

# **SAPULPA MUNICIPAL AUTHORITY MEETING**

CITY HALL - 425 EAST DEWEY AVENUE

COUNCIL CHAMBERS, 2ND FLOOR

7:00 P.M., MONDAY, MARCH 5, 2018

MEETING PROCEDURE: Comments from the public are welcome at two different times during the course of the meeting. A Sign in Sheet is located at the back of the room. Those wishing to address the Municipal Authority are to sign in prior to the start of the meeting and identify the item(s) they wish to address. Comments concerning items scheduled on the Agenda will be heard immediately following the presentation by staff or petitioner and Comments concerning items not scheduled on the Agenda will only be heard under the Public Comments section. The Municipal Authority will act on an Item after all comments have been heard.

**PLEASE COME TO THE PODIUM WHEN THE CHAIRMAN CALLS YOUR NAME**

## **- AGENDA -**

1. **CALL TO ORDER.**
2. **ROLL CALL.**
3. **MINUTES.**
  - A. Consider approval of minutes for the February 19, 2018, regular municipal authority meeting.
4. **APPOINTMENTS, AWARDS, PRESENTATIONS, AND PROCLAMATIONS.**
5. **CONSENT ITEMS:** All matters under “Consent” are considered by the Municipal Authority to be routine and will be enacted by one motion. Any Municipal Authority Trustee may, however, remove an item from consent by request.
  - A. Consider Approving Claims in the amount of \$179,478.59  
(Refer to: Purchase Order Claim Register with City Agenda.)
6. **PUBLIC HEARINGS.**

7. **ADMINISTRATION.**

- A. Discuss and possible action regarding Amendment No. 1 to Professional Services Agreement with Tetra Tech, Inc for Engineering Services and additional required documentation needed for the construction of water line running between the Golf Course and Johnson Street on the west side waterline improvement project.
- B. Discuss and possible action regarding a Professional Services Agreement for Engineering Services with Tetra Tech for the planning, design, and project management of the West Side/SeneGence Sanitary Sewer Extension Project.
- C. Discuss and possible action regarding approval of a Lease Agreement with Glass Design, Inc. for the property located at 8810 West 100th Street South, Sapulpa, Oklahoma.
- D. Consider and take action with respect to a Resolution agreeing to file application with the Oklahoma Water Resources Board (The "OWRB") for financial assistance through their various loan programs, with the loan proceeds being for the purpose of financing certain Wastewater System Improvements; and containing other provisions related thereto.

8. **NEW BUSINESS.**

9. **INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

10. **PUBLIC COMMENTS:** The purpose of the Public Comments Section of the Agenda is for members of the public to speak to the Municipal Authority on any subject not scheduled on the Regular Agenda. The Municipal Authority shall make no decision or action, except to direct the Trust Manager to take action, or to schedule the matter for Municipal Authority discussion at a later date.

*Please come to the podium when the Chairman calls your name and keep your comments as brief as possible.*

11. **ADJOURNMENT.**

Posted this 2nd day of March, 2018 at or before 5:00 p.m., at the Sapulpa City Hall, 425 East Dewey, Sapulpa, Oklahoma.

Name: *Anna Jo Fife*

Title: *Administrative Assistant*



**AGENDA ITEM**

**Municipal Authority Regular**

**3.A.**

**Meeting Date:** March 5, 2018

**Submitted By:** Shirley Burzio, City Clerk

**Department:** City Clerk

**Presented By:**

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**SUBJECT:**

Consider approval of minutes for the February 19, 2018, regular municipal authority meeting.

**BACKGROUND:**

**RECOMMENDATION:**

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**Attachments**

minutes.02-19-2018 sma

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# DRAFT

**SAPULPA MUNICIPAL AUTHORITY**  
TRUST PROCEEDINGS  
Meeting of February 19, 2018

The Board of Trustees of the Sapulpa Municipal Trust Authority met in regular session Monday, February 19, 2018, at 7:00 o'clock P.M. in the City Hall Council Chambers, 425 East Dewey Avenue, Sapulpa, Oklahoma.

Present: Louis Martin, Jr., Vice-Chairman  
John Anderson, Trustee  
Marty Cummins, Trustee  
Wes Galloway, Trustee  
Craig Henderson, Trustee  
Alan Jones, Trustee  
Hugo Naifeh, Trustee  
Charles Stephens, Trustee

Absent: Reg Green, Chairman  
Carla Stinnett, Trustee

Staff Present: Joan Riley, Trust Manager; Rick Rumsey, Assistant Trust Manager; Pam Vann, Trust Treasurer; David Widdoes, Trust Attorney; Shirley Burzio, Secretary

**1. MINUTES, CONSENT ITEMS, AND ADMINISTRATION:**

Motion was made by Trustee Alan Jones, seconded by Trustee Charles Stephens, to approve the following items of business:

- A.** Approve the minutes of the February 5, 2018, regular municipal authority meeting;
- B.** Approve claims in the amount of \$552,274.26;
- C.** Approve the adoption of a resolution of the City of Sapulpa, Oklahoma, and the Sapulpa Municipal Authority, Sapulpa, Oklahoma, amending the FY 2017-2018 annual budget by increasing revenues and appropriations in the General Fund in the amount of \$1,481.00 and in the Storm Water Management Fund in the amount of \$7,989.00 for the purpose of recognizing additional revenue from insurance reimbursements to provide funds for vehicle repair. (Resolution No. 4514)

ROLL CALL: AYE-John Anderson, Marty Cummins, Wes Galloway, Craig Henderson, Alan Jones, Louis Martin, Hugo Naifeh, Charles Stephens.  
NAY-None. Motion carried 8-0.

2. **INFORMATIONAL ITEMS FROM CHAIRMAN, BOARD OF TRUSTEES, TRUST MANAGER, OR TRUST ATTORNEY.**

- A. The status report from Tetra Tech regarding various city and trust authority projects was presented to the board for discussion only. There was no action taken by the board.

3. **PUBLIC COMMENTS:**

There were no public comments made to the board.

4. **ADJOURNMENT.**

There being no further business to consider, motion was made by Trustee Alan Jones, seconded by Trustee Hugo Naifeh, to adjourn the meeting. Motion carried unanimously.

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Chairman

Attest:

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Secretary



**Consent Agenda 5.A.**

**Municipal Authority Regular**

**Meeting Date:** March 5, 2018

**Submitted For:** Amber Fisher, Accounts Payable Clerk

**Submitted By:** Amber Fisher, Accounts Payable Clerk, Finance

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**SUBJECT:**

Consider Approving Claims in the amount of \$179,478.59

(Refer to: Purchase Order Claim Register with City Agenda.)

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**AGENDA ITEM**

**Administration 7.A.**

**Municipal Authority Regular**

**Meeting Date:** March 5, 2018

**Submitted For:** Rick Rumsey, Assistant City Manager

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Public Works

**Presented By:** Rick Rumsey

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**SUBJECT:**

Discuss and possible action regarding Amendment No. 1 to Professional Services Agreement with Tetra Tech, Inc for Engineering Services and additional required documentation needed for the construction of water line running between the Golf Course and Johnson Street on the west side waterline improvement project.

**BACKGROUND:**

This is an amendment to the agreement with Tetra Tech for engineering services and the preparation of all required documentation to allow for boring underneath a portion of the railroad track lying between the Golf Course and Johnson Street. Please see attachments for additional information.

**RECOMMENDATION:**

Staff recommends Council approve Amendment No. 1 to Agreement with Tetra Tech and to authorize Mayor to execute same.

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**Fiscal Impact**

**Amount:** \$35,300.00

**To be paid from:** Capital Improvement Fund

**Account number:** 45-546-311B

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**Attachments**

Amendment No. 1 TetraTech

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**Professional Services Agreement  
Amendment No. 1  
Attachment A – Amended Project Requirements**

**Client:** City of Sapulpa, Oklahoma

**Project Description**

Sapulpa Fire Training Facility Waterline  
Tetra Tech Project No. 200-11390-17003

**Amendments to Scope of Services**

Consultant shall provide the following additional services:

- Preparation of documentation to complete a Certificate of Encroachment (COE) audit, a required parallel process for all new applicants with Omega Rail Management, Inc. the Real Estate Manager for Stillwater Central Railroad (SLWC).

**Special Assumptions**

The City of Sapulpa shall provide all available as-built or record drawings on all public utilities within SLWC right-of-way.

**Amendments to Project Schedule**

None

**Method of Compensation**

Lump Sum Fee, 08/21/17	\$29,800.00
Amendment No. 1	<u>\$5,500.00</u>
<b>TOTAL AUTHORIZED FEE</b>	<b>\$35,300.00</b>

**Supplemental Terms and Conditions**





**Tetra Tech, Inc.**  
**Amendment No. 1**  
**Professional Services Agreement for Engineering Services**

This is an amendment to the Agreement made on the 21st day of August, 2017, between **City of Sapulpa, Oklahoma** (Client) and **Tetra Tech, Inc.** (Consultant), a Delaware corporation, made on this 19th day of February, 2018.

Client and Consultant agree to specific changes to the referenced Agreement for the **Sapulpa Fire Training Facility Waterline, Tetra Tech Project No. 200-11390-17003**, as described in Attachment A. Consultant agrees to perform the services in consideration of the compensation described in Attachment A and in accordance with the terms of the Agreement.

This Amendment consists of this document together with Attachment A – Amended Project Requirements. This Amendment to the Agreement between the Client and Consultant supersedes all prior written and oral understandings.

In executing this Amendment, the undersigned also acknowledge their authority to bind the parties to all terms and conditions.

In witness whereof, the parties hereto have made and executed this Amendment as of the day and year first written.

**City of Sapulpa, Oklahoma**  
P.O. Box 1130  
Sapulpa, Oklahoma 74067

**Tetra Tech, Inc.**  
7645 East 63rd Street, Suite 301  
Tulsa, Oklahoma 74133  
918.249.3909

By \_\_\_\_\_  
*Client's Authorized Signature*

Reg Green  
Mayor

By \_\_\_\_\_  
*Consultant's Authorized Signature*

Felix R. Belanger, P.E.  
Vice President



## AGENDA ITEM

Administration 7.B.

### **Municipal Authority Regular**

**Meeting Date:** March 5, 2018

**Submitted For:** Rick Rumsey, Assistant City Manager

**Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Public Works

**Presented By:** Rick Rumsey

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### **SUBJECT:**

Discuss and possible action regarding a Professional Services Agreement for Engineering Services with Tetra Tech for the planning, design, and project management of the West Side/SeneGence Sanitary Sewer Extension Project.

### **BACKGROUND:**

This agreement authorizes Tetra Tech to plan, design, apply for needed permits, oversee the bid process, and be the project manager for the Westside/SeneGence Sanitary Sewer Project. This project includes the installation of 2,200 feet of gravity sewer, 25,900 feet of force main, a lift station with backup generator, and a wet weather storage basin. Please see attached documents for more detailed information.

### **RECOMMENDATION:**

Staff recommends Council approve this Agreement and authorize Mayor to execute same.

