

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).

POSTING DATE: JUNE 6, 2024

**SPECIAL CALL
AGENDA
MUSKOGEE CITY COUNCIL
JUNE 10, 2024**

TO: ALL MEMBERS OF THE MUSKOGEE CITY COUNCIL

Official action can only be taken on items which appear on the agenda. The public body may adopt, approve, ratify, deny, defer, recommend, amend, strike, or continue any agenda item.

When more information is needed to act on an item, the public body may refer the matter to Staff or back to Committee or the recommending body.

Under certain circumstances, items are deferred to a specific date or stricken from the agenda entirely.

By virtue of the authority vested in me as Mayor of the City of Muskogee, Oklahoma, I do hereby issue a call for a Special Call Meeting of the Muskogee City Council to convene:

DATE: JUNE 10, 2024
TIME: 5:30 P.M.
**PLACE: COUNCIL CHAMBERS, THIRD FLOOR
MUNICIPAL BUILDING, 229 W. OKMULGEE,
MUSKOGEE, OKLAHOMA**

**ROLL CALL
PURPOSE:**

1. Consider approval of a Memorandum of Understanding (MOU) between the City of Muskogee and the Fraternal Order of Police Lodge #95 (FOP) to make a one-time change to the Collective Bargaining Agreement for the July 2024 shift bid process and the subsequent shift change date as a result of manpower concerns, or take other necessary action. (Johnny Teehee)
2. Consider approval to amend City Council Policy 3-1-4, Muskogee Police Department Recruiting and Hiring Incentives, or take other necessary action. (Johnny Teehee)
3. Consider approval to authorize the City Manager to negotiate and execute a professional services agreement with the Muskogee City-County Port Authority, and/or, if necessary, to negotiate and execute a thirty (30) day extension of the current professional services agreement, or take other necessary action. (Mike Miller)

4. Discuss and consider approval of a Memorandum of Understanding with the Muskogee City-County Port of Muskogee (Port) to collaborate in the preparation and presentation of a grant application to the City of Muskogee Foundation in the amount of \$2,000,000.00, and accept the funds if awarded; and authorize the City Manager to negotiate and execute the same, or take other necessary action. (Mike Miller)
5. Consider an Executive Session to discuss and take possible action on the following:
 - a. Pursuant to Section 307 C.11, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss matters pertaining to a proposed Economic Development Project located in the Port of Muskogee, including an incentive request, and if necessary, take appropriate action in Open Session. (Mike Miller)

The City Clerk is hereby authorized to give each member of the Muskogee City Council notice of this Special Call Meeting as provided by the Charter of the City of Muskogee, Oklahoma.

ADJOURN

Special Call City Council

1.

Meeting Date: 06/10/2024

Submitted For: Johnny Teehee, Police

Initiator: Chad Farmer,
Deputy Chief

Department: Police

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval of a Memorandum of Understanding (MOU) between the City of Muskogee and the Fraternal Order of Police Lodge #95 (FOP) to make a one-time change to the Collective Bargaining Agreement for the July 2024 shift bid process and the subsequent shift change date as a result of manpower concerns, or take other necessary action. (Johnny Teehee)

BACKGROUND:

The Muskogee Police Department Patrol Division changes shifts twice a year. January and July. The shift bids have to be completed by June 15th for the July shift change which is the first full pay period in July.

We currently have five officers that have applied to OHP and have all received conditional offers pending physicals and mental health evaluations. The official dates of their hiring will not be known until after the current scheduled shift bid process is completed.

We would request that the shift bid be completed by July 31, 2024 and that shift change would be the second full pay period of August 2024.

Shift bids would resume on the same schedule listed in the contract for the January 2025 shift change.

RECOMMENDED ACTION:

Approve the Memorandum of Understanding between the City of Muskogee and the Fraternal Order of Police Lodge #95.

