MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
JULY 23, 2019 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Stan Booker, Mayor

Also Present:
Michael Cleghorn, City Manager
Tim Wilson, Deputy City Attorney
Traci Hushbeck, City Clerk

Mayor Booker called the meeting to order at 6:05 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Pastor Michael Collins, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:

Mary Ann Hankins, Ward One
Keith Jackson, Ward Two
Caleb Davis, Ward Three
Jay Burk, Ward Four
Dwight Tanner, Jr., Ward Five (Arrived @ 6:07 p.m.)
Sean Fortenbaugh, Ward Six
Onreka Johnson, Ward Seven
Randy Warren, Ward Eight

ABSENT: None

EMPLOYEE SPOTLIGHT PRESENTATION TO SUSAN SCHLECHT – FINANCE DEPARTMENT

The City Manager recognized Susan Schlecht, Finance Department, for her outstanding performance.

REPORTS: MAYOR/CITY COUNCIL

Mayor Booker stated the Lawton Birthday Celebration will be held on August 1st at 5:30 p.m. in the banquet hall.

Warren stated after issues with litter at the new Thunder basketball court, the public has really stepped up to keep the area clean. He is working to try to solve the parking issue.

Tanner stated the Lawton YMCA will be holding a hamburger cookoff fundraiser. He has tickets if anyone is interested. He stated the Alpha Phi Alpha fraternity had their Golden Awards Banquet and this year he was the recipient of the Public Service Award.

AUDIENCE PARTICIPATION:

Donald Dwain Hall, Jr., 710 NW Euclid, stated he was disturbed a few weeks ago by events within our city. He stated this is about government, authority and lawlessness. The disturbance has come about as a result of the lawlessness that has taken place within our city. (He presented a photo to the Mayor).

Andre Butler, 1727 SW 13th Street, stated he is representing the Lawton Fort Sill Juneteenth committee. He thanked the community for attending and all of those who had a part in the event.

CONSIDER APPROVAL OF MINUTES OF LAWTON CITY COUNCIL REGULAR MEETING OF JULY 9, 2019.

<u>MOVED by Burk SECOND by Warren</u> to approve the minutes of Lawton City Council regular meeting of July 9, 2019. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

CONSENT AGENDA:

Mayor Booker stated they are striking items #17 and #18.

<u>MOVED by Burk SECOND by Warren</u> to approve the consent agenda. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claim recommended for approval: Danielle R. Boss in the amount of $2,787.18. Exhibits: Legal Opinion/Recommendation, **Resolution No. 19-66**.

2. Consider approving a Memorandum of Understanding between the City of Lawton, Cameron University, and the Lawton Enhancement Trust Authority for the Cameron Community Mural Project. Exhibits: Memorandum of Understanding.

3. Consider approving a Professional Services Agreement with Dr. Robert William Worden, D.O., to work as the Physician Medical Director for the Lawton Fire Department and for the City of Lawton/Comanche County E-911 Emergency Communications Center. Exhibits: Physician Medical Director Agreement.

4. Consider authorizing the City of Lawton to issue a notice of intent not to renew a Master Service Agreement with Paymentus Corporation that provides for certain Credit Card and Online payment processing services to the City; and authorize City representatives to begin developing an alternative, cost effective system to accept a range of payment methods at all relevant City locations through competitive RFP process or other lawful avenue as may be deemed appropriate. Exhibits: Master Services Agreement dated February 8, 2011 between The City of Lawton and Paymentus Corporation; Letter of intent not to renew Agreement.

5. Consider setting the date of August 27, 2019, to hold a public hearing to close a portion of a utility easement along the rear of property addressed as 910 NW Micklegate Boulevard. Exhibits: Application and Location Map.

6. Consider accepting the installation of a 3 phase 400 amp electrical power supply at Elmer Thomas Park by the Lawton Chamber of Commerce. Exhibits: None.

7. Consider adopting a resolution approving the 2019 Hazard Mitigation Plan. Exhibits: **Resolution No. 19-67**. Plan on file with City Clerk.

8. Consider approving Amendment No. 8 to the contract with Black and Veatch Corporation for professional engineering services for modifications to the design of Work Package No. III for the Wastewater Treatment Plant Improvements Project 2008-11. Exhibits: Amendment #8 to the Agreement.

