

OKLAHOMA WATER RESOURCES BOARD MEETING INFORMATION

The Oklahoma Water Resources Board meets monthly in accordance with the date, time, and location shown on the final posted agenda. A draft Board meeting agenda and packet materials are scheduled to be prepared approximately 10 calendar days prior to the Board's meeting. A final agenda is scheduled to be posted at least 24 hours prior to the meeting. The standard sections of the agenda are numbered in a series; additional or special items will appear on the agenda subsequently. Standard sections include the following:

- 01000 = Call to Order
- 02000 = Financial Assistance Division
- 03000 = Summary Disposition Agenda
- 04000 = Items of Interest
- 05000 = Special Consideration Items

This meeting packet contains expanded information (summary documents, proposed orders, etc.) associated with individual agenda items. Each section of the packet contains a cover sheet noting the appropriate corresponding agenda item/number. (For example, to locate agenda item 2.D., concerning a grant or loan, review the packet for the section labeled, "2. Financial Assistance Division," which will begin on page 02000. Item D. is placed in alphabetical order in the section and is labeled accordingly.) The documents and information provided within the meeting packet are draft until approved by the Board. Please contact OWRB staff for the final, official documents as approved by the Board.

If you require assistance in locating an item or accompanying documents, please contact OWRB staff at (405) 530-8800.

1.B.

**October 21, 2025, Regular Meeting Draft Official Minutes
For consideration at the November 18, 2025 Board Meeting**

CALL TO ORDER

The Regular Meeting of the Oklahoma Water Resources Board was called to order by Chairman Tom Gorman, on October 21, 2025, at 9:30 a.m. at the Oklahoma Water Resources Board located at 3800 N. Classen Blvd. Oklahoma City, Oklahoma 73118. The meeting was conducted pursuant to the Oklahoma Open Meeting Law with due and proper notice provided pursuant to Sections 303 and 311 thereof. The agenda was posted on October 17, 2025, at 2:00 p.m., at the Oklahoma Water Resources Board's offices at 3800 N. Classen Boulevard, Oklahoma City, Oklahoma.

A. Roll Call. Chair Gorman welcomed everyone to the meeting and asked for the roll call of members.

Board Members Present

Ron Justice
Robert Stallings, Jr.
Suzanne Landess
Jarred Campbell
Bandy Silk
Darren Cook
Heather McCall
Bob Latham

Board Members Absent

None

Staff Members Present

Julie Cunningham, Executive Director
Sara Gibson, General Counsel
Tamara Lilly, Executive Administrator
Lori Johnson, Chief, Financial Assistance Division
Bill Cauthron, Chief, Water Quality Programs Division
Chris Neel, Chief, Planning and Management Division
Jay Foote, Chief, Administrative Services Division

Others Attending

Mary Stallings
Kristi Oneill
Michael Brooks
Martin Tucker
Cindy Arnold
Will Archer
Kaylee Davis-Maddy
Bryce Jones
Lars Osternold
Jon Wolff
Brenda Frickenschmidt
Mike Frickenschmidt
Phillip Hightower
Saiyed Nori
Chris Gander
Kim Coody
Amber Wooten
John Rehering
Ben Jenkins
Michelle Wynn

Randy McDaniel
Roy Lackey
Melissa Lackey
Martin Smith
Chris Wilff
Ron Peterson
Bodie Bachelor

B. Discussion, Amendments and Vote to Approve Official Minutes of September 16, 2025, Regular meeting.

Chairman Gorman inquired if all members reviewed the minutes of the September 16, 2025, meeting and if no questions, or changes, requested a motion to approve. No comments or amendments; Ms. Landess motioned to approve, and Mr. Silk seconded the motion. Chairman Gorman called for the vote.

AYE: Latham, Justice, Landess, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

C. Executive Director's Report:

Director Cunningham reported that drought is setting up again with 29% of the state including large areas of central Oklahoma. The outlook through January shows persistent developing drought in the central and southern parts of our state.

We have participated in several interim studies including one with Representative Newton focusing especially on groundwater. This study focuses on ways to protect and manage our water resources including metering and data improvement. We emphasized demand, metering, and conservation investments. We are also involved with an interim study involving data centers and looking at water impacts.

December 5th is the deadline of drafting bills and the end of this month all interim studies will conclude.

D. Financial Update

Mr. Jay Foote, Chief Administrative Services Division, presents the budget report for the period ending September 2025. Mr. Foote reports the agency has spent 15 % of its appropriated budget leaving 85 %; spent 14% of its revolving budget, leaving 86%; has spent 5% of its federal budget, leaving 95%. Overall, the total budget remaining is 88%.

2. FINANCIAL ASSISTANCE DIVISION

A. Consideration of and Possible Action on a Proposed Order Approving Clean Water Funding Application for the Tishomingo Municipal Authority, Johnston County, Oklahoma. Recommended for Approval.

This is a \$3,300,000.00 loan and will be secured with a lien on the revenues of the water and sewer systems and a 0.75 cent sales tax. The applicant's debt ration stands at 1.28 times.

Chair Gorman asked for a motion or further discussion. Mr. Latham moved to approve, and Mr. Justice seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- B. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for the Chandler Municipal Authority, Creek County, Oklahoma. Recommended for Approval.

This is a \$5,000,000.00 loan and will be secured with a lien on the revenues of the water, sewer and sanitation systems along with a 1 cent sales tax. The applicant's debt ration stands at 2.66 times.

Chair Gorman asked for a motion or further discussion. Mr. Stallings moved to approve, and Mr. Latham seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- C. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for the Broken Arrow Municipal Authority, Tulsa County, Oklahoma. Recommended for Approval.

This is a \$6,280,000.00 loan and will be secured with a lien on the revenues of the water, sewer and sanitation systems along with a 1 cent sales tax. The applicant's debt ratio stands at 2.35 times.

Chair Gorman asked for a motion or further discussion. Ms. Landess moved to approve, and Mr. Silk seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- D. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for the Enid Municipal Authority, Garfield County, Oklahoma. Recommended for Approval.

This is a \$10,745,00.00 loan to be secured with a lien on the revenues of the water, sewer and sanitation systems along with a 2 cent sales tax. The applicant's debt ratio stands at 2.69 times.

Chair Gorman asked for a motion or further discussion. Mr. Justice moved to approve, and Mr. Latham seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- E. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for the Mountain Park Master Conservancy District, Kiowa County, Oklahoma. Recommended for Approval.

This is a \$15,350,000.00 loan to be secured with a lien on the revenues of the water storage and transmission facilities of the applicant including municipal agreements with the cities of Altus, Fredrick, and Snyder which are more specifically secured by a lien on Altus' water, sewer, and electric systems. The applicant's debt ratio stands at 1.95 times.

Chair Gorman asked for a motion or further discussion. Mr. Stallings moved to approve, and Mr. Silk seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- F. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for The Durant Utilities Authority, Bryan County, Oklahoma. Recommended for Approval.

This is a \$16,450,000.00 loan to be secured with a lien on the revenues if the water, sewer and sanitation systems along with 3 cent sales tax. The applicant's debt ratio stands at 2.64 times.

Chair Gorman asked for a motion or further discussion. Mr. Latham moved to approve, and Mr. Silk seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- G. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for The Durant Utilities Authority, Bryan County, Oklahoma. Recommended for Approval.

This is a \$35,270,000.00 loan to be secured with a lien on the revenues of the applicant's water, sewer and sanitation systems along with a 3 cent sales tax. The applicant's debt ratio stands at 2.64 times.

Chair Gorman asked for a motion or further discussion. Mr. Latham moved to approve, and Mr. Justice seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman

NAY: None

ABSTAIN: None

ABSENT: None

- H. Consideration of and Possible Action on a Proposed Order Approving State Loan Program Revenue Bond Loan Funding Application for the Stillwater Utilities Authority, Payne County, Oklahoma. Recommended for Approval.

This is a \$112,905,000.00 loan to be secured with a lien on the revenues of the water, sewer, sanitation and electric systems. The applicant's debt ratio is 3.02 times.

Chair Gorman asked for a motion or further discussion. Mr. Justice moved to approve, and Mr. Campbell seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman
NAY: None
ABSTAIN: None
ABSENT: None

- I. Consideration of and Possible Action on a Proposed Change of Pledge Securing Clean Water Funding for Bixby Public Works Authority, Tulsa County. Recommended for Approval.

Chair Gorman asked for a motion or further discussion. Mr. Silk moved to approve, and Mr. Latham seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman
NAY: None
ABSTAIN: None
ABSENT: None

- J. Consideration of and Possible Action on a Proposed Change of Pledge Securing Clean Water Funding for Bixby Public Works Authority, Tulsa County. Recommended for Approval.

Chair Gorman asked for a motion or further discussion. Mr. Latham moved to approve, and Mr. Justice seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman
NAY: None
ABSTAIN: None
ABSENT: None

- K. Consideration of and Possible Action on a Proposed Change of Pledge Securing Drinking Water Funding for Bixby Public Works Authority, Tulsa County. Recommended for Approval.

Chair Gorman asked for a motion or further discussion. Ms. Landess moved to approve, and Mr. Silk seconded the motion. Chair Gorman called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings, Gorman
NAY: None
ABSTAIN: None
ABSENT: None

3. SUMMARY DISPOSITION AGENDA ITEMS

Any item listed under this Summary Disposition Agenda may, at the request of any member of the Board, the Board's staff, or any other person attending this meeting, be transferred to the Special Consideration Agenda. Under the Special Consideration Agenda, separate discussion and vote or other action may be taken on any items already listed under that agenda or items transferred to that agenda from this Summary Disposition Agenda.

- A. Requests to Transfer Items from Summary Disposition Agenda to the Special Consideration Agenda and Action on Whether to Transfer Such Items.
- B. Discussion, Questions, and Responses Pertaining to Any Items Remaining on Summary Disposition Agenda and Possible Action on Items Listed Below.

C. Consideration of and Possible Action on Financial Assistance Division Items:

1. Emergency Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
a.	FAP-25-0002-G	The Salina Public Works Authority	Mayes	\$ 37,286.00

2. Rural Economic Action Plan (REAP) Grant Applications:
None.

3. CWSRF Principal Forgiveness Loan Applications:
None.

4. DWSRF Principal Forgiveness Loan Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
a.	ORF-23-0058-DW	Drumright Utility Trust	Creek	\$ 438,130.52

5. Sewer Overflow and Stormwater Reuse Municipal Grants ("OSG")
None.

6. American Rescue Plan Act (ARPA) Grant Applications:

<u>Item No.</u>	<u>Application No.</u>	<u>Entity Name</u>	<u>County</u>	<u>Amount Recommended</u>
a.	ARP-25-0002-DTG	Tonkawa Tribe of Indians of Oklahoma	Kay	\$ 500,000.00
b.	ARP-23-0298-G	Seminole Municipal Authority	Seminole	\$ 650,264.59

D. Consideration of and Possible Action on the Contracts and Agreements:

- 1. Joint Funding Agreement between OWRB and US Geological Survey for Little Washita River Monitoring and Evaluation

2. A Joint Agreement with the Office of Management and Enterprise Services (OMES) to enhance the Oklahoma Dam Inventory application. The project will add functionality for creating, managing, and distributing official correspondence to dam owners, including reusable templates that auto-populate dam and owner data with options for custom inspection content.
3. Statement of work to digitize microfiche documents – Business Imaging Systems, Inc “BIS” is digitizing approximately 20,000 microfiche cards containing OWRB historical records, of which nearly 17,000 are water right records, to facilitate permanent preservation of the records.
4. Professional Engineering Services Agreement between Lynker Technologies and OWRB to make modifications and run modeling scenarios in support of the Washita Basin Study, using the Upper Washita River system model developed by OWRB within the CRAM modeling system.
5. A contract for engineering services with WSB, LLC. to support the OWRB Dam Safety Program. The scope includes technical training for OWRB staff on hydrologic and hydraulic analysis, updates to the Hydrologic and Hydraulic Guidelines for Dams in Oklahoma, and development of a comprehensive Dam Safety Training Manual. Additional tasks include organizing and reviewing documentation for all high hazard dams, identifying data gaps, prioritizing future studies, and conducting site visits and surveys as needed to verify dam conditions and update records.

E. Consideration of and Possible Action on Applications for Temporary Permits to Use Groundwater:

1. Jensen Farms, Inc., Canadian County, 2023-689
2. Jensen Farms, Inc., Canadian County, 2023-690
3. Landon Wayne and Jenna Sue Scales, Caddo County, 2024-660
4. Tonkawa Tribe of Oklahoma, Kay County, 2025-548
5. Gale C. Percy and Donna C. Percy, Trustees of the Percy Family Revocable Trust Agreement dated October 23, 2023, Caddo County, 2025-563
6. CF2 Cattle Company, LLC, Caddo County, 2025-566
7. Christina Marie Farris, Caddo County, 2025-567
8. Orlin R. Smith Revocable Trust, Washita County, 2025-580
9. Alvin W. Hawkins and Rita L. Hawkins, Washita County, 2025-582
10. Steven Ron Lowry and Beverly Lowry, Washita County, 2025-586
11. David and Marcy Bailey, Caddo County, 2025-587
12. Daryl Scales and Jeanine Scales, Washita County, 2025-595

F. Consideration of and Possible Action on Applications to Amend Temporary Permits to Use Groundwater:

1. Norman A.J. Jones, McIntosh County, 1997-560
2. Cucu Properties, LLC, LeFlore County, 2023-552

G. Consideration of and Possible Action on Applications for Regular Permits to Use Groundwater:

1. Jensen Farms, Inc., Canadian County, 2023-688
2. Steve and Courtney Gurley, Beckham County, 2024-523
3. Eckroat Family Trust Dated 6/8/16, Oklahoma County, 2024-631
4. Ryan Jerald Radcliff and Tatum Jo Radcliff, Beaver County, 2024-668
5. Weston Del Miller and Sammie Jean Flowers, Ellis County, 2025-516
6. Stanley, Stephanie, Tabron, and Tyler Holloway, Cimarron County, 2025-585
7. Stanley and Stephanie Holloway, Cimarron County, 2025-590
8. Larry and Lorri Moore, Roger Mills County, 2025-594
9. F & K Land, LLC, Texas County, 2025-604
10. FD Guymon Farms, LLC, Texas County, 2025-605

H. Consideration of and Possible Action on Applications to Amend Regular Permits to Use

Groundwater:

1. Pony Creek Farms, Inc., Texas County, 1982-586
2. Beckham County Rural Water District No. 1, Beckham County, 1986-596
3. Darrell and Linda Gunsaulis, Major County, 2002-505

I. Consideration of and Possible Action on Applications to Amend Prior Right to Use

Groundwater:

None

J. Consideration of and Possible Action on Applications to for Term/Seasonal Permits to Use Stream Water:

1. Kaw Nation, Kay County, 2024-005

K. Consideration of and Possible Action on Applications for Regular Permits to Use Stream Water:

1. Dennis Gilliland, Pawnee County, 2023-003
2. Axia Energy III, LLC, Major County, 2023-015
3. Anderson Xiong, Pittsburg County, 2023-020
4. Pushmataha County Rural Water District No. 3, Pushmataha County, 2025-010

L. Consideration of and Possible Action on Applications to Amend Regular Permits to Use Stream Water:

1. John C. Noah, Latimer County, 1989-070

M. Consideration of and Possible Action on Well Driller and Pump Installer Licensing:

1. New Licenses, Accompanying Operator Certificates and Activities:
 - a. Licensee: Citation Drilling and Boring
 1. Operator: James CrowleyActivities: Groundwater well drilling
 - b. Licensee: Territory Drilling and Water Well Services
 2. Operator: Andrew JonesActivities: Groundwater wells and pump installation
 - c. Licensee: Drill Pro Water Well
 3. Operator: Jeffery LuskActivities: Groundwater wells and pump installation
2. New Operators, Licensee Name Change, and/or Activities for Existing Licenses:
 - a. Licensee: Ace Water Well Services
 1. Operator: Rodney JonesActivities: Pump Installation

N. Consideration of and Possible Action on Dam and Reservoir Construction:

1. Weleetka Dam, Okfuskee County, OK10076
2. Hefner Lake Dam, Oklahoma County, OK02535

O. Consideration of and Possible Action on Permit Applications for Proposed Development on State Owned or Operated Property within Floodplain Areas:

1. OTA, Oklahoma County, FP-2025-06
2. OTA, Oklahoma County, FP-2025-07
3. OTA, Oklahoma County, FP-2025-08

P. Consideration of and Possible Action on Applications for Accreditation of Floodplain Administrators:

1. Wanda Hensley, Choctaw County, #FPA-722
2. Jessica Yeager, City of Choctaw, #FPA-25
3. Danny Giager, City of Fairview, #FPA-28

Q. Consideration of and Possible Action on Cancellation of Groundwater Permits:

1. Carl H Nightengale, Major County, 1965-264

2. John R Nichols, Major County, 1965-336
3. Linda Kay Banks, Roger Mills County, 1966-599
4. Hazel M Braziel, Major County, 1939-089C
5. Jeneva Helterbrake, Major County, 1939-089B
6. Tracy D and Jennifer P Sullivan, Pottawatomie, 1978-548A
7. Mr Virgil Louthan, Major County, 1953-147A
8. Carlene K & Allen L Moose, Major County, 1955-397A
9. George Lenz Jr, Harper County, 1941-012A
10. Natalee June Smith, Harper County, 2006-566
11. Melvin K Elwood, Woodward County, 1954-689
12. Jerry Lee Merritt, Harper County, 1974-314
13. Melvin D Griffith, Woodward County, 1976-789
14. Cecil D Condreay, Major County, 1979-690
15. Donald Elwell, Major County, 1980-605
16. Natalee June Smith, Harper County, 2006-564
17. Paul Huffman, Woodward County, 1972-447B
18. CTL Corporation, Harper County, 1973-133A
19. Joyce Martin, Woodward County, 1991-598
20. Gary L and Sandra K Carpenter, Woodward County, 1990-527
21. W T Boston, Major County, 1953-335
22. Bonnie Cox, Woodward County, 1979-671
23. Ira C White, Dewey County, 1971-202
24. Cecil D Condreay, Major County, 1966-168A

R. Consideration of and Possible Action on Cancellation of Stream Water Permits:

1. None

S. Consideration of and Possible Action on Stream Water Permit Excused Nonuse:
None

T. Consideration of and Possible Action on an Informal Disposition Order:

1. Jack and Sharon Damron, Beckham County, 2011-555
2. Xue Fei Lin, Lincoln County, 2024-564

Chairman Gorman asked for a motion or further discussion. Mr. Campbell moved to approve, and Mr. Latham seconded the motion. Chair Latham called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

04000 4. 04000 4. QUESTIONS AND DISCUSSION ABOUT AGENCY MATTERS AND OTHER ITEMS OF INTEREST.

A. Presentation on the Oklahoma Comprehensive Water Plan

John Rehring

Presentation available upon request

A. Consideration of and Possible Action on Application for a Limited Quantity Regular Groundwater Right No. 2025-508, Roy Lackey and Melissa Loyd, Pottawatomie County, Oklahoma:

1. Summary – **Mr. Chris Neel**
2. Discussion and presentation by parties
3. Possible Executive Session

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act”.

- (a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.
- (b) Designation of person to keep written minutes of Executive Session, if authorized.
- (c) Executive Session, if authorized.
4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.
5. Vote on whether to approve the Proposed Order as presented or as may be amended, or vote on any other action or decision relating to the Proposed Order.

Roy Lackey and Melissa Loyd of 117 Red Tail Lane, McCloud, OK 74851 has filed an application, #2025-508, with the Oklahoma Water Resources Board (Board) for a permit to use 1 acre-feet of groundwater per year. The groundwater is proposed to be used for agriculture (medical marijuana indoor growth) and irrigation (medical marijuana outdoor growth) purposes and to be withdrawn from 2.5 acres located in the NE NE SW of Section 4, T9N, R2EIM, Pottawatomie County. The groundwater will be used in Pottawatomie County as more specifically described in the application plat. The applicant intends to withdraw the groundwater from one (1) well located in the NE NE SW of Section 4, T9N, R2EIM, Pottawatomie County. The applicant gave proper Public Notice, the application was protested, and an administrative hearing was held on September 18, 2025. The Board concludes that the well exception request should be granted. The hearing examiner recommends approval of the application.

Applicants were present; No protestants were present

Chairman Gorman asked for a motion or further discussion. Mr. Stallings moved to approve, and Mr. Latham seconded the motion. Chair Latham called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

B. Consideration of and Possible Action on Application for a Temporary Groundwater Right No. 2024-651, Superior Sod Farm, LLC, Bryan County, Oklahoma:

1. Summary – **Mr. Chris Neel**
2. Discussion and presentation by parties
3. Possible Executive Session

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a

final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act”.

- (a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.
 - (b) Designation of person to keep written minutes of Executive Session, if authorized.
 - (c) Executive Session, if authorized.
4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.
 5. Vote on whether to approve the Proposed Order as presented or as may be amended, or vote on any other action or decision relating to the Proposed Order.

Superior Sod Farm, LLC c/o Colby Pennell of PO Box 291, Tom Bean, TX 75489 has filed an application, #2024-651, with the Oklahoma Water Resources Board (Board) for a permit to use 204 acre-feet of groundwater per year. The groundwater is proposed to be used for irrigation (sod) and taken from 102 acres located as follows: in the NW of Section 15, T9S, R9EIM, Bryan County. The water is to be withdrawn from four (4) wells located as follows: one (1) well each in the NE NE NW, NE SE NW, and two (2) wells in the SE NE NW of Section 15, T9S, R9EIM, Bryan County. The applicant gave proper Public Notice. The application was protested and an administrative hearing was held on September 17, 2025. The hearing examiner recommends approval of the application.

Applicant’s attorney, Kaylee Davis-Maddy was present; no protestants were present

Chairman Gorman asked for a motion or further discussion. Mr. Silk moved to approve, and Mr. Justice seconded the motion. Chair Latham called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

C. Consideration of and Possible Action on Application for a Temporary Groundwater Right No. 2024-646, Mike Frickenschmidt and Timothy Frickenschmidt, Garfield County, Oklahoma:

1. Summary – **Mr. Chris Neel**
2. Discussion and presentation by parties
3. Possible Executive Session

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act”.

- (a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.
 - (b) Designation of person to keep written minutes of Executive Session, if authorized.
 - (c) Executive Session, if authorized.
4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.

5. Vote on whether to approve the Proposed Order as presented or as may be amended,
or vote on any other action or decision relating to the Proposed Order.

Notice is given by Mike Frickenschmidt and Timothy Frickenschmidt of PO Box 65, Waukomis, OK 73773 has filed an application, #2024-646, with the Oklahoma Water Resources Board (Board) for a permit to use 320 acre-feet of groundwater per year. The groundwater is proposed to be used for irrigation (wheat, corn, and soybeans) and oil and gas (selling water and dust suppression) and taken from 160 acres located as follows: in the NE of Section 23, T21N, R6WIM, Garfield County. The water is to be withdrawn from one (1) well located as follows: in the NW NW NE of Section 23, T21N, R6WIM, Garfield County. The applicant gave proper Public Notice. The application was protested and an administrative hearing was held on July 29, 2025. The hearing examiner recommends approval of the application.

Applicants were present; no protestants were present

Chairman Gorman asked for a motion or further discussion. Mr. Stallings moved to approve, and Mr. Latham seconded the motion. Chair Latham called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings
NAY: None
ABSTAIN: None
ABSENT: Gorman

D. Consideration of and Possible Action on Amendment to Stream Water Permit No. 2013-049, Michael J. and Brenda Sue Frickenschmidt, Garfield County, Oklahoma:

1. Summary – **Mr. Chris Neel**
2. Discussion and presentation by parties
3. Possible Executive Session

As authorized by the Oklahoma Open Meeting Act in Section 307(B)(8) of Title 25 of the Oklahoma Statutes, an executive session may be held for the purpose of “[e]ngaging in deliberations or rendering a final or intermediate decision in an individual proceeding pursuant to Article II of the Administrative Procedures Act”.

- (a) Vote on whether to hold Executive Session. Before it can be held, the Executive Session must be authorized by a majority vote of a quorum of members present and such vote must be recorded.
- (b) Designation of person to keep written minutes of Executive Session, if authorized.
- (c) Executive Session, if authorized.
4. Return to open meeting and possible vote or action on any matter discussed in the Executive Session, if authorized.
5. Vote on whether to approve the Proposed Order as presented or as may be amended,
or vote on any other action or decision relating to the Proposed Order.

Notice is given by Michael J. and Brenda Sue Frickenschmidt of PO Box 65, Waukomis, OK 73773 has filed a petition to amend Regular Stream water Permit #2013-049, with the Oklahoma Water Resources Board (Board). The Application asks to add the use of commercial sale for industrial (dust suppression) for 12 acre feet per year, along with reducing the existing use of irrigation by 12 acre feet per year down to 281.3 acres-feet per year. All

other aspects of the water right will remain the same. The permit authorizes the withdrawal of up to 293.3 acre-feet per year not to exceed 1,500 gallons per minute from one diversion point on Skeleton Creek located in the SE SW SW of Section 36, T22N, R6WIM, Garfield County. The applicant gave proper Public Notice. The application was protested and an administrative hearing was held on August 13, 2025. The hearing examiner recommends approval of the amended permit.

Applicants were present; no protestants were present

Chairman Gorman asked for a motion or further discussion. Mr. Stallings moved to approve, and Mr. Silk seconded the motion. Chair Latham called for the vote.

AYE: Latham, Justice, Stallings, Cook, Campbell, McCall, Silk, Stallings

NAY: None

ABSTAIN: None

ABSENT: Gorman

06000 6. NEW BUSINESS

Chair Tom Gorman

Under the Open Meeting Act, this agenda item is authorized only for matters not known about or which could not have been reasonably foreseen prior to the time of posting the agenda or any revised agenda.

07000 7. ADJOURNMENT

Chair Tom Gorman

The next regular meeting of the Oklahoma Water Resources Board will be held on Tuesday, November 18, 2025, at 9:30 am. In the offices of the OWRB, 3800 N. Classen Boulevard, Oklahoma City, OK 73118.

OKLAHOMA WATER RESOURCES BOARD

Thomas Gorman, Chairman

Heather McCall

Bandy Silk

Darren Cook

Ron Justice

Bob. Latham

Robert L. Stallings, Jr.

Jarred Campbell

ATTEST:

Suzanne Landess, Secretary (SEAL)

1. D. FINANCIAL UPDATE

1. D.1. Monthly Budget Report



OCTOBER 2025 FOR FY2026
FY 2026 Expenses by Fund and Category

	Fund	General Revenue			Budgeted	Expended	Balance	Percentage Remaining	Spend
By Fund	19511	1	FY 25 Carryover		0	0	0	#DIV/0!	
	19303	1	FY 26 Appropriation		9,096,075	1,944,060	7,152,015	79%	
			Total General Revenue		9,096,075	1,944,060	7,152,015	79%	21%
			Revolving Funds						
	21000	2	Drillers Indemnity Fund		50,000	0	50,000	100%	
	21500	3	OWRB Revolving Fund		2,707,028	715,061	1,991,967	74%	
	23500	4	Phase II A-S Hydro St Rev Fund		293,192	40	293,152	100%	
	24000	5	Revolving Fund		877,906	372,848	505,058	58%	
	24500	6	Drillers Regulation Fund		0	0	0		
	25000	7	Water Infrastructure Dev. Fund (OCWP)		3,598,038	427,727	3,170,311	88%	
	42000	8	USGS Cooperative Agreement		293,400	0	293,400	100%	
	44400	9	DW Loan Administration Fund		1,223,740	160,070	1,063,670	87%	
	44500	10	CW Loan Administration Fund		2,282,227	418,044	1,864,183	82%	
			Total Revolving Funds		11,325,531	2,093,788	9,231,743	82%	18%
			Federal Funds						
	40000	11	Federal Fund - General		1,042,899	177,737	865,162	83%	17%
	40700	12	Federal Fund - Engineering and Planning		7,327,914	253,917	7,073,997	97%	3%
	49700	13	Federal Fund - *ARPA		1,842,066	191,632	1,650,434	19%	81%
			Total Federal Funds		10,212,879	623,287	9,589,592	94%	6%
			Total Funding		30,634,485	4,661,135	25,973,350	85%	15%
By Category					Budgeted	Expended	Balance	Percentage Remaining	
	510000	14	Salary Expense		8,600,378	2,481,236	6,119,142	71%	29%
	512000	15	Insurance		1,496,417	366,250	1,130,167	76%	24%
	513000	16	FICA and Retirement		2,098,417	579,144	1,519,273	72%	28%
	515000	17	Professional Services		10,098,448	666,624	9,431,824	93%	7%
	519000	18	Flexible Benefits		16,000	4,259	11,741	73%	27%
			Total Personal Services		22,309,660	4,097,514	18,212,146	82%	18%
	520000	19	Travel Expense		651,979	94,694	557,285	85%	15%
	530000	20	Administrative Expense		1,442,724	474,320	968,404	67%	33%
	540000	21	Furniture and Equipment Expense		553,406	18,230	535,176	97%	3%
	550000	22	Intra Inter Agency Payments		5,676,716	0	5,676,716	100%	0%
			Total Operating Expenses		8,324,825	587,244	7,737,581	93%	7%
			Total Expenditures		30,634,485	4,684,758	25,949,727	85%	15%

2. FINANCIAL ASSISTANCE DIVISION

November 18, 2025

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Walters Public Works Authority, Cotton County

Loan Application No.: FAP-26-0017-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$1,240,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than twenty (20) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, sanitation, and electric systems, a 3 cent sales tax and may include a mortgage on the applicant's water, sewer, and electric systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) install automated meter reading units for water and electric, install the associated automated metering infrastructure, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$1,188,246.85
Total	<u><u>\$1,188,246.85</u></u>

Uses of Funds (Est.)

Project	\$1,120,273.84
Bond Counsel	30,000.00
Financial Advisor	30,000.00
OWRB Costs of Issuance	4,723.01
Local Counsel	2,500.00
Trustee Bank	750.00
Total	<u><u>\$1,188,246.85</u></u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0017-L IN THE NAME OF)
THE WALTERS PUBLIC WORKS AUTHORITY)
COTTON COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, The Walters Public Works Authority (the "Applicant") has made its Application for Funding No. FAP-26-0017-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0017-L in the name of The Walters Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) install automated meter reading units for water and electric, install the associated automated metering infrastructure, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$1,240,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than twenty (20) years.

**ORDER APPROVING LOAN APPLICATION
THE WALTERS PUBLIC WORKS AUTHORITY
FAP-26-0017-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, sanitation, and electric systems, a 3 cent sales tax and may include a mortgage on the Applicant's water, sewer, and electric systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE WALTERS PUBLIC WORKS AUTHORITY
FAP-26-0017-L**

Reviewed By:

A handwritten signature in black ink, appearing to read "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Rural Water District No. 6, Garfield County, Oklahoma

Loan Application No.: FAP-26-0012-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$2,015,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water system and may include a mortgage on the applicant's water system and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) replace waterlines and a booster pump station, install two master meters, a backup generator, a SCADA system, and new waterlines, make improvements to the existing water wells, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$1,924,526.85
Total	<u><u>\$1,924,526.85</u></u>

Uses of Funds (Est.)

Project	\$1,702,166.77
Debt Service Reserve	123,760.00
Bond Counsel	45,000.00
Financial Advisor	45,000.00
OWRB Costs of Issuance	7,850.08
Trustee Bank	750.00
Total	<u><u>\$1,924,526.85</u></u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0012-L IN THE NAME OF)
RURAL WATER DISTRICT NO. 6,)
GARFIELD COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, Rural Water District No. 6, Garfield County, Oklahoma (the "Applicant") has made its Application for Funding No. FAP-26-0012-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0012-L in the name of Rural Water District No. 6, Garfield County, Oklahoma be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) replace waterlines and a booster pump station, install two master meters, a backup generator, a SCADA system, and new waterlines, make improvements to the existing water wells, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$2,015,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

**ORDER APPROVING LOAN APPLICATION
RURAL WATER DISTRICT NO. 6, GARFIELD COUNTY, OKLAHOMA
FAP-26-0012-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water system and may include a mortgage on the Applicant's water system and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
RURAL WATER DISTRICT NO. 6, GARFIELD COUNTY, OKLAHOMA
FAP-26-0012-L**

Reviewed By:

A handwritten signature in cursive script that reads "Lori Johnson".

Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Collinsville Municipal Authority, Tulsa County

Loan Application No.: FAP-26-0014-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$2,270,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and electric systems, a 1.75 cents sales tax and may include a mortgage on the applicant's water, sewer, and electric systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) construct a lift station, force main, and water line extension, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$2,179,486.20
Total	<u><u>\$2,179,486.20</u></u>

Uses of Funds (Est.)

Project	\$2,097,350.94
Bond Counsel	32,500.00
Financial Advisor	32,500.00
OWRB Costs of Issuance	8,885.26
Local Counsel	7,500.00
Trustee Bank	750.00
Total	<u><u>\$2,179,486.20</u></u>

**ORDER APPROVING LOAN APPLICATION
THE COLLINSVILLE MUNICIPAL AUTHORITY
FAP-26-0014-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and electric systems, a 1.75 cents sales tax and may include a mortgage on the Applicant's water, sewer, and electric systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE COLLINSVILLE MUNICIPAL AUTHORITY
FAP-26-0014-L**

Reviewed By:

A handwritten signature in cursive script, appearing to read "Lori Johnson".

Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Rural Water District No. 6, Mayes County, Oklahoma

Loan Application No.: FAP-26-0010-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$2,760,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water system and may include a mortgage on the applicant's water system and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) expand the water treatment plant capacity from 1.5 MGD to 2.0 MGD, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$2,644,730.95
Local Funds	550,000.00

Total	<u>\$3,194,730.95</u>
--------------	------------------------------

Uses of Funds (Est.)

Project	\$2,903,574.72
Debt Service Reserve	189,580.00
Bond Counsel	45,000.00
Financial Advisor	45,000.00
OWRB Costs of Issuance	10,826.23
Trustee Bank	750.00

Total	<u>\$3,194,730.95</u>
--------------	------------------------------

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0010-L IN THE NAME OF)
RURAL WATER DISTRICT NO. 6)
MAYES COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, Rural Water District No. 6, Mayes County, Oklahoma (the "Applicant") has made its Application for Funding No. FAP-26-0010-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0010-L in the name of Rural Water District No. 6, Mayes County, Oklahoma be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) expand the water treatment plant capacity from 1.5 MGD to 2.0 MGD, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$2,760,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

**ORDER APPROVING LOAN APPLICATION
RURAL WATER DISTRICT NO. 6, MAYES COUNTY, OKLAHOMA
FAP-26-0010-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water system and may include a mortgage on the Applicant's water system and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
RURAL WATER DISTRICT NO. 6, MAYES COUNTY, OKLAHOMA
FAP-26-0010-L**

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Spiro Municipal Improvement Authority, LeFlore County

Loan Application No.: FAP-26-0011-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$3,125,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, sanitation, and electric systems, a 1 cent sales tax and may include a mortgage on the applicant's water, sewer, and electric systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) rehabilitate manholes, clean the mainline, repair and replace sewer lines and all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$2,994,239.10
Total	<u><u>\$2,994,239.10</u></u>

Uses of Funds (Est.)

Project	\$2,841,282.64
Bond Counsel	70,000.00
Financial Advisor	50,000.00
Local Counsel	20,000.00
OWRB Costs of Issuance	12,206.46
Trustee Bank	750.00
Total	<u><u>\$2,994,239.10</u></u>

IN THE MATTER OF LOAN APPLICATION
NO. FAP-26-0011-L IN THE NAME OF
THE SPIRO MUNICIPAL IMPROVEMENT AUTHORITY
LEFLORE COUNTY, OKLAHOMA

2018

**ORDER APPROVING LOAN APPLICATION
THE SPIRO MUNICIPAL IMPROVEMENT AUTHORITY
FAP-26-0011-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, sanitation, and electric systems, a 1 cent sales tax and may include a mortgage on the Applicant's water, sewer, and electric systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE SPIRO MUNICIPAL IMPROVEMENT AUTHORITY
FAP-26-0011-L**

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Perry Municipal Authority, Noble County

Loan Application No.: FAP-26-0016-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$4,110,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water system, a 2.25 cents sales tax and may include a mortgage on the applicant's water system and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) install a sludge box, a water main termination connection, and make improvements to the water treatment plant, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$3,946,010.05
Total	<u>3,946,010.05</u>

Uses of Funds (Est.)

Project	\$3,801,419.56
Bond Counsel	51,825.13
Financial Advisor	51,825.13
Local Counsel	24,662.56
OWRB Costs of Issuance	15,527.67
Trustee Bank	750.00
Total	<u>\$3,946,010.05</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0016-L IN THE NAME OF)
PERRY MUNICIPAL AUTHORITY)
NOBLE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, Perry Municipal Authority (the "Applicant") has made its Application for Funding No. FAP-26-0016-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0016-L in the name of Perry Municipal Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) install a sludge box, a water main termination connection, and make improvements to the water treatment plant, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$4,110,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

**ORDER APPROVING LOAN APPLICATION
PERRY MUNICIPAL AUTHORITY
FAP-26-0016-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water system, a 2.25 cents sales tax and may include a mortgage on the Applicant's water system and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
PERRY MUNICIPAL AUTHORITY
FAP-26-0016-L**

Reviewed By:

A handwritten signature in black ink, appearing to read "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Kingfisher Public Works Authority, Kingfisher County

Loan Application No.: FAP-26-0013-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$5,000,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than twenty-nine (29) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and electric systems and may include a mortgage on the applicant's water, sewer, and electric systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) design and construct a new mechanical headworks facility and lift station, design and install instrumentation and control systems within the well fields, develop a comprehensive hydraulic model of the water distribution system, conduct system-wide sewer line and manhole inspections, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
Loan Proceeds	\$4,999,946.45	Project	\$4,873,817.49
		Bond Counsel	52,499.46
		Financial Advisor	52,499.46
		OWRB Costs of Issuance	20,380.04
		Trustee Bank	750.00
Total	<u>\$4,999,946.45</u>	Total	<u>\$4,999,946.45</u>

**ORDER APPROVING LOAN APPLICATION
THE KINGFISHER PUBLIC WORKS AUTHORITY
FAP-26-0013-L**

payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than twenty-nine (29) years.

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and electric systems and may include a mortgage on the Applicant's water, sewer, and electric systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE KINGFISHER PUBLIC WORKS AUTHORITY
FAP-26-0013-L**

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Clinton Public Works Authority, Custer County

Loan Application No.: FAP-26-0008-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$5,390,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water and sewer systems, a 3 cent sales tax and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) construct a lift station with bar screen facilities, a force main, a bar screen access stairwell pit, a splitter box, and a manhole, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$5,176,436.00
Total	<u><u>\$5,176,436.00</u></u>

Uses of Funds (Est.)

Project	\$5,004,632.50
Bond Counsel	67,205.45
Financial Advisor	67,205.45
OWRB Costs of Issuance	21,113.29
Local Counsel	15,529.31
Trustee Bank	750.00
Total	<u><u>\$5,176,436.00</u></u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0008-L IN THE NAME OF)
THE CLINTON PUBLIC WORKS AUTHORITY)
CUSTER COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, The Clinton Public Works Authority (the "Applicant") has made its Application for Funding No. FAP-26-0008-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0008-L in the name of The Clinton Public Works Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) construct a lift station with bar screen facilities, a force main, a bar screen access stairwell pit, a splitter box, and a manhole, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$5,390,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

**ORDER APPROVING LOAN APPLICATION
THE CLINTON PUBLIC WORKS AUTHORITY
FAP-26-0008-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water and sewer systems, a 3 cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE CLINTON PUBLIC WORKS AUTHORITY
FAP-26-0008-L**

Reviewed By:

A handwritten signature in cursive script that reads "Lori Johnson".

Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Pauls Valley Municipal Authority, Garvin County

Loan Application No.: FAP-26-0009-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$12,630,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, and sanitation systems, a 0.5 cent sales tax and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) make water treatment plant improvements including a new clarifier, backwash holding basin, chemical feed modifications, and replacement of the microfilter membrane, rehabilitate a lift station with a new forcemain and discharge structure, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$12,120,482.10
Total	<u>\$12,120,482.10</u>

Uses of Funds (Est.)

Project	\$11,762,311.88
Bond Counsel	123,704.82
Financial Advisor	123,704.82
Local Counsel	60,602.41
OWRB Costs of Issuance	49,408.17
Trustee Bank	750.00
Total	<u>\$12,120,482.10</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0009-L IN THE NAME OF)
PAULS VALLEY MUNICIPAL AUTHORITY)
GARVIN COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, Pauls Valley Municipal Authority (the "Applicant") has made its Application for Funding No. FAP-26-0009-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0009-L in the name of Pauls Valley Municipal Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) make water treatment plant improvements including a new clarifier, backwash holding basin, chemical feed modifications, and replacement of the microfilter membrane, rehabilitate a lift station with a new forcemain and discharge structure, all related appurtenances (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$12,630,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and

**ORDER APPROVING LOAN APPLICATION
PAULS VALLEY MUNICIPAL AUTHORITY
FAP-26-0009-L**

interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, and sanitation systems, a 0.5 cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
PAULS VALLEY MUNICIPAL AUTHORITY
FAP-26-0009-L**

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: The Duncan Public Utilities Authority, Stephens County

Loan Application No.: FAP-26-0015-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$13,520,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water, sewer, sanitation and electric systems, a 1 cent sales tax and may include a mortgage on the applicant's water, sewer, and electric systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) make wastewater treatment plant improvements including rehabilitating lift stations, headworks, treatment processes, and upgrading the SCADA system, make water treatment plant improvements including rehabilitating the clarifier and replacing old equipment, make water system improvements including replacing water lines and rehabilitating multiple water towers, all related appurtenances (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds \$13,123,953.30

Total

\$13,123,953.30

Uses of Funds (Est.)

Project \$12,757,847.18
Bond Counsel 133,739.53
Financial Advisor 133,739.53
OWRB Costs of Issuance 54,174.30
Local Counsel 43,702.76
Trustee Bank 750.00

Total

\$13,123,953.30

**ORDER APPROVING LOAN APPLICATION
THE DUNCAN PUBLIC UTILITIES AUTHORITY
FAP-26-0015-L**

interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

2. The loan shall be secured with a lien on the revenues of the Applicant's water, sewer, sanitation, and electric systems, and 1 cent sales tax and may include a mortgage on the Applicant's water, sewer, and electric systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
THE DUNCAN PUBLIC UTILITIES AUTHORITY
FAP-26-0015-L**

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

LOAN APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: Muskogee Municipal Authority, Muskogee County

Loan Application No.: FAP-26-0018-L
State Loan Program Revenue Bond Loan (“FAP Loan”)

Amount Requested: \$37,170,000.00

Interest Rate: The FAP Loan shall bear interest at a fixed rate.

Payment Term: Principal and interest payments shall be made on a semi-annual basis. The term of the FAP Loan shall be no longer than thirty (30) years.

Security Position: The loan shall be secured with a lien on the revenues of the applicant's water and sewer systems, a 0.5 cent sales tax and may include a mortgage on the applicant's water and sewer systems and other real property.

Purpose: The applicant will utilize the loan proceeds to: (i) provide additional funds for FAP-24-0006-L that was approved on January 16, 2024 (the “Project”), (ii) satisfy the Local Reserve Requirement, if necessary; and (iii) pay related costs of issuance.

Sources of Funds (Est.)

Loan Proceeds	\$34,320,223.75
FAP-24-0006-L	71,844,857.41

Total	<u>\$106,165,081.16</u>
--------------	--------------------------------

Uses of Funds (Est.)

Project	\$105,502,708.44
Bond Counsel	259,901.68
Financial Advisor	259,901.68
OWRB Costs of Issuance	141,819.36
Trustee Bank	750.00

Total	<u>\$106,165,081.16</u>
--------------	--------------------------------

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF LOAN APPLICATION)
NO. FAP-26-0018-L IN THE NAME OF)
MUSKOGEE MUNICIPAL AUTHORITY)
MUSKOGEE COUNTY, OKLAHOMA)

**PROPOSED
ORDER APPROVING LOAN APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board (the "Board") on the 18th day of November, 2025.

WHEREAS, Muskogee Municipal Authority (the "Applicant") has made its Application for Funding No. FAP-26-0018-L (the "Loan Application") to the Board for a loan from the proceeds of the Board's State Loan Program Revenue Bonds issued pursuant to the 2016 General Bond Resolution dated as of November 1, 2016, as supplemented and amended (the "Bond Resolution"), and authorized by Title 82 Oklahoma Statutes 2021, Sections 1085.31 *et seq.*, as amended; and

WHEREAS, the Applicant intends to use the loan to provide for acquisition, development, and utilization of storage and control facilities for water and sewage systems for the use and benefit of the public and for the conservation and distribution of water for beneficial purposes in or from reservoirs or other storage facilities and/or refinancing indebtedness originally incurred for such purposes; and

WHEREAS, the Board has completed its review of the Loan Application and related information, and finds that the Loan Application should be approved according to the terms and conditions set forth below.

NOW, THEREFORE, LET IT BE RESOLVED AND ORDERED BY THE OKLAHOMA WATER RESOURCES BOARD:

Application for Funding No. FAP-26-0018-L in the name of Muskogee Municipal Authority be and the same is hereby approved. Subject to and contingent upon the Board's receipt of sufficient funds, a loan shall be made to the Applicant for the following purpose and subject to the following terms and conditions:

Purpose

The loan proceeds, along with other funds of the Applicant, if any, will be used to (i) provide additional funds for FAP-24-0006-L that was approved on January 16, 2024 (the "Project"), (ii) satisfy the Local Reserve Requirement, if necessary and (iii) pay related costs of issuance, all as more specifically set forth in the Application.

Terms and Conditions

1. A loan shall be made out of proceeds of the Board's State Loan Program Revenue Bonds to the Applicant to provide funds for the Project described in the Loan Application in an aggregate principal amount not to exceed \$37,170,000.00. The Applicant shall pay interest on the loan at a fixed or variable rate to be established periodically by the Board. Principal and interest payments shall be made on a semi-annual basis or as otherwise provided for under the Bond Resolution. The term of the loan shall be no longer than thirty (30) years.

**ORDER APPROVING LOAN APPLICATION
MUSKOGEE MUNICIPAL AUTHORITY
FAP-26-0018-L**

2. The loan shall be secured with a lien on the revenues of the Applicant's water and sewer systems, a 0.5 cent sales tax and may include a mortgage on the Applicant's water and sewer systems and other real property.

3. The funds shall be reserved for the Applicant for a period of one (1) year from the date of this Order. In the event the loan is not closed on or before such date, the Board reserves the right to (i) approve, at the Applicant's request, a reasonable extension of time to close the loan, or (ii) de-obligate all or a portion of the loan funds in order to be used by the Board to make other loans, as the Board determines shall permit the best use of the funds. Funds shall be provided to the Applicant from proceeds of the Board's State Loan Program Revenue Bonds in accordance with the requirements of the Bond Resolution.

4. The Board's Staff is authorized to determine what additional conditions or requirements shall be necessary in order to assure the soundness of the loan and compliance with applicable financial, legal, and Bond Resolution requirements. The Board's Staff is further authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially and adversely affect the loan.

5. The loan shall be subject in all respects to the provisions of the Applicant's promissory note(s), loan agreement(s), and other loan documents which shall be executed by proper officials of the Applicant and a Board Member at or prior to loan closing as appropriate.

6. Additional loans may be made at such times, for such projects of the Applicant, at such repayment periods and interest rates, and upon such other terms and conditions as may be agreed to and approved by the Board and the Applicant.

So ordered this 18th day of November, 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

**ORDER APPROVING LOAN APPLICATION
MUSKOGEE MUNICIPAL AUTHORITY
FAP-26-0018-L**

Reviewed By:

A handwritten signature in cursive script, appearing to read "Lori Johnson".

Lori Johnson, Chief
Financial Assistance Division

3.C. SUMMARY DISPOSITION AGENDA ITEMS

FINANCIAL ASSISTANCE DIVISION

November 18, 2025

EMERGENCY GRANT APPLICATION **RECOMMENDED FOR APPROVAL**

APPLICANT: Harper County Rural Water District No. 1, Harper County, Oklahoma **DATE RECEIVED:** 10/21/2025
COUNTY: Harper **APPLICATION NUMBER:** FAP-26-0003-G

Amount Requested: \$56,028.60

Amount Recommended: \$56,028.60

PROJECT DESCRIPTION: Harper County Rural Water District No. 1, Harper County, Oklahoma (District) operates a water system. The District experienced a total loss of water pressure after an air pocket entered the main line and settled at the system's highest elevation during another project they were completing. To address the problem, the District did an emergency connection to Buffalo, OK's water system by installing approximately 400 LF of HDPE waterline, plus all appurtenances required to complete the project. The total cost of the project was \$65,916.00 of which \$56,028.60 is eligible to be reimbursed through the OWRB Emergency Grant and the remaining \$9,887.40 paid by local funds will satisfy the required 15% match for the grant.

Priority Ranking			Priority Points
Emergency Ranking <u>1</u> (Maximum: 50 points)			<u>50</u>
WATER AND SEWER RATE STRUCTURE (Maximum: 13 points)			
Water rate per 5,000 gal/month: \$ 64.35 Sewer rate per 5,000 gal/month: <u>0.00</u> <div style="text-align: right;">Total \$ 64.35</div>	<div style="display: flex; justify-content: space-between;"> <div> <input type="checkbox"/> Flat rate <input type="checkbox"/> Decreasing Block <input type="checkbox"/> Uniform <input checked="" type="checkbox"/> Increasing Block <input type="checkbox"/> Sales tax (W/S) </div> <div style="text-align: right;"> <u>-3</u> <u>-2</u> <u>0</u> <u>+2</u> <u>+1</u> </div> </div> <div style="text-align: right; margin-top: 10px;"><u>10</u> points</div>		<u>12</u>
INDEBTEDNESS PER CUSTOMER (Maximum: 10 points)			
Total Indebtedness: \$ 106,428.71 Monthly Debt Payment: \$ 5,267.51 Number of Customers: 353 Monthly Payment Per Customer: \$ 14.92			<u>7</u>
LOCAL PARTICIPATION (Maximum 10 points)			
From Reserves: \$ 9,887.40 Contribution from Loan: \$ 0.00 % of Project Local Funded: 15%			<u>1</u>
MEDIAN HOUSEHOLD INCOME \$ 59,191.00 (Maximum: 10 points)			<u>0</u>
ABILITY TO FINANCE PROJECT (Maximum: 12 points)			
$FP = \frac{(\$56,028.60)}{(353)} \frac{(0.0710)}{(12)} = \0.94			<u>1</u>
AMOUNT OF GRANT REQUESTED (Maximum: 10 points)			
AR = \$56,028.60			<u>3</u>
REQUEST NUMBER <u>1</u>			<u>0</u>
BENEFIT OF PROJECT TO OTHER SYSTEMS No			<u>0</u>
TOTAL PRIORITY POINTS			<u>74</u>

6. The applicant shall return or otherwise pay to the Board, any grant funds expended for unauthorized or unallowable purposes. Authorized purposes are those which are necessary for the completion of the project described in the grant application, which application is incorporated by reference herein, or which are necessary for the project as approved, if the project is different from that described in the application. Any funds returned by the applicant under this paragraph shall bear interest at the maximum rate allowed by law. The applicant shall direct to the Board any and all questions regarding whether an expenditure is authorized.
7. Furthermore, prior to and during the construction period, Harper County Rural Water District No. 1, Harper County, Oklahoma is required to comply with the requirements of all applicable federal and state statutory provisions and all Oklahoma Water Resources Board rules, regulations and grant policies.

SO ORDERED this 18th day of November 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess , Secretary

(SEAL)

Reviewed By:



Lori Johnson, Chief
Financial Assistance Division

AMERICAN RESCUE PLAN ACT (ARPA) APPLICATION
RECOMMENDED FOR APPROVAL

Applicant: City of Coweta, State of Oklahoma, Wagoner County

Grant Application No.: ARP-23-0043-DTG
American Rescue Plan Act Grant ("ARPA Grant")

Amount Requested: Increase of \$500.00 making the total grant \$128,500.00

Designated Grant

Information: Name and/or number of the ARPA Grant account under which designated: Tribal Matching Grant - ARPA - YY000881

Purpose: City of Coweta, State of Oklahoma (City) operates a water distribution system. A new development is being built in the city and the current water main in the area is not big enough to hold the new flow demand once the development is complete. The proposed project is to upgrade approximately 1,900 linear feet of 8-inch water main to 12-inch water main and all appurtenances required to complete the project. The estimated cost of the project will be \$257,000.00 which will be funded by the OWRB ARPA grant of \$128,500.00 and the Muscogee Creek Nation Funding of \$128,500.00

Sources of Funds (Est.)

OWRB ARPA Increase
Grant Amount:

\$500.00

OWRB ARPA Funds:

128,000.00

Muscogee Creek Tribal

Matching Funds:

128,500.00

Total

\$257,000.00

Uses of Funds (Est.)

Project:

\$257,000.00

Total

\$257,000.00

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF AMERICAN RESCUE PLAN ACT (ARPA))
GRANT APPLICATION NO. ARP-23-0043-DTG)
IN THE NAME OF THE CITY OF COWETA, STATE OF)
OKLAHOMA, WAGONER COUNTY)

PROPOSED
ORDER APPROVING ARPA GRANT INCREASE APPLICATION

This matter came on for consideration before the Oklahoma Water Resources Board on the 18th day of November 2025. The Board finds that since the application for this grant has been identified by the legislature, has met the eligibility requirements for this grant, and that since sufficient funds are available, the grant application increase for an amount not to exceed \$500.00 should be approved for the following purpose and subject to the following conditions:

Conditions:

1. The amount of the ARPA grant increase shall not exceed \$500.00 This is an addition to the previously approved ARPA grant of \$128,000.00 for a total awarded of \$128,500.00.
2. ARPA grant funds shall be accounted for separately with a federally insured financial institution.
3. The project shall be to upgrade approximately 1,900 linear feet of 8-inch water main to 12-inch water main. Applicant is authorized to request the ARPA grant funds only for costs incurred for eligible expenses for the purposes of completing such project.
4. Furthermore, prior to and during the construction period, City of Coweta, State of Oklahoma is required to comply with the requirements of all applicable federal and state statutory provisions, all applicable ARPA regulations, and the Oklahoma Water Resources Board ARPA Grant Agreement, Board rules, regulations, and grant policies. The Board Staff is authorized to determine what additional conditions may be necessary in order to assure compliance with the applicable requirements.
5. The Board's Staff is authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially or adversely affect the grant.

SO ORDERED this 18th day of November 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

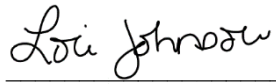
Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

Reviewed By:

A handwritten signature in black ink that reads "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

ARPA GRANT APPLICATION RECOMMENDED FOR APPROVAL

APPLICANT: Rural Water District No. 17, LeFlore County, Oklahoma **DATE RECEIVED:** 11/11/2022
COUNTY: LeFlore **APPLICATION NUMBER:** ARP-23-0029-G
ARPA NUMBER: ARPA-YY002306
Amount Requested: \$55,235.58 **Amount Recommended:** \$55,235.58

PROJECT DESCRIPTION: Rural Water District No. 17, LeFlore County, Oklahoma (District) operates a water distribution system. The District has experienced significant water losses ranging from 50% to 80% due to undetected leaks and the absence of an effective leak detection system. The proposed project is to reimburse costs associated with the installation of seven (7) in-ground automatic flush hydrants, thirty-eight (38) gate valves, leak repairs along the District's 33 miles of water main, and all necessary appurtenances to complete the improvements. The total cost of the project was \$255,235.58, which was originally funded through two RIG Grants of \$100,000.00 each, \$30,235.58 in local funds, and \$25,000.00 from a Communities Unlimited loan. Of this total, \$55,235.58 is now eligible for reimbursement through the OWRB ARPA Grant.

Priority Ranking				Priority Points
Taps <u>175</u>				
WATER AND SEWER RATE STRUCTURE (Maximum: 13 points)				
Water rate per 5,000 gal/month:	\$ 146.00	() Flat rate	<u>-3</u>	<u>12</u>
Sewer rate per 5,000 gal/month:	<u>0.00</u>	() Decreasing Block	<u>-2</u>	
Total	\$ 146.00	() Uniform	<u>0</u>	
		(X) Increasing Block	<u>+2</u>	
	10 points	() Sales tax (W/S)	<u>+1</u>	
INDEBTEDNESS PER CUSTOMER (Maximum: 10 points)				
Total Indebtedness:	\$ 25,000.00			<u>0</u>
Monthly Debt Payment:	\$ 49.33			
Number of Customers:	175			
Monthly Payment Per Customer:	\$.29			
APCI Tier	Tier 1.00	(Maximum: 24 points)		<u>24</u>
LEGISLATIVE PORTAL REQUEST (Maximum: 5 points)				<u>0</u>
PREVIOUS GRANTS <u>0</u>				<u>0</u>
ENFORCMENT ORDER <u>No</u> (Maximum: 5 points)				<u>0</u>
BENEFIT OF PROJECT TO OTHER SYSTEMS <u>No</u>				<u>0</u>
FISCAL SUSTAINABILITY				<u>6</u>
TOTAL PRIORITY POINTS				<u>42</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE AMERICAN RESCUE PLAN ACT)
(ARPA) GRANT APPLICATION)
NO. ARP-23-0029-G IN THE NAME OF THE)
RURAL WATER DISTRICT NO. 17, LEFLORE COUNTY,)
OKLAHOMA.)

**PROPOSED
ORDER APPROVING ARPA GRANT APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board on the 18th day of November 2025. The Board finds that since the application for this grant has received a priority ranking of 42 points under Chapter 50 of the Board's Rules and that since sufficient funds are available, the grant application for an amount not to exceed \$55,235.58 should be approved for the following purpose and subject to the following conditions:

Conditions:

1. The amount of the ARPA grant shall not exceed \$55,235.58.
2. ARPA grant funds shall be accounted for separately with a federally insured financial institution.
3. The project shall be to reimburse costs associated with the installation of seven (7) in-ground automatic flush hydrants, thirty-eight (38) gate valves, and leak repairs along the District's 33 miles of water main. Applicant is authorized to request the ARPA grant funds only for costs incurred for eligible expenses for the purposes of completing such project.
4. Furthermore, prior to and during the construction period, Rural Water District No. 17, LeFlore County, Oklahoma is required to comply with the requirements of all applicable federal and state statutory provisions, all applicable ARPA rules, and the Oklahoma Water Resources Board ARPA Grant Agreement, Board rules, regulations, and grant policies. The Board Staff is authorized to determine what additional conditions may be necessary in order to assure compliance with the applicable requirements.
5. The Board's Staff is authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially or adversely affect the grant.

SO ORDERED this 18th day of November 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

Rural Water District No. 17 LeFlore County, Oklahoma
OWRB ARPA Grant No. ARP-23-0029-G

Reviewed By:

A handwritten signature in black ink that reads "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

ARPA GRANT APPLICATION RECOMMENDED FOR APPROVAL

APPLICANT: Municipal Authority of the City of Bristow, Oklahoma **DATE RECEIVED:** 11/30/2022
COUNTY: Creek **APPLICATION NUMBER:** ARP-23-0238-G
ARPA NUMBER: ARPA-YY002306
Amount Requested: \$1,000,000.00 **Amount Recommended:** \$1,000,000.00

PROJECT DESCRIPTION: Municipal Authority of the City of Bristow, Oklahoma operates a water and sanitary sewer system. The City of Bristow is experiencing notable growth, driven in part by the development of a new Kratos Defense & Infrastructure facility within the city. The proposed project is to install approximately 4,345 LF of 12-inch PVC water line, 2,240 LF of 8-inch sewer line, and 12 manholes for the Kratos site, plus all appurtenances required to complete the project. The estimated cost of the project is \$1,385,636.00, which will be funded by the OWRB ARPA Grant of \$1,000,000.00 and \$385,636.00 of local funds.

Priority Ranking				Priority Points
Population <u>4,226</u>				
WATER AND SEWER RATE STRUCTURE (Maximum: 13 points)				
Water rate per 5,000 gal/month:	\$ 47.76	() Flat rate	<u>-3</u>	<u>11</u>
Sewer rate per 5,000 gal/month:	<u>37.74</u>	() Decreasing Block	<u>-2</u>	
Total	\$ 85.50	(X) Uniform	<u>0</u>	
		() Increasing Block	<u>+2</u>	
	10 points	(X) Sales tax (W/S)	<u>+1</u>	
INDEBTEDNESS PER CUSTOMER (Maximum: 10 points)				
Total Indebtedness:	\$ 12,025,612.00			<u>10</u>
Monthly Debt Payment:	\$ 118,511.67			
Number of Customers:	1742			
Monthly Payment Per Customer:	\$ 68.03			
APCI Tier	Tier 1.00	(Maximum: 24 points)		<u>24</u>
LEGISLATIVE PORTAL REQUEST (Maximum: 5 points)				<u>5</u>
PREVIOUS GRANTS	<u>0</u>			<u>0</u>
ENFORCMENT ORDER	<u>No</u>	(Maximum: 5 points)		<u>0</u>
BENEFIT OF PROJECT TO OTHER SYSTEMS	<u>No</u>			<u>0</u>
FISCAL SUSTAINABILITY				<u>3</u>
TOTAL PRIORITY POINTS				<u>53</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF THE AMERICAN RESCUE PLAN ACT)
(ARPA) GRANT APPLICATION)
NO. ARP-23-0238-G IN THE NAME OF THE)
MUNICIPAL AUTHORITY OF THE CITY OF BRISTOW,)
OKLAHOMA, CREEK COUNTY.)

**PROPOSED
ORDER APPROVING ARPA GRANT APPLICATION**

This matter came on for consideration before the Oklahoma Water Resources Board on the 18th day of November 2025. The Board finds that since the application for this grant has received a priority ranking of 53 points under Chapter 50 of the Board's Rules and that since sufficient funds are available, the grant application for an amount not to exceed \$1,000,000.00 should be approved for the following purpose and subject to the following conditions:

Conditions:

1. The amount of the ARPA grant shall not exceed \$1,000,000.00.
2. ARPA grant funds shall be accounted for separately with a federally insured financial institution.
3. The project shall be to install approximately 4,345 LF of 12-inch PVC water line, 2,240 LF of 8-inch sewer line, and 12 manholes for the Kratos site. Applicant is authorized to request the ARPA grant funds only for costs incurred for eligible expenses for the purposes of completing such project.
4. Furthermore, prior to and during the construction period, Municipal Authority of the City of Bristow, Oklahoma is required to comply with the requirements of all applicable federal and state statutory provisions, all applicable ARPA rules, and the Oklahoma Water Resources Board ARPA Grant Agreement, Board rules, regulations, and grant policies. The Board Staff is authorized to determine what additional conditions may be necessary in order to assure compliance with the applicable requirements.
5. The Board's Staff is authorized to approve future modifications or additions to the project purposes and uses of funds approved herein, provided such modifications or additions will not materially or adversely affect the grant.

SO ORDERED this 18th day of November 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

Municipal Authority of the City of Bristow, Oklahoma
OWRB ARPA Grant No. ARP-23-0238-G

Reviewed By:

A handwritten signature in black ink, appearing to read "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

**NORTHEAST OKLAHOMA INFRASTRUCTURE FUND (HB 2888) INTEREST
EARNINGS**

RECOMMENDED FOR APPROVAL

Applicant: City of Tulsa-Rogers County Port Authority, Rogers County

Grant Application No.: NOI-23-0001-G
Northeast Oklahoma Infrastructure Fund
Oklahoma House Bill 2888

Amount Requested: \$1,924,943.78 additional from Interest Earnings from NOI and \$1,229,710.41 from ARPA Interest Earnings plus any additional funds accrued.

Designated Grant

Information: Oklahoma House Bill 2888 Designated \$38,620,000 plus any interest earned to the City of Tulsa-Rogers County Port Authority

Purpose: The Oklahoma Water Resources Board is designated from the General Revenue Fund of the State Treasury the sum of Thirty-eight Million Six Hundred Twenty Thousand Dollars (38,620,000.00) or so much thereof as may be necessary for upgrades to water and wastewater systems located in Northeast Oklahoma along an inland waterway that supplies water and wastewater to major supply chain locations. Funding will be directed to the City of Tulsa-Rogers County Port Authority to support the design and construction of a new 3.1 MGD wastewater treatment facility at its Tulsa Port of Inola and operated by the Town of Inola. The scope of the project includes engineering services, permitting, utility connections, access roads, collection systems, site work, facility construction, and commissioning the facility.

<u>Sources of Funds (Est.)</u>		<u>Uses of Funds (Est.)</u>	
NE OK Infrastructure Fund:	\$38,620,000.00	Project:	\$79,920,000.00
EDA Grant:	22,300,000.00		
Loan Proceeds/ Interest Earnings:	15,000,000.00		
ARPA Grant:	4,000,000.00		
Total	<u>\$79,920,000.00</u>	Total	<u>\$79,920,000.00</u>

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

IN THE MATTER OF NORTHEAST OKLAHOMA INFRASTRUCTURE)
FUND OKLAHOMA HOUSE BILL 2888)
APPLICATION NO. NOI-23-0001-G)
IN THE NAME OF THE CITY OF TULSA-ROGERS COUNTY PORT)
AUTHORITY)

**PROPOSED
ORDER APPROVING GRANT INCREASE REQUEST**

This matter came on for consideration before the Oklahoma Water Resources Board on the 18th day of November 2025. The Board finds that since the request for this increase using Interest Earnings from both the Northeast Oklahoma Infrastructure Fund (NOI) and American Rescue Plan Act (ARPA) has met the eligibility requirements for this grant and since sufficient funds are available, the request from NOI and ARPA interest earnings, plus any additional interest earnings should be approved for the following purpose and subject to the following conditions:

Conditions:

1. On May 21st, 2024, the Board approved an NOI Grant to the City of Tulsa – Rogers County Port Authority in the amount of \$38,620,000.00. The Board’s Order (“Order”) approving application as of the date specified various purposes and conditions of the grant.
2. In the Order, the Board Specified that grant funds were to be used to upgrade water and wastewater systems located in Northeast Oklahoma along an inland waterway that supplies water and wastewater to major supply chain locations. Funding will be directed to the City of Tulsa-Rogers County Port Authority ("Port Authority") to support the design and construction of a new 3.1 MGD wastewater treatment facility at its Tulsa Port of Inola and operated by the Town of Inola. The scope of the project includes engineering services, permitting, utility connections, access roads, collection systems, site work, facility construction, and commissioning the facility.
3. The Authority is eligible to receive any interest funds that have accrued in the ARPA grant account(s) for ARPA Relief Funds Port of Inola (Wastewater Modernization) YY002162 and City of Tulsa-Rogers Port Authority held at BancFirst. The current balance in those accounts is \$1,229,710.41 and \$1,924,943.78 respectively. Any additional interest funds shall be available until the completion of the project or until funds have been exhausted.
4. Except for the amendment specified herein, all terms, purposes, and conditions specified in the original Board’s Order shall remain in full force and effect.

SO ORDERED this 18th day of November 2025, in regular and open meeting of the Oklahoma Water Resources Board.

OKLAHOMA WATER RESOURCES BOARD

Thomas A. Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

Reviewed By:

A handwritten signature in black ink that reads "Lori Johnson". The signature is written in a cursive, flowing style.

Lori Johnson, Chief
Financial Assistance Division

3. SUMMARY DISPOSITION AGENDA ITEMS

D. Contracts and Agreements Recommended for Approval

November 18, 2025

AGENDA ITEM 3D(1)
JOINT FUNDING AGREEMENT

WITH: Office of Management and Enterprise Services (OMES)

PURPOSE: **Phase 2 - 2026 Durable Technology Partner Proposal** – seeking to continue an agency modernization project. To allow Agency leadership to determine work/focus areas throughout the engagement.

AMOUNT: Not to exceed \$1,572,930.00

TERM: 12 months but can cancel at anytime/with a 30-day notice given

This Agreement is made effective January 1, 2026, (“Effective Date”) between the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”), for the benefit of Oklahoma Water Resources Board and Phase 2 Development, LLC (“Supplier”) and is a Contract Document in connection with Oklahoma Statewide Contract No. 1025 (“SW1025”) between the State and Supplier. Unless otherwise indicated herein, capitalized terms used in this Agreement without definition shall have the respective meanings specified in SW1025. The term of this Agreement is from January 1, 2026 to December 31, 2026, for a total spend not to exceed \$1,572,930. Supplier shall invoice agency only for hours accepted by Oklahoma Water Resources Board. The parties agree that the terms and conditions of SW1025 prevail over any conflicting terms that may exist in Attachment A.

This Agreement incorporates the following attachments:

1. Attachment A: 2026 Durable Technology Partner Proposal

The parties recognize that while the State of Oklahoma by and through the Office of Management and Enterprise Services is executing this contract, payment obligations rest solely with the Oklahoma Water Resources Board, and the Office of Management and Enterprise Services shall not be responsible for such. Please send invoices and billing inquiries to the following:

**Oklahoma Water Resources Board
Attn: Accounts Payable
3800 N Classen Blvd, Oklahoma City, OK 73118**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURES

The undersigned represent and warrant that they are authorized, as representatives of the Party on whose behalf they are signing, to sign this Addendum and to bind their respective Party thereto.

STATE:**SUPPLIER:**_____
Authorized Signature_____
Authorized Signature_____
Printed Name_____
Printed Name_____
Title_____
Title_____
Date_____
Date

Oklahoma Water Resources Board is additionally executing this Agreement to memorialize its involvement in negotiation of and its agreement with the terms of this Agreement.

IN WITNESS WHEREOF, This Agreement has been duly executed by the parties on the date(s) shown below.

OKLAHOMA WATER RESOURCES BOARD (“OWRB”)

By: Thomas Gorman, Chairman_____
Date**ATTEST:**_____
Suzanne Landess, Secretary_____
Date**(SEAL)**



OKLAHOMA
Water Resources Board

Attachment A: 2026 Durable Technology Partner Proposal

SW1025 Water Resources Board

Executive Summary

The Oklahoma Water Resource Board (OWRB), through the Office of Enterprise Management Services (OMES), is seeking to continue an agency modernization project.

Engagement Overview

This Statement of Work is structured as a 1025 engagement, allowing Agency leadership to determine work/focus areas throughout the engagement, with the option to cancel at any time, provided a 30-day notice is given.

The following are key initiatives identified as new and continued scope.

- Lift&Shift of Oracle WR database to Azure SQL Server
 - Connect the Water Rights & Mailouts VB.NET desktop application, the public-facing PT VB.NET application, and Azure SQL Server.
- Historical Data Migration – move all permitting data into SQL Server for the new system with an improved schema of Water Use Reports & Permits
- Long-Term, Short-Term (90-day PT), Groundwater, Surface water
 - Internal Portal only, no public-facing web form
 - Complete water rights permit lifecycle management, including splits & change of ownership timeline
- Short-Term (90-day PT) – Groundwater & Surface Water
 - Public Portal – public-facing application search and entry
- Online Water Use Mailouts
 - Internal Portal
 - Notice of Violations Support – search and notification correspondence generation for Individual/bulk
 - Public Portal
 - Print@Home support – authenticated users may download the Mailout packet
- Online Water Use Enhancements
 - Public and Internal Portals updates for production issues
 - Multi-year viewing support

Team Roles

The following roles present on the Phase 2 team will be available for OWRB resource augmentation. Each role provides specific and valuable services that will result in engagement successes and allow Phase 2 to operate as an independent elite team or as complementary resources to OWRB or other vendor partners.

Lead Consultant (.4 FTE)

The Lead Consultant role exists within the client and vendor organization and is the key representative for the product and goal. He or she is responsible for communicating the vision and requirements to the Development Team.

The Lead Consultant takes primary responsibility for the Product Backlog, including its initial development and its ongoing revision of the product's development. He or she will also participate in meetings demonstrating progress toward the Development Team's goals.

Project Manager (.2 FTE)

The Technical Project Manager's role is to support the Lead Consultant and Product Development Team as they cooperatively plan priorities, execute, and demonstrate progress of goals. Additionally, the Technical Project Manager will ensure that the budget and timelines are accurate and communicated between the client and vendor.

Development Team (2.13 FTE)

The Development Team will be responsible for the actual development activities within each Sprint. The team will be cross-functional and include members who are skilled in areas such as coding, testing, UI, etc.

Architect & Senior Engineer (1 FTE)

The architect's role is to help the team execute the organization's vision and keep the team aligned toward pragmatic delivery. P2 architects are senior engineers who execute foundational delivery and help design and align board architectural principles and practices.

User Interface and User Experience Designer (As needed)

Usability is a core principle of P2 software product delivery. This role is designed to drive the core principles and practices of great usability into all user interfaces and business process designs. Their task ranges from creating meaningful user experience prototypes to ensuring usability through UAT in the final product.

AGENDA ITEM 3D(2)
JOINT FUNDING AGREEMENT

WITH: City of Lawton Water Authority

PURPOSE: A no-cost time extension to the agreement between the OWRB and City of Lawton, originally executed on September 19, 2023, for the FEMA Rehabilitation of High Hazard Potential Dams grant program. The \$925,251 grant covers up to 65% of project costs, with the extension moving the period of performance end date to September 2026.

TERM: Ending September 2026

Engagement Duration, Budget, and Terms

Phase 2 is offering this agreement over the duration of the 12-month contracted period, which starts January 1, 2026, and runs through December 31, 2026.

Budget Overview

Duration of Commitment: **12 months**

Budget Total: **\$1,572,930**

FTE Count: **3.73**

If required and agreed upon with notice and an approved change order, Phase 2 can increase assigned team resources to fit the needs of OWRB during the course of this agreement.

Budget Detail

Team Member	Hourly Rate	Total Hours	Total Billing
Lead Consultant	\$225	800	\$180,000
Senior Engineers	\$210	6,260	\$1,314,600
Project Manager	\$210	200	\$42,000
User Interface/User Experience Designer	\$210	173	\$36,330
		7,433	\$1,572,930

Payment Terms

Phase 2 will bill monthly on net 45 terms. Phase 2 is offering this SOW as a fixed budget variable scope SW1025 agreement over the estimated 12-month time period.

Standard Rates:

Technical Project Manager, UI/UX Designer, Senior Architects, and Software Engineers
– \$210 per FTE hour

Lead Consultant
– \$225 per FTE hour

Phase 2 requires a signed copy of this agreement and a purchase order. We appreciate your business and look forward to enhancing the evolving functionality of your business. If you have questions or concerns regarding this proposal, please feel free to call **Shane Kempton** at **405.595.9513** or email **shanek@phase2online.com**.



OKLAHOMA
Office of Management
& Enterprise Services

**Procurement
Master Agreement**

STATE OF OKLAHOMA

SW1025

Information Technology Staff Augmentation Services

Master Agreement

ATTACHMENT A

STATE OF OKLAHOMA PURPOSE

This State of Oklahoma Master Agreement (the “Master Agreement”) is entered into between **Phase 2 Development LLC**, with its principal place of business at **3324 NW135th St., Oklahoma City, OK, 73120, United States**, and the State of Oklahoma by and through the Office of Management and Enterprise Services (“State”) and is effective upon completed signatures, (“Master Agreement Effective Date”). This agreement supersedes and terminates any previously existing contract or agreement between the parties.

Supplier and State agree to the terms and conditions as follows:

I. Scope and Term

- A.** This Master Agreement and other Contract Documents provides governing terms for Acquisitions in which the Supplier provides products and/or services to Customers and all sales to Customers for products and services available to provide temporary Information Technology Staff Augmentation Services for State Agencies and Affiliates to purchase services on an as-needed basis. The parties hereby acknowledge and affirm that the execution of this Master Agreement, standing alone, does not evidence that the parties have agreed to engage in a particular transaction, nor does it evidence that a particular contract award has been made to Supplier. OMES shall have no liability and makes no representation that products or services offered by Supplier will meet the needs of Customer and Customer should review Contract terms and independently assess the extent to which such products or services are suitable.
- B.** The Initial term of this Master Agreement shall commence on the Master Agreement Effective Date and will be effective 10.1.2023 to 9.30.2024.
There will be 4 annual options to renew annually under the same terms and conditions through 9.30.2028. The State may require additional documentation upon renewal request. Decision to exercise option periods rests solely with the State of Oklahoma.
- C.** A statement of work, work order or other similar ordering document providing an option to renew may be unilaterally exercised by the State so long as the option does not exceed the total cost or total hours as agreed to by the parties. Notwithstanding the foregoing, the term for statements of work, work orders or other similar ordering documents under Statewide Contract No. 1025 shall not exceed 12 months inclusive of the unilaterally exercised renewal.

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract Document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract Document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State’s prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services
(a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier’s performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract Documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Addendum. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.
- 2.2 Contract Documents shall be read to be consistent and complementary. Any conflict among the Contract Documents shall be resolved by giving priority to Contract Documents in the following order of precedence:
- A. this Master Agreement Cover page;
 - B. Attachment B State's General Terms
 - C. Attachment D, State's Information Technology Terms
 - D. any solicitation issued by the State;
 - E. any statement of work, work order, or other similar ordering document as applicable; and
 - F. other mutually agreed Contract Documents;
- 2.3 If there is a conflict between the terms contained in this Contract Document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract Document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Addendum.
- 2.4 Any Contract Document shall be legibly written in ink or typed. All Contract transactions, and any Contract Document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 Modification of Contract Terms and Contract Documents

- 3.1 The Contract may only be modified, amended, or expanded by an Addendum. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.

- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.

4 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Addendum** means a mutually executed, written modification to a Contract Document.
- 4.3 **Amendment** means a written change, addition, correction or revision to the Solicitation.
- 4.4 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.5 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.6 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract Documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.7 **Contract Document** means this document; any master or enterprise agreement terms entered into between the parties that are mutually agreed to be applicable to the Contract; any Solicitation; any Contract-specific terms; any Supplier's Bid as may be negotiated; any statement of work, work order, or other similar mutually executed ordering document; other mutually executed documents and any Addendum.
- 4.8 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 4.9 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.10 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract Document.

- 4.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees and designees thereof.
- 4.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.14 OAC** means the Oklahoma Administrative Code.
- 4.15 OMES** means the Office of Management and Enterprise Services.
- 4.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.17 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract Document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming

code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, tradenames, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

- 6.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-

encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.

- 6.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 6.3** Supplier shall deliver products and services on or before the required date specified in a Contract Document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract Document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.

