MINUTES
LAWTON CITY COUNCIL REGULAR MEETING
SEPTEMBER 11, 2018 – 6:00 P.M.
LAWTON CITY HALL
COUNCIL CHAMBERS/AUDITORIUM

Fred L. Fitch, Mayor
Presiding

Also Present:
Jerry Ihler, City Manager
Frank Jensen, City Attorney
Traci Hushbeck, City Clerk

Mayor Fitch called the meeting to order at 6:03 p.m. Notice of meeting and agenda were posted on the City Hall notice board as required by law. Invocation was given by Charles Barnett, followed by the Pledge of Allegiance.

ROLL CALL

PRESENT:
Bob Morford, Ward One
Keith Jackson, Ward Two
Caleb Davis, Ward Three
Jay Burk, Ward Four
Dwight Tanner, Jr., Ward Five
Sean Fortenbaugh, Ward Six
Onreka Johnson, Ward Seven
Randy Warren, Ward Eight

ABSENT: None

AUDIENCE PARTICIPATION: None

CONSENT AGENDA:

Mayor Fitch stated item #5 will be stricken from the agenda.

Tanner requested item #2 be considered separately.

MOVED by Burk SECOND by Jackson to approve the consent agenda with the exception of items #2 and #5. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

1. Consider the following damage claims recommended for approval: Melinda Boggs in the amount of $2,366.64 **(Res. 18-63)** and Tori and Rantz Codopony in the amount of $1,616.99 **(Res. 18-64)**. Legal Opinions/Recommendations, Res. 18-___ and Res. 18-___.

2. Consider approving a budget resolution to amend the City's Hotel Motel FY 2018-2019 budget to enable reimbursements to be dispersed to the Chamber of Commerce and the Lawton Enhancement Trust Authority, (the Authority), for additional revenues collected above budget during the City's FY 2017-2018 as per the City's approved agreements with both entities in effect during the FY 2017-2018; as well as the approval of the amended Chamber of Commerce 2018-2019 Hotel Motel budget, as well as the Authority's amended budget for FY 2018-2019, to account for such additional funds. Exhibits: Budget Resolution No. 18-__, Budget Amendment Form FY 2018-2019, Lawton Chamber of Commerce amended FY 2018-2019 budget and Lawton Enhancement Trust Authority amended FY 2018-2019 budget.

Tanner requested that the city manager give an overview about the clause we have in the contract with the chamber of commerce.

Ihler stated the contract the city council approved for fiscal year ending 2018 as well as in the fiscal year that we are currently in, there is a clause that the chamber would receive 70% of the dollar amount that was over the projected amount and LETA would get 5% of the dollar amount that was over the projected amount. We do a budget amendment after the fiscal year to honor that contract.

Tanner questioned when this was originally put in the contract.

Burk stated he thinks it goes back to the time when they actually agreed upon the 70/30 split.

Tanner stated he brings this up every year. Any money they collect that is over and above the projected amount, he would prefer it go into our economic development account. He knows there is nothing they can do now because this is the contract they approved. He would like to request that the hotel/motel tax committee look into removing this provision from this contract. He is not opposed to giving LETA a percentage since they do a lot of beautification projects in the community. He stated the council just voted to give the chamber $12,000 so they could have their festivities downtown and they voted a month or so ago to give them $800,000 which they manage for the citizens of Lawton. He stated now they are giving them $40,000, which he feels is not a good expenditure of the citizens dollars. He would like to see it put into the economic development fund so that when a small business comes in and they get tagged with a change of use or putting in a fire hydrant, they could use this to help local industry. Another possible use is helping to upgrade some of our parks. They could also use this money to hire a spot crew to clean up the debris in town, which he feels is economic development because it makes a good impression on visitors that come through our city and potential new industry that may want to move here. He stated some of the neighborhood streets in the city have big cracks in them that are so big that grass and weeds have starting growing up in the cracks. He suggested they use some of this money to hire a weed eating crew to go out and mow this grass out of the streets. He realizes they cannot do anything about it now, but next year these are options where this money could be used. He feels that anything they collect over and above the projected amount needs to go into our economic development fund. That is what we do with our public safety tax and he feels they need to do the same thing with this hotel/motel money.

MOVED by Warren SECOND by Morford to approve **Resolution No. 18-65**. AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Johnson, Warren. NAY: Tanner. MOTION CARRIED.

3. Consider approving the Supplemental Memorandum of Understanding between the Lawton Metropolitan Planning Organization and the City of Lawton for transit activities. Exhibits: Supplemental Memorandum of Understanding.

4. Consider approval of a Grant Agreement for the Lawton-Ft Sill Regional Airport in the amount of $ 544,320.00 for Design of the Terminal Building, Phases 2, 3 and 4. Exhibits: Agreement on file at the Airport Director's office.

