

THE MOTION MADE BY TRUSTEE LOWE , SECONDED BY TRUSTEE PACKWOOD TO ACCEPT 2013 SC&CDA MEETING SCHEDULE. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN: NONE

AGENDA ITEM NO.12

DISCUSSION, CONSIDERATION, AND POSSIBLE ACTION TO SET TERMS OF CONTRACT & FEE'S PD FOR CONCESSIONS & CATERING.

THE MOTION MADE BY TRUSTEE PACKWOOD , SECONDED BY TRUSTEE WORTHAM TO HAVE MIKE CLOVER AND MIKE JACKSON WORK OUT THE TERMS OF THE PROPOSAL FOR CONCESSIONS AND CATERING, WITH THIS CLAUSE BEING ADDED- IF CONCESSIONS MAKES BETWEEN \$0 & \$200 NO % IS PD TO SC&CDA, HOWEVER 25% OF ANYTHING OVER \$200 WILL BE PD TO SC&CDA AS ALWAYS. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN: NONE

AGENDA ITEM NO.19

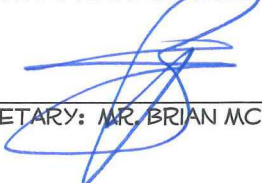
ADJOURNMENT

THE MOTION MADE BY TRUSTEE PACKWOOD , SECONDED BY TRUSTEE LOWE TO ADJOURN MEETING. MOTION CARRIED.

AYE: GILBERT, LOWE, PACKWOOD, WORTHAM, MCDUGAL, KOZEL
NAY: NONE
ABSTAIN: NONE



CHAIRMAN: MR. KARL KOZEL



SECRETARY: MR. BRIAN MCDUGAL

Regular Board of Commissioners

2. e.

Meeting Date: 12/03/2012

Meeting Schedule

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Approve Board of Commissioners and Authorities meeting schedule for 2013.

Attachments

2013 Meeting Schedule

2013 CALENDAR YEAR
SCHEDULE OF REGULAR MEETINGS
CITY COMMISSION & RELATED AUTHORITIES

DATE		TIME	PLACE OF
1/07/13	Monday	6:30 p.m.	Commission Chambers-City Hall
1/22/13	Tuesday	”	16 West 9 th , Shawnee, OK
2/04/13	Monday	”	”
2/19/13	Tuesday	”	”
3/04/13	Monday	”	”
3/18/13	”	”	”
4/01/13	”	”	”
4/15/13	”	”	”
5/06/13	“	”	”
5/20/13	“	”	”
6/03/13	“	”	”
6/17/13	“	”	”
7/01/13	“	”	”
7/15/13	“	”	”
8/05/13	“	”	”
8/19/13	“	”	”
9/03/13	Tuesday	”	”
9/16/13	Monday	”	”
10/07/13	“	”	”
10/21/13	“	”	”
11/04/13	“	”	”
11/18/13	“	”	”
12/02/13	“	”	”
12/16/13	“	”	”

NAME: Phyllis Loftis, CMC

TITLE: City Clerk

ADDRESS: P. O. Box 1448
Shawnee, OK 74802-1448

TELEPHONE: (405) 878-1604

Filed in the office of the Municipal Clerk at _____ a.m. / p.m. on _____, 2012.

Signed: _____
Clerk/Deputy Clerk

Regular Board of Commissioners

2. f.

Meeting Date: 12/03/2012

Retirement Schrum

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Acknowledge Oklahoma Municipal Retirement Fund Normal Retirement for Elaine Shrum.

Regular Board of Commissioners

2. g.

Meeting Date: 12/03/2012

SYAA Agreement

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Approve agreement with the Shawnee Youth Athletic Association for operation of the youth sports program at Lions Club Park.

Attachments

SYAA Agreement

AGREEMENT

This Agreement ("Agreement") is entered into between the CITY OF SHAWNEE, a municipal corporation ("City") and the Shawnee Youth Athletic Association, a non-profit Oklahoma corporation ("SYAA"), collectively the ("Parties").

WHEREAS the City is the owner of public property and facilities known as Lions Club Park, in the City of Shawnee, Pottawatomie County, State of Oklahoma, and;

WHEREAS the City recognizes that the sports fields and facilities located at Lions Club Park shall be used for certain recreational purposes for the benefit of the health, safety and welfare of the residents of the of the City of Shawnee, and;

WHEREAS, it is the desire of the parties to set out in detail the rights and responsibilities of the parties regarding the operations of the youth sports program and the use of City property.

NOW, THEREFORE, in consideration of the covenants, terms and conditions herein contained, the City and the SYAA agree as follows:

1. The City hereby grants the right and privilege to the SYAA to use the facilities and property located generally at Lions Club Park, City of Shawnee, Pottawatomie County, State of Oklahoma, hereinafter jointly referred to as the "Property", and specifically, the areas marked on the attached maps."

2. This Agreement shall commence on January 1, 2013 and end on December 31, 2013 unless sooner terminated in accordance with the express provisions of this Agreement or renewed as provided in this section. This Agreement shall automatically renew for successive one (1) year terms at the end of the Original Term and each subsequent renewal term, unless revoked in writing by the City or the SYAA, by November 1st of the then-current renewal term. It is further agreed that either of the Parties shall have the right and privilege of terminating this Agreement at any time in the event of a material default by the other Party, upon giving sixty (60) days notice, in writing, delivered by certified mail, to the other Party of its intention to terminate provided the other party fails to cure, or commence the taking of actions designed to cure, such default within such sixty (60) day time period. In the event this Agreement is terminated, all rights and interests of the Parties hereto shall thereupon cease. Upon termination of this Agreement, the SYAA shall retain all rights to maintenance equipment, concession equipment, and all other items not considered permanent structural improvements or not purchased by the City. Any and all structures which have been placed or constructed on the Property by the SYAA shall become the property of the City unless otherwise mutually agreed to in writing by the City and the SYAA. The Parties acknowledge that the SYAA shall pay to the City a sum of one dollar (\$1.00) on the first day of January every calendar year as lease payment for use of the Property. The Parties acknowledge that at the time of execution of this agreement there have been no permanent improvements constructed by the SYAA.

3. Before any changes are made in the improvements and structures, and before the

construction of any permanent building, the SYAA shall obtain approval from the City's Parks Department for such changes or construction costing Twenty-five Thousand Dollars (\$25,000) or less. All changes or construction costing in excess of Twenty-five Thousand Dollars (\$25,000.) shall require the approval of the City Commission.

4. It is agreed that the Property area is to be used by the SYAA solely for the purposes of recreation and education, and development of sports skills, primarily for the purpose of playing, training and promoting various sports, and associated supportive services. Any other use of the Property area must be approved by the City. The SYAA shall provide the City with by-laws, league rules, league registration fees and schedules of all the SYAA activities. It is further agreed between the Parties that the SYAA shall make every effort to accommodate the Shawnee School System to facilitate shared use, at no cost to the school district. If the SYAA makes the property available for use by others, the SYAA shall prepare fields for play and determine costs and assess such costs against such entities using the property.

5. The SYAA shall not assign this Agreement, or any interest herein, or sublet any portion of the Property area without the consent of the City Operations Director or designee. The SYAA may grant permission and authority to any entities to occupy and use the Property area for any supportive services necessary for SYAA or for the conduct of a sport not sponsored by SYAA. SYAA will be responsible for informing all other entities using the City fields of the rules and obligations for the use of the fields.

