

AGENDA
Lawton Economic Development Authority
Regular Meeting
Thursday, December 19, 2024 - 2:00 PM
3rd Floor Conference Room
City Hall - 212 SW 9th Street
Lawton, Oklahoma 73501



MEETING CALLED TO ORDER/ROLL CALL

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. § 301-314

BUSINESS ITEMS

1. Consider approving the minutes of the November 21, 2024, meeting.
2. Receive the Financial Report from Hatch Croke & Associates, P.C., and take action as deemed necessary.
3. Consider approving the First Amendment to the Redevelopment Agreement between City of Lawton, the Lawton Economic Development Authority, the Lawton-Fort Sill Economic Development Corporation, and Fisher59 Properties, L.L.C., approved on April 23, 2024, pursuant to which the Redeveloper agreed to construct an approximately 100,000 square foot warehouse and distribution center on 15.71 acres of real property located in the Airport Industrial Park, and provide the design and construction of the offsite public sewer, water, roadway, and drainage improvements required to serve the Property, modifying the agreement to provide periodic draws on the Assistance in Development Financing rather than a lump sum amount upon completion of the improvements.

REPORTS

1. Receive a report from the LEDA Executive Director

ADJOURNMENT

MINUTES
Lawton Economic Development Authority
Regular Meeting
Thursday, November 21, 2024 - 2:00 PM
3rd Floor Conference Room
City Hall - 212 SW 9th Street
Lawton, Oklahoma 73501

Chairman Fitch called the meeting to order at 2:00 PM. in the 3rd floor conference room of City Hall.

STATEMENT OF COMPLIANCE WITH OKLAHOMA OPEN MEETING ACT, 25 O.S. 301-314

Meeting notice and agenda were posted by the City Clerk's Office as required by State Law.

ROLL CALL:

PRESENT: Fred Fitch, Randy Warren, Ernest Sheppard, George Gill, Larry Neal, Jason Hensley, Ron Nance

ABSENT: David Means, David Madigan

OTHERS PRESENT: Richard Rogalski, LEDA Executive Director; John Andrew, City Attorney; Tammy Branstetter, City Clerk's Office; Matthew Modeste, Hatch, Croke & Associates; Kim McConnell, The Lawton Constitution

BUSINESS ITEMS

1. Consider approving the minutes of the October 17, 2024, meeting.

Motion by Gill, Second by Hensley, to approve the minutes of the October 17, 2024 meeting.
AYE: Fitch, Hensley, Gill, Warren, Neal, Nance, Sheppard. **NAY:** None. **MOTION PASSED.**

2. Receive the Financial Report from Hatch Croke & Associates, P.C., and take action as deemed necessary.

Matthew Modeste, Hatch Croke & Associates, P.C., presented the September 2024 Financial Report, which includes the following financial statements:

- Statement of Net Position dated September 30, 2024
- Statement of Revenue and Expenses – Combined for the Period Ended September 30, 2024
- Statement of Cash Flows for the Period Ended September 30, 2024
- Statement of Revenue and Expenses – Operations for the Period Ended September 30, 2024
- Statement of Revenue and Expenses – TIF District 1 for the Period Ended September 30, 2024
- Statement of Revenue and Expenses – TIF District 3 for the Period Ended September 30, 2024

A copy of the September 2024 Financial Report may be obtained from the City Clerk's Office upon request.

Motion by Warren, Second by Neal, to accept the September 2024 Financial Report from Hatch Croke & Associates, P.C. as presented. **AYE:** Fitch, Hensley, Gill, Warren, Neal, Nance, Sheppard. **NAY:** None. **MOTION PASSED.**

REPORTS

1. Receive a report from the LEDA Executive Director

Rogalski provided an updated on the state match. He said the state is concerned about the net benefit ratio that is listed in our grant letter we received when the state match was approved. The letter said we said we are approved up to \$37 million, with a 2% net benefit ratio. Rogalski said we read this as \$37 million, so we've been sending our state match requests in every six months. The state had been paying these requests for the past 12 years, but in spring of last year the state requested the percentages of taxes being sent to them. Rogalski said he advised the state that the occupancy tax is 7.5%, the use tax is 4 1/8% and the sales tax is 2%. The state then advised that we can't go over the 2% net benefit ratio. Rogalski said this means that we would not be able to claim the other 5.5% of the occupancy tax.

Rogalski said that after reading the original letters, it was his understanding that we were approved as a military community and the \$37 million was based on employment at Ft. Sill (not people buying things at the Lawton Town Center), and the net benefit ratio was to be 2% of all their purchases of a theoretical number. However, Rogalski said we couldn't find the calculations that were backup to the original letters.