5. Consider accepting the waterline and maintenance bond, and approve the record plat for Aubrey Subdivision, a replat of Lot 6, also known as Block 6, Thompson Subdivision. Exhibits: Plat Map. Maintenance bond is on file in the City Clerk's office. **STRICKEN FROM THE AGENDA**

6. Consider accepting the sanitary sewer line, easements and maintenance bond to serve EZ GO #39 located on the south side of West Gore Boulevard and east of SW 27th Street. Exhibits: Location Map. Maintenance Bond and Easements are on file in the City Clerk's office.

7. Consider approving an equipment rental agreement with Pitney Bowes for a Relay 2000 inserting system to be utilized for folding/stuffing/sealing mailing assembly for Financial/Payroll application needs. Exhibits: Pitney Bowes rental agreement of file in the City Clerk's Office.

8. Consider adopting a Resolution authorizing the installation and/or removal of traffic control measures on West Gore Blvd. at 2306 West Gore, SE Lee Blvd. at east city limit boundary. Exhibits: **Resolution No. 18-66**, Traffic Commission Minutes and Traffic Issue Requests.

9. Consider awarding Sludge Lagoon Maintenance Contract to Hodges Farms & Dredging of Lebo, KS. Exhibits: Department Recommendation, Abstract of Bids, Bid & Price Sheets.

10. Consider approving appointments to boards and commissions. Exhibits: None.

Board of Adjustment
Tom Linville
Existing Member
10/28/21

Citizens' Committee On Capital Improvement Program (CIP)
Vince Cambron
Existing Member
09/10/21

Economic Development Authority

David B. Means
Existing Member
12/15/24

David Denham
Existing Member
12/15/24

Larry Neal
Existing Member
11/28/24

Historical Preservation Commission

Dr. Suzanne Crawford
Existing Member
12/14/20

11. Consider approval of payroll for the periods of August 27 – September 9, 2018.

OLD BUSINESS ITEM:

12. Consider Change Order #3 as requested by Flintco, LLC to their contract with the City of Lawton for construction of the Public Safety Facility at the intersection of Railroad Road and Gore Boulevard. Exhibits: Change Order No. 3 - Public Safety Facility.

Tanner stated the council committee met yesterday and they do have some recommendations to make to the council. On behalf of the committee he moves:

MOVED by Tanner SECOND by __ to recommend to the city council that all change orders to public construction contracts be placed on the business item agenda of the council and that the appropriate city staff be required to go over each line item of the change order to determine compliance or non compliance with the change order provisions of the Oklahoma Public Competitive Bidding Act.

Tanner stated if council follows this recommendation, any of these change orders are not going on the consent agenda anymore where you don't have to discuss it unless we pull it, they will go on as new business items where we are forced to discuss this if we so choose. With regard to change order #3, requested by Flintco LLC to their contract for the construction of the public safety facility:

MOVED by Tanner SECOND by __ that the line item #2 in the amount of $126,121 be removed from the change order and tabled and that the city staff be directed to investigate the architect's responsibility for the necessity of this change order line item with the assistance of the independent consultant as necessary and report their findings to the council and that the remaining line items #1 and #3-8 be explained by city staff to determine their compliance or non compliance with state statute.

Mayor Fitch stated there are two motions here.

Jensen stated they can go ahead and get a vote on the motions and then proceed with the remainder of change order #3.

Fortenbaugh stated there is a motion involving changing the policy that change orders need to be approved on business and he would suggest that issue be agended on a future meeting so that everyone has a chance to look into it beforehand because it is not on this agenda.

Jensen stated it is on the agenda to the extent that the committee was asked to look into change orders and change order #3 in particular and that was one of their recommendations.

Burk stated he agreed with Council Member Fortenbaugh and would like to second his substitute motion.

Mayor Fitch stated this substitute motion would be on the first item.

SUBSTITUTE MOTION MOVED by Fortenbaugh SECOND by Burk to table the recommendation that the council place all future change orders on new business.

Davis questioned why Council Member Fortenbaugh wants to table this item.

Fortenbaugh stated he would like to table this because the agenda tonight does not include anything about changing council policy on these change orders and he thinks it would be more appropriate to agenda it and let the public see what is going on and have the ability to comment and give the council the ability to discuss it. He had no idea they were going to talk about this tonight.
VOTE ON THE SUBSTITUTE MOTION: AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Davis. MOTION CARRIED.

Mayor Fitch stated in regards to the change order #3 requested by Flintco, there is a motion by Council Member Tanner and a second by Council Member Warren.

MOVED by Tanner SECOND by Warren that the line item #2 in the amount of $126,121 be removed from the change order and tabled that the city staff be directed to investigate the architect's responsibility for the necessity of this change order line item with the assistance of the independent consultant as necessary and report their findings to the council and that the remaining line items #1 and #3-8 be explained by city staff to determine their compliance or non compliance with state statute. AYE: Morford, Jackson, Davis, Tanner, Fortenbaugh, Johnson, Warren. NAY: Burk. MOTION CARRIED.

