

File Attachments for Item:

12. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-72: BY AND BETWEEN THE CITY OF NORMAN AND ESKIMO SNO INC., D/B/A BEANSTALK COFFEE AND SNO, FOR BEANSTALK COFFEE AND SNO TO BE THE CONCESSIONAIRE PARTNER AND OPERATOR OF THE CONCESSION SPACE INSIDE THE YOUNG FAMILY ATHLETIC CENTER, 2201 TRAE YOUNG DRIVE, NORMAN, OKLAHOMA.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: AshLynn Wilkerson, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-72: BY AND BETWEEN THE CITY OF NORMAN AND ESKIMO SNO INC., D/B/A BEANSTALK COFFEE AND SNO, FOR BEANSTALK COFFEE AND SNO TO BE THE CONCESSIONAIRE PARTNER AND OPERATOR OF THE CONCESSION SPACE INSIDE THE YOUNG FAMILY ATHLETIC CENTER, 2201 TRAE YOUNG DRIVE, NORMAN, OKLAHOMA.

BACKGROUND:

In October 2015, Norman voters approved the \$150 million, 15-year Norman Forward Sales Tax initiative. The Norman Forward Initiative outlined various citywide projects to improve the quality of life for the citizens of Norman. This initiative included projects to construct a new Multi-Sport Complex and Indoor Aquatic Facility.

The Multi-Sport Complex and Indoor Aquatic Facility were initially proposed as separate projects. After extensive public input and consideration by the City Council, acting as Trustees of the Norman Municipal Authority (NMA), these projects were combined in 2018 into one more extensive project, to be located at the southeast corner of 24th Avenue NW and Rock Creek Road in the University North Park development. This new sports and aquatic complex will include eight full-sized basketball or 12 volleyball courts; a 25-meter, eight-lane lap pool; a 25-yard, four-lane warm-up pool; concession stands; retail space; administration offices; and, through a partnership with Norman Regional Health System (NRHS), a health and wellness clinic to be placed between the multi-sports and aquatic complexes.

The building and the project were named the Young Family Athletic Center ("YFAC") in July of 2021 (K-2122-27) after the Trae Young Family Foundation (TYFF) agreed to donate \$4,000,000 to the construction of the building. NRHS has committed a minimum of \$6.7 million, through a contract approved by the City Council in June of 2023 (K-2122-99), towards constructing a human sports and performance clinic inside the YFAC called "N-Motion."

DISCUSSION:

On June 12, 2023, The Parks and Recreation Department solicited proposals (RFP-2324-10) for a local organization to be a Concessionaire Partner at the YFAC. This Concessionaire

Partner will operate and manage the concession space inside the YFAC and remit a monthly lease payment and some profit sharing in exchange for such operation. Beanstalk Coffee and Sno was the only entity to submit a proposal before RFP-2324-10 closed on July 21, 2023. The proposal selection panel interviewed Beanstalk and decided to move forward with negotiations for Beanstalk to be the Concessionaire Partner at the YFAC.

The agenda item is the recommended approval of a concession agreement with Beanstalk to operate and manage the concession space inside the YFAC. The contract is to begin on January 1, 2024, and extend for a one year term, to automatically renew annually for a maximum contract term of five years. Beanstalk will operate the concession space and act as one provider of catering services for events held at the YFAC. Beanstalk's hours of operation are designed around the NRHS clinic hours and the event calendar at the YFAC to maximize profits of the concession space. The City is to receive \$35 per square foot as a lease payment, with the annual lease total to be \$40,250, in addition to 2% of its gross receipts from the operation of the Concession Space and any Catering Event or other special event held at the YFAC, both of which are to be remitted to the City on a monthly basis. The City also retains all "pour rights" at the YFAC and thereby is the sole entity to collect revenues from such rights, for example, deals with Coca-Cola and Body Armor.

RECOMMENDATION:

Staff recommends the approval of Contract K-2324-72 between the City of Norman and Eskimo Sno Inc. d/b/a, Beanstalk Coffee and Sno, for Beanstalk to be the Concessionaire Partner and operator of the concession space inside the YFAC.

YFAC CONCESSION AGREEMENT

This Agreement is a contract, made and entered into this 8 day of December, 2023, by and between the City of Norman, a municipal corporation, hereinafter called the "City," and the Concessionaire Partner, Eskimo Sno Inc., dba Beanstalk Coffee and Sno, a for profit corporation, hereinafter called "Beanstalk."

WITNESSETH:

WHEREAS, the City is the owner of property in Cleveland County, Oklahoma, known as The Young Family Athletic Center (YFAC), for the purpose of enriching the quality of life and health through competition and recreational leisure in a safe, fun, and family environment, and

WHEREAS, the City issued a Request for Proposal (RFP No. 2324-10) to solicit an operator to provide food and beverage services at the café located inside the YFAC, and

WHEREAS, Beanstalk responded to the City's RFP with a proposal that satisfied the qualifications of the RFP, and

WHEREAS, the City has chosen Beanstalk to be the Concessionaire Partner at the YFAC and now desires to enter into this Concession Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto agree as follows:

1. CONCESSION OPERATIONS:

A) The City grants to Beanstalk the right, privilege and obligation to occupy, equip, and maintain a café located in the YFAC, with a total square footage of 1,150 sq.ft., as depicted on the floor plan attached as Exhibit A (the "Concession Space"). Notwithstanding, the City shall retain all pouring rights at the YFAC and will be the sole entity to collect all contract revenues from the exercise of such rights. Beanstalk shall be entitled to collect any rebate amounts from the City's pouring rights. "Pouring rights" shall be defined as the right to make available, sell, dispense and serve food and beverage products during events held at the YFAC, which may or may not be to the exclusion of other food and beverage vendors at the YFAC. The City shall be responsible for furnishing the public lounge area, but Beanstalk shall be responsible for furnishing and equipping the Concession Space with needed equipment and materials for its operations in the Concession Space, with all improvements to the Concession Space to be approved by the City. Beanstalk accepts the Concession Space in "as is" condition and containing whatever appurtenances that may be contained therein or thereon. The City makes no warranty of any kind of fitness for intended use of said facility or appurtenances.

B) Beanstalk's standard hours of operation shall reflect and comply with the operating hours of the YFAC and any special events held at the YFAC. Beanstalk must also

operate the Concession Space during the hours the Norman Regional Health System (NRHS) Clinic is in operation (8am to 5pm daily). The City shall post Beanstalk's standard hours of operation in a public location. Beanstalk must submit changes to its hours of operation to the Director of Parks and Recreation, such changes only to come into effect with approval of the Director. Beanstalk may operate the Concession Space outside its standard hours of operation for any special events or Catering Events that have been approved by the City.

C) Beanstalk's Responsibilities for Operation:

- i. Beanstalk shall have full and complete control over the operation of the Concession Space, subject only to the obligations of this Agreement and applicable law.
- ii. The menu for the Concession Space and Catering Events shall be the responsibility of Beanstalk, but the City reserves the right to request menu items. Beanstalk agrees that there shall be no sale or advertising of any tobacco products at the Concession Space or any Catering Events. The prices charged by Beanstalk for the Concession Space and Catering Events shall at all times be reasonable and subject to approval of the City.
- iii. Beanstalk may bring in food trucks for special events or Catering Events only with the approval of the City.
- iv. Beanstalk may serve alcohol for special events or Catering Events only with the approval of the City.
- v. Beanstalk shall be responsible for securing the premises of the Concession Space during operating hours.
- vi. Beanstalk shall be responsible for maintaining the Concession Space, including the public lounge area, in a clean and sanitary manner at all times during operation, including but not limited to keeping all trash bagged properly and away from public view in designated holding areas, sanitizing tables and chairs, and sweeping and cleaning food and beverage spills in the public lounge area.
- vii. Beanstalk shall be responsible for maintenance and repairs to equipment, fixtures and/or personal items it has provided and is responsible for in the Concession Space.
- viii. Beanstalk shall be responsible for sending an authorized representative to monthly YFAC operators' meetings held by the City.

D) The City's Responsibilities for Operation:

- i. The City, through YFAC staff, shall maintain security at the YFAC and shall assist Beanstalk with any security issues that may arise as requested by Beanstalk.
- ii. The City, through YFAC staff, shall be responsible for removing trash from designated holding areas to the dumpsters as needed throughout operating hours. The City, through YFAC staff, shall also be responsible for exterior cleaning and maintenance.
- iii. The City shall be responsible for building maintenance and will provide needed repairs to electrical, HVAC, plumbing, or structure.
- iv. The City shall assist Beanstalk in their promotion of its operation of the

Concession Space in the City's print, online, and social media marking and communications.

- v. The City shall provide building access cards to Beanstalk for its employees' entry into the YFAC, with Beanstalk to be responsible for any costs associated with lost and/or replacement access cards.

E) Beanstalk agrees that its operation of the Concession Space shall at all times comply with: 1) the YFAC Facilities Policy Manual, and any revisions that may be made by the City from time to time, attached hereto as Exhibit B and incorporated herein; 2) all applicable federal, state, and local laws and regulations governing food service establishments and any associated licenses and permits necessary for the operation of a food service establishment; 3) the highest practicable standards of sanitation, complying with all laws of the State of Oklahoma, with all rules and regulations of the State Board of Public Health; and 4) regulations promulgated by ABLE for any events where alcohol is served.

2. **CATERING:** Beanstalk has the right to provide catering services for events held at the YFAC ("Catering Events") and shall have the right of first refusal for such Catering Events, but shall not be the sole catering provider at the YFAC. Notice to Beanstalk of Catering Events shall be provided as described below. Beanstalk shall have ten (10) days to accept or refuse Catering Events following such notice. In the event of rejection or a failure to accept within the ten (10) days, the party requesting catering is free to utilize another catering service for its event. Beanstalk agrees that the City is exempt from this right of first refusal as well as using Beanstalk as a catering provider for City events.

A) For Catering Events provided to third-parties, the City shall provide a monthly calendar of events to be held at the YFAC, providing prompt notice of any subsequent change of events for the month, if applicable, for Beanstalk to coordinate Catering Events with third-parties. Beanstalk shall have the sole responsibility for communicating and organizing any Catering Events with third-parties.

3. **TERM:** The term of this Agreement shall commence on January 1st, 2024 and continue until December 31st, 2024. This Agreement shall renew automatically on an annual basis, beginning on January 1 of each year, unless terminated pursuant to the provisions set forth herein, for a maximum contract term of five (5) years.
4. **REVENUE SHARING DURING TERM:** Beanstalk agrees that in exchange for the operation of the Concession Space, it will remit to the City \$35 per square foot as a lease payment, with the first annual lease total to be \$40,250. The lease payments for the first term of this Agreement shall begin on March 1, 2024, all subsequent renewal terms shall begin on January 1 of each renewal year. Beanstalk understands and agrees that such lease payment is subject to change upon each annual contract renewal to reflect the amount determined to be the then current rate for leasing commercial space in the University North Park area of Norman, Oklahoma. Beanstalk also agrees to remit to the City 2% of its gross receipts from the operation of the Concession Space and any Catering Event or other special event held at the YFAC. The 2% gross receipts payments for the first term of this Agreement shall begin on the first day of operations of the Concession space, all subsequent renewal terms shall begin on January 1 of

each renewal year. Both payments are to be remitted to the City on a monthly basis and are to be supported by documentation showing all gross receipts received by Beanstalk from its operations at the YFAC for the corresponding month, with Beanstalk's Square report to suffice as a proper method of documentation.

5. **UTILITIES:** The City shall furnish all heat and cooling for the Concession Space and all water, electricity and gas necessary in the operation of the Concession Space. Public Wi-Fi will be available at the YFAC.
6. **SIGNAGE AND MARKETING:** The City shall provide appropriate indoor facility space for identifying and marketing signage provided by Beanstalk, such as signage space on the windows of the YFAC and/or digital signage, with such signage being subject to the approval of the City. The City also agrees to provide outdoor signage space at the intersection of 24th Avenue NW and W Rock Creek Road, at Beanstalk's own expense.
7. **REMOVAL OF EQUIPMENT:** Beanstalk shall retain title to and shall remove at its sole cost, upon expiration or termination of this Agreement, all of Beanstalk's equipment, defined as follows: any equipment, apparatus, machinery, signs, furnishings, trade fixtures and personal property provided and installed by Beanstalk and used in the operation of their business but shall not include any fixtures installed by City prior to Beanstalk's use of the Concession Space.
8. **RECORDKEEPING AND REPORTING:** Beanstalk shall supply an annual report to the Director of the City of Norman's Parks and Recreation Department and the Norman City Council within forty-five (45) days of the end of each annual contract term. The annual report shall include a summary of all activity, along with revenue and expenditure summaries for Beanstalk's operation of the Concession Space for the preceding year. In addition to the annual report, Beanstalk shall also supply all corroborating records of gross receipts monthly as described in Section 4 of this Agreement. All detailed records associated with the operation of the Concession Space shall be made available for review within ten (10) days by Beanstalk upon request from the City. Beanstalk agrees to maintain all financial records associated with the operation of the Concession Space for a period of seven (7) years. These financial records shall be maintained in such detail as to account for gross receipts and expenditures for all significant operation activity. The financial recording system shall be reviewed and approved by the City's Department of Finance for the purpose of maintaining a minimum accounting standard acceptable to both parties.
9. **INSURANCE:** Beanstalk shall, at its own expense, keep in force insurance of the following types, naming the City as co-insured, and in not less than the following amounts, issued by a company or companies licensed to do business in Oklahoma and is of sound and adequate financial responsibility, against all liabilities for accidents arising out of or in connection with Beanstalk's operation of the Concession Space, except when caused by the City's negligence or that of its agents or employees, and shall furnish to the City certificates evidencing such insurance subject to the limitations set forth above in respect to the City's sole negligence and Beanstalk shall furnish a certificate to the effect that such insurance shall not be changed or

cancelled without ten (10) days prior notice to the City, said notice shall be written and shall be given by Beanstalk, to wit:

- A) Worker's Compensation Insurance and Employer's Liability Insurance as prescribed by State Statute, for all of Beanstalk's employees and subcontractors, working at the YFAC, with the subcontractors to also provide the same.
- B) Provide both Commercial General Liability Insurance and Automobile Liability Insurance for personal injury and property damage in limits prescribed by the Oklahoma Governmental Tort Claims Act (51 O.S. § 151 et seq.) and subsequent revisions thereto, as follows:
 - i. \$25,000 for loss of property arising out of a single act or occurrence.
 - ii. \$125,000 per person for any other loss arising out of a single act or occurrence.
 - iii. \$1,000,000 for any number of claims arising out of a single act or occurrence.