Rogalski said he's had a couple of conversations with Jon Chiappe with the Oklahoma Department of Commerce. Rogalski said Mr. Chiappe sent him a spreadsheet last week indicating what the number was based on. He said the spreadsheet shows the number was based on 5,100 soldiers at Ft. Sill. Rogalski said we will be drafting a letter to the OTC stating our understanding of what the grant is based on and explaining that we've since been submitting these requests in accordance with the Local Development Act. Rogalski noted that the Local Development Act limits sales tax matches to 4.5%, but it doesn't give you a limit on occupancy tax, so we've absolutely been in compliance with the statute other than the line that states that it can't go over the net benefit ratio – this is what the OTC is hitting us with. Rogalski said the letter to the OTC will state that we understand that the net benefit ratio doesn't apply to our collections within the Lawton Town Center – it applies to a calculated number of troops at Ft. Sill. Rogalski noted that the number of troops is probably higher now, which would mean they need to give us more money.

Rogalski said it's possible that the OTC will say yes and it's done. It's also possible that they say yes but will require a new grant letter stating the new net benefit, which will accommodate how we've been charging it. He emphasized that the spreadsheet from Mr. Chiappe was just what we were needing. Rogalski said he did not want to resubmit a request for less money because we did not do anything wrong – he believes the OTC is misunderstanding things.

Chairman Fitch said Dan Batchelor did the first two or three submittals to the state for us to get the state match and everything seemed fine – our belief was that we were doing it correctly.

Rogalski said he still believes we were doing it correctly. He thinks the OTC is misunderstanding the nature of our grant. We do not have a normal grant – ours was a military community grant and it's completely different.

Chairman Fitch said we feel very good with where we are, and he thinks things will work out just fine without hurting us financially.

Rogalski said we are in a very strong position – what we are doing is very fair.

Chairman Fitch said he commends Rogalski for his tenacity in staying on top of this.

Rogalski said Westwin is trying to get their Certificate of Occupancy (CO) wrapped up by the end of the year. Westwin had a few issues with their mechanical inspections, but they finally got it passed inspection yesterday. Rogalski said it's his understanding that they'll be issued a CO this week for the pilot plant, which will be the very first important step for them to make nickel and do the bankable feasibility study for us. Rogalski said he is confident that things will roll forward and we'll have a commercial plant groundbreaking in 2025. He said this is all speculation, but he's feeling good about it.

Rogalski said things are close to moving forward with Fisher59. There is a proposed request to do draws rather than a final payment at the end. Rogalski said if we get this language worked out, we'll be bringing it forward to this body, the LEDC and the City Council. He said it looks like this might work out.

Rogalski said Fisher59 didn't get their easements, and they're suddenly realizing they need them. The easements from themselves and from the LEDC are easy, but the ones from the Commissioners of Land Office north of the project will take some time. Rogalski said he's been helping them with this process.

Rogalski gave a presentation on the STEDI Project Plan to let Authority members know what's been done and where we are in the process. A copy of the presentation may be obtained from the City Clerk's Office upon request.

Rogalski noted that the median family income in Lawton is \$10,000 lower than the average for the state. He said he believes every single problem or issue we have in this community can be tied to this number. If we were just at the state average, our citizens would have \$331 million a year more income in their pockets – this would change the community remarkably.

Rogalski said the STEDI Project Plan and the PROPEL CIP work hand in hand to fuel industrial development.

Rogalski said the STEDI Project Plan Review Committee met on November 12th and unanimously approved a Statement of Findings recommending approval of the Amended STEDI Project Plan to the City Council. The City Planning Commission met on November 14th and unanimously recommended approval of the Amended STEDI Project Plan and stated that the plan is in conformance with the Land Use Plan.

Rogalski said we have a noticed public hearing for Monday, December 2nd at 3:30 P.M. – this is a hearing only. On Tuesday, December 10th at 6:00 P.M. there will be another public hearing at the City Council meeting, after which the City Council could consider an amendment adopting the Amended STEDI Project Plan.

Chairman Fitch said this involved a lot of long-range planning, and he thinks we've got ourselves very well covered for the future.

EXECUTIVE SESSION

1. Pursuant to Section 307C.11, Title 25, Oklahoma Statutes, consider convening in executive session for purpose of conferring on matters pertaining to economic development, including the transfer of property, financing, and the creation of a

proposal to entice a business to locate within their jurisdiction if the public disclosure of which would violate the confidentiality of prospective business entities, and if necessary, take appropriate action in open session, to include providing direction to the Executive Director, to either pursue or not to pursue further negotiations with any economic development prospects so discussed.

Motion by Gill, Second by Nance, to convene in executive session. **AYE:** Fitch, Hensley, Gill, Warren, Neal, Nance, Sheppard. **NAY:** None. ***Motion Passed.***

The Authority convened in executive session at 2:42 PM and remained in executive session until 3:12 PM. When back in open session, roll call reflected all members present.