- 6.4** Product warranty and return policies and terms provided under any Contract Document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** Supplier shall have no right of setoff.
- G.** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H.** The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.
- I.** Supplier, and any approved subcontractor, agrees to utilize solely at the state's discretion, the state's preferred method of submitting timekeeping for invoicing purposes under the Contract. This includes but is not limited to utilizing the state's vendor management system. Any costs associated with utilizing this

system will be paid by the Supplier.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 8.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a thirty (30) day notice of cancellation and name the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$5,000,000 per occurrence;
- C.** Automobile Liability Insurance with limits of liability of not less than \$5,000,000 combined single limit each accident;
- D.** Directors and Officers Insurance which shall include Employment Practices Liability as well as Consultant's Computer Errors and Omissions Coverage, if information technology services are provided under the Contract, with limits not less than \$5,000,000 per occurrence;
- E.** Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and

F. Additional coverage required in writing in connection with a particular Acquisition.

8.2 Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

8.3 Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance with Applicable Laws

9.1 As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A. Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
- B. Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C. Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension and other responsibility matters;
- D. 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375;
- E. Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- F. Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);

- G. Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
 - H. Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at www.dhs.gov/E-Verify;
 - I. Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J. Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2 The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at https://omes.ok.gov/sites/g/files/gmc316/f/InfoSecPPG_0.pdf. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3 At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4 In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 9.5 The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide

adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.

- 9.6** As applicable, Supplier agrees to comply with the Governor’s Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier’s knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non- electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and

performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.

- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 10.3** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or

its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll-free telephone call center services.

- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 11.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.
- 11.7** Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include

information that:

(i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) résumé, pricing or marketing materials provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

13.1 Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.

13.2 Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any

assignment or delegation in violation of this subsection shall be void.

- 13.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract Documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.
- 13.4** All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.
- 13.5** Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to accessing any facilities or the commencement of any services, including before accessing, processing, storing, or transmitting any Customer Data, Supplier's employees and subcontractors must have a background check, approved and on file, with Oklahoma Cyber Command. All Suppliers must submit annual background verification renewals when requested by the State.

Pursuant to Subsection 18.2, if a Supplier attempts to or does submit false background check information to the State or fails to submit a background check when asked to provide one, the State has the option to terminate the Contract immediately. The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract. Any amounts paid to Supplier in the form of prepaid fees that are unused upon termination shall be refunded. Should any employee or subcontractor of the Supplier who will be providing services under the Contract fail to satisfactorily pass a background check, or criminal history investigation, the Customer may require replacement of the employee or

subcontractor in question. If no suitable replacement is made within a reasonable time, the statement of work, work order or other similar ordering document associated with the project or services may be terminated. The cost associated with background checks are the sole responsibility of the Supplier, regardless of what kind or type of background check is required by the State and obtained by the Supplier.

The Supplier will indemnify the Indemnified Parties for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including, without limitation, reasonable attorneys' fees and costs required to establish the right to indemnification) due to the Supplier's failure to provide the requested background check or to perform a proper background check or due to the Supplier's submission of false background check information. To the extent, if any, the Indemnified Parties incur fees, fines, or penalties from a regulatory entity due to Supplier's failure to comply with the background check process, the Supplier will reimburse the Indemnified Parties for those associated costs.

If the term of the statement of work, work order or other similar ordering document has not expired and the scope remains the same, Supplier's employees and subcontractors may be replaced by another employee or subcontractor so long as such replacement is compliant with Subsection 6.3. If the Supplier needs to change out an employee or subcontractor to include employees or subcontractors that were not initially contemplated at the execution of the statement of work, work order or other similar ordering document, the employee or subcontractor must have a background check approved and on file with Oklahoma Cyber Command before the employee or subcontractor can commence any services, including accessing, processing, storing, or transmitting any Customer data.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer

affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.4 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.5 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier, and Supplier shall not be liable to the State or any Customer, for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages. Except for Supplier's liability for Data Security Incidents addressed in Section 16.5(B), Supplier's liability for damages of any kind to the State or any Customer shall be limited to the total amount paid to Supplier under this Contract during the twelve months immediately preceding accrual of the claim or cause of action or \$20,000,000 whichever is lesser
- B.** Supplier's liability for unauthorized access to, unauthorized disclosure, transfer, or processing of, damage to, or loss, destruction, alteration, or corruption of any data arising from any act or omission of Supplier including but not limited to Supplier breach of data security obligations (collectively, "Data Security Incidents") shall not exceed \$20,000,000. For avoidance of doubt, Section 16.5(C) shall not be construed to negate or otherwise render unenforceable the damages limitations applicable to Data Security Incidents set forth in this Section 16.5(B).
- C.** Notwithstanding anything to the contrary in the Contract, no provision shall

limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.

- D.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1** Notwithstanding anything to the contrary in any Contract Document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.
- 17.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.
- 17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

- 18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice

of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.

- 18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 18.3** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.
- 18.4** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-1 is an example.

19 Termination for Convenience

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

- 20.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 20.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.
- 20.3** Such Suspension may be removed, or suspended activity may resume, at the earlier of

such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract Document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract Documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Venue for any action, claim, dispute, or litigation relating in any way to the Contract Documents, shall be in Oklahoma County, Oklahoma.

26.2 No Guarantee of Products or Services Required

The State shall not guarantee any minimum or maximum amount of Supplier products or services required under the Contract.

26.3 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.4 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.5 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.6 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject

to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 *et seq.* Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required.

26.7 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract Document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract Document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.8 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.9 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.10 Severability

If any provision of a Contract Document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.11 Section Headings

The headings used in any Contract Document are for convenience only and do not constitute terms of the Contract.

26.12 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.13 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract Documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.14 Entire Agreement

The Contract Documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract Document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.15 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if

it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.16 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

26.17 Contract Management Fee and Usage Report

Pursuant to 74 O.S. § 85.33A, the State assesses a contract management fee on all transactions under a statewide contract. The payment of such fee will be calculated for all transactions, net of returns and the Supplier has no right of setoff against such fee regardless of the payment status of any Customer or any aggregate accounts receivable percentage. Supplier acknowledges and agrees that all prices quoted under any statewide contract shall include the contract management fee and the contract management fee shall not be reflected as a separate line item in Supplier's billing. The State reserves the right to change this fee upward or downward upon sixty (60) calendar days' written notice to Supplier without further requirement for an Addendum.

While Supplier is the awardee of a statewide contract, transactions that occur under the terms of the statewide contract are subject to a one percent (1%) contract management fee to be paid by Supplier. Supplier shall submit a Contract Usage Report on a quarterly basis for each contract using a form provided by the State and such report shall include applicable information for each transaction. Reports shall include usage of the statewide contract by every Customer during the applicable quarter. A singular report provided late will not be considered a breach of the statewide contract; provided, however, repeated failure to submit accurate quarterly usage reports and submit timely payments may result in suspension or termination, in whole or in part, of the Contract.

All Contract Usage Reports shall meet the following criteria:

- i. Electronic submission in Microsoft Excel format to strategic.sourcing@omes.ok.gov;
- ii. Quarterly submission regardless of whether there were transactions under the Contract during the applicable quarterly reporting period;
- iii. Submission no later than forty-five (45) days following the end of each calendar quarter;
- iv. Contract quarterly reporting periods shall be as follows:
 - a. January 01 through March 31;
 - b. April 01 through June 30;
 - c. July 01 through September 30; and
 - d. October 01 through December 31.

- v. Reports must include the following information:
 - a. Procuring entity;
 - b. Order date;
 - c. Purchase Order number or note that the transaction was paid by Purchase Card;
 - d. City in which products or services were received or specific office or subdivision title;
 - e. Product manufacturer or type of service;
 - f. Manufacturer item number, if applicable;
 - g. Product description;
 - h. General product category, if applicable;
 - i. Quantity;
 - j. Unit list price or MSRP, as applicable;
 - k. Unit price charged to the purchasing entity; and
 - l. Other Contract usage information requested by the State.

Payment of the contract management fee shall be delivered to the following address within forty-five (45) calendar days after the end of each quarterly reporting period:

State of Oklahoma
Office of Management and Enterprise Services, Central Purchasing
2401 North Lincoln Boulevard, Suite 116
Oklahoma City, Oklahoma 73105

To ensure payment is properly accounted for, Supplier shall provide the following information with payment: (i) reference to the applicable

Contract Usage Report and quarterly reporting period and (ii) the applicable statewide contract number(s) and the amount of the contract management fee being paid for each contract number.

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (“The Act” or “Act”), OMES- Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 DEFINITIONS

- 1.1 Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier. Customer Data includes both Non-Public Data and Personal Data.
- 1.2 Data Breach** means the unauthorized access or the reasonable suspicion of unauthorized access, by an unauthorized person that results in the use, destruction, loss, alteration, disclosure, or theft of Customer Data.
- 1.3 Host** includes the terms Hosted or Hosting and means the accessing, processing or storing of Customer Data.
- 1.4 Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.5 Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.6 Personal Data** means Customer Data that contains 1) any combination of an individual's name, social security numbers, driver's license, state/federal identification number, account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.
- 1.7 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.8 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State. A Supplier with whom the State enters into an awarded Contract shall also be known as a Contractor.
- 1.9 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel,

any portion of same was created, invented or conceived by such person while affiliated with Customer.

1.10 Third Party Intellectual Property means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.

2 TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

2.1 Customer removes the product for which the services are provided, from productive use; or,

2.2 The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).

2.3 If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 COMPLIANCE AND ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

3.1 State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards (“Standards”) set forth at <https://oklahoma.gov/omes/services/information-services/is/policies-and-standards/accessibility-standards.html>. Supplier shall provide a Voluntary Product Accessibility Template (“VPAT”) describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum. All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 MEDIA OWNERSHIP (Disk Drive and/or Memory Chip Ownership)

4.1 Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the sole and exclusive property of the Customer.

4.2 Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime

(repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 OFFSHORE SERVICES

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State's sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 COMPLIANCE WITH TECHNOLOGY POLICIES

6.1 The Supplier agrees to adhere to the State of Oklahoma "Information Security Policy, Procedures, and Guidelines" available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

Supplier's employees and subcontractors shall adhere to the applicable State IT Standards, policies, procedures and architectures as set forth at <https://oklahoma.gov/omes/services/information-services.html> or as otherwise provided by the State.

6.2 Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

7 EMERGING TECHNOLOGIES

The State reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 EXTENSION RIGHT

In addition to extension rights of the State set forth in the Contract, the State Chief Information Officer reserves the right to extend any Contract at his or her sole option if the State Chief Information Officer determine such extension to be in the best interest of the State.

9 SOURCE CODE ESCROW

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or
- 9.8** Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 COMMERCIAL OFF THE SHELF SOFTWARE OR SUPPLIER TERMS

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement, including via a hyperlink or uniform resource locator address to a site on the internet, that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail. Further, no such terms and conditions or clauses shall expand the State's or Customer's liability or reduce the rights of Customer or the State.

11 OWNERSHIP RIGHTS

Any software developed, modified, or customized by the Supplier in accordance with a mutually negotiated statement of work pursuant to this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. The parties mutually agree the State as a licensee of the Supplier does not make a claim of ownership to the existing Intellectual Property of Supplier. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all

other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as “Work for Hire”, Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State when made in accordance with a mutually negotiated statement of work pursuant to this Contract. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 INTELLECTUAL PROPERTY OWNERSHIP TO WORK PRODUCT

The following terms apply to ownership and rights related to Intellectual Property:

12.1 As to the Intellectual Property Rights to Work Product between Supplier and Customer, Customer shall be the exclusive owner and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is effectively transferred, granted, conveyed, assigned, and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the

objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.

12.2 Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier's signature due to the dissolution of Supplier or Supplier's failure to respond to Customer's repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier's agent and Supplier's attorney-in-fact to act for and in Supplier's behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer's sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

12.3 Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.

12.4 All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.

12.5 These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.

12.6 Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all

documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.

12.7 Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.

12.8 To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

12.9 Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.

12.10 To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

12.11 If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 HOSTING SERVICES

A Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier Hosting Customer Data or providing products or services pursuant to an Acquisition, contributes to, or directly causes a Data Breach or a Security Incident. Likewise, Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier's affiliate or subcontractor contributes to, or directly causes a Data Breach or a Security Incident.

14 CHANGE MANAGEMENT

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 SERVICE LEVEL DEFICIENCY

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 OWNERSHIP OF IT AND TELECOMMUNICATION ASSETS

Notwithstanding any other provision in the Contract and pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, all information technology and telecommunication assets and contracts on behalf of appropriated agencies of the State belong to OMES-IS. OMES-IS allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier.

17 CUSTOMER DATA

17.1 The parties agree to the following provisions in connection with any Customer Data accessed, processed transmitted, or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.

17.2 Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of rights, title, and interest in Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

17.3 Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice

provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

17.4 Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

18 DATA SECURITY

18.1 Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.

18.2 All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data. All Personal Data and Non-Public Data shall be subject to controlled access. Any stipulation of responsibilities shall be included in a Statement of Work and will identify specific roles and responsibilities.

18.3 Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.

18.4 At no time shall any Customer Data or processes – that either belong to or are intended for the use of the State - be copied, disclosed, or retained by Supplier or any party related to Supplier for subsequent use in any transaction that does not include the State unless otherwise agreed to by the State.

18.5 Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.

18.6 Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

18.7 Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

18.8 Any remedies provided are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

19 SECURITY ASSESSMENT

19.1 The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.

19.2 Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

20 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

20.1 Supplier shall inform Customer of any Security Incident or Data Breach.

20.2 Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.

20.3 Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).

20.4 Supplier shall maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.

20.5 If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

21 DATA BREACH NOTIFICATION AND RESPONSIBILITIES

This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

21.1 Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.

21.2 Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.

21.3 If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

22 SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants the following:

22.1 The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.

22.2 Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

22.3 The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.

22.4 Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any "copy-protected" devices, or any other harmful or disruptive program.

23 INDEMNITY

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier's breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party's patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier's expense and pay all related costs, damages, and attorney's fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third-party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section, but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier's opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

24 TERMINATION, EXPIRATION AND SUSPENSION OF SERVICE

24.1 During any period of service suspension, Supplier shall not take any action to

intentionally disclose, alter or erase any Customer Data.

24.2 In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
- b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
- c. a combination of the two immediately preceding options.

24.3 Supplier shall not take any action to intentionally erase any Customer Data for a period of:

- a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
- b. 30 days after the effective date of termination, if the termination is for convenience; or
- c. 60 days after the effective date of termination if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

24.4 The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

24.5 Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

25 GENERAL INFORMATION SECURITY REQUIREMENTS

25.1 No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.

25.2 Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.

25.3 Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.

25.4 Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

26 HIPAA REQUIREMENTS

26.1 Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).

26.2 If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.

26.3 Business Associate Terms Definitions:

- a. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- b. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
- c. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
- e. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.

26.4 Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:

- a. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
- d. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
- e. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- f. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- g. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- h. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- i. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- j. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business

Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;

k. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;

l. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;

m. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;

n. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;

o. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and

p. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

26.5 Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- a. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
- b. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. disclose PHI to report violations of law to appropriate federal and state authorities; or
- d. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- e. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- f. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § (d)(1)].

26.6 Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.
- c. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- d. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
- e. Covered Entity shall provide the minimum necessary PHI to Business Associate.

26.7 Term and Termination:

a. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:

- i. retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- ii. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
- iii. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
- iv. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted Uses and Disclosures By Business Associate” that applied prior to termination; and
- v. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

b. All other applicable obligations of Business Associate under this Agreement shall survive termination.

c. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)(A),(B) & 164.314 (a)(2)(i)(D).

26.8 Miscellaneous Provisions:

a. No Third-Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

- b. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- c. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- c. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- d. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- e. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- f. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

27 42 C.F.R. PART 2 RELATED PROVISIONS

27.1 Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:

27.2 Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;

27.3 Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;

27.4 Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;

27.5 Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).

27.6 Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.

27.7 Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;

27.8 Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;

27.9 Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;

27.10 Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.

28 DATA SECURITY

The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's

possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.

28.1 Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.

28.2 Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.

28.3 Rediscovery of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

29 FEDERAL TAX INFORMATION REQUIREMENTS IRS PUBLICATION 1075

29.1 PERFORMANCE: If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

29.2 All work will be performed under the supervision of the State of Oklahoma.

29.3 The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

29.4 FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

29.5 FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.

29.6 The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.

29.7 Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the

agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.

29.8 All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.

29.9 No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.

29.10 Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.

29.11 To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.

29.12 In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.

29.13 For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.

29.14 The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

30 CRIMINAL/CIVIL SANCTIONS

30.1 Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.

30.2 Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.

30.3 Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the

sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.

30.4 Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

30.5 Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

31 INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

32 SSA REQUIREMENTS

32.1 PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:

32.2 All work will be done under the supervision of the State of Oklahoma.

32.3 Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.

32.4 All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.

32.5 No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.

32.6 The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.

32.7 Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.

32.8 Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful access and/or disclosure.

32.9 Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.

32.10 The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.

32.11 Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf,

the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.

32.12 SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.

32.13 SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a “de facto” extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.

32.14 If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor’s vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.

32.15 In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.

32.16 The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.

33 CRIMINAL/CIVIL SANCTIONS

The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of record s subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.

33.1 Civil Remedies

- a. In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
- b. actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and

c. the costs of the action together with reasonable attorney fees as determined by the court.

d. An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

33.2 Criminal Penalties

a. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

b. Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).

c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

34 CHILD SUPPORT FPLS REQUIREMENTS

34.1 Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 USC 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.

34.2 This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contract ors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.

34.3 This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

35 FERPA REQUIREMENTS

35.1 If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

36 CJIS REQUIREMENTS

36.1 INTRODUCTION - This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

36.2 The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

36.3 CJIS SECURITY POLICY REQUIREMENTS GENERALLY - The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software,

equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix “A” to said Security Policy, “access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI.”

36.4 DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION- The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

36.5 This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

36.6 In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

- a. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
- b. the general policies in §4;
- c. the Policies in §5;
- d. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
- e. the Supplemental Guidance in Appendices “J”.

36.7 This FBI Security Policy is located and may be downloaded at:

- a. <https://www.fbi.gov/services/cjis/cjissecurity-policy-resource-centerhttps://www.fbi.gov/services/cjis/cjissecurity-policy-resource-center>.
- b. By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

37.1 In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

OMES Deputy General Counsel
3115 North Lincoln Blvd
Oklahoma City, Oklahoma 73105

Signature Block

IN WITNESS WHEREOF, each person executing this Master Agreement below represents that he or she is authorized to enter into this Master Agreement on behalf of such party and each party expressly agrees to the terms and conditions of this Master Agreement.

**STATE: State of Oklahoma by and through the
Office of Management and Enterprise Services**


Joe McIntosh (Nov 28, 2023 15:34 CST)

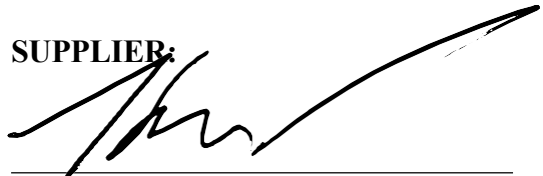
Authorized Signature

**Joe McIntosh
Oklahoma Chief Information Officer**

Per Adobe signature

Date


SUPPLIER:



Authorized Signature


Printed Name


Title


Date

Beth Vincent

OMES Legal Review Beth Vincent (Nov 28, 2023 12:13 CST)

AGENDA ITEM 3D(2)
JOINT FUNDING AGREEMENT

WITH: City of Lawton Water Authority

PURPOSE: A no-cost time extension to the agreement between the OWRB and City of Lawton, originally executed on September 19, 2023, for the FEMA Rehabilitation of High Hazard Potential Dams grant program. The \$925,251 grant covers up to 65% of project costs, with the extension moving the period of performance end date to September 2026.

TERM: Ending September 2026

NO-COST TIME EXTENSION AGREEMENT

THIS NO-COST TIME EXTENSION AGREEMENT, dated for convenience of reference as of the 16th day of September 2025, but to be effective only as provided herein, by and between the Oklahoma Water Resources Board ("OWRB"), an agency and instrumentality of the State of Oklahoma, and the Lawton Water Authority ("Subrecipient").

WITNESSETH:

WHEREAS, OWRB and Subrecipient entered into a certain Agreement dated September 19, 2023 (the "Rehabilitation of High Hazard Potential Dams Grant Agreement"), which provided, among other things, for Subrecipient to complete the Ellsworth Spillway Drought Resilience & Rehabilitation Project and for the grant to pay for such work as described in said Rehabilitation of High Hazard Potential Dams Grant Agreement; and

WHEREAS, a portion of the work has not yet been fully performed and a portion of the funding therefore remains unexpended; and

WHEREAS, subject to the terms of the underlying funding for the project, Subrecipient and OWRB mutually desire to renew and extend the Original Agreement for an additional period of time.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein, it is agreed:

1. **AMENDMENT AND EXTENSION OF AGREEMENT.** The Original Agreement by and between OWRB and the Lawton Water Authority as renewed and extended by the No-Cost Time Extension Agreement is hereby amended and extended at no additional cost for an additional one-year period, to be effective through September 14, 2026. All reimbursement requests for eligible project activities must be received by the Board by June 14, 2026. If the project is unable to be completed by June 14, 2026, the Subrecipient shall submit a request for a project extension. If the extension is determined by the Board to be necessary and appropriate, the OWRB or staff may approval additional time, but no later than September 14, 2026. If an acceptable reimbursement request is not received on or before September 14, 2026, then the approval of this grant shall expire and no grant funds will be released to the Subrecipient, unless authorized by the grantor.
2. **OTHER TERMS AND CONDITIONS.** Except for the term of the Agreement as provided in paragraph 1 herein, all other terms, conditions and provisions set forth in the Original Agreement in its entirety with all attachments shall remain unchanged and are incorporated by reference as though fully set forth in this No-Cost Time Extension Agreement. The parties shall continue to perform their obligations described in the Original Agreement in accordance with the time for performance stated in paragraph 1 herein.

In consideration of Subrecipient's agreement to these terms and conditions, Subrecipient has entered and signed this HHPD Grant Agreement this ____ day of _____, 20__

OKLAHOMA WATER RESOURCES BOARD

Thomas Gorman, ~~Vice~~ Chair

ATTEST:

Suzanne Landess, Secretary

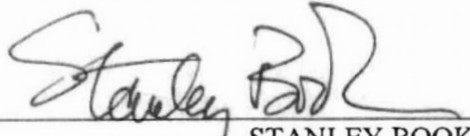
(BOARD SEAL)

* * * * *

Reviewed by:

Yohanes Sugeng, Chief
Engineering and Planning Division

City of Lawton, Comanche County


STANLEY BOOKER

Date: 22 October 2025
Chairmen of the Lawton Water Authority

ATTEST:

By: 

Title: City Clerk



AGENDA ITEM 3D(3)

AGREEMENT

WITH: KISTERS North America

PURPOSE: Agreement between OWRB and KISTERS North America for the provision of a data system and data migration services for OWRB's continuous water data.

Amount: not to exceed \$217,130.31

TERM: Ending September 2026



STATE OF OKLAHOMA CONTRACT WITH KISTERS NORTH AMERICA

This State of Oklahoma Contract is entered into between the State of Oklahoma by and through the Oklahoma Water Resources Board and KISTERS North America (“Supplier”) and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature to this Contract. The initial term of the Contract shall be for 1 year with four (4) one-year options to renew.

Purpose

The State is awarding this Contract to Supplier for the provision of software for the Water Division for a continuous monitoring database system for its monitoring programs including specific requirements for data formats, APIs, and API authentications as dictated by OWRB’s customer requirements. This Contract memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Solicitation #EV00000803 with Exhibits, Attachment A;
 - 2.2. General Terms, Attachment B;
 - 2.3. Reserved, Attachment C;
 - 2.4. Information Technology terms, Attachment D; and
 - 2.5. Pricing, Attachment E-1.
3. The parties additionally agree:
 - 3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
 - 3.2. All representations made by Supplier in response to the Solicitation regarding specifications and requirements are incorporated herein by reference into this Contract.
 - 3.3. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State

or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

4. Payment obligations rest solely with the Oklahoma Water Resources Board

Please send invoices and billing inquiries to:

Oklahoma Water Resources Board
3800 N Classen Blvd, Ste. 100
Oklahoma City, Oklahoma 73118
United States

E-mail: AccountsPayable@owrb.ok.gov

5. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

SIGNATURES

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Contract and to bind their respective party thereto.

STATE OF OKLAHOMA
by and through the OKLAHOMA WATER
RESOURCES BOARD

KISTERS NORTH AMERICA

By:

By: Matt Ables
Matt Ables (Nov 12, 2025 14:00:15 CST)

Name: Thomas A. Gorman

Name: Matt Ables

Title: Chairman

Title: Manager - KNA

Date:

Date: Nov 12, 2025

Secretary

By:

Name: Suzanne Landess

Title:

Date:

The Chief Information Officer is signing solely to approve the Contract pursuant to 62 O.S., § 34.11.1 concerning procurement of Information Technology and/or Telecommunications.

By:

Name: Dan Cronin

Title: Chief Information Officer/C

Date:

Attachment A

Agency Solicitations

Solicitation No. EV00000803

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded on behalf of the Oklahoma Water Resources Board by and through the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract document.

I. PURPOSE

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses on behalf of the Oklahoma Water Resources Board from potential Suppliers to provide a contract for the purchase of software for the Water Division for a continuous monitoring database system for its monitoring programs including specific requirements for data formats, APIs, and API authentications as dictated by OWRB's customer requirements. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.¹

The Contract is awarded on behalf of Oklahoma Water Resources Board which intends to purchase the software with installation on State servers, with capital costs upfront, followed by annual maintenance and support costs. A State server suitable for the deployment of the chosen system will be developed alongside this bid process.

There are strict timelines for the purchase, installation, configuration, and migration of historical datasets. State server resources will be developed for this but may not be fully developed by the deadline needed.

If state servers are not fully developed by the required time, additional services need to be provided including the initial deployment of the database on cloud services, cloud-hosting, and redeployment onto State servers once those resources are available. Any hosting services presented must be able to pass security review requirements within the allotted timeframe and be presented as a monthly cost.

1. Contract Term and Renewal Options:

- 1.1. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four (4) one-year options to renew the Contract.

¹ 74 O.S. 85.5(G)(3)

2. Solicitation Criterion:

2.1. The Bid will be evaluated using a best value criterion, based on the following:

- 2.1.1. Price
- 2.1.2. Ability to meet mandatory requirements in Exhibit 02: Mandatory Requirements
- 2.1.3. Ability to meet specifications in Exhibit 06: Specifications Response Worksheet
- 2.1.4. Past performance

3. Scope and Description:

3.1. The Bid Response shall show the ability of the Bidder to meet or exceed the mandatory specifications described in Exhibit 02: Mandatory Requirements.

4. Pricing

- 4.1. Pricing shall be proposed as a single total firm, fixed cost and include all information concerning fees, other costs, and any other information relevant to the total cost as seen in Exhibit 03: Pricing.
- 4.2. Value-added products and/or services within scope of the Acquisition may be included in the Bid.

5. Executive Summary and Company Information are on Exhibit 01: Executive Summary and Company Information.

6. The response to pricing shall be proposed using Exhibit 03: Pricing.

7. Value-added products and/or services within scope of the Acquisition are to be included in Exhibit 03: Pricing.

8. Business References are to be on Exhibit 04: Bidder Reference Worksheet.

9. Third-party vendor information is included on Exhibit 05: Third Party Supplier Information.

Request for Proposals for
Solicitation Number EV00000803
Bidder Name: _____

Section Two: Executive Summary and Company Information EXHIBIT 01: OFFEROR RESPONSE WORKSHEET		
Offeror must provide complete and succinct responses to each item below. Insert your responses into this worksheet directly into the yellow boxes. If your response does not fit into the boxes below a clearly labeled response (Example: 7.2.etc). will be considered. Offeror should provide all information necessary to demonstrate Offeror’s ability to meet the requirements of this RFP and the RFP’s Scope of Work. Responses to the below questions in this exhibit are mandatory and will be evaluated. Failure to respond to any question may result in your proposal being deemed nonresponsive.		
Any bidder responses left blank to any of the below requirements will not proceed further in the evaluation phase.		
	Section Two: Executive Summary and Company Information	
Bidders Instructions		Record Responses Below
7.2	Bidder marketing information, general company information and other similar resources the Bidder wishes to provide	
7.2.1	Provide the length of time the Bidder has been in business	
7.2.2	Insert a brief description of the company	
7.2.3	Indicate Company size and organization structure (an Organizational chart is recommended)	
7.2.4	The number of years the Bidder has been providing products and/or services of the type requested (must be at least 36 months)	
7.2.5	Describe the core competency of the company	
7.2.6	Estimated Number of clients	
7.2.7	Average client size (i.e., employee count)	

EXHIBIT 2
MANDATORY REQUIREMENTS
EV#00000803

Demonstrations: The top candidates will be invited to deliver Final Presentations via Teams; date TBD.

This bid shall be scored as best value. All solicitation criteria are needed for the system's successful deployment and are listed below. Any bid not meeting these specifications will not be scored. Unless otherwise stated, bids meeting these criteria will be scored based on the suitability of system, ease of use, and cost for: software purchase, installation, deployment and maintenance. Demonstration of various system components will be required and then graded accordingly.

System Requirements

For ease of review and compliance, requirements have been broken into subsections. All requirements are mandatory, and bidders must demonstrate how they meet the requirements. Bidders must submit the Specifications Response Worksheet, which reflects the below requirements.

Core Database Requirements

- Off-the-shelf configurable database with no development or customization required for installation and deployment.
- Provide five (5) concurrent licenses for the database (and whole system) with no less than 50 named users and the ability to designate Administrator (Admin) accounts.
- Ability to store raw and corrected datasets for each time-series.
- Addition of new parameters, units, stations, metadata attributes, and data types can be done directly through the database by designated OWRB staff and do not require database structure modification or support from the software provider.
- Supports Water One-Flow Service, Sensor Observation Services 1 and 2, Web Mapping Services, Web Feature Services, OGC, and CUAHSI.

EXHIBIT 2

MANDATORY REQUIREMENTS

- Preferably an ESRI Partner, and integrates with ArcMap, ESRI Online, and other ESRI products and services directly through Web Services or an ArcGIS Extension.

Data Review, Editing, and Validation

- A user configurable tool to validate all information in the system with rules for processing and quality assuring data.
- User interface with a visual graphing component that enables efficient review and editing of data at a point-to-point level and across a specific time period.
- Capable of setting gap tolerance for a particular data stream.
- Ability to efficiently perform drift, offset, gap filling, and other industry standard correction types, with full audit trails tied to user accounts.

Incoming Data

- Manual input data compatibility: WML, WML2, JSON, DataJSON, ESRI-JSON, ASCII, CSV, XLSX, KML, ESRI Layer Pack, ZIP, JPG, PNG, RASTER, and HTML.
- Support automated input from authenticated FTP, SFTP and API sources.
- Provision of an FTP site to facilitate data transfers that require external processing.

Data Outputs

- Data export options: WML, WML2, JSON, DataJSON, ESRI-JSON, ASCII, CSV, XLSX, KML, ESRI Layer Pack, ZIP, JPG, PNG, RASTER, and HTML.
- Outgoing API should provide a completely unauthenticated option, not requiring any form of login, and also provide data in JSON and XML formats to meet external customer requirements. If this is not provided, a viable alternative must be provided to enable efficient transfer of data to the National Groundwater Monitoring Network. Determination of viability will be at the discretion of OWRB.
- OGC compliant Web Services.
- Ability to publish or unpublish data with publication status controlling data availability to outgoing APIs.

EXHIBIT 2
MANDATORY REQUIREMENTS
Rating Curve Tools

- Must have a visual rating curve development tool.
- Ability to apply time specific shifts.
- Ability to add shifts and break points in the rating.
- Rating curve manipulation should be graphical.
- Ability to overlay field measurements on rating curve.
- Ability to remove/turn off rating points.
- Must have calibration and error stats.
- Ability to view rating curve in a linear or logarithmic view.
- Ability to have multiple rating curves per site.
- Apply time periods to multiple rating curves per site.
- Applied rating curves must be able to generate a calculated, or derived, discharge dataset in real-time.

Any of these requirements may be met by the core system or by additional modules. All required system components, such as additional modules, need to be described in the bid response, included in the cost form, and as a separate line item.

Installation and Configuration

- Must work with State IT to successfully deploy complete data systems on State equipment.
- Coordinate with State IT, either remotely or in person, to ensure OWRB staff are successfully able to access and operate system.
- Setup user accounts, designate appropriate system roles, and assign appropriate permissions.
- Completely migrate all data from cloud-hosted instance of Aquatic Informatics' Aquarius Time-Series System, into new system. Clear instructions to OWRB on information and data formats needed should be provided as part of bidding process.

EXHIBIT 2

MANDATORY REQUIREMENTS

- Provide in-person training on the new data system to OWRB admin and user staff.
- Assist OWRB staff in establishing new data flows.

Provisional Additional Services

- If State servers are not able to be completed on time, must be able to deploy the data system on cloud provider, or a similar service, provided by the supplier.
- Host the data system until State resources are completed and ready for deployment. This will be assessed on a monthly basis. Timeline for deployment to State servers and cutoff of supplier cloud-hosting will be determined by OWRB in coordination with the supplier.

Timelines

In order to meet necessary timelines the supplier must complete:

- Installation, configuration, and migration 10 days from signed agreement.
- Conduct training and workshop 15-20 days from signed agreement.

Process is expected to be completed by December 19, 2025. OWRB reserves the right to extend these dates at OWRB's discretion.

Support

OWRB will require an annual support agreement to provide user support, system maintenance, and assistance in system update publication.

Pricing and Increases for Future Fiscal Years

Any additional modules out of the core system, which are required to meet the above listed requirements, must have a: written description, possible demonstration, and additional line with cost in the pricing sheet.

As part of bid and pricing, each potential supplier must coordinate with OWRB and State IT staff to facilitate security and suitability reviews of systems in order to acquire an Authority to Operate (ATO). This shall be no additional cost, outside of what is included in the bid.

EXHIBIT 2

MANDATORY REQUIREMENTS

Expected pricing for years 2-5 for continuing maintenance and support must be indicated.

Exhibit 3 (Please Bid on the Following)

Reminder: Add extra lines as needed. Additional modules, or components, need to be included as separate line items

Item Number	Description	Notes	Cost
1	Software (including at least 5 concurrent user licenses, and at least 1 with admin abilities)		
1.1	(Example additional line for required module, or other service)	Reminder: any additional modules out of the core system need a written description, and possible demonstration, outside this form. Cost for additional modules must be included here.	
2	Initial Software Installation and Configuration		
3	FTP Provision		
4	Data Migration		
5	General Database Setup and Customization		
6	User Training and Workshop		
7	Year 2 Maintenance and Support (OWRB Hosted)		
8	Year 3 Maintenance and Support (OWRB Hosted)		
9	Year 4 Maintenance and Support (OWRB Hosted)		
10	Year 5 Maintenance and Support (OWRB Hosted)		
Total			\$0.00
Provisional Potential Items			
11	Cloud-Hosting Year 1	Hosting should be presented as a per month cost and also a yearly cost. Line items included below	
11.1	Cloud-Hosting per month Cost		
11.2	Cloud-Hosting per year Cost		
12	Reinstallation, Configuration, and Migration to State Servers		

Exhibit 4 Reference Sheet

EV00000803

Company Name: _____

Contact Email: _____

Company Contact Name: _____

Contact Phone: _____

Project Details

Project Description:

Project Date: _____

Project Budget: _____

Current Status: _____

1. What were you hoping to achieve by hiring the vendor's services? Do you feel you achieved them?
2. How long did it take to complete setup of the product? Was this process as expected? If there were delays, were they in part due to the vendor?
3. Do you use a locally hosted instance of the system or do you use an instance hosted by the vendor? Are you satisfied with that decision?
4. Are you satisfied with the product? If not, what has been the most significant issue?
5. Did your project involve the migration of continuous data from Aquatic Informatic's Aquarius Time-Series Database?
 - a. If so, did the process go smoothly and within the expected time?
 - b. How was the export from Aquarius achieved?
 - c. Are there any problem areas we should watch for?

6. Did the vendor exceed your expectations? How would you rate the overall service of the vendor?
7. How well did the vendor understand your needs?
8. Would you hire this vendor again?

7.11 Section Eleven: Third Party Vendor Information EXHIBIT 5: 3rd Party Supplier Information				
Instructions -If a third-party vendor or subcontractor is included as part of a submitted Bid, the following information is required				
Third-party vendor or subcontractor name:	3rd Party Company Summary	Relationship to Bidder	Clients for which the two entities have worked together	Products and/or services proposed to be provided by the third-party vendor and how those products and/or services interface with the Bidder's solution
Name:				
Name:				
Name:				
Name:				
Name:				

SPECIFICATIONS RESPONSE WORKSHEET

EV#00000803

VENDOR NAME:

INSTRUCTIONS:

Complete in detail the Specifications Response Worksheet. If any bidder does not meet a mandatory requirement, the bid is non-responsive.

SYSTEM REQUIREMENTS:

For ease of review and compliance, requirements have been broken into subsections. All requirements are mandatory, and bidders *must* demonstrate how they meet the requirements with detailed comments.

	MEETS SPECIFICATION	YES	NO	COMMENTS
	Core Database Requirements			
	Off-the-shelf configurable database with no development or customization required for installation and deployment. 1			
	Provide five (5) concurrent licenses for the database (and whole system) with no less than 50 named users and the ability to designate Administrator (Admin) accounts. 2			
	Ability to store raw and corrected datasets for each time-series. 3			
	Addition of new parameters, units, stations, metadata attributes, and data types can be done directly through the database by designated OWRB staff and do not require database structure modification or support from the software provider. 4			
	Supports Water One-Flow Service, Sensor Observation Services 1 and 2, Web Mapping Services, Web Feature Services, OGC, and CUAHSI. 5			
	Preferably an ESRI Partner, and integrates with ArcMap, ESRI Online, and other ESRI products and services directly through Web Services or an ArcGIS Extension. 6			
	Data Review, Editing and Validation			
	A user configurable tool to validate all information in the system with rules for processing and quality assuring data. 1			
	User interface with a visual graphing component that enables efficient review and editing of data at a point-to-point level and across a specific time period. 2			
	Capable of setting gap tolerance for a particular data stream. 3			
	Ability to efficiently perform drift, offset, gap filling, and other industry standard correction types, with full audit trails tied to user accounts. 4			
	Incoming Data			
	Manual input data compatibility: WML, WML2, JSON, DataJSON, ESRI-JSON, ASCII, CSV, XLSX, KML, ESRI Layer Pack, ZIP, JPG, PNG, RASTER, and HTML. 1			

2	Support automated input from authenticated FTP, SFTP and API sources.			
3	Provision of an FTP site to facilitate data transfers that require external processing.			
	Data Outputs			
1	Data export options: WML, WML2, JSON, DataJSON, ESRI-JSON, ASCII, CSV, XLSX, KML, ESRI Layer Pack, ZIP, JPG, PNG, RASTER, and HTML.			
2	Outgoing API should provide a completely unauthenticated option, not requiring any form of login, and also provide data in JSON and XML formats to meet external customer requirements. If this is not provided, a viable alternative must be provided to enable efficient transfer of data to the National Groundwater Monitoring Network. Determination of viability will be at the discretion of OWRB.			
3	OGC compliant Web Services.			
4	Ability to publish or unpublish data with publication status controlling data availability to outgoing APIs.			
	Rating Curve Tools			
1	Must have a visual rating curve development tool.			
2	Ability to apply time specific shifts.			
3	Ability to add shifts and break points in the rating.			
4	Rating curve manipulation should be graphical.			
5	Ability to overlay field measurements on rating curve.			
6	Ability to remove/turn off rating points.			
7	Must have calibration and error stats.			