10. INDEMNIFICATION: Beanstalk agrees to indemnify and hold harmless the City, its officers, agents and employees from and against all liability for injuries or death to persons, legal expense or damage to property caused by Beanstalk's, its agents or employees operation of the Concession Space; provided, however, that Beanstalk shall not be liable for injury, damage or loss occasioned by the sole negligence of the City, its agents or employees. Beanstalk shall indemnify and hold harmless the City, its officers, agents and employees from and against all claims, damages, suits, expenses, liability or proceedings of any kind whatsoever, including, without limitation, Worker's Compensation claims of or by anyone whomever, in any way resulting from, or arising out of, Beanstalk's acts, omissions or operations under or in connection with this Agreement or Beanstalk's operation of the Concession Space. Further, the City shall not be liable or responsible to Beanstalk for any loss or damage to any property or person occasioned by a third party or any Force Majeure event. It is understood that this indemnity and hold harmless provision is not limited by the insurance required under this Agreement.

11. TERMINATION:

- A) *For Cause:* This Agreement may be terminated by either party upon written notice in the event of substantial failure by the other party to perform in accordance with its material duties or obligations under this Agreement. The defaulting party shall have ninety (90) days after written notice is given, specifying the event of default under the Agreement, to cure the default. If the default is not cured to the complete satisfaction of the non-defaulting party, such party may terminate the Agreement.
- B) *For Convenience:* The City may terminate this agreement for any reason upon sixty (60) days written notice to Beanstalk.
- C) *Appeal:* Beanstalk shall be afforded a hearing before the Board of Park Commissioners if requested within ten (10) business days following notice of termination. The results of such hearing shall not be binding on the City as constituting a limitation upon its power to cancel this contract.

- 12. FORCE MAJEURE:** Neither party shall be responsible nor liable for any delays or failures in performance from any cause beyond its reasonable control, including, but not limited to acts of God, changes to law or regulations, embargoes, war, terrorist acts, acts or omissions of a third party, riots, fires, earthquakes, floods, power blackouts, strikes, or weather events.
- 13. RIGHT TO ENTER:** The City and its authorized agents or employees shall have the right to enter the Concession Space at any reasonable time and as often as necessary in the City's judgment to inspect and examine the Concession Space, to make and perform needed improvements and/or repairs, and to comply with applicable laws, ordinances, rules, orders or other governmental regulations. The City reserves the right to close down the Concession Space without notice in the event an emergency repair is deemed necessary by the City.
- 14. SURRENDER OF POSSESSION:** Beanstalk agrees to surrender possession of the Concession Space to the City at the expiration or termination of this Agreement, or upon the expiration of any renewal, in as good repair and condition as when Beanstalk obtained the Concession Space excepting only ordinary wear and tear and decay, or damage caused by any Force Majeure event. Upon expiration or termination of this Agreement, Beanstalk shall remove all of its furniture, fixtures and other personal effects from the Concession Space. In the event Beanstalk does not remove all of its furniture, fixtures, and other personal effects from the Concession Space upon expiration or termination of this Agreement, the City may take possession of such items and utilize or dispose of them in the City's sole discretion without any liability to Beanstalk.
- 15. NOTICE:** Any notice, demand, or other communication under this Agreement shall be sufficiently given or delivered when it is delivered personally, or within three (3) business days after it is deposited in the United States mail, registered or certified mail, postage prepaid, return receipt requested, to:

City:

Jason Olsen
Director of Parks and Recreation
225 N. Webster Ave.
Norman, OK 73070

Beanstalk:

Jennii Buendia
Owner/President
3408 36th Ave NW Ste 124, Norman, OK 73072

16. MISCELLANEOUS:

- A) *Counterparts:* This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute the same instrument.
- B) *Severability:* If any provision of this Agreement is determined to be unenforceable, invalid, or illegal, then the enforceability, validity, and legality of the remaining

provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

- C) *Governing Law; Venue:* This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this Agreement shall be in the District Court of Cleveland County, Oklahoma, or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.
- D) *Binding Effect:* All the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto.
- E) *Authority:* Each party hereto has the legal right, power and authority to enter into this Agreement. Each party's execution, delivery and performance of this Agreement has been duly authorized, and no other action is requisite to the valid and binding execution, delivery and performance of this Agreement, except as expressly set forth herein
- F) *Relationship of Parties:* This Agreement does not create any partnership or joint venture between the parties hereto, or render any party liable for any of the debts or obligations of the other party. Neither party shall be deemed to be an agent or representative of the other.
- G) *Entire Agreement; Amendments:* This Agreement constitutes the entire agreement among the parties hereto and may not be amended or modified, except in writing, signed by each of the parties hereto.
- H) *Assignment:* This Agreement shall not be assigned by either party without prior written consent of the other party, said consent not to be unreasonably withheld.
- I) *Non-waiver:* No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to either party at law or in equity.
- J) *Nondiscrimination:* Beanstalk agrees further that it will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.

[Signatures on following page]

In Witness Whereof, the parties hereunto set their hands and seal the date first above written. The parties agree that they may conduct the transaction by electronic means and hereby state that electronic signature is valid and shall have the same force and effect as an original signature.

BEANSTALK

BY: Vannii Buendia

Owner

ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
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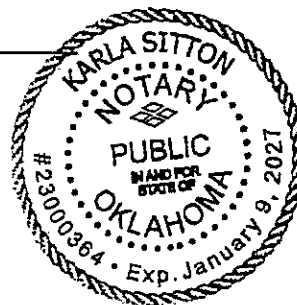
K-2324-72

COUNTY OF OKLAHOMA)

Before me, a Notary Public in and for the State of Oklahoma, on this 8th day of December, 2023, personally appeared Jennii Blundia, to me known to be the identical person who subscribed their names to the foregoing instrument as their free act and voluntary deed for the uses and purposes therein set forth.

Karla Sitton
NOTARY PUBLIC

My Commission No. 23000364 Expires January 9, 2027 [SEAL]



CITY OF NORMAN

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

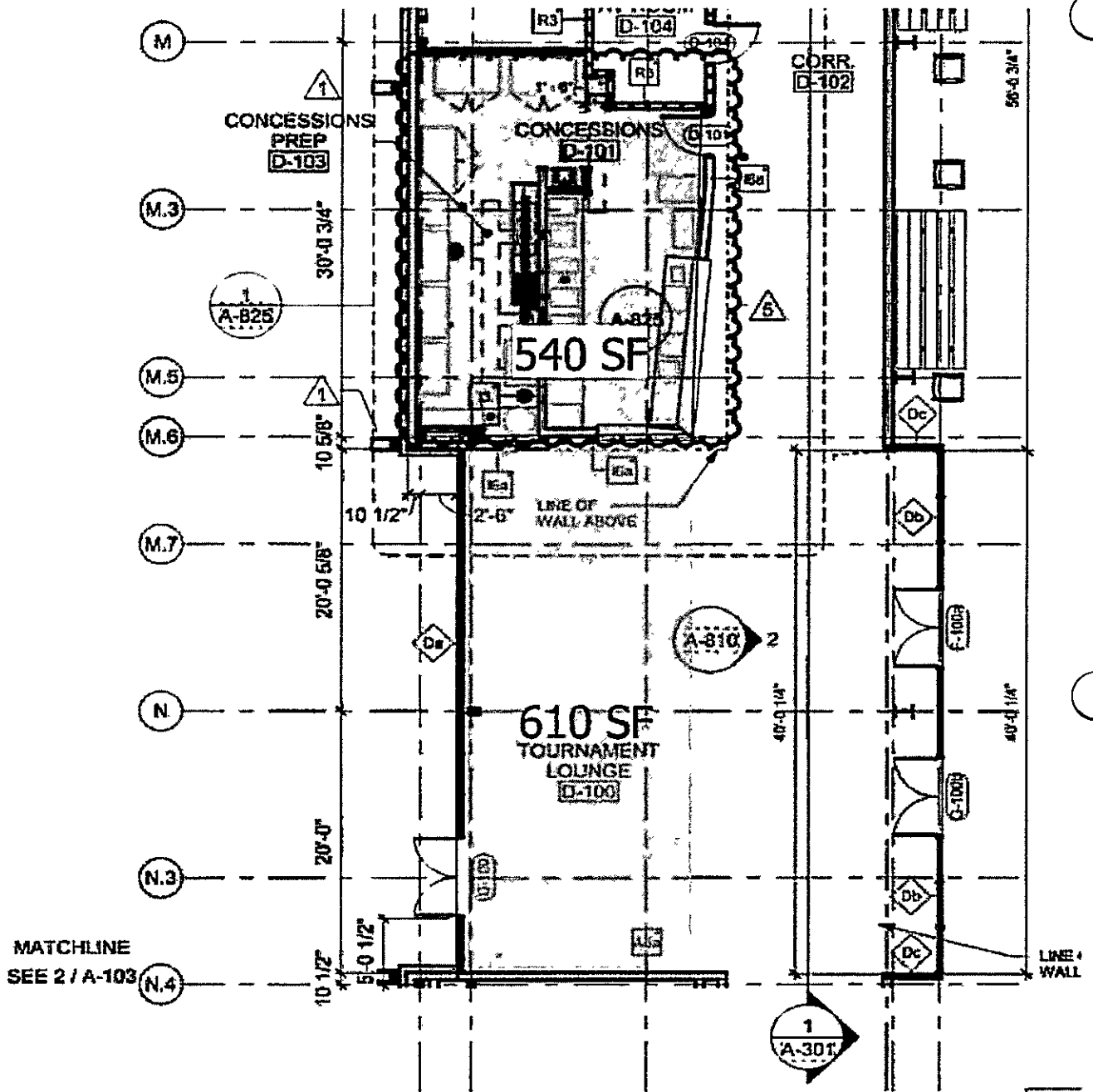
Brenda Hall, City Clerk

APPROVED as to form and legality this 8th day of December, 2023.

[Signature]
CITY ATTORNEY

EXHIBIT A

K-2324-72



1 GROUND FLOOR PLAN - SECTOR D

SCALE: 1/8" = 1'-0"

EXHIBIT B

Introduction and Purpose

The Young Family Athletic Center (YFAC) is owned and operated by the City of Norman Parks and Recreation Department. The YFAC has eight (8) basketball courts, twelve (12) volleyball courts, an eight (8) lane 25-meter competition pool, and a four (4) lane recreation pool. Norman Regional Hospital Systems (NRHS) will perform sports medicine with Ortho Central and N-Motion clinics inside the YFAC.

Authority of the Director of Parks and Recreation

The Director of Parks and Recreation (the "Director") sets the pricing schedule and fees, which will be reviewed annually and updated on the recommendation of the Norman Board of Park Commissioners.

The Director can also enter into an agreement on behalf of the City of Norman with a Community/Operational partner annually for the rental of the YFAC for events, practices, or meetings. Community/Operational Partner Agreements will be reviewed annually by the Norman Board of Park Commissioners.

The Director will set the Fee Schedule, which includes membership and day pass costs, rental and event fees, and other general fees associated with access to the YFAC. The Fee Schedule will be set based on recommendations from the Norman Board of Park Commissioners.

The Director is responsible for entering into sponsorship or marketing agreements with businesses/groups at the YFAC on behalf of the City of Norman. Marketing and Sponsorship agreements will be reviewed annually by the Norman Board of Park Commissioners.

Any update or change to the YFAC Booking & Sponsorship Policies must be at the Recommendation of the Norman Board of Park Commissioners and approved by the Norman City Manager.

YFAC Mission

- The mission of the Young Family Athletic Center (YFAC) is to enrich the quality of life and health through competition and recreational leisure through sports, aquatics, fitness, special events, and various activities in a safe, fun, and family environment.

Definitions

1. **Fee Schedule** –The cost table showing the fixed costs for the public to use or rent the YFAC. The Director sets the Fee Schedule on the Norman Board of Parks Commissioners' recommendations. (Exhibit B)
2. **Community/Operational Partner** – A community/operational partner will be defined at the YFAC as a School, Sports Club, or local non-profit that fits in the mission of the YFAC and will be allowed to enter into annual agreements with the Parks and Recreation Department. The Parks and Recreation Department will keep a Community/Operational Partners list. The partners will be recommended through the Norman Board of Park Commissioners and approved by the Director. (Exhibit B)
3. **Event Rental** – Event rental is for a person, group, business, or non-profit involving twenty-five (25) or more people using the Athletic or Aquatics areas for athletic competition, banquet, concert, or other miscellaneous event.

