

The City of Muskogee encourages participation from all 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).

(Public Comment during Public Hearing or Agenda item comment)

Council Rules of Decorum limit citizen comments on agenda items and public hearings to five (5) minutes and general comments for non-agenda items to three (3) minutes. Any person desiring to address the Committee during such period is required to sign in with the City Clerk prior to the meeting between 5:00 p.m. and 5:15 p.m. on the third floor of City Hall or anytime between 8:00 a.m. and 5:00 p.m. in the Office of the City Clerk. They shall provide their name, address and specify the agenda item they wish to address. Remarks shall be directed to the matter being considered and the speaker is allowed to speak only one time. If written materials are to be submitted twelve (12) copies should be made available, and may not be returned.

Agenda
Public Works Committee
August 6, 2018
5:30 P.M. - City Council Chambers

1. Consider approval of Public Works Committee minutes of July 16, 2018.
2. Consider approval of awarding the construction contract to the low bidder, APAC Central, for the Mill & Overlay 2018 Project in the amount of \$268,540.00, or take other necessary action. (Greg Riley)
3. Consider approval of a Pipeline License (#18-60429) between BNSF Railway Company and the City of Muskogee, or take other necessary action. (Greg Riley)
4. Consider approval of awarding the Airport Long-Term Parking Lot Construction project to J.E. DirtWurx in the amount of \$79,860.00, as approved by the Airport Board, or take other necessary action. (Mike Stewart)
5. Consider ratification of the By-Laws of the Roxy Theater Community Trust, as approved by the Trustees at their special call meeting held on July 27, 2018, or take other necessary action. (Councilor Jaime Stout)
6. Consider approval of the reappointment of Alice Smith to serve a three (3) year term on the Muskogee Housing Authority Board, ending on June 30, 2021, or take other necessary action. (Councilor Marlon Coleman)
7. Consider approval of the appointment of Rev. Leroy Walker to serve a five (5) year term on the Martin Luther King Jr. Community Center Trust Authority beginning August 14, 2018, and ending on July 31, 2023, or take other necessary action. (Mayor Bob Coburn)

RECOGNIZE CITIZENS WISHING TO SPEAK TO CHAIRMAN AND COMMITTEE MEMBERS.

Council Rules of Decorum limit citizen comments to three (3) minutes. Any person desiring to speak is required to sign-in with the City Clerk, provide their name, address, and the particular issue they wish to address. Under Oklahoma law, the Committee Members are prohibited from discussing or taking any action on items not on today's agenda. If written materials are to be submitted to the Committee twelve (12) copies should be made available, and may not be returned.

Public Works Committee

1.

Meeting Date: 08/06/2018
Initiator: Ashley Wallace, Office Adm 1
Department: City Clerk
Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval of Public Works Committee minutes of July 16, 2018.

BACKGROUND:

RECOMMENDED ACTION:

Fiscal Impact

Attachments

07-16-2018 pwmin

MINUTES
PUBLIC WORKS COMMITTEE
July 16, 2018

The Public Works Committee of the City of Muskogee, Oklahoma, met at 5:30 p.m. on Monday, July 16, 2018 in Council Chambers, Third Floor, Municipal Building, with the following in attendance:

Present: Mayor John R. Coburn; Deputy Mayor Janey Boydston; Committee Member Jaime Stout; Committee Member Patrick Cale; Committee Member Marlon Coleman; Committee Member Dan Hall; Committee Member Wayne Johnson; Committee Member Derrick Reed; Committee Member Ivory Vann

Staff Present: Mike Miller, City Manager; Mike Stewart, Assistant City Manager; Roy Tucker, City Attorney; Tammy L. Tracy, City Clerk; Gary Garvin, City Planner; Greg Riley, Public Works Director; Johnny Teehee, Police Chief; Chad Farmer, Deputy Police Chief; Billy Coffey, Facilities Manager; Marcie Gilliam, Strategic Financial Analyst; Prag Mahajan, Civil Engineer; Darrell Jones, Fire Marshall

1. Consider approval of Public Works Committee minutes of July 2, 2018.

Motion was made by Committee Member Dan Hall, seconded by Committee Member Jaime Stout to approve Public Works Committee minutes of July 2, 2018.

AYE: Mayor John R. Coburn, Deputy Mayor Janey Boydston, Committee Member Jaime Stout, Committee Member Patrick Cale, Committee Member Marlon Coleman, Committee Member Dan Hall, Committee Member Wayne Johnson, Committee Member Derrick Reed, Committee Member Ivory Vann

Carried - Unanimously

2. Consider approval to award a contract in the amount of \$728,807.90 to the sole bidder, Intermountain Slurry Seal Inc., inclusive of Add Alternate Nos. 1 and 2, for the Micro Surfacing Project for the Central Business District, or take other necessary action. (Greg Riley)

Public Works Director Greg Riley stated this project includes micro surfacing of approximately eight (8) miles of streets, including two (2) miles of Broadway within the Central Business District. Micro Surfacing is a mixture of modified asphalt emulsion, hi-quality aggregates, and specialty additives properly proportioned, mixed, and spread on paved roads. The product is known for its macro-texture and rapid traffic return and has a history of superior performance for all types of roads. It is typically applied at approximately 3/8" capable of filling ruts and restoring sections, improving safety. He explained there has been great results with this product in Muskogee as it extends the life of pavement and has been researched by the Street Committee and Staff. This includes crack sealing of the pavement as part of the process as Add Alternate No.1 and Add Alternate No. 2 is for traffic striping which includes re-striping Dennison to have bicycle lanes and handicap spaces on Broadway.

The original Scope of the project has been modified and Elgin from Main to 7th Street was removed. This was done to accommodate it through the Depot District Project and bring the project within budget.

The Street Committee and Staff recommend going with the only bid received from Intermountain Slurry, Inc. The price is higher than previous micro sealing bids but is inline with recent ODOT bid amounts for the same type work. This project will have some night and weekend work.

The original Bid Schedule is attached for your reference.

The project is budgeted as part of Contractual Services in Street and Traffic. It was delayed from the 2016-2017 budget year in anticipation of the start of the Main Street project. The Main Street portion has been removed and this project is for the remainder of the streets.

Motion was made by Committee Member Jaime Stout, seconded by Committee Member Patrick Cale to approve awarding a contract in the amount of \$728,807.90 to the sole bidder, Intermountain Slurry Seal Inc., inclusive of Add Alternate Nos. 1 and 2, for the Micro Surfacing Project for the Central Business District.

AYE: Mayor John R. Coburn, Deputy Mayor Janey Boydston, Committee Member Jaime Stout, Committee Member Patrick Cale, Committee Member Marlon Coleman, Committee Member Dan Hall, Committee Member Wayne Johnson, Committee Member Derrick Reed, Committee Member Ivory Vann

Carried - Unanimously

3. Consider the appointment of Jaime Stout to serve a two (2) year term on the City of Muskogee Foundation Board, beginning September 1, 2018, and ending August 31, 2020, replacing Dan Hall, or take other necessary action. (Councilor Dan Hall)

Motion was made by Committee Member Dan Hall, seconded by Committee Member Wayne Johnson to approve the appointment of Jaime Stout to serve a two (2) year term on the City of Muskogee Foundation Board, beginning September 1, 2018, and ending August 31, 2020, replacing Dan Hall.