Motion by Warren, Second by Hensley, to direct the Executive Director to move forward with discussions that would encompass things discussed in executive session. **AYE:** Fitch, Hensley, Gill, Warren, Neal, Nance, Sheppard. **NAY:** None. ***Motion Passed.***

Gill left the meeting at 3:13 P.M.

Chairman Fitch asked Rogalski to provide a report on how the sales tax and occupancy tax is apportioned.

Rogalski said he's been working with the City of Lawton on how they apportion the sales tax and the occupancy tax. For twelve years they've had reports for Chairman Fitch to sign, certifying the amount that supposed to be apportioned. Rogalski said he explained to the City's new Finance Director that Chairman Fitch isn't the one creating the numbers – the City's Finance staff is creating the numbers, so they should be the ones certifying them. Rogalski said he worked with the Finance Director to develop an internal process within the City of Lawton for apportioning sales tax and occupancy tax to LEDA.

Chairman Fitch said this is one of the many things that Rogalski has done to streamline a lot of the things that we're doing. He noted that we're making quite a few different changes.

Neal asked when operations will begin at the Westwin pilot plant.

Rogalski said they will start making nickel in December. He's unsure exactly how long the process takes.

Warren said he believes it takes less than a week.

ADJOURNMENT

Motion by Warren, Second by Neal, to adjourn the November 21, 2024 meeting. **AYE:** Fitch, Hensley, Warren, Neal, Nance, Sheppard. **NAY:** None. ***MOTION PASSED.***

There being no further business, the meeting adjourned at 3:22 PM.

FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO REDEVELOPMENT AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2025 ("Effective Date"), by and among the City of Lawton, a municipal corporation ("City"), the Lawton Economic Development Authority ("LEDA"), a public trust having as its beneficiary the City of Lawton, the Lawton-Fort Sill Economic Development Corporation, an Oklahoma 501(c)(6) not-for-profit corporation ("LEDC"), and Fisher59 Properties, L.L.C., a Texas limited liability company, duly authorized to conduct business in the State of Oklahoma ("Redeveloper").

RECITALS

A. The City, LEDA, LEDC, and Redeveloper previously entered into a Redevelopment Agreement (the "Agreement") dated April 23, 2024, pursuant to which the Redeveloper agreed to: (a) develop approximately 15.71 acres of real property located in the Airport Industrial Park, in Lawton, Oklahoma as more particularly described on Exhibit A attached to the Agreement (the "Property"), by making a minimum capital investment of \$16 million ("Minimum Investment") to construct an approximately 100,000 square foot warehouse and distribution center (the "Distribution Center"), related parking and site improvements on the Property (collectively, the "Distribution Center Improvements"), and (b) provide the design and cause the construction of the offsite public sewer, water, and roadway improvements required to serve the Property and Distribution Center Improvements ("Public Improvements" and together with the Distribution Center Improvements, collectively, the "Redevelopment").

B. Redeveloper has acquired the Property from LEDC, pursuant to Section 3.1 of the Agreement and LEDC has delivered the Net Proceeds to the City, as required under Section 3.2 of the Agreement.

C. Under Section 1.2 of the Agreement, the City has agreed to provide assistance in development financing to the Redeveloper by reimbursing Redeveloper actual out-of-pocket costs and expenses associated with the design and construction of the Public Improvements, with an initial cap of \$1.6 million (the "Initial Cap").

D. Pursuant to City Council Resolution No. 24-142, adopted on June 25, 2024, the City increased the Initial Cap to \$2.9 million (the "Adjusted Cap").

E. The Redeveloper has submitted, and the City has approved (i) the Design Development Documents and Construction Documents for the Distribution Center Improvements, and (ii) the Plans for the Public Improvements.

F. Section 5.3 of the Agreement currently provides for the disbursement of Assistance in Development Financing to the Redeveloper within sixty (60) days of the date of the Redeveloper's dedication and City Council's acceptance of the Public Improvements.

G. The parties have agreed that the Redeveloper will be reimbursed for the cost of the Public Improvements, up to the Adjusted Cap ("Assistance in Development Financing"), in monthly installments, based on the percentage of completion of the Public Improvements, subject to the terms

and conditions of this First Amendment.

H. Unless otherwise defined in this First Amendment, capitalized terms used herein shall have the meanings set forth in the Agreement.

AGREEMENTS

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to amend the Agreement as follows:

1. **Conditions Precedent.** This First Amendment shall not be effective until, and construction of the Public Improvements shall not commence until, the following conditions have been satisfied.