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### **Attachments**

TetraTech Westside Sewer Agreement

Exhibit A to Tetra Tech Agreement

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**Tetra Tech, Inc.**  
**Professional Services Agreement for Engineering Services**

This Agreement is made and becomes effective this \_\_\_\_\_ day of \_\_\_\_\_, 2018, between **Sapulpa Municipal Authority** (Client) and **Tetra Tech, Inc.** (Consultant), a Delaware corporation.

Client hereby retains Consultant to perform engineering services in connection with the **Westside/SeneGence Sewer Improvements Project** as described in Attachment A. Consultant agrees to perform the services in consideration of the compensation described in Attachment A and in accordance with the terms described in the attached Standard Terms and Conditions.

This Agreement consists of this document together with Attachment A - Project Requirements and the attached Standard Terms and Conditions. This Agreement between the Client and Consultant supersedes all prior written and oral understandings. This Agreement may only be amended, supplemented, modified, or cancelled by a duly executed written instrument. Signature by facsimile or e-mail shall be deemed original.

In executing this Agreement, the undersigned also acknowledge their authority to bind the parties to all terms and conditions.

In witness whereof, the parties hereto have made and executed this Agreement as of the day and year first written.

**Sapulpa Municipal Authority**  
P.O. Box 1130  
Sapulpa, Oklahoma 74067

**Tetra Tech, Inc.**  
7645 East 63rd Street, Suite 301  
Tulsa, Oklahoma 74133  
918.249.3909

By \_\_\_\_\_  
*Client's Authorized Signature*

By \_\_\_\_\_  
*Consultant's Authorized Signature*

Reg Green  
Trust Chairman

Ryan Mittasch, P.E.  
Senior Project Manager



**Professional Services Agreement  
Attachment A – Project Requirements  
Westside/SeneGence Sewer Improvements Project**

**A. Client:** Sapulpa Municipal Authority

**B. Project Description**

- A. The Project consists of one new gravity sewer, lift station, and force main needed to provide sanitary sewer service to the proposed SeneGence manufacturing facility. The 2018 Westside/SeneGence Sewer Plan describes the proposed improvements, and provides an Opinion of Probable Construction Cost of \$5,023,000 for:
- a. 15-inch gravity sewer (2,200 feet)
  - b. 0.90 MGD lift station, with backup generator
  - c. 1 MG wet weather storage basin
  - d. 8-inch diameter force main (25,900 feet)

**B. Scope of Services**

- A. The services performed by Consultant under this Agreement shall consist of seven tasks, as stated below. Further, it is understood and agreed that the Work that is the subject of this Agreement shall commence upon execution of this Agreement and after receipt of a Notice to Proceed.
- B. Consultant shall coordinate the overall Work of the project to include all data gathering, field inspections, analysis, and evaluation and shall oversee the Work of all Subconsultants engaged in such activities. Consultant shall provide progress updates to Client as needed throughout the duration of the project.

**TASK A - INVESTIGATIONS**

- A. Consultant shall prepare a letter report consisting of the development and evaluation of proposed gravity sewer and force main alignments to review with Client representatives. Consultant shall complete the investigations within 75 days of Notice to Proceed.
- B. Project Kick-Off
- a. Following receipt of a Notice to Proceed from Client, Consultant shall coordinate, plan and lead one project kick-off meeting. Consultant attendees will include as a minimum the Project Manager and the discipline lead. The major objectives of the meeting are to:
    - i. Introduce the Consultant's team to Client
    - ii. Establish the lines of communications with Client
    - iii. Confirm the project scope, goals, objectives and constraints
    - iv. Confirm the project schedule and milestones

- v. Convey project knowledge of existing assets from Client to Consultant
  - vi. Identify data required by Consultant from Client to support the project
- b. Following the meeting, Client will provide Consultant the data requested at the meeting.

#### C. Site and Alignment Selection

- a. Following completion of the project kick-off meeting, Consultant shall review the lift station and wet weather basin Site and pipeline alignments proposed in the January 2018 West Side/SeneGence Sewer Plan. The review shall consist of evaluating any new project knowledge obtained by Consultant or Client since completion of the Plan. Consultant shall meet with Client to discuss any new knowledge that may warrant a change in the Site or pipeline alignments. At the end of the meeting, Consultant and Client shall agree on the Site and pipeline alignments that the Consultant shall investigate.

#### D. Investigations

- a. Following agreement with Client of the Site selected to locate lift station and wet weather storage basin, and the proposed alignments of the gravity sewer and forcemain, Consultant shall coordinate, plan and execute site investigations.
- b. Investigations shall include confirmations of preliminary information obtained during the proposal phase. These confirmations shall include ground elevations, soil conditions, existing utility information, land ownership, easement and right-of-way requirements, existing City sanitary system hydraulic capacity, and a review of Client information.
- c. Consultant shall undertake the following investigations:
- i. Topographical survey
    1. Consultant shall contract with a Subconsultant to undertake a full topographical survey of the site selected to locate lift station and wet weather storage basin, and along the proposed alignments of the gravity sewer and forcemain, to State of Oklahoma survey standards. This Agreement assumes that the scope of the topographic survey shall:
      - a. Survey of the agreed selected lift station and wet weather storage basin site (no more than 3 acres)
      - b. Survey along the agreed alignment of the proposed gravity sanitary sewer (no more than 2,200 ft.), 50-foot width
      - c. Survey along the agreed alignment of the proposed forcemain (no more than 25,900 ft.), 30-foot to 80-foot width
      - d. Establish a local coordinate system (or utilize a Client coordinate system if available) for horizontal control for the proposed gravity sewer alignments that may be tied to the state plane coordinate system by Client.
      - e. Establish vertical control utilizing USGS or other established benchmarks.
      - f. Set horizontal and vertical controls at spacing no greater than 500 feet apart, with line of sight between each successive set control point.

- g. Prepare topographic drawings of the areas encompassed in by survey extent perimeters.
  - h. Provide Finished Floor Elevations (FFE) of all existing structures within survey extents. Always provide FFE for structures when encountering a side easement. FFE are not necessary in backyard easements, solely service line cleanouts.
  - i. Provide horizontal and vertical survey data relative to all existing drainage structures, ditches, and streams.
  - j. Identify existing utilities participating in the Call-OKIE system at the lift station and wet weather storage basin site, and along the proposed centerline of the gravity sewer and forcemain alignments. Coordinate with Client for location all public utilities (i.e. water lines) prior to start of detailed survey. Tie locations where possible to survey data and delineated on the construction drawings.
  - k. For waterlines, locate the nearest valve box. Water valves shall be designated with the correct symbol.
  - l. Identify all existing benchmarks, temporary benchmarks, pk nails, etc.
  - m. Create a topographical drawing, with 1-ft contour intervals. Survey should include overhead and buried utilities as well as trees, structures, roads (including material), top and toe of retaining walls, and other significant features that may have an effect on the design of the street repair or the proposed gravity sewer line. All trees larger than 6" within the right-of-way shall be identified with an individual tree symbol and text with description of the tree (i.e., 14" oak, 24" maple).
  - n. Survey all existing utilities within survey extents.
  - o. For sanitary sewers and storm sewers, also locate the closest upstream and the closest downstream manholes including all pipe sizes, pipe materials, and top of manhole (rim) and flow line elevations. Record the pipe flowline elevation of all lines coming into manholes. If the manhole is a drop manhole, it is to be noted on the survey drawings, and all flowline elevations are to be given.
  - p. Locate sufficient property corners and/or section corners to establish platted property, un-platted property, and right-of-way crossed by existing and proposed sanitary sewer and water lines. Locate existing property fences for correlation to the property corners.
2. Full or partial topographical surveys of areas not specified in this Agreement (including changes to the agreed quantity of site area and pipeline lengths) are outside the scope of this Agreement.
- ii. Soil investigations, including test borings and geotechnical report
    - 1. Consultant shall contract with a Subconsultant to undertake soil investigations at the site selected to locate lift station and wet weather storage basin, and along the proposed alignments of the gravity sewer and forcemain. The results of the soil investigations shall be summarized in a report that shall include:
      - a. Soil boring logs and classification
      - b. Existing ground-water levels and estimated seasonal high levels

- c. Pipe trench and excavation preparations and backfill recommendations
    - d. Foundation requirements for lift station structure
    - e. Other concerns as appropriate
  - 2. This Agreement assumes Consultant will undertake twelve (12) test borings up to 20 ft. deep. Investigations shall undertake test borings at the following locations:
    - a. Along the proposed alignments of the gravity sewer and force main, that extend at least two feet below the proposed flowlines approximately one every mile (5 test borings)
    - b. At each end of any project conduit bored in place (4 test borings)
    - c. At the proposed locations of the lift station and wet weather storage locations (3 test borings)
- iii. Potholing
  - 1. Where required, Consultant shall contract with a Subconsultant to undertake potholing of utilities found along the gravity sewer and force main alignments that may conflict with the proposed alignments to determine their exact depth and location. This Agreement assumes that Consultant is required to undertake potholing at eight (8) locations.
- iv. Abstract and Title
  - 1. Consultant shall contract with a Subconsultant to obtain necessary property reports to determine land ownership and existing easements in the Project areas.
- v. Flow monitoring
  - 1. Consultant shall undertake flow monitoring of the Client's sanitary sewer interceptor downstream of the proposed force main discharge point. The purpose of the monitoring is to capture data related to how the interceptor currently responds to wet weather events. This Agreement assumes that Consultant will install three (3) flow meters and two (2) rain gauges (each with three (3) tipping buckets) for up to 90 days.
  - 2. In event that no significant wet weather events occur within the specified time, Consultant can prolong the flow-monitoring period with Client's prior agreement.
- E. Consultant shall oversee the Work of all Subconsultants. In overseeing their Work:
  - a. Liaise with Client and landowners to obtain permission for sub consultants to enter property to undertake work
  - b. Review all drawings and reports produced by the sub consultants to determine if it meets the scope of their subcontracts, and are complete to engineering best practice
  - c. Provide Client with a copy of all drawings and reports produced by the sub consultants in raw and pdf format
- F. Client shall consider Task A - Investigations complete upon Client's review and acceptance of the letter report.

## **TASK B - PRELIMINARY (30%) DESIGN**

- A. Consultant shall prepare preliminary (30%) design, which shall include preliminary design plans and specifications, and a preliminary Opinion of Probable Construction Cost within 90 calendar days after completion of Task A - Investigations.
- B. Hydraulic Modeling.
  - a. Consultant shall use the flow monitoring data to hydraulically model Client's sanitary sewer interceptor downstream of the proposed force main discharge point to determine its response to wet weather volumes. In turn, Consultant shall use the results of the modeling exercise to confirm the size of the wet weather storage basin.
- C. Preliminary Design
  - a. Consultant shall prepare preliminary (30% design) plans and specifications for the proposed improvements. The preliminary plans and specifications shall be of sufficient detail to the extent that the design concept is clearly demonstrated, such that Client can review the major features, materials, and equipment. Preliminary Design shall consist of:
    - a. Design Analysis
      - i. Results of hydraulic modeling
    - b. Concept Drawings
      - i. Site plan showing lift station and wet weather storage basin
      - ii. Lift station plan and sections
      - iii. Wet weather storage basin plan and sections
      - iv. Plan and profile sheets of gravity sewer and forcemain
    - c. List of major materials and equipment
    - d. Outline specifications of major materials and equipment
    - e. Identify information required for permits
- D. Preliminary Cost Estimate
  - a. Consultant shall update the Opinion of Probable Construction Cost contained within the 2018 Westside/SeneGence Sewer Plan based on the preliminary plans and specifications.
- E. Design Review Meeting
  - a. On completion of the preliminary design, Consultant shall submit all documentation to the Client for review. Consultant shall provide Client with four copies of the preliminary plans and specifications and Opinion of Probable Construction Cost update. Plans shall be in 11" X 17" format acceptable to the ODEQ. Following Client review, Consultant shall coordinate, plan and lead one design review meeting to discuss Client's review of the preliminary design. Consultant and Client shall agree upon Client's comments Consultant shall incorporate into the final design.
- F. Easement Documents
  - a. Consultant shall prepare legal descriptions for all proposed additional right-of-way and easements required for offset alignments in accordance with State of Oklahoma survey



standards and City requirements. The legal descriptions shall adequately describe all proposed additional right-of-way and be provided to Client for use in right-of-way acquisition.