Fiscal Impact

Attachments

MOU Shift Bid change 2024 MPD

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF MUSKOGEE AND
THE MUSKOGEE FRATERNAL ORDER OF POLICE LODGE 95**

Whereas, the City of Muskogee (the City) and The Muskogee Fraternal Order of Police Lodge 95 (FOP) have reached a mutual agreement effective this ____ day of _____, 2024;

Whereas, The City and the FOP agreed to a one-time change to the Collective Bargaining Agreement for the July 2024 shift bid process and shift change date as a result of an anticipated manpower reduction;

Whereas, the current agreement calls for a shift bids to be completed by July 15, 2024, and the shift change to be take effect the first full pay period of July, 2024, but the Muskogee Police Department expects a temporary reduction in force after the current shift bid process should be completed;

FOP desires that the shift bed be completed by July 31, 2024, and that shift change would be effective the second full pay period of August 2024;

Whereas, the City finds that such a change is for a public purpose and supports the general welfare and safety of the officers of the Muskogee Police Department and the citizens of the City;

Therefore Be It Resolved, the City of Muskogee (the City) and The Muskogee Fraternal Order of Police Lodge 95 have mutually agreed to the following:

The Collective Bargaining Agreement between the City of Muskogee and The Muskogee Fraternal Order Of Police Lodge 95 is hereby amended to allow for the 2024 shift bed change to be completed by July 31, 2024, with said shift change being effective the second full pay period in August, 2024. The normal shift bid change schedule will resume in January 2025.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the date signed below.

Mayor

Date

President, Muskogee FOP
Lodge 95

City Clerk

City Attorney

Special Call City Council

2.

Meeting Date: 06/10/2024

Submitted For: Johnny Teehee, Police

Initiator: Chad Farmer, Deputy Chief

Department: Police

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval to amend City Council Policy 3-1-4, Muskogee Police Department Recruiting and Hiring Incentives, or take other necessary action. (Johnny Teehee)

BACKGROUND:

In January 2019, City Council approved City Council Policy 3-1-4 to begin an incentive program that paid CLEET certified officers \$10,000 .00 and non-certified officers \$5,000.00. The Muskogee Police Department would like to change this policy to \$15,000 for Cleet Certified and \$0 for non-certified. This change is an attempt to get trained officers on the street faster due to workforce shortages.

The amended Sections are attached to this agenda item.

The employee agreement that is listed as Exhibit A needs to be amended to show the new dollar amount of \$15,000 for a certified candidate and remove the language for a non-certified candidate.

RECOMMENDED ACTION:

Recommend approval of City Council 3-1-4, Muskogee Police Department Recruiting and Hiring Incentives Policy.

Fiscal Impact

Attachments

Current Policy

Amended Section of Current Policy

CITY COUNCIL POLICY 3-1-4

DISTRIBUTION: City Manager, all departments

SUBJECT: Muskogee Police Department Recruiting and Hiring Incentives

APPLICATION: Applies to employees all employees of the City of Muskogee (except as may be provided differently under the terms of a collective bargaining agreement (cba) and/or associated cba prevailing practices).

PURPOSE: To govern the provisions of recruiting incentives for newly hired uniformed employees of the Muskogee Police Department and referral incentives for other employees, as allowed. This policy specifies the timing of payments and factors used in determining incentive amounts. This incentive is a sum or sum(s) of money which is paid to an employee with the sole objective of incentivizing the employee who is receiving the money to accept and continue employment with the City of Muskogee Police Department.

BACKGROUND: In recent years, recruiting for uniformed Police Officers has been difficult in all areas of the country and the difficulty continues to grow, with Muskogee feeling the effect. Hiring for police officers is costly and invasive, compared to other positions in the City and many candidates struggle to meet the minimum hiring standards. In addition, various events in the United States have caused a growing distrust of law enforcement among some segments of society, making law enforcement an undesirable career. Prior to, and including 2014, the Muskogee Police Department sent out over 100 letters per testing process to candidates who applied for the position of Police Officer. In recent years, that number has continued to decline. In 2018, we sent out only as many as 56 letters to applicants for the testing process and the number of applications received continues to decline.