8	Ability to view rating curve in a linear or logarithmic view.			
9	Ability to have multiple rating curves per site.			
10	Apply time periods to multiple rating curves per site.			
11	Applied rating curves must be able to generate a calculated, or derived, discharge dataset in real-time.			
	Installation and Configuration			
1	Must work with State IT to successfully deploy complete data systems on State equipment.			
2	Coordinate with State IT, either remotely or in person, to ensure OWRB staff are successfully able to access and operate system.			
3	Setup user accounts, designate appropriate system roles, and assign appropriate permissions.			
4	Completely migrate all data from Cloud-hosted instance of Aquatic Informatic's Aquarius Time-Series System, into new system. Clear instructions to OWRB on information and data formats needed should be provided as part of bidding process.			
5	Provide in-person training on the new data system to OWRB admin and user staff.			
6	Assist OWRB staff in establishing new data flows.			
	Provisional Additional Services			
1	If State servers are not able to be completed on time, must be able to deploy the data system on Cloud Provider, or a simliar service, provided by the supplier.			
2	Host the data system until State resources are completed and ready for deployment. This will be assessed on a monthly basis. Timeline for deployment to State servers and cutoff of supplier Cloud-hosting will be determined by OWRB in coordination wi the supplier.			
	Timelines			
1	The supplier must complete installation, configuration, and migration 10 days from signed agreement.			

	The supplier must conduct training and workshop 15-20 days from signed agreement. 2			
	Support			
	OWRB will require an annual support agreement to provide user support, 1 system maintenance, and assistance in system update publication.			
	Any additional modules out of the core system, which are required to meet 2 the above listed requirements, must have a: written description, possible demonstration, and additional line with cost in the pricing sheet.			
	As part of bid and pricing, each potential supplier must coordinate with 3 OWRB and State IT staff to facilitate security and suitability reviews of systems in order to acquire an Authority to Operate (ATO). This shall be no additional cost, outside of what is included in the bid.			
	Expected pricing for years 2-5 for continuing maintenance and support must 4 be indicated.			

ATTACHMENT B

STATE OF OKLAHOMA GENERAL TERMS

This State of Oklahoma General Terms ("General Terms") is a Contract document in connection with the Contract awarded by the State of Oklahoma by and through the Office of Management and Enterprise Services.

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1** Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2** At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3** If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4** The State may extend the Contract for ninety (90) days beyond a final renewal term at the Contract compensation rate for the extended period. If the State exercises such option to extend ninety (90) days, the State shall notify the Supplier in writing prior to Contract end date. The State, at its sole option and to the extent allowable by law, may choose to exercise subsequent ninety (90) day extensions at the Contract

pricing rate, to facilitate the finalization of related terms and conditions of a new award or as needed for transition to a new Supplier.

- 1.5** Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness and Order of Priority

- 2.1** Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until the Contract is effective.

- 2.2** Contract documents shall be read to be consistent and complementary. Any conflict among the Contract documents shall be resolved by giving priority to Contract documents in the following order of precedence:

- A.** any Amendment;
- B.** terms contained in this Contract document
- C.** any Contract-specific State terms including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract;
- D.** any applicable Solicitation;
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation or applicable law;
- F.** any statement of work, work order, or other mutually agreed Contract documents.

- 2.3** If there is a conflict between the terms contained in this Contract document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Amendment.

- 2.4** Any Contract document shall be legibly written in ink or typed. All Contract

transactions, and any Contract document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 Modification of Contract Terms and Contract documents

- 3.1** The Contract may only be modified, amended, or expanded by an Amendment. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2** Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a Customer other than OMES in connection with an Acquisition.
- 3.3** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4** Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no Contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State. If Supplier is acting as a reseller, any third-party terms provided are also subject to the foregoing.
- 3.5** To the extent any term or condition in any Contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

4 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 4.1 **Acquisition** means items, products, materials, supplies, services and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 4.2 **Amendment** means a mutually executed, written modification to a Contract document.
- 4.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 4.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 4.5 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 4.6 **Customer** means the governmental entity receiving goods or services contemplated by the Contract.
- 4.7 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 4.8 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 4.9 **Governmental Entity** means any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

- 4.10 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees, and designees thereof.
- 4.11 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 4.12 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 4.13 OAC** means the Oklahoma Administrative Code.
- 4.14 OMES** means the Office of Management and Enterprise Services.
- 4.15 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 4.16 State** means the government of the state of Oklahoma, its employees and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 4.17 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 4.18 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a State agency subject to the Central Purchasing Act.
- 4.19 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 4.20 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract document issued pursuant to this Contract,

including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

5 Pricing

- 5.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 5.2** Pursuant to 74 O. S. § 85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 5.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees. All product deliveries will be free on-board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer

requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.

6 Ordering, Inspection, and Acceptance

6.1 Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.

6.2 Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service. Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

6.3 Supplier shall deliver products and services on or before the required date specified in a Contract document. Failure to deliver timely may result in liquidated damages

as set forth in the applicable Contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.

- 6.4** Product warranty and return policies and terms provided under any Contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

7 Invoices and Payment

- 7.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or services rendered and accepted.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a State agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.

- F. Supplier shall have no right of setoff.
- G. Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.
- H. The Supplier shall accept payment by Purchase Card as allowed by Oklahoma law.

8 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

8.1 As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better. Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a notice of cancellation and includes the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A. Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law;
- B. Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than 2,000,000 per occurrence;
- C. If the Supplier will access, process, or store state data, then Security and Privacy Liability insurance, including coverage for failure to protect

confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with a limit of not less than \$5,000,000 per occurrence; and

D. Additional coverage required in writing in connection with a particular Acquisition.

8.2 Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or Supplier's employees, agents and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, Supplier's employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

8.3 Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

9 Compliance With Applicable Laws

9.1 As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.
- B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans;
- C.** Prospective participant requirements set at 2 C.F.R. part 376 in connection with Debarment, Suspension and other responsibility matters;
- D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, and Americans with Disabilities Act of 1990;
- E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93;
- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein);
- G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity;
- H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. § 1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. § 1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at e-verify.gov.

- I. Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
 - J. Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.
- 9.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at e-verify.gov. Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 9.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 9.4** In addition to compliance under subsection 9.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 9.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 9.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.

- 9.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 9.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.
- 9.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 9.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non- electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

10 Audits and Records Clause

- 10.1** As used in this clause and pursuant to 67 O.S. §203, "record" includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form. Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 10.2** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of

an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.

- 10.3** Pursuant to 74 O.S. § 85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

11 Confidentiality

- 11.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 11.2** Supplier shall establish, maintain and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 11.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it

or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonably should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of at least three (3) years, all notice-related costs and toll freetelephone call center services.

- 11.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 11.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 11.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.
- 11.7** Customer may be provided access to Supplier's Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier

acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this Contract.

- 11.8** Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to the Supplier.

12 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees, agents and subcontractors are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

13 Assignment and Permitted Subcontractors

- 13.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 13.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers

prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

13.3 If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.

13.4 All payments under the Contract shall be made directly to the Supplier, except as provided in 13.1 above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.

13.5 Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

14 Background Checks and Criminal History Investigations

Prior to the commencement of any services, background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required and, if so, the required information shall be provided to the State in a timely manner. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The

costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or service.

15 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

16 Indemnification

16.1 State Shall Not Indemnify

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State

pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

16.2 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

16.3 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or

(d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

16.4 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

16.5 Coordination of Defense

In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

16.6 Limitation of Liability

A. With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.

- B. Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C. The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

17 Termination for Funding Insufficiency

- 17.1 Notwithstanding anything to the contrary in any Contract document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.
- 17.2 Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded.

- 17.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

18 Termination for Cause

- 18.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 18.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 18.3** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR), marketing or communication services. The State may immediately terminate the Contract with no more than 10-days notice under this section.
- 18.4** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or

associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

- 18.5** The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules or regulations; without limitation, OAC 260:115-9-1 is an example.

19 Termination for Convenience

- 19.1** The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.
- 19.2** Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies

provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

20 Suspension of Supplier

20.1 Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

20.2 Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

20.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such a resumption will occur.

21 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written

notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

22 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

23 Force Majeure

23.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

23.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

23.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself

by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

24 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

25 Notices

All notices, approvals or requests allowed or required by the terms of any Contract document shall be in writing, reference the Contract with specificity and deemed delivered upon receipt or upon refusal of the intended party to accept receipt of the notice. In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the physical address set forth below. Notice information may be updated in writing to the other party as necessary. Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall not be delivered solely via e-mail.

If Sent to the State:

State Purchasing Director

2401 N. Lincoln Blvd., Second Floor Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

OMES Central Purchasing, Attn: Deputy General Counsel, 2401 N. Lincoln Blvd., Second Floor Oklahoma City, OK 73105

26 Miscellaneous

26.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract documents, in the singular or in the aggregate, shall be governed by the laws of the State without regard to application of choice of law principles. Pursuant to 74 O.S. § 85.7(F), where federal granted funds

are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure benefit of such federal funds to the State. Venue for any action, claim, dispute, or litigation relating in any way to the Contract documents, shall be in Oklahoma County, Oklahoma. The State expressly declines any terms that minimize its rights under Oklahoma law, including but not limited to, Statutes of Limitations.

26.2 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

26.3 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

26.4 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

26.5 Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. § 24A-1 et seq. Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested to be held confidential by a Bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) pricing provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

26.6 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

26.7 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract and each party is free to enter into similar agreements with others.

- C. The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D. The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E. Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

26.8 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

26.9 Severability

If any provision of a Contract document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

26.10 Section Headings

The headings used in any Contract document are for convenience only and do not constitute terms of the Contract.

26.11 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State.

26.12 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

26.13 Entire Agreement

The Contract documents taken together as a whole constitute the entire agreement between the parties. No statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained in a Contract document shall be binding or valid. The Supplier's representations and certifications, including any completed electronically, are incorporated by reference into the Contract.

26.14 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its employee, agent, or another representative violated any federal, State or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

26.15 Import/Export Controls

Neither party will use, distribute, transfer or transmit any equipment, services, software or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

EV00000803 Database Software

Oklahoma Water Resources Board

Attachment C – Agency Terms

Intentionally Omitted

ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (“The Act” or “Act”), OMES- Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 DEFINITIONS

- 1.1 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier. Customer Data includes both Non-Public Data and Personal Data.
- 1.2 **Data Breach** means the unauthorized access or the reasonable suspicion of unauthorized access, by an unauthorized person that results in the use, destruction, loss, alteration, disclosure, or theft of Customer Data.
- 1.3 **Host** includes the terms Hosted or Hosting and means the accessing, processing or storing of Customer Data.
- 1.4 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.5 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.6 **Personal Data** means Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number,

account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.

- 1.7 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.8 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State. A Supplier with whom the State enters into an awarded Contract shall also be known as a Contractor.
- 1.9 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.10 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.

2 TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use; or,
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).
- 2.3** If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 COMPLIANCE AND ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

- 3.1** State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards (“Standards”) set forth at [Information and Communication Technology Accessibility Standards \(oklahoma.gov\)](https://oklahoma.gov/information-communication-technology-accessibility-standards). Supplier shall provide a Voluntary Product Accessibility Template (“VPAT”) describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 MEDIA OWNERSHIP (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the sole and exclusive property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 OFFSHORE SERVICES

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 COMPLIANCE WITH TECHNOLOGY POLICIES

- 6.1** The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

Supplier’s employees and subcontractors shall adhere to the applicable State IT

Standards, policies, procedures and architectures as set forth at <https://oklahoma.gov/omes/services/information-services.html> or as otherwise provided by the State.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

7 EMERGING TECHNOLOGIES

The State reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 EXTENSION RIGHT

In addition to extension rights of the State set forth in the Contract, the State Chief Information Officer reserves the right to extend any Contract at his or her sole option if the State Chief Information Officer determine such extension to be in the best interest of the State.

9 SOURCE CODE ESCROW

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or

9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 COMMERCIAL OFF THE SHELF SOFTWARE OR SUPPLIER TERMS

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement, including via a hyperlink or uniform resource locator address to a site on the internet, that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail. Further, no such terms and conditions or clauses shall expand the State's or Customer's liability or reduce the rights of Customer or the State.

11 OWNERSHIP RIGHTS

Any software developed, modified, or customized by the Supplier in accordance with a mutually negotiated statement of work pursuant to this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. The parties mutually agree the State as a licensee of the Supplier does not make a claim of ownership to the existing Intellectual Property of Supplier. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State when made in accordance with a mutually negotiated statement of work pursuant to this Contract. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 INTELLECTUAL PROPERTY OWNERSHIP TO WORK PRODUCT

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As to the Intellectual Property Rights to Work Product between Supplier and Customer, Customer shall be the exclusive owner and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is effectively transferred, granted, conveyed, assigned, and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the WorkProduct and (ii) authorize others to do any or all of the

foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

- 12.9** Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.
- 12.10** To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.
- 12.11** If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 HOSTING SERVICES

A Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier Hosting Customer Data or providing products or services pursuant to an Acquisition, contributes to, or directly causes a Data Breach or a Security Incident. Likewise, Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier's affiliate or subcontractor contributes to, or directly causes a Data Breach or a Security Incident.

14 CHANGE MANAGEMENT

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon renewal or if future bids submitted by Supplier are evaluated by the State.

15 SERVICE LEVEL DEFICIENCY

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 OWNERSHIP OF IT AND TELECOMMUNICATION ASSETS

Notwithstanding any other provision in the Contract and pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, all information technology and telecommunication assets and contracts on behalf of appropriated agencies of the State belong to OMES-IS. OMES-IS allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier.

17 CUSTOMER DATA

17.1 The parties agree to the following provisions in connection with any Customer Data accessed, processed transmitted, or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.

17.2 Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of rights, title, and interest in Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

17.3 Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

17.4 Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at

the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

18 DATA SECURITY

- 18.1** Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- 18.2** All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data. All Personal Data and Non-Public Data shall be subject to controlled access. Any stipulation of responsibilities shall be included in a Statement of Work and will identify specific roles and responsibilities.
- 18.3** Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
- 18.4** At no time shall any Customer Data or processes – that either belong to or are intended for the use of the State - be copied, disclosed, or retained by Supplier or any party related to Supplier for subsequent use in any transaction that does not include the State unless otherwise agreed to by the State.
- 18.5** Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
- 18.6** Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

- 18.7** Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- 18.8** Any remedies provided are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

19 SECURITY ASSESSMENT

- 19.1** The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum-security standards at time the Contract was executed. Failure to maintain the State's minimum-security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
- 19.2** Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

20 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

- 20.1** Supplier shall inform Customer of any Security Incident or Data Breach.
- 20.2** Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
- 20.3** Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice

period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).

- 20.4** Supplier shall maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- 20.5** If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

21 DATA BREACH NOTIFICATION AND RESPONSIBILITIES

This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

- 21.1** Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 21.2** Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
- 21.3** If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

22 SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants the following:

- 22.1** The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
- 22.2** Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect

its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

22.3 The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.

22.4 Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any “copy-protected” devices, or any other harmful or disruptive program.

23 INDEMNITY

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys’ fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier’s breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract document or these Information Technology Terms infringes that party’s patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier’s expense and pay all related costs, damages, and attorney’s fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third-party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section, but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier’s opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

24 TERMINATION, EXPIRATION AND SUSPENSION OF SERVICE

24.1 During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

24.2 In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
- b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
- c. a combination of the two immediately preceding options.

24.3 Supplier shall not take any action to intentionally erase any Customer Data for a period of:

- a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
- b. 30 days after the effective date of termination, if the termination is for convenience; or
- c. 60 days after the effective date of termination if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

24.4 The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

24.5 Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

25 GENERAL INFORMATION SECURITY REQUIREMENTS

25.1 No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.

25.2 Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.

25.3 Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.

- 25.4** Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

26 HIPAA REQUIREMENTS

- 26.1** Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).
- 26.2** If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.
- 26.3** Business Associate Terms Definitions:
- a. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
 - b. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
 - c. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103.
 - d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
 - e. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.

26.4 Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:

- a. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
- d. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
- e. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- f. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- g. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- h. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- i. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- j. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without

unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;

- k. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- l. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- m. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- n. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- o. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and

- p. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

26.5 Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- a. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
- b. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. disclose PHI to report violations of law to appropriate federal and state authorities; or
- d. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- e. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- f. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § 164.502(d)].

26.6 Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

- c. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- d. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
- e. Covered Entity shall provide the minimum necessary PHI to Business Associate.

26.7 Term and Termination:

- a. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - i. retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - iii. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted Uses and Disclosures By Business Associate” that applied prior to termination; and
 - v. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- b. All other applicable obligations of Business Associate under this Agreement shall survive termination.
- c. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such

time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)-(iii) & 164.314 (a)(2)(i)(C).

26.8 Miscellaneous Provisions:

- a. No Third-Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- b. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- c. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- d. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- e. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- f. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- g. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

27 **42 C.F.R. PART 2 RELATED PROVISIONS**

- 27.1** Confidentiality of Information. Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure

compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:

- 27.2** Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
- 27.3** Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
- 27.4** Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
- 27.5** Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).
- 27.6** Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- 27.7** Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- 27.8** Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- 27.9** Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the

State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;

- 27.10** Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.

28 DATA SECURITY

The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.

- 28.1** Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.
- 28.2** Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.
- 28.3** Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

29 FEDERAL TAX INFORMATION REQUIREMENTS IRS PUBLICATION 1075

- 29.1** PERFORMANCE: If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:
- 29.2** All work will be performed under the supervision of the State of Oklahoma.
- 29.3** The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.
- 29.4** FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

- 29.5** FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- 29.6** The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 29.7** Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- 29.8** All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 29.9** No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- 29.10** Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- 29.11** To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- 29.12** In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- 29.13** For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- 29.14** The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

30 CRIMINAL/CIVIL SANCTIONS

- 30.1** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- 30.2** Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- 30.3** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 30.4** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 30.5** Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

31 INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

32 SSA REQUIREMENTS

- 32.1** PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 32.2** All work will be done under the supervision of the State of Oklahoma.
- 32.3** Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- 32.4** All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 32.5** No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- 32.6** The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- 32.7** Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- 32.8** Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.

- 32.9** Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- 32.10** The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- 32.11** Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- 32.12** SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- 32.13** SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.
- 32.14** If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
- 32.15** In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
- 32.16** The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.

33 CRIMINAL/CIVIL SANCTIONS

The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.

33.1 Civil Remedies

- a. In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
- b. actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
- c. the costs of the action together with reasonable attorney fees as determined by the court.
- d. An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

33.2 Criminal Penalties

- a. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

- b. Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

34 CHILD SUPPORT FPLS REQUIREMENTS

- 34.1** Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.
- 34.2** This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- 34.3** This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

35 FERPA REQUIREMENTS

- 35.1** If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

36 CJIS REQUIREMENTS

- 36.1** INTRODUCTION - This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).
- 36.2** The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.
- 36.3** CJIS SECURITY POLICY REQUIREMENTS GENERALLY - The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix "A" to said Security Policy, "access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI."
- 36.4** DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION- The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.
- 36.5** This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data

transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

36.6 In order to have access to CJI or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

- a. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
- b. the general policies in §4;
- c. the Policies in §5;
- d. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
- e. the Supplemental Guidance in Appendices “J”.

36.7 This FBI Security Policy is located and may be downloaded at:

- a. https://le.fbi.gov/file-repository/cjis_security_policy_v6-0_20241227.pdf/view
- b. By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

37 NOTICES

37.1 In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

OMES Deputy General Counsel
2401 North Lincoln Blvd.
Oklahoma City, Oklahoma 73105

Exhibit 3 (Please Bid on the Following)

Reminder: Add extra lines as needed. Additional modules, or components, need to be included as separate line items

Item Number	Description	Notes	Cost
1	Software (incl at least 5 concurrent user licenses and at least 1 with admin abilities)	Cost includes a 60% discount for trade in of existing software licenses.	\$28,000.00
	Year 1 Maintenance and Support		\$17,000.00
1.1	N/A		
2	Initial Software Installation and Configuration		\$11,250.00
3	FTP Provision		\$0.00
4	Data Migration		\$28,000.00
5	General Database Setup and Customization		\$52,875.00
6	User Training and Workshop		\$6,750.00
7	Year 2 Maintenance and Support (OWRB Hosted)		\$17,510.00
8	Year 3 Maintenance and Support (OWRB Hosted)		\$18,035.30
9	Year 4 Maintenance and Support (OWRB Hosted)		\$18,576.36
10	Year 5 Maintenance and Support (OWRB Hosted)		\$19,133.63
Total			\$217,130.31
Provisional Potential Items			
11	Cloud-Hosting Year 1	Hosting should be presented as a per month cost and also a yearly cost. Line items included below	
11.1	Cloud-Hosting per month Cost		\$1,000.00 (temporary hosting)
11.2	Cloud-Hosting per year Cost		\$28,333.33 (long-term hosting)
12	Reinstallation, Configuration, and Migration to State Servers		\$2,250 (1 day)

AGENDA ITEM 3D(4)

AGREEMENT

WITH: Secretary of Energy and Environment

PURPOSE: Agreement between OWRB and the Office of the Secretary of Energy and Environment providing funding for the Water Quality Monitoring Program-Monitoring Initiative goals.

AMOUNT: Not to exceed \$168,775.00

TERM: October 1, 2025 through December 31, 2026

AGREEMENT
for OKLAHOMA'S FY26
SECTION 106 WATER QUALITY MONITORING PROGRAM – MONITORING INITIATIVE
CA# I-02F94901
between OFFICE OF THE SECRETARY OF ENERGY & ENVIRONMENT
and
OKLAHOMA WATER RESOURCES BOARD

This Agreement for FY26 SECTION 106 WATER POLLUTION CONTROL PROGRAM – MONITORING INITIATIVE ("Agreement"), for convenience of reference dated as of the _____ day of _____, 2025, by and between the OKLAHOMA WATER RESOURCES BOARD ("AGENCY"), an agency of the State of Oklahoma, and the OFFICE OF THE SECRETARY OF ENERGY & ENVIRONMENT ("OSEE"), an office within the Cabinet of the Governor of the State of Oklahoma.

WITNESSETH:

WHEREAS, OSEE has been given certain duties and responsibilities by law (See 27A O.S. § 1-2-101) pertaining to receipt and disbursement of certain funds for state environmental agencies and coordination of pollution control activities of state agencies; and

WHEREAS, the U. S. Environmental Protection Agency ("EPA") will make available \$168,775.00 to OSEE to be used for the FY26 WATER QUALITY MONITORING PROGRAM – MONITORING INITIATIVE pursuant to Section 106 of the Federal Water Pollution Control Act as amended (commonly known as the Clean Water Act) and a Cooperative Agreement bearing an Assistance ID No. I-02F94901 (hereinafter referred to as the "Cooperative Agreement"); and

WHEREAS, the terms of the Cooperative Agreement require OSEE to make \$168,775.00 available to the AGENCY in accordance with the terms of this Agreement.

NOW THEREFORE, in consideration of the foregoing premises, the AGENCY and OSEE mutually agree as follows:

1. DUTIES TO BE PERFORMED BY AGENCY:

a. AGENCY shall perform the work and deliver the products as provided in this Agreement and "Appendix" attached hereto and incorporated by reference as a part of this Agreement. The terms and conditions of the Cooperative Agreement as it may be amended, which are applicable to OSEE as the grant recipient, shall likewise be applicable to AGENCY, and AGENCY shall perform in accordance with such terms and conditions as well as in accordance with all EPA and Federal regulations applicable to Section 106 grant recipients.

b. On or before the date for such task identified in the workplan included in the Appendix hereof, AGENCY shall where required prepare and submit to OSEE and EPA for review and approval a draft Quality Assurance Project Plan ("QAPP") that describes how AGENCY will perform the environmental measurements or data generation described in the Appendix hereof. AGENCY shall make any changes in the draft QAPP specified by OSEE and EPA and shall obtain OSEE and EPA approval of the QAPP before commencing the environmental measurements or data generation. All environmental measurements or data generation shall be performed by AGENCY in accordance with the EPA-approved QAPP.

c. AGENCY shall provide to OSEE semi-annual reports of AGENCY's performance under this Agreement. The reports shall be in electronic format and shall include one printed copy thereof. Semi-annual reports shall be provided on or before January 15 and July 15 of each year

d. AGENCY shall provide to OSEE for review and approval an electronic draft of each deliverable required by this Agreement. AGENCY shall make any changes in the draft deliverable specified by OSEE before providing two (2) copies of the deliverable in final form to OSEE.

e. In accordance with 2 CFR § 1500.9, the AGENCY payment of salary (excluding overhead) to individual consultants is limited to the maximum daily rate for a level 4 of the Executive Schedule.

f. On or before sixty (60) days after the end-date for such project identified in the workplan included in the Appendix hereof, AGENCY shall provide to OSEE final deliverables, and a financial report based upon information certified by AGENCY's financial officer.

g. AGENCY shall comply with the requirements set forth in Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6962). Regulations issued under RCRA Section 6002 apply, among other things, to any acquisition of an item where the purchase price exceeds \$10,000 or where the quantity of such items acquired in the course of the preceding fiscal year was \$10,000 or more. RCRA Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines development by EPA. These guidelines are listed in 40 CFR § 247.

h. AGENCY shall fully comply with Subpart C of 2 CFR Part 180 and 2 CFR Part 1532 entitled "Responsibilities of Participants Regarding Transactions (Doing Business with Other Persons)." AGENCY is responsibility for ensuring that any transaction as described in Subpart B of 2 CFR 180 and 2 CFR Part 1532 entitled "Covered Transactions," includes a term or condition requiring compliance with Subpart C. AGENCY acknowledges that failing to disclose the information as required at 2 CFR 180.335 may result in the delay or negation of this agreement.

i. The Chief Executive Officer of AGENCY shall ensure that no grant funds awarded under this agreement are used to engage in lobbying of the Federal Government or in litigation against the United States unless authorized under existing law. The AGENCY shall comply with Title 40 CFR Part 34, New Restrictions on Lobbying. AGENCY shall include the language of this provision in award documents for all subawards exceeding \$100,000 and require that subrecipients submit certification and disclosure forms accordingly.

j. AGENCY agrees to:

- 1) Establish all subaward agreements in writing;
- 2) Maintain responsibility for ensuring successful completion of the approved project;
- 3) Ensure that any subawards comply with the standards in Section 210(a) – (d) of OMB Circular A-133 and are not used to acquire commercial goods or services for the recipient;
- 4) Ensure that any subawards are awarded to eligible subrecipients and that proposed subaward costs are necessary, reasonable and allocable;
- 5) Ensure that any subawards to 501(c)(4) organizations do not involve lobbying activities;
- 6) Monitor the performance of the subawards and ensure that they comply with all

applicable regulations, statutes, and terms and conditions which flow down in the subaward;

- 7) Obtain approval from OSEE for any new subaward work that is not outlined in the approved workplan.

2. DUTIES TO BE PERFORMED BY OSEE:

a. If the Cooperative Agreement is amended during the period of this Agreement, OSEE shall provide to AGENCY one (1) copy of each such amendment within thirty (30) days after such amendment becomes effective.

b. OSEE shall review all deliverables submitted by AGENCY within thirty (30) days for acceptability under the terms of the Cooperative Agreement. Upon concurrence by OSEE, OSEE shall transmit the deliverable to EPA within ten (10) days.

3. OTHER AGREEMENTS OF THE PARTIES:

a. **PAYMENT.** For and in consideration of performance by the AGENCY, OSEE will pay the AGENCY a total amount not to exceed One-hundred-sixty-eight-thousand, seven-hundred seventy-five Dollars \$168,775.00 as such services are performed and as money is made available to OSEE by EPA. AGENCY shall submit to OSEE invoices in form and content mutually agreed upon by the parties on or before the 15th day of the month in which payment is desired. Invoices shall be submitted only for work that has already been performed and costs that have already been incurred by AGENCY. AGENCY shall submit such records or other evidence of performance as may be required by the OSEE for processing such invoices. Invoices that do not reference the correct Assistance ID Number and Project Number will be returned to AGENCY without payment. Payment will be withheld if documentation or evidence of performance is inadequate, if costs are incurred outside the scope and terms of the Cooperative Agreement, or if the terms and conditions of this Agreement or the Cooperative Agreement are not satisfied. At the discretion of OSEE, up to ten percent (10%) of the amount allocated to each workplan task subject to this Agreement may be withheld until the AGENCY completes its performance for such task and such performance is approved by the EPA project officer. Upon approval by OSEE of an invoice, OSEE shall process the invoice and pay AGENCY within thirty (30) days of receipt of funding from EPA.

b. **TERM OF AGREEMENT.** The provisions of this Agreement shall be effective for the period from **October 1, 2025, through December 31, 2026.**

c. **AMENDMENT.** Subject to and upon the mutual written consent and approval of both parties, this Agreement may be amended or modified at any time. Provided, if AGENCY desires any revision or modification of the Appendix hereof, including but not limited to the workplan or budget therein, then AGENCY shall give OSEE written notice as soon as the need is identified, and when possible, within sixty (60) days in advance of the proposed effective date thereof, and no such revision or modification shall be effective or authorized unless and until it is approved by EPA. Provided further, if AGENCY desires any extension of AGENCY's time to perform any portion of this Agreement, then AGENCY shall give OSEE written notice as soon as the need is identified, and when possible, within ninety (90) days in advance of the scheduled deadline for performance, and no extension shall be effective or authorized unless and until it is approved by EPA.

d. **CLOSEOUT OF PROJECTS.** All deliverables and final financial reports associated with the project shall be submitted by the AGENCY to OSEE on or before sixty (60) days after the end

date for the Cooperative Agreement. If final deliverables are not submitted within the sixty (60) days OSEE may disallow project costs directly related to the noncompliance and request reimbursement or void the agreement and seek repayment of part or all of the funds.

e. TERMINATION. This Agreement may be terminated upon thirty (30) days advance written notice of termination by either party to the other party.

f. AUDITS. Books, records, accounting procedures, or any other documents or practices of AGENCY relevant to this Agreement are subject to examination by OSEE and the State Auditor and Inspector. It is further understood and agreed that financial records, supporting documents, statistical records, and all other records pertinent to this Agreement shall be retained for a period of no less than three (3) years from the termination date of this Agreement. In accordance with OMB Circular A-133, AGENCY shall obtain a single audit if it expends \$500,000 or more a year in federal awards. The recipient shall submit a copy of the audit report to OSEE and:

Grants Team (6MD-RX)
U.S. Environmental Protection Agency
Region 6, WDAS
1201 Elm Street, Suite 500
Dallas, Texas 75270

g. PROHIBITION STATEMENT. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not engage in severe forms of trafficking in persons during the period of time that the award is in effect; procure a commercial sex act during the period of time that the award is in effect; or use forced labor in the performance of the award or subawards under the award.

h. DISPUTE RESOLUTION. In the event that a dispute between the parties as to the interpretation or performance of this Agreement occurs, if the dispute cannot be resolved by mutual agreement between the parties' representatives, then the dispute shall be submitted to the Secretary of Energy & Environment and the Executive Director of the AGENCY. If the dispute is not resolved by their mutual agreement, then the aggrieved party may resort to other remedies available.

i. AGREEMENT SUBJECT TO LAWS AND GRANT. The parties mutually agree and acknowledge that this Agreement is subject, in all respects, to the applicable laws of the State of Oklahoma. It is further agreed and acknowledged that payments to AGENCY by OSEE are subject to and contingent upon OSEE receiving the funds available under the Cooperative Agreement, for this purpose, and that said federal funds are the sole and exclusive funding source for payments to be made hereunder.

Appendix

Cooperative AGREEMENT CA# I-02F94901

USEPA Cooperative Agreement CA# I-02F94901.....	Tab 1
“Detail of Other and Individual Budget Category Lists”	Tab 2
“Contractual Detail”	Tab 3
Workplans.....	Tab 4
Invoice Form.....	Tab 5
Performance Report Form	Tab 6
Applicable Regulations and OMB Circulars	Tab 7
EPA Form 6600-06 (Rev. 06/2008) “Certification of Lobbying”	Tab 8
Standard Form LLL “Disclosure Form to Report Lobbying”	Tab 9

3. SUMMARY DISPOSITION AGENDA ITEMS

WATER RIGHTS ADMINISTRATION DIVISION

November 18, 2025

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Temporary Permits to Use Groundwater

November 18, 2025

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2024-575 4/18/2024	Colin and Nicole McNabb	2	Dewey County, Rush Springs Sandstone	40 acres Section, 30, T18N, R14WIM	Irrigation 36 a.f.
2024-621 8/15/2024	E-F, LLC	5	Beaver County, Permian System	1,724 acres Sections 9, 13, 14, 22, 23, T3N, R24ECM	Agriculture 3, 448 a.f.
2025-554 4/7/2025	Paul Knauss and Gayle Knauss	13	Caddo County, Rush Springs Sandstone	1,266.28 acres Sections 20, 29, T8N, R12WIM, Sections 7, 9, 17, 18, T8N, R13WIM	Irrigation 2,472.56 a.f.
2025-617 8/29/2025	Larry Rice and Kim Rice	1	Muskogee County, Boggy Formation	39.59 acres Section 2, T14N, R16EIM	Trailer park 3 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications to Amend Temporary Permits to Use Groundwater

November 18, 2025

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
1985-547 1/18/2024	Garfield Co. RWD #6	3	Grant County, Rush Springs Sandstone	80 acres Section 12, T25N, R4WIM	Rural water systems and industrial use 160 a.f.
2006-549A 5/9/2025	Greg Little and Geri Little	10	Caddo County, Rush Springs Sandstone	516 acres Sections 15, 16, 21, T8N, R13WIM	Irrigation and mining (oil and gas wells) 986.4 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Regular Permits to Use Groundwater

November 18, 2025

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
2024-593 6/4/2024	Jake R. and Lesa C. Slatten	5	Beaver County, Ogallala Panhandle	5,722.15 acres Sec. 11, T5N, R21ECM, Sec. 14, 24, T5N, R22ECM, Sec. 7, 15, 18, 19, 20, 22, 27, T5N, R23ECM, Sec. 13, 14, 23, 24, 31, T6N, R23ECM Sec. 7, 8, 17, 18, T4N, Sec. 7, T5N, Sec. 18, T6N, R24ECM	Irrigation 11,444.3
2025-525 1/23/2025	A&K Land and & Cattle, LLC	2	Texas County, Ogallala Panhandle	625 acres Section 24, T3N, R18ECM	Irrigation 1,250 a.f.
2025-547 3/20/2025	Rodney Meyer	1	Beaver County, Ogallala Panhandle	166 acres Section 14, 24, T2N, R22ECM	Irrigation 320 a.f.
2025-556 4/7/2025	MPH Farms, LLC	1	Texas County, Ogallala Panhandle	400 acres Section, 27, T4N, R17ECM	Irrigation 450 a.f.
2025-559 4/17/2025	Johan Friesen Knelsen	1	Texas County, Ogallala Panhandle	160 acres Section 18, T5N, R12ECM	Irrigation 320 a.f.
2025-592 6/12/2025	Seth Christian Nelson and Jodi R. Nelson	1	Texas County, Ogallala Panhandle	160 acres Section 18, T6N, R19ECM	Irrigation 320 a.f.

2025-611 8/18/2025	Konner Hood	2	Texas County, Ogallala Panhandle	320 acres Sections 3, 10, T5N, R19ECM	Irrigation 640 a.f.
-----------------------	-------------	---	-------------------------------------	---	------------------------

WATER RIGHTS ADMINISTRATION DIVISION
Applications to Amend Prior Rights to Use Groundwater

November 18, 2025

APP. NO. & DATE FILED	NAME OF APPLICANT	NUMBER OF WELLS	COUNTY & BASIN	LAND DEDICATED	PURPOSE & AMOUNT RECOMMENDED
1967-135A 3/6/2024	Darren W. and Julie A. Buck	2	Texas County, Ogallala Panhandle	160 acres Section 20, T6N, R11ECM	Irrigation 213 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Applications for Regular Permits to Use Stream Water

November 18, 2025

APP. NO. & DATE FILED	NAME OF APPLICANT	POINTS OF DIVERSION	COUNTY & STREAM SYSTEM	PURPOSE & AMOUNT RECOMMENDED
2023-006 3/7/2023	Genesis Enterprises, LLC	One point of diversion on Deep Fork River in Section 1, T13N, R5EIM	Lincoln County SS 2-7	Irrigation 1,600 a.f.
2023-010 4/27/2023	Lighthouse Farm, LLC	One point of diversion on Coal Creek in Section 11, T9N, R24EIM	LeFlore County SS 2-2	Agriculture 250 a.f.
2025-013 6/2/2025	Mary Jean Little	One point of diversion on Caney River in Section 5, T23N, R14EIM	Washington County SS 2-14	Irrigation and recreation fish and wildlife 750 a.f.

WATER RIGHTS ADMINISTRATION DIVISION
Well Driller and Pump Installer Licensing

November 18, 2025

DPC NUMBER	NAME OF FIRM	CERTIFIED ACTIVITIES	OPERATORS
New Licenses, Accompanying Operator Certificates and Activities:			
	DPump Co.	Groundwater wells drilling And pump installation	David Casey
New Operators, License Name Change, and/or Activities for Existing Licenses:			
	Knutson Irrigation Design, LLC	Pump Installation	Scotty Reed
	3T Drilling	Pump Installation	Raymond Teeter
	METCO	Monitoring Wells	Austin Banks

November 2025 Dam Safety Board items

N. Consideration of and Possible Action on Dams and Reservoir Construction:

1. Shawnee City Lake No.1 Dam, OK11039

NID. NO. & COUNTY	NAME OF APPLICANT & NAME OF PROJECT	PLANS & SPECS PREPARED BY	HAZARD CLASSIFICATION	LEGAL DESCRIPTION
OK11039	City of Shawnee	Taylor Green, P.E.	High	Sec. 11, T10N, R02E1
Pottawatomie County	Shawnee City Lake No.1	Freese and Nichols, Inc.		

The applicant requests approval for the repair and alteration of a high hazard potential dam originally constructed in 1936. The proposed work includes removing trees from the downstream slope and construction of an access road along the downstream toe. The primary purpose of the structure is municipal water supply. The dam is 55 feet tall, with a normal storage capacity of 22,600 acre-feet and a maximum storage capacity of 36,500 acre-feet.

2. Canadian Low-Head Dam, OK30704

NID. NO. & COUNTY	NAME OF APPLICANT & NAME OF PROJECT	PLANS & SPECS PREPARED BY	HAZARD CLASSIFICATION	LEGAL DESCRIPTION
OK30704	City of Oklahoma City	Chris Russell, P.E.	Low	Sec. 01, T11N, R03W1
Oklahoma County	Canadian Low-Head Dam	TEIM Design		

The applicant requests approval for the construction of a new, small, low hazard potential low-head dam. The purpose of the dam is to provide hydraulic and aesthetic enhancements along the Oklahoma River reach. The applicant also requests a variance for the absence of a valley floor drain and compliance spillway design flood requirements since the dam is designed to overtop. The dam will be 9.5 feet tall, with a normal storage capacity of 82.4 acre-feet.