- b. Client shall review the legal descriptions and provide comments to Consultant. Consultant shall modify the legal descriptions if necessary in response to Client comments, and provide final legal descriptions to Client.
  - c. Client shall perform Right-of-way acquisition and is not included within this Agreement.
- G. Client shall consider Task B - Preliminary Design complete on completion of the design review meeting with Consultant.

### **TASK C - FINAL DESIGN**

Consultant shall finalize the plans and specifications as required for bidding and construction of the proposed improvements and submit for approval within 45 days of receiving preliminary design review comments agreed with Client.

#### **A. Detailed (65%) Design**

- a. Consultant shall prepare detailed design plans and specifications for the proposed improvements.
- b. The purpose of this design phase and review is to ensure that:
  - a. Funding and construction duration limits are not being exceeded
  - b. Production of plans, specifications and cost estimate are proceeding in a timely manner
  - c. Consultant is incorporating Client comments from the preliminary design phase into the design
- c. Detailed plans shall include where required plan and profile sheets; civil, structural, mechanical, electrical and P&ID sheets; detail sheets; and all other sheets necessary up to 65% complete to adequately convey the intent of the design; and comply with Client standard specifications and drawings.
- d. Consultant shall produce construction drawings to engineering best practice that comply with current applicable Federal, State, and Local regulations.
- e. Consultant will develop project specific specifications and drawings for all items of work not covered by Client standard specifications or drawings.

#### **B. Detailed Cost Estimate**

- a. Consultant shall prepare an updated Opinion of Probable Construction Cost based on the detailed design.

#### **C. Detailed Design Review**

- a. On completion of the detailed design, Consultant will submit all documentation to Client for review, Following Client review, Tetra Tech will coordinate, plan and lead one meeting to discuss and review the preliminary design. Consultant shall provide Client with four copies of the detailed plans and specifications and Opinion of Probable Construction Cost update. Plans shall be in 11" X 17" format acceptable to the ODEQ. Upon receipt of Client's comments, Consultant will incorporate these comments into the production of the final design (95%) documentation.

#### **D. Final (95%) Design**

- a. Consultant shall prepare final design plans and specifications for the proposed improvements based upon Client's comments on the detailed design.
- b. This design phase represents a 100% complete design with the exception of the incorporation of any Client review comments. Final design shall consist of:
  - i. Complete drawings, including those that address construction phasing
  - ii. Final edited specifications
  - iii. Bid documentation
  - iv. All supporting documentation required for permit applications
- c. Consultant shall obtain front-end bid documents from Client and tailor them for this project.

E. Final Cost Estimate

- a. Consultant shall prepare an updated Opinion of Probable Construction Cost based on the final design.

F. Final Design Review

- a. On completion of the final design, Consultant will submit all documentation to Client for review. Following Client review, Tetra Tech will coordinate, plan and lead one meeting to discuss and review the preliminary design. Consultant shall provide Client with four copies of the detailed plans and specifications and Opinion of Probable Construction Cost update. Plans shall be in 11" X 17" format acceptable to the ODEQ. Upon receipt of Client's comments, Consultant shall incorporate these comments into the production of final bid documents (100%) and submit to Client for approval.

G. Client shall consider Task C - Final Design complete upon Client's approval of the final bid documents.

**TASK D - PERMITS**

- A. After acceptance by Client of the final plans and specifications, Consultant shall prepare and assist Client in submitting the documents necessary for Client to obtain requisite permits to construct the Work.
- B. Consultant shall prepare the following identified permits:
  - a. ODEQ Permit to Construct
  - b. Stillwater Central Railroad pipeline crossing permit
  - c. Oklahoma Turnpike Authority pipeline crossing permit (I-44 Turner Turnpike)
  - d. Oklahoma Department of Transportation pipeline crossing permit (State Highway 66)
- C. Regarding stream crossings, Nationwide Permit (NWP) 12 authorizes the discharge of dredged or fill material into the waters of the United States and structures or work in navigable waters for crossings of those waters associated with the construction, maintenance, or repair of utility lines. This permit authorizes construction without the requirement to seek an individual permit from the US Army Corps of Engineers (USACE), provided the activity does not result in the loss of greater than ½ acre of waters of the United States for each single and complete project. The NWP requires the submission of a pre-construction notification (PCN) if it meets certain criteria; otherwise, no notification is required. This Agreement assumes that Consultant will prepare a PCN for Client to submit for crossing Rock Creek, but an individual permit application to the USACE is not required.

- D. Regarding stormwater, the Contractor is responsible for filing a Notice of intent with ODEQ for more than one (1) acre of disturbed ground. Consultant shall address stormwater management within the Contract documents.
- E. Consultant shall prepare the requisite number, size, and format of plans and specifications required for each permit application, along with completion of the permit application forms. Client shall provide Consultant with all relevant applicant information necessary to complete the permit application forms. Client shall review the permit applications once and Consultant shall make all necessary changes once prior to final submittal to the Client. Client shall accept the final permit applications, and be responsible for submission of the applications along with payment of all permit application fees.
- F. If the permitter request changes to the plans and specifications submitted with the permit application, Consultant shall make the required changes and resubmit the documents to Client. Consultant shall make changes until the permitter grants a permit.
- G. Client shall consider Task D - Permits complete upon Client receiving approved permits.

### **TASK E – BID PHASE SERVICES**

- A. After acceptance by Client of the final bid documents and the most recent Opinion of Probable Construction Cost as determined in the Final Design phase and upon authorization by Client to proceed, Consultant shall:
  - a. Prepare an advertisement for bids and coordinate publication of the bidding notice in the local press with Client. Client is responsible for the cost of advertisement.
  - b. Distribute copies of the final bid documents to prospective bidders, bid rooms, material suppliers and other interested parties. Consultant shall offer bidders the opportunity to obtain the bid documents online, and maintain a register of plan holders.
  - c. Coordinate, plan and lead one pre-bid meeting hosted at City Hall. Following the meeting, Consultant shall coordinate with Client to respond to any questions raised by the bidder and issue any required addenda to all plan holders as appropriate to clarify, correct, or change the bidding documents.
  - d. Attend the bid-opening meeting, and tabulate the received bid proposals alongside the Opinion of Probable Construction Cost. Consultant shall:
    - i. Analyze the received bid proposals and qualifications to determine their suitability
    - ii. Note any mathematical errors within the received bids
    - iii. Check references stated by the bidders in their bids.
    - iv. Consult with Client as to the acceptability of Subcontractors, suppliers, and other individuals and entities proposed by prospective Contractors for those portions of the Work as to which such acceptability is required by the bidding documents.
    - v. If bidding documents require, Consultant shall evaluate and determine the acceptability of "or equals" and substitute materials and equipment proposed by bidders.
    - vi. Provide information or assistance needed by Client in the course of any negotiations with prospective Contractors.
  - e. Recommend to Client in writing for awarding the construction contract to the most responsive bidder.

- f. Upon award of contract, Consultant shall furnish up to six (6) sets of the conformed, full contract documents to the Contractor for execution and submittal to Client for subsequent execution. Consultant shall then coordinate with the Client to issue a NTP to the selected bidder.
- B. Client shall consider Task E - Bid Phase Service complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors.

## **TASK F – CONSTRUCTION PHASE SERVICES**

- A. Upon successful completion of the Bid Phase, and upon written authorization from Client, Consultant shall:
- a. Provide general engineering review of the construction work as it progresses to ascertain that the Contractor is conforming to the design concept. Consultant shall employ a full-time Resident Project Representative.
    - i. Resident Project Representative shall attend the Site each working day to observe the Work. Engineer shall make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, are not intended to be exhaustive or to extend to every aspect of Contractor's Work in progress or to involve detailed inspections of Contractor's Work in progress beyond the responsibilities specifically assigned to Engineer in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
    - ii. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative at the Site, shall be to enable Consultant to undertake the duties and responsibilities assigned to Consultant during the Construction Phase. In addition, by the exercise of Consultant's efforts as an experienced and qualified design professional, to provide for Client a greater degree of confidence that the completed Work shall conform in general to the Contract Documents, and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents. Consultant shall not, during such visits or as a result of such observations of Contractor's Work in progress, supervise, direct, or have control over Contractor's Work, nor shall Consultant have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to Contractor's Work, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, Consultant neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish or perform the Work in accordance with the Contract Documents.
  - b. Coordinate, plan and lead a Pre-Construction Conference with Client and Contractor. Consultant shall coordinate with Client to issue clarifications in response to questions raised at the conference.
  - c. Receive, review, and determine the acceptability of all schedules Contractor is required to submit to Consultant, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
  - d. Coordinate, plan and lead monthly construction progress meetings, and submit a meeting summary to Client and Contractor within one week of the meeting.
  - e. Respond to Client requests for interpretation of the plans and specifications.

- i. Consultant shall issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's Work. Such clarifications and interpretations shall be consistent with the intent of and reasonably inferable from the Contract Documents. Subject to any limitations in the Contract Documents, Consultant may assist Client in issuing field orders authorizing minor variations in the Work from the requirements of the Contract Documents.
- f. Review Contractor submittals for conformance with the Contract Documents.
  - i. Consultant shall produce a summary list of submittals required from Contractor collated from the individual submittal requirements of each specification. Consultant shall hand over the summary list to Contractor at the Pre-Construction Conference. The list shall act as a checklist to ensure that Contractor has submitted all of the required submittals. Consultant shall track all received submittals and responses, along with the dates of receipt and response. Consultant shall respond to all submittals in a timely manner, and provide Client with a copy of all responses for concurrence prior to submission to Contractor. This Agreement assumes that each Contractor submittal requires one original review and only one revision review by Consultant.
- g. Review the Contractor's schedule and milestone dates for conformity with the Contract Time to Complete. Consultant shall use the schedule as a tool for assessing Contractor progress at the monthly construction progress meetings
- h. Respond to Requests for Information (RFI) for Contractor regarding questions on the plans and specifications.
  - i. Consultant shall track the request and responses, along with the dates of request and response. Consultant shall respond to all RFIs in a timely manner, and provide Client with a copy of all responses for concurrence prior to submission to Contractor.
- i. As necessary, prepare Contract change orders and Work change directives and associated exhibits for Client consideration in a timely manner. This Agreement assumes that such changes only result from conditions in the field differing from those described in the Contract Documents as to require changes to the Contract.
- j. Perform a Pre-Final (and/or Substantial) inspection of the completed work in conjunction with the Contractor and Client to develop a punch list of items. Consultant shall forward this list to Contractor and Client
- k. Issue a statement of Substantial Construction Completion and submit a written certification to Client
- l. Following approval of Contractor's final application for payment, submit a written statement of completion to Client with the recommendation that it accepts the improvements
- m. Notify Client if, on the basis of Consultant's observations, Consultant believes that such Work (a) is defective under the standards set forth in the Contract Documents, (b) shall not produce a completed Project that conforms to the Contract Documents, or (c) shall imperil the integrity of the design concept of the completed Project as a functioning whole as indicated by the Contract Documents.
- n. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. Consultant shall meet any Contractor's submittal schedule that Consultant has accepted.