A. **Easements and Dedication:** The Redeveloper, LEDC, and the Commissioners of the Land Office (“CLO”), as respective grantors of property on which the Public Improvements will be constructed pursuant to this Agreement (“Public Improvements Property”), shall each execute and deliver to the City a public utility easement (collectively, the “Easements”). Each easement will grant the City a permanent right over, under, and across the grantors’ respective portions of the Public Improvements Property, including the right of ingress and egress, for the City’s installation, maintenance, repair, and replacement of the Public Improvements following the Redeveloper’s completion of initial construction and subsequent dedication to the City. The form of the easements and legal descriptions must be approved by the City. The Redeveloper and LEDC hereby quitclaim and convey all right, title, and interest in the Public Improvements to the City, free and clear of all liens, claims, and encumbrances. Upon completion of the Public Improvements, the Redeveloper and LEDC will take all actions necessary to finalize the dedication of the Public Improvements to the City.

LEDC and the City will secure the required easement from the CLO and to coordinate with the CLO all other actions necessary for the conveyance and dedication of the Public Improvements.

B. **Payment and Performance Bond Requirement:** The General Contractor shall have provided payment and performance bonds issued by a reputable surety company, in an amount equal to 100% of the estimated cost of the Public Improvements to ensure the faithful performance of the construction contract between the Redeveloper and its general contractor for construction of the Public Improvements (“Construction Contract”) and completion of the Public Improvements in accordance with the terms of the Agreement, and the payment of all subcontractors, laborers, and suppliers for work performed and materials supplied in connection with the Public Improvements. The bonds shall name LEDC as a dual obligee ensuring that LEDC has the right to make a claim under the bonds in the event of a default by the Redeveloper or if there are unpaid claims by subcontractors, laborers, or suppliers. The bonds shall remain in effect until the Public Improvements are completed to the satisfaction of the City, inspected by the City inspector, and accepted by the City Council. Additionally, the bonds shall remain in effect until all claims related to the Public

Improvements have been resolved and settled. The surety company issuing the bond must be licensed to do business in the State and have a financial strength rating of "A" or better by A.M. Best or an equivalent rating agency.

C. Insurance Requirements: The City, LEDA, and LEDC shall have received evidence of the insurance policies described in Schedule 1 attached hereto and made a part hereof.

D. Construction Contract. Redeveloper shall have delivered to the City, LEDA, and LEDC for review and confirmation that the Construction Contract reflects, at a minimum: (i) the obligations of the General Contractor to construct the Public Improvements in accordance with the approved Plans and all applicable standards, ordinances, and code requirements of the City, including without limitation Article 21-8 of the City of Lawton's Code of Ordinances (the "Standards"); (ii) a detailed itemization of the total cost of the Public Improvements; (iii) the construction schedule; (iv) the commencement and completion dates of the Public Improvements, (v) a ten percent (10%) retainage to be withheld from each Application for Payment ("Retainage"); and (vi) agreement by the Redeveloper and General Contractor that the Construction Contract shall be fully assignable to LEDC in the event of a default, granting LEDC the right to enforce the Construction Contract and require completion of the Public Improvements, without the need for further consent from the Redeveloper, the General Contractor, or any other party.

E. Certification of Costs. Redeveloper shall have delivered to LEDA for review and approval an executed and dated certification of the total costs of the Public Improvements, supporting by documentation and itemizing all associated costs ("Redeveloper Certification"), including but not limited to: costs reflected in the Construction Contract; engineering and design costs; project management costs; and other costs eligible for reimbursement as Assistance in Development Financing, up to the Adjusted Cap. The Redeveloper Certification will reflect all costs known to the Redeveloper as of the date of the certification. The Redeveloper Certification may include a contingency equal to 10% of the Public Improvements costs ("Contingency"), but a Request for Reimbursement submitted by Redeveloper (pursuant to Section 5.3.B. below) shall not include any portion of the Contingency, unless such costs were actually incurred by Redeveloper. The Redeveloper Certification may be supplemented periodically during construction to reflect unexpected costs to complete the Public Improvements, above the Contingency, provided such additional amounts remain under the Adjusted Cap. Any such supplemental submission shall be identified as a "Supplemental Redeveloper Certification," which shall mean a written certification, executed, dated, and delivered by Redeveloper to LEDA, itemizing additional Public Improvement costs incurred during construction that exceed the Contingency, supported by documentation, and detailing such costs as necessary to complete the Public Improvements. Redeveloper shall not include any such additional costs in a Request for Reimbursement until thirty (30) days after delivering to LEDA the Supplemental Redeveloper Certification itemizing said costs with supporting documentation. Upon approval of the initial Redeveloper Certification, LEDA will deliver it to the City requesting disbursement of the funds. Upon LEDA's receipt of the Assistance in Development Financing from the City in the amount indicated in the initial Redeveloper

Certification, LEDA shall issue a notice to proceed to Redeveloper. LEDA will also submit approved Supplemental Redeveloper Certifications to the City for disbursement of funds identified therein.

F. Permits. All permits necessary for the construction of the Public Improvements shall have been issued.

G. Other Conditions. Conditions precedent under Section 2.1(a), (b), (c), (d), and (f) of the Agreement have been satisfied.