Item #1:

George Hennessee, City Engineer, stated on the change order #3 request from Flintco on the public safety facility, the very first item is a cistern that was discovered during the demolition of the project. That cistern was discussed and because it was a cistern it had to be capped according to the state regulations and then filled in. That activity was approved by staff and they would suggest that council approve this item.

Tanner state he is showing that item #1 is $14,461.

Mayor Fitch stated that is correct.

Tanner questioned if this item was already completed.

Hennessee stated yes.

Jensen stated on each one of these items, staff needs to address the timing issue that we are dealing with because of acts and omissions of a former employee as required by the statute.

Tanner questioned if the city attorney was recommending that they approve this.

Jensen stated they are going to go through each one of these items, except for #2. When you subtract from the total sum this $126,121, you come up with $39,456. That is under the cap of $40,000 that is set forth in the statute on change orders from the Public Competitive Bidding Act. The other component of that which is very difficult in this situation is that when you have an employee that has been delegated authority up to that cap of $40,000 collectively, and he authorizes a matter to proceed, the matter is supposed to come back at the next regular council meeting. Because of the situation that we have here because of acts and omissions of a former employee, that is impossible, unless staff can relay some information that he is not aware of because he does not know exactly when all of this was finalized. That needs to be addressed. That is a procedural matter, the most important matter to him is the cap of $40,000 not being exceeded with one total sum change order. We would be under that cap with all of these remaining items except for #2, but each one they need to address because the council needs to have full disclosure on what they want to approve on this list.

Hennessee stated these instructions were given to him an hour ago and he has not been able to compile a total date of each item that is on this list. He stated representatives from Flintco are here and can assist us with those dates.

Bill Mincey, Project Manager for Flintco, questioned what date they were asking about.

Hennessee stated the date of discovery for item #1 and when it was completed.

Mr. Mincey stated the date of discovery was at the beginning of the year. There was a PR issued by the architect on how to address this cistern once they determined it needed to be addressed. It was located in the southwest corner of the parking lot and if it was demo'd out and properly compacted they could have some grade failure and the parking would fail on them. They priced the PR and that work did not actually happen until the early part of August. He would have to go back to his records to see the exact date when that work occurred, but it was once they had administrative approval back on that pricing.

Tanner questioned if we had a city employee come out and inspect this and make sure the work was done. He questioned how this works, do they go out and look at it or do they take pictures.

Hennessee stated there is a full time employee that is on the job. He stated actually they had three inspectors on that particular job. They also have a testing lab, EST, who does compaction tests to make sure it is adequate to support the loads that they anticipate.

Tanner questioned if we know the work was actually done. He questioned if they took pictures.

Hennessee stated yes. They have before and after pictures.

Tanner questioned if they were supposed to approve these one by one.

Jensen stated that is up to the council, he just wants to have a discussion of each one because they need to know that the contractor didn't just proceed by themselves. They need to know if someone on staff, below the $40,000 cap, actually authorized to proceed on this. He stated George may have authorized one or two and someone else did as well because there was a change over in project managers and they need to address the timing issue so they can have full disclosure.

Mayor Fitch questioned if the council would like to vote on these each individually.

Tanner stated he would like to vote on these one at a time. He questioned if they had authorization from a city staff member to go ahead. Was it the former city staff member?

Hennessee stated it was under his direction.

Tanner questioned how the whole process works?

Hennessee stated after the issue was identified they went through the process determining the amount of soil that would be required to fill in…

Tanner stated he did not need to know all the details, just the process of the change order. Did Hennessee initiate the change order.

Hennessee stated generally the initiator is the contractor. The contractor identifies an issue that is on the plan, he submits that to the engineering staff, the engineering staff submits that to the architect who does a simultaneous review of that change order request. If there are questions they question the contractor about his approach or procedure and they come to an accord on how that repair or change will be made and then they negotiate the price.

Tanner stated once they determine it is a legitimate change order, not an architectural flaw or something that the contractor has caused, then at that point how does it work through the city staff. There are levels that you have to go through to get a change order approved and get it before the council. There is an initiator, then the supervisor looks at it, then it goes to the city manager, to the finance department.

Hennessee stated in this case the inspector on the job signed off on the completion of it and he would do that based on the soil testing, concrete testing and the final appearance of it. The inspector would sign off on it and would present it to him and he would verify that the change was necessary and the funding was available to pay for it and it was completed according to spec. He would then sign off on it and submit it to the legal staff, city manager and finance director so that each one has an opportunity to look at it. It will then go to city council.

Tanner stated there are different layers concerning these change orders.

Hennessee stated absolutely and at the completion of the project it goes through a final audit to assure that everything is up and above.

Tanner stated the finance department is not going to cut a check, they are going to go through the whole process and once everything has been approved it come before the council.