9. Reconsider funding for work identified under Changer Order #2 to the contract for the Wastewater Treatment Improvements Work Package III Project 2008-11 with Wynn Construction Co., Inc. Exhibits: Modified Change Order #2.

10. Consider authorizing the Mayor and City Clerk to execute the FY-2020 Memorandum Agreement between the City of Lawton, the Oklahoma Water Resources Board and the U.S. Geological Survey. Exhibits: The Memorandum of Agreement is on file in the Department of Public Utilities Office.

11. Consider approving the record plat for Braum's Addition, a Replat of Lots 11-18, Block 3, Lee Addition. Exhibits: Plat Map and CPC Minutes.

12. Consider extending contract (CL17-029) Liquid Oxygen to Matheson Tri-Gas Inc., of Irving, TX. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

13. Consider extending contract for (CL17-032) Emergency Generator Maintenance to Elite Power Services Inc. of Edmond, OK for an additional year. Exhibits: Department Recommendation, Contract Extension Form, Price Sheet.

NEW BUSINESS ITEMS:

14. Consider authorizing the Mayor and the City Manager to seek funding in the form of grants and donations to perform a Management, Operations, Staffing and Efficiency (Performance Management) study for the City of Lawton. Exhibits: The Novak Consulting Group Scope of Work.

Mayor Booker stated this is something he has talked about for a long time and the reason that they are doing this is because we did not have it in the budget. He is asking the council's consideration to go outside to raise the funding from private sources or grants in order to fund this study.

Cleghorn stated when he was hired he was asked to look at the city from a holistic point of view and one of the ways they can do that is a performance management audit. It links the strategic planning and management system and performance measures into one cohesive document. It outlines strategic goals, it drives employee development, it engages our customers and employees and it improves our bottom line. This will give us data from which to measure. They are looking at a group called The Novack Consulting Group and they are highly recommended.

Tanner stated he feels this is an excellent idea. They had some private funds donated a few years ago and they had an operational analysis that was not completed. He is not sure what happened to that money.

Davis questioned if the findings from this study would be made public.

Cleghorn stated yes.

MOVED by Tanner SECOND by Warren to authorize the Mayor and the City Manager to seek funding in the form of grants and donations to perform a Management, Operations, Staffing and Efficiency (Performance Management) study for the City of Lawton. AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

15. Consider appointing a taskforce chair and at least two taskforce members to the Healthy Food Retail Taskforce to carry out the tasks listed in Resolution 19-63. Exhibits: None.

Richard Rogalski, Community Services Director, stated at the last meeting the council approved a resolution that created a healthy food retail taskforce but it required that at this meeting the council appoint a chair and two members from the council. Council Member Tanner initiated the original item.

Tanner stated he would volunteer his time to be on this task force.

Johnson and Hankins volunteered for the task force.

Tanner stated he would volunteer to be Chair.

16. Consider Change Order #11 to the contract between Flintco, LLC and the City of Lawton for construction of the Public Safety Facility. Exhibits: Change Order #11 - Public Safety Facility.

George Hennessee, Engineering Director, stated there are six items on Change Order #11:

- PCO #39 R1 concerns a conflict between the Architectural and Structural plans that caused the floor to be too far out to accommodate the brick shelf required for the fascia. This requires the removal of concrete and a new pour to accommodate the brick. The cost of concrete removal, steel reinforcing and replacement of the floor is $7,586 and adds 2 calendar days to the contract.

- PCO # 40 concerns the addition of window lintels required by the designer, but not indicated on the Pre Engineered Metal Builder. This included loose lintel steel added to support the brick above the two windows at a cost of $1967 and adds 2 calendar days to the contract.
- PCO #41 R1 concerns the relocation of the roof top unit to avoid structural steel. Due to the relocation, the roof top unit is only 11 inches from the roof top mezzanine prohibiting the sealing of the roofing material. This concern is addressed by placing a diversion of rainwater around the roof top unit and the mezzanine with an insulation cricket at a cost of $4,607 and adds 2 calendar days to the contract.
- PCO 42 concerns the addition of a clean out on the sanitary sewer line servicing the jail system. Jail system sewer is notorious for blockage due to inmates' activities of flushing unauthorized items such as socks causing overflows. This cleanout would facilitate the clearing of any such blockage at a cost of $2,871 and add 1 calendar day to the contract.
- PCO #43 involves upsizing the water service line for fire protection from a 4" line to a 6" line to better serve the fire suppression system within the structure. It was determined the 4" required velocities within the system that were potentially harmful to the piping and the 6" line would reduce those velocities to a more acceptable level. The cost of this PCO is $1,386 and adds 2 calendar days to the project.
- PCO # 46 concerns three doors that are rated as detention doors that were not designated in the original schedule as being detention rated and bid as push-pull hardware. The change in hardware for these three doors to meet the detention rating is a cost of $1,260 and adds one (1) calendar day to the project.