- o. Evaluate and determine the acceptability of substitute or “or-equal” materials and equipment proposed by Contractor.
- B. Duration of Construction Phase
  - a. The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon final payment to Contractor. Consultant may be entitled to an increase in compensation if Construction Phase services are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. Limitation of Responsibilities
  - a. Consultant shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Consultant shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.
- D. Client shall consider Task F - Construction Phase Services complete upon acceptance of the improvements by Client.

#### **TASK G – POST CONSTRUCTION SERVICES**

- A. Following construction completion, Consultant shall provide two (2) full sized reproducible prints, one AutoCAD format file, one full sized (22" x 34") PDF file and one half-sized (11" x 17") PDF file of the as-built drawings. Consultant shall base these drawings on the construction records provided by Contractor and reviewed by the Consultant's Resident Project Representative.
- B. Client shall consider Task G - Post Construction Phase complete upon Client's acceptance of the record drawing submittals.

#### **D. Additional Services**

- A. Additional Services Requiring Client's Written Authorization
  - a. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below:
    - i. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by Consultant or its design requirements including, but not limited to, changes in size, complexity, Client's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, plans, specifications, or Contract Documents when such revisions are required by changes in Laws and Regulations enacted subsequent to the Effective Date or are due to any other causes beyond Consultant's control.
    - ii. Providing construction surveys and staking to enable Contractor to perform its work, and any type of property surveys or related engineering services needed for the transfer of interests in real property, and providing other special field surveys.
    - iii. Other services performed or furnished by Consultant not otherwise provided for in this Agreement.

**E. Responsibilities of Client**

- A. Client agrees:
  - a. To furnish, as required by the Work, and not at expense to Consultant:
    - i. Records, reports, studies, plans, drawings, and other data available in the files of the Client, which may be useful in the Project.
  - b. To provide access to public and private property when required in performance of Consultant's services
  - c. To furnish the services of at least one of Client's employees or staff who has right of entry to, and who has knowledge of, Client's facilities relating to this Project
  - d. To furnish legal assistance as required in the preparation, review, and approval of construction documents
  - e. To furnish assistance in locating existing utilities and in expediting their relocation

**F. Project Schedule**

A. Consultant shall complete the Work in accordance with the following schedule. The anticipated time to complete the Project to construction completion (Task A to Task F) is two calendar years. The Project schedule can be influenced by factors outside of Consultant's control e.g. time taken to acquire right-of-way, permits etc.

<b>Task</b>	<b>Date</b>
Task A - Investigations	75 days after Notice to Proceed
Task B - Preliminary Design	90 days after approval of Task A
Task C - Final Design	45 days after receipt of Client review comments from Task B
Task D - Permits	90 days after Client approval of Task C deliverables (anticipated)
Task E - Bid Phase Services	60 days after Client authorization
Task F - Construction Phase Services	365 days after award of Contract to Contractor by Client
Task G – Post Construction Services	30 days after of construction completion by Client

**G. Method of Compensation**

**Lump Sum** Compensation for these services shall be a lump sum of **\$834,245**



## Tetra Tech, Inc.

# Engineering Services Standard Terms & Conditions

**Services** Consultant will perform services for the Project as set forth in the provisions for Scope of Work/Fee/Schedule in the proposal and in accordance with these Terms & Conditions. Consultant has developed the Project scope of service, schedule, and compensation based on available information and various assumptions. The Client acknowledges that adjustments to the schedule and compensation may be necessary based on the actual circumstances encountered by Consultant in performing their services. Consultant is authorized to proceed with services upon receipt of an executed Agreement.

**Compensation** In consideration of the services performed by Consultant, the Client shall pay Consultant in the manner set forth above. The parties acknowledge that terms of compensation are based on an orderly and continuous progress of the Project. Compensation shall be equitably adjusted for delays or extensions of time beyond the control of Consultant. Where total project compensation has been separately identified for various tasks, Consultant may adjust the amounts allocated between tasks as the work progresses so long as the total compensation amount for the project is not exceeded.

**Fee Definitions** The following fee types shall apply to methods of payment:

- **Salary Cost** is defined as the individual's base salary plus customary and statutory benefits. Statutory benefits shall be as prescribed by law and customary benefits shall be as established by Consultant employment policy.
- **Cost Plus** is defined as the individual's base salary plus actual overhead plus professional fee. Overhead shall include customary and statutory benefits, administrative expense, and non-project operating costs.
- **Lump Sum** is defined as a fixed price amount for the scope of services described.
- **Standard Rates** is defined as individual time multiplied by standard billing rates for that individual.
- **Subcontracted Services** are defined as Project-related services provided by other parties to Consultant.
- **Reimbursable Expenses** are defined as actual expenses incurred in connection with the Project.

**Payment Terms** Consultant shall submit invoices at least once per month for services performed and Client shall pay the full invoice amount within 30 days of the invoice date. Invoices will be considered correct if not questioned in writing within 10 days of the invoice date. Client payment to Consultant is not contingent on arrangement of project financing or receipt of funds from a third party. In the event the Client disputes the invoice or any portion thereof, the undisputed portion shall be paid to Consultant based on terms of this Agreement. Invoices not in dispute and unpaid after 30 days shall accrue interest at the rate of one and one-half percent per month (or the maximum percentage allowed by law, whichever is the lesser). Invoice payment delayed beyond 60 days shall give Consultant the right to stop work until payments are current. Non-payment beyond 70 days shall be just cause for termination by Consultant.

**Additional Services** The Client and Consultant acknowledge that additional services may be necessary for the Project to address issues that may not be known at Project initiation or that may be required to address circumstances that were not foreseen. In that event, Consultant shall notify the Client of the need for additional services and the Client shall pay for such additional services in an amount and manner as the parties may subsequently agree.

**Site Access** The Client shall obtain all necessary approvals for Consultant to access the Project site(s).

**Underground Facilities** Consultant and/or its authorized subcontractor will conduct research and perform site reconnaissance in an effort to discover the location of existing underground facilities prior to developing boring plans, conducting borings, or undertaking invasive subsurface investigations. Client recognizes that accurate drawings or knowledge of the location of such facilities may not exist, or that research may reveal as-built drawings or other documents that may inaccurately show, or not show, the location of existing underground facilities. In such events, except for the sole negligence, willful misconduct, or practice not conforming to the Standard of Care cited in this Agreement, Client agrees to indemnify and hold Consultant and/or its Subcontractor harmless from any and all property damage, injury, or economic loss arising or allegedly arising from borings or other subsurface penetrations.

**Regulated Wastes** Client is responsible for the disposal of all regulated wastes generated as a result of services provided under this Agreement. Consultant and Client mutually agree that Consultant assumes no responsibility for the waste or disposal thereof.

**Contractor Selection** Consultant may make recommendations concerning award of construction contracts and products. The Client acknowledges that the final selection of construction contractors and products is the Client's sole responsibility.

**Ownership of Documents** Drawings, specifications, reports, programs, manuals, or other documents, including all documents on electronic media, prepared under this Agreement are instruments of service and are, and shall remain, the property of Consultant. Record documents of service shall be based on the printed copy. Consultant will retain all common law, statutory, and other reserved rights, including the copyright thereto. Consultant will furnish documents electronically; however, the Client releases Consultant from any liability that may result from documents used in this form. Consultant shall not be held liable for reuse of documents or modifications thereof by the Client or its representatives for any purpose other than the original intent of this Agreement, without written authorization of and appropriate compensation to Consultant.

**Standard of Care** Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. Consultant makes no warranty or guaranty, either express or implied. Consultant will not be liable for the cost of any omission that adds value to the Project.

**Period of Service** This Agreement shall remain in force until completion and acceptance of the services or until terminated by mutual agreement. Consultant shall perform the services for the Project in a timely manner consistent with sound professional practice. Consultant will strive to perform its services according to the Project schedule set forth in the provisions for Scope of Work/Fee/Schedule above. The services of each task shall be considered complete when deliverables for the task have been presented to the Client. Consultant shall be entitled to an extension of time and compensation adjustment for any delay beyond Consultant control.

**Insurance and Liability** Consultant shall maintain the following insurance and coverage limits during the period of service. The Client will be named as an additional insured on the Commercial General Liability and Automobile Liability insurance policies.

Worker's Compensation – as required by applicable state statute

Commercial General Liability - \$1,000,000 per occurrence for bodily injury, including death and property damage, and \$2,000,000 in the aggregate

Automobile Liability –\$1,000,000 combined single limit for bodily injury and property damage

Professional Liability (E&O) - \$1,000,000 each claim and in the aggregate

The Client shall make arrangements for Builder's Risk, Protective Liability, Pollution Prevention, and other specific insurance coverage warranted for the Project in amounts appropriate to the Project value and risks. Consultant shall be a named insured on those policies where Consultant may be at risk. The Client shall obtain the counsel of others in setting insurance limits for construction contracts.

**Indemnification** Consultant shall indemnify and hold harmless the Client and its employees from any liability, settlements, loss, or costs (including reasonable attorneys' fees and costs of defense) to the extent caused solely by the negligent act, error, or omission of Consultant in the performance of services under this Agreement. If such damage results in part by the negligence of another party, Consultant shall be liable only to the extent of Consultant's proportional negligence.

**Dispute Resolution** The Client and Consultant agree that they shall diligently pursue resolution of all disagreements within 45 days of either party's written notice using a mutually acceptable form of mediated dispute resolution prior to exercising their rights under law. Consultant shall continue to perform services for the Project and the Client shall pay for such services during the dispute resolution process unless the Client issues a written notice to suspend work. Causes of action between the parties to this Agreement shall be deemed to have accrued and the applicable statutes of repose and/or limitation shall commence not later than the date of substantial completion.

**Suspension of Work** The Client may suspend services performed by Consultant with cause upon fourteen (14) days written notice. Consultant shall submit an invoice for services performed up to the effective date of the work suspension and the Client shall pay Consultant all outstanding invoices within fourteen (14) days. If the work suspension exceeds thirty (30) days from the effective work suspension date, Consultant shall be entitled to renegotiate the Project schedule and the compensation terms for the Project.