Hennessee stated the check is not cut until after council approval. After council approved it the Mayor will sign off on it and it will go to finance.

Tanner questioned if the city attorney was going to approve this.

Jensen stated yes he is because it is under the $40,000 cap.

MOVED by Tanner SECOND by Fortenbaugh to approve line item #1 of change order #3. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Item #3:

Hennessee stated item #3 is to relocate an oil/water separator. The oil/water separators purpose is to separate oil from any wash water out of the truck bays in the fire department area. The original design had the separator located within the tire path of the trucks exiting the building and even though the separator was designed for traffic loads, the repeated operation of the heavy trucks would be detrimental to the oil/water separator. It was determined that it was necessary to relocate that outside tire path.

Mayor Fitch stated they need to know the time frame and when it was approved.

Hennessee stated it was approved by a staff member and he signed off of it and he had no objection to the relocation.

Mr. Mincey stated the change came about by the issuance of an ASI by the architect around the April – May time period.

Tanner questioned the meaning of an ASI.

Hennessee stated it is an architectural supplemental instruction.

Tanner stated we paid the architectural firm roughly $3 million. At what point in time do we say that you designed the building for us and now we have to do these changes. Is this because they didn't design it properly? In situations like that he feels the architect should be responsible.

Hennessee stated the city has a contract with the architect and the city has a contract with the contractor, but we don't have a link between the contractor and the architect. If there is a blunder and it is determined that it is the architect's responsibility, then they would go to the architect for reimbursement or if we don't pay it then we would join the architect in any suits of any kind.

Tanner stated since this is an ASI, this is a change the architect recommended.
Hennessee stated this is one the staff requested.

Tanner stated this may be an upgrade possibly once a staff member gets in and says this may be a problem.

MOVED by Jackson SECOND by Burk to approve line item #3 of change order #3. AYE: Morford, Jackson, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: Davis. MOTION CARRIED.

Item #4:

Hennessee stated item #4 involves plumbing and electrical revisions to the floor for clean outs and changes the fixtures per recommendation to the architect. The floor lay out was done off of preliminary sizing of furniture and fixtures within the building and as those were refined. The desks in some of the areas did not have electrical outlets so they wanted to improve the system so there would not be extension cords running across the floor, so they asked for additional boxes. They also included some carbon monoxide detectors for improvement in the fire station.

Davis stated the architect on some of this was designing some of this based on assumptions or guesses of what we might have for FFE.

Hennessee stated they used a preliminary design.

Davis stated it was a guess. We went through this whole process and approved this entire deal with about $3 million going to the architect based on a guess of what we might use because we didn't slow down to take the time to get that figured out and now it is costing us about $29,718.

Tanner stated this is another change that maybe a city staff member requested.

Hennessee stated it was done through his staff and he is not aware of the exact circumstances.

Tanner questioned who initiated this.

Hennessee stated it would have been the project manager at the time.
Tanner questioned if this was the former…

Hennessee stated it would have been the project manager at the time.

Tanner questioned if it was the former project manager.

Hennessee stated yes.

MOVED by Tanner to deny line item #4 of change order #3.

Motion died due to a lack of a second.
MOVED by Jackson SECOND by Burk to approve line item #4 of change order #3. AYE: Morford, Jackson, Burk, Fortenbaugh, Johnson, Warren. NAY: Davis, Tanner. MOTION CARRIED.

Item #5:

Hennessee stated item #5 is a pier cap modification. It came about because the pier caps were undersized between the office building and the outlying buildings. The steel was somewhat undersized, the concrete was upgraded to 5,000 psi and the system was reinforced. The original design was for uplift only and this was to improve the system to provide for sheer as well as uplift.

Jensen questioned if this one has already started.

Hennessee stated this one is not completed.

Jensen stated when this was originally written staff wasn't sure if it had been started yet or not.

Mr. Mincey stated the date they figured out they had an issue in the field was June 14th and they discussed it with the architect and they issued them the PR documents to price on June 22nd and as of July 10th that is when they went through the pricing and administrative approval process to be able to release the steel manufacturer to start making modifications of the column baseplates. A portion of that work has been done.

Hennessee stated when he mentions column baseplates the original design was set deeper than the final design so that made the columns too long and with the revised design the column had to be cut off and the base plates had to be re-welded on to them and that is the manufacturing process that was underway.

Tanner questioned if Hennessee thought this was an architectural design flaw.

Hennessee stated the original design was for uplift only and this design was to take care of some sheer lateral loads.

Tanner stated if this is something they didn't design right, let's kick it back to them and let them deal with it.

Hennessee stated the architectural design did not include seismic loads in the original design on these columns.

Tanner stated this is something they possibly overlooked.

Hennessee stated he didn't do their QC's so he didn't know if it was overlooked or just ignored.

Tanner questioned who initiated this.

Hennessee stated it was initiated by the contractor. After they started erecting the steel they realized that on the first column that is was not conducive to the steel building that we have.