ENGINEERING & PLANNING DIVISION
Permit Applications for Proposed Development on
State Owned or Operated Property with Floodplain Areas

November 1, 2025

APPLICATION NO.	NAME OF APPLICANT	LOCATION	
FP-2025-09	OTA	Oklahoma County, Oklahoma	Project No. JKT-30603B will construct a service road turnaround and new on-ramp to the JKT (I-344) at the Council Road interchange. The new on ramp will require a new bridge over Walnut Creek between MM 122.18 and 123.18. The new bridge will be in the median between the main lanes and the East Memorial Road (South Service Road), however no piers are in the channel.
FP-2025-10	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 25 involves removing exist. drop inlet on exist. 18" X 112' LG. RCP and remove approx. 3 feet of the exist. 18" RCP and

			const. new drop inlet on new end of pipe.
FP-2025-11	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 13 involves installing a new 28"X18" X 112' LG. RCPA with Std. CET Each End.

FP-2025-12	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 113 involves extending exist. (2)-7'X6' X 193.5' LG. RCB Str. EX18 by the removal of the existing DS headwall and extending the barrel approx.. 11 feet and const. a new 0° headwall.
FP-2025-13	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 112 involves extending exist. 48" X 181.3' LG. RCP Str. EX17 by removal of the existing DS headwall and installing a manhole for connection of median drains and extending the conduit approx.. 14 feet and install std. PCES.

FP-2025-14	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 109 involves extending exist. 5'X7' X 148.4' LG. RCB Str. EX13 by the removal of the existing DS headwall and extending the barrel approx. 13 feet and const. a new 0° headwall.
FP-2025-15	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 106 involves extending exist. (2)-8'3' X 148.8' LG. RCB Str EX11 by the removal of the existing DS headwall and extending the barrel approx.. 16 feet and const. a new 0° headwall.

FP-2025-16	ODOT	Mayes County, Oklahoma	Reconstruction of southbound lanes of existing 4 lane divided highway. Includes extension of some existing cross drain structures. This Str. No. 101 involves extending exist. (2)-8'X4' X 150.2 LG. RCB Str. EX4 by the removal of existing DS headwall and extending the barrel approx. 11 feet and const. a new 0° headwall.
FP-2025-17	OTA	Cleveland County, Oklahoma	28603A: Construction of a new 4-lane divided freeway (East-West Connector) and interchange generally following the existing Indian Hills Road alignment at Western Avenue, from 0.45 miles west of Western Avenue to S. Santa Fe Avenue, including Grade, Drain, Bridge & Surface, bridges over Western Avenue, EB & WB Frontage Rds from Pennsylvania Avenue to S. Santa Fe Avenue. 28103A: City of Moore Effluent lines from the west side of the Canadian River east to the existing treatment plant on

			the east side of I-35, which will run within the proposed R/W of EWC-28603A.
--	--	--	--

3.P.

**PLANNING AND MANAGEMENT DIVISION
Floodplain Administrator Accreditation Applications**

November 1st, 2025

NUMBER	NAME OF COMMUNITY/CID	FLOODPLAIN ADMINISTRATOR
637	City of Mustang	Jacob Coleman
178	City of Crescent	Jannis DeLisa

**WATER RIGHTS ADMINISTRATION DIVISION
Cancellation of Groundwater Permits**

November 18, 2025

1954-431	James S. Wallace	Harmon County
1992-504	Friendly Bank	Cleveland County
1982-908	Betty Jo Taylor	Custer County
1955-1025	Joe Richard and Gayle Johnson	Jackson County
1973-032	Sharon B. Roles	Canadian County
1971-535	Roy Trout Jr.	Roger Mills County
1953-109	Bruce R. Jr. & Barbara J. Bailey	Tillman County
1957-116	Kenneth Chapman Living Trust	Jackson County
1967-790A	3RK LLC	Texas County
1993-536A	3RK LLC	Texas County
1981-732	Roy Trout Jr.	Roger Mills County
1957-184A	Jimmie A. and Beverly A. Meeks	Tillman County
2015-566A	Jimmie A. and Beverly A. Meeks	Tillman County
2001-580A	Bernard Harris	Beaver County
1976-636A	Jack A. Slatten	Beaver County
1941-012A	George Lenz Jr.	Harper County
1995-610A	Doris Jean McLaury Estate	Kiowa County

**BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA**

In the Matter of Preston and Christina)	
Jones Application for Groundwater)	Application # 2024-0599
Permit in Major County, Oklahoma)	

**PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DEFAULT
BOARD ORDER ON GROUNDWATER PERMIT APPLICATION**

INTRODUCTION

This matter arises out of the application for a groundwater permit filed on June 13, 2024 (the “Application”), by Preston and Christina Jones (“Applicants”). Applicants requested to drill a total of ten (10) groundwater wells on the property owned by Preston and Christina Jones, initially, for use of oil and gas mining, agriculture, irrigation, commercial, industrial, recreation, fish and wildlife. *See* Applicants’ Exhibit 16. Subsequently, the Applicants amended their application to the proposed use of oil and gas mining. Protestant, Barbara S. Bierig, Trustee of the Richard L. and Barbara S. Bierig Family Trust dated August 23, 2021 (the “Protestant”), submitted protest letters on March 20, 2025, and May 14, 2025, to the application and the matter was set for hearing October 2, 2025.

A hearing was held at the Board offices in Oklahoma City, Oklahoma at 10:00 a.m. on October 2, 2025. The Hearing Examiner, having reviewed the Proofs of Publication of Notice of the Application, determined that notice was properly provided in accordance with the law. The Applicants appeared through legal counsel, Dale Cottingham and Lewis LaNaire, Crowe and Dunlevy, Oklahoma City, Oklahoma. The Applicants presented two (2) witnesses at the hearing to testify. The Applicants’ first witness, Jarrod Maly, testified that he has worked for the Applicants for 23 years and he assisted in the preparation of the Application.

The Applicants’ second witness, David Correll, hydrogeologist and Senior Project Manager for D&B Oilfield Services, Ringwood, Oklahoma, on behalf of his employer ENSOLUM, who was determined by the Hearing Examiner to be an Expert Witness in this matter. David Correll testified that he prepared a Hydrogeological Evaluation of Groundwater Permit Application 2024-599 dated September 28, 2025, in support of the Application. *See* Applicants’ Exhibit 28. According to the Executive Summary of the Hydrogeological Evaluation of the Application, sufficient groundwater is available to support the proposed withdrawal without exceeding the aquifer’s physical capacity. The maximum radius of influence of 268 feet of the Applicants’ proposed well is more than 1,600 feet from the Protestant’s well with no measurable drawdown or interference is anticipated. According to the evaluation’s Executive Summary, the proposed withdrawal will supply water for oilfield operations including well drilling, well completion and other industrial activities which are economically driven uses that are recognized as beneficial, under OAC 785:30-1-2. In conclusion, the evaluation stated that the proposed use meets the OWRB beneficial use criteria and is consistent with sustainable groundwater management and that it is the professional opinion of ENSOLUM that the permit should be approved as requested.

The Protestant chose or failed to appear in person or through legal counsel at the Hearing in this matter. The Board’s Rules at OAC 785:4-7-3, provide that the applicant or protestant or

respondents, as the case may be, must appear at the hearing, either personally, by representative, or by legal counsel. Pursuant to the Board's Rules at OAC 785:4-7-3, the failure of a party to appear shall be deemed to constitute default and abandonment of interest by the party failing to appear and shall preclude the party from being heard further unless good cause for such failure to appear is shown within five (5) days from the date of the Hearing.

Pursuant to Oklahoma Administrative Code ("OAC") 785:4-7-1 and 4-7-7, records were admitted that were offered by the Oklahoma Water Resources Board ("OWRB") pertinent to this Application, including in part the application, ownership documents, notice documents, maps, protest letter of the Protestant, and the notice scheduling hearing. *See* OWRB Exhibits 1- 15. After the hearing was adjourned, the matter was taken under advisement. A proposed order was prepared, served on the Applicants and Protestant, and presented to the Board for consideration and action.

Based upon the separately stated Findings of Fact and Conclusions of Law that follow, the Board determines that the application should be approved.

BACKGROUND

1. On June 13, 2024, the Applicants filed Application No. 2024-0599 with the Board for a groundwater permit. Applicants requested authorization to use 128 acre-feet of groundwater each year from the proposed ten (10) groundwater wells for oil and gas mining. Applicants dedicated to the Application 64.8 acres of land; namely

N 1/2 of N/W ¼ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County; *See* OWRB Exhibit 1.

2. The ten (10) proposed groundwater wells are to be located as follows:

1 Well (existing): NE ¼ of NE ¼ of NW ¼ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NE ¼ of NE ¼ of NW ¼ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NW ¼ of NE ¼ of NW ¼ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County; and

3 Wells: NE¼ of NW ¼ of NW ¼ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County.

See OWRB Exhibit 1. Applicants' proposed use of the groundwater will be in Major County. The application indicated that water would be taken from the Cimarron River groundwater basin (also known as the Cimarron Alluvial and Terrace groundwater basin). *See* OWRB Exhibit 1 and Applicants' Exhibit 28 Executive Summary.

3. To support this application, Applicant submitted the following deed(s) recorded in the Office of the County Clerk of Major County:

Joint Tenancy Warranty Deed (Book 2119, Page 477-478)

Quit Claim Deed (Book 2152, Page 129-130)

See OWRB Exhibit 1. Ownership of land was not disputed.

4. Applicants revised the Application as necessary by Board rules and statutes. *See* OWRB Exhibit 1. Applicants also submitted a surface estate owner's map for notification purposes. *See* OWRB Exhibit 1.

NOTICE

5. On February 3, 2025, Board staff notified Applicants that the application had been reviewed and directed Applicants to give notice of the application by certified mail to each surface owner of land within 1,320 feet of the outside boundary of the ten-acre tract of land with the groundwater well location covered by the application, and publish notice of the application in a newspaper of general circulation in the county in which the existing well is located during the weeks beginning February 16, 2025 and February 23, 2025 *See* OWRB Exhibit 3. The notice was published on February 20, 2025 and February 27, 2025, in The Fairview Republican, a newspaper of general circulation in Major County. The notice listed a protest deadline of March 24, 2025. *See* OWRB Exhibit 6. Applicants also sent, by certified mail, direct notice to those individuals listed on the surface estates owner's map. *See* OWRB Exhibit 7

PROTESTS

6. Protestant Barbara S. Bierig, Trustee of the Richard L. and Barbara S. Bierig Family Revocable Trust dated August 23, 2021, protested the application and was made a party herein. *See* OWRB Exhibit 6.

PREHEARING CONFERENCE

6A. A Prehearing Conference in this matter was held on August 21, 2025, at which time Garrett D. Howerton was informed that he as a non-attorney could represent the Protestant and the Protestant was granted a continuance of the Hearing in order to allow the Protestant time to retain an attorney.

HEARING

7. The hearing commenced on October 2, 2025, at the Board's office in Oklahoma City, Oklahoma. Appearing on behalf of Applicants was Jarrod Maly. The Protestant chose or failed to appear with or without counsel. The Protestant's non-attorney grandson, Garrett D. Howerton, who previously in writing represented himself to be "legal counsel" to the protestant and later in writing that he was the "authorized representative" of the Protestant, notified the Board by email on October 1, 2025, that he would not attend the Hearing on October 2, 2025. The Hearing Examiner noted that notice to the Protestant was appropriate. The hearing was opened, appearances were entered, witnesses were sworn and testified, evidence was admitted. Thereafter, a proposed

order was prepared, served on the parties, and presented to the Board for consideration at its next appropriate meeting.

FINDINGS OF FACT

OWNERSHIP OF LAND

8. During the hearing, Jarrod Maly, on behalf of the Applicants, presented the reasons for applying for this groundwater permit. The surface of land dedicated to this application for the permit is 64.48 acres and is located as follows:

1 Well (existing): NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County; and

3 Wells NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County.

See OWRB Exhibit 1. The title to the land is held by the Applicants Preston and Christina Jones. *See* OWRB Exhibit 2. Ownership was not disputed at the hearing.

LAND LOCATED OVER GROUNDWATER BASIN

9. Mr. Jarrod Maly testified on behalf of the Applicants, consistent with the application that the land dedicated to this application overlies the Cimarron River groundwater basin. Pursuant to the application, the maximum annual yield determination established by the Board in the absence of a maximum annual yield (may) for this groundwater basin is 2 acre-feet per year per acre of land. This was not disputed at the hearing.

BENEFICIAL USE

10. The proposed use of the groundwater initially, was for use of oil and gas mining, agriculture, irrigation, commercial, industrial, recreation, fish and wildlife. *See* Applicants' Exhibit 16. Subsequently, the Applicants amended their application to the proposed use of oil and gas mining. *See* OWRB Exhibit 1. The beneficial use of oil and gas mining of the groundwater was not disputed at the hearing.

WASTE BY DEPLETION

11. Although the Protestant expressed concerns in the Protestant's written protest letter that the groundwater basin would be depleted should this groundwater permit be issued, no evidence was produced that waste by depletion would occur.

WASTE BY POLLUTION

12. No evidence was produced that waste by pollution would occur should the groundwater permit be issued.

CONCLUSIONS OF LAW

Based upon applicable law, and as applied to the above Findings of Fact and evidence in the record, the Board draws the following Conclusions of Law:

USE OF GROUNDWATER

13. Under 60 O.S. § 60, the owner of the surface of a given tract of land owns the fresh groundwater beneath the surface of that land. That surface owner may use such groundwater in accordance with the use regulations imposed by the Oklahoma Groundwater Law, 82 O.S. § 1020.1 et seq.

SUBJECT MATTER JURISDICTION

14. The Board has subject matter jurisdiction to adjudicate applications for permits according to the Oklahoma Groundwater Law and the Board's rules promulgated pursuant thereto. 82 O.S. § 1020.7. *See* OWRB Exhibits 6 and 7.

PERSONAL JURISDICTION; DUE PROCESS

15. Due and proper notice of the application and subsequent proceedings was given to all potentially interested persons as required by law. Applicant and Protestant are interested parties to this proceeding. All other potentially interested persons have defaulted or abandoned their interests. Oklahoma Administrative Code ("OAC") 785:4-7-3.

ISSUES TO BE DETERMINED

16. When a person makes an application for a groundwater permit, 82 O.S. § 1020.9 and OAC 785:30-3-5 requires the Board to determine several specific issues. These are:

- (a) whether the applicant owns the surface of the dedicated land or holds a valid lease for the taking of groundwater from the land;
- (b) whether the dedicated land overlies a fresh groundwater basin or subbasin;
- (c) whether the use to which the applicant intends to put the water is a beneficial use; and
- (d) that waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur.

16A. Generally, if the Board finds for the applicant on all these issues, the rule provides that the Board shall approve the application and issue the appropriate permit. Section 1020.9(D)

of Title 82 provides further that the Board may specify conditions in the permit, including but not limited to the rate of withdrawal and the level of perforation and sealing wells.

OWNERSHIP OF LAND

17. Ownership of land was not challenged at the hearing. Regardless, based on the information submitted in the application and the evidence admitted at the hearing, the Board concludes that Applicant provided evidence of his right to take groundwater from the land identified on the application, in the form of ownership documentation listed above in paragraph three. *See* OWRB Exhibits 1 and 2.

GROUNDWATER BASIN

18. The dedicated land in this Application overlies the Cimarron River groundwater basin. The maximum annual yield for this basin is 2 acre-feet per acre per year. This issue was not challenged at the hearing. Therefore, based on that maximum annual yield, Applicants are entitled to a groundwater allocation of two acre-feet per acre per year, as provided in 82 O.S. § 1020.11.

BENEFICIAL USE

19. This Board defines beneficial use in OAC 785:30-1-2 as follows:

“Beneficial use” means the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.

20. Although beneficial use was not challenged at the hearing, the evidence established that Applicant’s proposed use meets the definition of beneficial use.

21. The Board must determine whether Applicant will allow waste as specified by 82 O.S. § 1020.15 to occur. Section 1020.15 is quoted as follows:

A. The Oklahoma Water Resources Board shall not permit any fresh groundwater user to commit waste by:

1. Drilling a well, taking or using fresh groundwater without a permit, except for domestic use;
2. Taking more fresh groundwater than is authorized by the permit;
3. Taking or using fresh groundwater in any manner so that the water is lost for beneficial use;
4. Transporting fresh groundwater from a well to the place of use in such a manner that there is an excessive loss in transit;

5. Using fresh groundwater in such an inefficient manner that excessive losses occur;
6. Allowing any fresh groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well;
7. Permitting or causing the pollution of fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin. The Board shall be precluded from determining whether waste by pollution will occur pursuant to the provisions of this paragraph if the activity for which the applicant or water user intends to or has used the water as specified under Section 1020.9 of [Title 82] is required to comply with rules and requirements of or is within the jurisdictional areas of environmental responsibility of the Department of Environmental Quality or the Oklahoma Department of Agriculture, Food and Forestry;
8. Drilling wells and producing fresh groundwater therefrom except in accordance with the well spacing previously determined by the Board;
9. Using fresh groundwater for air conditioning or cooling purposes without providing facilities to aerate and reuse such water; or
10. Failure to properly plug abandoned freshwater wells in accordance with rules of the Board and file reports thereof.

According to OAC 785:30-1-1, paragraphs (1) through (6) and paragraphs (8) and (9) are forms of “waste by depletion” (as that term is used in the case of *Oklahoma Water Resources Board v. Texas County Irrigation and Water Resources Ass’n*, 1984 OK 96). Paragraphs (7) and (10) are forms of “waste by pollution”).

22. The Board acknowledges Protestant’s written concern about the groundwater supply in the area and that his existing water well could be adversely affected by Applicant’s withdrawal of groundwater from the same basin. However, there is no basis in this case to determine that Applicant’s proposed use will be impermissible or unlawful. The legislative policy expressed in the Oklahoma Groundwater Law is “to utilize the groundwater resources of the state.” 82 O.S. § 1020.2(A). To implement that policy, the Oklahoma Groundwater Law authorizes the controlled reduction of a groundwater basin as long as that reduction is done in an orderly fashion according to the statutory scheme for reasonable restrictions on such use. The surface owner or lessee of land overlying a fresh groundwater basin is entitled to use the groundwater beneath the surface once certain elements of the Oklahoma Groundwater Law have been met. Here the application is in accordance with and not contrary to the law and rules.

23. The Board concludes that waste by depletion will not occur if the application is approved.

WASTE BY POLLUTION

24. The provisions of 82 O.S. § 1020.15(A)(7) provide the Board shall not permit any groundwater user to commit waste by “permitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin.” Subsection (10) also prohibits a user from committing waste for “failure to properly plug abandoned water wells in accordance with

rules of the Board and file reports thereof.” Therefore, the Board concludes that waste by pollution will not occur.

CONCLUSION

25. The Board hereby orders that application no. 2024-0599 in the name of Preston and Christina Jones shall be and is hereby **APPROVED**.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Application No. 2024-0599 in the name of Preston and Christina Jones shall be and the same is hereby approved. A permit shall be issued which authorizes the ten (10) groundwater wells located as follows:

1 Well (existing): NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NE $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County;

3 Wells: NW $\frac{1}{4}$ of NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County; and

3 Wells NE $\frac{1}{4}$ of NW $\frac{1}{4}$ of NW $\frac{1}{4}$ of Section 34, Township 22 North, Range 10 West, Indian Meridian, Major County.

IT IS FURTHER ORDERED that all other terms and provisions set forth in the application and not inconsistent with provisions of this Order shall be incorporated into and made a part of the permit.

IT IS SO ORDERED by the Oklahoma Water Resources Board in regular and open meeting this 18th day of November 2025.

OKLAHOMA WATER RESOURCES BOARD

Thomas Goreman, Chairman

ATTEST:

Secretary
(SEAL)

4. PUBLIC HEARING ON PROPOSED NEW AND AMENDED PERMANENT RULES OF THE BOARD

November 18, 2025

CHAPTER 4. RULES OF PRACTICE AND HEARINGS

SUBCHAPTER 1. GENERAL PROVISIONS

785:4-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise:

"APA" means and refers to the Oklahoma Administrative Procedures Act set forth in 75 O.S. 1981, §§301 et seq., as amended.

"Application" means a formal request to the Board and the first step required by law to acquire the right to perform or engage in activities regulated by the Board.

"Board" means the Oklahoma Water Resources Board or any employee or agent or staff member thereof.

"Board Order" means an order issued by the Oklahoma Water Resources Board.

"Document" means a collection of text or other data that is maintained as unique and separate from others, including, but not limited to, any opinion, order, judgment, decree, petition, motion, pleading, form, instrument, record, exhibit, writ, transcript, or other item.

"Designated Case-Specific Email-Address" is the primary email address provided by a Person or Party in a specific case, matter, or application. Persons submitting an Application, Interested Persons, and all other Parties or Persons with Business before the Board, including permit holders and license holders or their attorneys or legal representatives, must provide a Designated Case-Specific Email Address at the time of making their initial filing or entry of appearance, or at the time of their next required report, renewal, or application, whichever is first.

"Electronic Filing (E-Filing, E-File, or E-Filed)" means the transmission by an Approved Electronic Method of any Document to or by the Board. This will include notices and orders created by the Board as well as pleadings, letters or protest, other Documents and attachments created by practitioners or parties.

"Executive Director" means the Executive Director of the Oklahoma Water Resources Board.

"Filer" means the interested person or interested party filing a Document with the Board.

"Hearing Examiner" means a person qualified, designated, and authorized to act in that capacity to preside in a hearing and otherwise exercise the authority of a Hearing Examiner as set forth in these rules.

"Interested party" means party.

"Interested person" means one whose interests could be adversely affected by any proceeding.

"Party" means a person or agency named and participating, or properly seeking and entitled by law to participate, in hearings other than hearings on Board rules, regulations and standards.

"Person" means any individual, firm, partnership, association, corporation, business or public trusts, federal agency, state agency, the State or any political subdivision thereof, municipalities, and any other duly constituted legal entity.

SUBCHAPTER 3. BOARD HEARINGS

785:4-3-4. Hearing Examiners

(a) **Who may be Hearing Examiners.** Hearings may be conducted by authorized and designated Hearing Examiners. Any Board member, the Board Executive Director or Assistant Director, any authorized Board staff member, staff attorneys, the Attorney General or Assistant Attorney General or any other Board authorized person may serve as Hearing Examiner.

(b) **General authority of Hearing Examiners.** Hearing Examiners are authorized to supervise, direct, preside over and conduct the hearing proceedings; to make and enter interlocutory rulings; to make and enter rulings on procedural or evidentiary questions or objections; to make and enter rulings on any other motions or objections arising during the course of the hearing; and, generally, to do all things necessary and incidental to conducting and completing the hearing and all other acts authorized under this Chapter.

(c) **Assistance.** Where deemed necessary, the Hearing Examiner may designate any Board staff member to assist the Hearing Examiner in the conduct of the proceedings or to aid the Hearing Examiner in an advisory capacity.

(d) **Discovery by Hearing Examiner.** The Hearing Examiner may request parties to an individual proceeding to produce evidence in support of their claims or defenses. The request may be made in advance, during, or after the hearing, and prior to the closing of the record.

SUBCHAPTER 5. PRE-HEARING ACTIONS AND PROCEEDINGS

785:4-5-4. Application protests; comments and objections

(a) **Who may file.** Any interested person may file a written protest, objection or comment to any permit application, petition or other matter subject of a hearing. Persons signing form letters, multiple letters containing substantially similar or duplicate text or information, or persons signing written submittals in petition format containing multiple signatures, may not be considered parties to a proceeding unless all requirements specified in subsection b are set forth for each person signing such letters or petitions.

(b) Requirements for protests; standing. Protests must be filed with the Board in writing and must contain the following information:

- (1) Name, telephone number, designated case-specific e-mail (if available), and postal address of the interested person;
- (2) The application to which the protest relates;
- (3) Specific information to show how approval of the application, petition or action proposed may directly and adversely affect legally protected interests of the person filing the protest; and
- (4) A statement of the relief sought by the interested person.

(c) Protest required for party status. To become a party and to facilitate reasonable notice to the applicant or petitioner, all protests must contain the information as set forth in paragraphs (1) through (4) of subsection (b) and be filed with the Board, and a copy must be provided to the applicant or petitioner via certified mail, return receipt requested, within the time period stated in the notice. Return receipts showing compliance with this requirement must be provided to Board Staff within (30) days of the end of the time period stated. In enforcement actions initiated by Board staff, all respondents named in the notice of hearing shall be deemed parties for purposes of participation in the proceedings. A person who fails to provide a copy of the protest with the applicant or petitioner within the time period stated may not be considered a party unless otherwise determined by the Hearing Examiner.

(d) Hearing examiner discretion on allowing presentation of protest. If an interested person appears at the hearing for purposes of presenting a protest to the application without first meeting the requirements set forth above, the Hearing Examiner may at the Examiner's discretion, reject the protest, receive the protest, orally or in writing, and proceed with the hearing; or may defer receiving such protest and direct a continuance of the hearing in order to allow the interested person an opportunity to file the protest in compliance with the requirements set forth above. In the last described instance, the Examiner may take into consideration the wishes of the applicant or petitioner with respect to proceeding with or continuing the hearing. The Hearing Examiner may allow any interested person to make a statement in support of or in opposition to an application or petition without cross examination if the statement is not intended as evidence, provided the Hearing Examiner may limit such presentations to avoid duplication. **Insufficient Protests Dismissed.** Any protest, comment, or objection failing to meet the requirements set forth in this section 4-5-4, may be dismissed by the Hearing Examiner on their own motion or upon motion from a Party.

(e) Record of protests, comments and objections.

- (1) All correspondence relating to an application, including all protest, objection and comment letters, shall be retained in the permanent application file.
- (2) Persons who submit objections or comments to an application or petition will not be deemed to be parties, but, as described in subsection (d), may be allowed to make statements at a hearing.
- (3) Abbreviated notice, including but not limited to notice by electronic mail, of further proceedings or of the availability of proposed findings, conclusions and order prepared after a hearing may be given to a person who files objections and comments or who makes a statement at a hearing.

(f) Hearing Fees. When an individual proceeding is required in response to protests received to an application, the applicant shall be required to pay a Hearing Fee as described in 785:5-1-16.

(1) Hearing Fees owed under this section must be paid by the party within fifteen (15) days of the mailing of the resulting invoice and Hearing Order.

(2) A Party failing to pay Hearing Fees owed under this section before the Proposed Order is presented to the Board for consideration shall be dismissed as a party. A party dismissed under this section will be considered to have been dismissed for lack of standing.

(3) No fee shall be charged to any person wishing to submit evidence, views or arguments at any public hearing (as differentiated from an individual proceeding) authorized by the Oklahoma Administrative Procedures Act concerning rules, regulations, licenses, permits, orders or any other proposed agency action. [75.315.1]

785:4-5-5. Pre-hearing continuances, informal disposition by stipulation, agreed settlement or consent order

(a) Continuances ~~may~~**must** be requested ~~not more than~~**at least** five (5) days prior to the hearing ~~be~~**by** telephone, followed by a written request **to the Board and all parties**, and may be granted by the Hearing Examiner if all parties of record agree or otherwise at the discretion of the Hearing Examiner.

(b) In enforcement actions initiated by Board staff, informal disposition of the matter subject of the hearing may be made by stipulation, agreed settlement or consent order. A proposed stipulation, agreed settlement or consent order, acceptable to Board staff and respondent, shall be presented to the Hearing Examiner for recommendation to the Board. The recommendation of the Hearing Examiner, along with the proposed stipulation, agreed settlement or consent order, shall be forwarded to the Board for consideration without further hearing or findings of fact and conclusions of law (see also 785:4-9-1).

785:4-5-6. Electronic mail notice

(a) The Board may allow protests, comments and objections to applications to be submitted through electronic mail to an e-mail address specified in the notice of application.

(b) Unless a request is made to provide notice to a U.S. Postal Service address, persons who submit protests, comments or objections by electronic mail will be given notice to the electronic mail address from which the protest, comment or objection was received, unless another electronic mail address is provided.

(c) ~~Hard copies of electronic mail messages and attachments sent or received by the Board relating to applications, protests, comments and objections and will be made and placed in the application file.~~

785:4-5-7. Motions, requests and orders

- (a) Except for oral motions made in proceedings on the record, or where the Hearing Examiner otherwise direct, each motion shall:
- (1) Be in writing; and
 - (2) Contain a concise statement of supporting grounds.
- (b) Unless the Hearing Examiner orders otherwise, any party to a proceeding in which a motion is filed under (a) of this section shall have 15 days from service of the motion to file a statement in response.
- (c) Failure to make a timely motion or to file a statement in response may be construed as a waiver of objection.
- (d) The Hearing Examiner shall rule on all motions as expeditiously as possible.
- (e) Any person filing a motion or other request to the Board shall mail a copy of the motion or request to all parties of record. A certificate of such mailing shall be filed with the motion or request.
- (f) Unless otherwise directed within the interlocutory order, a copy of the interlocutory order relating to the motion or request shall be provided by the Board to the person filing the motion or request. That person shall mail a copy of the interlocutory order to all parties of record and file with the Board a Certificate of Mailing.
- (g) A written copy of the proposed final order of the Board prepared by the Hearing Examiner after the conclusion of any hearing shall be provided to the applicant, and the applicant shall be required to serve all other parties at least fifteen (15) days prior to Board meeting at which the proposed final order is scheduled to be considered.

785:4-5-8. Electronic Filing, Service, and Signature~~filing, service, and signature~~

- (a) Electronic Filing. Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be filed or delivered to the Board, such requirement may be satisfied by electronic filing as authorized by these rules.
- (b) Electronic Service. Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be served, mailed, transmitted, or issued, such requirement may be satisfied by electronic methods as authorized by these rules, and any other applicable statute or rule. As used in these rules, the term "mail" "mailing" or "mailed" shall include transmission by electronic mail, unless otherwise specified in applicable statute, rule, notice, order, or form provided by the Board.
- (c) Electronic Signature.
- (1) Whenever these rules require a pleading, application, motion, document, notice, or other instrument to be signed, verified, certified, or otherwise authenticated, such requirement may be satisfied by electronic methods as authorized by these rules, applicable statute, or Board Order.
 - (2) Pleadings, motions, affidavits, waivers, or other instruments that are signed under the penalty of perjury or notarized may be filed electronically, pursuant to these rules. Waivers or other instruments which are signed and witnessed may be electronically filed in the same manner as notarized documents.
 - (3) Originals Retained. The filer of any document shall retain the original document(s) or other evidence of the original signature(s) for future production.

785:4-5-9. Documents Filed Electronically~~filed electronically~~

- (a) **Signature Block.** All E-Filed Documents must include a signature block and must set forth the user's name, bar number (where applicable), address, telephone number, and Designated Case-Specific Email Address. The name of the party submitting the Document must be preceded by an "/s/" and typed in the space where the signature would otherwise appear.
- (b) **Multiple Signatures.** The Filer of any Document requiring two or more signatures (e.g., stipulations, joint status reports) must list thereon all the other signatories' names by means of an "/s/" signature block for each signatory. By submitting such a Document, the Filer certifies that each of the other signatories has expressly agreed to the form and substance of the Document and that the Filer has their actual authority to submit the Document electronically. It shall be the responsibility of the Filer to retain records evidencing this concurrence for future production. Unless a longer time is prescribed by court rule or statute, a non-filing signatory or party who disputes the authenticity of an electronically filed Document containing multiple signatures must file an objection to the Document within ten (10) days of the date the signatory or party knows, or should know, the Document is filed.
- (c) **Documents signed under penalty of perjury or requiring a notary public's signature.** Documents required by law to include a signature under penalty of perjury, or the signature of a notary public, may be E-Filed in place of the original Document. The declarant and/or notary public must sign the original Document. The original Document shall be converted into an E-Document, if necessary, and E-Filed in a format that accurately reproduces the original signatures and contents of the Document. The Filer shall retain the original Document, or other evidence of the original signature(s), for future production.
- (d) **When an E-Filed Document is Deemed Filed.** A Document submitted to the Board shall be deemed filed upon the date it is accepted by the Board, as evidenced by a confirmation email containing the date of acceptance sent to the Filer.

785:4-5-10. Electronic filing and delivery

- (a) All Parties or Persons with business before the Board, including applicants, permit holders, or license holders, and protestants, are required to designate at the time of their initial filing or at the time of their next filing or report to the Board, whichever is first, a Designated Case-Specific E-mail Address. The Board shall keep a record of the Designated Case-Specific E-

mail Address. Except for initial filings and as otherwise provided by rule, statute, or order, the Designated Case-Specific Email shall be the primary method of contact for official notices and communications from the Board.

(b) Any Party or Person may decline to receive communications via Electronic Mail, either formally in writing or by failing to provide a Designated Case-Specific Email-Address. Persons declining to receive communications via Electronic Mail may be charged a fee for the postage required as a result of their failing to consent to Electronic Mail communication; provided that no fee shall be charged for postage if the cost is less than five dollars (\$5.00) for any individual letter.

785:4-5-11. Hearing materials kept and provided, fees and costs

(a) Hearing Materials, including but not limited to application files, exhibits, notices, and all other records, documents, or materials part of the hearing record, shall be kept electronically by the OWRB hearings clerk. Digital copies of hearing materials, in their native file format, shall be provided upon written request.

(b) Hard copies of the hearing materials shall only be provided on written request and shall require the advance payment of a copy and postage fees as follows:

(1) Certified copies. A fee of \$1.00 per copied page is charged for each copy of an order, application, or other document on file with the Board certified by the Secretary, in addition to the other fees applicable in this and other sections.

(2) Non-Certified copies - \$0.25 per page.

(3) Postage -actual cost.

(4) Hearing Binder – containing certified copies of all board exhibits to a hearing, application file, and other records and Documents bound in a three-ring binder with dividers - \$50.00 plus \$1.00 per page after the first 20 pages.

RULE IMPACT STATEMENT

Title 785. Oklahoma Water Resources Board Chapter 4. Rules of Practice and Hearings

I. Statement of need and legal basis

The Oklahoma Water Resources Board proposes the amendments to the Oklahoma Administrative Code, Title 785, Chapter 4, to address rising administrative costs and to modernize its application and hearing procedures. These rule changes provide clarity for both the agency and citizens appearing in an individual proceeding before the agency. These rule changes also modernize the methods for official communication, saving agency and citizens' time and money while still adhering to common procedural safeguards.

Additionally, to address rising administrative costs associated with conducting individual proceedings, and pursuant to the authority granted by 82 O.S. 1085.2(9)(m), the Board proposes to add a hearing fee payable by the applicant whose application is the subject of such proceedings. Implementing a Hearing Fee is a necessary and justifiable change to the Board's administrative rules. It is a reasonable and proportionate measure to recover ever-increasing costs directly associated with the hearing process, including mailing and substantial staff time. This change will help the Board maintain its operational efficiency and continue to provide effective and timely services to the public. The rule change for the hearing fee is further codified in Title 785, Chapter 5 "Fees", please see Title 785. Oklahoma Water Resources Board; Chapter 5. Fees Rule Impact Statement for further analysis of the proposed fee.

II. Classification of the rule(s) and justification for classification.

Non-Major Rule. There are no direct costs associated with compliance with the proposed rules other than what the Board already incurs to provide hearings as required.

III. Description of the proposed rule(s).

The changes to the Board's hearing rules primarily address a hearing examiners ability to rule on matters in advance of a hearing, as well as, adopting rules similar to those adopted by the Oklahoma Supreme Court to allow for electronic filing of documents, and allowing official communication and notices to take place via electronic mail, and eliminating the need to keep hard copies of records stored electronically. The proposed rules are not mandated by federal law. The proposed rules do not exceed the requirements of any applicable federal law. No federal law is directly applicable.

IV. Description of the classes of persons who most likely will be affected by the proposed rule(s), including classes that will bear the costs of the proposed rule(s), and any information on cost impacts received by the agency from any private or public entities.

All persons with business before the Board, including permit holders, applicants, license holders,

and protestants, will be affected by the rule changes and will benefit from increased clarity and efficiency.

V. Description of the classes of persons who will benefit from the proposed rule(s).

All persons will benefit from the proposed rule changes. The rules will provide clarity of process and speed up the processing of applications, allowing both applicants and protesters to receive a faster resolution to matters before the board. The people of the State of Oklahoma will generally benefit from the reduced cost of bearing the administrative burden associated with hearings and record-keeping inefficiencies eliminated by these rule changes. Namely, the elimination of postage costs and delays in response processes associated therewith.

VI. Comprehensive of the rules' economic impact.

The proposed rule changes will not require an increase in the full-time employee count and should allow for a reduction in the number of contract hearing examiners employed by the Board. The Board will incur no new costs associated with the benefits of the proposed rules. There will be an estimated benefit to the Board, measured by new fee income and cost reduction. Moving to an electronic notice system is estimated to reduce annual postage costs by at least \$3,772.80 in the first year. Any person or entity who wishes to file a protest will incur the cost of certified mailing of the protest to the applicant.

VII. Detailed explanation of methodology and assumptions used to determine the economic impact.

The methodology focused on **direct, measurable impacts**, primarily concerning fees and administrative costs, and found negligible secondary impacts on the state economy, public utility ratepayers, and local government units.

The analysis was conducted under the assumption that the costs (new hearing fees) were balanced by the benefits (Board revenue/savings), and that the rule change itself does not induce market-wide behavioral changes that would significantly affect the larger economy.

VIII. Determination of whether implementation of the proposed rule(s) will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule(s).

No impact foreseen.

IX. Determination of whether implementation of the proposed rule(s) may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

No impact foreseen.

X. Measures taken to minimize the cost and impact of the proposed rule on business

and economic development in this state, local government unites of this state, and individuals.

The proposed rule changes have been specifically tailored to impact only those persons and businesses with matters pending before the Board, and further tailored to assess costs only on those directly benefiting from the services provided by the Board. Further, the rules have been drafted to create procedural efficiencies which will ultimately benefit all entities of the State.

XI. Determination of the effect of the proposed rule(s) on the public health, safety and environment and, if the proposed rule(s) is/are designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk.

There is no foreseen impact on public health, safety or the environment, nor are the proposed rules designed to reduce risks to the public health, safety and environment.

XII. Determination of any detrimental effect on the public health, safety and environment if the proposed rule(s) is/are not implemented.

There is no foreseen impact on public health, safety or the environment, nor are the proposed rules designed to reduce risks to the public health, safety and environment.

XIII. Analysis of Alternatives to Adopting the Rule(s)

The alternative to adopting the proposed rules is to continue operating as the Board has had in the past. This would mean continuing antiquated procedures such as printing and storing hard copies of emails, only communicating with applicants and parties by U.S. Mail, and conducting hearings where no party has standing to proceed, because current rules do not allow for such prehearing determinations.

XIV. Estimated Time Spent by State Employees to Develop Rule and Other Resources Used in Developing Rule

OWRB Staff, including legal staff, spent approximately 40 hours developing these rule changes and analyzing the impacts.

XV. Summary and Preliminary Comparison of Any Existing or Proposed Federal Regulations Intended to Address the Activities to be Regulated by Proposed Administrative Rules

There are no federal regulations intended to address the activities to be regulated by the proposed rules.

XVI. Date the rule impact statement was prepared and if modified, the date modified.

The Oklahoma Water Resources Board prepared this rule impact statement on October 13, 2025.