**Termination** The Client or Consultant may terminate services on the Project upon seven (7) days written notice without cause or in the event of substantial failure by the other party to fulfill its obligations of the terms hereunder. Consultant shall submit an invoice for services performed up to the effective date of termination and the Client shall pay Consultant all outstanding invoices, together with all costs arising out of such termination, within fourteen (14) days. The Client may withhold an amount for services that may be in



dispute provided that the Client furnishes a written notice of the basis for their dispute and that the amount withheld represents a reasonable value.

**Authorized Representative** The Project Manager assigned to the Project by Consultant is authorized to make decisions or commitments related to the project on behalf of Consultant. Only authorized representatives of Consultant are authorized to execute contracts and/or work orders on behalf of Consultant. The Client shall designate a representative with similar authority. Email messages between Client and members of the project team shall not be construed as an actual or proposed contractual amendment of the services, compensation or payment terms of the Agreement.

**Project Requirements** The Client shall confirm the objectives, requirements, constraints, and criteria for the Project at its inception. If the Client has established design standards, they shall be furnished to Consultant at Project inception. Consultant will review the Client design standards and may recommend alternate standards considering the standard of care provision.

**Independent Consultant** Consultant is and shall be at all times during the term of this Agreement an independent consultant and not an employee or agent of the Client. Consultant shall retain control over the means and methods used in performing Consultant's services and may retain subconsultants to perform certain services as determined by Consultant.

**Compliance with Laws** Consultant shall perform its services consistent with sound professional practice and endeavor to incorporate applicable laws, regulations, codes, and standards applicable at the time the work is performed. In the event that standards of practice change during the Project, Consultant shall be entitled to additional compensation where additional services are needed to conform to the standard of practice.

**Permits and Approvals** Consultant will assist the Client in preparing applications and supporting documents for the Client to secure permits and approvals from agencies having jurisdiction over the Project. The Client agrees to pay all application and review fees.

**Limitation of Liability** In recognition of the relative risks and benefits of the project to both the Client and Consultant, the risks have been allocated such that the Client agrees, to the fullest extent permitted by law, to limit the liability of Consultant and its subconsultants to the Client and to all construction contractors and subcontractors on the project for any and all claims, losses, costs, damages of any nature whatsoever or claims expenses from any cause or causes, so that the total aggregate liability of Consultant and its subconsultants to all those named shall not exceed \$50,000 or the amount of Consultant's total fee paid by the Client for services under this Agreement, whichever is the greater. Such claims and causes include, but are not limited to negligence, professional errors or omissions, strict liability, breach of contract or warranty.

**Consequential Damages** Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Client nor Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the project or to this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of strict or implied warranty. Both the Client and Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project or with this Agreement.

**Waiver of Subrogation** Consultant shall endeavor to obtain a waiver of subrogation against the Client, if requested in writing by the Client, provided that Consultant will not increase its exposure to risk and Client will pay the cost associated with any premium increase or special fees.

**Environmental Matters** The Client warrants that they have disclosed all potential hazardous materials that may be encountered on the Project. In the event unknown hazardous materials are encountered, Consultant shall be entitled to additional compensation for appropriate actions to protect the health and safety of its personnel, and for additional services required to comply with applicable laws. The Client shall indemnify Consultant from any claim related to hazardous materials encountered on the Project except for those events caused by negligent acts of Consultant.

**Cost Opinions** Consultant shall prepare cost opinions for the Project based on historical information that represents the judgment of a qualified professional. The Client and Consultant acknowledge that actual costs may vary from the cost opinions prepared and that Consultant offers no guarantee related to the Project cost.

**Contingency Fund** The Client acknowledges the potential for changes in the work during construction and the Client agrees to include a contingency fund in the Project budget appropriate to the potential risks and uncertainties associated with the Project. Consultant may offer advice concerning the value of the contingency fund; however, Consultant shall not be liable for additional costs that the Client may incur beyond the contingency fund

they select unless such additional cost results from a negligent act, error, or omission related to services performed by Consultant.

**Safety** Consultant shall be responsible solely for the safety precautions or programs of its employees and no other party.

**Information from Other Parties** The Client and Consultant acknowledge that Consultant will rely on information furnished by other parties in performing its services under the Project. Consultant shall not be liable for any damages that may be incurred by the Client in the use of third party information.

**Force Majeure** Consultant shall not be liable for any damages caused by any delay that is beyond Consultant's reasonable control, including but not limited to unavoidable delays that may result from any acts of God, strikes, lockouts, wars, acts of terrorism, riots, acts of governmental authorities, extraordinary weather conditions or other natural catastrophes, or any other cause beyond the reasonable control or contemplation of either party.

**Waiver of Rights** The failure of either party to enforce any provision of these terms and conditions shall not constitute a waiver of such provision nor diminish the right of either party to the remedies of such provision.

**Warranty** Consultant warrants that it will deliver services under the Agreement within the standard of care. No other expressed or implied warranty is provided by Consultant.

**Severability** Any provision of these terms later held to be unenforceable shall be deemed void and all remaining provisions shall continue in full force and effect. In such event, the Client and Consultant will work in good faith to replace an invalid provision with one that is valid with as close to the original meaning as possible.

**Survival** All obligations arising prior to the termination of this Agreement and all provisions of these terms that allocate responsibility or liability between the Client and Consultant shall survive the completion or termination of services for the Project.

**Assignments** Neither party shall assign its rights, interests, or obligations under the Agreement without the express written consent of the other party.

**Governing Law** The terms of Agreement shall be governed by the laws of the state where the services are performed provided that nothing contained herein shall be interpreted in such a manner as to render it unenforceable under the laws of the state in which the Project resides.

**Collection Costs** In the event that legal action is necessary to enforce the payment provisions of this Agreement if Client fails to make payment within sixty (60) days of the invoice date, Consultant shall be entitled to collect from the Client any judgment or settlement sums due, reasonable attorneys' fees, court costs, and expenses incurred by Consultant in connection therewith and, in addition, the reasonable value of Consultant's time and expenses spent in connection with such collection action, computed at Consultant's prevailing fee schedule and expense policies.

**Equal Employment Opportunity** Consultant will comply with federal regulations pertaining to Equal Employment Opportunity. Consultant is in compliance with applicable local, state, and federal regulations concerning minority hiring. It is Consultant's policy to ensure that applicants and employees are treated equally without regard to race, creed, sex, color, religion, veteran status, ancestry, citizenship status, national origin, marital status, sexual orientation, or disability. Consultant expressly assures all employees, applicants for employment, and the community of its continuous commitment to equal opportunity and fair employment practices.

**Attorney Fees** Should there be any suit or action instituted to enforce any right granted in this contract, the substantially prevailing party shall be entitled to recover its costs, disbursements, and reasonable attorney fees from the other party. The party that is awarded a net recovery against the other party shall be deemed the substantially prevailing party unless such other party has previously made a bona fide offer of payment in settlement and the amount of recovery is the same or less than the amount offered in settlement. Reasonable attorney fees may be recovered regardless of the forum in which the dispute is heard, including an appeal.

**Third Party Beneficiaries** Nothing in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or the Consultant. The Consultant's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Consultant because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.

**Lien Rights** Consultant may file a lien against the Client's property in the event that the Client does not make payment within the time prescribed in this Agreement. The Client agrees that services by Consultant are considered property improvements and the Client waives the right to any legal defense to the contrary.

**Captions** The captions herein are for convenience only and are not to be construed as part of this Agreement, nor shall the same be construed as defining or limiting in any way the scope or intent of the provisions hereof.

**Federal Equal Opportunity and Non-Discrimination Provision  
(Non-Construction contracts)**

During the performance of this contract, the contractor agrees as follows

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex or national origin. Such action shall include but not be limited to the following Employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the agency contracting officer, advising the labor union or workers= representatives of the contractor=s commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

(6) In the event of the contractor=s noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation or order of the Secretary of Labor or as otherwise provide by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance, provided however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## **AFFIRMATIVE ACTION FOR DISABLED WORKERS**

(a) The contractor will not discriminate against any employee or applicant for employment because of physical or mental disability in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled individual without discrimination based upon their physical or mental disability in all employment practices such as the following employment, upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(c) In the event of the contractor=s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(d) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor=s obligation under the law to take affirmative action to employ and advance in employment qualified disabled employees and applicants for employment and the rights of applicants and employees.

(e) The contractor will notify each labor union or representative of workers with which has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of section 503 of the Rehabilitation Act of 1973 and is committed to take affirmative action to employ and advance in employment physically and mentally disabled individuals.

(f) The contractor will include the provisions of this clause in every subcontract or purchase Order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to section 503 of the Act so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

## **AFFIRMATIVE ACTION FOR DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA**

(a) The contractor will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era in regard to any position for which the employee or applicant for employment is qualified. The contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified disabled veterans and veterans of the Vietnam era without discrimination based upon their disability or veterans status in all employment practices such as the following: Employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship.

(b) The contractor agrees to list all employment openings which exist at the time of the execution of this contract and those which occur during the performance of this contract, including those not generated by this contract and including those occurring at an establishment of the contractor other than the one wherein the contract is being performed but excluding those of independently operated corporate affiliates, at an appropriate local office of the State employment service system wherein the opening occurs.

(c) Listing of employment openings with the employment service system pursuant to this clause shall be made at each concurrently with the use of any other recruitment source or effort and shall invoice the normal obligations which attach to the placing of a bona fide job order, including the acceptance of referrals of veterans and non-veteran. The listing of employment openings does not require the hiring of any particular job applicant or from any particular group of job applicants and nothing herein is intended to relieve the contractor from any requirements in Executive orders or regulations regarding or discrimination in employment.

(d) The reports required by paragraph (b) of this clause shall include but not be limited to periodic reports which shall be filed at least quarterly with the appropriate local office or, where the contractor has more than one hiring location in a State, with the central office of that State employment service. Such reports shall indicate for each hiring location: (1) The number of individuals hired during the reporting period, (2) The number of non-disabled veterans of the Vietnam era hired, (3) The number of disabled veterans of the Vietnam era hired, and (4) The total number of disabled veterans hired. The reports should include covered veterans hired for on-the-job training under 38 U S C 1787. The contractor shall submit a report within 30 days after the end of each reporting period wherein any performance is made on this contract identifying data for each hiring location. The contractor shall maintain at each hiring location copies of the reports submitted until the expiration of one year after final payment under the contract. During this time these reports and related documentation shall be made available upon request for examination by any authorized representative of the contracting officer of the Secretary of Labor Documentation would include personnel records respecting job openings, recruitment and placement.

(e) Whenever the contractor becomes contractually bound to the listing provisions of this clause it shall advise the employment service system in each State where it has establishments of the name and location of each hiring location in the State. As long as the contractor=s

contractually bound to these provisions and has so advised the State system there is no need to advise the State system of subsequent contracts. The contractor may advise the State system when it is no longer bound by this contract clause.

(f) This clause does not apply to the listing of employment openings which occur and are filled outside of the 50 States, the Town of Columbia, Puerto Rico, Guam and the Virgin Islands.

(g) The provisions of paragraphs (b), (c), (d) and (e) of this clause do not apply to openings which the contractor proposes to fill from within his own organization or to fill pursuant to a customary and traditional employer-union hiring arrangement. This exclusion does not apply to a particular opening once an employer decides to consider applicants outside of his own organization or employer-union arrangement for that opening.