Tanner stated so they were forced to do some modifications and make everything line up. He would consider this an architectural mistake and would like to pass this back to the architects. They could table this and look into it like they are looking at item #2.

Mayor Fitch questioned if this work has already been done.

Hennessee stated it is not completed.

Mayor Fitch stated there is still some completion on the steel that is not erected yet.

Tanner stated he is not trying to not pay the contractors, he wants them to get paid, but at the same time if this is something that was an architectural design flaw he feels they need to pass that back or at least attempt to pass it back to the architect. He thinks there is omission in errors in their contract.

<u>MOVED by Tanner SECOND by Davis</u> to table.

Fortenbaugh stated that Mr. Hennessee is saying that we had to do item #5 because our building would not have been structurally sound enough, so we would have done this no matter what. Whether it was an oversight or not it is something we had to do.

Hennessee stated in order to meet current code and seismic codes yes.

Burk stated if we pay this and then tell the city attorney to go and sue the architect for the $16,000, $14,000 or $40,000, is that not what the city attorney is supposed to do.

Jensen stated if he is give the authorization that is what he will do. That doesn't mean we have to do it that way, but that is the other option.

Burk stated the option that he does not like is that the contractor did what they thought was in accordance with what they were supposed to do and the contractor is not getting paid because of some things that have happened. That is not the contractor's fault. If we are going to go back on the architect, then let's go back on the architect, but we need to do that as a city. Flintco is an upstanding company, they are building wonderful structures all over the place. Building a building like this is not easy, especially on soil and ground that is not perfect. If we are going to go after then, let's go after them. We have an attorney and staff that can do that and get us reimbursement on this line item, but to hold up the contractor from being able to complete what he needs to complete with the steel manufacturer to put these plates on, there is no reason to hold this up. Let's go after somebody besides the contractor.

Tanner stated he does not think the contractor is going to slow down the project for $16,000. They need to be paid for their work. This is a unique situation.

Mayor Fitch stated if you want the contractor to be paid, this needs to be approved and allow Mr. Jensen to go after the architect.

Jensen stated he can't go after anyone unless he has some evidence and that is the whole idea behind #2. So until we get some evidence from a real expert, he will not recommend going against anyone. Once we have some evidence, he will brief the council in executive session and the policy is that we don't file a suit against anyone unless authorized by the council.

Warren stated during the committee meeting they discussed this and they all want to make sure that the contractor gets paid because so far they have not run into anything that was really their fault. He questioned if Dewberry was in attendance.

Hennessee stated no.

Warren stated this is a perfect example of not being the City's fault and not being the contractors fault. If the steel is not the right length and they are going to have to spend more money, because it would have been cheaper if it had been designed correctly the first time, because you would not have had to spend the labor to put the caps on. He is not having a real good feeling about the things he is seeing. He feels they need to do whatever the city attorney feels they need to do to make sure that they have the ability to go back to the architect. He stated the contractor is going to get paid one way or another.

SUBSTITUTE MOTION by Warren SECOND by Burk to approve line item #5 of change order #3.

Mayor Fitch stated he feels they need to approve this so the contractor can get paid and finish the work and keep the construction going on time and then we can come up with the evidence we need to address it with the architect.

Jensen stated you are not going to be waiving anything as far as going against the architect by approving this if you decide to do it under the cap of the $40,000.

Tanner stated if they don't approve this line item #5 for $16,000, is this going to stop the process.

Hennessee stated it will not shut down the construction but it will probably result in a delay of 30-45 days.

Tanner stated they have ordered the adjustments that needed to be made to the steel. He does not see what the difference would be since they tabled line item #2, they can table line item #5.

Mayor Fitch stated there is a substitute motion.

Johnson questioned if a 30-45 day delay would cost the City more money.

Hennessee stated generally when you delay a project it does result in an expense.
Tanner questioned if they were to table line item #5, is the contractor going to stop construction on the building for $16,000. We are already saying we are going to pay the contractor if it is something that was needed to be done and it's not an architectural design flaw. He questioned if they were going to stop the project for this $16,000.

Mr. Mincey stated they have not been able to issue change orders for their subcontractors that are affected by this. Their steel erector has gone ahead and proceeded based on their direction, but this affects steel erectors, concrete addressing the foundation, so it could impact their work if he cannot get those change orders issued. They are trying to be good partners and keep this thing rolling and they don't want to delay anything and they were hoping to get to move on this tonight and be able to write those change orders.

Tanner stated he understands that, but based off of yesterday's committee meeting, the contractor has already proceeded knowing that they have went above that $40,000 threshold on some of these change orders and they have done it at their own risk. If you are going to stop construction after you have already admitted that you have already proceeded at your own risk, he does not see you stopping for this $16,000. Since we are already going to look into change order #3, rather than going ahead and approving it and having to come up with some evidence so they can send it over to the city attorney so he can go sue the architect, he does not know why they just don't look at item #5 and #2 at the same time and see if there is something they can kick back to the architect.