CHAPTER 5. FEES

SUBCHAPTER 1. GENERAL PROVISIONS

785:5-1-9. Dam safety and inspection fees

(a) Filing fees which must be submitted with each application to construct, enlarge, alter, or repair a dam (based on estimated cost of construction, enlargement, etc.) are as follows:

- (1) \$199,999 or less estimated cost - \$1,000.00
- (2) \$200,000 through \$11,999,999 estimated cost - One-half of one percent (0.5%) of estimated cost; not to exceed \$6,000.00.
- (3) ~~\$12,000.00~~ \$12,000,000.00 or greater estimated cost - Five hundredths of one percent (0.05%) of estimated cost.

(b) Fees for inspections of dams classified as low or significant hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel are as follows:

- (1) Small (see 785:25-3-3) - \$250.00 for each inspection visit.
- (2) Intermediate (see 785:25-3-3) - \$500.00 for each inspection visit.
- (3) Large (see 785:25-3-3) - \$1000.00 for each inspection visit.

(c) Fees for inspections of dams classified as high hazard potential made at request of a person who is not an owner of the dam or other routine or periodic inspections conducted by Board personnel shall be the actual cost of such inspection.

(d) The fee required for issuance of a certificate of completion is \$25.00 plus if applicable, the inspection fee set out in subsection (b) or (c) of this Section.

(e) Inspection report review and administration fees are due with submittal of the inspection reports as follows:

- (1) Significant hazard dams - \$300 once every three (3) years
- (2) High hazard dams - \$350 each year; provided that if the inspection report and fee is not submitted by the date specified, an additional fee of \$50.00 will be due.

785:5-1-16. Fees required in other matters

(a) The fee for computer services shall be as follows:

- (1) Copying documents to electronic media - \$1.00 per document or file plus actual cost of Board provided electronic media.
- (2) Direct labor cost to convert raw data in data bases to machine-readable format, including but not limited to preparation of table and field descriptions.
- (3) Actual cost of medium supplied by Board used in copying data from data base.

(b) The fee for a document search shall be \$10.00 per hour.

~~(c) The filing fee for Information Sheets regarding domestic use of stream water from federal reservoirs shall be \$50.00.~~

~~(dc)~~ For transcripts prepared by certified court reporter, stenographer or Board staff under the provisions of 785:4-3-6, the fee shall be the actual cost of the transcription. Prior to such transcription being made, the person requesting the transcription (or appealing the Board's order) shall pre-pay to the Board the estimated cost of the transcribing the audio, with such estimate to be prepared by the Board. Upon completion of the transcription, the person requesting the same shall deposit the balance, if any, necessary for full payment of the transcription. The Board shall refund or credit any excess amount previously deposited.

~~(ed)~~ If unavailable from local floodplain administrators, flood zone and flood map information on file with the Board for each tract or description of land requested will be provided for a fee of \$25.00.

~~(fe)~~ The fee for preparation and compilation of the administrative record for transmittal to a court pursuant to the Administrative Procedures Act shall be \$1.00 per page for written documents, plus the cost of copying the audio recording and the electronic media as provided in this Chapter, plus actual cost of duplication of other exhibits, all payable prior to the transmittal of the record in the court. If the party appealing an order of the Board requests a written transcription of the hearing, or if the district court orders a written transcription as authorized by 75 O.S. § 309, the provisions in subsection (f) above, including prepayment of the cost of transcribing cassette tapes of the hearing, shall apply to the party appealing the Board's order. The full cost of transcribing the tapes must be paid before the Board shall transmit the transcription to the court. The Board shall review any such transcription for accuracy before transmitting the same to court.

~~(gf)~~ In addition to any other applicable fee, and subject to review by the State Governmental Internet Applications Review Board and approval by the Office of Management and Enterprise Services ("OMES"), unless otherwise waived by the Board a person who undertakes an electronic/on-line transaction with the Board shall pay a convenience fee approved by OMES which includes, but is not necessarily limited to, the transaction fee levied by OMES, the credit card or other financial institution charge, and a prorated share of the reasonable costs of development and implementation of, sustaining and upgrading, and future expansion of, the electronic/on-line application. Such transactions may include, but shall not be limited to, filing applications for permits or loans, filing reports of well drilling activities, and renewing licenses or certifications.

(g) A hearing fee of \$1,750.00 must be submitted by the applicant for a permit when an individual proceeding is required on matters related to the application in response to protests received to an application in accordance with 785:4-5-4.

Rule Impact Statement

Title 785. Oklahoma Water Resources Board Chapter 5. Fees

I. Statement of need and legal basis

To address rising administrative costs associated with conducting individual proceedings, and pursuant to the authority granted by 82 O.S. 1085.2(9)(m), the Board proposes to add a hearing fee payable by the applicant whose application is the subject of such proceedings. Implementing a Hearing Fee is a necessary and justifiable change to the Board's administrative rules. It is a reasonable and proportionate measure to recover ever-increasing costs directly associated with the hearing process, including mailing and substantial staff time. This change will help the Board maintain its operational efficiency and continue to provide effective and timely services to the public.

II. Classification of the rule(s) and justification for classification.

Non-major rule. There are no other direct costs associated with compliance with the proposed rules other than what the Board already incurs to provide hearings as required.

III. Description of the proposed rule(s).

The proposed rule change adds a one-time fee of \$1,750.00 to be paid by applicants whose application is the subject of an individual proceeding. The proposed rule is not mandated by federal law. The proposed rule does not exceed the requirements of any applicable federal law. No federal law is directly applicable.

IV. Description of the classes of persons who most likely will be affected by the proposed rule(s), including classes that will bear the costs of the proposed rule(s), and any information on cost impacts received by the agency from any private or public entities.

The only class of persons affected by the proposed rules will be those with applications before the Board that require an individual proceeding. This represents approximately 22.3% of applications. The proposed rule will require the applicant to bear a portion of the costs of administering the individual proceedings associated with their application.

V. Description of the classes of persons who will benefit from the proposed rule(s).

The people of the State of Oklahoma will benefit from the proposed rule by requiring those persons directly benefiting from individual proceedings to bear the costs of those proceedings, rather than having those costs paid entirely from the general budgetary allocation.

VI. Comprehensive of the rules' economic impact.

The proposed rule changes will not require an increase in the full-time employee count and should allow for a reduction in the number of contract hearing examiners employed by the Board. The Board will incur no new costs associated with the benefits of the proposed rules. There will be an estimated benefit to the Board, measured by new fee income and cost reduction. The compliance cost is limited to the direct cost of the new fee to the applicant, which is \$1,750.00.

VII. Detailed explanation of methodology and assumptions used to determine the economic impact.

The methodology focused on **direct, measurable impacts**, primarily concerning fees and administrative costs, and found negligible secondary impacts on the state economy, public utility ratepayers, and local government units. The analysis was conducted under the assumption that the costs (new hearing fees) were balanced by the benefits (Board revenue/savings), and that the rule change itself does not induce market-wide behavioral changes that would significantly affect the larger economy.

VIII. Determination of whether implementation of the proposed rule(s) will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule(s).

No impact foreseen.

IX. Determination of whether implementation of the proposed rule(s) may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

No impact foreseen.

X. Measures taken to minimize the cost and impact of the proposed rule on business and economic development in this state, local government unites of this state, and individuals.

The proposed rule changes have been specifically tailored to impact only those persons and businesses with matters pending before the Board, and further tailored to assess costs only on those directly benefiting from the services provided by the Board.

XI. Determination of the effect of the proposed rule(s) on the public health, safety and environment and, if the proposed rule(s) is/are designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk.

There is no foreseen impact on public health, safety or the environment, nor are the proposed

rules designed to reduce risks to the public health, safety and environment.

XII. Determination of any detrimental effect on the public health, safety and environment if the proposed rule(s) is/are not implemented.

There is no foreseen impact on public health, safety or the environment, nor are the proposed rules designed to reduce risks to the public health, safety and environment.

XIII. Analysis of Alternatives to Adopting the Rule(s)

The alternative to adopting the proposed rule is for the Board to continue to pay the ever-increasing costs associated with administering the necessary individual proceedings out of its general budgetary allocation.

XIV. Estimated Time Spent by State Employees to Develop Rule and Other Resources Used in Developing Rule

OWRB Staff, including legal staff, spent approximately 40 hours developing these rule changes and analyzing the impacts.

XV. Summary and Preliminary Comparison of Any Existing or Proposed Federal Regulations Intended to Address the Activities to be Regulated by Proposed Administrative Rules

There are no federal regulations intended to address the activities to be regulated by the proposed rules.

XVI. Date the rule impact statement was prepared and if modified, the date modified.

The Oklahoma Water Resources Board prepared this rule impact statement on October 13, 2025

Fee Justification Report

Title 785. Oklahoma Water Resources Board Chapter 5. Fees

1. Introduction

This report outlines the justification for adding a hearing fee to the Oklahoma Water Resources Board Administrative Rules. The proposed rule change adds a new requirement: "When an individual proceeding is required in response to protests received to an application, all parties to the proceeding shall be required to pay a Hearing Fee as authorized by 82 O.S. 1085.2 (9)(m)." This fee is essential for offsetting the direct costs incurred by the Board when hearings are required in response to protests received to an application for water permits.

2. Justification of the Fee

The proposed fee directly addresses the financial burden placed on the Board by the hearing process. These costs have historically been covered by the agency's general revenue allocation, but costs have increased significantly over the last 5 years due to the number of hearings being scheduled and the cost to retain hearing examiners. The Board is taking steps to reduce costs by implementing an email filing process to reduce mailing costs and clarifying hearing examiner responsibilities so the Board is only considering issues within its jurisdiction.

In 2025, the Board will schedule approximately 44 hearings. The costs associated with each hearing are significant and include both fixed and variable expenses.

- **Fixed Costs:** \$31.44 in mailing costs is incurred per party, per hearing. This accounts for sending three certified letters—the notice of hearing, notice of the proposed order, and the final order—to each party. The use of certified mail ensures legal notice is properly served, a critical component of due process. In a case with only one protestant and one applicant, this cost will be **at a minimum \$62.88**.
- **Staff Time:** The most substantial costs are related to staff time and salaries. Processing a single hearing requires significant time from multiple employees, including:
 - **Hearing Examiner:** A hearing examiner spends approximately **20 hours** on each hearing, with a cost to the Board of approximately **\$63.34 per hour**. Each hearing effectively costs the Board **\$1,266.80** to have it evaluated by a hearing examiner. This time reflects the time needed to evaluate the application materials, each protest letter, conduct the hearing, review the hearing record, prepare and edit a proposed order. While not all hearings are the same, this time represents an average for the typical hearing. Some hearings, which end in default or are minimally complex, may require less time; while others, which have more protests, complex legal issues, prehearing discovery, prehearings, or rehearing, may require substantially more time.

- **Legal Assistant:** A legal assistant spends approximately four hours per hearing processing protests, notices and other materials for hearings, in addition to the time spent in a hearing as the clerk. With an average hearing lasting four hours, that's 8 hours per hearing. A legal assistant's cost to the board is approximately **\$36.22 per hour**. That amounts to an average of **\$289.82 per hearing**.
- **Board Review:** After the proposed hearing order is submitted to OWRB, the proposed order is reviewed by the General Counsel and prepared for Board consideration. This process takes approximately two (2) hours at \$70.00 per hour for a total of \$140.00
- **The Average Hearing,** including Legal Assistant, Hearing Examiner Time, and Postage for the minimum number of parties, costs the Board **\$1,759.50** to administer. This does not include time for other staff who may be required to testify at a hearing or prepare materials in advance of a hearing.

3. Rule Change

A rule change is necessary to allow the Board to recover some of the expenses associated with administering hearings. The proposed change would add a section (h) to 785:5-1-6. See below for exact language:

Fixed Hearing Fees Payable by the Applicant at Time of Hearing

While less individualized and less likely to recover the exact cost associated with each individual proceeding, a fixed hearing fee has the benefit of being predictable for the parties and may be assessed based on the average cost of a hearing. Additionally, a fixed fee, payable by the applicant is more likely to be paid as a permit may be withheld pending payment.

785:5-1-16 Fees required in other matters

- (h) A hearing fee of \$1,750.00 must be submitted by the applicant for a permit when an individual proceeding is required on matters related to the application in response to protests received to an application.

Conclusion

Implementing a Hearing Fee is a necessary and justifiable change to the Board's administrative rules. It is a reasonable and proportionate measure to recover ever-increasing costs directly associated with the hearing process, including mailing and substantial staff time. This change will help the Board maintain its operational efficiency and continue to provide effective and timely services to the public.

CHAPTER 50. FINANCIAL ASSISTANCE

SUBCHAPTER 6. WATER AND SEWER PROGRAM EMERGENCY GRANTS REQUIREMENTS AND PROCEDURES

785:50-6-2. Evaluation procedures for grant applications

(a) In evaluating a grant request under the water and sewer program, a determination shall be made as to whether an emergency situation exists. For the purposes of this determination, an emergency situation shall be a situation where the life, health or property of the persons served by the entity are endangered. An emergency will be deemed no longer to exist, and a grant application based thereon will not be approved nor funded, after the passage of 180 days following the date the emergency last occurred, unless the Board finds, upon evidence satisfactory to the Board, that the emergency continues to exist as the date of approval and the date of funding.

(b) No emergency may be determined by the Board to exist absent an official declaration of emergency by the entity requesting the grant. The entity's declaration of emergency must be furnished to the Board and must set forth and described, among other matters, the nature and circumstances of the emergency.

(c) In addition to determining whether an emergency situation exists, the Board shall, in evaluating a grant request, take into consideration the following:

- (1) The needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance;
- (2) Whether the political subdivision can reasonably finance the project without assistance from the state;
- (3) The relationship of the project to the overall statewide water and sewage treatment needs; and
- (4) Whether or not the applicant has taken all reasonable measure to limit waste and conserve water.

(d) Upon a determination that an emergency situation does exist, the priority point system set forth in ~~785:50-7-5~~ 785:50-6-3 shall be utilized to review pending grant applications and grant applications filed after the effective date of these rules.

(e) For purposes of evaluating, approving and funding an application for a grant, eligible project costs shall include, in addition to those project costs described in 785:50-3-1:

- (1) Architecture and/or engineer fees related to the project.
- (2) Fees for soil testing.
- (3) Fees for surveying.
- (4) Payments to contractor(s) for construction of the improvements.
- (5) Legal fees and expenses of counsel for the applicant which are related to the project.
- (6) Services of full-time or part-time inspector.
- (7) Administrative expenses shall not be eligible project costs.

(f) Grant application must be fully completed including the verification form signed and notarized by the applicant representative, and must have ~~a~~ the signature of an attorney representing applicant.

785:50-6-3. Emergency grant priority point system

(a) Basis of priority system and formula.

(1) **General description.** The priority system consists of a mathematical equation rating the applicants and the proposed project in accordance with the requirements of the statutes by means of a formula awarding points for each criteria used in the evaluation. The maximum point total under the system is ~~one hundred twenty (120)~~ one hundred and five (105). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 60 or more priority points. If the Board determines that the applicant with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of 59 or fewer shall be deemed denied; provided, such applications may be reevaluated if the applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The two primary statutory criteria are:

(A) The emergency situation of the applicant.

(B) Whether or not the applicant can reasonably finance the project without assistance from the state.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects; therefore, eligible entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among applicants.

(b) Priority formula for eligible entities other than school districts.

(1) **Formula.** The following formula has been devised to rank grant applications:
$$T = \frac{P \times E + WR + I + L + MHH + FP}{RS + OCR + LP + ACPI + AR + BP - AN}$$
 where:

- (A) ~~P = Priority ranking~~ T = Total priority points (105).
- (B) E = Emergency ranking (50).
- (C) ~~WR = Water and sewer rate~~ RS = Rates and Study (10).
- (D) ~~I = Indebtedness per customer~~ OCR = Operational cost ratio (13).
- (E) LP = Amount of local contribution toward project Local Participation (10).
- (F) MHH = Median Household Income APCI = Adjusted per capita income (10).
- (G) ~~FP = Applicant's ability to finance project~~ AR = Amount of grant requested (7).
- (H) ~~AR = Amount of grant requested~~ BP = Benefit of project to other systems (5).
- (I) ~~BP = Benefit of project to other systems~~ AN = Application number (0).
- (J) ~~AN = Application number~~

(2) **Explanation.** Each of these criteria are explained below:

(A) **Emergency rankings (E).** Emergencies are ranked by severity with Category 1 being the most severe and Category 2 being the least severe. Points awarded range from a maximum of 50 points for Category 1 and a minimum of 40 points for Category 2. If an applicant requests funds to correct more than one emergency category need, only the amount of assistance needed to correct the most severe need will be considered in the calculation for the application ranking. The applicant will be informed that separate and additional applications must be filed for other needs and projects. An applicant who receives funding for a project under any of the listed emergencies may not reapply under the same emergency. The two (2) emergency ranking categories are as follows:

(i) **Category 1.** Total loss of a water supply or sewage system or loss of a major component of a system due to a natural or unforeseen disaster which could not have been prevented by the exercise of reasonable care by the applicant. Examples of such disasters may include but are not necessarily limited to: tornado; flood; fire; severe weather; landslide; sudden loss of a water supply system; sudden collapse of a major structural portion of a system; signs of imminent failure of a public water supply lake dam, spillway or outlet structure such as settlement or slumping of the crest, excessive seepage, slides, cracks or sloughs along the upstream and downstream slopes of the dam. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quantity does not supply the basic needs of the residents. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provisions of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 1 emergencies receive 50 points.

(ii) **Category 2.** Water or sewer emergencies which could not have been prevented by the exercise of reasonable care by the applicant and which cause immediate danger or an imminent health hazard to the community or other nearby citizens. Such emergencies may include but are not necessarily limited to: users or systems whose water supply is deemed to be dangerous or unhealthy; systems whose supply source becomes contaminated by man-made pollution caused by a person other than the applicant; overflow of raw sewage into homes or streets due to structural failure in the collection mains and/or structural, mechanical, or electrical failure at a lift station due to disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides; sewage treatment systems which discharge raw or inadequately treated sewage effluent whose quality and/or quantity causes an immediate and imminent health or safety danger to a public water supply due to a structural, mechanical or electrical failure of a process unit(s) caused by disasters which could not have been prevented by the exercise of reasonable care by the applicant, including but not limited to tornado, flooding, fire, or landslides. Also included under this category is the construction of a new water system to serve areas where residents are supplied by domestic sources or domestic systems whose quality is dangerous or unhealthy as a consequence of circumstances that could not have been prevented by the exercise of reasonable care by the applicant. In such cases where new or extended systems are proposed, the Board shall consider and determine whether an adequate population density is available to utilize the proposed system. Notwithstanding any other provision of this Chapter, if the density is preliminarily determined by Board staff to be inadequate for the applicant to feasibly provide operation and maintenance of the new or extended system, then the application will not be recommended for approval until the proper density, which will make the extension feasible, is achieved. Category 2 emergencies receive 40 points.

(B) ~~Water and sewer rate structure (WR)~~ **Rates and Study (RS).** A recent rate study will help ensure an applicant has current rates that will benefit the system in the long run. A study must be conducted frequently to stay current with aging infrastructure needs. The rate study is to be conducted independently by a third-party.

entity that does not stand to gain from the transaction. The maximum points possible under this criterion is 10 points.

(i) For systems providing water service only: If a rate study has been conducted and implemented within two (2) years of the application date, the applicant receives 5 points.

(I) If the cost per 5000 gallons is \$50.00 or greater, the applicant receives 10 points.

(II) If the cost per 5000 gallons is \$45.00 to \$49.99, the applicant receives 9 points.

(III) If the cost per 5000 gallons is \$40.00 to \$44.99, the applicant receives 8 points.

(IV) If the cost per 5000 gallons is \$35.00 to \$39.99, the applicant receives 7 points.

(V) If the cost per 5000 gallons is \$30.00 to \$34.99, the applicant receives 6 points.

(VI) If the cost per 5000 gallons is \$25.00 to \$29.99, the applicant receives 5 points.

(VII) If the cost per 5000 gallons is \$23.00 to \$24.99, the applicant receives 4 points.

(VIII) If the cost per 5000 gallons is \$21.00 to \$22.99, the applicant receives 3 points.

(IX) If the cost per 5000 gallons is \$19.00 to \$20.99, the applicant receives 2 points.

(X) If the cost per 5000 gallons is \$18.00 to \$18.99, the applicant receives 1 point.

(XI) If the cost per 5000 gallons is less than \$18.00, the applicant receives 0 points.

(ii) For systems providing water and sewer services: If a rate study was conducted and implemented more than two (2) years but less than five (5) years prior to the application date, the applicant receives zero (0) points.

(I) If the cost per 5000 gallons is \$56.00 or greater, the applicant receives 10 points.

(II) If the cost per 5000 gallons is \$53.00 to \$55.99, the applicant receives 9 points.

(III) If the cost per 5000 gallons is \$49.00 to \$52.99, the applicant receives 8 points.

(IV) If the cost per 5000 gallons is \$45.00 to \$48.99, the applicant receives 7 points.

(V) If the cost per 5000 gallons is \$41.00 to \$44.99, the applicant receives 6 points.

(VI) If the cost per 5000 is \$37.00 to \$40.99, the applicant receives 5 points.

(VII) If the cost per 5000 gallons is \$34.00 to \$36.99, the applicant receives 4 points.

(VIII) If the cost per 5000 gallons is \$32.00 to \$33.99, the applicant receives 3 points.

(IX) If the cost per 5000 gallons is \$31.00 to \$31.99, the applicant receives 2 points.

(X) If the cost per 5000 gallons is \$30.00 to \$30.99, the applicant receives 1 point.

(XI) If the cost per 5000 gallons is less than \$30.00, the applicant receives 0 points.

(iii) For systems providing sewer service only: If a rate study has not been conducted and implemented within five (5) years of the application date, the applicant receives negative five (-5) points.

(I) If the cost per connection per month is \$34.00 or greater, the applicant receives 10 points.

(II) If the cost of connection per month is \$32.00 to \$33.99, the applicant receives 9 points.

(III) If the cost of connection per month is \$30.00 to \$31.99, the applicant receives 8 points.

(IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant receives 7 points.

(V) If the cost of connection per month is \$26.00 to \$27.99, the applicant receives 6 points.

(VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant receives 5 points.

(VII) If the cost of connection per month is \$22.00 to \$23.99, the applicant receives 4 points.

(VIII) If the cost of connection per month is \$20.00 to \$21.99, the applicant receives 3 points.

(IX) If the cost of connection per month is \$18.00 to \$19.99, the applicant receives 2 points.

(X) If the cost of connection per month is \$16.00 to \$17.99, the applicant receives 1 point.

(XI) If the cost of connection per month is less than \$16.00, the applicant receives 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under the category the maximum number of points is 13 and the minimum is -3 points. Billing rate structure:

(I) The Board will deduct three (3) points from the total for any system which charges a flat-water rate or sewer rate (unmetered) without regard to the amount of water or sewer used.

(II) The Board will deduct two (2) points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water.

(III) No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum.

(IV) Two (2) points will be added for systems using an increasing block rate.

(V) Entities who dedicate sales tax for water and/or sewer improvements will be awarded one (1) additional point.

(VI) Entities who have implemented an automatic rate increase will be awarded two (2) additional points.

(C) Indebtedness per customer (I). The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served. **Operational Cost Ratio (OCR).** The operational cost ratio will look at the applicant's total operating revenues and compare them against the operating expenses and debt to gauge ability to finance debt based off of their most recent audit not more than two (2) fiscal years behind. An Agreed Upon Procedure not more than two (2) fiscal years behind will be accepted to be reviewed. Operating revenues shall include interest income as well as membership fees, along with all revenues listed under the revenues category. If sales tax is dedicated towards water and/or sewer improvements as indicated in the Rate Study, sales tax revenue will also be included in operating revenues. Operating expenses shall include everything in the expenses category except depreciation. Debt shall mean any outstanding obligations related to water and/or sewer infrastructure and will include the amount of grant requested. The maximum points possible under this criterion is thirteen (13) points. The formula is as follows: $\text{Operational Cost Ratio} = (\text{Operating Revenues} - \text{Operating Expenses} + \text{Depreciation}) / (\text{Debt} + \text{Amount of grant requested})$. If the applicant does not have any debt, the grant amount requested will be taken into consideration to determine OCR.

- (i) If the indebtedness per customer is \$20.00 or greater, the applicant receives 10 points. If operational cost ratio is less than 1.0 times, the applicant receives 0 points.
- (ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant receives 9 points. If operational cost ratio is 1.0 times, the applicant receives 5 points.
- (iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant receives 8 points. If operational cost ratio is more than 1.0 times but less than 1.25 times, the applicant receives 10 points.
- (iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant receives 7 points. If operational cost ratio is more than 1.25 times, the applicant receives 13 points.
- (v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant receives 6 points.
- (vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant receives 5 points.
- (vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant receives 4 points.
- (viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant receives 3 points.
- (ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant receives 2 points.
- (x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant receives 1 point.
- (xi) If the indebtedness per customer is less than \$5.50, the applicant receives 0 points.

(D) Local participation (L). The local participation ranking is based on the percentage of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will be counted as local funding. The maximum points possible under this criterion is ten (10) points. Points awarded for participation are as follows:

- (i) The Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project. If the percentage of the project cost locally funded is less than 15%, the applicant receives 0 points.
- (ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions, or incurrence of additional debt through a loan. Grant funds received through other agencies will not be counted as local funding. Points awarded for participation are as follows: If the percentage of the project cost locally funded is 15% or more but less than 20%, the applicant receives 5 points.
 - (I) If the percentage of the project cost locally funded is 90% or greater, the applicant shall be given 10 points.
 - (H) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant receives 9 points.
 - (HH) If the percentage of the project cost locally funded is at least 70% but less than 80%, the applicant receives 8 points.
 - (IV) If the percentage of the project cost locally funded is at least 60% but less than 70%, the applicant receives 7 points.
 - (V) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant receives 6 points.
 - (VI) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant receives 5 points.
 - (VII) If the percentage of the project cost locally funded is at least 30% but less than 40%, the applicant receives 4 points.
 - (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant receives 3 points.
 - (IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant receives 2 points.
 - (X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant receives 1 point.

(XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) If the percentage of the project cost locally funded is more than 20%, the applicant receives 10 points.

(E) **Median Household Income (MHI).** The median household income is calculated according to the most current federal decennial census or American Community Survey data available. **Adjusted Per Capita Income (APCI).** The Adjusted Per Capita Income (APCI) is a formula that takes into account the affordability criteria of the applicant and is measured against the United States' APCI to determine tier ranking based off of what percentage applicant receives. Data from the census website is used to determine per capita income, unemployment rate, and population trend. The maximum points possible under this criterion is 10 points.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available. The formula is as follows: $APCI = \text{Per Capita Income} * \text{Employment Rate} * \text{Population Trend}$.

(I) Employment Rate = $1 - \text{unemployment rate}$.

(II) Population Trend = 10-year difference in population from most recent Census

(III) Tier Ranking = $\text{Percentage of APCI} = \text{APCI}/\text{US. APCI}$

(ii) Points are awarded as follows: Rural Water and Sewer systems are requested to contact OWRB for additional information needed to determine percentage ranking. Required data of at least two of the largest communities served by the RW&S system will be averaged to determine RW&S percentage ranking and tier determination or data presented to OWRB that more accurately reflects the entity's current or proposed service area, that will be evaluated on a case-by-case basis. If a system serves only one community, the sole community's data will be used to determine RW&S percentage ranking and tier determination.

(I) If the median household income is less than \$17,000, the applicant receives 10 points.

(II) If the median household income is \$17,000 to \$20,999, the applicant receives 9 points.

(III) If the median household income is \$21,000 to \$23,999, the applicant receives 8 points.

(IV) If the median household income is \$24,000 to \$28,999, the applicant receives 7 points.

(V) If the median household income is \$29,000 to \$31,999, the applicant receives 6 points.

(VI) If the median household income is \$32,000 to \$36,999, the applicant receives 5 points.

(VII) If the median household income is \$37,000 to \$39,999, the applicant receives 4 points.

(VIII) If the median household income is \$40,000 to \$44,999, the applicant receives 3 points.

(IX) If the median household income is \$45,000 to \$47,999, the applicant receives 2 points.

(X) If the median household income is \$48,000 to \$51,999, the applicant receives 1 point.

(XI) If the median household income is \$52,000 or greater, the applicant receives 0 points.

(iii) Tier ranking:

(I) If percentage of APCI is equal to 81% or more of U.S. APCI, applicant will be considered a Tier 4 and receives 4 points.

(II) If percentage of APCI is more than or equal to 71% but less than 81% of U.S. APCI, applicant will be considered Tier 3 and receives 6

(III) If percentage of APCI is more than or equal to 56% but less than 71% of U.S. APCI, applicant will be considered a Tier 2 and receives 8 points.

(IV) If percentage of APCI is equal to 55% or less of U.S. APCI, applicant will be considered a Tier 1 and receives 10 points.

(F) **Ability to finance project (FP): Amount of grant requested (AR).** The maximum number of points under this criterion is seven (7) and the minimum is negative five (-5) points.

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12. Points under this category for the amount of grant requested are distributed as follows:

(I) If the grant amount requested is \$275,000 to \$300,000, the applicant receives -5 points.

(II) If the grant amount requested is \$250,000 to \$274,999.99, the applicant receives -4 points.

(III) If the grant amount request is \$225,000 to \$249,999.99, the applicant receives -3 points.

(IV) If the grant amount requested is \$200,000 to \$249,999.99, the applicant receives -2 points.

(V) If the grant amount requested is \$175,000.01 to \$199,999.99, the applicant receives -1 point.

(VI) If the grant amount requested is \$175,000.00, the applicant receives 0 points.

(VII) If the grant amount requested is \$150,000 to \$174,999.99, the applicant receives 1 point.

(VIII) If the grant amount requested is \$125,000 to \$149,999.99, the applicant receives 2 points.

(IX) If the grant amount requested is \$100,000 to \$124,999.99, the applicant receives 3 points.

(X) If the grant amount requested is \$75,000 to \$99,999.99, the applicant receives 4 points.

(XI) If the grant amount requested is \$50,000 to \$74,999.99, the applicant receives 5 points.

(XII) If the grant amount requested is \$25,000 to \$49,999.99, the applicant receives 6 points.

(XIII) If the grant amount requested is \$24,999.99 and below, the applicant receives 7 points.

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula: FP equals the product of AR multiplied by (0.0710), divided by the product of (12) multiplied by (C), where: If a project exceeds \$175,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(I) FP = Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant request for the project.

(H) AR = Amount of grant request. For this calculation, the amount of available reserve not dedicated to the project will be deducted from the amount requested.

(HH) (0.0710) = Annual rate factor for a 25 year loan at 5%

(IV) (12) = Number of months per year.

(V) (C) = Number of customers

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project. No grant shall be made to any single eligible entity during any fiscal year in an amount exceeding twenty percent (20%) of the funds available for grants to eligible entities during that fiscal year nor shall such grant exceed Three Hundred Thousand Dollars (\$300,000.00).

(iv) Points in the FP ranking are awarded as follows:

(I) If the ability to finance the project is \$10.00 or greater, the applicant receives 12 points.

(H) If the ability to finance the project is \$8.00 to \$9.99, the applicant receives 11 points.

(HH) If the ability to finance the project is \$6.00 to \$7.99, the applicant receives 10 points.

(IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant receives 9 points.

(V) If the ability to finance the project is \$4.00 to \$4.99, the applicant receives 8 points.

(VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant receives 7 points.

(VH) If the ability to finance the project is \$2.00 to \$2.99, the applicant receives 6 points.

(VHH) If the ability to finance the project is \$1.75 to \$1.99, the applicant receives 5 points.

(IX) If the ability to finance the project is \$1.50 to \$1.74, the applicant receives 4 points.

(X) If the ability to finance the project is \$1.25 to \$1.49, the applicant receives 3 points.

(XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant receives 2 points.

(XH) If the ability to finance the project is \$0.75 to \$0.99, the applicant receives 1 point.

(XHH) If the ability to finance the project is less than \$0.75, the applicant receives 0 points.

(G) Amount of grant requested (AR): Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicants, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(i) Points under this category for amount of grant requested are distributed as follows:

(I) If the grant amount requested is \$95,001 to \$100,000, the applicant receives -5 points.

(H) If the grant amount requested is \$90,001 to \$95,000, the applicant receives -4 points.

(HH) If the grant amount request is \$85,001 to \$90,000, the applicant receives -3 points.

(IV) If the grant smount requested is \$80,001 to \$85,000, the applicant receives -2 points.

(V) If the grant amount requested is \$75,001 to \$80,000, the applicant receives -1 point.

(VI) If the grant amount requested is \$70,001 to \$75,000, the applicant receives 0 points.

(VH) If the grant amount requested is \$65,001 to \$70,000, the applicant receives 1 point.

(VHH) If the grant amount requested is \$60,001 to \$65,000, the applicant receives 2 points.

(IX) If the grant amount requested is \$55,001 to \$60,000, the applicant receives 3 points.

(X) If the grant amount requested is \$50,000 to \$55,000, the applicant receives 4 points.

(XI) If the grant amount requested is \$45,001 to \$50,000, the applicant receives 5 points.

(XH) If the grant amount requested is \$40,001 to \$45,000 the applicant receives 6 points.

(XHH) If the grant amount requested is \$35,001 to \$40,000, the applicant receives 7 points.

(XIV) If the grant amount requested is \$30,001 to \$35,000, the applicant received 8 points.

(XV) If the grant amount requested is \$25,001 to \$30,000, the applicant receives 9 points.

(XVI) If the grant amount requested is \$25,000 or less, the applicant receives 10 points.

(ii) If a project exceeds \$75,000 and the amount of funds needed over and above the OWRB grant request are being secured through a loan from OWRB, then there will be no deduction of points under this category.

(H) Project benefit to other systems (BP). If the applicant's project will benefit other adjacent systems as well as applicant's, or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application. **Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from

such any emergency grant which was funded 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:

- (i) If the qualified entity has received one (1) prior grant, the applicant receives -5
- (ii) If the qualified entity has received two (2) prior grants, the applicant receives -8
- (iii) If the qualified entity has received three (3) prior grants, the applicant receives -10 points.
- (iv) If the qualified entity has received four (4) prior grants, the applicant receives -12 points.
- (v) If the qualified entity has received five (5) or more prior grants, the applicant receives -14 points.

~~(f) **Number of grants.** Since it is anticipated that entities who have received emergency grants might submit additional grant applications for approval, points will be deducted from such applications according to the following schedule; provided, points shall not be deducted from such any emergency grant which was funded 10 or more years prior to the date of Board action on the pending application and which has been subjected to a Board audit:~~

- ~~(i) If the qualified entity has received one (1) prior grant, the application receives -5 points.~~
- ~~(ii) If the qualified entity has received two (2) prior grants, the application receives -8 points.~~
- ~~(iii) If the qualified entity has received three (3) prior grants, the application receives -10 points.~~
- ~~(iv) If the qualified entity has received four (4) prior grants, the application receives -12 points.~~
- ~~(v) If the qualified entity has received five (5) or more prior grants, the application receives -14 points.~~

(c) Priority formula for school districts.

- (1) School districts, created under Article V of the 1971 School Code, 70 O.S. 1981, §5-101 et seq., are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's program.
- (2) In evaluating and prioritizing grant applications from school districts similar criteria to those applied to municipalities, towns and rural water districts will be utilized.
- (3) In developing a priority formula for school district applicants, again, the two primary statutory criteria are:
 - (A) The emergency situation of the school district.
 - (B) Whether the school district can reasonably finance the emergency project without the Board's assistance.
- (4) The emergency aspect of each project is ranked with a maximum of 50 points being given to the most serious situations and a minimum of 30 points to the least serious. The emergency categories and points given for each are the same as those listed in (b)(2) of this Section.
- (5) The school district's financial situation is given a maximum of 66 points and is derived by analyzing the following:
 - (A) Local tax levies
 - (B) Bonded indebtedness
 - (C) Local contribution
 - (D) Median household income within the school district's geographical area
 - (E) Applicant's ability to finance project
 - (F) Amount of grant requested
 - (G) Application number
- (6) Priority lists compiled and published by other Oklahoma state agencies shall be utilized to assess the seriousness of the emergency.
- (7) Using the previously mentioned analysis, the following formula has been devised to rank school districts' grant applications: $P = E + LT + BI + L + MHI + FP + AR - AN$, where:
 - (A) P = Priority ranking total points
 - (B) E = Emergency ranking
 - (C) LT = Local tax levies
 - (D) BI = Bonded indebtedness
 - (E) L = School's contribution toward the project
 - (F) MHI = Median household income of population within a school district
 - (G) FP = Applicant's ability to finance project
 - (H) AR = Amount of grant requested
 - (I) AN = Application number
- (8) The criteria E, MHI, FP, AR and AN are the same as that set forth in (b) of this section. LT, BI and L are explained as follows:

(A) Local tax levies (LT). Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

- (i) If the mills are 95 to 100, the applicant receives 13 points.
- (ii) If the mills are 90 to 94.99 the applicant receives 11 points.
- (iii) If the mills are 85 to 89.99, the applicant receives 10 points.
- (iv) If the mills are 80 to 84.99, the applicant receives 8 points.
- (v) If the mills are 70 to 79.99, the applicant receives 6 points.
- (vi) If the mills are 60 to 69.99, the applicant receives 4 points.
- (vii) If the mills are 55 to 59.99, the applicant receives 2 points.
- (viii) If the mills are 50 to 54.99, the applicant receives 1 point.

- (ix) If the mills are 45 to 59.99, the applicant receives 0 points.
- (x) If the mills are 40 to 44.99, the applicant receives -1 point.
- (xi) If the mills are less than 40, the applicant receives -2 points.

(B) Bonded indebtedness (BI).

(i) Priority points for Bonded Indebtedness are as follows:

- (I) If the percentage is 95% to 100%, the applicant receives 10 points
- (II) If the percentage is 90% to 94.99%, the applicant receives 8 points.
- (III) If the percentage is 80% to 89.99%, the applicant receives 7 points.
- (IV) If the percentage is 75% to 79.99%, the applicant receives 6 points.
- (V) If the percentage is 70% to 74.99%, the applicant receives 5 points.
- (VI) If the percentage is 65% to 69.99%, the applicant receives 4 points
- (VII) If the percentage is 60% to 64.99%, the applicant receives 3 points.
- (VIII) If the percentage is 55% to 59.99%, the applicant receives 2 points.
- (IX) If the percentage is 50% to 54.99%, the applicant receives 1 point.
- (X) If the percentage is 45% to 44.99%, the applicant receives 0 points.
- (XI) If the percentage is 40% to 44.99%, the applicant receives -1 point.
- (XII) If the percentage is 30% to 39.99%, the applicant receives -2 points.
- (XIII) If the percentage is less than 30%, the applicant receives -3 points.

(ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

(C) Local participation (L).

(i) In order to achieve the maximum benefit from available grant funds, the Board will not approve nor fund any grant application unless the applicant contributes at least fifteen percent (15%) of the total cost of the proposed project.