A. CLEET Certified Eligibility

CLEET certified officers applying for, and being hired into, the position of Police Officer will be eligible for a \$10,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:

1. \$5,000 will be paid on the first normal pay period after the CLEET certified officer is formally hired.
2. \$2,500 will be paid on the first normal pay period after successful completion of the department's Field Training Program.
3. \$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police department.

B. Out of State Certified Eligibility

Certified officers from other states applying for the position of, and being hired into, the position of Police Officer will be eligible for a \$10,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:

1. \$5,000 will be paid on the first normal pay period after the certified officer is formally hired.
2. \$2,500 will be paid on the first normal pay period after receiving the Oklahoma CLEET certification and after completion of the department's Field Training Program.
3. \$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police Department.

C. Non-CLEET Certified Eligibility

Civilians applying for the position of, and being hired into, the position of Police Officer and are not already CLEET certified will be eligible for a \$5,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:

1. \$1,250 will be paid on the first normal pay period after the person is formally hired.
2. \$1,250 will be paid on the first normal pay period after the successful completion of the department's Field Training Program.
3. \$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police department.

D. Referral Incentive

Employees who refer a potential officer candidate to the Muskogee Police Department and that candidate is hired and successfully completes the department's Field Training Program will be eligible for a \$1,500 referral incentive.

1. The candidate must indicate that he/she was referred by a specific employee at the beginning of the application process and the employee's name must be included on the candidate's application prior to the application being submitted to the Human Resources Department.
2. Only one employee may receive the \$1,500 referral incentive for each successfully hired candidate.
3. There is no limit on the number of officer candidates an employee can refer and receive incentive.
4. Incentives shall only be distributed to active fulltime employees.

E. Responsibilities of the Employee

The employee is responsible for agreeing to and signing a written agreement (Exhibit A) and Promissory Note (Exhibit B) between the City of Muskogee and the employee and assuring understanding of and agreement to the following:

1. Employee must maintain employment at the City of Muskogee for a minimum of five (5) years from the date of hire. If the employee is unable to satisfy the five

(5) year minimum requirement and is terminated or voluntarily leaves employment for any reason before that point, the employee is responsible for the repayment of the pro-rated portion of the sign-on incentive that was paid. For example, if the employee completes twenty-four full months of service, the employee must repay 60% of the total incentive (100%-1.67% for each full month of employment completed).

F. Tax Provisions

The City of Muskogee makes no representation of any kind whatsoever regarding the tax consequences to participants of payments made herein. The City shall withhold taxes and other obligations, such as garnishments, from the payment amount to the extent required by state or federal law.

G. Rehire Provisions

This recruiting incentive will not apply to any person who is employed by the Muskogee Police Department, or rehired by the Muskogee Police Department, on or after the effective date of this policy.

H. Terms of Policy

This policy will be utilized at the discretion of the City Manager as deemed appropriate based on the recruiting needs of the Muskogee Police Department. When deemed necessary, the City Manager, or his designee, will place the information of the incentive structure on the job posting and provide notice to all employees that the policy is active for purpose of Sections A-D above. The City Manager will set a policy activation date and the incentive will remain active until the City Manager determines the incentive is not needed or funding is not available. All dates will be maintained by the Human Resources Department.

REFERENCES: N/A

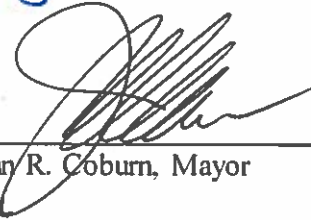
EFFECTIVE DATE: January 18, 2019

RESCISSION: This policy rescinds and supersedes any prior policy in conflict herewith

RESPONSIBILITY DEPARTMENT: Human Resources

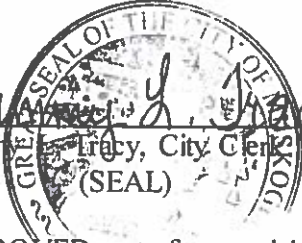
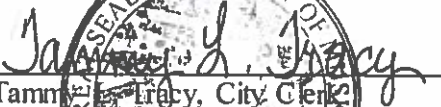
(This portion of the page has intentionally been left blank)

PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MUSKOGEE,
OKLAHOMA, THIS 28 DAY OF January, 2019.