6. The SYAA will hold the City harmless and exempt from any damage or injury to persons or any damage to property of every kind arising from the management and use of the Property area by the SYAA, its invitees, employees, representatives and successors from the failure of the SYAA to keep the Property and ball fields area and structures in good condition and repair or for any negligent or intentional act committed by SYAA, its employees, officers, successors and assigns resulting in injury of any kind.

7. The SYAA, at its expense, shall keep in force, during the term of this Agreement, general liability insurance issued by an insurance company authorized to conduct business in Oklahoma by the Oklahoma Insurance commissioner. The insurance will be in a form acceptable to the City Attorney and City Manager for the City, for the protection of the City and the SYAA against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from City, on account of any matter or thing which may occur on the Property, excluding Participants who will not be covered during the actual participation in an event, in a general liability policy or policies in the amount of one million dollars (\$1,000,000.00). The use of the fields by any entity other than SYAA will require that entity to comply with the requirements of this paragraph for the obtaining of insurance. The insurance obtained will include a rider for the City and SYAA to be covered by the policy.

8. The SYAA will provide all maintenance to all game fields, including restrooms, the concession areas and the areas adjacent thereto; all janitorial and sanitizing service and supplies; refuse receptacles and liners to be disposed of on an as needed basis;

field supplies and service including chalk, paint, and other equipment; turf and infield supplies. Major repairs to facilities such as replacing buildings, roofs, sewer lines, major water line breaks, parking lot repairs, painting of buildings, and fencing replacement, and other repairs traditionally within the responsibility of the "landlord", will be the responsibility of the City at no cost to the SYAA. The SYAA will be responsible for repair of sprinkler heads when necessary, minor repairs to the concession building, replacement of food preparation equipment, minor plumbing repairs such as clogged toilets, clogged sink drains, toilet and sink replacement and light bulb replacement. The SYAA shall be responsible for ensuring that trash is picked up from dugouts, bleachers and grounds after games and deposited into containers provided by the SYAA. The setting and purchase of bases, yardage markers, flags and such equipment as is necessary shall be the responsibility of the SYAA. Field maintenance equipment such as infield drags, motorized carts, shovels, rakes mowers and the like, purchased by the SYAA, shall remain the property of the SYAA. The SYAA shall exercise a high degree of care in ensuring playing surfaces are continually in good repair during the term of this agreement. The City shall be charged for electric services, solid waste services, sewer and water for the Property, including, but not limited to, field lighting, concession building and field storage facilities. The SYAA will exercise reasonable efforts to conserve electric and water usage. For night games, the SYAA will use lights for only those fields in which games will be played and for the safety of the participants.

9. The SYAA will exercise reasonable efforts to make its customers aware of parking regulations during SYAA activities to assist the City in an effort to insure that the ground and vegetation of the Property, and adjacent premises, is not damaged by

vehicles being driven or parked in places other than those defined by signage or in the plan as road or parking areas.

10. The SYAA agrees to provide activities, primarily for Shawnee area schools and City of Shawnee youth, within age groups designated by the SYAA, without discrimination as to race, religion, color, creed, sex or national origin. Said activities will include leagues for all levels of play to include open and recreational leagues, for all sports. Under normal conditions, SYAA activities will not be scheduled to start after the hours of 10:30 p.m., on Sundays through Thursdays, and 11:00 p.m., Fridays through Saturdays.

11. If any person believes that the SYAA has violated the provisions of this Agreement, and has exhausted all appeal procedures through the SYAA Board, that person may file a written complaint with the Director of Operations or designee. The Director of Operations or designee shall so advise the SYAA, provide it with a copy of the complaint, and give the SYAA ten (10) days to consult with counsel and file a written response with the Director or designee. Thereafter, the Director of Operations may, if he/she deems prudent, conduct an investigation into the situation, and within thirty (30) days of the response by the SYAA, advise of a ruling on the matter by either a written report to the Community Service Contract Review Committee or to be handled internally by the Director of Operations, if possible. If a written report is submitted to the Community Service Contract Review Committee, the Committee will make a recommendation which will be submitted to the City Commission to resolve the dispute or rectify the situation. Failure of the SYAA to follow the directions so given by the City Commission or Director of Operations may result in the termination

of this Agreement (without further notice).

12. The City Operations Department may designate one (1) person to serve as a non-voting, advisory to the SYAA Board. Alternatively, the SYAA may designate one (1) person to serve as liaison between the SYAA and the City Parks Department to address issues regarding maintenance and program administration. The SYAA will provide the City and the Director of Operations, semi-annual financial statements and reports of business activities. The SYAA shall inform the Director of Operations of changes to league rules and By-Laws in its semi-annual report after the change becomes effective. There shall be ultimate City Commission review for capital improvements in excess of twenty five thousand dollars (\$25,000.00). The SYAA shall permit City or City's designee to conduct a financial review of its operations at any time per discretion of the City.

13. The SYAA shall maintain a local contact, accessible to the City and the public at reasonable hours and otherwise make arrangements to accommodate the working public to the extent necessary for registration and similar activities. The contact will be responsible for disseminating all administrative and operational functions to include management, registration, access to all records that are subject to disclosure pursuant to Title 51 O.S. §24A.1, et seq., known as the Oklahoma Open Records Act, and access to the operational staff.

14. This Agreement shall only be amended in writing by the mutual consent of the SYAA and the City. In the event that anyone or more of the provisions contained in

this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the other provisions of the Agreement shall not be affected. The Agreement shall be construed as if the valid, legal, or enforceable provisions for the Agreement were not affected, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained therein. No terms inconsistent with this Agreement shall be deemed binding on the parties. This Agreement contains all essential terms necessary to accomplish the purposes expressed by the parties and any other prior agreements, written or oral, consistent or inconsistent with the terms herein, are hereby rendered null and void. The parties also agree that this Agreement is fully integrated, embracing all essential terms necessary to carry out the purpose stated herein.

IN WITNESS HEREOF the City of Shawnee, and Shawnee Youth Athletic Association, by their representatives, set their hands to this Agreement on the _____ day of December, 2012.

THE CITY OF SHAWNEE, OKLAHOMA

BY: _____
Brian E. McDougal, City Manager

ATTESTED:

Phyllis Loftis, CMC, City Clerk

SHAWNEE YOUTH ATHLETIC
ASSOCIATION

By: _____
PRESIDENT/CHAIRMAN

ATTEST:

CLERK

Regular Board of Commissioners

2. h.

Meeting Date: 12/03/2012

YMCA Agreement

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Approve agreement with the YMCA for operation of the Dockery Park ball fields.

Attachments

YMCA Agreement

AGREEMENT

This Agreement ("Agreement") is entered into between the CITY OF SHAWNEE, a municipal corporation ("City") and the Troy & Dollie Smith Family YMCA, a non-profit Oklahoma corporation ("YMCA"), collectively the ("Parties").

WHEREAS the City is the owner of public property and facilities known as Dockery Park, in the City of Shawnee, Pottawatomie County, State of Oklahoma, and;

WHEREAS the City recognizes that the sports fields and facilities located at Dockery Park shall be used for certain recreational purposes for the benefit of the health, safety and welfare of the residents of the of the City of Shawnee, and;

WHEREAS, it is the desire of the parties to set out in detail the rights and responsibilities of the parties regarding the operations of the youth sports program and the use of City property.

