

## CITY COUNCIL SPECIAL SESSION MINUTES

January 23, 2018

The City Council of the City of Norman, Cleveland County, State of Oklahoma, met in Special Session at 5:10 p.m. in the Municipal Building Conference Room on the 23rd day of January, 2018, and notice and agenda of the meeting were posted in the Municipal Building at 201 West Gray and the Norman Public Library at 225 North Webster 24 hours prior to the beginning of the meeting.

PRESENT: Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller

ABSENT: Councilmember Bierman

Item 1, being:

DISCUSSION REGARDING CHANGE ORDER NO. ONE TO CONTRACT K-1617-127 WITH RDNJ, L.L.C., D/B/A A-TECH PAVING INCREASING THE CONTRACT AMOUNT BY \$299,402.78 FOR A REVISED CONTRACT AMOUNT OF \$750,647.78 AND ADDING 100 CALENDAR DAYS TO THE CONTRACT FOR THE IMHOFF CREEK CHANNEL IMPROVEMENTS PROJECT.

The City of Norman experienced a tornado as well as rainfall of over 23 inches causing multiple flash flooding events from May 5 to May 24, 2015, which damaged roadways, bridges, and drainage channels throughout Norman. Mr. Tim Miles, Capital Projects Engineer, said 66 damaged locations were identified with Imhoff Creek being one of the most seriously damaged drainage channels with a wash out of approximately 250 feet of articulated concrete block channel and concrete block drop structure. On November 24, 2015, Council approved Contract K-1516-71 with Freese and Nichols to provide engineering design services for the Imhoff Creek Channel Improvements Project.

On July 25, 2017, Council approved Contract K-1617-127 with RDNJ, L.L.C., d/b/a A-Tech Paving in the amount of \$451,245 for improvements to Imhoff Creek which included replacement of the damaged articulated concrete block channel segments with concrete channel lining; reconstruction of the existing damaged drop structure (a manmade waterfall type structure designed to convey water to a lower elevation in the channel while controlling the energy and velocity of the water); and removal of debris from the existing plunge pool.

Mr. Miles said in the spring of 2017, rainfall damaged an adjacent channel of Imhoff Creek and the new damaged areas are critical areas of the channel that without immediate attention will jeopardize portions of the current Imhoff Creek Channel Improvements Project as well as private property abutting the damaged creek area. He said Change Order No. One in the amount of \$299,402.78 will address the additional damages to the channel that occurred after the original project was underway. The change order will also add 100 calendar days to the project for the additional repairs. He said \$300,000 is available from the Federal Emergency Management Agency (FEMA) funds received for the 2015 damages so the Capital Fund will not be affected by this change order.

Councilmember Hickman said these repairs need to take place and asked if the top edge of the banks will be concreted and Mr. Miles said no, there are no anticipated problems, even with heavy rainfall, with the top of the banks so there is no need of concrete.

Councilmember Karjala said in lower Imhoff Creek, homeowners' backyards are literally falling into the creek and it is her understanding the reason this project is being done prior to lower Imhoff Creek is because FEMA could not give the City money for those repairs. She is upset to hear the City is going to spend \$300,000 on this project while the homeowners losing their backyards to the creek are being put off until a Stormwater Fee is created which may or may not happen. She said the area being discussed tonight is not as big a threat to people's property as the lower portion of Imhoff Creek located in her ward. Mr. Shawn O'Leary, Director of Public Works, said if the City does not repair this portion of the creek being discussed tonight, it is anticipated that more damage will occur to the portion currently being repaired so this is the time to repair the entire section and replace the block structures that were installed in the 1990's. Councilmember Karjala said the damage in her ward has been occurring for many years and although she understands the pragmatism of what Staff is recommending she is not sure how she can explain this to her constituents who have been asking for help long before the damages being repaired occurred. Councilmember Hickman said there are

Item 1, continued:

numerous locations in drainage channels throughout Norman that are flooding people's property that are not being taken care of at this time.