Hennessee stated the sum of these six modifications would be $19,659 and will add 12 calendar days to the contract.

Warren stated he feels that none of these modification listed are the fault of city staff and it is not the fault of the contractor, Flintco. He feels they will have to pay this but he hoped that staff was keeping a list of all these items that are the fault of architects that did not do their job. At some point we need to see about getting some of this money back.

Hennessee state they maintain a list of all the change orders.

Burk stated a lot of this should have been caught at the beginning design of this building. He can understand a few of these, but clean outs do not cost $2,871 unless they are 12 foot deep. This does not make sense and he does not know who is giving us these prices. He feels the item with the detention doors is not our fault and he feels we need to hold the architect accountable for missing these things. We paid them millions to design this building and he is tired of them walking away scott free and us left holding the bag.

Wilson stated if the architect had design flaws in their product they presented to us there are certain things they can look at litigation wise if that is the desire of the council when the project is done.

Burk stated they need to do something with him standing here before the council and telling them why he messed it up.

Wilson stated that is an option if the council wants to do that.

Hennessee stated if the council wants to pursue any errors and omission actions against the architect, his recommendation would be to wait until the end of the project. If they do it now and they have another incidence, it just muddies the water.

Burk stated he does not want to slow the project down, but he does not want to approve these items and then say they are okay with these. Can they legally say that they do not believe that some of these items are correct and were overlooked in the architectural design. He questioned if they could say they do not agree with it even if they approve these items. They need to keep the project moving. He questioned if they need to approve this and go back at them at the end.

Wilson stated that certainly is a way to do it. They could put them on notice that we are not satisfied with where we are at with the process.

Davis questioned how much were the liquidated damages on this project.

Hennessee stated $3,000 a day.

Davis stated he agrees with Council Members Warren and Burk. He also requested that the architect be here today and answer some of these questions. He stated on the last item, to put different hardware on three doors, they want another day added to the project. More than likely this project will go into liquidated damages, they are buying down days. That is $1,260 for the doorknobs, but $3,000 that they will get out of paying in liquidated damages, because it takes them a whole day to put on three doorknobs, that does not make any sense. It does not take two more days to put on lintels over a window. The only thing he sees that would take two calendar days would be the concrete where they have to cut out and repour. He sees them trying to buy $12,000 back in liquidated damages aside from saddling the citizens with all the costs of their poor design. We are at $645,338.53 with change orders and very few of those were the responsibility of the City and nearly all of those were things overlooked by the architect in the design. Now this is an additional $19,659 and that doesn't count the liquidated damage days at $3,000. He would like to table this until the next council meeting so that the architect could attend. He reminded the council that a council committee was formed to look at the change orders and he would like to see that committee meet about this.

<u>MOVED by Davis SECOND by Tanner</u> to table until next council meeting when the architect can be here.

Tanner stated they had a special meeting concerning the major change order of the pier designs and the architect did admit that they did not foresee the earthquakes and they did not put that into the design. We paid these folks about $3 million to design this building. The consensus of the committee was to go ahead, finish the project, address these concerns with the architect, and try to retrieve some of our costs.

Hennessee stated concerning the doorknobs, those are not something you go down to Lowe's and pick up and it does take a day to get them in and get them installed.

VOTE ON MOTION: AYE: Hankins, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

STAFF REPORTS

Diane Branstetter, Finance Director, presented revenue and expenditure highlights for the year ending June 30, 2019. (On file in the City Clerk's office). She stated about the hotel/motel funds, what was budgeted for last year was $1,188,000 and what was collected was $1,251,213. With that overage, a portion goes back to LETA and that has been done. There was some discussion as to what to do with the overage and excess money for the Chamber. During the hotel/motel committee meeting there was a discussion that they would forego that money this year and forward it to the Holiday in the Park. She stated there was no definite direction given by council, so the council needs to let her know what to do with it. The excess figure is $44,248.79.