AYE: Mayor John R. Coburn, Deputy Mayor Janey Boydston, Committee Member Jaime Stout, Committee Member Patrick Cale, Committee Member Marlon Coleman, Committee Member Dan Hall, Committee Member Wayne Johnson, Committee Member Derrick Reed, Committee Member Ivory Vann

Carried - Unanimously

4. Consider approval of the reappointment of Jack Farr to serve a three (3) year term on the Muskogee Housing Authority Board, beginning July 23, 2018, and ending on May 31, 2021, or take other necessary action. (Councilor Derrick Reed)

Motion was made by Committee Member Derrick Reed, seconded by Committee Member Dan Hall to approve the reappointment of Jack Farr to serve a three (3) year term on the Muskogee Housing Authority Board, beginning July 23, 2018, and ending on May 31, 2021.

AYE: Mayor John R. Coburn, Deputy Mayor Janey Boydston, Committee Member Jaime Stout, Committee Member Patrick Cale, Committee Member Marlon Coleman, Committee Member Dan Hall, Committee Member Wayne Johnson, Committee Member Derrick Reed, Committee Member Ivory Vann

Carried - Unanimously

5. Consider approval of the appointment of Glenda Shelter to the War Memorial Trust Authority, filling the unexpired term of Joshua Caserez, ending on April 30, 2019, or take other necessary action. (Marlon Coleman)

Motion was made by Committee Member Marlon Coleman, seconded by Committee Member Dan Hall to approve the appointment of Glenda Shelter to the War Memorial Trust Authority, filling the unexpired term of Joshua Caserez, ending on April 30, 2019.

AYE: Mayor John R. Coburn, Deputy Mayor Janey Boydston, Committee Member Jaime Stout, Committee Member Patrick Cale, Committee Member Marlon Coleman, Committee Member Dan Hall, Committee Member Wayne Johnson, Committee Member Derrick Reed, Committee Member Ivory Vann

Carried - Unanimously

RECOGNIZE CITIZENS WISHING TO SPEAK TO CHAIRMAN AND COMMITTEE MEMBERS.

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CHAIRMAN WAYNE JOHNSON
PUBLIC WORKS COMMITTEE

Public Works Committee**2.**

Meeting Date: 08/06/2018

Submitted For: Greg Riley, Public Works Initiator: Prag Mahajan, Civil Engineer II

Department: Public Works

Staff Information Source: Greg Riley, Director of Public Works; Jim Wixom, Assistant Director of Public Works-Operation; Prag Mahajan, Civil Engineer; Donnie Wimbley Purchasing Director;

Information**AGENDA ITEM TITLE:**

Consider approval of awarding the construction contract to the low bidder, APAC Central, for the Mill & Overlay 2018 Project in the amount of \$268,540.00, or take other necessary action. (Greg Riley)

BACKGROUND:

This project includes the mill and asphalt overlay of approximately 2 miles of streets as listed below. The streets are in the northwest quadrant work being done as part of the 2018 work.

1. North 15th (MLK to Emporia)
2. North 16th (MLK to Emporia)
3. North 17th (MLK to Emporia)
4. North 18th (MLK to Emporia)
5. North 19th (MLK to North 21st)
6. Emporia (North 12th to Denison)

This project is to mill (remove) two inches of existing asphalt street surface and replace it with two inches of new asphalt surface.

This is being funded out of the 1/4% sales tax for streets. The Street Improvement Advisory Commission reviewed and approved these streets.

RECOMMENDED ACTION:

Approve awarding the construction contract to the lowest bid from APAC Central for the Mill & Overlay 2018 in the amount of \$268,540.00.

Fiscal Impact**Attachments****Bid Tabs**



Tabulation Sheet

City of Muskogee

Bid Item: Mill & Overlay CBD Year 5 #2018020

Date: 7/18/2018

Department: Public Works-Street

Approved by Purchasing: _____

Approved by City Council: _____

Vendors	Total Base Bid Schedule 1						
Goodwin & Goodwin Const.	410,388 ⁰⁰						
Apac Central	268,540 ⁰⁰ RA						
H & G Paving Contractors	292,250 ⁰⁰						

Witnessed by:

Russ Andris
[Signature]
[Signature]
[Signature]
[Signature]

Approved by:

Public Works Committee**3.**

Meeting Date: 08/06/2018

Submitted For: Greg Riley, Public Works Initiator: Prag Mahajan, Civil Engineer II

Department: Public Works

Staff Information Source: Greg Riley, Director of Public Works; George Kingston, Assistant Director of Public Works-Utilities ; Justin Cook, Cook Consulting ;Prag Mahajan Civil Engineer

Information**AGENDA ITEM TITLE:**

Consider approval of a Pipeline License (#18-60429) between BNSF Railway Company and the City of Muskogee, or take other necessary action. (Greg Riley)

BACKGROUND:

This is a required license with the Burlington Northern Railroad for performing repairs on an eight inch diameter waterline that is encased in a twelve inch steel casing, under the BNSF's rail near York Street, Line Segment 1055, Mile Post 453.51.

This is priority repair as significant water is being lost due to the water leak.

RECOMMENDED ACTION:

Approve Pipeline License (#18-60429) made by and between BNSF Railway Company, a Delaware Corporation (Licensor) and the City of Muskogee, OK, an Oklahoma Corporation (Licensee).

Fiscal Impact**Attachments**Pipeline License (#18-60429)

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2018 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF MUSKOGEE**, a political subdivision of the State of Oklahoma ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, eight (8") inches in diameter inside a twelve (12") inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Muskogee, County of Muskogee, State of OK, Line Segment 1055, Mile Post 453.51, as shown on the attached Drawing No. 72847, dated May 24, 2018, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described, and shall be automatically renewable in twenty-five (25) year increments, unless either party gives notice of its intent not to renew one hundred-eighty (180) days prior to the effective date of any renewal.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may

increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensors, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
- 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
- 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within one hundred-eighty (180) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's Roadmaster, at Aaron.Erwine@BNSF.com or 918-445-2566, at least fifteen (15) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. In the event of emergency, Licensee shall notify Licensor of Licensee's entry onto the Premises at the telephone number above as soon as practicable and shall promptly thereafter follow up with written notice of such entry.
- 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
- 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.
- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless

Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises in such a manner as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.

- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel or representatives due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.
- 11.8 Horizontal Directional Drilling (HDD). Cutting head must travel at 0.0% grade (or downward) beginning 25' (minimum) from centerline of track until it reaches a point 25' (minimum) from the centerline of track. Minimum pressure must be applied to pumping the slurry to the cutting head during drilling. This will deter the bentonite slurry used for lubrication from seeping up and fouling the track roadbed. A BNSF flagman must be present during installation and will monitor the ballast and roadbed.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided, however, that in lieu of the foregoing, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the Underground Services Association) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee may request information from Licensor concerning the existence and approximate location of Licensor's underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensor's Telecommunications Helpdesk at least thirty (30) business days prior to installation of the Pipeline. Upon

receiving Licensee's timely request, Licensor will provide Licensee with the information Licensor has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensor's standard procedures. Licensor does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensor prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensor's reasonable opinion that granular material is present, Licensor may select a new location for Licensee's use, or may require Licensee to furnish for Licensor's review and approval, in Licensor's sole discretion, a remedial plan to deal with the granular material. Once Licensor has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 Any open hole, boring, or well-constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
- 12.3.1 filled in to surrounding ground level with compacted bentonite grout; or
- 12.3.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensor's property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensor and Licensor's affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee or Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**
- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF**

THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). LICENSEE WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL SUCH CLAIMS. NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.

- 13.4 IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.
- 13.5 THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.

14. Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the life of this License the following insurance coverage:

- 15.1 Commercial General Liability Insurance. This insurance shall contain broad form contractual liability with a combined single limit of a minimum of \$5,000,000 each occurrence and an aggregate limit of at least \$10,000,000 but in no event less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence or equivalent and include coverage for, but not limited to, the following:
- Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- The definition of insured contract shall be amended to remove any exclusion or other limitation for any work being done within 50 feet of railroad property.
- Waiver of subrogation in favor of and acceptable to Licensor.

- Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

It is agreed that the workers' compensation and employers' liability related exclusions in the Commercial General Liability Insurance policy(s) required herein are intended to apply to employees of the policy holder and shall not apply to Licensor's employees.

No other endorsements limiting coverage may be included on the policy.

- 15.2 Business Automobile Insurance. This insurance shall contain a combined single limit of at least \$1,000,000 per occurrence, and include coverage for, but not limited to the following:

- Bodily injury and property damage.
- Any and all vehicles owned, used or hired.

This policy shall also contain the following endorsements, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.
- Additional insured endorsement in favor of and acceptable to Licensor.
- Separation of insureds.
- The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

- 15.3 Workers' Compensation and Employers' Liability Insurance. This insurance shall include coverage for, but not limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) in which the services are to be performed. If optional under state laws, the insurance must cover all employees anyway.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.

This policy shall also contain the following endorsements or language, which shall be indicated on the certificate of insurance:

- Waiver of subrogation in favor of and acceptable to Licensor.

- 15.4 Railroad Protective Liability Insurance. This insurance shall name only Licensor as the Insured with coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy shall be issued on a standard ISO form CG 00 35 12 03 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor prior to performing any work or services under this License.
- Definition of "Physical Damage to Property" shall be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.

- ☐ I **elect** to participate in Licensor's Blanket Policy;
- ☐ I **elect not** to participate in Licensor's Blanket Policy.

15.5 Intentionally deleted.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, all policies (applying to coverage listed above) shall contain no exclusion for punitive damages.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or a policy endorsement, must waive their right of subrogation against Licensor for all claims and suits, and the certificate of insurance must reflect the waiver of subrogation endorsement. Licensee further waives its right of recovery, and its insurers must also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property, or property under Licensee's care, custody, or control.
- 15.6.3 Licensee is allowed to self-insure without the prior written consent of Licensor. Any self-insured retention or other financial responsibility for claims shall be covered directly by Licensee in lieu of insurance. Any and all Licensor liabilities that would otherwise, in accordance with the provisions of this License, be covered by Licensee's insurance will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.
- 15.6.4 Prior to entering the Premises, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance including an original signature of the authorized representative evidencing the required coverage, endorsements, and amendments. Licensee shall notify Licensor in writing at least 30 days prior to any cancellation, non-renewal, substitution, or material alteration. In the event of a claim or lawsuit involving Licensor arising out of this License, Licensee will make available any required policy covering such claim or lawsuit.
- 15.6.5 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.6 If coverage is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration or termination of this License. Annually, Licensee agrees to provide evidence of such coverage as required hereunder.
- 15.6.7 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), who have been instructed by Licensee to procure the insurance coverage required by this License. Allocated Loss Expense shall be in addition to all policy limits for coverages referenced above.
- 15.6.8 Not more frequently than once every five years, Licensor may reasonably modify the required insurance coverage to reflect then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.9 If any portion of the operation is to be subcontracted by Licensee, Licensee shall require that the subcontractor shall provide and maintain insurance coverages as set forth herein, naming Licensor as an additional insured, and shall require that the subcontractor shall release, defend and indemnify Licensor to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor herein.
- 15.6.10 Failure to provide evidence as required by this **Section 15** shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this Section shall not operate as a waiver of Licensee's obligations hereunder.

15.6.11 The fact that insurance (including, without limitation, self-insurance) is obtained by Licensee shall not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.

15.6.12 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable.

15.6.13 For purposes of this **Section 15**, Licensor shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensor's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with all federal, state and local environmental Legal Requirements and regulations in its use of the Premises, including, but not limited to, the Resource Conservation and Recovery Act, as amended (RCRA), the Clean Water Act, the Oil Pollution Act, the Hazardous Materials Transportation Act, and CERCLA (collectively referred to as the "**Environmental Laws**"). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or hazardous substances, as defined by Environmental Laws on or about the Premises.
- 17.2 Licensee covenants that it will not handle or transport "hazardous waste" or "hazardous substances", as

"hazardous waste" and "hazardous substances" may now or in the future be defined by any federal, state, or local governmental agency or body through the Pipeline on Licensors property. Licensee agrees periodically to furnish Licensor with proof, satisfactory to Licensor that Licensee is in compliance with the provisions of this **Section 17.2**.

- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of hazardous substances on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use the best efforts to promptly respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor immediate notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall promptly report to Licensor in writing any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take whatever action is necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.

DISCLAIMER OF WARRANTIES

18. No Warranties.

- 18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damage Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on Premises. Licensor is hereby

authorized to post any notices or take any other action upon or with respect to Premises that is or may be permitted by law to prevent the attachment of any such liens to Premises; provided, however, that failure of Licenser to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. **Taxes.** Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licenser or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. **Default and Termination.** In addition to and not in limitation of Licenser's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licenser has the right to terminate as set forth below:

- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licenser, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licenser may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licenser shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
- 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of hazardous waste or hazardous material, notwithstanding anything contained in any other provision of this License, Licenser may, at its option, terminate this License by serving five (5) days' notice of termination upon Licensee.
- 23.3 Any waiver by Licenser of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licenser's ability to enforce any Section of this License. The remedy set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licenser may have at law or in equity.
- 23.4 In addition to and not in limitation of Licenser's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.

24. **Surrender of the Premises.**

- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
- 24.1.1 if so directed by Licenser in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licenser, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licenser;
- 24.1.2 report and restore any damage to the Premises or Licenser's other property arising from, growing out of, or connected with Licensee's use of the Premises;
- 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
- 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date.
- 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licenser or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"),

Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensor may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensor for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensor has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensor, provide a bill of sale in a form acceptable to Licensor conveying the Pipeline and the other Improvements to Licensor.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensor and Licensee to the same extent as if each such successor and assign was named a party to this License.