- 4. Practice or Private Party Rental** – A practice or private party will be defined as a small group of people (twenty-five (25) or less) that use a section of the Athletic or Aquatic meeting room areas for either a practice or a small private party for a group, business, or non-profit.

YFAC Facility

The YFAC Facility is multi-purpose to meet the varied needs of the community. Portions of the Facility available for rent are listed below.

1. Multi-Sport Gymnasium
 - Basketball/Volleyball Courts – The YFAC can be configured for up to eight (8) basketball courts and/or twelve (12) volleyball courts with bleachers for each court
 - Tournament Office Space
 - Tournament Ticketing Window
2. Competition and Recreation Pools
 - Eight (8) lane 25-meter competition pool
 - Four (4) lane recreation pool
3. Women's Aquatic Locker Rooms
4. Men's Aquatic Locker Rooms
5. Aquatic Family Changing Rooms
6. Meeting Rooms
7. NRHS Clinic Space

Operating Hours & Serviceability ¹

The YFAC will be open to the public on non-holiday weeks a minimum of eighty (80) hours. The Parks and Recreation Department commits to have the center available for Norman residents for passive activities at an average of seventy (70) hours per week. The Parks Department and the YFAC will commit to have a minimum of one-hundred (100) hours of community open gym/swim annually for Norman residents at no cost by opening the facility to the public for scheduled open activity.

Operating Hours:	Monday – Friday	7:00 am – 9:00 pm
	Saturday	8:00 am – 6:00 pm
	Sundays	12:00 pm – 4:00 pm

Special Holiday Hours:	12:00 pm – 6:00 pm
	MLK Day, Memorial Day, Juneteenth, Labor Day

Holidays Closed:	New Years Day, Independence Day, Thanksgiving Day, Christmas Eve, and Christmas Day
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¹ Operating Hours & Serviceability added 11/2/23 & 12/7/23

1. Community/Operational Partner Rentals

Community/Operational Partners must enter into annual agreements that specify all YFAC spaces to be used, dates and times for usage, and fees to be paid. Such agreements shall set forth the reservation payment terms, insurance requirements, and any other applicable and reasonable term(s) related to the use of the YFAC by such Partner.

2. Event Rentals

- a. Reservations for the YFAC can be made up to two (2) years in advance for event rentals and must be made no less than fourteen (14) days before the event.
- b. Reservations are on a first-come, first-served basis. The YFAC/Parks and Recreation Department cannot guarantee a reservation until the rental is paid in full.
- c. To reserve dates as an event rental at the YFAC, a deposit of at least 20% must be paid when the facility is reserved. Without this, a reservation is not valid. Lessee must be at least eighteen (18) years old to enter into a contract. Signed agreements are binding.
- d. All rental fees, layouts, security forms, cleaning fees, deposits, sponsorship, and agreements with Norman Regional Hospital System (NRHS) for sports medicine or other additional costs associated with the event must be paid in full before the start of the rental per the terms of the contract.
- e. Admission fees proposed by Community/Operational Partners or for event rentals must be submitted and approved by the YFAC/Parks and Recreation Department when the rental agreement is submitted.
- f. Event times at the YFAC must end no later than 11:00 p.m. on Sunday-Thursday, with the YFAC completely vacated by midnight. Events must end by midnight on Friday & Saturday, with the building vacated by 1:00 a.m.
- g. Event rental fees are subject to different rental fees than practice or private party rentals.
- h. Alcohol can be approved at events with the written permission of the Director . Alcohol will not be allowed at youth events under any circumstances.
- i. Any event at the YFAC will require proof of insurance that reflects coverage for activities with one million-dollar liability insurance showing the City of Norman, Oklahoma, as a Certificate Holder or Additional Insured.
- j. AFTER PAYING ALL FEES, the YFAC/Parks & Recreation Department will issue a facility rental permit. The permit will be mailed or emailed. If the permittee pays in person at our downtown office, Parks and Recreation will provide a copy of the permit at purchase.
- k. Permits are issued only for the individual or organization whose name is on the permit. If a transfer is requested, the permittee must request an amendment with the YFAC/Parks & Recreation Department.
- l. The permittee should take a copy of the permit to their scheduled event in case of a conflict.

3. Private Practice or Private Party Rentals

- a. Reservation for practices/parties can be made up to one hundred and twenty (120) days in advance.
- b. Reservations must be scheduled during regular operating hours for the YFAC and are subject to availability.
- c. Each group is limited to a maximum of two (2) rentals per week.
- d. Any cancellations will be subject to the City's cancellation policy.
- e. If renting more than 50% of the lanes in the competition pool, renter will be required to rent the entire pool.
- f. Discounts for the meeting rooms are available if rented in tandem with the Multi-Purpose Gym or the Competition or Recreation Pools.

Payment Policy

- Payment can be made by cash, personal check, cashier's check, money order, or credit card.
- Payment for Events must be paid in full fourteen (14) days before the start of the rental.
- Payment for Private Practice or Private Party rentals is due at the time of booking.
- Personal checks cannot be accepted for reservations made less than fourteen (14) days before the rental date.

Cancellation Policy

All cancellations of contracted events must be submitted to the City in writing and will be subject to a cancellation fee that will be deducted from any refunded deposits.

- Reservation deposits will be forfeited in full if an event is canceled less than one hundred and eighty (180) days before the event.
- Reservation deposits will be forfeited in full if a practice or private party is canceled less than forty-eight (48) hours before the practice or private party.
- The YFAC/Parks and Recreation Department reserves the right to cancel any event, practice, or private party for any reason.
- Events, practices or private parties that the YFAC/Parks and Recreation Department cancels will be fully refunded to the lessor.

For Questions about this policy or to rent the YFAC, please contact the Young Family Athletic Center 405-321-9322 / YFAC@normanok.gov or the Norman Parks and Recreation Department at 405-366-5472 / ParksRec@normanok.gov.

EXHIBIT A

Memberships

Individual Annual Pass	Norman Resident	\$300	year
Family Annual Pass	Norman Resident	\$960	year
Individual Monthly Pass	Norman Resident	\$30	month
Family Monthly Pass	Norman Resident	\$100	month
Individual Annual Pass	Non-Resident	\$360	year
Family Annual Pass	Non-Resident	\$1,200	year
Individual Monthly Pass	Non-Resident	\$35	month
Family Monthly Pass	Non-Resident	\$120	month
Individual Annual Pass	SR/Vet/MIL/FR	\$300	year
Family Annual Pass	SR/Vet/MIL/FR	\$960	year
Individual Monthly Pass	SR/Vet/MIL/FR	\$30	month
Family Monthly Pass	SR/Vet/MIL/FR	\$100	month

Day Passes

Swimming Pass	Norman Resident	\$5	day
Multi-Sports	Norman Resident	\$5	day
Swimming Pass	Non-Resident	\$7	day
Multi-Sports	Non-Resident	\$7	day
Swimming Pass	SR/Vet/MIL/FR	\$5	day
Multi-Sports	SR/Vet/MIL/FR	\$5	day
Swimming Pass	Children 12 & U	\$3	day
Multi-Sports	Children 12 & U	\$3	day
Swimming Pass	Children 3 & U	FREE	day
Multi-Sports	Children 3 & U	FREE	day

Common Rentals

Basketball Court	1/2 Court	\$35	hour
Basketball Court Full Court	Full Court	\$70	hour
Volleyball Court	Per Court	\$70	hour
Pickleball Court	Per Court	\$45	hour
Conference Room	2 Hour Min	\$25	hour
Pool Lane Rental		\$25	hour
Recreation Pool	Min. 2 hours	\$150	hour
Competition Pool	Min. 2 hours	\$250	hour

Event Rentals*

Basketball Court	4 Hour Min	\$65-\$85	hour per/court
Volleyball Court	4 Hour Min	\$50-\$70	hour per/court
Pickleball	4 Hour Min	\$30-\$45	hour per/court
Full Gym (non athletic)	4 Hour Min	\$500-\$750	Full Facility
Full Pool Rental	4 Hour Min	\$500-\$750	Both Pools

SCHOOL PARTNER:

Norman Public Schools
131 South Flood Avenue
Norman, OK 73069

LOCAL YOUTH LEAGUE PARTNER:

Norman Optimist Club
1005 Lexington Avenue
Norman, OK 73069

TOURNAMENT PARTNER:

Santa Fe Family Life Center
6300 N Santa Fe Ave
OKC, OK 73118

BASKETBALL CLUB:

Trae Young Family Foundation
& Trae Young Basketball
2201 Trae Young Drive
Norman, OK 73069

SWIMMING CLUB:

Sooner Swim Club
1701 Asp Avenue
Norman, OK 73072

VOLLEYBALL CLUB:

TBD

File Attachments for Item:

13. CONSIDERATION OF THE APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-82: AN AGREEMENT BETWEEN THE CITY OF NORMAN, OKLAHOMA AND COMMUNITY AFTER SCHOOL PROGRAM INC., TO PROVIDE FREE TUTORING SERVICES AT CITY OF NORMAN AFTER-SCHOOL PROGRAMS AS OUTLINED IN THE STAFF REPORT.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: Veronica Tracy, Recreation Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF THE APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-82: AN AGREEMENT BETWEEN THE CITY OF NORMAN, OKLAHOMA AND COMMUNITY AFTER SCHOOL PROGRAM INC., TO PROVIDE FREE TUTORING SERVICES AT CITY OF NORMAN AFTER-SCHOOL PROGRAMS AS OUTLINED IN THE STAFF REPORT.

BACKGROUND:

The City of Norman Parks and Recreation Department operates three after-school program locations at Whittier Recreation Center, Irving Recreation Center, and 12th Avenue Recreation Center. These three programs serve school-age children attending 14 Norman Public School locations and are licensed by the State of Oklahoma Department of Human Services. The Community After School Program (CASP) is a 501(c)3 nonprofit agency in Norman that provides high-quality literacy tutoring for free to the community.

DISCUSSION:

CASP approached City staff in the Parks and Recreation Department earlier this year about bringing their free literacy tutoring program into the after-school programs offered by the Parks and Recreation Department. CASP's mission is to provide high-quality tutoring that aligns with individual student needs. They will begin the tutoring program at the Parks and Recreation Department's Irving Middle School after-school site by assessing the literacy needs of each student in the program after receiving parental permission and then providing 1:1 tutoring for students in need of additional literacy support. CASP will provide background-checked staff, regular program updates, and administrative oversight. The Parks and Recreation Department will provide space and assist in communication with participants. The long-term goal for this program, once implemented successfully within the Irving Middle School after-school site, is to expand to all three after-school program sites as soon as possible.

RECOMMENDATION:

Staff recommends approval of Contract K-2324-82 between CASP and the City of Norman.



AGREEMENT TO PROVIDE TUTORING SERVICES
Between CASP and City of Norman

This document serves as an agreement between CASP, Inc. an agency providing free tutoring services to at-risk youth in Norman, OK (a/k/a "Community Afterschool Program 1023," and hereinafter referred to as "CASP"), and the City of Norman, a municipal corporation (hereinafter referred to as "City"). This agreement goes into effect immediately upon signing. The purpose of the agreement is to define the responsibilities and expectations of each party pursuant to this agreement, as they carry out the services reflected herein in conformance with their individual missions.

I. Pursuant to this Agreement, CASP agrees as follows:

a. CASP's services hereunder shall be available where a student:

- i. Attends K-5th grade at a public school in Cleveland County;
- ii. Reads below the applicable grade level;
- iii. Is from a family with limited income qualifying for Free & Reduced Lunch Program, SNAP benefits, DHS Childcare Subsidies, and or Sooner Care, etc.; and
- iv. Has a parent or guardian able to transport the student and remain during tutoring or attend a partner program.

Except that CASP shall providing literacy tutoring to students not satisfying I(a)(iii) herein pursuant to the terms set forth in III(b) below.

b. CASP shall supply trained tutors to provide 1:1 literacy tutoring for at-risk students in K-5th grade at the City's certain recreational facilities, beginning with the Irving Recreational Center and expanding to other identified locations as is mutually agreed to by the parties thereafter.

- i. CASP shall be solely responsibility for actions of said trained tutors and activities and shall maintain, for the duration of this agreement, valid liability and workers' compensation insurances complying with applicable state law and otherwise meeting or exceeding the limits of the Oklahoma Governmental Tort Claims Act;

ii. As to each such trained tutor, CASP will complete a name-based OSBI background check on all tutors & personnel, including sex offender and Mary Rippe Violent Offender Search, as well as an OSCN, ODCR, and Joshua's List (DHS Restricted Registry) search; and

iii. All tutors complete tutor orientation, and ongoing training as needed.

c. CASP shall provide administrative staff to oversee the CASP tutors/program.

i. As part of its administrative oversight, CASP shall provide regular program updates and communication to ensure effective and safe delivery of services;

ii. CASP shall maintain all required and necessary records and shall, to the extent it is not subject to disclosure pursuant to the Oklahoma Open Records Act, ensure confidentiality of information, but shall make any information relating to the services provided, but expressly excluding individual academic information regarding literacy tutoring students, available for the City's inspection to the extent the City requires it to evaluate the services provided by this agreement;

d. All persons employed by CASP shall be treated equally by CASP without regard to or because of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the sex, or any other status protected by law, and in compliance with all antidiscrimination laws of the United States of America, the State of Oklahoma, and City.

e. During the performance of this Agreement, CASP and any other parties with whom CASP may subcontract shall adhere to equal opportunity employment practices to assure that applicants and employees are treated equally and are not discriminated against because of their race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex, or any other status protected by law.

f. To indemnify and hold harmless the City from any and all claims and liability due to the acts or omissions of its trained tutors or employees, or other agents under this Agreement, including but limited to negligent injury or damage to persons or property.