Burk stated he thought at the meeting it was clear that is where they wanted it to go.

Branstetter stated there was never a vote.

Davis stated he was the chairman of the committee and the recommendation was that this year that just started, the overage will go to our economic development fund, which they may vote to put towards the Holiday in the Park. As far as last year, the year that was just closed out, Council Member Burk may be right about it going to Holiday in the Park. Moving forward that is what the committee suggested to council and those were the terms under which council passed the budget.

Burk stated he is confused because he believed that there was a definite amount of money each year that would go to Holiday in the Park. He understood that this money was allocated this much, approximately $58,000.

Branstetter stated in the budget book there is no language, just a total.

Tanner stated this is last years' revenue that was left over and the contract is written that this money would have gone to the chamber, but they volunteered to forego receiving that money and now we have $44,000 left over and some of his peers believed that the money would be going to Holiday in the Park, which he supports. Right now it is sitting in our economic development fund and they would have to agenda an item designating those funds.

Mayor Booker stated staff will research this issue and hopefully have something on the next agenda.

Branstetter stated currently the balance of the economic development fund is $1,100,885.94 and that is not including the $44,000. You take out the $250,000 that the council has set aside for the

Henniges project and that leaves $850,885.94 as the actual figure in the economic development reserve.

Mayor Booker questioned if we had a target for the reserve fund.

Cleghorn stated most municipalities put a percentage on that and he had mentioned somewhere between 6% and 10% as a target goal. Oklahoma cities he has seen are between 10% and 14%. He would recommend at least 10% and the overage that is going into that account now would build up to that point in approximately five years.

Cleghorn presented the end of year report. (On file in the City Clerk's office)

The Mayor and Council convened in executive session at 7:05 p.m. and reconvened in regular, open session at 9:06 p.m. Roll call reflected all members present excluding Davis and Burk who entered at 9:08 p.m.

EXECUTIVE SESSION ITEMS:

17. Pursuant to Section 307B.1, Title 25, Oklahoma Statutes, consider convening in executive session to review the employment of Nathan M. Johnson as Municipal Judge, and in open session take other action as necessary. Exhibits: None. **STRICKEN**

18. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations regarding for a Collective Bargaining Agreement for FY 2019-2020 between the International Association of Fire Fighters (IAFF), Local 1882, and the City of Lawton, and, if necessary, take appropriate action in open session. Exhibits: None. **STRICKEN**

ADDENDUM:

1. Pursuant to Section 307B.1 and B.4, Title 25, Oklahoma Statues, consider convening in executive session to discuss a pending investigation of a personnel matter involving the City Attorney, and consider placing Frank V. Jensen, City Attorney on administrative leave and if necessary, take action in open session. Exhibits: None.

Wilson read the title of item #1 of the addendum.

<u>MOVED by Tanner SECOND by Jackson</u> to place Franke Jensen, as City Attorney, on administrative leave with pay, pursuant to Lawton City Code 17-1-6-168. AYE: Hankins, Jackson, Tanner, Fortenbaugh, Johnson, Warren, Booker. NAY: None. ABSENT: Burk, Davis. MOTION CARRIED.

Mayor Booker stated they need to revisit item #15. The Deputy City Attorney has asked that the council vote on this item because they will have to vote on the citizens that will be appointed to the taskforce.

15. Consider appointing a taskforce chair and at least two taskforce members to the Healthy Food Retail Taskforce to carry out the tasks listed in Resolution 19-63. Exhibits: None.

Wilson stated the resolution that passed at the last council meeting said that the council has to appoint a task force of council members and citizens and to make this clean they need to make a motion to suspend the rules and, by motion, appoint this task force with a formal vote.

MOVED by Burk SECOND by Warren to suspend council policy. AYE: Hankins, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Davis. MOTION CARRIED.

MOVED by Burk SECOND by Tanner to appoint Council Member Tanner to serve as Chairman and Council Members Hankins and Johnson to serve as taskforce members to the Healthy Food Retail Taskforce. AYE: Hankins, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Davis. MOTION CARRIED.

There being no further business to consider, the meeting adjourned at 9:10 p.m. upon motion, Second and roll call vote.

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STAN BOOKER, MAYOR

ATTEST:
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TRACI HUSHBECK, CITY CLERK