2. Assistance in Development Financing. Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

5.3 Assistance in Development Financing.

A. City Obligations. Provided all conditions set forth in Section 1 of this First Amendment have been satisfied, the City will, within thirty (30) days, transfer to LEDA the Assistance in Development Financing, in the total amount indicated in the initial Redeveloper Certification, for LEDA's disbursement to the Redeveloper, in accordance with and subject to the terms of this Agreement. The City will thereafter transfer funds indicated in any approved Supplemental Redeveloper Certification(s) to LEDA within thirty (30) days. In no event shall the total amount disbursed by the City to LEDA exceed the Adjusted Cap.

B. LEDA Obligations. Provided all conditions set forth in Section 1 of this First Amendment and set forth in this Section 5.3 have been satisfied, LEDA will reimburse the Redeveloper for the actual out-of-pocket expenses incurred in constructing the Public Improvements, as reflected in the Redeveloper Certification(s) in monthly installments (each a "Reimbursement"), based on the percentage of completion of the Public Improvements in accordance with and subject to the terms of this Agreement. A Request for Reimbursement shall not include any amounts above the Contingency unless the procedures set forth in Section 1.E above have been followed. LEDA shall not be required to make any Reimbursement unless the following conditions are satisfied:

1. City Delivery of Funds and Submittal Review. The City shall have delivered to LEDA funds equal to the Assistance in Development Financing, in accordance with Section 5.3.A. above. The City shall have received and verified the required terms of the Easements, the Construction Contract, the Payment and Performance Bonds, the Maintenance Bond, and evidence of all policies of insurance required under the Agreement and this First Amendment.

2. LEDA Receipt of Funds and Submittal Review. LEDA shall have received funds equal to the Assistance in Development Financing, in accordance with Section 5.3.A. above. LEDA shall have received and verified the required terms of the Construction Contract, the Payment and Performance Bonds, the Maintenance Bond, evidence of all policies of insurance required under the Agreement and this First Amendment, and each Request for Reimbursement.

3. Request for Reimbursement. Not later than the last day of the calendar month, LEDA shall have received from the Redeveloper a Request for Reimbursement in the form of Schedule 2 attached hereto, specifying the amount of the Reimbursement requested, together with: (i) a completed and fully itemized Application for Payment in the form AIA Document G702 and G703 reflecting the total amount requested for payment by the General Contractor for the period immediately preceding the requested payment, after the withholding of Retainage, executed by the General Contractor and verified by the Redeveloper's architect or engineer of record; (ii) invoices from contractors and suppliers for the work completed; (iii) lien waivers from all contractors, subcontractors, and suppliers for all work done or materials furnished through and including that which was paid for the period the immediately preceding the requested payment; (iv) a detailed schedule of values showing the percentage of completion of each component of the Public Improvements; and (v) evidence of Redeveloper's payment to the General Contractor in the amount reflected in the Application for Payment. LEDA will notify the Redeveloper if a Request for Reimbursement is incomplete. A Request for Reimbursement shall not include costs above the initial Redeveloper Certification unless such costs have been identified, with supporting documentation, in a Supplemental Redeveloper Certification submitted to LEDA thirty (30) days prior to the request, in accordance with Section 1.E. above.

4. Construction Report. LEDA shall have received a report signed by the City's inspector that describes the work completed since the last such report and certifying that all construction completed to date is in accordance with the approved Plans, applicable standards, ordinances, and code requirements. The City will use reasonable diligence to provide this report within ten business days after the Request for Reimbursement is submitted.

5. Current Payment. LEDA shall have received such evidence as it may require, consistent with commercially reasonable standards, that all invoices for labor and material provided in connection with the Public Improvements have been paid.

6. No Event of Default. No Event of Default by Redeveloper under this Agreement shall exist or result from the payment of each Reimbursement and no event shall have occurred, or occur with the payment of each Reimbursement, that with the giving of notice or passage of time, or both, would constitute an Event of Default by Redeveloper under this Agreement.

7. Representations and Warranties. The representations and warranties of Redeveloper in the Agreement shall be true and accurate as of the date of each Reimbursement.

C. Reimbursements:

1. The City and LEDA shall have the right to conduct inspections of the Public Improvements at any time during construction and prior to the disbursement of any Reimbursement. No Reimbursement shall be made until the City and LEDA

have verified that the work is completed pursuant to the approved Plans and in accordance with the City's Standards and LEDA has approved the Request for Reimbursement. The City and LEDA will use reasonable diligence to conduct such inspections within five business days after the Request for Reimbursement is submitted.