John R. Coburn, Mayor

ATTEST:

Tammy L. Tracy, City Clerk
(SEAL)

APPROVED as to form and legality this 28 day of January, 2019.



Roy D. Tucker
City Attorney

Recruiting and Hiring Incentive Agreement

This Recruiting and Hiring Incentive Agreement (the "Agreement") is entered into by and between the City of Muskogee (the "City") and the employee (the "Employee") (collectively, the "Parties").

The City of Muskogee agrees to pay the Employee an incentive of up to \$10,000 for CLEET Certified candidates, \$10,000 for out of state Certified candidates or \$5,000 for non-certified candidates. This incentive is subject to all required taxes and withholdings, as required by law.

The Parties agree the payments are incentives the Employee will earn by completing various stages of employment by the City within the first twelve months following the hire date.

Repayment of incentive. Employee agrees to repay to the City all or a prorated amount of the incentive, according to the following terms:

(a) Repayment due to termination of employment. If Employee's employment with the City terminates less than five (5) years after the hire date, Employee agrees to repay the full amount of the incentive, less 1.67% for each full month of employment completed. Employee agrees that repayment obligations under this Agreement are not reduced by completion of partial months of employment other than as stated in this Agreement. The Employee further agrees they will repay the incentive by no later than the effective date of the employment termination, and that any outstanding balance on such repayment obligations is delinquent and immediately collectable the day following the effective date of termination.

(b) Repayment forgiveness. The City agrees to forgive any repayment due under this Agreement where the City terminates the Employee's employment due to a City-or department-wide reduction in force. The City, may also, in its sole discretion, forgive any repayment due under this Agreement under circumstances of an extraordinary or unavoidable nature. The Parties agree the Employee's voluntary termination of his/her employment, or the City's termination of the Employee's employment for any reason other than those stated in this section, are not conditions requiring forgiveness of any repayment due under this Agreement.

No Guarantee of Continued Employment. Nothing in this Agreement guarantees employment for any period of time.

Consent to Withhold. Employee agrees that any repayment due under this Agreement may be deducted to the extent permitted by law from any amounts due to the Employee at the time of employment termination, including wages, accrued annual leave, incentive compensation payments, and hereby expressly authorizes such deduction(s).

Acknowledgement and Integration. Employee understands he/she has the right to discuss this Agreement with any individual, and that to the extent desired, he/she availed him/herself of this

opportunity. Employee further acknowledges that he/she has carefully read and fully understands the provisions of this Agreement, and that he/she is voluntarily entering into it without any duress or pressure from the City. Employee also understands and acknowledges that this Agreement is the entire agreement between him/her and the City with respect to this subject matter, and Employee acknowledges that the City has not made any other statements, promises or commitments of any kind (written or oral) to cause Employee to agree to the terms of this Agreement.

Severability. The Parties agree that should any provision of this Agreement be declared or determined by any court to be illegal, invalid or unenforceable, the remainder of the Agreement shall nonetheless remain binding and enforceable and the illegal, invalid or unenforceable provision(s) shall be modified only so much as necessary to comply with applicable law(s).

Employee:

City:

Signature

Witness

Printed Name

Title

Date

Date

City of Muskogee Police Department Promissory Note

The City of Muskogee requires individuals who receive a hiring incentive to sign a promissory note to repay the City of Muskogee for the recruiting incentive they receive, if the Officer leaves the Muskogee Police Department prior to completing five years of service.

This is an agreement between the City of Muskogee and the individual signing this Promissory Note. Under no circumstances shall the City of Muskogee, or any law enforcement agency, be held liable by the individual signing this Promissory Note for any default, breach in terms of conditions, or payment due under this Promissory Note.

