



**CITY COMMISSION
WEDNESDAY, NOVEMBER 6, 2024 AT 11:00 AM
CITY COMMISSION CHAMBER**

ORDER OF BUSINESS

CALL MEETING TO ORDER Mayor Erren Harter

MEMBERS PRESENT

Vice-Mayor Susan Brinkman
Commissioner Tyler Curtis
Commissioner Becky Smith
Commissioner Jamie Sauder

PROCLAMATIONS

Proclamation Naming November 30, 2024, as Small Business Saturday in Emporia.

Accepted by: Jess Buchholz, Community Development Coordinator for Emporia Main Street

Proclamation Recognizing November 3rd-9th as Animal Shelter Appreciation Week.

Accepted by: Vanessa Cowie, Director of Prairie Paws Shelter & Bailey Estes, Director of Emporia Animal Shelter

PUBLIC FORUM

The public is invited to make comments at this time. Please limit comments to two (2) minutes each. Please state your name and address prior to making comments.

NEW BUSINESS

1) Appoint Members to the Emporia Human Relations Commission.

Presented by: Commissioner Becky Smith & Commissioner Jamie Sauder

Recommended Action: Approve the appointment of Donnia Hinrichs & Misty Williams to the Emporia Human Relations Commission.

2) Ordinance No. 24-35 Annexing Land East of Road G and South of W 18th Ave. Pursuant to K.S.A. 12-520.

Presented by: Justin Givens, Planning & Zoning Administrator

Recommended Action: Approve Ordinance No. 24-35 Annexing Land East of Road G and South of W 18th Ave. Pursuant to K.S.A. 12-520.

3) Award Bid for Fire Station Construction.

Presented by: Brandon Beck, Fire Chief

Recommended Action: Award bid package #1 to Crossland Construction for \$10,084,115 with an allowance of \$500,000 for fixtures, furniture, and equipment for a total of \$10,584,115.

4) Resolution No. 3744 to Amend Hazardous Sidewalk Program Costs.

Presented by: Jim Ubert, City Engineer

Recommended Action: Approve Resolution No. 3744 to Amend the Hazardous Sidewalk Cost-Share Program.

5) **Ordinance No. 24-33 Amending City Code Section 24-8 for Removal of Snow and Ice from Sidewalks.**

Presented by: James Watson, Assistant City Attorney

Recommended Action: Approve Ordinance No. 24-33 Amending City Code Section 24-8 for Removal of Snow and Ice from Sidewalks.

6) **Ordinance 24-34 for a Conditional Use Permit for an Accessory Dwelling Unit at 928 Neosho Street.**

Presented by: Justin Givens, Planning & Zoning Administrator

Recommended Action: Adopt Ordinance 24-34 for a Conditional Use Permit for an Accessory Dwelling Unit at 928 Neosho Street.

7) **Lift Station No. 1 Contract for Construction Services.**

Presented by: Dean Grant, Public Works Director

Recommended Action: Approve the agreement with BG Consultants for construction services on the Lift Station #2 project.

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

- 1) Commission Meeting Minutes for October 16, 2024.
- 2) Memorandum of Understanding with BNSF.
- 3) KDOT TA Supplemental Agreement No. 1, Project No. SK2201, KDOT 056 TE-0516-01.
- 4) Lockwood Heights RHID Reimbursement Agreement

INFORMATIONAL ITEMS

Presented by Trey Cocking, City Manager.

- 1) Informational Items

GOVERNING BODY COMMENTS

Mayor Erren Harter

Vice-Mayor Susan Brinkman

Commissioner Tyler Curtis

Commissioner Becky Smith

Commissioner Jamie Sauder

EXECUTIVE SESSION

- 1) Recess into executive session for 60 minutes inviting pertinent city staff to discuss confidential data of a third party relating to economic development. The justification for the executive session is provided by K.S.A. 75-4319(b)(4) to protect financial affairs and trade secrets of third parties. The open meeting will resume in Conference Room 1AB room at approximately ___:___ a.m./p.m.

RECESS

STUDY SESSION AGENDA ITEMS

ADJOURNMENT



PROCLAMATION

WHEREAS, the small locally owned businesses of Emporia are vital to our city's economic health; and

WHEREAS, locally owned businesses contribute to our unique and vibrant community character; and

WHEREAS, the U.S. Bureau of Labor Statistics states that small businesses contributed to 55% of total net job creation from 2013-2023; and

WHEREAS, with every \$100 spent at a small local retailer, \$67 will return to the community through taxes, payroll, and donations to local schools and charities and

WHEREAS, public awareness of the contributions made by Emporia local businesses is the key to sustaining a healthy business climate; and

WHEREAS, the people of Emporia are grateful to the small locally owned businesses of Emporia for their generous contribution to the quality of life we all enjoy; and

WHEREAS, we join American Express, Main Street America, Kansas Main Street, and Emporia Main Street in supporting America's locally owned Small Businesses.