2. All Reimbursements will be made based upon the percentage of completion of the Public Improvements, as set forth in the Application for Payment attached to the Request for Reimbursement. No Reimbursement, other than the final Reimbursement, shall include payment of Engineering Costs (defined below), Project Management Fees (defined below), and any Retainage. If for any reason a Request for Reimbursement does not reflect the withholding of Retainage, the amount of the Reimbursement will be reduced accordingly.
3. Provided all conditions described herein have been satisfactorily met, LEDA will issue payment for a Reimbursement to the Redeveloper no later than fifteen (15) days from LEDA's receipt and approval of the Request for Reimbursement.
4. Upon substantial completion of the Public Improvements, the City and LEDA shall conduct a final inspection. The Public Improvements must thereafter be formally dedicated to and accepted by City Council before the final Reimbursement is made. The final Request for Reimbursement shall include final lien waivers, as-built construction plans in compliance with City standards and stamped by a licensed engineer, the Maintenance Bond, and an itemization of all amounts due, and may include Retainage, the Redeveloper's out-of-pocket engineering costs paid by the Redeveloper in connection with the design of the Plans for the Public Improvements ("Engineering Costs"), the Redeveloper's out-of-pocket project management fees paid by the Redeveloper for the cost of overseeing construction of the Public Improvements ("Project Management Fees"), and any other out-of-pocket expenses paid by the Redeveloper in connection with the Public Improvements reflected in an approved Redeveloper Certification. Provided all other conditions hereunder have been satisfied, the final Reimbursement shall be made within thirty (30) days following the City Council's acceptance of the completed Public Improvements.
5. Under no circumstances will the aggregate amount of the Reimbursements exceed the Adjusted Cap without the prior approval of the City Council.

D. LEDA's Right to Withhold Payments: LEDA shall have the right, in its sole discretion, to withhold any disbursement if: (a) any of the conditions set forth in Sections 5.3.B have not been fully satisfied; (b) there are disputes, claims, or liens filed against the Public Improvements, the Property, or the Redeveloper; (c) there are defects or deficiencies identified in the Public Improvements that have not been corrected to the satisfaction of the City and LEDA; (d) Redeveloper fails to provide sufficient documentation or certification required by LEDA to support any Request for Reimbursement; (e) any Change Order to the Construction Contract that would result in a non-compliance with the approved Plans

or City Standards, or that would increase the cost of the Public Improvements beyond the Adjusted Cap; (f) any Reimbursement would exceed the Adjusted Cap; or (g) the Redeveloper is in default under any provision of the Agreement or this First Amendment.

3. **Default.**

3.1 **Default by LEDA:** In the event that LEDA fails to make a Reimbursement pursuant to an approved Request for Reimbursement when due and payable hereunder, except where LEDA is permitted to withhold payment pursuant to Section 5.3.D. above, LEDA shall be in default and the unpaid amount shall accrue interest at a rate of 5% per annum. However, LEDA shall not be liable for interest or penalties if the delay is due to Redeveloper's failure to comply with any provision of the Agreement or this First Amendment.

3.2 **Default by City:** In the event that the City fails to deliver to LEDA funds equal to the Assistance in Development Financing such that LEDA is unable to make a Reimbursement pursuant to a Request for Reimbursement when due and payable hereunder, except where LEDA is permitted to withhold payment pursuant to Section 5.3 of the Agreement, as amended hereby (excluding the condition that LEDA has received Assistance in Development Financing from the City), the City shall be in default and the unpaid amount shall accrue interest at a rate of 5% per annum. However, the City shall not be liable for interest or penalties if the delay is due to Redeveloper's failure to comply with any provision of the Agreement or this First Amendment.

3.3 **Default by Redeveloper:** In the event that Redeveloper fails to complete the Public Improvements in accordance with the terms of this Agreement, the Redeveloper expressly grants LEDC the right to assume the Construction Contract and the right to enter the Property to complete the Public Improvements using any available remedies, including the use of funds from any performance bond. LEDC expressly agrees to accept such assignment and perform the obligations thereunder in the event of a Redeveloper default hereunder. Additionally, LEDA agrees to reimburse LEDC for any actual out-of-pocket costs incurred in completing the Public Improvements on the same terms and conditions of this First Amendment, up the Adjusted Cap, less the Reimbursements previously paid to the Redeveloper. Furthermore, the Redeveloper shall reimburse LEDA and LEDC for any actual out-of-pocket expenses incurred due to a default by the Redeveloper.

4. **Binding Effect.** Except as expressly modified by this First Amendment, all terms and conditions of the Agreement shall remain in full force and effect.

5. **Counterparts.** This First Amendment may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This First Amendment to Redevelopment Agreement is hereby approved by the City as of the Effective Date.

CITY:

CITY OF LAWTON,
a municipal corporation

By: _____
Stanley Booker, Mayor

ATTEST:

Donalynn Blazek-Scherler, City Clerk

(SEAL)

APPROVED as to form and legality this ____ day of _____, 2025.

John Andrew, City Attorney

This First Amendment to Redevelopment Agreement is hereby approved by LEDA as of the Effective Date.