(h) As used in this clause: (1) "All employment openings" includes all positions except executive and top management those positions that will be filled from within the contractors organization and positions lasting three days or less. This term includes full-time employment temporary employment of more than three days= duration and part-time employment.

(I) Appropriate office of the State employment as the Director of the Office of Federal Contract service system" means the local office of the Compliance Programs may direct to enforce such federal/State/national system of public employment provisions, including action for noncompliance offices with assigned responsibility for serving the area where the employment opening is to be filled, including the Town of Columbia, Guam, the Commonwealth of Puerto Rico and the Virgins Islands.

(j) Positions that will be filled from within the contractors organization" means employment openings for which no consideration will be given to persons outside the contractors organization (including any affiliates, subsidiaries and the parent companies) and includes any openings which the contractor proposes to fill from regularly-established Recall" lists. The exception does not apply to a particular opening once an employer decides to consider applicants outside of his or her own organization.

(k) Openings which the contractor proposes to fill pursuant to a customary and traditional employer-union hiring arrangement means employment openings which the contractor proposes to fill from union halls which is part of the customary and traditional hiring relationship which exists between the contractor and representatives of his employees.

(i) The contractor agrees to comply with the rules, regulations and relevant orders of the Secretary of Labor issued pursuant to the Act.

(j) In the event of the contractor=s noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

(k) The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the contractor's obligation under the law to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era for employment and the rights of applicants and employees.

(l) The contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the contractor is bound by the terms of the Vietnam Era Veterans Readjustment Assistance Act and is committed to take affirmative action to employ and advance in employment qualified disabled veterans and veterans of the Vietnam era.

(m) The contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations or orders of the Secretary issued pursuant to the Act, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

### **Clean Air and Water Provisions**

During the performance of this contract the contractor agrees as follows:

(1) The contractor will certify that any facility to be utilized in the performance of any nonexempt contract or subcontract is not listed on the List of Violating Facilities issued by the Environmental Protection Agency pursuant to 40 CFR 1520.

(2) The contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act as amended (42 USC 1958c-8) and Section 308 of the Federal Water Pollution Control Act, as amended (33 U SC 1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder.

(3) The contractor agrees that, as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, Environmental Protection Agency, indicating that a facility utilized or to be utilized for the contract is under consideration to be listed on the Environmental Protection Agency List of Violating Facilities.

(4) The contractor agrees that it will include or cause to be included the criteria and requirements in Paragraphs (1) through (4) of this section in every nonexempt subcontract and require every subcontractor to take such action as the Government may direct as a means of enforcing such provisions.



**AGENDA ITEM**

**Administration 7.C.**

**Municipal Authority Regular**

**Meeting Date:** March 5, 2018

**Submitted For:** David Widdoes, City Attorney      **Submitted By:** Amy Hoehner, Legal Assistant

**Department:** Legal

**Presented By:** David Widdoes, Rick Rumsey

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**SUBJECT:**

Discuss and possible action regarding approval of a Lease Agreement with Glass Design, Inc. for the property located at 8810 West 100th Street South, Sapulpa, Oklahoma.

**BACKGROUND:**

On February 8, 2018, the City of Sapulpa took possession of the property and 3 structures located 8810 W 100th Street S, Sapulpa, Oklahoma. One of the structures is in process of being designed and refurbished to house the new animal shelter for the City. Final design on the animal control building should be complete within 30 days. The other two structures on the property are to be utilized as the public works complex for the City. Work on those 2 structures will not commence until after the animal shelter project has been completed by December 2018. To make use of those 2 structures during pendency of construction of the animal control facility, staff has negotiated a proposed lease for the 2 buildings with its existing tenant, Glass Design Inc. The proposed lease agreement is for a one year term at an annual rent of \$33,000.00, and will allow the tenant to remain at the location until the City is prepared to commence work on the public works complex.

**RECOMMENDATION:**

Staff recommends Council approve the Lease Agreement and authorize Mayor to execute same.

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**Attachments**

Lease Agreement

Exhibit A to Lease Agreement

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**LEASE AGREEMENT**

**[City of Sapulpa and Glass Design]**

In consideration of the covenants hereinafter set forth in this document (the "Lease" or "Lease Agreement"), the City of Sapulpa, Oklahoma ("Landlord") hereby leases to Glass Design, Inc. ("Tenant") and Tenant hereby leases from Landlord, the herein described premises upon the following terms and conditions:

**SECTION I - BASIC LEASE PROVISIONS**

- A. **LEASED PREMISES:** The "Leased Premises" are two certain structures described and identified on attached Exhibit A with a street address of 8810 W. 100<sup>th</sup> Street, Sapulpa, Oklahoma, 74066 (the "Leased Premises").
- B. **LEASE TERM:** The term of this Lease shall be a period of one (1) year (the "Lease Term") commencing on the "Term Commencement Date", which shall be March 1, 2018 and ending at 12:00 midnight on February 28, 2019.
- C. **RENT COMMENCEMENT DATE:** Tenant's obligation to pay Rent hereunder will begin on the "Rent Commencement Date", which shall be March 1, 2018.
- D. **RENT:** The "Rent" shall consist of a total annual rent of Thirty Three Thousand Dollars and no/ 100 dollars (\$33,000.00) due and payable monthly in advance on the first day of each month. The payment of Rent shall commence on the Rent Commencement Date and shall be payable in accordance with the following schedule:

March 1, 2018.....	\$2,750.00
April 1, 2018.....	\$2,750.00
May 1, 2018.....	\$2,750.00
June 1, 2018.....	\$2,750.00
July 1, 2018.....	\$2,750.00
August 1, 2018.....	\$2,750.00
September 1, 2018.....	\$2,750.00
October 1, 2018.....	\$2,750.00
November1, 2018.....	\$2,750.00
December 1, 2018.....	\$2,750.00
January 1, 2019 .....	\$2,750.00
February 1, 2019.....	\$2,750.00

In the event any rent payment required to be paid by Tenant hereunder is not paid in full by the start of the tenth (10<sup>th</sup>) day of each month, Tenant shall pay to Landlord, in addition to such payment or other charges due hereunder, an initial late fee in the amount of 10% of the monthly rent amount.



## **SECTION II - GENERAL PROVISIONS**

- A. **RELATIONSHIP**: Nothing herein shall be construed as creating a relationship between the parties other than that of Landlord and Tenant.
  
- B. **WAIVERS**: Landlord's consent, approval, or waiver of any act, breach, or Default by Tenant shall not be construed to render future consent to or approval of any subsequent similar act unnecessary, nor as a waiver of a subsequent breach or Default. No covenant, term, or condition shall be deemed waived by Landlord unless the waiver, in each instance, is in writing. Tenant's consent, approval, or waiver of any act, breach, or default by Landlord shall not be construed to render future consent to or approval of any subsequent similar act unnecessary, nor as a waiver of a subsequent breach or default. No covenant, term, or condition shall be deemed waived by Tenant unless the waiver, in each instance, is in writing.
  
- C. **NOTICES**: All payments, reports, notices, documents, or other correspondence due to either Landlord or Tenant shall be made to the following applicable addresses: Landlord: c/o City Clerk, P.O. Box 1130, Sapulpa, OK 74067; Tenant: c/o Roger Weilacher, P.O. Box 568, Sapulpa, OK 74067. Landlord and/or Tenant shall have the right to change their Address from time to time by written notice to the other. All parties included within the term "Tenant" shall be bound by notices given hereunder to the same effect as if each had received such notice. Any notice required maybe delivered either by United States mail certified or registered, postage prepaid, return receipt requested, or by hand delivery.

## **SECTION III - PREPARATION OF LEASED PREMISES**

- A. **LANDLORD WORK**: Landlord shall not be obligated to furnish any work, remodeling, fixtures, or equipment to make the Leased Premises ready for Tenant's use unless such items are specifically agreed to herein or in another writing agreed to and signed by Landlord.
  
- B. **ACCEPTANCE**: Tenant acknowledges that it has had an opportunity to independently inspect the Leased Premises, as well as all facilities serving the Leased Premises, and Tenant accepts the Leased Premises in their present condition having found them to be acceptable and suitable for Tenant's intended use.
  
- C. **TENANT'S WORK**: Should Tenant desire to do or have any work performed to alter the condition of the Leased Premises, it shall first obtain the written consent of Landlord, which consent shall not be unreasonably withheld. The plans and specifications for Tenant's Work shall be submitted to Landlord prior to commencing Tenant's Work. Tenant's Work shall be performed and completed in a good and workmanlike manner by properly licensed professionals and shall be completed in strict conformance with the plans and specifications as approved by Landlord. Moreover, it is specifically contemplated as a condition of entering into this Lease that Tenant shall do certain work to provide all required utilities to the Leased

Premises within sixty (60) days of the Term Commencement Date. In this regard, Tenant agrees at its sole expense to provide separate utilities as needed by Tenant to the Leased Premises, such work to be completed within sixty (60) days off the Term Commencement Date.

#### **SECTION IV - RENTAL AND OTHER PAYMENT PROVISIONS**

- A. PAYMENT OF RENT: Tenant agrees to pay to Landlord the Rent specified in Section I. The first regular advance monthly installment of the Rent shall be due and payable on the Term Commencement Date and subsequent advance monthly installments of the Rent shall be due and payable on the first day of each month thereafter during the Lease Term. Each installment of Rent shall be paid without counterclaim, deduction or offset. Tenant waives any right to notice that any Rent is due or past due.
- B. ACCEPTANCE: Landlord's acceptance of a payment of Rent after its due date shall not be deemed a departure from the terms of this Lease and despite any such acceptances, Landlord shall always have the right to declare the Tenant in Default should the Tenant thereafter fail to make any payment on the date the same becomes due. Landlord's acceptance of a lesser amount due than the Rent or other charges due shall not be deemed a waiver of the remaining balance due, nor shall an endorsement or statement on any check, or letter accompanying any check or payment, be deemed an accord and satisfaction, and Landlord may receive and deposit such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease. Landlord's acceptance of a check or payment from a person or entity other than Tenant shall not be deemed a consent by Landlord to a transfer of the obligations of this Lease.

#### **SECTION V - USE OF LEASED PREMISES**

- A. CARE OF PREMISES: Tenant shall not engage in any activities which might injure the Property or the Leased Premises. At all times Tenant shall take good care of the Leased Premises and keep the same in a clean, orderly and sanitary condition.
- B. PERMITTED USE: The Leased Premises may be used and occupied by Tenant for any legal use. Tenant shall be entitled to use the Leased Premises during the Lease Term for such permitted use every day of the week 24 hours per day. Tenant agrees that no activity or use shall occur on the Leased Premises without a responsible staff member of Tenant being present on the site.
- C. PARKING/ACCESS: Tenant, its employees, and invitees are allowed to use the parking lot located on the Leased Premises as reflected on Exhibit A and shall otherwise have access to all areas designated "Leased Premises" on attached Exhibit A. In addition, it is specifically contemplated as a condition of entering into this Lease that Tenant shall have reasonable access, with right of ingress and egress, to the shared outside storage areas adjacent to the leased Premises reflected on Exhibit A, and Landlord agrees to provide Tenant with such reasonable access during the term of the Lease.