26. Assignment.

- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensor, which consent may not be unreasonably withheld or delayed by Licensor. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensor in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. **THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSOR, SUCH CONSENT TO BE IN LICENSOR'S SOLE DISCRETION.**
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a **"Purported Assignment"**) to another party (a **"Purported Transferee"**), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensor for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment.

26.4 The provisions of this **Section 26** shall survive the expiration or earlier termination of this License.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham, Suite 110
Fort Worth, TX 76155
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2310 Lou Menk Dr. –GOB3W
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Muskogee
229 W. Okmulgee Ave
Muskogee, OK 74401

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Premises are restored to its condition as of the Effective Date.
29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Oklahoma without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.
35. Interpretation.
- 35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation

hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

- 35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.
36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged via email or electronic facsimile machines and any email or electronic facsimile of any party's signature shall be deemed to be an original signature for all purposes.
37. Licensors Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the date below each party's signature; to be effective, however, as of the Effective Date.

LICENSOR:

BNSF RAILWAY COMPANY, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
4200 Buckingham Road, Suite 110
Fort Worth, TX 76155

By: _____

Title: _____

Date: _____

LICENSEE:

CITY OF MUSKOGEE

229 W. Okmulgee Ave
Muskogee, OK 74401

By: _____

Title: _____

Date: _____

Attest:

Tammy L. Tracy, City Clerk

Approved as to form and legality on behalf of the City of Muskogee this ____ day of _____, 2018.

Roy D. Tucker, City Attorney

Public Works Committee

4.

Meeting Date: 08/06/2018
Submitted For: Mike Stewart, Assistant City Manager
Initiator: Drew Saffell, Airport Manager
Department: Assistant City Manager
Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval of awarding the Airport Long-Term Parking Lot Construction project to J.E. DirtWurx in the amount of \$79,860.00, as approved by the Airport Board, or take other necessary action. (Mike Stewart)

BACKGROUND:

The City advertised and solicited for Bid proposals and received five (5) proposals.

1. H & G Paving Contractors \$130,308.84
2. Ross Construction \$85,000.00
3. Frix Construction \$92,000.00
4. Bronze Oak \$132,019.00
5. J.E. DirtWurx \$79,860.00

The Bid proposal submitted by J.E. DirtWurx was complete, the most economical, and meets the requirements for the City. Plans, specifications, and bid tabulation with unit price comparison is attached for your reference. This item has been approved by the Airport Board.

RECOMMENDED ACTION:

Approve awarding the Airport Long-Term Parking Lot Construction project to J.E. DirtWurx or take other necessary action.

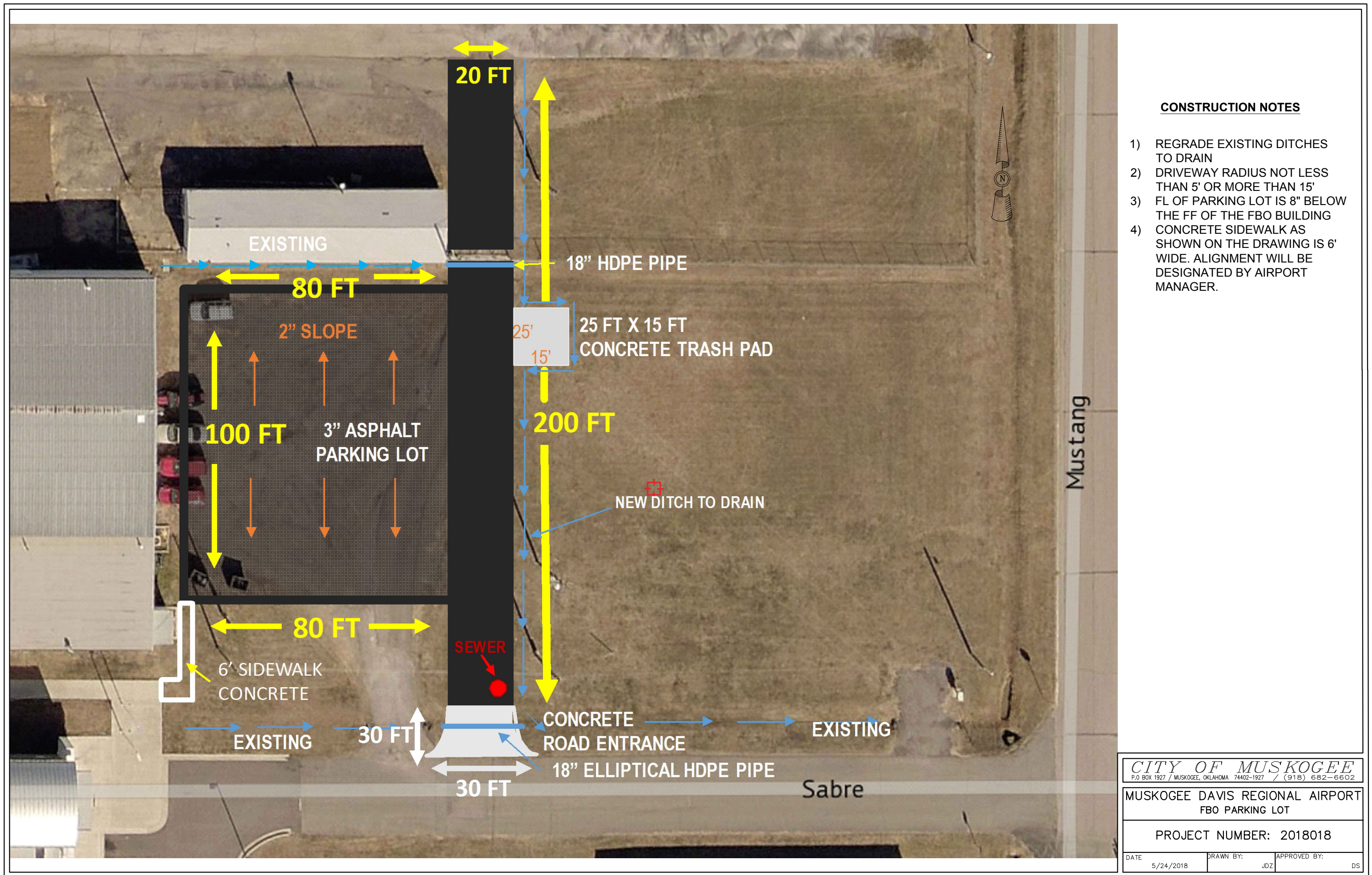
Fiscal Impact

FUNDING SOURCE:

FY2014 CIP Sales Tax Funds for airport improvement

Attachments

Parking Lot Plans
Specifications
Bid Tabulation Sheet



BID PROPOSAL – Muskogee Davis Regional Airport FBO Parking Lot							
for							
City Of Muskogee							
Muskogee, Oklahoma							
THE UNDERSIGNED BIDDER,							
CERTIFIES THAT he has inspected the site of the proposed work and has full knowledge of the extent and character of the work involved, construction difficulties that may be encountered, and materials necessary for construction, class and type of excavation, and all other factors affecting or which may be affected by the specified work;							
SCOPE OF WORK							
<ul style="list-style-type: none"> • Unclassified Excavation and backfill • Stripping Topsoil • 26'x50' Stabilized Entrance • Silt Fence • Inlet Sediment Trap • Clear & Grub • Seeding and Re-vegetation • Removal of existing concrete, • Fine Grading • Pulverize existing area shown on the drawings and mix ordinary Portland cement to stabilize the base with 8% cement 							
<u>BID SCHEDULE</u>							
Item #	Quantity	Unit	Description and Bid	Unit Cost	Extension		
1.	1	LS	Unclassified Excavation and backfill- Include for excavation and disposal				
2.	1	LS	Stripping Topsoil				
3.	1 EA		26'x50' Stabilized Entrance				
4.	600	LF	Silt Fence				
5.	2	EA	Inlet Sediment Trap				
6.	0.5	Acre	Clear & Grub and site prep				
7.	1500	SY	Pulverize existing area and mix ordinary Portland cement to stabilize the base with 8% cement				
8.	50	Tons	6" aggregate base type A (ODOT) only if required for any soft spots				
9.	150	Tons	3" Asphalt for parking lot (type SS3)				
10.	100	Tons	3" Asphalt for road(type SS3)				
11.	1	LS	Removal of existing concrete, curb, etc.				
12.	1	LS	Fine Grading				
13.	110	SY	6" Concrete Driveway for item 3				
	15	SY	4" Concrete Sidewalk				
14.	72	LF	18" HDPE for drainage below the driveway				
15.	1	EA	25 ft. X 15ft Concrete trash pad as shown				
16.	1 Lump sum		Allowance	\$ 4,000.00		\$ 4,000.00	
17.	1 Lump sum		Bonds & Insurance				
18.	1 Lump sum		Mobilization, Quality assurance and quality Control, temporary traffic Control, Construction Staking Level II				
TOTAL TO BID FORM							

THE BIDDER SHALL COMPLETE THE FOLLOWING AS APPLICABLE:

AN INDIVIDUAL

By _____ (Individual's Name)

Doing business as _____

A PARTNERSHIP

By _____ (Firm Name)

A CORPORATION

By _____ (Corporation Name)

State of Incorporation is _____

By _____
(Name)

(Title)

Attest _____
(Secretary)

(Corporate Seal)

Business address: _____

Phone No.: _____

FAX No.: _____

SUBMITTED on _____, 20__.

Agreement

Owner: City Of Muskogee
P.O. Box 1927
Muskogee, Ok. 74402

Project: Muskogee Davis Regional Airport FBO Parking Lot

Number: 2018-018

Contractor Name:

Address:

City, State:

This Agreement is dated as of the _____ day of _____, _____ by and between the OWNER and CONTRACTOR each above identified and collectively referred to as the Parties.

Witnessed: That for and in consideration of the payments, covenants and agreements stated herein, the Parties agree as follows:

Article 1. Work.

Contractor shall complete all work as specified or indicated in the Contract Documents. The Work is generally described as follows:

Muskogee Davis Regional Airport FBO Parking Lot

Article 2. Contract Time.

2.1 The Work shall be substantially completed within 30 consecutive calendar days after the date when the Contract Time commences to run as provided in paragraph 2.03 of the General Conditions, and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions within _____ consecutive calendar days after the date when the Contract Time commences to run.

2.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that the OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 2.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved with a legal or arbitration proceedings the actual loss suffered by the OWNER if the Work is not substantially complete on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER **Two Hundred fifty Dollars \$250.00** for each calendar day that expires after the time specified in paragraph 2.1 for substantial completion until the Work is substantially complete.

Article 3. Contract Price.

3.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the Contract Documents in current funds as follows: _____ (_____).

Article 4. Payment Procedures.

CONTRACTOR shall submit Applications for Payment in accordance with Article 14 of the General Conditions. The CITY ENGINEER as provided in the General Conditions will process applications for payment.

4.1 Progress Payments: OWNER will make progress payments on the basis of the CONTRACTOR'S Applications for Payment as recommended by the CITY ENGINEER, on or about the first day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values provided for in paragraph 14.01 of the General Conditions.

4.1.1 Prior to 50 percent of Substantial Completion, progress payments will be in an amount equal to 95 percent of the Work completed, and 95 percent of materials and equipment not incorporated in the Work but delivered and suitably stored, less in each case the aggregate of payments previously made.

4.1.2 Upon Substantial Completion, OWNER will pay an amount sufficient to increase total payments to CONTRACTOR to 100% of the Contract Price, less such amounts as the CITY ENGINEER, Airport manager or designee shall determine in accordance with paragraph 14.06 of the General Conditions and less such amounts as the CITY ENGINEER shall determine for completion of punch-list items, if any.

4.2 Final Payment: Upon final completion and acceptance of the Work in accordance with paragraph 14.13 of the General Conditions, OWNER will pay the remainder of the Contract Price as recommended by the CITY ENGINEER, Airport manager or designee as provided in said paragraph 14.07.

Article 5. Interest.

All moneys not paid when due hereunder shall bear interest at the maximum rate allowed by law at the place of the Project.

Article 6. Contractor's Representations.

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations.

6.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work.

6.2 CONTRACTOR has studied carefully all reports of investigations and tests of subsurface and latent physical conditions at the site or otherwise affecting cost, progress or performance of the Work which were relied upon by the ENGINEER, Airport manager or designee in the preparation of the Drawings and Specifications and which have been identified in the Contract Documents.

6.3 CONTRACTOR has made or caused to be made examinations, investigations and tests and studies of such reports and related data in addition to those referred to in paragraph 6.2 as he deems necessary for the performance of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents; and no additional examinations, investigations, tests, reports or similar data are or will be required by CONTRACTOR for such purposes.

6.4 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.

6.5 CONTRACTOR has given the CITY ENGINEER, Airport Manager or designee written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by the CITY ENGINEER is acceptable to CONTRACTOR.

Division I General Provisions

Section 01010 – Scope of Work

1.1 Description -The Work under this Contract will consist of furnishing all labor, materials and performing all work necessary for the construction of Muskogee Davis Regional Airport FBO

Item #		Quantity	Unit	Description and Bid
1.		1	LS	Unclassified Excavation and backfill- Include for excavation and disposal
2.		1	LS	Stripping Topsoil
3.		1 EA		26'x50' Stabilized Entrance
4.		600	LF	Silt Fence
5.		2	EA	Inlet Sediment Trap
6.		0.5	Acre	Clear & Grub and site prep
7.		1500	SY	Pulverize existing area and mix ordinary Portland cement to stabilize the base with 8% cement
8.		50	Tons	6" aggregate base type A (ODOT) only if required for any soft spots
9.		150	Tons	3" Asphalt for parking lot (type SS3)
10.		100	Tons	3" Asphalt for road(type SS3)
11.		1	LS	Removal of existing concrete, curb, etc.
12.		1	LS	Fine Grading
13.		110	SY	6" Concrete Driveway for item 3
		15	SY	4" Concrete Sidewalk
14.		72	LF	18" HDPE for drainage below the driveway
15.		1	EA	25 ft. X 15ft Concrete trash pad as shown
16.		1 Lump sum		Allowance
17.		1 Lump sum		Bonds & Insurance
18.		1 Lump sum		Mobilization, Quality assurance and quality Control, temporary traffic Control, Construction Staking Level II

Parking Lot, as per the attached drawings and the bid schedule.