II. Pursuant to this Agreement, the City shall:

a. Provide space at its Irving Recreation Center, and in the discretion of the Parks and Recreation Director or their designee, provide space at its Whittier Recreation Center and 12th Avenue Recreation Center, as necessarily required for CASP's provision of trained tutoring services herein, including quiet locations with tables and chairs for tutoring students (visible to others with open doors, etc.);

b. Engage in regular communication and coordination with CASP to ensure, to the best of the City's ability, CASP's effective and safe delivery of services hereunder;

c. To the extent it is legally subject to disclosure, provide CASP access to necessary student information;

d. To the extent it is not subject to disclosure pursuant to the Oklahoma Open Records Act, the City shall ensure necessary confidentiality of information;

III. The Parties agree and acknowledge that CASP is utilizing available reserve funds to supply the services hereunder, and:

a. Under this Agreement, the City makes no representation, nor guarantee, or ability to continue the services provided by CASP hereunder should CASP's funding source be exhausted, except that the City shall reimburse CASP at a rate of \$15/tutoring session for literacy tutoring services provided to students who do not meet eligibility criteria I(a)(iii) above; and

b. Either party may cancel this agreement at any time with or without cause upon written notice to the addresses listed below.

On Behalf of Community After
School Program, Inc. :



Terri Craig, Executive Director

CASP Address:

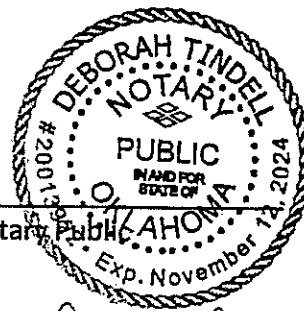
Community After School Program, Inc.
1023 N. Flood Avenue
Norman, OK 73069

Before me, the undersigned, a Notary Public in and for said County and State, this 8th day of December, 2023, personally appeared Terri Craig, to me known to be the identical person who executed the foregoing, and acknowledged to me that he/she executed the same as free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.

My commission expires:

November 12, 2024

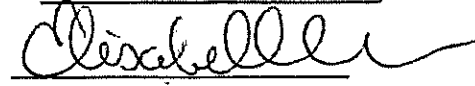


Notary Public

Deborah Tindell

On Behalf of City Of Norman:

Approved as to form and legality this 8 day of Dec, 2023


City Attorney

By: _____

Larry, Heikkila, Mayor

ATTEST:

Brenda Hall, City Clerk

City Address:
c/o City Clerk's Office
201 West Gray
Norman, OK 73069

File Attachments for Item:

15. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-102; A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SOURCE ONE FACILITY MAINTENANCE IN THE AMOUNT OF \$43,046 TO PROVIDE CUSTODIAL SERVICES FOR THE ADULT WELLNESS CENTER AND BUDGET APPROPRIATION FROM THE GENERAL FUND BALANCE AS OUTLINED IN THE STAFF REPORT.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: Lance Harper, Facilities and Construction Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-102;
A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SOURCE ONE FACILITY MAINTENANCE IN THE AMOUNT OF \$43,046 TO PROVIDE CUSTODIAL SERVICES FOR THE ADULT WELLNESS CENTER AND BUDGET APPROPRIATION FROM THE GENERAL FUND BALANCE AS OUTLINED IN THE STAFF REPORT.

BACKGROUND:

The Facility Maintenance division's janitorial staff consists of two full-time employees who are assigned daily duties with supply chain deliveries, cleaning inspections, and daily cleaning of needed areas on the main campus. As we no longer employ staff members to perform custodial cleaning, the facilities maintenance division has entered into month-to-month cleaning agreements with a custodial contractor to perform cleaning services at the City's main complex buildings A, B, and C.

In Spring 2022, a contract was signed to build the new Adult Wellness and Education Center (AWE) at 602 North Findlay Avenue. The AWE opened to the public in November of 2023. The Wellness Center is a 50,000-square-foot building with a spacious gym, indoor exercise pool, craft and art rooms, exercise classrooms, meeting rooms, and physical therapy rooms.

DISCUSSION:

Four proposals to provide custodial services for the AWE were received in the Parks and Recreation office through RFP- 2324-28 on November 1, 2023, from Source One, Capitol Cleaning, Central Janitorial, and Reliance Cleaning.

Proposals were reviewed and evaluated by Facility Maintenance staff based on experience providing similar services, references, cost, and overall ability to deliver specified services. After assessing each proposal, staff recommended the proposal submitted by Source One Facilities Maintenance. Source One is a full-service commercial janitorial cleaning company located in Tulsa with an office in the Oklahoma City metro. Source One is currently cleaning a MAPS 3 Wellness Center in Oklahoma City, First Oklahoma Bank in Tulsa, and Mid-Del Tech Center in Midwest City. References were checked, and positive reviews were provided for Source One's

work. The proposal submitted by Source One includes a base fee of \$3,588 per month plus per-occurrence fees for deep cleaning of floors and windows. The FYE 2024 budget does not include funding for this facility's services. Staff will request a recurring budget increase to cover the total contract amount during the FYE 25 budget process.

RECOMMENDATION 1:

Staff recommends appropriating \$43,056 from the General Fund Balance (account 10-29000) to the Facility Administration Miscellaneous Services-Other account (10770430-44799).

RECOMMENDATION 2:

Staff recommends approval of Contract K-2324-102 in the amount of \$43,056 with Source One Facility Maintenance to provide custodial services for the Adult Wellness Center.

**AGREEMENT FOR PROFESSIONAL CUSTODIAL SERVICES
FOR THE CITY OF NORMAN WELLNESS CENTER**

This Agreement is entered into between The City of Norman ("CITY") and Source One Facility Maintenance Services, Inc. ("Source One") for the following reasons:

1. The CITY requires custodial services ("Services") for the City of Norman Wellness Center located at 602 N. Findlay Ave, Norman, Oklahoma 73071; and,
2. Source One is prepared to provide the Services as outlined in the proposal submitted November 1, 2023, as Exhibit "A" to this Agreement included herein and made a part hereof.

In consideration of the promises contained in this Agreement, CITY and Source One agree as follows:

ARTICLE 1 - EFFECTIVE DATE

The effective date of this Agreement shall be the 1st day of January, 2024 and shall extend until January 1, 2025. The terms and provisions of this contract may be extended by mutual agreements of the parties for four (4) additional twelve (12) month periods unless the contract amount changes and only after sufficient appropriations shall have been made for the particular fiscal year in which renewal is sought.

ARTICLE 2 - GOVERNING LAW

This Agreement shall be governed by the laws of the State of Oklahoma. Any actions brought under the terms of this Agreement shall be heard in the United States District Court for the Western District of Oklahoma or in the District Court of Cleveland County, Oklahoma.

ARTICLE 3 – PERFORMANCE AND STANDARD OF CARE

The same degree of care, skill, and diligence shall be exercised in the performance of the Services, "Option 2" allocating for 6 days per week at 7.5 hours per night for a total price per month of \$3,588.00 as further described in Exhibit "A". In terms of the standard of excellence, 100% excellence in compliance and in the work performed shall be the goal.

ARTICLE 4 – INDEMNIFICATION AND LIABILITY

Indemnification. Source One agrees to defend, indemnify, and hold harmless the CITY, its officers, servants, and employees, from and against any and all liability, loss, damage, cost and expense (including attorney's fees and accountants fees) caused by an error, omission, or negligent act of Source One in the performance of Services under this Agreement. The CITY agrees to defend, indemnify and hold harmless Source One, its officers, servants and employees, from and against any all liability, loss, damage, cost and expense (including attorney's fees and accounts' fees) caused by an error, omission, or negligent act of the CITY in the performance of Services under this Agreement, provided such indemnification shall be applicable only to the extent sovereign immunity has been waived pursuant to Oklahoma law. Source One and the CITY each agree to promptly serve notice on the other party of any claims arising hereunder, and shall cooperate in the defense of such claims. The acceptance by the CITY or its representatives of any certification of insurance providing for coverage other than as required in this Agreement to be furnished by Source One shall not in any event be deemed a waiver of any action, right, or remedy otherwise available to the CITY under Oklahoma law.

Survival. The terms and conditions of this Article shall survive completion of the Services, or any termination of this Agreement.

ARTICLE 5 – INSURANCE

During the performance of the Services under this Agreement, Source One shall maintain Worker's Compensation insurance in accordance with State Laws and Employer's Liability Insurance in the following amount, pursuant to State Law:

- (a) Property Damage Liability.—Limits shall be carried in the amount of not less than twenty five thousand dollars (\$25,000.00) to any one person for any number of claims for damage to or destruction of property including but not limited to consequential damages arising out of a single accident or occurrence.
- (b) All Other Liability.—In an amount not less than one hundred twenty five thousand dollars (\$125,000.00) for claims including accidental death, personal injury, and all other claims to any one person out of a single accident or occurrence.
- (c) Single Occurrence of Accident Liability.—in an amount not less than one million dollars (1,000,000.00) for any number of claims arising out of a single occurrence or accident.

This insurance policies shall be issued by a company approved by the City of Norman. The CITY shall be furnished with a Certificate of Insurance which shall provide that such insurance shall not be changed or canceled without ten (10) business day's prior written notice to the CITY. Certificates of Insurance shall be delivered to the CITY prior to the commencement of the Agreement.

ARTICLE 6 – TERMINATION

This Agreement may be terminated by either party upon thirty (30) day written notice to the other party.

ARTICLE 7 – NOTICES

Any notice required by this Agreement shall be made in writing to the address specified below:

CITY:

Lance Harper
Facility and Construction Manager
City of Norman P.O. Box 370
Norman, OK 73070 405-779-6525

Source One:

Cliff Litchfield
Director of Sales and Operations
5424 S 99th E. Ave
Tulsa, Ok 74716
918-551-6300

Nothing contained in this Article shall be construed to restrict the transmission of routine communication between representatives of CITY and Source One.

ARTICLE 8 – DISPUTES

In the event of a dispute between CITY and Source One arising out of or related to this Agreement, the aggrieved party shall notify the other party of the dispute within a reasonable time after such dispute arises. If the parties cannot thereafter resolve the dispute, each party shall nominate a senior officer of its management to meet to resolve the dispute by direct negotiation or mediation.

ARTICLE 9 – NONDISCRIMINATION

Source One agrees that it, or any of its subcontractors, will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.

ARTICLE 10 – NON-WAIVER

No failure on the part of either party to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise by either party of any right hereunder preclude any other or future exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedy available to either party at law or in equity. Further, any waiver by either CITY or Source One of any breach of this Agreement shall be in writing. Such a waiver shall not affect the waiving party's rights with respect to any other further breach.

ARTICLE 11 – ENTIRE AGREEMENT; AMENDMENTS

This Agreement, including Exhibit "A", the proposal submitted by Source One on November 1st, 2023, incorporated by reference, represents the entire and integrated agreement between CITY and Source One. It supersedes all prior and contemporaneous communications, representations, and agreements, wither oral or written, relating to the subject matter of this Agreement. This Agreement may not be amended or modified, except in writing, signed by each of the parties hereto.

ARTICLE 12 – SEVERABILITY

If any provision of this Agreement is determined to be unenforceable, invalid or illegal, then the enforceability, validity and legality of the remaining provisions will not in any way be affected or impaired, and such provision will be deemed to be restated to reflect the original intentions of the parties as nearly as possible in accordance with applicable law.

ARTICLE 13 – ASSIGNMENT

Neither CITY nor Source One shall assign any rights or duties under this Agreement without the prior written consent of the other party.

ARTICLE 14 – NO THIRD PARTY RIGHTS

The services provided for in this Agreement are for the sole use and benefit of CITY and Source One. Nothing in this Agreement shall be construed to give any rights or benefits to anyone other than CITY and Source One.

ARTICLE 15 – BINDING EFFECT

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the CITY and Source One, have executed this Agreement,

Dated this _____ day of _____ 202__

The City of Norman:

Signature: _____

Name: _____

Title: _____

Date: _____

Attest: _____
City Clerk

Approved as to form and legality this 7th day of December 2023

[Signature]
City Attorney

Source One Management Services, Inc.:

Signature: [Signature]

Name: Mark Ferrell

Title: CHIEF OPERATING OFFICER

STATE OF OKLAHOMA SS: COUNTY OF Tulsa

Before me, the undersigned, a Notary Public in and for said County and State, On this 20 day of November 2023, personally appeared Mark Ferrell to me known to be the identical person who executed the foregoing, and acknowledged to me that he/she executed the same as his free and voluntary act and deed for the sue and purposes therein set forth.

WITNESS my hand and seal the day and year last above written,

Notary Public: [Signature]

My commission: Expires 01-30-2027
#23001459

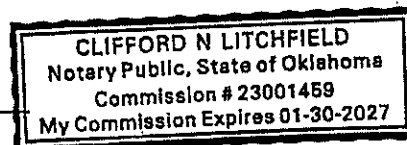


EXHIBIT A



Lance,

I am writing to express our strong interest in the Janitorial Services Request for Proposal (RFP-2324-28) for the New Adult Wellness Center. SourceOne is committed to delivering top-notch janitorial services that not only meet but exceed your expectations.

With over 20 years of experience in the janitorial services industry, we have built a solid reputation for providing comprehensive and cost-effective solutions. Our team is dedicated to maintaining a clean, safe, and welcoming environment for your organization. We understand that cleanliness is crucial for the well-being of your employees and visitors.