Mayor Miller said she understands Councilmember Karjala's frustration as she has a number of friends that live on property abutting Imhoff Creek whose backyards are falling into the creek; however, the City does have 130 million plus problems with stormwater right now and it would not make sense to put federally funded repairs in jeopardy. She said once a Stormwater Utility has been created that portion of the creek Councilmember Karjala is concerned about will be a priority.

Mayor Miller asked Staff if the City has attempted to obtain FEMA funds for other flood damaged locations and Mr. O'Leary said yes, there are nine projects from the 2015 flooding the City has tried to obtain FEMA funding for and the applications have been denied.

Councilmember Hickman said years ago, Imhoff Creek was just a small ditch with grass that property owners would mow, but because of upstream development over the years the stormwater is draining into the channel at a faster rate. Mr. O'Leary said that is correct and Imhoff Creek is the poster child as to why the City needs a Stormwater Utility because the damage is getting worse and the channel is getting more expensive to maintain.

Items submitted for the record

1. PowerPoint presentation entitled, "Agenda Item No. 16: Change Order No. One, Imhoff Creek Channel Improvements Project," dated January 23, 2018

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Item 2, being:

**DISCUSSION REGARDING A RESOLUTION APPROPRIATING FUNDS FOR FINAL PAYMENT TO THE OKLAHOMA DEPARTMENT OF TRANSPORTATION FOR VARIOUS AUDITED PROJECTS.**

Mr. Scott Sturtz, City Engineer, said the City favorably competes for Federal Highway Administration funding that generally covers 80% to 100% of construction costs. The funds are distributed through the Association of Central Oklahoma Governments and projects are administered by the Oklahoma Department of Transportation (ODOT). Prior to ODOT requesting bids on a project, the City enters into an agreement to place funds for the City's share of the project on deposit with ODOT with the amount being based on the Engineer's estimated total construction cost of the project. He said the actual project costs can differ from the Engineer's estimates and after each project is completed, ODOT conducts an audit and prepares a final invoice for any costs that have been exceeded and the audit process can take years to complete. He said sometimes the City receives a refund if costs are less than the Engineer's estimate.

On May 12, 2017, the City received an invoice from ODOT in the amount of \$605,246.31 that included costs for nineteen (19) completed projects in fifteen (15) locations that ranged from small traffic signal installation projects to the Robinson Street Underpass Project. The ODOT audit also included a refund for the Rock Creek Overpass Project in the amount of \$518,383.51; however, a deposit for that project was made from University North Park Tax Increment Financing District (UNPTIF) funds so the UNPTIF will need to be credited for that money, not the Capital Fund account.

Mr. Sturtz said Staff recommends payment to ODOT in the amount of \$605,246.31, which is 21.78% of total project costs of \$8,423,996.51.

Mayor Miller asked if it is unusual for ODOT to invoice several projects at one time and Mr. Sturtz said yes, ODOT usually invoices one to two projects. He said Staff was very diligent in ensuring the projects were complete and the costs correct.

Councilmember Castleberry asked if paying this invoice would jeopardize any future capital projects currently in the pipeline and Mr. Sturtz said Staff will make sure all future projects are funded appropriately; however, there may be some 2019 Capital Projects impacted. Councilmember Holman asked what major project could be impacted in 2019 and Mr. Shawn O'Leary, Director of Public Works, said if Council wanted to add sidewalks to a project that may not be feasible.

Item 2, continued:

Councilmember Holman said while he is grateful the City is able to obtain federal funds for projects, there are times when the quality and detail of the work is not up to standards and he does not like giving up control of the projects to ODOT. Mr. Sturtz said City Inspectors visit each project at least two to three times per day and the project engineer walks the project at least daily if not twice per day. He said he drove Lindsey Street every day and spent a lot of time conferring with the construction management firms to make sure everything was being done to the City's satisfaction. He said ODOT is pretty accepting of the fact that the City wants to be hands-on with the projects.