Davis stated at the committee meeting yesterday they asked the council from Flintco if they had been involved in a situation where there was a change order that was required that was the financial responsibility of the architect and Flintco indicated that yes, they have been involved with those situations. In his mind there is not doubt on some of these that they are the responsibility of the architect. A change order is for the purpose of unforeseen changes that cost more money or a request by the customer that they did not initially request that would cost more money, or sometimes reduce money. Last year when they talked about passing this contract, one of the reasons stated by the city manager that it was over budget was because of the architect having to adjust for new calculations for seismic activity that had recently changed. Now we are saying with this particular one we are paying for it again somehow. In his mind there is no doubt that there would be an argument to be made that this is the responsibility of the architect. He stated that Council Member Burk makes a good point that there is not a relationship between the contractor, architect and the City of Lawton in a manner that would allow us to do this any differently. He is opposed to the City of Lawton paying for this, but at this time it may be prudent to pay this. This is common for this stuff to end up in court between the architect, contractor and customer. He initially was prepared to vote to deny these things but he thinks the prudent thing to do would be to approve them and if there is a legal argument that can be made on the City's behalf that this is the financial responsibility of the architect, then he feels they stand a good chance to get our money back. He does not know if we can sue the architect if we don't have damages, if we don't pay this then what are we suing them for.

Tanner stated it would be more efficient and less costly to the citizens of Lawton if they just combine items #5 and #2.

VOTE ON SUBSTITUTE MOTION: AYE: Morford, Jackson, Davis, Burk, Fortenbaugh, Johnson, Warren. NAY: Tanner. MOTION CARRIED.

Item #6:

Hennessee stated we have a bicycle path that goes from the Gore intersection down through D Avenue. There is a duplicate sidewalk that is 10 foot wide that can be utilized as a bicycle path and the original bicycle path was lined with lighted bollards to make it attractive for evening walks. Item #6 would be a cost savings item for the project so they can replenish some of the contingency account. By deleting the 27 solar powered lighting bollards they can replenish that account by $23,693.

Jensen stated in order to get under the cap of $40,000, they are taking into consideration subtracting $23,693.

MOVED by Tanner SECOND by Warren to approve line item #6 of change order #3. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Item #7:

Hennessee stated item #7 was removed and placed on Change Order #4 which was already approved.

Item #8:

Hennessee stated this item is to deal with bad weather days. Our contract is written such that if a contractor is rained out and can't work due to circumstances beyond his control, we do allow him delay days for materials ordered that may be delayed in delivery. There may be utilities in the way that he has no control over and there may be weather days he has no control over. With this item we are recommending 22 weather days from December to February and 21 additional days from March to June.

Morford questioned if these are days we are adding for bad days back then.

Hennessee stated generally the weather days are added to the end of the contract so these would just extend that contract date.

Morford questioned why this was not written in originally.

Hennessee stated the common practice is to provide for these kinds of delays in the project. Some contracts are written such that the average delay is written in the contract, but this was written as a calendar day contract and there were no provisions that provided for average weather days.

Morford clarified that there were no weather days in the original contract.
Hennessee stated not in the original contract.

Morford questioned how these are determined.

Hennessee stated these are determined by his field inspector. He and the superintendent of the job determine whether the contractor can work or cannot work.

MOVED by Burk SECOND by Jackson to approve line item #8 of change order #3. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

NEW BUSINESS ITEMS:

13. Consider holding a public hearing and approve the Lawton Police Department to submit an application for the 2018 Department of Justice Edward Byrne Assistance Grant Local (JAG). Exhibits: Interlocal City-Council Edward Byrne Memorial Grant Agreement.

Assistant Chief James Apple, Lawton Police Department, stated this item is to approve the submission of the 2018 Department of Justice Edward Byrnes JAG grant. The grant amount is $75,829 and it is an 80/20 split with the Comanche County Sheriff's Department. The amount going to the City of Lawton would be $60,663.20 and $15,165.80 going to Comanche County. The funding is applied towards equipment and it does require a public hearing. (Chief Apple distributed a budget summary and narrative with a list of items and projected cost.)

PUBLIC HEARING OPENED. No one appeared to speak and the public hearing was closed.

MOVED by Burk SECOND by Jackson to approve the submission of, and acceptance of, the 2018 Edward Byrne Memorial Grant and authorize the Mayor and City Clerk to execute the Interlocal Agreement between the City and County. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

14. Consider authorizing closing out the 2005 Capital Improvement Program (CIP) and directing financial services to transfer the remaining funds to the 2015 Sales Tax Extension CIP and 2016 CIP. Exhibits: Exhibit "A" Summarizing the 2005 CIP, Exhibit "B" 2005 CIP Financial Summary, Ordinance 10-13-1304 – Purpose of revenues; disposition of proceeds 2005 CIP.