Our proposal will include a detailed plan for:

1. **Cleaning Services:** We will outline the cleaning schedule, methods, and techniques we will employ to ensure that your facility remains spotless and sanitary.
2. **Trained Staff:** Our skilled and trained janitorial staff will be well-versed in best practices and safety protocols to ensure the highest quality service.
3. **Quality Assurance:** We have rigorous quality control measures in place to ensure consistency and satisfaction. Regular inspections and customer feedback will be part of our approach.
4. **Sustainability:** SourceOne is dedicated to environmental sustainability. We will detail our eco-friendly cleaning practices and the products we use to minimize our environmental footprint wherever possible.
5. **Pricing and Cost Structure:** Our proposal will provide transparent pricing and a clear breakdown of costs to help you understand the value we offer.
6. **References:** We will include references from our satisfied clients to demonstrate our track record.
7. **Insurance and Compliance:** We will provide proof of insurance and compliance with all relevant regulations.

We are confident that our proposal will demonstrate our commitment to providing exceptional janitorial services tailored to your needs. Our aim is to establish a long-term partnership with the City of Norman and contribute to the success of your operations.

Thank you for considering our proposal. We look forward to the opportunity to discuss our janitorial services in more detail and address any questions or concerns you may have. Please feel free to contact me at 918-551-6300 or via email at Cliff.Litchfield@sourceone-usa.com.

Sincerely,

Tulsa
(918) 551-6300

SOURCEONE Management Services, Inc.
5424 South 99th East Ave
Tulsa, OK 74146
(918) 551-6302 fax

OKC
(405) 753-4144



RFP-2324-28

Janitorial services for this RFP encompass a wide range of cleaning tasks and responsibilities. SourceOne will be:

1. **Sweeping and Mopping:** Janitors sweep and mop floors to remove dirt, dust, and debris. This includes hard floors in lobbies, hallways, and common areas. This service to be performed daily.
2. **Vacuuming:** Carpets are regularly vacuumed to remove dirt, dust, and allergens. This helps maintain the appearance and cleanliness of the carpeted areas. This service to be performed daily.
3. **Dusting:** Janitors dust surfaces such as desks, shelves, windowsills, and other flat surfaces to eliminate dust and keep them clean. This service to be performed daily.
4. **Trash Removal:** Emptying and replacing trash can liners and disposing of waste in designated bins. This service to be performed daily.
5. **Restroom Cleaning:** Thorough cleaning of restrooms includes disinfecting toilets, sinks, and fixtures, as well as refilling soap and paper towel dispensers. This service to be performed daily.
6. **Window Cleaning:** Janitors may clean and wipe down windows, mirrors, and glass surfaces to ensure they are free of streaks and smudges. Entrance Glass doors (inside and out) to be cleaner Daily, inside the building glass to be cleaned monthly unless otherwise requested or needed. Outside windows to be cleaned as directed by Facilities see the pricing section.
7. **Kitchen and Break Room Cleaning:** Cleaning and sanitizing kitchen and break room areas, including appliances, countertops, and tables, to maintain a clean and safe space for employees & guests. This service to be performed daily.
8. **Floor Care:** This can involve tasks like stripping and waxing hard floors to maintain their shine, and carpet cleaning to remove stains and refresh the appearance. Spot Carpet cleaning to be performed upon request, entire carpet areas to be extracted on an annual basis.

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9. **High-Dust Cleaning:** Removing dust and cobwebs from ceilings, vents, and other high or hard-to-reach areas. This service to be performed monthly below 9 feet.
10. **Disinfection:** In response to health concerns like COVID-19 or RSV, janitorial services may include enhanced disinfection of high-touch surfaces and common areas to reduce the risk of infection. This service to be performed on an as needed basis, some disinfection will be completed during the normal cleaning process however, we suggest the use of a Vital Oxide treatment in case of an outbreak.
11. **Specialized Cleaning:** Some facilities may require specialized cleaning, such as pool decks or locker rooms. These areas demand specific cleaning methods and protocols. Such as the spraying of the pool deck daily.
12. **Emergency Cleanup:** Janitors may be responsible for addressing spills, accidents, or other unforeseen cleaning needs as they arise. The service performed on an as needed basis.
13. **Supply Management:** Restocking and managing cleaning supplies, toiletries, and other consumables as necessary. This service performed daily.
14. **Outdoor Area Maintenance:** Depending on the facilities requirements, this may include tasks like picking up litter up to a certain distance from the entrances and emptying outside trash receptacles. This service performed daily.
15. **Regular Inspection and Quality Control:** Janitorial services will include routine inspections to ensure cleaning standards are met and maintained. Once a month with the facilities manager and weekly by a site manager from SourceOne, using our software *Clean Smarts* with reporting available in real time. Our site managers and cleaners are specifically trained to look for and report any building issue that is discovered.

Tulsa
(918) 551-6300

SOURCEONE Management Services, Inc.
5424 South 99th East Ave
Tulsa, OK 74146
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(405) 753-4144



Microbiological Testing Additional Information.

Technology has been developed that will enable managers to measure the effectiveness of cleaning programs. APPA's custodial guidelines and levels of appearance were a quantum leap in an industry that up through the late 1980s demonstrated little interest in any form of industrial quality measurement in the field of custodial operations, especially as it related to appearance levels or levels of cleanliness. As we move to the future, new measurement technologies are available, such as the adenosine triphosphate (ATP) meter (see Figure 5). This meter identifies ATP on a surface. According to Robert W. Powitz, Ph.D, MPH, "ATP is the primary energy transfer molecule present in all living biological cells on earth—its measurement is a direct indication of biological activity. Simply stated: no biological contamination, no microbial growth." The advantage of the ATP meter over the traditional method of colony counts is that it provides data in real time (i.e., seconds instead of days) and at a low cost. This provides for immediate feedback and allows for quick corrective action as needed. Other measurement instruments are currently being used, such as handheld air-monitoring equipment, water quality monitoring meters, ultraviolet-revealing technology, and volatile organic compound measuring units.

Tulsa
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(405) 753-4144

SOURCEONE

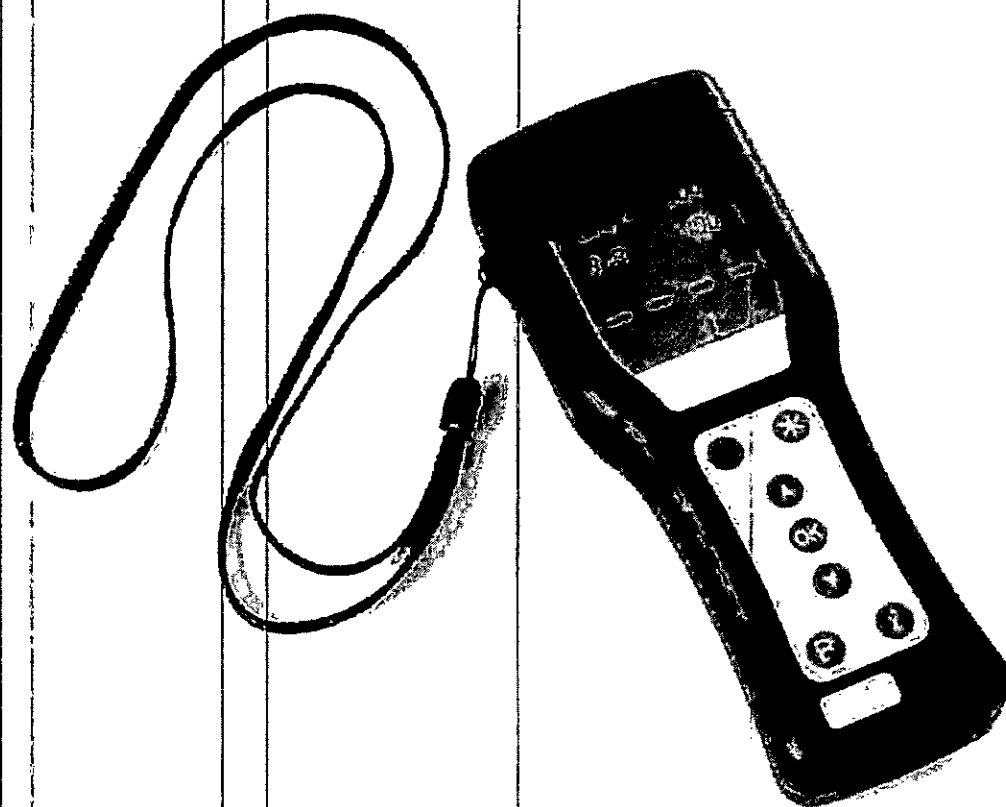


Figure 5. ATP Meter

- **Moving toward cleaning the unseen.** During the past decade, custodial services has been barraged with increased expectations to prepare to respond to viral outbreaks or pandemics. This requires an increased level of sophistication on the part of the custodial services manager. Not only must custodial services respond to make surfaces visibly clean (i.e., remove dirt and trash), the expectation is that the invisible dirt or micro-organisms and bio-pathogens will also be removed. Custodial services is not just cleaning for appearances, but cleaning for health. To accomplish this, the

Tulsa
(918) 551-6300

SOURCEONE Management Services, Inc.
5424 South 99th East Ave
Tulsa, OK 74146
(918) 551-6302 fax

OKC
(405) 753-4144

SOURCEONE

manager will need to implement a systems approach to cleaning that uses best practices to clean facilities, and to measure the effectiveness of the cleaning program using a technologically sophisticated version of the old inspection process—the new process will measure the presence or absence of the unseen dirt. Such an approach uses scientific instrumentation to measure the effectiveness of the cleaning processes and requires the use of best practices, chemicals, and equipment to produce the final result: hygienically clean facilities, using processes and practices that address the philosophy of “cleaning for health.”

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Tulsa, OK 74146
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(405) 753-4144



SourceOne Facilities Management Call Tree for Emergency Services

1st David Rechter Site Manager

918-210-9806

david.rechter@sourceone-usa.com

2nd Cliff Litchfield Director of Operations

918-231-0123

cliff.litchfield@sourceone-usa.com

3rd Parker Ferrell Site Manager

918-625-9532

parker.ferrell@sourceone-usa.com

4th Ian Litchfield Inspector

405-630-4137

5th Mark Ferrell President

918-857-3388

mark.ferrell@sourceone-usa.com

Calls Answered 24 / 7

Tulsa
(918) 551-6300

SOURCEONE Management Services, Inc.
5424 South 99th East Ave
Tulsa, OK 74146
(918) 551-6302 fax

OKC
(405) 753-4144

SOURCEONE

References

Cindi Stearns, Executive Director
Mid-Del Tech Center
 1621 Maple Drive
 Midwest City, OK. 73110
 405-739-1707 x 6384
cstearns@mid-del.net

John McIntosh, SVP/Facilities & Security
First Oklahoma Bank
 100 South Riverside Drive
 Tulsa, OK. 74037
John.mcintosh@firstoklahomabank.com

Allen Granger, Director Facilities
CACI
 1224 Rex Madeira Road
 Lawton, OK. 73501
 580-678-2668
Allen.r.granger2.ctr@mail.mil

Chris Patuto, Facilities Manager
Community Care College
Oklahoma Technical College
Clary Sage College
 4242 South Sheridan
 Tulsa, OK. 74145
 918-610-0027
cpatuto@communitycarecollege.edu

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 (918) 551-6300

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 5424 South 99th East Ave
 Tulsa, OK 74146
 (918) 551-6302 fax

OKC
 (405) 753-4144

Pricing Details for:

City of Norman
Adult Wellness Center
602 N Findlay
Norman, OK 73069

RFP-2324-28

Option	Furnished S/F	Frequency	Man Hours per Night	Price/Month
Option 1	23,000	5 Days/Week	5.5	\$2,250.00
Option 2	23,000	5 Days/Week	7.5	\$2,940.00
Option 1 + Day Porter	23,000	5 Days/Week	5.5	\$2,250.00
	4 Hour Day Porter 5 Days/Week M-F			\$1,395.00
Opt 1 + Day Porter Total..:				\$3,645.00
Option 2 + Day Porter	23,000	5 Days/Week	7.5	\$2,940.00
	4 Hour Day Porter 5 Days/Week M-F			\$1,395.00
Opt 2 + Day Porter Total..:				\$4,335.00

Additional Services Upon Request	
Exterior Window Cleaning @ \$1,992.00/Event	
Carpet Extraction @ \$0.17/s.f.	
Strip & Refinish LVT @ \$0.35/s.f.	
Vital Oxide Disinfection @ \$0.08/s.f.	
Microbial Quarterly Testing @ \$1,295.00/Year	

Terms and Conditions:

- All services will be performed in accordance with industry standards and the specifications included in this proposal.
- Prices are subject to change upon agreement of renewal.
- Termination of the contract requires a 30 day written notice by either party.
- **Payment Terms:** Invoices are sent on the 1st of the following month of service provided and is due 15 days from invoice date.

AFFIDAVIT OF NON-COLLUSION

STATE OF OKLAHOMA)COUNTY OF TULSA) ss

Mark Ferrell, of lawful age, being first duly sworn, on oath says, that (s) he is the agent authorized by the bidder to submit the attached bid. Affidavit further states that the bidder has not been a party to any collusion among bidders in restraint to freedom of competition by agreement to bid at a fixed price or to refrain from bidding; or with any city official or employee as to quantity, quality, or price in the prospective contract, or any other terms of prospective contract; or in any discussion between bidders and any city official concerning exchange of money or other thing of value for special consideration in the letting of a contract; that the bidder/contractor has not paid, given or donated or agreed to pay, give or donate to any officer or employee of the City of Norman, Oklahoma any money or other thing of value, either directly or indirectly, in the procuring of the award of a contract pursuant to this bid.