NOW, THEREFORE, in consideration of the covenants, terms and conditions herein contained, the City and the YMCA agree as follows:

1. The City hereby grants the right and privilege to the YMCA to use the facilities and property located generally at Dockery Park, City of Shawnee, Pottawatomie County, State of Oklahoma, hereinafter jointly referred to as the "Property", and specifically, the areas marked on the attached maps."

2. This Agreement shall commence on January 1, 2013 and end on December 31, 2013 unless sooner terminated in accordance with the express provisions of this Agreement or renewed as provided in this section. This Agreement shall automatically renew for successive one (1) year terms at the end of the Original Term and each subsequent renewal term, unless revoked in writing by the City or the YMCA, by November 1st of the then-current renewal term. It is further agreed that either of the Parties shall have the right and privilege of terminating this Agreement at any time in the event of a material default by the other Party, upon giving sixty (60) days notice, in writing, delivered by certified mail, to the other Party of its intention to terminate provided the other party fails to cure, or commence the taking of actions designed to cure, such default within such sixty (60) day time period. In the event this Agreement is terminated, all rights and interests of the Parties hereto shall thereupon cease. Upon termination of this Agreement, the YMCA shall retain all rights to maintenance equipment, concession equipment, and all other items not considered permanent structural improvements or not purchased by the City. Any and all structures which have been placed or constructed on the Property by the YMCA shall become the property of the City unless otherwise mutually agreed to in writing by the City and the YMCA. The Parties acknowledge that the YMCA shall pay to the City a sum of one dollar (\$1.00) on the first day of January every calendar year as lease payment for use of the Property. The Parties acknowledge that at the time of execution of this agreement there have been no permanent improvements constructed by the YMCA.

3. Before any changes are made in the improvements and structures, and before the construction of any permanent building, the YMCA shall obtain approval from the City's Parks Department for such changes or construction costing Twenty-five Thousand Dollars

(\$25,000) or less. All changes or construction costing in excess of Twenty-five Thousand Dollars (\$25,000.) shall require the approval of the City Commission.

4. It is agreed that the Property area is to be used by the YMCA solely for the purposes of recreation and education, and development of sports skills, primarily for the purpose of playing, training and promoting various sports, and associated supportive services. Any other use of the Property area must be approved by the City. The YMCA shall provide the City with by-laws, league rules, league registration fees and schedules of all the YMCA activities. It is further agreed between the Parties that the YMCA shall make every effort to accommodate the Shawnee School System to facilitate shared use, at no cost to the school district. If the YMCA makes the property available for use by others, the YMCA shall prepare fields for play and determine costs and assess such costs against such entities using the property.

5. The YMCA shall not assign this Agreement, or any interest herein, or sublet any portion of the Property area without the consent of the City Operations Director or designee. The YMCA may grant permission and authority to any entities to occupy and use the Property area for any supportive services necessary for YMCA or for the conduct of a sport not sponsored by YMCA. YMCA will be responsible for informing all other entities using the City fields of the rules and obligations for the use of the fields.

6. The YMCA will hold the City harmless and exempt from any damage or injury to persons or any damage to property of every kind arising from the management and use of the Property area by the YMCA, its invitees, employees, representatives and successors from the failure of the YMCA to keep the Property and ball fields area and structures in good

condition and repair or for any negligent or intentional act committed by YMCA, its employees, officers, successors and assigns resulting in injury of any kind.

7. The YMCA, at its expense, shall keep in force, during the term of this Agreement, general liability insurance issued by an insurance company authorized to conduct business in Oklahoma by the Oklahoma Insurance commissioner. The insurance will be in a form acceptable to the City Attorney and City Manager for the City, for the protection of the City and the YMCA against all liabilities, judgments, costs, damages and expenses which may accrue against, be charged to, or recovered from City, on account of any matter or thing which may occur on the Property, excluding Participants who will not be covered during the actual participation in an event, in a general liability policy or policies in the amount of one million dollars (\$1,000,000.00). The use of the fields by any entity other than YMCA will require that entity to comply with the requirements of this paragraph for the obtaining of insurance. The insurance obtained will include a rider for the City and YMCA to be covered by the policy.

8. The YMCA will provide all maintenance to all game fields, including restrooms, the concession areas and the areas adjacent thereto; all janitorial and sanitizing service and supplies; refuse receptacles and liners to be disposed of on an as needed basis; field supplies and service including chalk, paint, and other equipment; turf and infield supplies. Major repairs to facilities such as replacing buildings, roofs, sewer lines, major water line breaks, parking lot repairs, painting of buildings, and fencing replacement, and other repairs traditionally within the responsibility of the "landlord", will be the responsibility of the City at no cost to the YMCA. The YMCA will be responsible for repair of sprinkler heads when necessary, minor repairs to the concession building, replacement of food preparation

equipment, minor plumbing repairs such as clogged toilets, clogged sink drains, toilet and sink replacement and light bulb replacement. The YMCA shall be responsible for ensuring that trash is picked up from dugouts, bleachers and grounds after games and deposited into containers provided by the City. The setting and purchase of bases, yardage markers, flags and such equipment as is necessary shall be the responsibility of the YMCA. Field maintenance equipment such as infield drags, motorized carts, shovels, rakes mowers and the like, purchased by the YMCA, shall remain the property of the YMCA. The YMCA shall exercise a high degree of care in ensuring playing surfaces are continually in good repair during the term of this agreement. The City shall be charged for electric services, solid waste services, sewer and water for the Property, including, but not limited to, field lighting, concession building and field storage facilities. The YMCA will exercise reasonable efforts to conserve electric and water usage. For night games, the YMCA will use lights for only those fields in which games will be played and for the safety of the participants.

9. The YMCA will exercise reasonable efforts to make its customers aware of parking regulations during YMCA activities to assist the City in an effort to insure that the ground and vegetation of the Property, and adjacent premises, is not damaged by vehicles being driven or parked in places other than those defined by signage or in the plan as road or parking areas.

10. The YMCA agrees to provide activities, primarily for Shawnee area without discrimination as to race, religion, color, creed, sex or national origin. Said activities will include leagues for all levels of play to include open and recreational leagues Under normal conditions, YMCA activities will not be scheduled to start after the hours of 10:30 p.m., on Sundays through Thursdays, and 11:00 p.m., Fridays through Saturdays.

11. If any person believes that the YMCA has violated the provisions of this Agreement, and has exhausted all appeal procedures through the YMCA Board, that person may file a written complaint with the Director of Operations or designee. The Director of Operations or designee shall so advise the YMCA, provide it with a copy of the complaint, and give the YMCA ten (10) days to consult with counsel and file a written response with the Director or designee. Thereafter, the Director of Operations may, if he/she deems prudent, conduct an investigation into the situation, and within thirty (30) days of the response by the YMCA, advise of a ruling on the matter by either a written report to the Community Service Contract Review Committee or to be handled internally by the Director of Operations, if possible. If a written report is submitted to the Community Service Contract Review Committee, the Committee will make a recommendation which will be submitted to the City Commission to resolve the dispute or rectify the situation. Failure of the YMCA to follow the directions so given by the City Commission or Director of Operations may result in the termination of this Agreement (without further notice).