Ihler stated they are asking to close out the 2005 Capital Improvement Program and transfer any of the remaining funds to the 2015 Sales Tax Extension and the 2016 CIP. With regards to the 2005 CIP, all of the identified projects that were listed in the ordinance have been completed. The only item that was not funded as part of the 2005 CIP was improvements to the dams out at Lake Lawtonka and Lake Ellsworth. We did not have enough funds at the time and we went ahead and incorporated the dam improvements into the alternative water supply items as it related to the 2016 sales tax. There are a couple of projects that have some encumbered funds that are not needed because the projects are complete. Those items are SE 45th, which has $5,000, and he is recommending those funds be transferred to the 2016 CIP and that those funds go into the construction project for SE 45th Street that is underway. With the Gore Boulevard project, they are recommending that $2,070 go to the 2015 CIP for the project on Gore Boulevard from 67th to 82nd for design. The water treatment plant sludge lagoon still has $24,129 encumbered and the project is complete and they are recommending that the funds go to the 2015 CIP and they go toward the chemical storage tank replacement. The large dollar amount of $730,997 that is unencumbered, they are recommending that it be transferred to the 2016 CIP into two areas. In the ordinance for the 2005 CIP, one of the items they could spend that money on is citywide computer hardware/software upgrades and improvements. They are requesting that these funds be transferred to the 2016 CIP and the accounts be set up for 1) citywide computer hardware/software upgrades for $230,997 and 2) the public safety computer hardware/software upgrade improvements. Along with the public safety facility there is approximately about $1 million worth of computer hardware/software and they are requesting that these funds be set aside exclusively for hardware/software upgrades for that facility in the 2016 CIP. There are no active projects remaining and this will eliminate the need to report and monitor the 2005 CIP.

<u>MOVED by Burk SECOND by Jackson</u> to authorize closing out the 2005 Capital Improvement Program (CIP) and directing financial services to transfer the remaining funds to the 2015 Sales Tax Extension CIP and 2016 CIP AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

ADDENDUM:

1. Consider approval of Change Order #5 by Flintco, LLC to their contract with the City of Lawton for construction of the Public Safety Facility. Exhibits: Change Order #5 - Public Safety Facility.

Hennessee stated prior to the bid of the public safety facility, the plans were submitted to the Oklahoma Health Department for review and comments. They received those comments much later than the bid. They had two significant comments which relates to items #1 and #2.

Item #1:

Hennessee stated item #1 deals with an addition in the amount of room that is required for each inmate in the day room. It required that they adjust a gridline L to accommodate the additional room space that is required. That changed the steel, glass glazing, doors, etc. In dealing with the contractor they have come up with a price of $45,201. He stated this is the first council meeting after staff received the price, so it does meet state law.

Jensen questioned if items #1 or #2 have been started.

Hennessee they have not.

Jensen stated this is the way it is supposed to happen, nothing has been started and no one approved anything out in the field.

Hennessee stated this item is a result of the Health Department review which came in very late.

Warren questioned if the Health Department changed their rules in the middle of this design process.

Hennessee stated not that he was aware of.

Warren stated this is another issue they will need to talk to the architect about because that is part of the deal when you design a building, you would need to talk to the entities that control what has to be in that building. They will have to look at providing the funds, but they need to look at the architect and see if they are willing to voluntarily come up with the money.

Burk stated they need to look at all of these to see if it is someone else's responsibility. Obviously this is a Health Department requirement and they have to do it, but is this something the architect should have caught in the beginning or at least informed them when they were doing these drawings.

Hennessee stated the architect designed it around a pre-manufactured building for the jail cells, so each cell has an individual pre-manufactured cell. He used a basis of design cell and that may or may not be the same cell that the contractor is using.

Burk stated he appreciates that, but our part is to make sure that if it is wrong we check into it. That is our job.

Morford stated the top staff at the Health Department quit in April or May and it has been in a mess. This may be part of the reason.

Davis stated if the contractor knowingly changed something that Dewberry put in there for any number of reasons, then it may fall back on the contractor.

Mr. Mincey stated in the specifications for the detention component of this project, one of the approved manufacturers is Sweeper and that is who is providing these modular jail cells. Those modular jail cells are on the western portion of the detention area. Where this gridline L modification is, those modular cells are not located in that area. They are actually building that space out of hollow metal detention frame, so modular components are further down from this gridline.

Davis questioned what unforeseen change occurred that caused this.

Hennessee stated there was a requirement that they move one wall about a foot in order to accommodate the additional square footage required for the day room area.

Davis stated the Health Department required this.

Hennessee state yes.

Davis questioned if that was required after Dewberry gave them the plans.

Hennessee stated yes.

Tanner questioned if the Health Department sends out officials to look at this.