PART I - GENERAL

Mobilization, Quality assurance and quality Control, temporary traffic Control, Construction Staking Level II

1.2 Specifications – All material and construction shall conform to Oklahoma State Highway Specifications 2009 Edition and Supplementation.

1.3 Construction Traffic Control - All Construction Traffic Control, conforming to the Manual on Uniform Traffic Control Devices, shall be furnished by the Contractor. All cost shall be included in the unit price bid.

END OF SECTION



Bid Item: Muskogee Davis-Regional Airport FBO Parking Lot

Date: 7/19/2018

Department: cm/mayor

Approved by Purchasing:

Approved by City Council:

[illegible]

Witnessed by:

Issued by: Miss Tucker
24-11-1945

Approved by:

Public Works Committee

5.

Meeting Date: 08/06/2018

Submitted For: Roy Tucker, City Attorney

Initiator: Tammy Tracy, City Clerk

Department: City Attorney

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider ratification of the By-Laws of the Roxy Theater Community Trust, as approved by the Trustees at their special call meeting held on July 27, 2018, or take other necessary action. (Councilor Jaime Stout)

BACKGROUND:

The Trust indenture creating the Roxy Theater Community Trust required Bylaws be established within 60 days from the effective date of the Trust, July 1, 2018. Attached are the bylaws adopted by the Trustees at the July 27, 2018 Special Call meeting.

RECOMMENDED ACTION:

Ratify Bylaws.

Fiscal Impact

Attachments

Roxy Theater Community Trust Bylaws

RESOLUTION NO. 1

A RESOLUTION ADOPTING BY-LAWS OF THE

ROXY THEATER COMMUNITY TRUST

**BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE ROXY
THEATER COMMUNITY TRUST THAT:**

ARTICLE I-THE AGENCY

Section 1. Name. The name of the Trust shall be the "Roxy Theater Community Trust."

Section 2. Seal. The seal of the Trust shall be in the form of a circle and shall bear the name "Roxy Theater Community Trust"; the word "seal"; and the name of the City, "Muskogee," Oklahoma.

Section 3. Office of the Authority. The office of the Trust shall be located at 220 West Okmulgee Street in Muskogee, Oklahoma.

ARTICLE II-BOARD OF TRUSTEES

Section 1. Appointment

The Trustees of this Trust shall be the citizens and residents of the Beneficiary. There shall be not less than three (3), nor a maximum of nine (9) Trustees: the City Manager for the City of Muskogee and his successor, ex officio, who shall be a nonvoting member but shall otherwise be fully vested to participate as a Trustee; all Trustees shall be selected by a majority of the City Council pursuant to nomination and confirmation methods effective at the time of the appointment. The original Trustees of this Trust shall be composed of the following individuals:

Mayor Bob Coburn
Jaime Stout
Kim Lynch
Wren Stratton
Charles Moore
Marlon Coleman
Jennifer Crotty
Roger Bell
ShIronbutterfly Ray

Each successor Trustee in office so appointed and confirmed, upon vacancy by the original trustee, shall without any further act, deed or conveyance become a Trustee of this Trust and become fully vested with all of the estate, properties, rights, powers, duties, and obligations of his or her predecessor with like effects as if originally named Trustee herein.

To ensure the fulfillment of purpose of the Trust, preference shall be given to individuals who possess any of the following unique skill sets or advanced knowledge: history; arts, film or humanities; fundraising; finance; technology; or experience in physical plant or facilities operations.

Section 2. Terms of Office

- a. All terms of office shall expire as of July 31st and new terms shall commence on August 1 of the calendar year.
- b. The terms of office of all successor Trustees shall be five years, except that:
 - (1) regardless of the calendar date when each Trustee is appointed, their terms shall expire on the July 31st closest to the five year term to which appointed; and
 - (2) each Trustee shall hold office until their successor has been appointed and qualified.
- c. The inaugural terms of the Trustees shall be established as follows:

Mayor Bob Coburn – Expires July 31, 2019
Jaime Stout – Expires July 31, 2022
Kim Lynch – Expires July 31, 2020
Wren Stratton – Expires July 31, 2020
Charles Moore – Expires July 31, 2020
Marlon Coleman – Expires July 31, 2021
Jennifer Crotty – Expires July 31, 2021
Roger Bell – Expires July 31, 2021
ShIronbutterfly Ray – Expires July 31, 2022

Section 3. Officers

The officers of the Board of Trustees shall be a Chairman, a Vice-Chairman, a Secretary, and a Treasurer.

Section 4. Chairman and Vice-Chairman

The Trustees shall elect from the duly appointed Trust Authority members, a Chairman and a Vice-Chairman who shall serve terms of one year beginning August 1 of each calendar year by a simple majority vote of its members. No Trustee may serve more than three (3) terms as Chairman. Trustee Jaime Stout shall serve as the initial Chairman of the Trust.

It shall be the duty of the Chairman to call and preside over the meetings of the Board of Trustees, to direct the recording of minutes of deliberations, and to appoint committees and assign

their respective activities. The Chair shall sign all resolutions, contracts, deeds and other legal instruments made by the Trust. The Chair shall be authorized to sign or countersign orders and checks for the disbursement of money.

The Vice-Chairman shall perform the duties of the Chairman in her or his absence or incapacity; provided, however, the Vice-Chair shall not sign or countersign orders or checks for the disbursement of money. In case of the resignation or death of the Chairman, the Vice-Chairman shall perform all duties as prescribed for the Chairman until such time as a new Chairman shall have been duly designated.

Section 5. Secretary and Assistant Secretary

The Trustees shall elect a Secretary from its membership by a simple majority vote of its members and may appoint an Assistant Secretary. The Secretary and the Assistant Secretary shall serve terms of one year beginning August 1 of each calendar year. Should the office of Secretary become vacant, the Trust shall elect a successor from among its members at the next meeting, and such election shall be for the unexpired term of said office.

The Secretary shall attest to all resolutions, contracts, deeds and other legal instruments made by the Authority, and shall sign Certificates of the Recording Officer as required. The Secretary shall be authorized to sign or countersign orders and checks for the disbursement of money.

The Assistant Secretary shall perform the duties of the Secretary in absence or incapacity; provided, however, shall not sign or countersign orders or checks for the disbursement of money.

Section 6. Treasurer

The Trustees shall elect a Treasurer by a simple majority vote of its members and the office of Treasurer is not required to be held by a Trust member.

Section 7. Compensation

A Trustee shall receive no compensation for services, but shall be entitled to necessary expenses, including traveling expenses incurred in the discharge of office.