- D. EQUIPMENT / SUPPLIES: Tenant shall utilize at its sole expense its own office equipment and supplies in conducting its operation and shall keep separate such supplies from supplies of the Landlord.

#### **SECTION VI- UTILITIES AND SERVICES**

- A. UTILITIES: Tenant shall be solely responsible for and agrees to promptly pay any and all charges for electricity, gas, water, storm water, sewer, refuse disposal, user fees, telephone, internet as well as any other assessments, fees, or similar charges, for the Leased Premises.
- B. INTERRUPTION: Landlord shall not be liable to the Tenant in damages or otherwise if any one or more of said services, whether or not furnished by Landlord, is interrupted or terminated.
- C. CLEANING: Tenant shall supervise the maintenance and janitorial needs of the Leased Premises. The maintenance and cleaning personnel will all be hired and supervised by the Tenant. Any such personnel will coordinate with the Landlord and Tenant in an effort to adequately insure that the Leased Premises are kept in a clean and sanitary condition.

#### **SECTION VII - REPAIRS**

- A. LANDLORD REPAIRS: Landlord shall keep the foundations, exterior walls, roof of the building and the plumbing system serving the Leased Premises (up to the Tenant's connection point thereto) in good order and repair provided the need for repair shall not be attributable to any act or omission of Tenant, its officers, employees, invitees or contractors, and Landlord shall not be required to make any other other improvements or repairs on the Leased Premises. Should the need arise for an repairs which are Landlord's responsibility, Tenant shall immediately contact Landlord as well as give Landlord prompt written notice thereof. In addition, the parties contemplate that the City shall, during the Lease Term provided, study and determine whether structural remodeling of the facility to better accommodate a shared use of the structure between the parties is feasible. If in the Landlord's sole discretion, such remodeling is deemed feasible and desirable, then the parties agree to co-operate and assist each other in causing such remodeling to occur within the Lease Term provided.
- B. TENANT REPAIRS: Tenant shall keep and maintain the Leased Premises in good order and repair, and in a condition at least equal to that at the Rent Commencement Date. Tenant's responsibilities for repairs or alterations shall include without limitation, all work of whatever nature which becomes necessary or desirable due to damage caused by Tenant or by Tenant's invitees. Tenant shall not make any repairs, alternations, or additions to either the interior or exterior of the Leased Premises or the Property without first obtaining Landlord's prior written consent.

- C. **REPLACEMENT:** At such time as replacement of any heating, air conditioning, or ventilating system is necessary due to the fact it has deteriorated to the degree that Tenant repair costs would exceed \$5,000.00, and sound operating practice would require replacement thereof, Tenant shall give written notice thereof to Landlord, accompanied by the written statement of a reputable manufacturer confirming repair costs in excess of \$5,000.00 and that replacement is necessary as aforesaid, and Landlord shall cause the replacement to be accomplished unless Landlord disputes the opinion of such manufacturer, in which case Landlord shall nonetheless perform the replacement and submit the matter to arbitration before the American Arbitration Association, and in such event, if the determination at arbitration is that replacement was not necessary under the foregoing criteria, Tenant shall promptly pay to Landlord all or such part of the cost, with interest thereon, plus fees as the arbitration award directs.
- D. **SIGNS:** Tenant shall be permitted an exterior sign to be erected or installed on the Leased Premises with the Landlord's prior written approval.

#### **SECTION VIII- INDEMNITY, LIEN CLAIMS AND DAMAGE TO TENANT**

- A. **TENANT INDEMNITY:** Tenant will indemnify Landlord and save it harmless from any breach, Default or negligence of Tenant in its performance of the terms and conditions hereof, and from all claims, actions, liability, expense and damages arising from the maintenance, operation or use of the Leased Premises by Tenant or its invitees, or from any condition existing on the Leased Premises which condition is the responsibility of Tenant. In any suit or action claimed to arise in whole or in part from the negligence or act of Tenant in which Landlord is included as a defendant, Tenant will assume all the burdens, and costs and expenses thereof and the costs of settlement or judgment obtained against Landlord by reason thereof. Tenant agrees to defend such action or proceeding by counsel reasonably satisfactory to Landlord.
- B. **CLAIMS:** Tenant will not create or permit to be created or remain and will immediately discharge any lien, encumbrance or other charge upon the Leased Premises, Tenant's leasehold estate, the Property or any part thereof; provided, that Tenant shall not be required to discharge any liens, encumbrances, or charges created by the Landlord.
- C. **TENANT'S DAMAGE:** Landlord shall not be liable for any damage, loss, disappearance, theft, or injury to the business, property or leasehold improvements which may be sustained or suffered by Tenant or its invitees by reason of any:
- (1) break, leak, or defect in the roof, walls, or foundation, or which may be occasioned by any air conditioning, heating, ventilation, plumbing, sewer, electrical wiring, gas, water, steam, or other pipes systems, appliances, and facilities whatsoever, whether or not caused by latent or patent defects in or about the

Leased Premises or the Property; or

(2) action of the elements, acts of God or

(3) neglect, carelessness, or act of any other tenant or invitee of such other tenant. Tenant agrees to hold Landlord harmless from and hereby waives any claims arising out of loss, injury, damage, theft or disappearance of Tenant's property, including sub-rogation claims by Tenant's insurance carrier.

### **SECTION IX - INSURANCE AND DAMAGE**

- A. **TENANT'S INSURANCE**: At all times as Tenant occupies the Leased Premises, or any part thereof, Tenant at its sole expense shall keep in force comprehensive general public liability and property damage insurance (including contractual and products liability), insuring Landlord and Tenant from all claims, demands or actions whatsoever occurring on or about the Leased Premises with combined single limit bodily injury and property damage coverage in an amount as designated sufficient by Landlord.
- B. **POLICY PROVISIONS**: All insurance policies required to be carried by Tenant shall specifically designate Landlord as an additional insured party and shall provide that said policies will not be canceled without at least thirty (30) days prior written notice to Landlord. The policy(s) or duly executed certificate(s) for the same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Landlord prior to the delivery of the Leased Premises to Tenant and thereafter at least thirty (30) days prior to the expiration dates of the last policies or certificates delivered to Landlord. All required insurance policies shall be written by companies of good financial standing, well rated by national rating organizations, and legally qualified to issue such insurance in the State of Oklahoma. If Tenant fails to comply with the above insurance requirements Landlord may obtain said insurance and keep the same in effect, and Tenant shall pay Landlord the premium cost thereof plus Interest thereon from the date of Landlord's payment, all as additional Rent.
- C. **LANDLORD INSURANCE**: Landlord shall carry insurance on the building in which the Leased Premises are located in amounts and types of coverage deemed adequate by Landlord, which may include, but shall not be limited to, comprehensive general public liability and property damage; fire and other casualty coverage. Landlord's casualty insurance will not cover any of Tenant's merchandise, trade fixtures, leasehold improvements or any other property of Tenant, or any property of others for which Tenant is responsible.
- D. **DAMAGE**: Should all or any portion of the Leased Premises be damaged or destroyed by fire or other casualty, Tenant shall immediately contact Landlord and also give Landlord prompt written notice thereof. Landlord shall have sixty (60) days from the casualty date to elect whether or not to repair and restore the damage. If Landlord elects not to rebuild or restore the Leased Premises, Tenant shall pay all Rent and other amounts due as of the casualty date and this Lease will terminate.

If Landlord elects to rebuild or restore, then this Lease shall not terminate, but the Rent shall abate pro-rata (according to the square footage of the Leased Premises which is unusable) from the casualty date until the Leased Premises are re-delivered to Tenant. In its sole discretion, the Tenant may agree, during any period of reconstruction, restoration, or repair of the Leased Premises or the Property, to continue the operation of its business in the Leased Premises to the extent reasonably practicable. Tenant shall forthwith replace or, repair at Tenant's expense, all signs, trade fixtures, equipment, and installations originally installed by Tenant. Landlord shall have no interest in the proceeds of any insurance carried by Tenant on Tenant's interest in this Lease, and Tenant shall have no interest in the proceeds of any insurance carried by Landlord. Tenant waives any claims or cause of action whatsoever against Landlord based upon damage to Tenants leasehold improvements, or to the Leased Premises, or to the contents thereof resulting from fire or any other casualty and Tenant agrees to give notice to its insurance carrier or carriers of this covenant -against suit for the purpose of eliminating any subrogation action which might otherwise result. Landlord's obligation to restore any casualty damage, if Landlord so elects, to the Leased Premises shall be limited to restoring the Leased Premises to substantially the same condition as existed immediately prior to the casualty, exclusive of any Tenant's Work to have been performed under this Lease. Notwithstanding anything in this Section to the contrary, there shall be no abatement in Rent, as above mentioned if the fire or other casualty giving rise to the damage or destruction was caused by carelessness neglect, or act of the Tenant or its invitees, in which event Tenant shall further be liable to Landlord for all damages to the Property or other losses which stem from such fire or other casualty.

#### **SECTION X - ASSIGNMENT OR SUBLEASING**

- A. ASSIGNMENT/SUB-LEASE: Tenant acknowledges that its agreement to operate the Leased Premises for the use permitted was a primary inducement and precondition to Landlord's agreement to lease the Leased Premises to Tenant and that Landlord's agreement to enter into this Lease was substantially and significantly based upon the credentials, creditworthiness and operating ability/experience of key personnel and owners of Tenant's business at the time this Lease was signed. Accordingly, Tenant shall not assign, sublet, enter into license agreement, share ownership, hypothecate or otherwise transfer (collectively "Transfer") this Lease or the Tenant's interest in the Leased Premises, in whole or in part, without, in each instance, first procuring the written consent of Landlord, which consent may be denied in Landlord's sole discretion. The provisions of this Section shall be construed to apply to any events occurring by operation of law or legal process, including, without limitation, receivership and bankruptcy.

#### **SECTION XI - RIGHT OF ACCESS**

- A. ACCESS: Landlord or its agents shall have the right at any reasonable or prudent time to enter the Leased Premises to inspect, install, maintain, and repair any facilities or structural elements leading through the Leased Premises which serve

other parts of the Property; or to do anything required of it under the terms of this Lease, or to conduct repairs needed to the Property.

## **SECTION XII - TAXES, FEES AND ASSESSMENTS**

- A. **REAL PROPERTY:** Landlord shall pay all real property and ad valorem taxes levied against the land and improvements on the Property.

## **SECTION XIII - EVENTS OF DEFAULT AND REMEDIES**

- A. **EVENTS OF DEFAULT:** Any of the following shall constitute an event of default (a "Default") under this Lease:

(1) If Tenant shall fail to make full payment when due of any Rent required to be paid by Tenant to Landlord under this Lease and if the non-payment of Rent shall continue for ten (10) days after such payment(s) are due (without the necessity for notice thereof); or

(2) If Tenant shall fail to make full payment of any amount other than Rent pursuant to a notice or demand and such failure shall continue for ten (10) days after Tenant's receipt of notice or demand; or

(3) If Tenant fails to observe or perform any other provision of this Lease and if said failure shall continue for more than ten(10) days after Landlord has given Tenant written notice specifying the Default. Except that if the nature of the Default is such that it cannot be cured by the payment of money and cannot with reasonable diligence be wholly cured within such period often (10) days, then if Tenant shall proceed immediately to cure the Default and thereafter proceeds with curing of the Default with all reasonable diligence, the time within which to cure the Default shall be extended for such period as may be necessary to complete the curing of the same with all reasonable diligence.