For purposes of explanation of the "Promissory Note" the following definitions apply:

1. A Promissory Note ("the Note") is a written promise to pay a specific amount of money in accordance with the terms and conditions stated in the note.
2. Following the official start date of the employee, the employee receives a credit of 1.67% for each month of completed service against the money owed under this Note. This reduction includes, but is not limited to, regular days off, vacation, sick time and injury leave. As long as the Officer continues to work, the amount of money due under the Note continues to decrease. If the Officer works continuously for the City of Muskogee Police Department for the full five (5) years, as required, the Officer will not owe any money under the Note.
3. If the Officer leaves the Muskogee Police Department before the full five (5) year requirement, the Note will be due and the Officer will owe to the City of Muskogee the amount left on their Note. Each full month of employment will satisfy 1.67% of the Note. For example, if an individual works thirteen (13) full months, then for any reason other than those allowed by policy, leaves employment, the Officer will owe forty-seven (47) months, or 78.49%.
4. If the Officer leaves employment before the required five (5) years and does not pay off the money due under the Note, and does not repay the Note as agreed, the City of Muskogee can file suit in District Court to enforce the Promissory Note. If the City of Muskogee obtains a judgement, the City may take action to collect any judgement.
5. The City agrees to forgive any repayment due under this Agreement where the City terminates the Employee's employment due to a City-or department-wide reduction in force. The City, may also, in its sole discretion, forgive any repayment due under this Agreement under circumstances of an extraordinary or unavoidable nature. The Parties agree the Employee's voluntary termination of his/her employment, or the City's termination of the Employee's employment for any reason other than those stated in this section, are not conditions requiring forgiveness of any repayment due under this Agreement.
6. Oklahoma law requires that a Promissory Note contain certain legal, technical language. You may want to consult with your attorney before signing this Note. The City of Muskogee cannot give individuals legal advice.

7. In the Promissory Note, the terms "I" or "me" refer to the person who signs the note. In Oklahoma law, the person who signs the note is known as the "Maker", so any reference in the Note or in correspondence to "Maker" is a reference to the person who signs the Note.

Promissory Note

This Promissory Note is an agreement between the City of Muskogee and the individual signing this Promissory Note, who will be referred to as "I" or "Me" or "Maker."

This Note is made and signed by _____,

This Note is signed on this ____ day of _____, 20____.

I, _____, commit to repay the City of Muskogee 1.67% for each full month of unfulfilled service if I leave the City for any reason, except as those allowed by policy, before the required five (5) year commitment is complete.

MAKER'S NAME AND MAILING ADDRESS (PRINTED)

MAKER'S PHONE NUMBER (WITH AREA CODE)

Signed this ____ day of _____, 2____

(Signature of Maker)

(Printed name of Maker)

State of Oklahoma

County of _____

Subscribed and sworn to before me this ____ day of _____, 2____

by _____ (the Maker) who acknowledged the same as his or her voluntary act.

Notary Public

My commission number is _____

My commission expires _____

A. CLEET Certified Eligibility

CLEET certified officers applying for, and being hired into, the position of Police Officer will be eligible for a ~~\$10,000~~ \$15,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:

1. ~~\$5,000~~ \$10,000 will be paid on the first normal pay period after the CLEET certified officer is formally hired.
2. \$2,500 will be paid on the first normal pay period after successful completion of the department's Field Training Program.
3. \$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police department.

B. Out of State Certified Eligibility

Certified officers from other states applying for the position of, and being hired into, the position of Police Officer will be eligible for a ~~\$10,000~~ \$15,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:

1. ~~\$5,000~~ \$10,000 will be paid on the first normal pay period after the certified officer is formally hired.
2. \$2,500 will be paid on the first normal pay period after receiving the Oklahoma CLEET certification and after completion of the department's Field Training Program
3. \$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police Department.