12. The City Operations Department may designate one (1) person to serve as a non-voting, advisory to the YMCA Board. Alternatively, the YMCA may designate one (1) person to serve as liaison between the YMCA and the City Parks Department to address issues regarding maintenance and program administration. The YMCA will provide the City and the Director of Operations, semi-annual financial statements and reports of business activities. The YMCA shall inform the Director of Operations of changes to league rules and By-Laws in its semi-annual report after the change becomes effective. There shall be ultimate City Commission review for capital improvements in excess of twenty five thousand dollars (\$25,000.00). The YMCA shall permit City or City's designee to conduct a financial review of

its operations at any time per discretion of the City.

13. The YMCA shall maintain a local contact, accessible to the City and the public at reasonable hours and otherwise make arrangements to accommodate the working public to the extent necessary for registration and similar activities. The contact will be responsible for disseminating all administrative and operational functions to include management, registration, access to all records that are subject to disclosure pursuant to Title 51 O.S. §24A.1, et seq., known as the Oklahoma Open Records Act, and access to the operational staff.

14. This Agreement shall only be amended in writing by the mutual consent of the YMCA and the City. In the event that anyone or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, the other provisions of the Agreement shall not be affected. The Agreement shall be construed as if the valid, legal, or enforceable provisions for the Agreement were not affected, and the Agreement shall be construed as if the invalid, illegal, or unenforceable provisions had never been contained therein. No terms inconsistent with this Agreement shall be deemed binding on the parties. This Agreement contains all essential terms necessary to accomplish the purposes expressed by the parties and any other prior agreements, written or oral, consistent or inconsistent with the terms herein, are hereby rendered null and void. The parties also agree that this Agreement is fully integrated, embracing all essential terms necessary to carry out the purpose stated herein.

IN WITNESS HEREOF the City of Shawnee, and Troy & Dollie Smith Family YMCA, by their representatives, set their hands to this Agreement on the ____ day of December, 2012.

THE CITY OF SHAWNEE, OKLAHOMA

BY: _____
Brian E. McDougal, City Manager

ATTESTED:

Phyllis Loftis, CMC, City Clerk

Troy & Dollie Smith Family YMCA

By: _____
PRESIDENT/CHAIRMAN

ATTEST:

CLERK

Regular Board of Commissioners

2. i.

Meeting Date: 12/03/2012

Mayor Appointments

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Mayor's appointments:

Shawnee Public Library Board

David Houghton – 1st Full Term Expires 6-30-15

Replaces Nancy Cook-Senn termed out

Kevin Huddleston – 1st Full Term Expires 6-30-15

Replaces Bob Perry moved to Pioneer Library Systems Board

Alfonso Nieves – 1st Full Term Expires 6-30-15

Replaces Keith Whitmore termed out

Robert Currie – 1st Partial Term Expires 6-30-14

Replaces Michael Affentranger

Tourism Advisory Committee

Randy Floyd – 2nd Full Term Expires 12-31-15

Re-appointment

Traffic Commission

Ron Duffell - 1st Full Term Expires 1-01-2016

Re-appointment

Regular Board of Commissioners

4.

Meeting Date: 12/03/2012

25 year certificates

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

City Manager's Presentation of Oklahoma Municipal League certificates to employees with 25 or more years of service with the City of Shawnee.

Russell Frantz
Rick Greenland
Freeland Wood

Regular Board of Commissioners

5.

Meeting Date: 12/03/2012

Supplemental Agreement ODOT

Submitted By: Donna Mayo, Administration

Department: Administration

Information

Title of Item for Agenda

Consideration and possible action on a Supplemental and Modification Agreement with the Oklahoma Department of Transportation on the Kickapoo Street Project, from Kickapoo Spur north to MacArthur Street.

Attachments

Kickapoo Street



OKLAHOMA DEPARTMENT OF TRANSPORTATION
Local Government Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204

November 29, 2012

Mr. John Krywicki - City Engineer
City of Shawnee
P O Box 1448
Shawnee, OK 74802

RE: **STPY -163A (356) SG**
22908(05)
KICKAPOO STREET: FROM THE KICKAPOO SPUR NORTH TO MACARTHUR
Bid Results / Supplemental Agreement / Invoice

Bid results were recently provided to the City for this project, reflecting the low bid as submitted by Haskell-Lemon Construction Company.

Based on our recent meeting and internal discussions, the Department has agreed to a revised funding commitment for this project. Attached for your review is a supplemental funding agreement, detailed funding breakout, and an invoice for additional City funds. We are also including for your information an analysis of the bid results as prepared by the Department's Office Engineer Division Manager.

If the City's decision is to authorize the Department to award the project at the upcoming December 3rd Transportation Commission Meeting, please provide us with a letter of commitment confirming your recommendation and your intent to process the attached agreement and invoice for payment. We request that your letter be transmitted electronically via email to my attention at mScott@odot.org by the close of business on Friday, November 30th.

Following the Award of the project, the Department will begin processing of the Contract with Haskell-Lemon Construction Company. The Work Order will be processed upon execution of the Supplemental Agreement and receipt of the additional City funds that are due.

If you need additional information, please contact me at (405) 521-2737.

Sincerely,

A handwritten signature in blue ink, appearing to read "Mark Scott".

Mark Scott
Assistant Division Manager
Local Government Division

Cc: Shannon Sheffert – Local Government Division Engineer
Paul Rachel – Division 3 Engineer
Brian Schmitt – Office Engineer

Attachments

**STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL AND MODIFICATION AGREEMENT NO. 1**

FEDERAL AID PROJECT MAINTENANCE AND FINANCING AGREEMENT

**STPY -163A (356) SG
22908(05)**

KICKAPOO STREET: FROM THE KICKAPOO SPUR NORTH TO MACARTHUR

This Supplemental and Modification Agreement, made the day and year last written below, by and between the City of Shawnee, hereinafter referred to as the CITY, and the Department of Transportation of the State of Oklahoma, hereinafter referred to as the Department, said parties being the same who executed the original FEDERAL AID PROJECT MAINTENANCE AND FINANCING AGREEMENT, for the following intents and purposes and subject to the following terms and conditions, to wit:

WITNESSETH

WHEREAS, It is deemed necessary by the Department and CITY, and in order to revise the scope of the original; and,

NOW, THEREFORE: the Department and CITY, in consideration of the mutual covenants and stipulations as set forth herein, do mutually promise and agree as follows:

A. The following sections are hereby modified from the original FEDERAL AID PROJECT MAINTENANCE AND FINANCING AGREEMENT;

15) The CITY agrees to provide 100 percent of all nonparticipating costs, estimated at \$2,014,716. Additionally, the City agrees to provide 20 percent of the participating project costs (estimated at \$1,783,160) which is being financed using \$983,928 in federally designated funding from project OK072, \$148,881 from project OK071, and the balance with City funds in an amount not to exceed \$136,000. Any amount due shall be deposited with the DEPARTMENT prior to advertisement for bids.

16) The DEPARTMENT agrees that Federal-aid Surface Transportation Program funds shall be requested to provide the balance of the participating project costs.