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Item 3, being:

CONSIDERATION OF ADJOURNING INTO AN EXECUTIVE SESSION AS AUTHORIZED BY OKLAHOMA STATUTES, TITLE 25 § 307(B)(4), TO A PENDING INVESTIGATION, CLAIM, OR ACTION REGARDING SETTLEMENT OF THE FOLLOWING LAWSUITS:

OKLAHOMA ASSOCIATION OF BROADCASTERS VS. CITY OF NORMAN, CASE 2014-1360 TB

ROBERT GREEN VS. CITY OF NORMAN, CASE CIV-17-510 D

Councilmember Wilson moved that the Special Session be adjourned out of and an Executive Session be convened into in order to discuss a pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB and Robert Green, Case CIV-17-510 D, which motion was duly seconded by Councilmember Clark; and the question being upon adjourning out of the Special Session and convening into an Executive Session in order to discuss A pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB and Robert Green, Case CIV-17-510 D, a vote was taken with the following result:

YEAS:	Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller
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NAYES:	None
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The Mayor declared the motion carried and the Special Session adjourned out of; and an Executive Session was convened into in order to discuss a pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB and Robert Green, Case CIV-17-510 D.

The City Council adjourned into Executive Session at 5:48 p.m. Mr. Steve Lewis, City Manager; Mr. Jeff Bryant, City Attorney; and Mr. Rick Knighton, Assistant City Attorney, were in attendance at the Executive Session.

Due to time constraints, Council was unable to finish discussing a pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB, and Robert Green, Case CIV-17-510 D. Thereupon, Councilmember Wilson moved that the City Council Special Session be recessed, which motion was duly seconded by Councilmember Clark; and the question being upon recessing the City Council Special Session, a vote was taken with the following result:

YEAS:	Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller
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NAYES:	None
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The Mayor declared the motion carried and the City Council Special Session was recessed.

The City Council recessed the City Council Special Session at 6:19 p.m. with plans to reconvene after the regular meeting.

Item 3, continued:

Thereupon, Councilmember Allison moved that the City Council Special Session be reconvened, which motion was duly seconded by Councilmember Wilson; and the question being upon reconvening the City Council Special Session, a vote was taken with the following result:

YEAS:	Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller
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NAYES:	None
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The Mayor City Council Special Session reconvened at 8:56 p.m.

Thereupon, Councilmember Allison moved that the City Council Special Session be adjourned out of and an Executive Session be convened into in order to discuss a pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB and Robert Green, Case CIV-17-510 D, which motion was duly seconded by Councilmember Hickman; and the question being upon adjourning out of the City Council Special Session and convening into an Executive Session, a vote was taken with the following result:

YEAS:	Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller
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NAYES:	None
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The Mayor declared the motion carried and the City Council Special Session adjourned out of and the Executive Session was convened into in order to discuss a pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB and Robert Green, Case CIV-17-510 D.

The City Council convened into Executive Session at 8:57 p.m. Mr. Steve Lewis, City Manager; Mr. Jeff Bryant, City Attorney; and Mr. Rick Knighton, Assistant City Attorney, were in attendance at the Executive Session.

Thereupon, Councilmember Hickman moved that the Executive Session be adjourned out of and the City Council Special Session be reconvened, which motion was duly seconded by Councilmember Karjala; and the question being upon adjourning out of the Executive Session in order to reconvene into the City Council Special Session, a vote was taken with the following result:

YEAS:	Councilmembers Allison, Castleberry, Clark, Hickman, Holman, Karjala, Wilson, Mayor Miller
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NAYES:	None
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The Mayor declared the motion carried and the Executive Session adjourned out of and the City Council Special Session was reconvened.

The Executive Session was adjourned out of at 9:48 p.m.

The Mayor said the possible pending investigation, claim, or action regarding the settlement of lawsuits – Oklahoma Broadcasters Association, Case 2014-1360 TB, and Robert Green, Case CIV-17-510 D, were discussed in Executive Session. No action was taken and no votes were cast.

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ADJOURNMENT

There being no further business, Councilmember Karjala moved that the meeting be adjourned, which motion was duly seconded by Councilmember Hickman; and the question being upon adjournment of the meeting, a vote was taken with the following result:

YEAS: Councilmembers Allison, Castleberry,  
Clark, Hickman, Holman, Karjala,  
Wilson, Mayor Miller

NAYES: None

The Mayor declared the motion carried and the meeting was adjourned at 9:49 p.m.

ATTEST:

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Deputy City Clerk

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Mayor