C. ~~Non-CLEET Certified Eligibility~~

~~Civilians applying for the position of, and being hired into, the position of Police Officer and are not already CLEET certified will be eligible for a \$5,000 incentive above and beyond their regular salary. The incentive will be paid in the following increments:~~

- ~~1. \$1,250 will be paid on the first normal pay period after the person is formally hired.~~
- ~~2. \$1,250 will be paid on the first normal pay period after the successful completion of the department's Field Training Program~~

~~\$2,500 will be paid on the first normal pay period after the employee has completed one year of employment with the Muskogee Police department.~~

Special Call City Council

3.

Meeting Date: 06/10/2024

Submitted For: Mike Miller, City Manager

Initiator: Katrina Bodenhamer, City Attorney

Department: City Manager

Staff Information Source:

Information

AGENDA ITEM TITLE:

Consider approval to authorize the City Manager to negotiate and execute a professional services agreement with the Muskogee City-County Port Authority, and/or, if necessary, to negotiate and execute a thirty (30) day extension of the current professional services agreement, or take other necessary action. (Mike Miller)

BACKGROUND:

The current professional services agreement between the Muskogee City-County Port Authority and the City of Muskogee expires on June 30, 2024. The new proposed agreement, which is currently being finalized, would take effect on July 1, 2024. The Port and the City are still finalizing the terms of the agreement. The attached amendment is an amendment to the original agreement, agreed to by both parties, extending the current contract term an additional 30 days in the event more time is needed to finalize the new agreement.

RECOMMENDED ACTION:

Authorize the City Manager to negotiate and execute the Professional Services Agreement, and/or, if necessary, the Amendment to extend the current contract an additional 30 days, if necessary.

Fiscal Impact

Attachments

Extension Agreement

Amendment #2 to the March 28, 2011

CONTRACT BETWEEN THE MUSKOGEE CITY-COUNTY PORT AUTHORITY
AND THE CITY OF MUSKOGEE

Section I. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect.

Section II. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect.

Section III. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect.

Section IV. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect.

Section V. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect pursuant to the original terms of the Agreement and as outlined in Amendment #1 (2015) to the March 28, 2011 Agreement.

Section VI. Unless amended herein all the terms, conditions, phases, section of said agreement shall remain in full force and effect.

Term: The term of this Agreement shall extend an additional thirty (30) days through July 30, 2024.

Dates this ____ day of _____, 2024.

CITY OF MUSKOGEE

MIKE MILLER, CITY MANAGER

Attest:

TAMMY L. TRACY, CITY CLERK
(seal)

Approved as to form and legality this _____ day of _____, 2024.

KATRINA BODENHAMER, City Attorney

Accepted and approved by the Muskogee City-County Port Authority.

Attest:

Secretary

President, Muskogee City-
County Port Authority

Special Call City Council

4.

Meeting Date: 06/10/2024

Submitted For: Mike Miller, City Manager

Initiator: Mike Miller, City Manager

Department: City Manager

Staff Information Source:

Information

AGENDA ITEM TITLE:

Discuss and consider approval of a Memorandum of Understanding with the Muskogee City-County Port of Muskogee (Port) to collaborate in the preparation and presentation of a grant application to the City of Muskogee Foundation in the amount of \$2,000,000.00, and accept the funds if awarded; and authorize the City Manager to negotiate and execute the same, or take other necessary action. (Mike Miller)

BACKGROUND:

The City of Muskogee and the Muskogee City-County Port authority are contemplating the attached agreement which would provide certain financial support for flood protection improvement for the construction of a berm behind the City's water treatment plant. This berm is necessary to mitigate flood risks. This would allow a joint application and collaboration for an out of cycle grant application to the City of Muskogee Foundation.