Source One
Proposer

By: Mark Ferrell

Subscribed and sworn to before me on this 31 day of October, 2023

[Signature]
My Commission Expires 1-30-2027

CLIFFORD N LITCHFIELD
Notary Public, State of Oklahoma
Commission # 23001459
My Commission Expires 01-30-2027

Client:



Vendor:



Company Name

SourceOne Management Services, Inc.

Address

5424 S 99th E Ave

City, State Zip

Tulsa, OK 74129

Accepted by

Accepted by

Title

Title

Pricing Details for:

City of Norman
Adult Wellness Center
602 N Findlay
Norman, OK 73069

RFP-2324-28

Option	Furnished S/F	Frequency	Man Hours per Night	Price/Month
Option 1	23,000	6 Days/Week	5.5	\$2,726.00
Option 2	23,000	6 Days/Week	7.5	\$3,588.00

Additional Services Upon Request

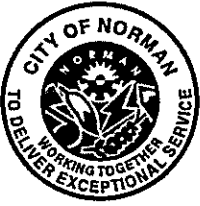
Exterior Window Cleaning @ \$1,992.00/Event
Carpet Extraction @ \$0.17/s.f.
Strip & Refinish LVT @ \$0.35/s.f.
Vital Oxide Disinfection @ \$0.08/s.f.
Microbial Quarterly Testing @ \$1,295.00/Year

Terms and Conditions:

- All services will be performed in accordance with industry standards and the specifications included in this proposal.
- Prices are good on a month to month basis until a permanent PO is available.
- Prices are subject to change upon agreement of renewal.
- Termination of the contract requires a 30 day written notice by either party.
- **Payment Terms:** Invoices are sent on the 1st of the following month of service provided and is due 15 days from invoice date.

File Attachments for Item:

17. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-104: AN AGREEMENT BETWEEN THE CITY OF NORMAN, OKLAHOMA AND ABBOTT HOUSE CHILD ADVOCACY CENTER, TO OPERATE AND PROVIDE PROGRAMMING AT 329 SOUTH PETERS AVENUE.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: Veronica Tracy, Recreation Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-104: AN AGREEMENT BETWEEN THE CITY OF NORMAN, OKLAHOMA AND ABBOTT HOUSE CHILD ADVOCACY CENTER, TO OPERATE AND PROVIDE PROGRAMMING AT 329 SOUTH PETERS AVENUE.

BACKGROUND:

In July 2023, the Parks and Recreation Department released Request for Proposal #2324-9 to solicit proposals for community programming within the City's Senior Center at 329 South Peters Avenue. The Senior Center was open for proposals to community non-profits due to the center closing to the public at the end of 2023 due to the new Adult Wellness and Education Center (AWE) construction being complete and operations starting in November 2023. The Parks and Recreation Department desired to solicit an operator to continue offering services to the community through the space once the City vacated at the end of 2023 and bridge programming gaps in the Norman community.

DISCUSSION:

The City received two proposals for operations at 329 South Peters Avenue. After a review and an interview panel process, the selection committee chose Abbott House Child Advocacy Center to expand its services into the facility. Abbott House services children ages 3 to 18 from Cleveland County and the surrounding areas. Although a standalone non-profit organization, Abbott House works closely with law enforcement, the district attorney's office, child protective services, mental health care professionals, and medical professionals to maintain a child-friendly atmosphere during investigations of alleged child abuse.

Abbott House is located at 231 East Symmes, within a block of 329 South Peters. This Lease Agreement will allow Abbott House to expand various services, including video interviews, educational programming, and other needed and expanding services, without moving staff and clients to another area of Norman.

Aging Services will continue to make and provide to-go meals and maintain areas out of the kitchen and dining room area for staff to perform operations related to their meal program. Abbott House acknowledges that the kitchen and dining room area are leased to Aging Services, Inc., a not-for-profit corporation, and are not a part of this Lease Agreement.

The City Attorney's Office has worked with the Parks and Recreation Department as well as Abbott House to draft a contract with a term of one year with four successive automatic renewal terms as well consideration to the City for one dollar per year with Abbott House furnishing utility, operations, and alterations costs. The City will approve all modifications to the facility.

RECOMMENDATION:

Staff recommends approval of Contract K-2324-104, an agreement between The City of Norman and Abbott House Child Advocacy Center to operate and provide services and educational programming at 329 South Peters Avenue.

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Agreement") is dated this _____ day of _____, _____, by and between the City of Norman, Oklahoma, a municipal corporation ("City"), and Abbott House Child Advocacy Center., a not-for-profit corporation ("Abbott House").

WITNESSETH:

WHEREAS, Abbott House, a United Way Agency of Norman, is a safe place for children to share their experiences regarding sexual abuse, physical abuse, and neglect, as well as being a witness to a crime or in a drug-endangered situation; and

WHEREAS, Abbot House provides services to children ages 3 to 18 years of age from Cleveland County and the surrounding areas. Although a stand-alone non-profit organization, Abbott House works closely with law enforcement, the district attorney's office, child protective services, mental health care professionals, and medical professionals to maintain a child-friendly atmosphere during investigations of alleged child abuse; and

WHEREAS, Abbott House is currently housed at 231 East Symmes, Norman, Oklahoma, within a block of 329 South Peters. This Lease Agreement will allow Abbott House to expand various services, which include video interviews, educational programming, and other needed and expanding services at an additional location; and

WHEREAS, the City is the owner of the property and improvements located at 329 South Peters Avenue, Norman, Cleveland County, Oklahoma, which property it has agreed to lease to Abbott House to expand the various services currently offered; and

WHEREAS, Abbott House acknowledges that the kitchen and dining room area are leased to Aging Services, Inc., a not-for-profit corporation, and are not a part of this Lease Agreement. In no event shall this structure be used for any purpose without the City's written consent.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree to use of 329 South Peters Avenue (except for the kitchen and dining room), for the operation of Abbott House as follows:

1. Rent

In consideration of the use, occupancy, and possession of the Leased Premises by Abbott House, it agrees to pay the City the sum of One-Dollar (\$1.00) valuable consideration, payable in advance of, or within thirty (30) days of the approval of this Agreement.

2. Maintenance

Abbott House will be solely responsible for all day-to-day upkeep of the Leased Premises, including maintenance of all plumbing units, pipes, and connections in good repair and free from

obstruction. Subject to any provisions herein to the contrary, the City shall be required to repair only defects, deficiencies, deviations or failures of materials or workmanship in the building. The City shall keep the Leased Premises free of such defects, deficiencies, deviations during the term of this agreement. Abbott House shall notify the City of any hazard, danger, or defect of the premises in writing immediately upon discovery.

3. Improvements.

Abbott House may, at its sole expense, from time to time, redecorate the Leased Premises and to make such non-structural alterations and changes, including landscaping, as Abbott House shall deem expedient or necessary for its purposes, provided that Abbott House has first obtained the consent thereto of the City in writing. All improvements affixed to the property, whether or not by or at the expense of Abbott House, shall be and remain a part of the Premises, shall be the property of the City and shall not be removed by Abbott House, unless City, by Notice to Abbott House, elects to have Abbott House remove any improvements installed by Abbott House. All fixtures, furniture and equipment not affixed to the property may be removed by Abbott House. In such case, Abbott House, at Abbott House's sole cost and expense and prior to the expiration of the Term, shall remove any fixture, furniture, or equipment and repair any damage caused by such removal.

4. Utilities

Abbott House shall pay a portion of the monthly utility billings for the facility and will be invoiced by the Parks and Recreation Department. Aging Services, Inc. will continue to pay \$425 per month and Abbott House will be responsible for the balance.

5. Independent Contractor Status

The Abbott House shall be an independent contractor for the City. Abbott House agrees to conduct itself in a manner consistent with such status and further agrees that it will neither hold itself out as, nor claim to be, an officer or employee of the City by reason of this Agreement and that it will not by reasons of this Agreement make any claim, demand, or application for any right or privilege applicable to an officer or employee of the City, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or retirement membership or credit.

6. Insurance

At all times during the term of this Lease, Abbott House shall maintain in full force a comprehensive public liability insurance policy covering Abbott House's operations, activities, and liabilities on the Premises, having singly or in combination limits, not less than One Million Dollars (\$1,000,000) in the aggregate. Such policy shall name City as an additional insured under such policy and provide that cancellation will not occur without at least thirty (30) days prior written notice to City. Upon the City's request, Abbott House shall give the City a certificate of insurance evidencing that the insurance required under the Lease is in force.

In the event of the breach of any provision of this section, or in the event any notice is received

which indicates any required insurance coverage will be diminished or canceled, the City, at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

7. Indemnification

Abbott House shall hold City harmless from any liability (including reimbursement of City's reasonable legal fees and all costs) for death or bodily injury to third parties or physical damage to the property of third parties, to the extent caused by the fault of Abbott House or any of Abbott House's agents, servants, employees, licensees, customers, patrons, or lenders, in connection herewith. Without waiving any limitation of liability or protections afforded by the City under the Oklahoma Governmental Tort Claims Act, 51 O.S. §151 et seq., as now or hereafter amended, the City is responsible for its own negligence and that of its employees. It is understood and agreed that all Abbott House shall bear the risk of loss for any property kept, installed, stored, or maintained in or upon the Premises by Abbott House. The City shall not be responsible for any loss or damage to equipment owned by Abbott House that might result from tornadoes, lightning, windstorms, floods, or other Acts of God or actions of parties over which the City has no control. The covenants of this paragraph shall survive and be enforceable and shall continue in full force and effect for the benefit of the Parties and their respective subsequent transferees, successors, and assigns, and shall survive the termination of this Agreement, whether by expiration or otherwise.

8. Termination

This Agreement may be terminated prior to the expiration period by written agreement by the parties to the Agreement. The City may unilaterally terminate the agreement for any reason, with or without cause, by giving (30) days written notice from the City to the Abbott House. The City may also terminate this agreement for cause or suspend this Agreement, in whole or in part, by giving ten (10) days written notice from the City to the Abbott House for the breach of any terms of this Agreement.

9. Misc. Provisions

a. Assignability and Subcontracting.

Abbott House shall not assign or transfer this Agreement or any interest herein, without the prior written consent of the City, and consent to an assignment or sublease shall not be deemed to be consent to any subsequent assignment.

b. Governing Law

All matters pertaining to this agreement (including its interpretation, application, validity, performance, and breach) in whatever jurisdiction action may be brought, shall be governed by, construed, and enforced in accordance with the laws of the State of Oklahoma.

c. Compliance with Laws.

All activities of Abbott House, its employees, subcontractors of Abbott House and/or agents will be carried out in compliance with all applicable federal, state, and local laws and regulations.

d. Complete Agreement.

This Agreement, along with any attachments, is the full and complete integration of the Parties' agreement with respect to the matters addressed herein, and that this Agreement supersedes any previous written or oral agreements between the Parties with respect to the matters addressed herein. Unless otherwise stated, to the extent there is any conflict between this Agreement and any other agreement (written or oral), the terms of this Agreement shall control.

e. Severability.

The unenforceability, invalidity or illegality of any provision(s) of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

f. Notices.

If either party shall desire or is required to give notice to the other, such notice shall be given in writing, via email, and concurrently delivered by overnight Federal Express [or priority U.S. Mail], addressed to the recipient as follows:

To: CITY:

Jason Olsen
Director of Parks and Recreation
225 N Webster, Norman, OK 73069
Jason.Olsen@NormanOK.gov

To: ABBOTT HOUSE:

Andree Harper

Changes to the above information shall be given to the other party in writing ten (10) business days before the change is effective.

g. Counterparts

The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be deemed an original but all of which, together, shall constitute one and the same instrument. A scanned, electronic, facsimile, or other copy of a party's signature shall be accepted and valid as an original.

h. Warranty of Authority

The signatories to this Agreement warrant and represent that each is authorized to execute this Agreement and that their respective signatures serve to legally obligate their respective representatives, agents, successors, and assigns to comply with the provisions of this Agreement.

IN WITNESS WHEREOF, THE CITY OF NORMAN and ABBOTT HOUSE CHILD ADVOCACY CENTER have executed this Agreement.

DATED this _____ day of _____.

The City of Norman
(City)

Abbott House Child Advocacy Center
(Center)

Signature _____ Signature Andree Harper

Name _____ Name Andree Harper

Date _____ Date 12.9.23

Attest

City Clerk

APPROVED as to form and legality this _____ the day of _____.

Joanne Prider
CITY ATTORNEY

File Attachments for Item:

20. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-108: BY AND BETWEEN THE CITY OF NORMAN AND PAUL BAGLEY D/B/A DESIGN SILO LLC, IN THE AMOUNT OF \$175,000 FOR PUBLIC ART TO BE PLACED IN THE ROUNDABOUT AT JAMES GARNER AVENUE AND FLOOD AVENUE, NORMAN, OKLAHOMA.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: AshLynn Wilkerson, Assistant City Attorney I

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-108: BY AND BETWEEN THE CITY OF NORMAN AND PAUL BAGLEY D/B/A DESIGN SILO LLC, IN THE AMOUNT OF \$175,000 FOR PUBLIC ART TO BE PLACED IN THE ROUNDABOUT AT JAMES GARNER AVENUE AND FLOOD AVENUE, NORMAN, OKLAHOMA.