(ii) The local participation ranking is based on the percent of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Points awarded are as follows:

- (I) If the percentage of the project cost locally funded is 90% or greater, the applicant receives 10 points.
- (II) If the percentage of the project cost locally funded is at least 80% but less than 90%, the applicant receives 9 points.
- (III) If the percentage of the project cost locally funded at least 70% but less than 80%, the applicant receives 8 points.
- (IV) If the percentage of the project cost locally funded at least 60% but less than 70%, the applicant receives 7 points.
- (V) If the percentage of the project cost locally funded at least 50% but less than 60%, the applicant receives 6 points.
- (VI) If the percentage of the project cost locally funded is at least 50% but less than 60%, the applicant receives 5 points.
- (VII) If the percentage of the project cost locally funded is at least 40% but less than 50%, the applicant receives 4 points.
- (VIII) If the percentage of the project cost locally funded is at least 25% but less than 30%, the applicant receives 3 points.
- (IX) If the percentage of the project cost locally funded is at least 20% but less than 25%, the applicant receives 2 points.
- (X) If the percentage of the project cost locally funded is at least 15% but less than 20%, the applicant receives 1 point.
- (XI) If the percentage of the project cost locally funded is less than 15%, the application shall not be approved nor funded.

(iii) Under the Ability to Finance Project (FP) category the Number of Customers (C) as previously discussed will be replaced by the Number of Families within a school district. Points awarded under the FP category are the same as discussed and shown in (b) of this Section.

SUBCHAPTER 8. RURAL ECONOMIC ACTION PLAN (REAP) GRANT PROGRAM REQUIREMENTS AND PROCEDURES

785:50-8-3. Application review and disposition

(a) **General procedures.** The general procedure to be followed in the financial assistance application, review and consideration process for financial assistance under the REAP grant program shall be as follows:

(1) Pre-application workshop.

(A) While not specifically required, all potential applicants are encouraged to participate in the pre-application workshop between Board staff, potential applicants (or representative), applicant's legal, financial and engineering advisors and such other persons whose attendance and participation may be deemed appropriate and beneficial. Applicants who attend the workshop shall receive additional points.

(B) At the pre-application workshop, preliminary matters respecting the applicant, the proposed project and the application for assistance may be generally discussed in an effort to familiarize all concerned parties with the financial assistance program and applicable application requirements and procedures.

(2) Application.

(A) Applicant shall initiate application review and consideration by submission to the Board of applicant's application for financial assistance. An application may be submitted directly by the qualified entity or, at the qualified entity's discretion, may be submitted by a COG for the benefit or on behalf of a qualified entity. A COG may assist a qualified entity in filling out or filing an application, but a COG may not exercise any power of review, approval or disapproval over an application. All applications filed with any COG shall be submitted by the COG to the Board. If an application submitted by a COG is approved, the money shall be disbursed directly to the qualified entity.

(B) In all instances, applications must be submitted in a form which meets the requirements of Subchapter 5.

(C) All applicants must have the verification form signed and notarized by the applicant representative, and must have ~~at~~ the signature of an attorney representing applicant.

(3) Submittal to Board. Upon completion of staff review, the submitted application (with staff recommendations, if any) shall be placed upon the Board's agenda for the next regular (or special) Board meeting and shall be thereby submitted to the Board for action as described in (e) below.

(b) General approval standards and criteria. In the review and consideration of applications for financial assistance under the REAP grant program, the Board shall follow the priority point system set forth in 785:50-8-5. The Board shall also give consideration to the following general and non-exclusive criteria for application approval:

(1) Compliance with laws. The application and proposed project must be found to be in compliance with all applicable and relevant federal, state and local laws and regulations, and applicant must possess all necessary and incidental legal rights and privileges necessary to project commencement and operation.

(2) Eligibility. The applicant must be a qualified entity (or a COG applying on behalf of a qualified entity) and the proposed project must be for a qualified purpose as defined in 785:50-3-1 or 785:50-8-2.

(3) Local need, support and priority. The project must be found to be needed in the area to be served and must be found to be sufficient, as proposed, to serve such needs. The Board shall additionally consider the project's relative benefit and priority in relation to the needs of other proposed projects and applicants.

(4) Availability of other assistance. The Board shall consider the feasibility and availability of alternative sources of revenue which could be obtained and utilized by applicant for project financing.

(5) Economic feasibility. The Board shall consider the overall apparent economic viability and feasibility of the project as a whole.

(6) Project feasibility. The Board shall consider from the engineering data submitted and otherwise available whether the proposed project appears to be feasible, and must determine as a prerequisite to application approval and funding that the project is cost effective.

(7) Statewide needs and public interest. The Board shall give consideration to the relationship between the proposed project and the overall water resource development needs within the State of Oklahoma as well as to whether the proposed project, if constructed, will serve the public interest and welfare.

(8) REAP grant amount; availability of funds. In sizing a REAP grant, the Board shall take into consideration the current and anticipated availability of REAP program funds. Appropriations for the year will determine the highest amount allowable to be requested by the applicant.

(9) Conservation Measures. The Board shall consider whether or not the applicant has taken all reasonable measures to limit waste and conserve water.

(c) Criteria applicability.

(1) The general criteria set forth in (b) and (d) of this Section are intended to constitute and shall constitute general guidelines and standards for application review and consideration by the Board.

(2) Such criteria shall not be deemed exclusive.

(3) In all instances, each individual application and project must be reviewed and considered on its own individual merits.

(4) The criteria and standards set forth in (b) and (d) of this Section shall accordingly be interpreted and applied so as to allow sufficient flexibility in the ultimate exercise of Board's judgment and discretion.

(d) Criteria for denying an application. The Board may deny an application for a REAP grant for any of the following reasons:

(1) The applicant or the entity which stands to receive the benefit of the grant assistance is not an eligible entity.

(2) Any other reason based upon applicable law or the Board's judgment and discretion.

(e) Board action.

(1) After reviewing and considering the submitted application, the Board may proceed to take one of the following alternative forms of Board action on the application:

(A) The Board may approve and grant the application as submitted, in whole or in part, and thereby authorize such further action as may be necessary to effectuate the disbursement of funds.

(B) The Board may retain the application under advisement for further consideration or continue hearing on same for later ruling and disposition, and, the Board may withhold ruling on the application pending further hearing and/or submission to the Board of such further or additional information as the Board may require for application consideration purposes.

(C) The Board may reject and deny the application, in whole or in part, based upon any criteria described in (d) of this Section which may be applicable.

(D) The Board may approve and grant the application, in whole or in part, such approval being conditioned and contingent upon the existence of adequate and available grant funds or conditioned and contingent upon receipt and approval by Board staff of any outstanding and necessary material, information, documents, verifications or other authorization.

(2) Upon approval of an application, the Board may authorize the execution of all necessary grant documents and instruments by the Chairman of the Board, or other designated Board member, and may accordingly authorize and provide for disbursements and may authorize such further or additional action as may be necessary to complete and implement the approved transaction.

785:50-8-5. REAP grant priority point system

(a) Basis of priority system and formula.

(1) **General description.** The priority system consists of a mathematical equation rating the qualified entities and the proposed project in accordance with the requirements of state law by means of a formula awarding points for each criterion used in the evaluation. The maximum point total under the system is one hundred thirty (130). The Board may consider each month, and in order from the highest rating, those applications awarded point ratings of 40 or more priority points. If the Board determines that the qualified entity with the highest point rating cannot promptly proceed with the project due to delays, including but not limited to those caused by legal problems, engineering problems, feasibility problems or availability of other funding sources, the Board may pass over consideration of such application then proceed to consider in order the next highest rated application. Applications which are bypassed shall retain their ratings and thus remain eligible for further consideration. Applications preliminarily determined by Board staff to have point ratings of applicant submits additional information showing changed circumstances within 120 days after the date of staff's determination, and such information improves the applicant's preliminary point rating.

(2) **Statutory criteria.** The basis of the priority formula has been developed from the enacting legislation. The primary statutory criteria are:

(A) There shall be a higher priority for any city or town with a population less than one thousand seven hundred fifty (1,750) according to the Census Population than for any jurisdiction with a greater population; and rural water or sewer districts which have less than 525 non-pasture customers; and

(B) *Among other cities or towns, those municipalities having relatively weaker fiscal capacity shall have a priority for project funding in preference to other municipalities* [62:2003]. In order to give a priority evaluation to each applicant, the Board shall evaluate all applications according to the fiscal capacity criteria set forth in this Section.

(3) **Total priority points.** Total priority points will be calculated and awarded for individual projects. Therefore, qualified entities will be required to complete separate applications for each project for which grant funds are requested. Priority lists compiled and published by other Oklahoma State agencies and/or seniority dates of applications submitted shall be utilized to decide ties in point totals among qualified entities.

(b) Priority formula for eligible entities other than school districts and counties.

(1) **Formula.** The following formula has been devised to rank grant applications: $T = P + \frac{WR}{RS} + \frac{I}{OCR} + \frac{MH}{LP} + \frac{FP}{APCI} + N + AR + BP + PG + S + WA$, Where:

(A) T = Total of priority points (130)

(B) P = Population (55)

(C) ~~WR = Water and sewer rate structure~~ RS = Rates and Study (10)

(D) ~~I = Indebtedness per customer~~ OCR = Operational cost ratio (13)

(E) ~~MH = Median household income~~ LP = Local participation (10)

(F) ~~FP = Applicant's ability to finance project~~ APCI = Adjusted per capita income (10)

(G) N = Need (5)

(H) AR = Amount of grant requested (7)

(I) BP = Project benefit to other systems (5)

(J) PG = Previous grant assistance (0)

(K) S = Sustainability (10)

(L) WA = Workshop attended (5)

(2) **Explanation.** Each of these criteria are explained below:

(A) **Population (P).** ~~Municipalities which have a population of less than 1,750 according to the latest Census Population will receive 55 priority points. Rural water or sewer districts which have less than 525 non-pasture~~

customers will receive 55 points. The maximum points under this criterion is fifty-five (55) points.

(B) **Water and Sewer rate structure (WR): Rates and study (RS.)** A recent rate study will help ensure an applicant has current rates that will benefit the system in the long run. A study must be conducted frequently to stay current rates that will benefit the system in the long run. A study must be conducted frequently to stay current with aging infrastructure needs. The study is to be conducted independently by a third-party entity that does not stand to gain from the transaction. The maximum points possible under this criterion is ten (10) points and the minimum is negative (-8).

(i) For systems providing water service only If a rate study has been conducted and implemented within two (2) years of the application date, the application receives five (5) points.

(I) If the cost per 5000 gallons is \$50.00 or greater, the applicant receives 10 points.

(II) If the cost per 5000 gallons is \$45.00 to \$49.99, the applicant receives 9 points.

(III) If the cost per 5000 gallons is \$40.00 to \$44.99, the applicant receives 8 points.

(IV) If the cost per 5000 gallons is \$35.00 to \$39.99, the applicant receives 7 points.

(V) If the cost per 5000 gallons is \$30.00 to \$34.99, the applicant receives 6 points.

(VI) If the cost per 5000 gallons is \$25.00 to \$29.99, the applicant receives 5 points.

(VII) If the cost per 5000 gallons is \$23.00 to \$24.99, the applicant receives 4 points.

(VIII) If the cost per 5000 gallons is \$21.00 to \$22.99, the applicant receives 3 points.

(IX) If the cost per 5000 gallons is \$19.00 to \$20.99, the applicant receives 2 points.

(X) If the cost per 5000 gallons is \$18.00 to \$18.99, the applicant receives 1 point.

(XI) If the cost per 5000 gallons is less than \$18.00, the applicant receives 0 points.

(ii) For systems providing water and sewer services; If a rate study was conducted and implemented more than two (2) years of the application date but less than five (5) years from the application date, the applicant receives zero (0) points.

(I) If the cost per 5000 gallons is \$56.00 or greater, the applicant receives 10 points.

(II) If the cost per 5000 gallons is \$53.00 to \$55.99, the applicant receives 9 points.

(III) If the cost per 5000 gallons is \$49.00 to \$52.99, the applicant receives 8 points.

(IV) If the cost per 5000 gallons is \$45.00 to \$48.99, the applicant receives 7 points.

(V) If the cost per 5000 gallons is \$41.00 to \$44.99, the applicant receives 6 points.

(VI) If the cost per 5000 gallons is \$37.00 to \$40.99, the applicant receives 5 points.

(VII) If the cost per 5000 gallons is \$34.00 to \$36.99, the applicant receives 4 points.

(VIII) If the cost per 5000 gallons is \$32.00 to \$33.99, the applicant receives 3 points.

(IX) If the cost per 5000 gallons is \$31.00 to \$31.99, the applicant receives 2 points.

(X) If the cost per 5000 gallons is \$30.00 to \$30.99, the applicant receives 1 point.

(XI) If the cost per 5000 gallons is less than \$30.00, the applicant receives 0 points.

(iii) For systems providing sewer service only; If a rate study has not been conducted or implemented within 5 years of the application date, the applicant receives negative five (-5) points.

(I) If the cost per connection per month is \$34.00 or greater, the applicant receives 10 points.

(II) If the cost of connection per month is \$32.00 to \$33.99, the applicant receives 9 points.

(III) If the cost of the connection per month is \$30.00 to \$31.99, the applicant receives 8 points.

(IV) If the cost of connection per month is \$28.00 to \$29.99, the applicant receives 7 points.

(V) If the cost of connection per month is \$26.00 to \$27.99, the applicant receives 6 points.

(VI) If the cost of connection per month is \$24.00 to \$25.99, the applicant receives 5 points.

(VII) If the cost per connection per month is \$22.00 to \$23.99, the applicant receives 4 points.

(VIII) If the cost per connection per month is \$20.00 to \$21.99, the applicant receives 3 points.

(IX) If the cost per connection per month is \$18.00 to \$19.99, the applicant receives 2 points.

(X) If the cost per connection per month is \$16.00 to \$17.99, the applicant receives 1 point.

(XI) If the cost per connection per month is less than \$16.00, the applicant receives 0 points.

(iv) The Board will deduct 3 points from the total of the Water and Sewer Rate Structure ranking for any system which charges a flat water rate or sewer rate (unmetered) without regard to the amount of water or sewer used, and 2 points for a decreasing block rate which lowers the cost per 1000 gallons for customers using larger amounts of water. No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above the minimum. Two points will be added for systems using an increasing block rate. Entities who dedicate sales tax for water and/or sewer improvements will be awarded 1 additional point. Under this category the maximum number of points is 13 and the minimum is -3 points. **Billing Rate Structure:**

(I) The Board will deduct three (3) points from the total for any system which charges a flat water rate or sewer rate (unmetered) without regard to the amount of water or sewer used.

(II) The Board will deduct two (2) points for a decreasing block rate which lowers the cost per 1,000 gallons for customers using larger amounts of water.

(III) No points will be added or subtracted for systems using a fixed rate per 1,000 gallons above

the minimum.

(IV) Two (2) points will be added or subtracted for systems using an increasing block rate.

(V) Entities who dedicate sales tax for water and/or sewer improvements will be awarded one (1) additional point.

(VI) Entities who have implemented an automatic rate increase will be awarded two (2) additional points.

(C) Indebtedness per customer (H). Operational Cost Ratio (OCR). The operational cost ratio will look at the applicant's total operating revenues and compare them against the operating expenses and debt to gauge ability to finance debt based off of their most recent audit not more than two (2) fiscal years behind. An Agreed Upon Procedure not more than two (2) fiscal years behind will be accepted to be reviewed. Operating revenues shall include interest income as well as membership fees, along with all revenues listed under the revenues category. If sales tax is dedicated towards water and/or sewer improvements as indicated in the Rate Study, sales tax revenue will also be included in the operating revenues. Operating expenses shall include everything in the expenses category except depreciation. Debt shall mean any outstanding obligations related to water and/or sewer infrastructure and will include the amount of grant requested. The maximum points possible under this criterion is thirteen (13) points. The formula is as follows:

Operational Cost Ratio = (Operating Revenues - (Operating Expenses + Depreciation)) / (Debt + Amount of grant requested. If the applicant does not have any debt, the grant amount will be taken into consideration to determine OCR. The indebtedness per customer ranking is calculated by taking the applicant's monthly requirements for debt service on debt incurred for water and/or sewer system purposes and dividing it by the number of customers served. When the applicant is a provider of wholesale water to other systems, the number of customers served is the sum total of the customers served by the systems to whom they sell water.

(i) If the indebtedness per customer is \$20.00 or greater, the applicant receives 10 points. If the operational cost ratio is less than 1.

times, the applicant receives 0 points.

(ii) If the indebtedness per customer is \$17.50 to \$19.99, the applicant receives 9 points. If the operational cost ratio is one than 1.0

times, the applicant receives 5 points.

(iii) If the indebtedness per customer is \$16.00 to \$17.49, the applicant receives 8 points. If the operational cost ratio is over 1.0 times

but less than 1.25 times, the applicant receives 10 points.

(iv) If the indebtedness per customer is \$14.50 to \$15.99, the applicant receives 7 points. If the operational cost ratio is over 1.25 times,

the applicant receives 13 points.

(v) If the indebtedness per customer is \$13.00 to \$14.49, the applicant receives 6 points.

(vi) If the indebtedness per customer is \$11.50 to \$12.99, the applicant receives 5 points.

(vii) If the indebtedness per customer is \$10.00 to \$11.49, the applicant receives 4 points.

(viii) If the indebtedness per customer is \$8.50 to \$9.99, the applicant receives 3 points.

(ix) If the indebtedness per customer is \$7.00 to \$8.49, the applicant receives 2 points.

(x) If the indebtedness per customer is \$5.50 to \$6.99, the applicant receives 1 point.

(xi) If the indebtedness per customer is less than \$5.50, the applicant receives 0 points.

(D) Median household income (MHH). Local Participation (LP). The local participation ranking is based on the percentage of the total project cost which is locally funded through cash contributions or incurrence of additional debt through a loan. Grant Funds received through other agencies will be counted as local funding. The maximum points possible under this criterion is 10 points. Points awarded for participation as follows: The median household income is calculated according to the most current United States Decennial Census or American Community Survey data available.

(i) The county median figure for median household income will be used in cases where data for the applicant's service area is not available.

If the percentage of project cost locally funded is less than 15%, the applicant receives 0 points.

(ii) Points for this MHH criterion are awarded according to the decennial census or American Community Survey data available. Points are awarded as follows:

If the percentage of project cost locally funded is 15% or more but less than 20%, the applicant receives 5 points.

(iii) If the percentage of project cost locally funded is more than 20%, the applicant receives 10 points.

(H) If the median household income is less than \$17,000, the applicant receives 10 points.

(H) If the median household income is \$17,000 to \$20,999, the applicant receives 9 points.

(HH) If the median household income is \$21,000 to \$23,999, the applicant receives 8 points.

(IV) If the median household income is \$24,000 to \$28,999, the applicant receives 7 points.

- (V) If the median household income is \$29,000 to \$31,999, the applicant receives 6 points.
- (VI) If the median household income is \$32,000 to \$36,999, the applicant receives 5 points.
- (VII) If the median household income is \$37,000 to \$39,999, the applicant receives 4 points.
- (VIII) If the median household income is \$40,000 to \$44,999, the applicant receives 3 points.
- (IX) If the median household income is \$45,000 to \$47,999, the applicant receives 2 points.
- (X) If the median household income is \$48,000 to \$51,999, the applicant receives 1 point.
- (XI) If the median household income is \$52,000 or greater, the applicant receives 0 points.

(E) **Ability to finance project (FP): Adjusted Per Capita Income (APCI).** The Adjusted Per Capita Income (APCI) is a formula that takes into account the affordability criteria of the applicant and is measured against the United States' APCI to determine tier anking based off of what percentage applicant receives. Data from the census ebsite is used to determine per capita income, unemployment rate, and population trent. The maximum points possible under the criterion us 10 points.

(i) The maximum points possible under this criterion for the ability of the applicant to finance the project without assistance from the state is 12. The formula is as follows: $APCI = \frac{\text{Per Capita Income} * \text{Employment Rate} * \text{Population Trend}}{\text{Population Trend}}$

(I) $\text{Employment Rate} = 1 - \text{unemployment rate}$.

(II) $\text{Population Trend} = 10\text{-year difference in population from most recent Census}$

(III) $\text{Tire Ranking} = \frac{\text{Percentage of APCI}}{\text{APCI/US.APCI}}$

(ii) The FP ranking gives a standardized account of the amount the existing water/sewer rates would have to be raised in order for the applicant to finance the project through a loan. A standard interest rate and term of 5% for 25 years is assumed. The cost per customer per month is calculated using the following formula: $FP = AR \cdot (0.0710) / (12)(C)$, Where: Rural Water and Sewer systems are requested to contact OWRB for additional information needed to determine percentage ranking. Required data of at least two of the largest communities served by the RW&S system will be averaged to determine RW&S percentage ranking and tier determination or data presented to OWRB that more accurately reflects the entity's current or proposed service area, that will be evaluated on a case-by-case basis. If a system serves only one community, the sole community's data will be used to determine RW&S percentage ranking and tier determination.

(I) $FP = \text{Estimate of the amount monthly water/sewer rates would have to be raised to finance the amount of grant requested for the project.}$

(II) $AR = \text{Amount of grant requested.}$

(III) $0.0710 = \text{Annual rate factor for a 25 year loan at 5\%.}$

(IV) $12 = \text{Number of months per year.}$

(V) $C = \text{Number of customers.}$

(iii) In cases where the applicant's current revenues exceed expenses by a large margin, the Board will appropriately adjust the (AR) figure to accurately represent the applicant's ability to finance the project. Tier ranking:

(I) If percentage of APCI is equal to 81% or more of the U.S. APCI, applicant will be considered a Tier 4 and receives 4 points.

(II) If percentage of APCI is more than or equal to 71% but less than 81% of U.S. APCI, applicant will be considered Tier 3 and receives 6 points.

(III) If percentage of APCI is more than or equal to 56% or less than 71% of U.S. APCI, applicant will be considered a Tier 2 and receives 8 points.

(IV) If percentage of APCI is equal to 55% or less of U.S. APCI, applicant will be considered a Tier 1 and receives 10 points.

(iv) Points in the FP ranking, based upon the cost per customer per month calculated as set forth in (ii) of this subparagraph, are awarded as follows:

(I) If the ability to finance the project is \$10.00 or greater, the applicant receives 12 points.

(II) If the ability to finance the project is \$8.00 to \$9.99, the applicant receives 11 points.

(III) If the ability to finance the project is \$6.00 to \$7.99, the applicant receives 10 points.

(IV) If the ability to finance the project is \$5.00 to \$5.99, the applicant receives 9 points.

(V) If the ability to finance the project is \$4.00 to \$4.99, the applicant receives 8 points.

(VI) If the ability to finance the project is \$3.00 to \$3.99, the applicant receives 7 points.

(VII) If the ability to finance the project is \$2.00 to \$2.99, the applicant receives 6 points.

(VIII) If the ability to finance the project is \$1.75 to \$1.99, the applicant receives 5 points.

(IX) If the ability to finance the project is \$1.50 to \$1.74, the applicant receives 4 points.

(X) If the ability to finance the project is \$1.25 to \$1.49, the applicant receives 3 points.

(XI) If the ability to finance the project is \$1.00 to \$1.24, the applicant receives 2 points.

(XII) If the ability to finance the project is \$0.75 to \$0.99, the applicant receives 1 point.

(XIII) If the ability to finance the project is less than \$0.75, the applicant receives 0 points.

(F) **Need (N).** An applicant who is subject to an enforcement order (i.e. consent order or administrative consent order) issued by a governmental agency with environmental jurisdiction receives 5 priority points for a proposed project which will remedy the violation out of which the order arose if the order specifies a project construction start date which is on or before June 30 of the Board's current fiscal year for funding REAP grants.

(G) **Amount of grant requested (AR).** Under this criterion the maximum number of points is seven (7) and the minimum is negative seven (-7) points. Appropriations for the year will determine the highest amount allowable to be requested by the applicant. Points under this category for amount of grant requested are determined as follows:

- (i) If the grant amount requested is \$140,001 to \$150,000, the applicant receives -5 points. If the amount requested is \$325,000 to \$350,000, the applicant receives -7 points.
- (ii) If the grant amount requested is \$130,001 to \$140,000, the applicant receives -4 points. If the grant amount requested is \$300,000 to \$324,999.99, the applicant receives -6 points.
- (iii) If the grant amount requested is \$120,001 to \$130,000, the applicant receives -3 points. If the grant amount requested is \$275,000 to \$299,999.99, the applicant receives -5 points.
- (iv) If the grant amount requested is \$110,001 to \$120,000, the applicant receives -2 points. If the grant amount requested is \$250,000 to \$274,999.99, the applicant receives -4 points.
- (v) If the grant amount requested is \$100,001 to \$110,000, the applicant receives -1 point. If the grant amount requested is \$225,000 to \$249,999.99, the applicant receives -3 points.
- (vi) If the grant amount requested is \$100,000, the applicant receives 0 points. If the grant amount requested is \$200,000 to \$224,999.99 the applicant receives -2 points.
- (vii) If the grant amount requested is \$80,000 to \$99,999, the applicant receives 1 point. If the grant amount requested is \$175,000.01 to \$199,999.99, the applicant receives -1 point.
- (viii) If the grant amount requested is \$60,000 to \$79,999, the applicant receives 2 points. If the grant amount requested is \$175,000 the applicant receives 0 points.
- (ix) If the grant amount requested is \$40,000 to \$59,999, the applicant receives 3 points. If the grant amount requested is \$150,000 to \$174,999.99, the applicant receives 1 point.
- (x) If the grant amount requested is \$20,000 to \$39,999, the applicant receives 5 points. If the grant amount requested is \$125,000 to \$149,999.99, the applicant receives 2 points.
- (xi) Any portion of a grant amount requested that is more than \$150,000 shall be denied. If the grant amount requested is \$100,000 to \$124,999.99, the applicant receives 3 points.
- (xii) If the grant amount requested is \$75,000 to \$99,999.99, the applicant receives 4 points.
- (xiii) If the grant amount requested is \$50,000 to \$74,999.99, the applicant receives 5 points.
- (xiv) If the grant amount requested is \$25,000 to \$49,999.99, the applicant receives 6 points.
- (xv) If the grant amount requested is \$25,999.99 and below, the applicant receives 7 points.
- (xvi) Any portion of grant amount requested that is more than the allowable amount for that fiscal year will be denied.

(H) **Project benefit to other systems (BP).** If the applicant's project will benefit other adjacent systems as well as applicant's or result in or lead to consolidation of systems, an additional five (5) priority points will be included in the total of priority points assigned to the application.

(I) **Previous grant assistance (PG).** No qualified entity shall receive more than \$150,000 in REAP grant assistance in any twelve (12) month period. For purposes of this subparagraph a political subdivision and all its public trusts and similar subordinate entities together shall be treated as one and the same qualified entity; provided, rural water or sewer districts shall not be construed to be subordinate entities of counties unless the effect would be to make multiple grants to substantially the same entity and/or service area. If a qualified entity has received one (1) or more REAP grants from the Board in the past, points shall be deducted from the application according to all of the following provisions that apply, provided points shall not be deducted from any such REAP grant which was funded 10 or more years prior to the date of Board action on the pending application, and has been subject to Board audit:

- (i) If the qualified entity has received one (1) REAP grant in the preceding twelve (12) month period, the application receives -8 points.
- (ii) If the qualified entity has received more than one (1) REAP grant in the preceding twelve (12) month period, the application receives -10 points for each REAP grant received.
- (iii) If the qualified entity has received one (1) REAP grant more than twelve (12) months in the past, the application receives -5 points.
- (iv) If the qualified entity has received two (2) REAP grants more than twelve (12) months in the past, the application receives -8 points.
- (v) If the qualified entity has received three (3) REAP grants more than twelve (12) months in the past, the application receives -10 points.
- (vi) If the qualified entity has received four (4) REAP grants more than twelve (12) months in the past, application receives -12 points.

(vii) If the qualified entity has received five (5) or more REAP grants more than twelve (12) months in the past, the application receives -14 points.

(J) **Sustainability (S).** The maximum possible points under this criterion is ten (10) points. Points will be awarded for an applicant's sustainability and long range planning as follows:

(i) ~~Have and have implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff the applicant receives 10 points~~ If an applicant has a fiscal sustainability and long-range plan that is in place and working to meet all the system needs, the plan will be ranked as Good and awarded 10 points.

(ii) ~~Have but have not implemented a Fiscal Sustainability Plan that meets the requirements of the Board Staff the applicant receives 6 points~~ If an applicant has a fiscal sustainability and long-range plan that is in place but meeting only half the system needs, the plan will be ranked as Fair and awarded 6 points.

(iii) Applicant is willing to develop and implement a Fiscal Sustainability Plan prior to funding that meets the requirements of the Board Staff receives 3 points. If an applicant has a fiscal sustainability and long-range plan but is not in place or not working to meet the system needs, the plan will be ranked as Poor and awarded 3 points.

(iv) If an applicant does not have a fiscal sustainability and long-range plan in place, the application will be deemed denied.

(K) **Workshop attended (WA).** 5 points will be awarded to any applicant who attends, or has a representative attend the pre-application workshop presented by Board staff. Attendance will be verified during the course of the training.

(c) **Priority formula for school districts and counties.**

(1) School districts created under Article V of the School Code, 70 O.S. 1991, §5-101 et seq., and counties are political subdivisions of the State, and therefore are eligible for financial assistance under the Board's REAP grant program.

(2) In evaluating and prioritizing grant applications from school districts and counties, similar criteria to those applied to municipalities and rural water districts will be utilized.

(3) In developing a priority formula for school district and county applicants, the primary criteria are average daily membership (for schools only), fiscal capacity, need, amount requested, and previous grant assistance.

(4) The following formula has been devised to rank REAP grant applications by counties and school districts: $T = ADM + LT + BI + MHI + FP + N + AR + PG + WA$, Where:

(A) T = Total of priority points

(B) ADM = Average daily membership

(C) Lt = Local tax levies

(D) BI = Bonded indebtedness

(E) MHI = Median household income of population within the school district or area of county to be served

(F) FP = Applicant's ability to finance project

(G) N = Need

(H) AR = Amount of grant requested

(I) PG = Previous grant assistance

(J) WA = Workshop attended

(5) The criteria MHI, FP, N, AR and PG are the same as that set forth in (b) of this Section. The criteria ADM, LT and BI are explained as follows:

(A) **Average daily membership (ADM).** School districts with an average daily membership of less than 525 students will receive 55 priority points.

(B) **Local tax levies (LT).** Points awarded under this category for local tax levies are based on the total amount of mills levied, as follows:

(i) If the mills are 95 to 100; the applicant receives 13 points.

(ii) If the mills are 90 to 94.99, the applicant receives 11 points.

(iii) If the mills are 85 to 89.99, the applicant receives 10 points.

(iv) If the mills are 80 to 84.99, the applicant receives 8 points.

(v) If the mills are 70 to 79.99, the applicant receives 6 points.

(vi) If the mills are 60 to 69.99, the applicant receives 4 points.

(vii) If the mills are 55 to 59.99, the applicant receives 2 points.

(viii) If the mills are 50 to 54.99, the applicant receives 1 point.

(ix) If the mills are 45 to 49.99, the applicant receives 0 points.

(x) If the mills are 40 to 44.99, the applicant receives -1 point.

(xi) If the mills are less than 40, the applicant receives -2 points.

(C) **Bonded indebtedness (BI).**

(i) Priority points for Bonded Indebtedness are as follows:

(I) If the percentage is 95% to 100%, the applicant receives 10 points.

(II) If the percentage is 90% to 94.99%, the applicant receives 8 points.

(III) If the percentage is 80% to 89.99%, the applicant receives 7 points.

- (IV) If the percentage is 75% to 79.99%, the applicant receives 6 points.
 - (V) If the percentage is 70% to 74.99%, the applicant receives 5 points.
 - (VI) If the percentage is 65% to 69.99%, the applicant receives 4 points.
 - (VII) If the percentage is 60% to 64.99%, the applicant receives 3 points.
 - (VIII) If the percentage is 55% to 59.99%, the applicant receives 2 points.
 - (IX) If the percentage is 50% to 54.99%, the applicant receives 1 point.
 - (X) If the percentage is 45% to 49.99%, the applicant receives 0 points.
 - (XI) If the percentage is 40% to 44.99%, the application receives -1 point.
 - (XII) If the percentage is 30% to 39.99%, the applicant receives -2 points.
 - (XIII) If the percentage is less than 30%, the applicant receives -3 points.
- (ii) A deduction of one (1) point from the indebtedness ranking total will be made for applicants with 75% of existing debts financed at rates of 5% or less, and one (1) point will be added if 75% of existing debts are financed at rates greater than 10%.

SUBCHAPTER 20. SAFEGUARDING TOMORROW REVOLVING LOAN PROGRAM REGULATIONS

785:50-20-1. General program description and procedures

(a) Safeguarding Tomorrow Revolving Loan Program Description.

- (1) Pursuant to 82 O.S., §§1085.91 through 1085.96, an additional financial assistance program was created to be administered by the Board and Oklahoma Department of Emergency Management (Department) to provide loan and grant funds for hazard mitigation projects and implement provisions of the federal Safeguarding Tomorrow Revolving Loan program authorized by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.
- (2) Under Oklahoma's program, the Department is to generally carry out the role of prioritizing hazard mitigation projects and conducting technical analysis and review of eligible entities and hazard mitigation projects. The Board is to generally carry out the role of conducting financial evaluations and analyses of eligible entities, reviewing documents for loan closings, and managing and administering monies in the Hazard Mitigation Financial Assistance Program Fund to make monies available for financial assistance through the Safeguarding Tomorrow Revolving Load Program and other authorized state programs.
- (3) The Safeguarding Tomorrow Revolving Loan Program shall be administered as a separate program from the Board's previously existing Financial Assistance Programs. The rules in this Subchapter are intended to recognize the distinction between the programs where necessary.

(b) General procedures. The general procedures to be followed in the hazard mitigation project review and financial assistance application process for financial review under the program authorized in 82 O.S.,§1085.91 through 1085.96 shall be as follows:

- (1) The applicant shall follow the procedures, rules and regulations administered by the Oklahoma Department of Emergency Management, which shall include placement on the priority list of a eligible entities projects established by the Department and the filing of an application with the Board for hazard mitigation project review and financial assistance.
- (2) The Board shall make an initial determination of whether an entity meets the legal and managerial criteria to receive funding.
- (3) The Board shall prepare an initial financial review of the entity based on documents provided to the Board and proposed loan amount and interest rate for which the entity qualifies. Consultations among Board staff, the Department, and the applicant's representatives may be held where deemed appropriate and beneficial.
- (4) The Board staff shall consider the initial financial review and application. It shall then forward its preliminary recommendation for approval or rejection of the loan application to the applicant, based on applicable criteria set forth in 785:50-20-2.
 - (A) If the recommendation is for rejection, the Board shall provide a written recommendation including the reasons for rejection. The entity may then be allowed to modify or supplement any documents in order to comply with the Board requirements and resubmit the same to the Board.
 - (B) If the Board recommends approval, it shall notify the applicant and the Department.
- (5) After initial financial review approval by the Board, the Board shall follow its established procedures and rules to conduct an in-depth financial review and evaluation of the hazard mitigation project to determine whether it complies with applicable state and federal laws.
- (6) After a secondary application and necessary documents are submitted to the Board, the matter will be reviewed by staff who may request additional information from the applicant or the Department and have further conferences as deemed necessary and beneficial to complete the financial review. The matter will then be placed on the Board's agenda for consideration. The Board may approve the application, reject the application, or request additional information.
- (7) If the application and loan receives final approval, the Board, Department and applicant will coordinate the setting of the date, time and place for the closing of the loan.
- (8) At the loan closing, the Department shall have authority to grant approval for disbursement of loan proceeds and to present the same.

(9) The Board shall administer the loans until paid by the recipient and a final accounting is completed.

Rule Impact Statement

Title 785. Oklahoma Water Resources Board (OWRB)

Chapter 50. Financial Assistance

Subchapter 6. Water and Sewer Program Emergency Grants Requirements and Procedures

Subchapter 8. Rural Economic Action Plan (REAP) Grant Program Requirements and Procedures

Permanent Rules under OKLA. ADMIN. CODE § 785:50-6-1 through 4; 785.50-8-1 through 6

This Rule Impact Statement has been prepared pursuant to 75 O.S.Supp.2025, § 253(B).

I. Statement of need and legal basis

The proposed rule changes are intended to encourage communities to adopt a more forward-thinking and proactive approach to long-term planning and financial sustainability. These changes aim to support communities in aligning with the eligibility criteria required to access State Revolving Fund (SRF) financing in the future. While grant funding has historically been a key resource, it is not guaranteed to remain available indefinitely. As such, the Oklahoma Water Resources Board (OWRB) staff is committed to assisting communities in building the capacity to maintain and operate their water and wastewater systems without incurring unsustainable financial deficits. By implementing these rule changes, the goal is to foster resilience, improve access to critical funding mechanisms, and promote fiscal responsibility and infrastructure planning at the local level.

II. Classification of the rule(s) and justification for classification.

Nonmajor rules – no cost associated with the changes.

III. Description of the proposed rule(s).

The proposed changes are to accompany the statute changes regarding eligible requested amount and to be more in line with how other funding programs function. The current rules do not encourage forward thinking making it harder for some systems to access current funding programs. These changes also allow for more communities the ability to qualify for the grant programs. Nothing federal associated with these changes.

IV. Description of the classes of persons who most likely will be affected by the proposed rule(s), including classes that will bear the costs of the proposed rule(s), and any information on cost impacts received by the agency from any private or public entities.

The proposed changes will affect staff and the population of Oklahoma eligible entities who are attempting to apply for REAP and Emergency Grant financing. There will be no cost incurred by these proposed changes.

V. Description of the classes of persons who will benefit from the proposed rule(s).

All communities with a population of 7,000 or less will benefit from the changes on the REAP grant and all communities of Oklahoma will benefit from the changes on the Emergency grant.

VI. Comprehensive of the rules' economic impact.

There will be no costs to the agency or state revenues associated with this proposed rule change. The benefit to the agency is that staff will be able to more easily ascertain eligibility and ranking of grant applications and provide a more rapid response to grant requests thereby providing eligible entities with the funding they need for their critical infrastructure projects.

VII. Detailed explanation of methodology and assumptions used to determine the economic impact.

There will be no cost incurred by these proposed changes.

VIII. Determination of whether implementation of the proposed rule(s) will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule(s).

The probable economic impact of these proposed rule changes is that it will be more streamlined for Oklahoma eligible entities to apply for, and potentially receive, necessary grant funding and potential loan fundings, as well as the opportunity to take additional steps to elevate their ranking.

IX. Determination of whether implementation of the proposed rule(s) may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

These proposed rule changes will not have an adverse economic effect on small business but could provide benefit to small businesses that are located in eligible entities experiencing water and wastewater infrastructure needs. Good infrastructure is invaluable to a community and the small businesses located within it.

X. Measures taken to minimize the cost and impact of the proposed rule on business and economic development in this state, local government unites of this state, and individuals.

There will be no cost impact for the proposed rules on any entity.

XI. Determination of the effect of the proposed rule(s) on the public health, safety and environment and, if the proposed rule(s) is/are designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk.

These proposed rules changes could very significantly reduce substantial risks to the public health, safety, and environmental concerns caused by water and wastewater infrastructure disrepair. Infrastructure affected by deterioration and disrepair can present enormous public health, safety, and environmental issues when not addressed in a timely manner. Being able

to more quickly access grant funds when eligible, reduces the time necessary to obtain other funding and improve water and wastewater infrastructure.

XII. Determination of any detrimental effect on the public health, safety and environment if the proposed rule(s) is/are not implemented.

The detriment of not implementing these changes would be that the communities could have a harder time accessing certain funding for the already aging infrastructure. The longer it takes to fix their infrastructure, the higher the risks to public health, safety, and environment.

XIII. Analysis of Alternatives to Adopting the Rule(s)

The only alternative is to not change the rules which would result in the diminishing of improvements proposed in the rule changes, which were designed to allow communities more benefit in the long term.