LEDA:

**LAWTON ECONOMIC DEVELOPMENT
AUTHORITY**, a public trust

By: _____
Fred L. Fitch, Chairman

ATTEST:

Secretary

This First Amendment to Redevelopment Agreement is hereby approved by LEDC as of the Effective Date.

LEDC:

**LAWTON-FORT SILL ECONOMIC
DEVELOPMENT CORPORATION,**
an Oklahoma 501(c)(6) not-for-profit corporation

By: _____
Brad Cooksey, President

This First Amendment to Redevelopment Agreement is hereby approved by the Redeveloper as of the Effective Date.

REDEVELOPER:

FISHER59 PROPERTIES, L.L.C.,
a Texas limited liability company

By: _____
Name: _____
Title: _____

SCHEDULE 1

MINIMUM INSURANCE REQUIREMENTS

1. Builder's Risk Insurance. The Contractor shall obtain and maintain an insurance policy with coverage for the full insurable value of the Public Improvements, including all materials, equipment, machinery, fixtures, and supplies to be used in or incidental to the construction thereof, whether on-site, in transit, or at temporary locations. The Builder's Risk Insurance policy shall meet the following requirements: The policy shall name the Redeveloper as the primary insured and the City of Lawton, a municipal corporation ("City"), the Lawton Economic Development Authority ("LEDA"), a public trust, and the Lawton-Fort Still Economic Development Corporation, an Oklahoma 501(c)(6) not-for-profit corporation ("LEDC") as additional insureds and loss payees. The policy shall provide "all-risk" coverage, including, but not limited to, coverage against fire, lightning, windstorm, hail, explosion, theft, vandalism, malicious mischief, collapse, water damage, and any other risks associated with the construction of the Public Improvements. The coverage shall be in an amount equal to 100% of the replacement cost value of the completed Public Improvements.

2. Worker's Compensation and Employer's Liability Insurance. The Contractor shall maintain Worker's Compensation Insurance as prescribed by the laws of the state of Oklahoma and Employer's Liability Insurance for all its, employees employed at the site of the project, and in case any work is subcontracted, the Contractor shall require the subcontractor similarly to provide Worker's Compensation and Employer's Liability Insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Contractor. In the event any class of employees engaged in work performed under the Contract or at the site of the project is not protected under such insurance heretofore mentioned, the Contractor shall provide and shall cause each subcontractor to provide adequate, Worker's Compensation and Employer's Liability insurance for the protection of the employees not otherwise protected.

3. Commercial General Liability Insurance. The Contractor shall provide and maintain commercial general liability insurance coverage not less than the greater of the following amounts: (1) \$1,000,000; or (2) the maximum cumulative liability of the City, all parties to the Agreement, and any public trust participating in the project under the Governmental Tort Claims Act (51 O.S. § 151 *et seq.*) and any amendment or addition thereto. The current required minimum commercial general liability coverage for each entity under the GTCA is \$175,000 per person for bodily injury or death, \$25,000 for property damage and \$1,000,000 for any number of claims arising out of a single accident or occurrence.

4. Automobile Liability Insurance. The Contractor shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles not less than the greater of the following amounts: (1) \$1,000,000; or (2) the maximum cumulative liability of the City, all parties to the Agreement, and any public trust participating in the project under the Governmental Tort Claims Act (51 O.S. § 151 *et seq.*) and any amendment or addition thereto.

The policies shall include a waiver of subrogation in favor of the City, LEDA, LEDC and their respective officers, agents, and employees. The policies shall contain a provision that it shall not

be canceled, terminated, or materially modified without at least thirty (30) days' prior written notice to the City, LEDA, and LEDC. Prior to the commencement of any construction activities, Redeveloper shall provide the City, LEDA, and LEDC with certificates of insurance and, upon request, a complete copy of the policies, including all endorsements, evidencing compliance with the requirements of the Agreement. The certificates of insurance shall be updated and provided to the City, LEDA, and LEDC as necessary to ensure continuous coverage throughout the construction period.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of the Agreement. All policies, unless specified otherwise, shall remain in full force and effect during the Agreement, during the construction of the Public Improvements, and for a period of two (2) years after the final, formal acceptance of the Public Improvements by the City.

The lapse of any of the insurance policy or coverage required hereunder is a breach of the Agreement. The City or LEDA may at their option suspend the Agreement until there is full compliance with these requirements or may cancel or terminate the Agreement and seek damages for the breach of the Agreement. The remedies in this paragraph shall not be deemed to waive or release any remedy available to the City, LEDA, or LEDC. The City, LEDA, and LEDC expressly reserve the right to pursue and enforce any other cause or remedy in equity or at law.

Nothing in this provision defines or limits the responsibilities and duties of the Contractor under any other provision of the Agreement, including but not limited to any indemnification provision. Nothing in this insurance provision shall define or limit the rights of the City or any party to the Agreement, including but not limited to any indemnification provision.