Hennessee stated he was not aware that they sent anyone out. They reviewed the plans and realized that the square footage for the day room area was insufficient.

Davis stated this is a pretty standard change order. There are going to be change orders and this is being done the right way. The change occurred after Dewberry had provided the plans and there is nothing they could have done about that. The contractor has to comply with that and so do we as a customer which will cost us more money. This is a standard proper change order.

MOVED by Burk SECOND by Jackson to approve line item #1 of change order #5. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Item #2:

Hennessee stated item #2 is a result of that same review from the Health Department. Instead of the floor space, this one concerns the air space and the visible light that is available to the inmates during their stay. There was a requirement to add some additional skylights to that area.

Warren stated they need to know why things like this happen and they don't need to just guess. There have been natural sunlight rules at the state for at least 15 years. When they do approve things like this they need to know that maybe there was a change in the law between the time it was designed and the time we contracted it. Otherwise they will never know who it belongs to.

Davis questioned if this was a change in the law after the design.

Hennessee stated it was not a change in the law, it was a change in the review.

Davis questioned if this was reviewed by the agency that is now requiring this.

Hennessee stated it was sent for review, but it was not reviewed until recently.

Davis stated they passed the design, why was it not reviewed.

Hennessee stated it was sent in for review prior to our bidding process and it took this long for the review to get back to us.

Burk stated there has been a major problem at the Health Department and it just takes them forever to get everything done. He has heard this from other contractors.

Davis questioned when this was sent to the state for review.

Hennessee stated he does not have the exact date, but he can get it. This is similar to item #1 in that neither one of them involved a law change, they were both just a delayed review.

Tanner questioned if the state has any type of adjustment committee.

MOVED by Burk SECOND by Jackson to approve line item #2 of change order #5. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Item #3:

Hennessee stated item #3 has been completed and it was approved by staff. The original design of the project had a broom finish in the bay floor and it was realized that the broom finish did not provide for proper cleaning. Staff required that the broom finish be changed to a trowel finish and that trowel finish required some additional time for floating it out.

Davis stated he is going to make a recommendation that they try to negotiate some of this with the architect in good faith and the change order they are going to talk about in committee to try to negotiate that as well. Knowing that a bay needs to be trowel finished to be cleaned, that is very rudimentary. That is not the contractors fault. He wanted to state publicly that he is going to make a motion in the committee to have the city staff try to negotiate these items before they talk about a lawsuit with the architect and then come back to council and let us know if that was able to be resolved.

MOVED by Jackson SECOND by Davis to approve line item #3 of change order #5. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Item #4:

Mayor Fitch stated item #4 is a decrease.

MOVED by Burk SECOND by Warren to approve line item #4 of change order #5. AYE: Morford, Jackson, Davis, Burk, Tanner, Fortenbaugh, Johnson, Warren. NAY: None. MOTION CARRIED.

Jensen stated there are some items identified, definitely #2 on Change Order #3. In his opinion, they need to have an independent consultant and that is why he put that as part of the motion. There may be someone they already have on retainer but he is going to need to know when they bring an item back for either an expansion of the scope of a currently retained consultant or if they have to do a brand new contract, what the scope of that is going to be outside of just item #2 on Change Order #3.

Burk stated he does not like these outside consultants because it always ends up costing us a lot of money. He feels the staff needs to look at it and decide if it is possibly something that could have been prevented by the architect. At that point come back to council and the council will recommend to the city attorney that he send a letter to the architect trying to see if we can get some money back for these items they believe to be things that could have and should be been prevented.

Jensen stated he is not talking about that part of the process. If they cannot get something resolved otherwise, that is what he is talking about, where they have an outside consultant.

Burk questioned if we are at that point.

Jensen stated no. All he is hearing right now about the response from the architect from the staff is they're going to say you were going to have to pay for it anyway. That is not an adequate response.

Davis stated he agrees, if we can't get it resolved with the architect, some of this they should be amenable to immediately, but if they are not, having a third party consultant would be the way to go.

REPORTS: MAYOR/CITY COUNCIL/CITY MANAGER - None

The Mayor and Council convened in executive session at 7:41 p.m. and reconvened in regular, open session at 8:29 p.m. Roll call reflected all members present excluding Mayor Fitch. (Mayor Fitch did not attend executive session).

EXECUTIVE SESSION:

2. Pursuant to Section 307B.2, Title 25, Oklahoma Statutes, consider convening in executive session to discuss negotiations for a Collective Bargaining Agreement for FY 2018-2019 between the International Union of Police Associations (IUPA), Local 24, and the City of Lawton, and, if necessary, take appropriate action in open session. Exhibits: None.

Jensen read the title of item #2 of the addendum. No action was taken.

There being no further business to consider, the meeting adjourned at 8:30 p.m. upon motion, second and roll call vote.

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FRED L. FITCH, MAYOR

ATTEST:

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TRACI HUSHBECK, CITY CLERK