B. That the original FEDERAL AID PROJECT MAINTENANCE AND FINANCING AGREEMENT is hereby modified as above described, said agreement in all other respects shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the Director of the Department of Transportation or his designee, pursuant to authority vested in him by the Transportation Commission, has hereunto subscribed his name as Director of the Department of Transportation, and the County has executed same pursuant to authority prescribed by law.

The CITY on the ____ day of _____, 20__, and the Department on the ____ day of _____, 20__.

APPROVED AS TO FORM AND LEGALITY:

CITY OF SHAWNEE

CITY ATTORNEY

MAYOR

ATTEST: CITY CLERK (SEAL)

REVIEWED AND APPROVED AS TO FORM AND LEGALITY:

RECOMMENDED:

ODOT General Counsel Date

Local Government Division Date

APPROVED BY:

STATE OF OKLAHOMA DEPARTMENT OF TRANSPORTATION

Director of Capital Programs Date

Deputy Director Date

OKLAHOMA DEPARTMENT OF TRANSPORTATION

INVOICE

Make check PAYABLE and MAIL TO:

Oklahoma Department of Transportation
 Comptroller Division
 200 N. E. 21st Street
 Oklahoma City, OK 73105-3204

To:	CITY OF SHAWNEE	Division Invoice No.	22908(05) AWARD
	P O BOX 1448	Division Name:	Local Government
	SHAWNEE OK 74802	Date:	11/28/12

Description – Explanation of Charge	Quantity	Price Each	Total
Due Date: UPON RECEIPT			
STPY -163A (356) SG STATE JOB NUMBER 22908(05) KICKAPOO STREET: FROM THE KICKAPOO SPUR EXTENDING NORTH TO MACARTHUR			
BID AMOUNT (HASKELL-LEMON) + 6% Estimated Administration			\$10,930,517.65
LESS FEDERAL SPECIAL APPROPRIATION FUNDS (OK072)			-\$983,928.00
LESS BALANCE OF SPECIAL APPROPRIATION FUNDS (OK071)			-\$148,881.40
LESS FORMULA FEDERAL FUNDS			-\$7,646,992.27
LESS CITY FUNDS ON DEPOSIT			-\$1,301,350.65
CITY FUNDS NOW DUE			\$849,365.33
Invoice Total			\$849,365.33

Accounting Use Only

Distribution of Copies:
 Purchaser
 Remit with Payment
 Division Project File
 Division Accounting
 Division Acctg-Invoice File
 Comptroller

KICKAPOO - US270B TO MACARTHUR	LOW BID FROM HASKELL LEMON	6% Estimated Inspection	Total	Federal	Local	FED SHARE
PARTICIPATING SUMMARY						
INCENTIVE (100 days @ \$2,000 per day)	\$0.00	\$0.00		\$0.00	\$0.00	80%
Roadway	\$7,053,117.60	\$423,187.06	\$7,476,304.66	\$5,981,043.72	\$1,495,260.93	80%
Traffic	\$743,775.40	\$44,626.52	\$788,401.92	\$630,721.54	\$157,680.38	80%
Signing Striping	\$321,070.84	\$19,264.25	\$340,335.09	\$272,268.07	\$68,067.02	80%
Staking	\$50,000.00	\$0.00	\$50,000.00	\$40,000.00	\$10,000.00	80%
Construction	\$246,000.00	\$14,760.00	\$260,760.00	\$208,608.00	\$52,152.00	80%
PARTICIPATING TOTALS	\$8,413,963.84	\$501,837.83	\$8,915,801.67	\$7,132,641.34	\$1,783,160.33	
NON PARTICIPATING SUMMARY						
<i>Non Participating Roadway</i>	<u>\$134,861.95</u>	<u>\$8,091.72</u>	<u>\$142,953.67</u>	<u>\$0.00</u>	<u>\$142,953.67</u>	<u>0%</u>
<i>Non Participating UTILITIES</i>	<u>\$1,765,813.50</u>	<u>\$105,948.81</u>	<u>\$1,871,762.31</u>	<u>\$0.00</u>	<u>\$1,871,762.31</u>	<u>0%</u>
<u>NON PARTICIPATING TOTALS</u>	<u>\$1,900,675.45</u>	<u>\$114,040.53</u>	<u>\$2,014,715.98</u>	<u>\$0.00</u>	<u>\$2,014,715.98</u>	
GRAND TOTALS	\$10,314,639.29	\$615,878.36	\$10,930,517.65	\$7,132,641.34	\$3,797,876.31	

LOCAL FUNDING BREAKOUT	
PARTICIPATING CITY COSTS	\$1,783,160.33
LESS SPECIAL APPROPRIATIONS OK072	(\$983,928.00)
LESS BALANCE OF SPECIAL APPROPRIATIONS OK 071	(\$148,881.40)
BALANCE (CITY SHARE - PARTICIPATING COSTS)	\$650,350.93
<i>Cap on City Share of Participating costs (per agreement)</i>	<u>\$136,000.00</u>
Amount in excess of Cap (Discount to City costs)	\$514,350.93
NON PARTICIPATING CITY COSTS	\$2,014,715.98
TOTAL CASH DUE FROM CITY OF SHAWNEE AFTER CREDITS	\$2,150,715.98
Shawnee Cash on deposit	\$1,301,350.65
Additional City funds needed	\$849,365.33



Brian Schmitt/ODOT
11/29/2012 10:19 AM

To Mark Scott/ODOT@fd9ns01.okladot.state.ok.us, Shannon Sheffert/ODOT@fd9ns01.okladot.state.ok.us
cc "Vahabzadegan, Mike" <Mike@estinc.net>, Gary Evans/ODOT@fd9ns01.okladot.state.ok.us, Casey Shell/ODOT@fd9ns01.okladot.state.ok.us, Tim
bcc
Subject Bid analysis: Kickapoo Street in Shawnee
STPY-163A(356)SG Pott. Co. CO#400 November letting

All,

After performing bid analysis on the subject project, it became quite clear that there were a few main factors which caused the bid to come in well above the Engineer's estimate. I discussed these items with the low bidder, Haskell Lemon Construction Co. They shared the following with me:

1. Waterline

Obviously, this waterline cost is the most distressing aspect of the bid. 41% of the amount over estimate is due to this waterline cost. So is the bid reasonable? The contractor told me that they are subcontracting out this work along with the storm sewer work. They received 5 quotes which varied by as much as 45%. They used the cheapest quote in their bid. If this work is separated out from the rest of the project the bid will go up, not down. EST needs to comment on how the estimate was generated but I think the bid is the cheapest we will receive for this work.

(The contractor volunteered that there may be some opportunity for Value Engineering savings on this waterline work but it would require the willingness of the City to change some materials specs. and the savings would be less than 10%. We did not get into the specifics of such a VE proposal as the bid analysis and award must be on the basis of the bid submitted.)

2. Dowel Jointed PC Pavement

Bid price for the DJCP resulted in 17% of the overage. Estimated price of \$15/SY is within the range of bids that we see for this item but certainly optimistic. More reasonable estimate would be in the \$20-25 range which is right where the bid of \$22.50 falls. Hindsight is always 20/20 but I think the estimate is low for this item.