Schedule 2

FORM OF REQUEST FOR REIMBURSEMENT

(to be attached to the Application for Payment in the form of AIA G702/703)

TO: LAWTON ECONOMIC DEVELOPMENT AUTHORITY (“LEDA”)

The terms used in this Request for Reimbursement shall have the meanings ascribed to them in the Redevelopment Agreement by and among the City of Lawton, a municipal corporation (“City”), the Lawton Economic Development Authority (“LEDA”), a public trust having as its beneficiary the City of Lawton, the Lawton-Fort Sill Economic Development Corporation, an Oklahoma 501(c)(6) not-for-profit corporation (“LEDC”), and Fisher59 Properties, L.L.C., a Texas limited liability company, duly authorized to conduct business in the State of Oklahoma (“Redeveloper”), dated April 23, 2024, as thereafter amended by the First Amendment to Redevelopment Agreement dated _____, 2025 (collectively, the “Agreement”). LEDA is requested to make a Reimbursement in the amount set forth in this Request for the purposes set forth in the Agreement.

1. **REQUEST NO:** _____
2. LEDA is hereby requested to make a payment to the Redeveloper, reimbursing the Redeveloper, for a partial payment made to its general contractor for the costs incurred to date for the construction of the Public Improvements as indicated below (check or wire instructions).
3. **AMOUNT OF REIMBURSEMENT REQUESTED: \$** _____
4. In connection with this Request, Redeveloper hereby represents, warrants and certifies to LEDA that:
 - (a) the Redeveloper has paid the amount indicated in line 3 above, as evidenced by the attached documentation;
 - (b) the total amount of the Reimbursement set forth in line 3 above represents costs that were made or incurred and were necessary for the development and construction of the Public Improvements and were made or incurred in substantial accordance with the Construction Contract and the approved Plans;
 - (c) the amount paid or to be paid, as set forth in this Request, represents a part of the amount due and payable for actual construction costs of the Public Improvements and such payment was not paid in advance of the time, if any, fixed for payment and is being made in accordance with the terms of any contracts applicable to the Public Improvements and in accordance with usual and customary practice under existing conditions;
 - (d) no part of the amount set forth in line 3 above has been included within the costs referred to in any Request previously submitted to LEDA (which has been paid) under the provisions of the Agreement;

(e) the total amount of the Reimbursement requested in line 3 above is a proper charge against the Assistance in Development Financing and properly payable as a Reimbursement pursuant to the Agreement;

(f) the amount of Assistance in Development Financing remaining, after payment of the amount requested in this Request, will be sufficient to pay the entire costs of completing the Public Improvements in accordance with the Construction Contract, the approved Plans and permits therefor;

(g) the attached Application for Payment, as required by the Agreement is true and accurate;

(h) all bills are paid for which previous Requests were funded;

(i) all labor, services, and/or materials reflected in the attached invoices have been performed or furnished. Any materials not incorporated into the Public Improvements have been suitably stored and safeguarded and are insured.

(j) all construction to date has been performed in accordance with the approved Plans;

(k) there have been no changes in the approved Plans or the Construction Contract, except as previously approved by the City and LEDA in writing;

(l) there have been no changes in the time schedule within which the construction of the Public Improvements is to be complete;

(m) there is no extra work, labor or materials ordered or contracted for in excess of items and amounts reflected in the Construction Contract;

(n) all conditions to the disbursement of the Reimbursement as set forth in the Agreement have been fulfilled;

(o) no Event of Default has occurred and is continuing under the Agreement, and nothing has occurred to the knowledge of the Redeveloper that would prevent the performance of its obligations under the Agreement; and

(p) the representations and warranties of the Redeveloper set forth in the Agreement remain true and accurate.

Fisher59 Properties, L.L.C., a Texas limited liability company. hereby agrees to indemnify and hold harmless the Lawton Economic Development Authority, a public trust, for any and all damages which it may sustain on account of being compelled to pay or defend against the claim or lien of any laborer, materialman, contractor or subcontractor, which may hereafter be filed against the Property or Improvements for labor or materials furnished in connection with the Public Improvements, including attorney's fees and court costs expended in the defense of any such claim.

Executed this _____ day of _____, 202__.

FISHER59 PROPERTIES, L.L.C.,
a Texas limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

Before me, a Notary Public in and for said State, on this _____ day of _____, 202__, personally appeared _____, to me known to be the identical person who subscribed the name of **FISHER59 PROPERTIES, L.L.C.**, to the foregoing instrument as its _____, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

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

Notary Public

My Commission number: _____
My Commission expires: _____

(SEAL)

THIS SECTION FOR APPROVAL BY LEDA

Request for Reimbursement No. ____ approved this _____ day of _____, 202__

LAWTON ECONOMIC DEVELOPMENT
AUTHORITY, a public trust

By: _____
Executive Director