RECOMMENDED ACTION:

Approve the MOU

Fiscal Impact

Attachments

PORT MOU

MEMORANDUM OF UNDERSTANDING

BETWEEN

Muskogee City-County Port Authority

&

City of Muskogee

This Memorandum of Understanding (the “MOU”) is made and entered into on May __, 2024 (the “Effective Date”), between Muskogee City-County Port Authority (“Port Muskogee”) and the City of Muskogee (the “City” and together with Port Muskogee, the “Parties”) for the purpose of establishing an understanding between the two Parties regarding the financial support for the flood protection improvement project to construct a section of berm directly behind the City’s water treatment plant (the “Project”).

WHEREAS, Port Muskogee and the City desire to collaborate in the preparation and presentation of the City’s application to the City of Muskogee Foundation (the “Foundation”) for an out-of-cycle Economic Development \$2,000,000 grant request to fund the Project (the “Grant Funds”);

WHEREAS, the Parties understand and agree that in order to commence the Project, Port Muskogee requires assurances from the City or the Foundation that Port Muskogee will have access to the Grant Funds for utilization on the Project;

WHEREAS, the City, in its Capital Improvement Plan Ordinance 4235-A to be voted on August 28, 2024 (the “CIP”), has proposed the inclusion of \$2,000,000 for the construction of the Project (the “CIP Project Funds”);

WHEREAS, the City has agreed to allocate the CIP Project Funds to Port Muskogee for industrial development purposes if the Grant Funds are secured for the Project and the CIP is approved.

NOW, THEREFORE, the Parties agree as follows:

1. Project Description. The Project includes improvements to construct a berm section and to make special provisions around the City’s main water intake line at Port Muskogee, to be located directly behind the water treatment plant owned by the City. This berm section is necessary to mitigate flood risks to the City’s water treatment plant.
2. Grant Funds. Each Party agrees to collaborate and contribute to the preparation and presentation of the City’s application to the Foundation for the Grant Funds. The commencement of the Project by Port Muskogee is contingent upon (i) the Foundation’s written approval and award of the grant for the Grant Funds (the “Grant”) on or before June 30, 2024, and (ii) assurances within the Grant that the Grant Funds will be distributed to Port Muskogee on or before July 31, 2024. In the event the Grant Funds are distributed to the City, then the City shall immediately pay said Grant Funds to Port Muskogee for utilization on the Project.
3. City’s Funding Commitment. If the Parties are successful in securing the Grant Funds in accordance with Paragraph 2 above, and the CIP is approved, then the City shall allocate the CIP Project Funds to Port Muskogee for general industrial development purposes conducted on behalf of the City by Port Muskogee. The CIP Project Funds shall be disbursed during the term of the CIP, which begins October 1, 2025, and ends September 30, 2031.
4. Overages. In the event the project budget as allocated herein is not sufficient to finalize the project as bid and projected, neither party shall be liable for any additional funding amounts and shall negotiate, in good faith, to seek a resolution and/or additional funding.

5. Confidentiality. All non-public, confidential or proprietary information provided by one Party (the “Disclosing Party”) to the other Party (the “Receiving Party”), including, but not limited to, the terms of this MOU, the application to the City of Muskogee Foundation, and the Project, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with this MOU (“Confidential Information”) is confidential, solely for the Receiving Party’s use in performing this MOU and may not be disclosed or copied unless authorized by Disclosing Party in writing. Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Receiving Party’s breach of this MOU; (b) is obtained by the Receiving Party on a non-confidential basis from a third party that was not legally or contractually restricted from disclosing such information; (c) Receiving Party establishes by documentary evidence was in Receiving Party’s possession prior to Disclosing Party’s disclosure; or (d) was or is independently developed by Receiving Party without using any Confidential Information; is required to be released pursuant to the Oklahoma Open Records Act or € is required for performance of this Agreement. Upon Disclosing Party’s request, Receiving Party shall promptly return all documents and other materials received from Disclosing Party. In addition to all other remedies available at law, Disclosing Party shall be entitled to seek specific performance and immediate injunctive and other equitable relief for any violation of this Paragraph. Each Party’s obligations under this Paragraph will survive the termination or expiration of this MOU for a period of three years.
6. Term. This MOU shall be effective from the Effective Date and shall remain in effect until the fourth installment of the CIP Funds is distributed to Port Muskogee, as set forth in Paragraph 3.
7. Termination. This MOU may be terminated by either Party in the event (i) the other Party materially fails to perform any of its obligations under this MOU and does not cure the same within thirty (30) days of receipt of written notice from the non-breaching Party specifying the failure or (ii) the Grant is not secured in accordance with Paragraph 2.
8. Amendment. This MOU may be amended or modified only in a writing signed by both Parties, and as may be subject to approval by the governing bodies.
9. Governing Law. This MOU shall be governed by and construed in accordance with the laws of the State of Oklahoma, and shall be brought in and not removed from the District Court of Muskogee County, without regard to conflicts of law principles thereof.
10. Assignment. Neither Party may assign this MOU without the prior written approval of the other Party.
11. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE OR LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, OR SPECIAL DAMAGES OF ANY TYPE OR NATURE WHATSOEVER AND HOWEVER ARISING, INCLUDING, WITHOUT LIMITATION, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF ANY PROVISION OF THIS MOU, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY A PARTY OR COULD HAVE BEEN REASONABLY FORESEEN BY PERSON OR ENTITY, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.
12. Counterparts. This MOU may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of this MOU

delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this MOU.

13. No Third-Party Beneficiaries. Nothing herein is intended or shall be construed to confer upon any person or entity other than the Parties and their successors or permitted assigns, any rights or remedies under or by reason of this MOU.
14. Survival. All provisions of this MOU which by their nature are intended to survive termination or expiration of this MOU shall survive any such termination or expiration.
15. Notices. All notices under this MOU shall be in writing delivered by one of the following methods and shall be effective as follows: (i) when delivered in person to the recipient at the address below, (ii) two days following deposit with a recognized overnight courier (e.g., FedEx) for delivery to the address below, or (iii) one business day after submission by electronic mail to the email address below:

If to Port Muskogee: Port Muskogee
 5201 Three Forks Road
 Fort Gibson, OK 74434
 Attn: Port Director
 Email: kimbra@portmuskogee.com

If to City: City of Muskogee
 P.O. Box 1927
 Muskogee, OK 74402-1927
 Attn: City Manager
 Email: citymanager@muskogeeonline.org
 Copy to City Clerk
 Copy to City Attorney

16. Entire Agreement. This MOU constitutes the entire agreement and understanding between the parties with respect to the subject matter of this MOU and supersedes any previous or contemporaneous written or oral representations, statements, negotiations or contracts, if any.

[Signatures to Follow]

IN WITNESS WHEREOF, each Party has caused this MOU to be signed and delivered by its duly authorized representative as of the Effective Date.

City of Muskogee

By: Mike Miller
Title: City Manager

ATTEST:

TAMMY L. TRACY, CITY CLERK

Approved as to form and legality this _____ day of _____, 2024.

Muskogee City-County Port Authority

By: Earnie Gilder
Title: Chairman

Special Call City Council

5. a.

Meeting Date: 06/10/2024

Submitted For: Mike Miller, City Manager

Initiator: Katrina Bodenhamer, City Attorney

Department: City Attorney

Staff Information Source:

Information

AGENDA ITEM TITLE:

Pursuant to Section 307 C.11, Title 25, Oklahoma Statutes, consider convening in Executive Session to discuss matters pertaining to a proposed Economic Development Project located in the Port of Muskogee, including an incentive request, and if necessary, take appropriate action in Open Session. (Mike Miller)

BACKGROUND:

City Staff wishes to discuss with City Council a potential economic development project and agreement, and an incentive/funding request, for a project located in the Port of Muskogee. The City Attorney advises the City Council that public disclosure of the matter discussed would interfere with the development of the property, and that public disclosure would violate the confidentiality of the business.

RECOMMENDED ACTION:

Convene in Executive Session and, if appropriate, take appropriate action in Open Session

Fiscal Impact

Attachments

No file(s) attached.