3. Removals (Pavement & Structure)

Bid price for these items came in much higher than estimated and higher than we are used to seeing. This resulted in 16% of the overage. When I asked the contractor why their bid was so high for these items, they responded that their bid included a lot of trucking cost because the broken concrete etc. had to be hauled off as soon as it was taken up. Due to the urban nature of this work there is no place to stockpile this material to be hauled off all at once. Also, the piecemeal nature of this project (6 phases done 1/2 at a time) results in removing a little here then a little there instead of the normal large removals. Their explanation makes sense but their bid for these items still seemed high.

Taking the bid analysis and discussions with the low bidder into account, it is my opinion that while the bids were not what we had hoped for, it is unlikely that we will get this project done any cheaper without seriously altering the scope. But, as always, it all comes down to whether the City of Shawnee can afford their portion of the work.

Hope this helps,

Brian E. Schmitt, P.E.

PROJECT AGREEMENT

This Agreement made the day and year last written below, by and between the Oklahoma Department of Transportation, hereinafter referred to as the DEPARTMENT, and the City of SHAWNEE, hereinafter referred to as the CITY, which may be referred to collectively as the PARTIES for the following intents and purposes and subject to the following terms and conditions, to wit:

WITNESSETH:

Whereas, the DEPARTMENT is charged under the law of the State of Oklahoma with construction and maintenance of State Highways; and,

Whereas, the DEPARTMENT is by terms of agreements with the Federal Highway Administration responsible for the management and construction of certain federally funded projects within the corporate limits of cities within the State of Oklahoma; and,

Whereas, the CITY has been identified as the beneficiary and sub-recipient of such a federally funded project; and,

Whereas, receipt of the benefits of this project will require that the CITY assume certain financial responsibilities; and,

Whereas, the CITY is a municipal corporation and a charter city created and existing under the constitution and laws of Oklahoma; and,

Whereas, the laws and constitution of the State of Oklahoma impose fiscal restrictions on the City and its ability to insure financial obligations; and,

Whereas, the PARTIES hereto recognized those financial limitations and agree that the financial obligations assumed by the City by the terms of this Agreement are enforceable only to the extent as may be allowed by law or as may be determined by a Court of competent jurisdiction; and,

Whereas, it is understood that, by virtue of the Oklahoma Constitution Article 10 section 26, the payment of CITY funds in the future will be limited to appropriations and available revenues in the then current CITY fiscal year.

Now therefore, subject to the limitations herein before described, the DEPARTMENT and the CITY do agree as follows:

APPROVED
10/17/01

- 1) The CITY requested that certain street improvements be approved by the Oklahoma Transportation Commission as were previously programmed by the CITY and which consist of actual improvements as follows:

JP No.	Project No.	Hwy.	Work Type	Description	Total Length
22908(05)	J2 -2908 (005)	CT ST	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FROM THE KICKAPOO SPUR NORTH TO 0.33 MINORTH OF INDEPENDENCE STREET (PHASE I)	0.508
22908(07)	J2 -2908 (007)	CT ST	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FR 0.33 MI NORTH OF INDEPENDENCE NORTH TO 0.1NORTH OF UNIVERSITY (PHASE III)	0.589
22908(08)	J2 -2908 (008)	CT ST	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FR 0.1 MI NORTH OF UNIVERSITY TO 0.06 MINORTH OF MACARTHUR (PHASE II)	0.149

- 2) The DEPARTMENT has prepared or caused to be prepared plans for construction of this federal-aid project and agrees that all construction shall be in conformance with the furnished plans which are incorporated with and made a part of this Agreement.
- 3) The DEPARTMENT agrees that the furnished plans are, as a minimum, in conformance with the Oklahoma Department of Transportation 2009 Standard Specification for Highway Construction.
- 4) The CITY agrees that the PARTIES have entered into a separate "Right-of-Way, Public Utility and Encroachment Agreement" which provides inter alia that the CITY is responsible for furnishing all right-of-way for this federal-aid project, free and clear of all obstructions and encroachments; that the CITY shall at its sole expense maintain the project after construction; and that nothing contained herein shall be construed as modifying, altering, rescind, or abridging any portion of that agreement.
- 5) The CITY agrees to the location of the subject project and acknowledge receipt of and adopts the plans for said project as the official plans of the CITY for the streets, boulevards, arterial highways and/or other improvements contained therein; and further the CITY affirmatively states that it has fully and completely examined these plans and does hereby warrant to the DEPARTMENT the CITY's complete satisfaction with these plans, and the fitness of the plans to construct the aforesaid project.
- 6) The CITY certifies that the project design plans comply, and the project when completed will comply, with the requirements of the **Americans with Disabilities Act (ADA) of 190 (42 USC §§ 12101 – 12213), 49 CFR parts 27, 37 and 38 and 28 CFR parts 35 and 36.** The CITY shall be exclusively responsible for integrated ADA compliance planning for all city streets, sidewalks and other facilities provided for public administration, use and accommodation which is required of

recipients and sub-recipients by 49 CFR § 27.11. State highways continued through corporate limits of the city shall be included in the CITY's comprehensive compliance plans.

- 7) The PARTIES hereto agree to comply with all applicable laws and regulations meeting Environmental Protection Agency (EPA) requirements for pollution prevention including discharges from storm water runoff on this project. The DEPARTMENT shall require the contractor who may be awarded the project to meet all Oklahoma Department of Environmental Quality (ODEQ) requirements for storm water runoff on this project. It is agreed that the project plans and specifications, required schedules for accomplishing the temporary and permanent erosion control work, the storm water management plan (SWMP) sheet, and appropriate USGS topographic map contained in the plans constitute the storm water management plan for the project described previously in this document. Further, if required, the DEPARTMENT shall require the contractor to file a Notice of Intent (NOI) for Storm Water Discharges Associated with CONSTRUCTION ACTIVITY UNDER THE OPDES General Permit with the Oklahoma Department of Environmental Quality which authorizes the storm water discharges associated with construction activity from the construction site and to develop if required a Storm Water Pollution Prevention Plan (SWPPP).
- 8) The CITY agrees to prohibit parking on that portion of the project within the corporate limits of the CITY, except as may be indicated in the plans or hereafter approved by agreement with the DEPARTMENT. The CITY further agrees not to install or permit to be installed any signs, signals, or markings not in conformance with the standards approved by the Federal Highway Administration and Manual on Uniform Traffic Control Devices (MUTCD).
- 9) The CITY further agrees and warrants to the DEPARTMENT that subsequent to the construction of said project, the CITY will:
 - a) Erect, maintain and operate traffic control devices, including signals, signs and pavement markings only in accordance with 47 O.S. 1991 Section 15-104, 15-105 and 15-106, and subject to the Agreement of the DEPARTMENT:
 - (1) In the event that any traffic signal installed hereunder is no longer needed for the purposes designated herein, then the traffic signal installed hereunder shall not be removed by the CITY to any point other than that which is approved by the DEPARTMENT prior to such removal.