ARTICLE III-EMPLOYEES

The Trustees may appoint a general manager for the Trust Estate and may, at their discretion, employ such other clerical, professional, legal, and technical assistance as may be deemed necessary in the discretion of the Trustees to properly operate the business of the Trust Estate, and may upon majority vote, fix their duties, terms of employment and compensation. All Trustees shall serve without compensation but may, upon majority approval from the Trustees, be reimbursed for reasonable expenses incurred in the performance of their duties hereunder.

In the event a general manager is appointed by the Trustees, the said general manager shall administer the business of the Trust Estates as directed from time to time by the Trustees. The general manager shall assume responsibility for the employment of any subordinate employees of the Trust as necessitated by the needs of the Trust. The Trustees themselves shall not deal directly with the subordinates of the general manager, but shall do so only through the general manager.

The Trustees may appoint other employees as necessary.

ARTICLE IV-MEETINGS

Section 1. Meetings

All meetings of the Roxy Theater Community Trust shall be open unless an executive session is authorized. The requirements of the Oklahoma Open Meetings Act shall be adhered to.

Section 2. Regular Meetings

The Trustees of the Roxy Theater Community Trust shall hold regular meetings each quarter at the Roxy Theater, 220 West Okmulgee, Muskogee, Oklahoma. However, the Trustees may, by a simple majority vote, cancel or change the date or location of the next regular meeting, subject to the requirements of the Oklahoma Open Meetings Act

Section 3. Special Meetings

The Chairman may, when deemed necessary, or shall upon the written request of two Trustees, call a special meeting of the Trustees for the purpose of transacting any business designated in the call. The written notice and agenda of a special meeting shall be delivered to the City Clerk of the City of Muskogee and each Trustee, and be delivered to the business or home address of each Trustee at least two (2) days prior to the date of such special meeting. Notices shall be posted as required by the Oklahoma Open Meetings Act by the City of Muskogee City Clerk.

Section 4. Annual Meeting

There shall be an Annual Meeting held each calendar year. The Trustees shall elect officers at the Annual Meeting for the coming year as prescribed by Article II, of these By-Laws.

Section 5. Quorum

A majority of the Trustees shall constitute a quorum for the purpose of conducting business and exercising the powers of the Authority and for all other purposes, when a quorum is in attendance, action may be taken by a majority vote of the Trustees present.

Section 6. Manner of Voting

The voting on all questions coming before the Trustees shall be by roll call; and the Aye's and Nay's shall be entered on the Minutes of the meeting.

Section 7. Attendance

Each member of the Board of Trustees should make every effort to attend all meetings described in this Article of these By-Laws. In the event a member is unable to attend a Regular or Special meeting they should obtain an excused absence by notifying the Chairman prior to the meeting time. Three (3) unexcused absences within a one (1) year rolling period shall automatically serve as a forfeiture of the office of Trustee without further act or deed.

ARTICLE V-ANNUAL REPORT

Section 1.

The Trustees shall prepare annually a report of the Authority's activities during the preceding fiscal year ending 30 June to include a complete financial statement setting forth its assets, liabilities, income and operating expenses as of the end of such fiscal year. This report shall be submitted to the City of Muskogee before 31 July of each calendar year.

The Trustees shall submit to the City of Muskogee an interim report in April of each year in conjunction with a proposed budget and allocation request.

ARTICLE VI-AMENDMENTS

Section 1. Amendments to By-Laws

The By-Laws of the Trust may be amended with the approval of at least three (3) of the Trustees of the Authority at a regular or a special meeting. Except by unanimous consent of all the Trustees, no proposed amendment to the By-Laws shall be voted upon until the same shall have been reduced to writing, filed with the Secretary, and read at the regular meeting immediately preceding the meeting at which the same is voted upon.

**NOW THEREFORE, BE IT RESOLVED BY THE ROXY THEATER
COMMUNITY TRUST:**

ADOPTED this 27 day of July, 2018.


CHAIRMAN

Attest:


SECRETARY

RATIFIED AND ACCEPTED THIS _____ DAY OF _____, 2018.

JOHN R. COBURN, MAYOR

ATTEST:

TAMMY L. TRACY, CITY CLERK

APPROVED AS TO FORM AND LEGALITY THIS _____ DAY OF _____,
2018.

ROY D. TUCKER, CITY ATTORNEY

Public Works Committee

6.

Meeting Date: 08/06/2018

Submitted For: Tammy Tracy, City Clerk

Initiator: Tammy Tracy, City Clerk

Department: City Clerk

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval of the reappointment of Alice Smith to serve a three (3) year term on the Muskogee Housing Authority Board, ending on June 30, 2021, or take other necessary action. (Councilor Marlon Coleman)

BACKGROUND:

Ms. Smith's term on the Muskogee Housing Authority Board expired May 31, 2018. She is requesting reappointment to the Board.

RECOMMENDED ACTION:

Approval of reappointment

Fiscal Impact

Attachments

Alice Smith

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION



**CITY OF MUSKOGEE
CITY COUNCIL**

**APPLICATION FOR CITY COUNCIL APPOINTMENT TO A BOARD
OR COMMISSION**

Application Instructions:

- Complete the entire application form (copies of the form are acceptable).
- Applicants are strongly encouraged to attach a current resume or biography.
- Specifically list the names of the boards or commissions to which you are applying (multiple selections are allowed). Paperwork cannot be appropriately processed unless specific boards or commissions are listed.
- Return application along with your resume to:
Office of the City Clerk, 229 W. Okmulgee, Muskogee, OK 74403 or by fax 918-684-6395.
- This form can be obtained electronically at <http://www.cityofmuskogee.com>, or by calling the City Clerk's Office at: (918) 684-6270.

Board(s) or Commission(s) for which you would like to be considered:

MUSKOGEE HOUSING AUTHORITY

Your Full

Legal Name: Alice M. Smith

Your

Preferred Name: Alice Smith

Business Name: _____

Home Address: _____

Job Title/Employment Date: N/A

City Zip: Muskogee, Okla. 74401

Business Address: 23

4

Ward:

1

Home Phone: _____

Business Phone: _____

Cell Phone: _____

Fax: _____

Home Email: _____

Business Email: _____

Are you registered to vote in City of Muskogee Elections?

☒ Yes

☐ No

Are you a citizen of the United States?

☒ Yes

☐ No

Personal Information:

The Mayor and Council desire a broad representation of backgrounds on boards and commissions.

Education (high school, name and location of college or university, year graduated, and degree):

Muskogee Public School - 1967 - Manual Training High

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION

Current employment (job description, employment date, supervisor):

Retired, 2009

Previous employment or experience:

Golden Rule - Employment Training + marketing
Consultant - Job placement for clients of Golden Rule
Also worked at Oklahoma Childrens Center
in Taft, Okla as a Transportation officer,
before the centers were closed down in Taft.
A people person, I try to solve problems to be
open to others, to help in any way I can.