BACKGROUND:

On October 13, 2015, Norman Voters approved the \$150 million, 15-year, Norman Forward Sales Tax initiative. The program outlined various citywide projects to improve the quality of life for the residents of and visitors to Norman. One of these projects is the James Garner Avenue – Acres Street to Flood Avenue project. This project was to be allotted a budget from Norman Forward funds of \$6,000,000.

On November 8, 2016, the Norman City Council approved programming Resolution R-1617-49 requesting federal funds to extend James Garner Avenue from Acres Street to Flood Avenue. This Resolution states the City's commitment to adhere to the terms and conditions of a federally funded project. Through the Association of Central Oklahoma Governments (ACOG), the Oklahoma Department of Transportation (ODOT) agrees to provide 80% of the cost of construction with a 20% matching share from the City of Norman. In order to receive the federal funding, the City of Norman is required to enter into an agreement with ODOT to complete the design, acquire all rights-of-way and relocate existing utilities/encroachments at City's cost.

This Norman Forward street improvement project will create a new entry into downtown and will help alleviate traffic on both Flood Avenue and Porter Avenue. The scope of this project includes:

- Construction of a new two-lane extension of James Garner Avenue from Acres Street to Flood Avenue;
- New roadway bridge over Robinson Street;
- New two-lane modern roundabout intersection at Flood Avenue; .
- Landscaping and Low Impact Development measures in roadway medians;
- Reconstruction and extension of a portion of the Legacy Trail to accommodate the new roadway;

- New lighting along the street and Legacy Trail;
- Reconstruction of local residential streets as necessary.

In March of 2017, the Norman City Council approved a design contract (K-1617-105) with Cabbiness Engineering, in the amount of \$427,000, for the James Garner Avenue project from Acres Street to Flood Avenue, and Cabbiness began preliminary design for the project.

On August 27, 2019, the Norman City Council approved Contract Amendment One for contract K-1617-105, between the City of Norman and Cabbiness Engineering, in the amount of \$2,275, for the design of the James Garner Avenue project from Acres Street to Flood Avenue.

On March 23, 2021, the Norman City Council approved Contract Amendment Two for contract K-1617-105, between the City of Norman and Garver, LLC (as successor to Cabbiness Engineering), in the amount of \$5,675, for the design of the James Garner Avenue project from Acres Street to Flood Avenue.

On January 26, 2022, the City of Norman purchased property north of Robinson Street from the Judith E. Drabek Foundation Trust, in the amount of \$81,936, for the construction of the James Garner Avenue Phase II-Acres Street to Flood Avenue Norman Forward Project.

On February 28, 2022, the City of Norman obtained property north of Robinson Street, from the University of Oklahoma, for the construction of the James Garner Avenue Phase II-Acres Street to Flood Avenue Norman Forward Project.

On April 12, 2022, the Norman City Council approved Contract Amendment Three for contract K-1617-105, between the City of Norman and Garver, LLC, in the amount of \$34,400, for the design of the James Garner Avenue Project from Acres Street to Flood Avenue.

On May 24, 2022, the Norman City Council accepted easement E-2122-65, establishing a roadway, sidewalk, and utility easement across the lands purchased for construction of the James Garner Phase II-Acres Street to Flood Avenue Norman Forward project.

On June 14, 2022, the City of Norman entered into a funding agreement with ODOT (Contract K-2122-135 & Resolution R-2122-129) for the James Garner Avenue-Acres Street to Flood Avenue Norman Forward project. The agreement split the project construction costs between City of Norman funds and federal funds administered by ODOT. The federal share was capped at \$4,825,733, leaving the City to pay \$1,664,597 based on the engineer's estimate at the time of the agreement.

On August 17, 2022, the City was invoiced by ODOT for its portion of the construction cost based on new estimates. The City's portion of construction at that time was estimated to be \$1,662,153. The City paid that amount, as invoiced, to ODOT per the project funding agreement from the Norman Forward project account.

On October 20, 2022, ODOT opened bids for the James Garner Avenue-Acres Street to Flood Avenue Norman Forward project. There were three bids. The low bid was from Redlands Contracting, LLC for a total of \$7,820,546.33. This low bid was approximately 15% over the final engineer's estimate.

On November 22, 2022 City Council approved an appropriation of funds in the amount of \$2,281,034 from the Norman Forward Fund balance (accrued primarily from savings on the Norman Public Library, Central project) to cover the funds necessary to cover the additional construction costs.

DISCUSSION:

On February 8, 2022 the Norman City Council, directed the Norman Public Works Department, in conjunction with Norman Arts Council, to use project funds from the Norman Forward Public Art project, for the purpose of designing, constructing and installing a public art piece for the center of the new roundabout currently under construction at the intersection of James Garner Avenue and Flood Avenue. The cost of the public art piece was estimated at \$200,000.

In August of 2022, a selection committee was appointed by the Norman Arts Council (NAC) to review artist submissions and select the art piece for the roundabout. On April 19, 2023 the committee met to establish criteria for selection and prepare the Request for Qualifications (RFQ) for the art project. In May of 2023, the RFQ was sent out to request submissions from artists nationwide. The NAC received 116 responses to the RFQ.

The selection committee then evaluated the submissions and decided upon three finalists. These three finalists were brought to Norman to review the site and ask questions of the committee regarding any requirements for the art installation. On September 28, 2023, the three finalists gave presentations of their concepts for the art piece and the committee made the final selection and recommendation to the Norman Arts Council and City Council. The selected art installation was unanimously recommended for approval by the NAC Board of Directors.

The selected artist is Paul Bagley of Oklahoma City. This agenda item is for the proposed approval of the contract with Mr. Bagley for the production and installation of the public art piece selected. The contract price for the artwork is \$175,000. The project is to be completed by April 30, 2024, for installation by June 30, 2024.

Funding for this contract is available in Norman Forward Public Arts, Construction (Account 51795500-46101; Project NFP100).

RECOMMENDATION:

Staff recommends the approval of Contract K-2324-108 between the City of Norman and Paul Bagley, doing business as Design Silo LLC in the amount of \$175,000, for a work of art to be placed in the roundabout at James Garner Avenue and Flood Avenue.

K-2324-108

Contract to Commission Artwork
Between

City of Norman, Oklahoma

Paul Bagley d/b/a Design Silo LLC

THIS CONTRACT made this 27th day of November by and between the City of Norman (hereinafter referred to as the "Owner"), and Paul Bagley d/b/a Design Silo LLC (hereinafter referred to as the "Artist") for a work of art incorporated herein by reference (hereinafter referred to as the "Work") to be placed in the Roundabout at James Garner Blvd and Flood Avenue, Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of The Roundabout will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

WHEREAS, the Selection Panel Advisory Board and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by the mutual obligations, covenants, and conditions herein.

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. The Project: The Scope of Services

- A. The Artist will design, execute, fabricate, transport, install and document the Work. These services shall be performed by Artist, and their assistants, as independent contractors.
- B. Artist agrees that said Work will be consistent with and substantially similar to the design concept presented to the Selection Panel Advisory Board and the Norman Arts Council Board. As design details are finalized, Artist will update the Owner.
- C. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner.

K-2324-108

- D. The permanent location for the work shall be in in the Roundabout at James Garner Blvd and Flood Avenue, Norman, Oklahoma.
- E. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work. The Owner will make equipment for installation available.
- F. The Owner shall make known its specifications regarding specific location, mounting, installation and other issues related to the finished product's delivery and installation, to the Artist prior to the rendering of their services.
- G. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- H. The Artist shall be responsible for the delivery, installation, and securing of the Work on a concrete base prepared, by the Owner, at the site in Norman, Oklahoma.
- I. The Artist shall coordinate, with the Norman Arts Council, on outreach program design, including number, duration, form, and delivery type.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the work in substantial conformity with the design as recommended by the Norman Arts Council Board and approved by the Owner
- B. Prior to implementation of any significant changes in the Work, the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed changes prior to continued work by the Artist.
- C. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.

K-2324-108

- D. The Artist shall complete the Work by April 30, 2024. Should the work be ready for delivery prior to April 30, 2024, the Artist shall keep the work safely stored at its studio or other location. The installation of the work will be at a date mutually agreeable between the Artist and the Owner, but no later than June 30, 2024.
- E. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date. A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.
- F. The Owner shall always grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Owner in performing its obligations under this Agreement or in completing the Project, or if conditions beyond the Artist's reasonable control such as, but not limited to, acts of nature; pandemic, national, state, or local quarantine or stay at home order, war or warlike operation; superior governmental regulation or control; public emergency render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.
- G. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it on the site.
- H. Within forty-five (45) days after installation of the Work, and prior to final payment, the Artist shall make available to the Owner high quality digital images of the completed Work.
- I. The Artist shall furnish the Owner with a full written narrative description of the Work.
- J. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- K. The Artist shall notify the Owner in writing when all services have been completed. Final Acceptance will be effective as of the earlier to occur of (i) the date of the Owner's written notification of Final Acceptance or (ii) the thirtieth (30th) day after the Artist has sent the written notice to the Owner of completion, unless the Owner, upon receipt of such notice and prior to the expiration of the thirty (30) day period, gives the Artist written

notice specifying and describing the services which have not been completed. Final acceptance shall be determined solely by the Owner and shall constitute the acknowledgment that the Work has been satisfactorily completed and installed according to the terms of this Agreement.

- L. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.

III. Warranties and Copyright

- A. The Artist represents and warrants that:

- i. The Work is solely the result of the artistic and creative efforts of the Artist;
- ii. The Work is unique and original and does not infringe upon any copyright;
- iii. The Work has not been accepted for sale elsewhere; and
- iv. The Work is free and clear of any liens from any source whatever.

- B. The Artist represents and warrants that:

- i. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
- ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
- iii. The warranties described in this section shall survive for a period of one (1) year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards. This includes making repairs to the Work or re-fabricating the Work arising out of defects consisting of "inherent vice" or qualities accelerating deterioration of the Work which appear for a period of one (1) year after the installation and which the Artist shall correct.

iv. Except as otherwise specifically provided, no other warranty or representation, either express or implied, is included or intended in the Artist's proposals, reports, deliverables, and/or communications. The warranties in this Section are conditional and shall be voided by the failure of the Owner to maintain the Work in accordance with the Artist's specifications, including the Maintenance Manual, and the applicable conservation standards. If the Owner fails to maintain the Work in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Work as the Artist's creation and request that all credits be removed from the Work and reproductions thereof until the Work's condition is satisfactorily repaired. THE ARTIST DISCLAIMS ANY WARRANTIES ARISING OUT OF THE OWNER'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY DAMAGES OR LOSSES TO THE ARTWORK ARISING OUT OF VANDALISM, INTENTIONAL DAMAGES OR OTHER ACTS OUTSIDE THE REASONABLE CONTROL OF THE PARTIES.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ARTIST MAKES NO WARRANTIES TO THE OWNER, WRITTEN OR ORAL, STATUTORY OR EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE OWNER'S EXCLUSIVE REMEDY AND THE ARTIST'S ENTIRE LIABILITY ARISING FROM OR IN CONNECTION WITH THE SERVICES AND THE ARTWORK (INCLUDING WITHOUT LIMITATION FOR BREACH OF WARRANTY OR INFRINGEMENT) SHALL BE THE MODIFICATION OR REPLACEMENT OF THE SERVICES OR WORK OR A REFUND OF ALL OR PART OF THE FEES FOR THE SERVICE PERFORMED.

This Section will survive termination or expiration of this Agreement for any reason.

- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement. The Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall the Artist grant permission to others to do so except

with the written permission of the Owner. The Artist grants to the Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

IV. Fee for Services

- A. The total purchase price of creation, preparation and completion of the final Work shall be \$175,000. This fee does not include the cost to Owner for preparation of the site for installation. Owner shall not provide any additional compensation for any alterations or revisions in the final Work which substantially depart from the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.
- B. The Artist shall receive payments from the Owner to the Artist to be paid in the amount of \$175,000.00 as follows:
 - i. \$87,500.00 within thirty (30) days of delivery of the signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$43,750.00 within thirty (30) days upon documentation of the 50% milestone of completion of fabrication of the Work;
 - iii. \$21,875.00 within thirty (30) days upon documentation of the 100% milestone of completion of fabrication of the Work;
 - iv. \$21,875.00 within thirty (30) days of final acceptance of the Work by Owner.
- C. Artist's lack of performance during either the payment stages ii or iii, listed above, shall initiate a thirty (30) day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the thirty (30) day

period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for all funds expended by Owner thus far including costs to remove the base or foundation.

- D. Artist shall provide proof of completion of the Work by submitting at least ten (10) pictures of the Work from various angles which tend to clearly show the Artist's progression during the stages of fabrication to completion. Additionally, Artist shall submit Form A along with these documents.

V. Funding

- A. Owner guarantees and warrants that it will produce funds in the amount of \$175,000.00 for the completion of the Work.
- B. If any payment from the Owner is past due, the Artist will promptly notify the Owner and the Artist may immediately cease all services until full payment for the relevant payment stage has been made and the Schedule and/or completion date shall be adjusted accordingly. The Artist has no obligation to provide services unless the Owner is in good standing and no amounts are owed to the Artist.

VI. Alteration and De-accession Right

- A. The Owner agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work by the Owner without attempting to consult the Artist.
- B. The Artist shall notify the Owner of changes in their address. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce that which requires the express approval of the Artist. The Owner shall make reasonable efforts to locate the Artist when matters arise relating to the Artist's rights.
- C. The Owner may remove the Work from the City of Norman collection if it determines that the Work represents a safety hazard in its present condition or cannot reasonably be restored to its original structural or aesthetic integrity due to technical difficulties or expense disproportionate to the value of the Work. The Owner shall notify the Artist of such a decision to de-access the Work. Such notification shall be made before the de-

accession, whenever possible. The Owner has no responsibility to relocate, restore, or replace the Work if it is misplaced, damaged or stolen.