- (2) In the event there is no mutually agreed location for the reinstallation, the CITY will assume complete ownership of the equipment following removal, if the installation is ten (10) years old or older. If the installation is less than ten (10) years old, and:
- ii) In the event the CITY desires total ownership of the equipment, the CITY shall reimburse the DEPARTMENT for the original Federal funding percentage share for the original equipment cost only, amortized for a ten (10) year service life, interest ignored, and assuming straight line depreciation.
 - iii) In the event the CITY does not desire total ownership of the equipment, the CITY shall sell the equipment at public auction to the highest bidder. The CITY shall reimburse the DEPARTMENT the original Federal funding percentage share of the proceeds of such sale.
- b) Subject to agreement with the DEPARTMENT, regulate and control traffic on said project, including but not limited to, the speed of vehicles, parking, stopping and turns and to make no changes in the provisions thereof without the approval of the DEPARTMENT. It shall be the responsibility of the CITY to notify the DEPARTMENT of any changes necessary to insure safety to the traveling public.
 - c) Maintain all drainage systems and facilities constructed, installed, modified or repaired in conjunction with this project or as may be otherwise necessary to insure proper drainage for road surfaces constructed under the terms of this Agreement.
 - d) Maintain all curbs and driveways abutting road surfaces constructed under the terms of this Agreement and all sidewalks adjacent thereto.
 - e) Maintain all right-of-way areas adjacent to road surfaces, including erosion control and periodic mowing of vegetation in a manner consistent with applicable codes, ordinances and regulations.
 - f) Make ample provision annually for proper maintenance of items heretofore delineated as the responsibility of the CITY, including the provision of competent personnel and adequate equipment, and specifically, to provide all required special maintenance of the project during the critical period immediately following construction.
 - g) Keep all permanent right-of-way shown on said plans free from any encroachment and take immediate action to effect the removal of any encroachments upon notification by the DEPARTMENT.
- 10) The CITY further agrees and warrants to the DEPARTMENT concerning sign and highway facility lighting:

- a) The CITY will upon notice from the DEPARTMENT Engineer provide at its own expense all required electrical energy necessary for all preliminary and operational tests of the highway lighting facilities.
 - b) Upon completion of the construction of said project, and by the DEPARTMENT, the CITY will be responsible for the maintenance and cost of operation of these highway lighting facilities, including all appurtenances thereto and including the sign lighting facilities.
 - c) It is specifically understood and agreed that the highway lighting and sign lighting facilities specified herein shall be continuously operated during the hours of darkness between sunset and sunrise and shall not be altered, removed or be allowed to cease operation without the mutual written consent of the DEPARTMENT and the CITY.
 - d) The CITY agrees to provide, on a periodic schedule, an inspection, cleaning and a re-lamping maintenance program to assure the maximum efficiency of the highway lighting facilities.
 - e) In the event that highway lighting facilities installed hereunder are no longer needed for the purposes designated herein, then the highway lighting facilities installed hereunder shall not be removed by the CITY to any point other than which is approved by the DEPARTMENT prior to such removal.
 - f) In the event there is no mutually agreed location for reinstallation, the CITY will assume complete ownership of the equipment following removal, if the installation is twenty (20) years old or older. If the installation is less than twenty (20) years old, and:
 - (1) In the event the CITY desires total ownership of the equipment, the CITY shall reimburse the DEPARTMENT the original Federal funding percentage share of the original equipment costs only, amortized for a twenty (20) year service life, interest ignored, and assuming straight line depreciation.
 - (2) In the event the CITY does not desire total ownership of the equipment, the CITY shall sell the equipment at public auction to the highest bidder. The CITY shall reimburse the DEPARTMENT the original Federal funding percentage share of the proceeds of such sale.
- 11) The CITY agrees, affirms and warrants to the DEPARTMENT that the CITY will be responsible, during the period of construction, for any repairs or maintenance to the approved detour route or any other street which may be required as a result of additional traffic.
 - 12) The CITY agrees to comply with Title VI of the Civil Rights Act of 1964, 78 O.S. § 252.42, U.S.C. §2000d-et seq., and all requirements imposed by or pursuant to Title 49, Code of Federal

Regulations, of Secretary of Transportation, Part 21 - "Nondiscrimination in federally assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act 1964."

- 13) The CITY agrees that it will, by resolution, duly authorize the execution of this Agreement by the proper officials, and attach copies of such resolution to this Agreement.
- 14) The DEPARTMENT and the CITY mutually recognize that each party is a governmental entity subject to the provisions of the Governmental Tort Claims Act (51 O.S. 1991 § 151 et seq.). The DEPARTMENT and the CITY hereby mutually agree that each is and may be held severally liable for any and all claims, demands, and suits in law or equity, of any nature whatsoever, paying for damages or otherwise, arising from any negligent act or omission of any of their respective employees, agents or contractors which may occur during the prosecution or performance of this Agreement to the extent provided in the Governmental Tort Claims Act. Each party agrees to severally bear all costs of investigation and defense of claims arising under to Governmental Tort Claims Act and any judgments which may be rendered in such cause to the limits provided by law. Nothing in this section shall be interpreted or construed to waive any legal defense which may be available to a party or any exemption, limitation or exception which may be provided by the Governmental Tort Claims Act.
- 15) The CITY agrees to provide 100 percent of all nonparticipating costs. Additionally, the City agrees to provide 20 percent of the participating project costs (estimated at \$1,468,137) which is being financed using \$983,928 in federally designated funding from project **SEC117-163A(227)SG / Jobpiece 22908(06)** and the balance with City funds in an amount not to exceed \$484,209. Any amount due shall be deposited with the DEPARTMENT prior to advertisement for bids.
- 16) The DEPARTMENT agrees that Federal-aid Surface Transportation Program funds shall be requested to provide the balance of the participating project costs.
- 17) It is understood by the CITY and the DEPARTMENT that the funding participation stipulated herein may be altered due to bid prices, construction supervision costs, and non-participating costs incurred during construction. Upon final acceptance of this project, the amount of Federal funds and the amount previously deposited by or credited to the CITY will be deducted from the total cost and a refund will be made by the DEPARTMENT to the CITY or additional funding will be requested from the CITY within the limits defined in this agreement.
- 18) It is understood by the CITY that no State funds are to be utilized in any phase or aspect of this project. Only CITY and Federal funds are to be utilized.

- 19) Upon approval of this Agreement and the plans, specifications, and estimates by the DEPARTMENT and Federal Highway Administration, if applicable, the DEPARTMENT shall agree to advertise and let the contract for this project in the usual and customary legal manner. It is agreed that the project herein described is proposed to be financed as previously set forth, and that this Agreement, all plans, specifications, estimates of costs, acceptance of work, payments and procedures in general hereunder are subject in all things at all times to all Federal laws, regulations, orders and approvals as may be applicable hereto.
- 20) The DEPARTMENT agrees to construct said project in strict accordance with the plans as approved by the CITY, provided that upon consultation with and agreement by the CITY, the DEPARTMENT shall have the right to make such changes in the plans and specifications as are necessary for the proper construction of the project. The DEPARTMENT shall provide competent supervision at all times that the work is in progress. The CITY shall have inspectors on the project site as the CITY determines necessary to insure construction of the project to the satisfaction of the CITY and shall have representatives available for consultation with the DEPARTMENT representatives to cooperate fully to the end of obtaining work strictly in accordance with the approved plans and specifications.
- 21) The CITY agrees that the CITY will intervene as a party defendant in all actions where a contractor may allege delay due to failure of the CITY to accomplish timely utility relocations, whether in the District Court or in an alternative dispute resolution forum, will defend all such actions and will pay all damages relating to delay as may be assessed by such court or alternative dispute resolution forum against the CITY for its adjudged failure.
- 22) Failure by the CITY to fulfill its responsibilities under this Agreement will disqualify the CITY from future participation in any Federal-aid project. Federal funds are to be withheld until such time as the deficiencies in regulations have been corrected or the improvements to be constructed under this Agreement are brought to a satisfactory condition of maintenance.
- 23) It is further specifically agreed and understood between the CITY and the DEPARTMENT that the project will be built in accordance with the plans and specifications, and upon final acceptance by the CITY and the DEPARTMENT of this project, the CITY does hereby accept full, complete and total responsibility for the maintenance of this project as provided in this Agreement. The CITY does not waive any rights against any contractor(s) with respect to defects, hidden or otherwise, in materials or workmanship. The CITY does not, pursuant to this provision or any other provision in

this Agreement, waive its sovereign immunity or any exemption from, exception to, or limitation of liability as provided in the Governmental Tort Claims Act.