- B. **REMEDIES:** Upon the occurrence of any Default Landlord shall have the option to pursue any one or more of the following remedies and Tenant waives all requirements of any prior notice or prior demand, including without limitation, notice of election to forfeit demand for payment or demand for possession, but excluding the notice of the filing of any action:

(1) Enter and take possession of the Leased Premises without terminating this Lease and relet the Premises from time to time (including for a period(s) beyond the Lease Term on such terms and taking such steps as Landlord, in its sole discretion, deems advisable and receive rentals therefor.

(2) At any time (notwithstanding any entry and possession without termination under subsection 1 above terminate this Lease, in which event Tenant shall, if still in possession, immediately surrender the Leased Premises to Landlord, and if

Tenant fails to do so, Landlord may enter and take possession of the Leased Premises.

- C. GENERAL REMEDY: Notwithstanding Landlord's entry and possession or termination under any other section, whether or not the Leased Premises or any part thereof shall have been relet, Landlord shall have the right to declare the unpaid balance of the Rent for the remaining Lease Term as due and payable at once and to enforce payment thereof.
- D. REMEDIES CUMULATIVE: The various rights and remedies reserved herein to the parties shall not be considered as exclusive of any other right or remedy, but as cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity.

#### **SECTION XIV - MORTGAGE RECOGNITION**

- A. SUBORDINATION: Tenant agrees that this Lease is and shall be subordinate to any mortgage deed of trust, or other hypothecation for security which has been or which hereafter maybe placed upon the Leased Premises. Tenant agrees to execute any documents which may be required to effectuate such subordination.

#### **SECTION XV - MISCELLANEOUS**

- A. COMPLIANCE WITH LAWS: Tenant agrees to comply with and to require its employees and contractors, and to cause the Leased Premises to comply with all federal, state, and local laws, ordinances, regulations, and directions relating to the physical aspects of the Leased Premises or Tenant's use thereof and the business of Tenant conducted therein. Should any alterations to the Leased Premises become necessary in order to comply with this provision, Tenant shall be responsible therefor.
- B. ENTIRE AGREEMENT: This Lease contains the entire agreement between the parties. No agreement shall be effective to change or terminate this Lease unless written and signed by the party against whom enforcement is sought.
- C. GOVERNING LAW: The laws of the State of Oklahoma shall govern the interpretation, validity, performance and enforcement of this Lease, and the venue for any disputes regarding Lease shall be Sapulpa, Oklahoma.
- D. QUIET ENJOYMENT: Upon execution of this agreement and Tenant's payment of the Rent and any other sums due hereunder, as well as the observance and performance of all the terms, conditions, and covenants to be performed or observed by Tenant under this Lease, Tenant shall have the exclusive right to peaceably and quietly hold and enjoy the Leased Premises for the Term hereof without hindrance or interruption by Landlord, or any other persons or persons lawfully or equitably claiming by, through, or under the Landlord, subject, nevertheless, to the terms and conditions of this Lease



IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the latest day and year written below.

Executed by Landlord the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**City of Sapulpa, Oklahoma**

\_\_\_\_\_  
Reg Green, Mayor

Attest:

Approved to form:

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
City Attorney

Executed by Tenant the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

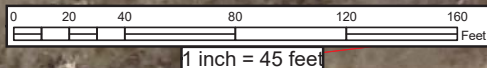
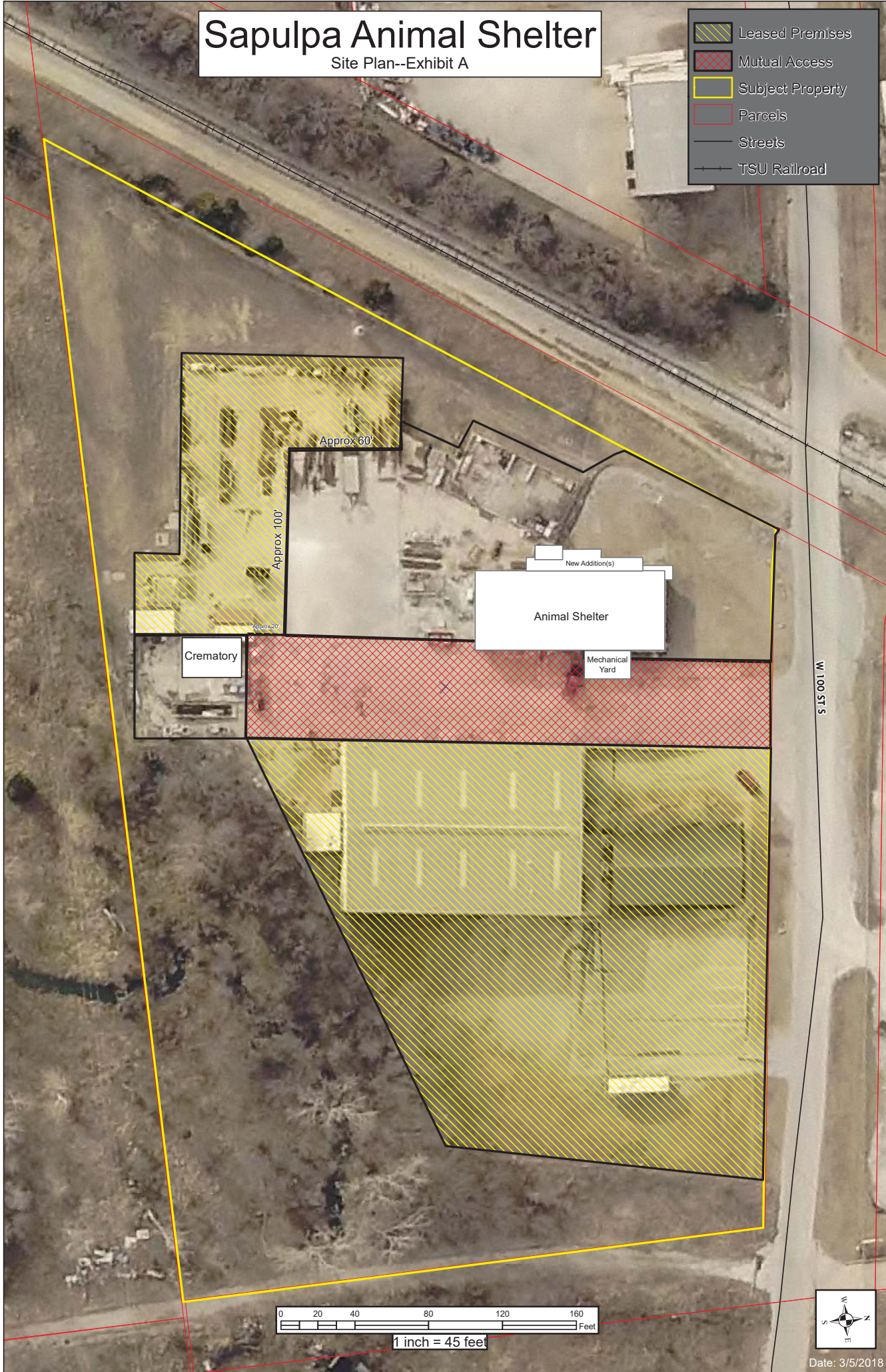
**Glass Design, Inc.**

\_\_\_\_\_  
Roger Weilacher, President

# Sapulpa Animal Shelter

Site Plan--Exhibit A

- Leased Premises
- Mutual Access
- Subject Property
- Parcels
- Streets
- TSU Railroad





**AGENDA ITEM**

**Administration 7.D.**

**Municipal Authority Regular**

**Meeting Date:** March 5, 2018

**Submitted By:** Anna Jo Fife, City Manager Assistant

**Department:** City Manager

**Presented By:** CITY MGR.

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**SUBJECT:**

Consider and take action with respect to a Resolution agreeing to file application with the Oklahoma Water Resources Board (The "OWRB") for financial assistance through their various loan programs, with the loan proceeds being for the purpose of financing certain Wastewater System Improvements; and containing other provisions related thereto.

**BACKGROUND:**

**RECOMMENDATION:**

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**Attachments**

res-owrb

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RESOLUTION NO. \_\_\_\_\_

A RESOLUTION AGREEING TO FILE APPLICATION WITH THE OKLAHOMA WATER RESOURCES BOARD (THE "OWRB") FOR FINANCIAL ASSISTANCE THROUGH THEIR VARIOUS LOAN PROGRAMS, WITH THE LOAN PROCEEDS BEING FOR THE PURPOSE OF FINANCING CERTAIN WASTEWATER SYSTEM IMPROVEMENTS; AND CONTAINING OTHER PROVISIONS RELATED THERETO.

WHEREAS, the Sapulpa Municipal Authority (the "Authority") has under consideration the financing of certain wastewater system improvements, and related costs (the "Project"); and

WHEREAS, it is deemed desirable for the Authority to give preliminary authorization for the issuance of obligations for such purpose; and

WHEREAS, the Oklahoma Water Resources Board has made monies available to qualified entities for the financing or refinancing of certain qualifying projects; and

WHEREAS, the Authority hereby agrees to file an application(s) with the Oklahoma Water Resources Board for financial assistance in the aggregate amount which will be sufficient to accomplish the Project.

NOW, THEREFORE, BE IT RESOLVED BY THE TRUSTEES OF THE SAPULPA MUNICIPAL AUTHORITY, THAT:

Section 1. Application. The Authority shall file an Application(s) with the Oklahoma Water Resources Board seeking financial assistance through the OWRB; and the Chairman or Vice Chairman and Secretary or Assistant Secretary of the Authority are hereby authorized to execute said Application(s) for and on behalf of the Authority. The Authority is further authorized to advance to the Oklahoma Water Resources Board the necessary application fees in connection with the referenced Application(s).

Section 2. Other Matters. The Chairman or Vice Chairman and Secretary or Assistant Secretary of the Authority are hereby authorized and directed to do all other lawful things necessary to carry out the terms and conditions of this Resolution.

PASSED, ADOPTED AND APPROVED THIS 5<sup>TH</sup> DAY OF MARCH, 2018.

SAPULPA MUNICIPAL AUTHORITY

(SEAL)

ATTEST:

\_\_\_\_\_  
Chairman

\_\_\_\_\_  
Secretary

STATE OF OKLAHOMA        )  
  )SS  
COUNTY OF CREEK        )

I, the undersigned, Secretary of the Sapulpa Municipal Authority, Creek County, Oklahoma, do hereby certify that the above and foregoing is a true, full and correct copy of an excerpt from the minutes of a meeting of the Board of Trustees of said Authority, held on the date above stated, all as recorded in the official minutes of such meeting. I further certify that the “Open Meeting Law” was complied with for such meeting.

GIVEN UNDER MY HAND THIS 5<sup>TH</sup> DAY OF MARCH, 2018.

(SEAL)

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Secretary