Professional Licenses Held (if applicable):

Professional References (name, title, contact phone number):

Krista Tallon - Community Manager - 918-910-5570

Memberships in professional or civic organizations (please include offices held and dates of terms):

Muskogee Housing Authority Board member

Military Service Record (including awards, decorations, etc.):

N/A

Have you ever been elected or appointed to any public office, board or commission in the City of Muskogee? No ☒ Yes (If yes, please list with dates served)

Muskogee Housing Authority 2015-present

Do you currently hold a public office? Public offices include elected or appointed officials of a municipality (it does not have to be Muskogee it could be any town or city), elected or appointed official of any county or the state or federal government, are a trustee of a public trust, are employed by any entity as a police officer, fire fighter, deputy sheriff, assistant district attorney or similar position or the member of a school board or appointed official of a school system or any other public or similar position.

Do you have any financial or other interests that might present a conflict of interest, or the appearance of such a conflict, if you were to be appointed to the position for which you have applied? No ☒ Yes (If yes, please explain)

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION

Please list any special interests or characteristics which might be important to serve on a Board or Commission:

able to listen and understand matters that concern
M.H.A

RELEASE OF INFORMATION

I authorize the use of any information contained in the **APPOINTMENTS APPLICATION** to verify my statements made in the Application. I authorize my past employers, all references, and any other persons to answer all questions asked concerning my ability, character, reputation and previous education or employment record. I release all such persons from any liability or damages on account of having furnished such information. I consent to such investigations as Pam Bates, City Clerk or her authorized representatives may make regarding law enforcement records and my general background.

I certify under penalty of perjury under the laws of the State of Oklahoma, that the above information is true, complete and correct to the best of my knowledge.

Alicia M. Smith

Signature of Nominee

05-10-2018

Date

Submitted by the Mayor for approval by the City Council this _____ day of _____, 20____

Signature of Sponsor

THE
UNIVERSITY OF OKLAHOMA

College of
Continuing Education

CERTIFIES THAT

Alice M. Smith

HAS PARTICIPATED IN AND COMPLETED
Employment Training Specialist Orientation
and Competency Test

May 16, 2003

DATE



Tulsa, Oklahoma

LOCATION

James T. Probas
VICE PROVOST
COLLEGE OF CONTINUING EDUCATION

Daniel L. Brer
PRESIDENT
THE UNIVERSITY OF OKLAHOMA

Carol A. Hoadley
REGISTRAR, CONTINUING EDUCATION

Charles B. Brer
DIRECTOR

Public Works Committee

7.

Meeting Date: 08/06/2018

Submitted For: Tammy Tracy, City Clerk

Initiator: Tammy Tracy, City Clerk

Department: City Clerk

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval of the appointment of Rev. Leroy Walker to serve a five (5) year term on the Martin Luther King Jr. Community Center Trust Authority beginning August 14, 2018, and ending on July 31, 2023, or take other necessary action. (Mayor Bob Coburn)

BACKGROUND:

Rev. Walker will be filling the expired term of Councilor Wayne Johnson whose term expired July 31, 2018.

RECOMMENDED ACTION:

Approval of appointment

Fiscal Impact

Attachments

Rev. Leroy Walker

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION



CITY OF MUSKOGEE
CITY COUNCIL

APPLICATION FOR CITY COUNCIL APPOINTMENT TO A BOARD
OR COMMISSION

Application Instructions:

- Complete the entire application form (copies of the form are acceptable).
- Applicants are strongly encouraged to attach a current resume or biography.
- Specifically list the names of the boards or commissions to which you are applying (multiple selections are allowed). Paperwork cannot be appropriately processed unless specific boards or commissions are listed.
- Return application along with your resume to:
Office of the City Clerk, 229 W. Okmulgee, Muskogee, OK 74403 or by fax 918-684-6395.
- This form can be obtained electronically at <http://www.cityofmuskogee.com>, or by calling the City Clerk's Office at: (918) 684-6270.

Board(s) or Commission(s) for which you would like to be considered:

Martin Luther King Board

Your Full Legal Name: Leroy Walker Your Preferred Name: Leroy

Business Name: Rayfield Baptist Ch Home Address: _____

Job Title/Employment Date: Pastor 1978 City Zip: Muskogee, OK 74401

Business Address: 601 Indianapolis St Ward: 1 2 3 4

Muskogee, OK 74401 Home Phone: _____

Business Phone: 918-682-9515 Cell Phone: _____

Fax: _____ Home Email: PastorLeroyWalkerSr@gmail.com

Business Email: _____

Are you registered to vote in City of Muskogee Elections? Yes No
Are you a citizen of the United States? Yes No

Personal Information:

The Mayor and Council desire a broad representation of backgrounds on boards and commissions.

Education (high school, name and location of college or university, year graduated, and degree):

Boynton High School Boynton OK
Peoria Barber College Tulsa OK
Took some College Courses AT ACC And NSU

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION

Current employment (job description, employment date, supervisor):

Pastor of Rayfield Baptist Church 1978
Muskogee, OK

Previous employment or experience:

Employed At Oklahoma Natural Gas Co. For 32 years
Retired in 2007 as one of Tulsa area manager.

Professional Licenses Held (if applicable):

N/A

Professional References (name, title, contact phone number):

Dorothy Hooks - Trustee 918-530-1129
Truman Marshall - Vice Chair Trustee 918-724-0546

Memberships in professional or civic organizations (please include offices held and dates of terms):

Muskogee
City of Muskogee Foundation - Board Member Chair The
Education & Empowerment Committee, Served on The Quality of
Life Committee in the past.

Military Service Record (including awards, decorations, etc.):

N/A

Have you ever been elected or appointed to any public office, board or commission in the City of Muskogee? ☒ No ☐ Yes (If yes, please list with dates served)

Do you currently hold a public office? Public offices include elected or appointed officials of a municipality (it does not have to be Muskogee it could be any town or city), elected or appointed official of any county or the state or federal government, are a trustee of a public trust, are employed by any entity as a police officer, fire fighter, deputy sheriff, assistant district attorney or similar position or the member of a school board or appointed official of a school system or any other public or similar position.

N/A

Do you have any financial or other interests that might present a conflict of interest, or the appearance of such a conflict, if you were to be appointed to the position for which you have applied? ☒ No ☐ Yes (If yes, please explain)

APPLICATION FOR APPOINTMENT TO A BOARD OR COMMISSION

Please list any special interests or characteristics which might be important to serve on a Board or Commission:

*Love Muskogee I like Helping Where I
Can To improve it.*

RELEASE OF INFORMATION

I authorize the use of any information contained in the **APPOINTMENTS APPLICATION** to verify my statements made in the Application. I authorize my past employers, all references, and any other persons to answer all questions asked concerning my ability, character, reputation and previous education or employment record. I release all such persons from any liability or damages on account of having furnished such information. I consent to such investigations as Tammy Tracy, City Clerk or her authorized representatives may make regarding law enforcement records and my general background.

I certify under penalty of perjury under the laws of the State of Oklahoma, that the above information is true, complete and correct to the best of my knowledge.

Leroy Walker Sr
Signature of Nominee

July 16, 2018
Date

Submitted by the Mayor for approval by the City Council this _____ day of _____, 20____

Signature of Sponsor