VII. Insurance

The Artist, as an independent contractor, is responsible for any requirements pertaining to Workers' Compensation insurance and employee liability insurance, and shall obtain and maintain insurance satisfactory to covering comprehensive general liability, and all risks of loss, damage to, or theft of the Work while it is being made, transported, or installed by the Artist. The Artist shall deliver to the Owner a copy of this insurance prior to beginning work. In addition, the City of Norman will provide insurance to cover loss, damage to, or theft of the Work once installed under the City of Norman's current policy covering the construction of the James Garner Ave Phase II street project.

VIII. Indemnity

Upon execution of this document, but prior to transfer of ownership, Artist agrees to defend, indemnify, and hold harmless Owner, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by Artist, its agents or employees' negligent acts, errors or omissions. Artist shall indemnify the City of Norman, Oklahoma up to one hundred thousand dollars (\$100,000.00) for any claim arising out of this Agreement. Artist further waives any rights against the City for any and all injuries or damages alleged to have arisen during the term of this Agreement.

IX. Default

If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all court ordered costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement.

X. Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XI. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIII. Notice

Notice of any breach or other correspondence related to this contract shall be by email or regular mail to the following contacts:

Artist:

Design Silo LLC

Paul Bagley, Owner

Address: 718 W. Sheridan
OKC OK 73102

405-209-5425

Email: paulbagley@me.com

City:

Shawn O'Leary

Director, Public Works

225 N. Webster Ave.

Norman, OK 73070

Shawn.OLeary@NormanOK.gov

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

XV. Severability

K-2324-108

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

XVI. Governing Law; Venue

This Agreement shall be governed and construed in accordance with the laws of the United States of America and the State of Oklahoma. The venue for any action under this agreement shall be in the District Court of Cleveland County, Oklahoma or the United States District Court for the Western District of Oklahoma. The parties agree to submit to the subject matter and personal jurisdiction of said court.

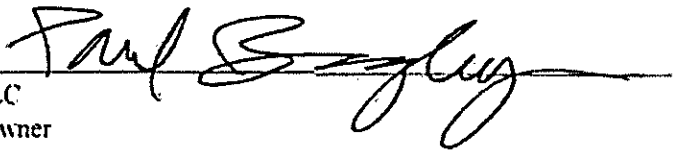
XVII. Nondiscrimination

Artist agrees further that it will not discriminate against any persons on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex.

[Signatures on the following page]

ARTIST

Design Silo LLC
Paul Bagley, Owner



Before me, the undersigned, a Notary Public in and for said County and State, on this 27 day of November, 2023, personally appeared Paul Bagley and Design Silo LLC, to me known to be the identical person(s)/(company title) who executed the foregoing and acknowledged to me that Paul Bagley executed the same as Paul Bagley free and voluntary act and deed for the uses and purposes therein set forth.

K-2324-108

WITNESS my hand and seal the day and year last above written.



Bridget Cook

Notary Public

My Commission Expires: 06/03/24**CITY OF NORMAN**

APPROVED this ____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

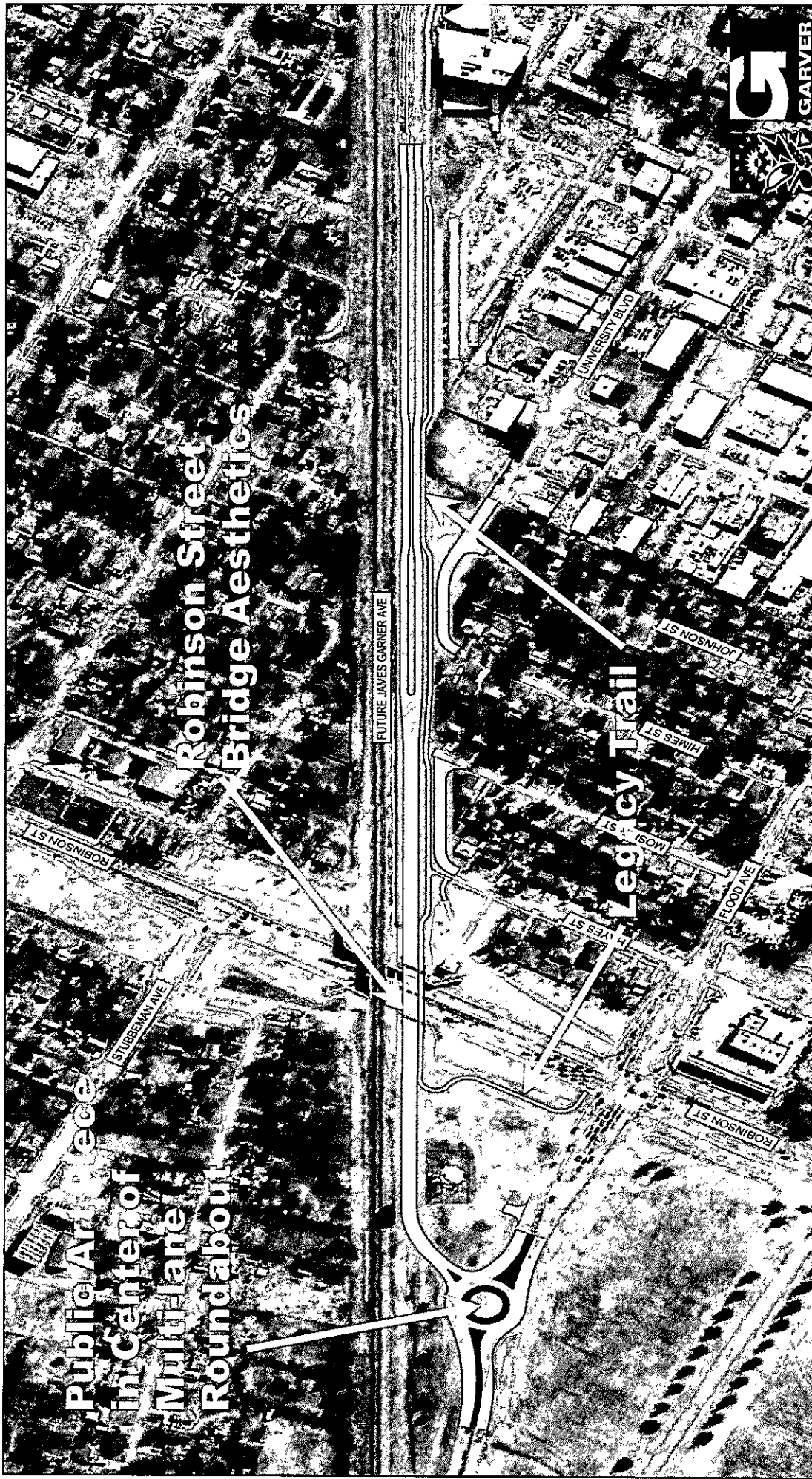
ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 4th day of December, 2023.

[Signature]
CITY ATTORNEY

SCHEDULE I**[to be included]**



File Attachments for Item:

23. CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-91: A RESOLUTION OF THE CITY OF NORMAN, OKLAHOMA, TRANSFERRING \$189,700 FROM THE RAILROAD QUIET ZONE ACCOUNT AND TRANSFERRING \$45,641 FROM THE RAILROAD CORRIDOR SAFETY ACCOUNT TO THE JAMES GARNER AVENUE PHASE 3 ACRES STREET TO DUFFY STREET PROJECT CONSTRUCTION ACCOUNT.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 12/12/2023

REQUESTER: Paul D'Andrea, Capital Projects Engineer

PRESENTER: Shawn O'Leary, Public Works Director

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-91: A RESOLUTION OF THE CITY OF NORMAN, OKLAHOMA, TRANSFERRING \$189,700 FROM THE RAILROAD QUIET ZONE ACCOUNT AND TRANSFERRING \$45,641 FROM THE RAILROAD CORRIDOR SAFETY ACCOUNT TO THE JAMES GARNER AVENUE PHASE 3 ACRES STREET TO DUFFY STREET PROJECT CONSTRUCTION ACCOUNT.

BACKGROUND:

On April 2, 2019, the citizens of Norman voted in favor of a \$72 million transportation bond issue, which includes nineteen (19) projects. With the anticipated \$67 million in federal dollars being leveraged for these projects, approximately \$139 million is budgeted for the nineteen (19) projects.

On August 19, 2019, City staff advertised Request for Proposal RFP 1920-16 to solicit Consulting Engineering Services for the fourteen (14) bond projects still requiring design. This RFP was written to select a group of approximately five (5) consultants to complete the design on the remaining 2019 Transportation Bond Projects that will be completed over the next ten (10) years. Twenty-two (22) proposals were received, and a selection committee consisting of three (3) City staff and two (2) citizens "shortlisted" nine (9) consultant teams for interviews held on October 2, 2019. The five (5) consultant teams selected after interviews to complete the design on these projects were:

- Cabiness Engineering, Norman
- Cowan Group, Oklahoma City
- Freese and Nichols, Oklahoma City
- MacArthur Associated Consultants, Oklahoma City
- Olsson Associates, Oklahoma City

These consultants will be assigned the various projects by City staff based on capacity, performance on their current projects and capabilities of their firm to complete a specific project.

On February 25, 2020, the Norman City Council approved Contract K-920-116, between the City of Norman and Cowan Group Engineers, in the amount of \$526,600, for the design of the James Garner Avenue Phase 3 (Duffy Street to Acres Street) 2019 Bond Project.

Phase 1 of the James Garner Avenue Project was completed in 2019 adjacent to the City's new Central Library north of Acres Street. Phase 2, from Acres Street north to Flood Avenue is currently under construction with a projected completion date of April, 2024. This project, James Garner Avenue Phase 3 - Acres Street to Duffy Street - will begin construction in spring of 2024. It will consist of the following:

- Reconstruction of James Garner Avenue from Duffy Street to Acres Street.
- Transition of parking within the project limits to reverse angle parking
- New signals at the James Garner Avenue and Main Street intersection
- New ADA compliant sidewalks within the corridor and pedestrian safety improvements
- Decorative street lighting
- Landscaping
- Railroad safety and quiet zone improvements

DISCUSSION:

The James Garner Avenue Phase 3 2019 Bond Project (Project BP0419), requires the construction of improvements to intersections adjacent to railroad crossings at various locations to comply with railroad quiet zone requirements. In addition, the BNSF Railroad has asked the City to provide a fence separating pedestrians throughout the corridor from the railroad right of way.

Currently, the City has two existing project accounts with available funding, not currently allotted for specific improvements, which could be used to help offset the project costs associated with these railroad-related improvements for James Garner Phase 3.

The Railroad Quiet Zone project (Project TR0066) has \$189,700.50 in unused funds and the Railroad Corridor Safety project (Project TR0019) contains \$45,641.12 in unused funds. These funds were originally intended to be used to address improvements, like the fencing along the railroad, proposed in the James Garner Phase 3 project. For this reason staff requests the transfer of these fund balances to the James Garner Phase 3 project to help offset a portion of the railroad related cost of the 2019 Bond Project.

RECOMMENDATION 1:

Staff recommends the transfer of \$189,700.50 from the Railroad Quiet Zone Construction account (Account 50591169-46101; Project TR0066) and \$45,641.12 from the Railroad Corridor Safety Construction account (50591169-46101; Project TR0019) to the James Garner Avenue Phase 3 Acres Street to Duffy Street Project Construction account (50594405-46101; Project TR0419).

Resolution

R-2324-91

A RESOLUTION OF THE CITY OF NORMAN, OKLAHOMA, TRANSFERRING \$189,700 FROM THE RAILROAD QUIET ZONE ACCOUNT AND TRANSFERRING \$45,641 FROM THE RAILROAD CORRIDOR SAFETY ACCOUNT TO THE JAMES GARNER AVENUE PHASE 3 ACRES STREET TO DUFFY STREET PROJECT CONSTRUCTION ACCOUNT.

- § 1. WHEREAS, on April 2, 2019, the citizens of Norman voted in favor of a \$72 million transportation bond issue, which included nineteen (19) projects; and
- § 2. WHEREAS, Phase 1 of the James Garner Avenue Project was completed in 2019, Phase 2, from Acres Street north to Flood Avenue is currently under construction and Phase 3 is projected to begin in the spring 2024; and
- § 3. WHEREAS, Phase 3 is projected to begin in the spring of 2024 and requires construction improvements to intersections adjacent to railroad crossings at various locations to comply with railroad quiet zone requirements; and
- § 4. WHEREAS, Burlington Northern Santa Fe Railway (BNSF) has requested the City to provide a fence separating pedestrians from the railroad right of way; and
- § 5. WHEREAS, unused funding in the Railroad Quiet Zone project account and in the Railroad Corridor Safety project account were originally intended to be used to address improvements in the proposed James Garner Phase 3 project to help offset a portion of the railroad related cost.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA:

- § 6. That the following transfer be made for reason stated above:

Account Name	Losing Account	Gaining Account	Amount
James Garner Avenue Phase 3 Acres Street to Duffy Street Project Construction Account	50591169-46101 Project TR0066	50594405-46101 Project TR0419	\$189,700.50
James Garner Avenue Phase 3 Acres Street to Duffy Street Project Construction Account	50591169-46101 Project TR0019	50594405-46101; Project TR0419	\$45,641.12

PASSED AND ADOPTED this 12th day of December, 2023.

Mayor

ATTEST:



City Clerk



James Garner Avenue Widening Project Location Map