- 24) The City also agrees that upon completion of this project, the Department will initiate a formal proceeding to remove from the Highway System the section of State Highway 3E from the Interstate 40 Interchange extending South approximately 1.5 miles, then East 1.0 Miles. The State Highway 3E designation will be relocated one mile east and State Highway 18 will carry a dual designation in order to ensure the continuity of the route.
- 25) The Secretary of the DEPARTMENT may terminate the contract in whole, or from time to time in part, whenever:
 - a) The requisite federal funding becomes unavailable through failure of appropriation or otherwise.
 - b) The contractor is prevented from proceeding with the work as a direct result of an Executive Order of the President with respect to the prosecution of war or in the interest of national defense, or an Executive Order of the President or Governor of the State with respect to the preservation of energy resources.
 - c) The contractor is prevented from proceeding with the work by reason of a preliminary, special, or permanent restraining order of a court of competent jurisdiction where the issuance of such order is primarily caused by the acts or omissions of persons or agencies other than the contractor.
 - d) The Secretary determines that such termination is in the best interest of the State.

IN WITNESS WHEREOF, the Director of the Department of Transportation, pursuant to authority vested in him by the State Transportation Commission, has hereunto subscribed his name as Director of the Department of Transportation and the CITY has executed same pursuant to authority prescribed by law for the Department.

The CITY on this 10th day of Dec., 2010, and the DEPARTMENT on the 10th day of Dec, 2010.

APPROVED AS TO FORM AND LEGALITY



City Attorney

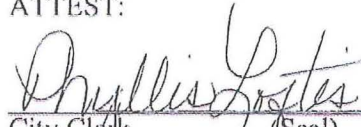
CITY OF SHAWNEE



Mayor



ATTEST:




City Clerk

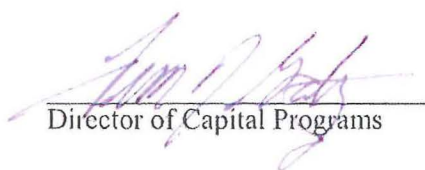
(Seal)

STATE OF OKLAHOMA
DEPARTMENT OF TRANSPORTATION

Recommended for Approval



Local Government
Division Engineer



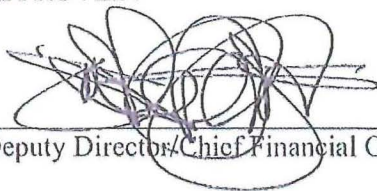
Director of Capital Programs

APPROVED AS TO FORM AND LEGALITY



General Counsel

APPROVED:



Deputy Director/Chief Financial Officer

1/20/11

Mayor
LINDA PETERSON



The City of Shawnee
P.O. Box 1448
Shawnee, Oklahoma 74802-1448
405-878-1760 / Fax 405-878-1719
www.ShawneeOK.org

Commissioners
PAM STEPHENS
FRANK SIMS
JAMES HARROD
BILLY COLLIER
JOHN WINTERRINGER
STEVE SMITH

January 7, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Mark Scott
Assistant Division Manager
Local Government Division
Oklahoma Department of Transportation
200 N.E. 21st Street
Oklahoma City, Oklahoma 73105-3204

Re: *Project Agreement between ODOT & City of Shawnee*
Job Project Nos. 22908(05), 22908(07) & 22908(08)

Dear Mr. Scott:

Enclosed please find three originals of the Project Agreement between ODOT and the City of Shawnee. After obtaining the required signatures, please provide our office with an original signed Agreement.

Please call John Krywicki at 405-878-1760 if you have any questions or comments.

Sincerely,

Lisa Lasyone

Lisa Lasyone
Engineering Secretary

/lbl
Enclosures

RECEIVED
JAN 10 2011
Local Government Div.



OKLAHOMA DEPARTMENT OF TRANSPORTATION
Local Government Division
200 N.E. 21st Street
Oklahoma City, OK 73105-3204

January 25, 2011

Mr. John Krywicki - City Engineer
City of Shawnee
P O Box 1448
Shawnee, OK 74802

RE: Project Maintenance and Financing Agreement:

Project No.	Work Type	Description
J2 -2908 (005)	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FROM THE KICKAPOO SPUR NORTH TO 0.33 MINORTH OF INDEPENDENCE STREET (PHASE I)
J2 -2908 (007)	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FR 0.33 MI NORTH OF INDEPENDENCE NORTH TO 0.1 NORTH OF UNIVERSITY (PHASE III)
J2 -2908 (008)	GRADE, DRAIN & SURFACE	KICKAPOO STREET, FR 0.1 MI NORTH OF UNIVERSITY TO 0.06 MINORTH OF MACARTHUR (PHASE II)

Attached for your files is an approved project agreement for the referenced projects.

Please note the 3 project phases described above have now been combined into a single project:

STPY -163A (356) SG
22908(05)
KICKAPOO STREET: FROM THE KICKAPOO SPUR NORTH TO MACARTHUR

If you need additional information, please contact me at (405) 521-2737.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark Scott".

Mark Scott
Assistant Division Manager
Local Government Division

Cc: Comptroller

KICKAPOO - US270B TO MACARTHUR	LOW BID FROM HASKELL LEMON	6% Estimated Inspection	Total	Federal	Local	FED SHARE
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<i>Cap on City Share of Participating costs (per agreement)</i>	<i>\$484,209.00</i>
Amount in excess of Cap (Discount to City costs)	\$166,141.93
NON PARTICIPATING CITY COSTS	\$2,014,715.98
TOTAL CASH DUE FROM CITY OF SHAWNEE AFTER CREDITS	\$2,498,924.98
Shawnee Cash on deposit	\$1,301,350.65
Additional City funds needed	\$1,197,574.33

Waterline issue-Bid Cost
 DOT Estimate \$ 1,871,762.31

Money allocated for Kickapoo \$ 4,000,000.00
 Spent to date
 payment to DOT-deposit \$ 1,301,350.65
 Street fund-easements \$ 1,615,208.42
 engineering, utilities gas etc
 Total \$ 2,916,559.07
 additional money needed \$ 849,365.33

\$ 234,075.60

Water rates increases
 2012-2013 \$ 793,174.00
 2013-2014 \$ 470,894.00

Money from rate increase \$ 1,264,068.00

Water Sales of of 11/29 \$ 725,000.00 *

\$ 1,989,068.00 **

* Running about 10% over budget so if it continues will give SMA addition \$725,000
 ** money left to pay this over this year and next