XIV. Estimated Time Spent by State Employees to Develop Rule and Other Resources Used in Developing Rule

About 8-10 hours.

XV. Summary and Preliminary Comparison of Any Existing or Proposed Federal Regulations Intended to Address the Activities to be Regulated by Proposed Administrative Rules

No federal regulations associated with this grant program.

XVI. Date the rule impact statement was prepared and if modified, the date modified.

OWRB prepared this rule impact statement on 10/10/2025.

5. SPECIAL CONSIDERATION

WATER RIGHTS ADMINISTRATION DIVISION

November 18, 2025

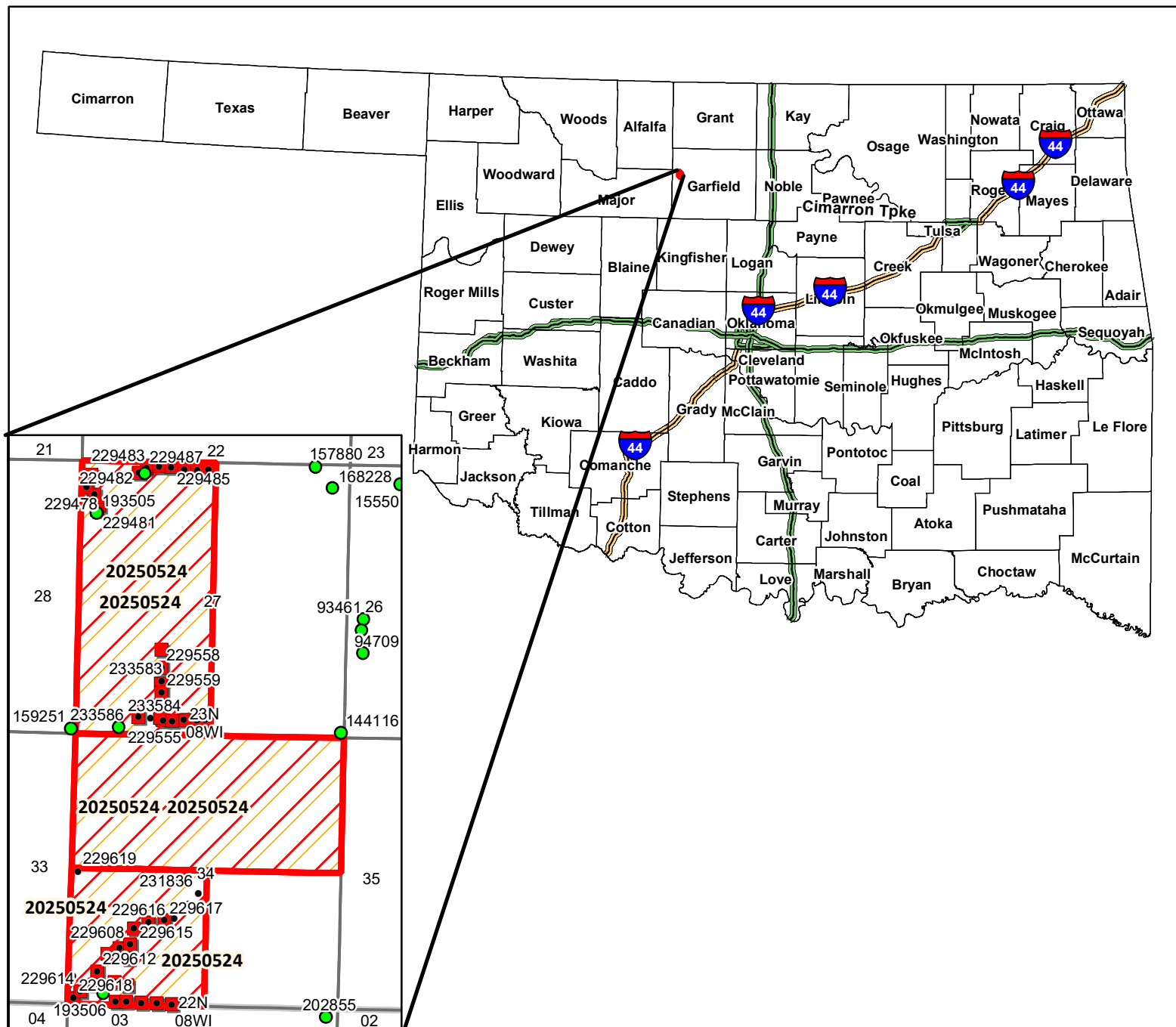
WATER RIGHTS ADMINISTRATION DIVISION
Application for a Temporary Groundwater Permit

November 18, 2025

NUMBER & DATE	COUNTY	NAME OF APPLICANT	RECOMMENDATION
2025-524 2/14/2025	Garfield County	Five P AG, LLC	Approval for proposed order

Five P AG, LLC c/o Hanna Pence of PO Box 6, Lahoma, OK 73754 has filed an application, #2025-524, with the Oklahoma Water Resources Board (Board) for a permit to use 1,584 acre-feet of groundwater per year. The groundwater is proposed to be used for irrigation (wheat, corn, soybeans, sorghum, cotton) and taken from 792 acres located as follows: 160 acres in the SW and 312 acres in the N2 of Section 34; 320 acres in the W2 of Section 27; all in T23N, R8WIM, Garfield County. The water is to be withdrawn from forty-three (43) wells located as follows: five (5) wells in the NE SW SW, four (4) wells each in the SW SW SW and SE SW SW, two (2) wells each in the SW SE SW and SW NE SW, one (1) well each in the SE SE SW, SE NW SW of Section 34; three (3) wells each in the SW SE SW, SE SE SW, NW NW NW, NE NE NW, two (2) wells each in the NW SE SW, SW NW NW, NE NW NW, NW NE NW, one (1) well each in the SE SW SW, SW SE SW, NW SE SW, SW NE SW of Section 27; all in T23N, R8WIM, Garfield County, and use the groundwater in Garfield County. The applicant gave proper Public Notice, the application was protested, and an administrative hearing was held on July 28, 2025. The Board concludes that forty-two (42) wells shall be granted, to withdraw from each well a maximum of sixty percent (60%) of its capacity. The hearing examiner recommends approval of the application.

Groundwater Permit Application: Application #2025-524 - Five P Ag, LLC - Garfield County



Main Legend

- Dedicated Lands
- Counties
- Interstate / Turnpike
- Interstate Highway

Inset Legend

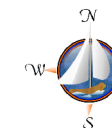
- Dedicated Lands
- Well Locations
- Townships
- Sections
- Groundwater Wells
- Reported Well Logs

OWRB Permits

- Groundwater, Active
- Groundwater, Pending
- Surface Water, Active
- Surface Water, Pending

OWRB Dedicated Lands

- Groundwater, Active
- Groundwater, Pending
- Surface Water, Active
- Surface Water, Pending



In the Matter of the Application of)
Five P Ag, LLC For a Temporary Permit to) Application No. 2025-524
Use Groundwater in Garfield County.)

INTRODUCTION

Based upon the separately stated Findings of Fact and Conclusions of Law that follow, the Board determines that the Application should be granted.

1. The hearing was held on July 28, 2025, at the Oklahoma Water Resources Board Office, Board Room, 2nd Floor, 3800 North Classen Boulevard Oklahoma City, OK. Applicant Five P Ag, LLC appeared by and through its attorney Kaylee P. Davis-Maddy, with its witness, Hanna Pence, testifying on behalf of Five P Ag, LLC. Protestants N. Ciliberti and B. Ciliberti appeared in person. The hearing was opened, appearances were entered, witnesses were sworn, exhibits were entered, evidence and arguments were heard, the hearing was adjourned, and the matter was taken under advisement. Thereafter, a proposed order was prepared, served on the parties, and presented to the Board for consideration at its November 18, 2025, meeting.

2. At the beginning of the Hearing the Applicant announced that it is withdrawing the request for the well in the SE SW SW of Section 27. It is capped.

3. Protestant B. Ciliberti requested a continuance to obtain counsel. Protestant B. Ciliberti acknowledged receipt of the Notice of Hearing but stated that she did not read all of it and was not prepared to proceed with a hearing today as she misunderstood what would be

occurring. Applicant's counsel objected to a continuance. The continuance was not submitted in writing, and all parties did not agree. The continuance request was denied.¹

4. OWRB Exhibits. The following Oklahoma Water Resource Board ("OWRB") exhibits were admitted into evidence without objection: OWRB Exhibit No. 1, Application No. 2025-524; OWRB Exhibit No. 2, Ownership Documents; OWRB Exhibit No. 3, Notice of Application; OWRB Exhibit No. 4, Proof of Service; OWRB Exhibit No. 5, Proof of Publication; OWRB Exhibit No. 6, Protest Letters and attached twenty-three (23) pictures and one (1) video; OWRB Exhibit No. 7, Notice of Hearing and Green Cards; OWRB Exhibit No. 8, Applicant's Attorney EOA; OWRB Exhibit No. 9, Protestant withdraw; and OWRB Exhibit No. 10, Attendance Sheet.

5. Applicant Exhibits. The following Applicant exhibit was admitted into evidence without objection: Applicant Exhibit No. 1, Provisional Temporary Permit #2025G0096.

6. Protestant Exhibits. The following Protestant exhibits were admitted into evidence without objection: Protestant Exhibit No. 1, Picture 20250530_135716 date stamped May 30, 2025, and Protestant Exhibit No. 2, Picture No.220250530_135711 date stamped May 30, 2025.

7. Protestants N. Ciliberti and B. Ciliberti requested that the record remain open for additional exhibits to be entered. Request for the record to remain open was denied.

FINDINGS OF FACT

Upon its evaluation of the testimony and documentary exhibits offered or officially noticed during the hearing, the Board hereby makes the following findings of fact:

BACKGROUND OF APPLICATION

8. On February 14, 2025, Applicant submitted an application for a Permit, which was given the Application number 2025-524. The Application sought to withdraw one thousand five hundred and eighty-four (1584), acre-feet of groundwater per year from its property in Garfield County, Oklahoma for the purpose of irrigation for growing proposed crops of wheat, corn, soybeans, sorghum, and cotton. *See OWRB Exhibit No. 1.*

9. Pursuant to the Application, groundwater was to be withdrawn from forty-three (43) wells located on the Applicant's property:

- one (1) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the SW1/4 of NE1/4 of SW1/4 of Section 27;
- four (4) located in the SW1/4 of SW1/4 of SW1/4 of Section 34;
- five (5) located in the NE1/4 of SW1/4 of SW1/4 of Section 34;

¹ After the hearing the Hearing Officer was made aware by the OWRB that Protestant N. Ciliberti had sent an email on the day of the hearing July 28, 2025 at 5:57am to a Sharon Robinson at email address Sharon.Robinson@owrb.ok.gov requesting a continuance. This request was not known about or addressed during the hearing.

- four (4) located in the SE1/4 of SW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of NW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of NE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of SW1/4 of SW1/4 of Section 27;²
- three (3) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the SE1/4 of SE1/4 of SW1/4 of Section 27;
- two (2) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the NW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the SW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NE1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NW1/4 of NE1/4 of NW1/4 of Section 27;
- three (3) located in the NE1/4 of NE1/4 of NW1/4 of Section 27;

all in T23N, R8WIM, Garfield County, Oklahoma. *See OWRB Exhibit No. 1.*

10. To support this Application, Applicant submitted a:

- Water Rights Lease (Book 2698 Page 38-39 (Garfield County) signed on February 25, 2025, between James Michael Wuerflein & Kathryn S. Wuerflein Revocable Trust and Five P Ag, LLC, and prior version for same location Water Rights Lease signed February 12, 2025, between James Michael Wuerflein & Kathryn S. Wuerflein Revocable Trust and Five P Ag, LLC;
- Quit Claim Deed (Book 2634 Page 747 Garfield County) signed August 4, 2023, between Hanna Pence, as Trustee of the Hanna Pence Revocable Trust and Five P Ag, L.L.C.;
- Farm Lease signed February 12, 2025, between James Michael Wuerflein & Kathryn S Wuerflein Revocable Trust and Jeremiah and/or Hanna Pence and/or Five 80 Farms, LLC and/or Five P Ag, LLC, and/or Life Well, Inc for an approximate 11-year term commencing July 1, 2024;
- Quit Claim Deed (Book 2639 Page 757 Garfield County) filed on September 18, 2023, between James M. Wuerflein a/k/a James Wuerflein a/k/a James Michael Wuerflein and Kathryn S. Wuerflein and James Micahel Wuerflein and Kathryn S. Wuerflein Revocable Trust, *See OWRB Exhibit No. 2.*

NOTICE OF THE APPLICATION AND HEARING

11. On March 26, 2025, Board staff notified Applicant that the Application had been reviewed and directed Applicant to give notice of the essential facts and intended use by newspaper publication and by sending notice by certified mail, return receipt requested, to surface estate owners of lands located within 1,320 feet of the outside boundary of each ten acre-tract regarding wells subject of the Application. *See OWRB Exhibit No. 3.*

² At the beginning of the Hearing the Applicant announced that it is withdrawing the request for the well in the SE SW SW Section of 27. It is capped.

12. Notice of Application was published in the Enid News & Eagle on April 8, 2025, and April 15, 2025. *See OWRB Exhibit No. 4.*

13. Notice of the Application was sufficiently delivered by certified U.S. mail to Mark and Gayle Ritchie on April 7, 2025, James and Kathryn Wuerflein and James and Kathryn Wuerflein Trust (return receipt signed but not dated), Moehle WH Family Farm LLC (return receipt signed but date unreadable), Zan A, Trust on April 11, 2025, Chase and Cortney Ratzlaff and Roberta Ann Clark Trust on April 4, 2025, Gerald Brakhage, Matthew Neill Davis et al, BA Stewart Family LP, Benway Living Trust, Casey Wilson, Bridget Ciliberti Life Estate, Moehle Family Trust, and Gerald D. Brakhage on April 3, 2025, Anna Sedbrook on April 9, 2025, and Carol A. Garrett on April 10, 2025, surface estate owners of land located within 1,320 feet of the outside boundary of each ten acre-tract regarding wells subject of the Application. Evidence of this service was demonstrated by the Affidavit of Notification and Parcel Map identifying the above listed surface owners by name and mailing address and the return receipts submitted to the Board and the U.S. Postal Service Certified Mail Receipts with tracking numbers. *See OWRB Exhibits No. 1 and 4.*

14. The Applicant's witness, Hanna Pence, testified that she is the sole owner of Five P Ag, LLC.

15. The amount of money that has been invested in the irrigation and wells was not provided by the Applicant.

16. Protestant N. Ciliberti testified that for the last ten (10) years the region has struggled with water.

17. Protestant N. Ciliberti testified that he lives about 70% of the time on his property and that the property is legally owned in the name of his mother as a life-estate.

18. Protestants N. Ciliberti and B. Ciliberti testified that they currently run about one hundred and eighty (180) grass fed cattle/calf operation and have chickens and pasture, but are making plans for bringing in multiple disciplinary crops of vegetables, peas, carrots, and onions as well as bringing in bees and other insects.

19. Notice of Hearing was sent to all interested parties on June 18, 2025. The Notice of Hearing gave a date, time, and location for the administrative hearing and explained the nature of the administrative hearing and the issues that would be presented.

20. Notice of the Hearing was sufficiently delivered by certified U.S. mail to the Protestants and Applicant. Notice of the Hearing was delivered by certified U.S. mail to Applicant on June 23, 2025, return receipt signed but not dated. Notice of the Hearing was delivered by certified U.S. mail to Protestant Nick Ciliberti on July 2, 2025, and to Protestant Life Estate Owner Bridget Ciliberti on July 2, 2025. *See OWRB Exhibit No. 8.*

21. Order Resetting Hearing was sent to all interested parties by certified US Mail or email on June 25, 2025. The Order Resetting Hearing gave a date, time, and location for the administrative hearing. *See OWRB Exhibit No. 8.*

PROTEST

22. Protestants, Nick Ciliberti, Life Estate Owner Bridget Ciliberti, and Chase Ratzlaff, protested the Application. Protestant Ratzlaff withdrew his protest prior to the Notice of Hearing. Protestants Nick Ciliberti and Life Estate Owner Bridget Ciliberti were made party herein. *See OWRB Exhibit No. 6 and 9.*

ELEMENTS TO BE DETERMINED

A. LANDS OWNED OR LEASED BY THE APPLICANT

23. Applicant asserted ownership or leases of the following tracts which it sought to dedicate even hundred and ninety-two (792) acres to its Application as follows: one hundred and sixty (160) acres in the SW1/4 of Section 34, three-hundred and twelve (312) acres in the N1/2 of Section 34, and three hundred and twenty (320) acres in the W1/2 of Section 27, all land in T23N, R8WIM, Garfield County. In support of the Applicant assertion of ownership and leases, there is a Water Rights Lease (Book 2698 Page 28-29 Garfield County), Quit Claim Deed (Book 2634 Page 747 Garfield County, Farm Lease signed February 12, 2025, and Quit Claim Deed (Book 2639 Page 757 Garfield County). *See OWRB Exhibit No. 1 and 2.*

B. LANDS OVERLIE FRESH GROUNDWATER BASIN

24. Upon their initial review of the Application, OWRB Board staff determined that the tract at issue overlies the El Reno groundwater basin. *See OWRB Exhibits No. 1.* That the lands overlie the El Reno groundwater basin was not disputed at the hearing.

C. GROUNDWATER TO BE PUT TO BENEFICIAL USE

25. The proposed use of groundwater, as stated in the Application, is to be used for irrigation for growing crops of wheat, corn, soybeans, sorghum, and cotton, of the land dedicated to the permit. *See OWRB Exhibits No. 1.*

26. Protestant N. Ciliberti disagrees with the style of farming practices being done by the Applicant, which includes the installation of huge agricultural pivots to grow crops that use large amounts of water.

27. The Applicant's witness testified that the Applicant did not pump any groundwater before the Provisional Temporary Permit was issued, no water used until the end of the first week of June, and that the Applicant has withdrawn water subject to the Provisional Temporary Permit #2025G0096. *See Appellant Exhibit No. 1.* The Provisional Temporary Permit was approved May29, 2025. *See Appellant Exhibit No. 1.*

28. The Applicant's witness also testified that the Applicant does not have OG&E power to the location yet and had no electricity until the 23rd of May when a generator came to the property. Applicant did rotate the pivot to make sure the electronic functions were working.

29. The exhibit pictures and video do not contradict the Applicant's witness testimony. *See OWRB Exhibit #6 and Protestant Exhibits #1 and #2.*

D. WASTE

BY DEPLETION

30. The proposed use of groundwater, as stated in the Application, is to be used for irrigation for growing crops of wheat, corn, soybeans, sorghum, and cotton, of the land dedicated to the permit. *See OWRB Exhibits No. 1.*

31. Applicant's witness testified that the irrigation is nozzled so that each well will use no more than sixty percent (60%) of its capacity, that every well is tested for capacity, and that the Applicant will turn in the annual usage report.

32. The Applicant hired an agronomist, since 2012, that scouts the fields weekly or every other week depending on the season, to help know when and how much water is needed.

33. Protestant B. Ciliberti testified that they have had a lot of rain but the creeks are down and some are dry and that where there was a spring the spring is half the size. Additionally, that no one can figure out why but the only thing that has changed are the forty-two (42) wells by the Applicant.

34. Protestant B. Ciliberti argued that she would like monitors on the wells, to know how much water has been used and for the wells to be cut off when the allowable amount of water usage has been reached. Currently the yearly reporting is just based on trust.

BY POLLUTION

35. Applicant's witness testified that the Applicant sprays/uses an assortment of different permitted fertilizers, herbicides, and pesticides on the crops as needed, that she would allow her children to eat the vegetables if planted a garden on the property, that her son currently eats the soybeans, and that the crops are safe for human consumption.

36. Additionally, Applicant's witness testified that she has no concerns that anything sprayed on the crops will reach the creek or have an appreciable effect on any groundwater, and that she drinks the water from the well.

37. Protestant B. Ciliberti testified that she is worried about run off from the Applicant's property into creeks and about the possibility of having to send in water samples every month to see what is in it. Her cattle drink out of the creek, and she drinks the water from her well.

38. No documentation or expert testimony was presented regarding runoff.

WELL SPACING

39. Well spacing rules set by the Board require that wells be located at a distance of at least one thousand and three hundred and twenty (1,320) feet from existing wells or proposed well location on lands of another unless a well location exception is granted.

40. No arguments or evidence were presented that any of the remaining wells on the Application are within one thousand and three hundred and twenty (1,320) feet from existing wells or proposed well location on lands of another.

41. The Applicant's witness testified that she took the SE SW SW Section of 27 well out of commission because Protestant Ratzlaff asked about it, due to the well being in close proximity to his unregistered well. Applicant agreed to not use the well and withdraw it from the Application, however, she doesn't think that is why Protestant Ratzlaff withdrew his protest. *See OWRB Exhibit #9*. Applicant's witness did not provide any other possible reasons why Ratzlaff may have withdrawn the protest.

42. The Protestants N. Ciliberti and B. Ciliberti are concerned that the Applicant's number of wells forty-two (42) and amount of requested groundwater requested one-thousand five hundred and eighty-four (1,584) acre-feet per year will pull the water level down.

CONCLUSIONS OF LAW

Based upon applicable law, and as applied to the above Findings of Fact and evidence in the record, the Board draws the following Conclusions of Law:

JURISDICTION AND AUTHORITY

43. The Board is vested with exclusive authority to determine groundwater permit application by Oklahoma's Groundwater Law, 82 O.S. § 1020.1 et seq., and by Chapter 30 of Title 785 of the Oklahoma Administrative Code ("OAC"). The OWRB is vested with authority to conduct administrative hearings under Article 7, § 1 of the Oklahoma State Constitution and by Article II of the Oklahoma Administrative Procedures Act (APA), 75 O.S. §§ 308a through 323. Hearings are conducted pursuant to Article II of the APA and Chapter 4 of Title 785 of the OAC.

44. The Board has subject matter jurisdiction to adjudicate applications for permits according to the Oklahoma Groundwater Law and the Board's rules promulgates pursuant thereto.

NOTICE OF THE APPLICATION AND HEARING

45. Notification of the Application for a Temporary groundwater permit was properly given as required by law, in accordance with 82 O.S. § 1020.8 and OAC 785:30-3-4.

46. Notice of the Hearing was given to all interested parties in accordance with OAC 785:30-3-4.

PERSONAL JURISDICTION; DUE PROCESS

47. Due and proper notice of the Application and subsequent proceedings was given to all potentially interested persons as required by law. Applicant and Protestant are interested parties to this proceeding. All other potentially interested persons have defaulted or abandoned their interests, pursuant to OAC 785:4-7-3.

USE OF GROUNDWATER

48. Under 60 O.S. § 60, the owner of the surface of a given tract of land owns the fresh groundwater beneath the surface of the land. The surface owner or lessee may use such groundwater in accordance with the use regulations imposed by the Oklahoma Groundwater Law, 82 O.S. §§ 1020.1 et seq.

ELEMENTS TO BE DETERMINED

49. When a person makes an application for a groundwater permit, 82 O.S. § 1020.9 and OAC 785:30-3-5 requires the Board to determine several specific issues. These are:

- A. Whether the applicant owns the surface of the dedicated land or has a valid lease or other legal authority for the taking of groundwater from the land;
- B. Whether the dedicated land overlies a fresh groundwater basin or subbasin;
- C. Whether the applicant's intended use for the water is a beneficial use; and
- D. That waste by depletion and waste by pollution as specified in 82 O.S. § 1020.15 will not occur.

Additionally, wells are required to be at least one thousand three hundred and twenty (1,320) feet of an authorized existing well proposed well location on lands of another, unless a well location exception is granted, pursuant to OAC 785: 30-3-6. A location exception would be granted if the Board determines that the new or proposed well at the location required to comply with the established well spacing would be inequitable or unreasonable.

If the Board finds for the applicant on all these issues, the rules provides that the Board shall approve the application and issue the appropriate permit, pursuant to 82 O.S. §§ 1020.9 and 1020.10.

A. LANDS OWNED OR LEASED BY APPLICANT

50. Based on the information submitted in the Application and at the hearing, the Board concludes that Applicant provided evidence of its right to take groundwater from the land, in the form of ownership and lease documentation.

B. LANDS OVERLIE FRESH GROUNDWATER BASIN

51. The dedicated land overlies the El Reno groundwater basin.

C. GROUNDWATER PUT TO BENEFICIAL USE

52. “Beneficial Use” is defined in OAC 785:30-1-2 as “the use of such quantity of stream or groundwater when reasonable intelligence and reasonable diligence are exercised in its application for a lawful purpose and as is economically necessary for that purpose. Beneficial uses include but are not limited to municipal, industrial, agricultural, irrigation, recreation, fish and wildlife, etc.” “Irrigation use” is defined in OAC 785:30-1-2 as “use of water for the production of food, fiber, crops, timber, fruits, nuts; and water applied to pastures, fields, landscaping, horticulture services, and golf courses.” “Agriculture use” is defined in OAC 785:30-1-2 as “water used for livestock, poultry, fish farms, fish hatcheries, veterinary services, feed lots, etc. (see also “Irrigation use”).” “Recreation, fish and wildlife use” is defined in OAC 785:30-1-2 as “use which includes but is not limited to the use of water for swimming, water skiing, boating, fishing, hunting or other forms of water recreation, and water for fish and wildlife conservation.” “Domestic use” is defined in OAC 785:30-1-2 as “the use of water by a natural individual or by a family or household for household purposes, for farm and domestic animals up to the normal grazing capacity of the land whether or not the animals are actually owned by such natural individual or family, and for the irrigation of land not exceeding a total of three (3) acres in area for the growing of gardens, orchards, and lawns [82:1020.1(2)]. Domestic use also includes: (1) the use of water for agriculture purposes by natural individuals, (2) use of water for fire protection, and (3) the use of water by non-household entities for drinking water purposes, restroom use, and the watering of lawns, provided that the amount of groundwater used for any such purposes does not exceed five acre-feet per year.”

53. The Applicant’s proposed use meets the definition of beneficial use.

D. WASTE

BY DEPLETION

54. The Board must determine whether Applicant will allow waste as specified by 82 O.S. § 1020.15 to occur. Waste may occur by the:

1. Drilling a well, taking, or using groundwater without a permit, except for domestic use;
2. Taking or using groundwater in any manner so that the water is lost for beneficial use;
3. Taking or using groundwater in any manner so that the water is lost for beneficial use;
4. Transporting groundwater from a well to the place of use in such a manner that there is an excessive loss in transit;
5. Using groundwater in such an inefficient manner that excessive losses occur;
6. Allowing any groundwater to reach a pervious stratum and be lost into cavernous or otherwise pervious materials encountered in a well; . . .
8. Drilling wells and producing groundwater therefrom except in accordance with the well spacing previously determined by the Board;
9. Using groundwater for air

conditioning or cooling purposes without providing facilities to aerate and reuse such water; or 10. Failure to properly plug abandoned water wells in accordance with rules of the Board and file reports thereof.

82 O.S. § 1020.15(A).

55. The Board is only “authorized to require that water wells be metered” when “a majority of the landowners residing within a basin or subbasin” request metering, pursuant to 82 O.S. § 1020.19.

56. The Applicant’s proposed use does not clearly indicate that waste by depletion may occur, however, there is a concern of possible usage of more than the allotted amount of water.

BY POLLUTION

57. The provisions of 82 O.S. § 1020.15(A)(7) provide the Board shall not permit any groundwater user to commit waste by “[p]ermitting or causing the pollution of a fresh water strata or basin through any act which will permit fresh groundwater polluted by minerals or other waste to filter or otherwise intrude into such a basin or subbasin.” Additionally, “[in] cases of waste by pollution pursuant to paragraph 7 of subsection A of this section, any complaint or investigation, or any enforcement matter other than an individual proceeding involving the suspension of an Oklahoma Water Resources Board permit shall be referred to and subject to the jurisdiction of the Department of Environmental Quality or other appropriate state environmental agency or state agency with limited environmental responsibility.” 82 O.S. § 1020.15(C).

58. The Applicant’s proposed use does not clearly indicate that waste by pollution may occur, however, there were stated concerns including water runoff.

WELL SPACING

59. The Board requires that a well be located at a distance of at least one thousand three hundred and twenty (1,320) feet from existing wells or proposed well locations on lands of another unless a well location exception is granted, pursuant to OAC 785:30-3-6.

60. A well location exception is not needed.

CONCLUSION

Based upon the Findings of Fact and Conclusions of Law above, the Board hereby concludes that Five P Ag, LLC has satisfied the necessary elements for obtaining a Temporary Groundwater Permit No. 2025-524. The Board hereby orders that the Application for a Temporary groundwater Permit No. 2025-524 shall be GRANTED. The Board hereby orders that the Application for a Temporary groundwater Permit No. 2025-524 shall be APPROVED for forty-two (42) groundwater wells located on the Applicant’s property:

- one (1) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the SW1/4 of NE1/4 of SW1/4 of Section 27;

- four (4) located in the SW1/4 of SW1/4 of SW1/4 of Section 34;
- five (5) located in the NE1/4 of SW1/4 of SW1/4 of Section 34;
- four (4) located in the SE1/4 of SW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of NW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of NE1/4 of SW1/4 of Section 34;
- three (3) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the SE1/4 of SE1/4 of SW1/4 of Section 27;
- two (2) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the NW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the SW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NE1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NW1/4 of NE1/4 of NW1/4 of Section 27;
- three (3) located in the NE1/4 of NE1/4 of NW1/4 of Section 27;

all in T23N, R8WIM, Garfield County, Oklahoma, to withdraw from each well a maximum of sixty percent (60%) of its capacity.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED the Application No. 2025-524 filed by Five P Ag, LLC is hereby granted to withdraw from each well a maximum of sixty percent (60%) of its capacity. A temporary groundwater permit shall be issued which authorizes forty-two (42) groundwater wells located on the Applicant's property:

- one (1) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- one (1) located in the SW1/4 of NE1/4 of SW1/4 of Section 27;
- four (4) located in the SW1/4 of SW1/4 of SW1/4 of Section 34;
- five (5) located in the NE1/4 of SW1/4 of SW1/4 of Section 34;
- four (4) located in the SE1/4 of SW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of SE1/4 of SW1/4 of Section 34;
- one (1) located in the SE1/4 of NW1/4 of SW1/4 of Section 34;
- two (2) located in the SW1/4 of NE1/4 of SW1/4 of Section 34;
- three (3) located in the SW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the SE1/4 of SE1/4 of SW1/4 of Section 27;
- two (2) located in the NW1/4 of SE1/4 of SW1/4 of Section 27;
- three (3) located in the NW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the SW1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NE1/4 of NW1/4 of NW1/4 of Section 27;
- two (2) located in the NW1/4 of NE1/4 of NW1/4 of Section 27;
- three (3) located in the NE1/4 of NE1/4 of NW1/4 of Section 27;

all in T23N, R8WIM, Garfield County, Oklahoma.

IT IS FURTHER ORDERED that all other terms and provisions set forth in the Application and not inconsistent with provisions of this Order shall be incorporated into and made a part of the permit.

IT IS SO ORDERED by the Oklahoma Water Resource Board in regular and open meeting this _____ day of _____, 2025.

OKLAHOMA WATER RESOURCES BOARD

Thomas Gorman, Chairman

ATTEST:

Suzanne Landess, Secretary

(SEAL)

BEFORE THE OKLAHOMA WATER RESOURCES BOARD
STATE OF OKLAHOMA

In the Matter of the Application of)	
Five P Ag, LLC For a Temporary Permit to)	Application No. 2025-524
Use Groundwater in Garfield County.)	

**EXCEPTIONS TO PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW
AND BOARD ORDER**

COMES NOW, Applicant Five P Ag, LLC (“Applicant”) and files the following exceptions to the Proposed Findings of Fact, Conclusions of Law and Board Order (“Proposed Order”) submitted by the Hearing Examiner on November 4, 2025.

INTRODUCTION

Applicant is grateful for the careful attention given to this matter. The Proposed Order correctly finds that the statutory criteria for issuance of a temporary groundwater permit have been met and recommends approval of the Application.

Applicant takes exception to only one aspect of the Proposed Order: the sentence imposing a “sixty percent (60%) of capacity” operational cap on all wells. The record contains no evidence defining “capacity,” no methodology for calculating or monitoring “60%,” and no finding that such a cap is necessary to prevent “waste” as that term is defined by Oklahoma law. As drafted, the condition is untethered to the statutory framework, impractical to administer, and inconsistent with the otherwise well-supported Proposed Order. It should be stricken, with all other terms remaining.

FACTUAL BACKGROUND

On July 28, 2025, Applicant and Protestants Nick and Bridget Ciliberti appeared before the Hearing Examiner on Applicant’s pending application for a temporary groundwater permit.

All parties were afforded an opportunity to present evidence and testimony and to conduct cross-examination.

Following the hearing, the Hearing Examiner issued the November 4, 2025 Proposed Order. Within it, the Hearing Examiner proposes that the Applicant's permit application be granted, but adds a condition that all wells be limited to pumping at sixty percent of capacity.

The Proposed Order identifies Applicant's own testimony as the source of the "sixty percent" language, referencing testimony that wells are nozzled so that "each well will use no more than sixty percent (60%) of its capacity." Proposed Order ¶ 31. That testimony described Applicant's internal operational practice—nozzling and testing wells as a matter of on-farm management—*not* a request that the Board convert that practice into a legal ceiling.

No expert testimony defined "capacity" for any well, explained how "capacity" would be determined for purposes of regulatory compliance, or stated that any capacity cap would affect waste. No witness presented a formula, common standard, or field procedure by which Board staff could verify whether any particular well was operating at or below "60% of capacity" at any given time. Finally, no witness presented evidence that this capacity limit will reduce or remove any future (unsupported) waste by depletion.

The Protestants' testimony likewise did not supply such a basis. One Protestant stated that "the creeks are down and some are dry," which does not address Applicant's proposed pumping under an authorized permit. Another expressed a desire for monitors on the wells "to know how much water has been used and for the wells to be cut off when the allowable amount of water has been reached"—a concern that aligns with unnecessary/unrequired metering and adherence to an annual authorized quantity, not with an undefined percentage-of-capacity cap. Proposed Order ¶¶ 32–33.

Finally, no protestant could produce evidence that Applicant's water usage would commit waste.¹

ARGUMENTS AND AUTHORITIES

Under Okla. Admin. Code 785:4-9-1(d), a party "adversely affected by the order as proposed" may file exceptions. Applicant is adversely affected by the addition of a novel, unsupported operational cap that goes beyond the evidence and the governing statutes.

The hearing focused on familiar groundwater elements. Protestants voiced general concerns about drawdown, which is *not* an element to be considered. The OWRB's statutory inquiry into "waste" is limited and specific. 82 O.S. § 1020.15 defines "waste" to include several discrete categories, such as drilling or using groundwater without a permit, taking more than is authorized, inefficient or negligent conveyance, or polluting a fresh-water basin. *Waste by depletion* does not mean general drawdown, aquifer decline, or a neighbor's subjective belief that another user's allocation is or could be "too much." Instead, it refers to using water beyond one's legal share or inefficiently so that water is lost for beneficial use.

On waste, the record reflects practical, on-farm safeguards. Applicant testified to agronomic scheduling and routine scouting, and—crucially—the testimony described nozzling and well testing as operational prudence so water is used efficiently, not as a legal cap. As mentioned, there was no expert quantification of "capacity," no uniform definition across wells, and no proposed method for the Board to verify a "% of capacity" limit in inspections or through

¹ The Proposed Order even states, "[t]he Applicant's proposed use does not clearly indicate that waste by depletion may occur, however, there is a concern of possible usage of more than the allotted amount of water." Proposed Order ¶ 56. And yet, such a concern was not supported by any actual evidence. Anyone can have a concern. A generalized "concern" of hypothetical overuse, without evidentiary support, is no more probative than a concern that a hurricane might make landfall in Oklahoma. Hurricanes, as a matter of climatology, don't reach this far inland; such a concern is possible to voice but not supported by the facts. It, like Protestants' "concern[s]" regarding overuse is based on irrationality, not real facts.

annual reporting. The only mention of “sixty percent” appears in Applicant’s description of nozzle settings and testing—operational practice—not a request for a legal ceiling, and without any methodology that would let the Board or field staff audit “capacity” across 42 wells over time.

Indeed, a user could operate “below 60% of capacity” every day and still exceed the total AFY the Board determines is appropriate for the tract. A pump running at “under 60% capacity” can still deliver water wastefully. Conversely, a well pumping *above* 60% capacity to meet agronomic demand, within an authorized AFY and using efficient irrigation practices, is not per se “waste” under § 1020.15. Waste by depletion is tied to exceeding one’s legal share or using water inefficiently—not to operating a pump above some fraction of its mechanical potential.

Likewise, there is no support—either factual or legal—that a capacity limit is needed to avoid or limit waste. No party produced evidence that waste will occur. Indeed, the Order itself notes there is no “clear[] indicat[ion] that waste by depletion may occur.”² Proposed Order ¶ 56. Mere apprehension that a permittee might in the future take “more than the allotted amount” is not, without supporting facts, substantial evidence of waste and cannot justify imposing a novel operational constraint unrelated to the statutory framework.

As described above, “waste” under Oklahoma law is concerned with using groundwater in excess of a legal allocation or in an inefficient manner such that water is lost to beneficial use. Nothing in the record suggests that Applicant intends or is likely to do so, or that Applicant’s use must be constrained by an arbitrary “sixty percent (60%) of capacity” limit to prevent waste. Existing tools—authorization of a defined annual quantity, compliance with spacing and construction requirements, and enforcement of the statutory prohibition on waste—are the precise,

² Although Applicant does not take exception to this finding, it should be noted that the standard is not whether waste by depletion *may* occur, but whether it will occur. 82 O.S. § 1020.9 (A)(2)(c).

tested mechanisms for addressing any future allegation of overuse or inefficiency. The proposed condition may appear to be a conservation measure, but it does not, and cannot, function as one under Oklahoma law or on the facts of this case.

CONCLUSION

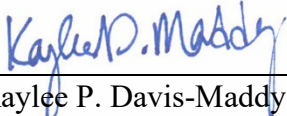
For these reasons, Applicant respectfully requests that the Board strike from the Proposed Order the sentence limiting wells to “sixty percent (60%) of capacity.”

WHEREFORE, Applicant Five P Ag, LLC respectfully requests that the Oklahoma Water Resources Board sustain these Exceptions, strike the “sixty percent (60%) of capacity” condition, enter the final Order otherwise granting the temporary permit, and grant such other relief as may be just and proper.

Respectfully submitted,

DOERNER, SAUNDERS, DANIEL & ANDERSON, L.L.P.

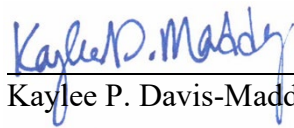
By: _____


Kaylee P. Davis-Maddy, OBA No. 31534
210 Park Avenue, Suite 1200
Oklahoma City, OK 73102-4805
(405) 319-3513; Fax: (405) 319-3524
Email: kmaddy@dsda.com
Attorney for Applicant

CERTIFICATE OF MAILING

This is to certify that on November 10, 2025, a true and correct copy of the above and foregoing document was mailed to:

Life Estate Owner Bridget Ciliberti
Nick Ciliberti
1828 N Logan Road
Enid, Ok 73703
Protestants



Kaylee P. Davis-Maddy