NOW, THEREFORE, I, Erren Harter, Mayor of the City of Emporia, Kansas, do hereby proclaim Saturday, November 30, 2024, as

SMALL BUSINESS SATURDAY

in the city of Emporia, Kansas, and urge all residents of Emporia to join the rest of America in shopping at small locally owned businesses on this day and throughout the year.

On this 6th Day of November 2024

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, dogs and cats are an integral part of the quality of life of our community, with approximately 6,140 pet dogs and 4,570 pet cats living in the City of Emporia, and 89.9 million dogs and 61.9 million cats nationwide; and

WHEREAS, animal shelter employees must respond to the needs of the community, keeping animals and humans safe from harm; and

WHEREAS, animal shelters make communities better places to live, taking stray animals off the streets and out of harm's way; and

WHEREAS, animal shelters help both animals and people in many ways: by returning lost pets to their owners, educating the public, and matching homeless animals with loving new families; and

WHEREAS, animal shelters receive important donations of money, goods, and volunteer time to assist in their important missions; and

WHEREAS, Prairie Paws Animal Shelter reflects best shelter practices, with veterinary care, enrichment, and socialization programs to provide the best possible outcome for each animal in its care; and

WHEREAS, City of Emporia is one of the kindest cities in America to homeless pets;

NOW, THEREFORE, I, Erren Harter, Mayor for the Governing Body of the City of Emporia, Kansas do hereby proclaim November 3-9, 2024, to be:

ANIMAL SHELTER APPRECIATION WEEK

In the City of Emporia, Kansas we call upon all citizens to recommit to the animals in our community with responsible pet ownership and support of local efforts to help homeless animals.

On this 6th Day of November 2024

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



Commission Action Report

Appoint Members to the Emporia Human Relations Commission

Title: Appoint Members to the Emporia Human Relations Commission

Agenda Date: November 6, 2024

Presented By: Commissioner Becky Smith & Commissioner Jamie Sauder

Background:

The Emporia Human Relations Commission requests that the City Commission fill board openings with qualified candidates.

Discussion:

Applications were received, and interviews were conducted by Commissioners Becky Smith and Jamie Sauder.

Interviewing Commissioners recommend the appointment of Donnia Hinrichs to fill an unexpired term ending 06/01/2025 and the appointment of Misty Williams to fill an unexpired term ending on 06/01/2026.

Recommended action:

Approve the appointment of Donnia Hinrichs & Misty Williams to the Emporia Human Relations Commission.

Online Form Submittal: Board Application Form

From noreply@civicplus.com <noreply@civicplus.com>

Date Tue 10/8/2024 12:53 PM

To Sue Bryson <sbryson@emporiaks.gov>; Emporia Info <emporiainfo@emporiaks.gov>

Board Application Form

Select Board, Commission, or Committee to apply. Emporia Human Relations Commission

Personal Information

First Name	Donnia
------------	--------

Last Name	Hinrichs
-----------	----------

Address1	1122 Cottonwood Street, APT #2
----------	--------------------------------

Address2	<i>Field not completed.</i>
----------	-----------------------------

City	Emporia
------	---------

State	Kansas
-------	--------

Zip	66801
-----	-------

Home Phone Number	9137090558
-------------------	------------

Business Address	624 Commercial Street
------------------	-----------------------

Business Phone Number	6206804407
-----------------------	------------

Occupation	Independent Living Specialist
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Email Address	Donnia.Hinrichs@rcilinc.org
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Residency Information

Length of Residency in Emporia	4 months
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Are you a registered voter	Yes
----------------------------	-----

Education and Hobbies

High School	Reading High School
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College	Emporia State University
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Trade or Business School	<i>Field not completed.</i>
Hobbies	Gardening, Biking, traveling, Reading
Organization Membership Information	
Are you currently serving on other Boards, Commissions, or Committees?	No
If yes, which	<i>Field not completed.</i>
Have you served on a Board, Commission, or Committee before?	No
If yes, which	<i>Field not completed.</i>
Please, list organization memberships and positions held.	<i>Field not completed.</i>
Please, list areas of special interest.	Areas that concern individuals with disabilities
Please, enter basic resume information below.	I am a retired Special Education teacher of 47 years. I taught 11 years at Emporia High School, 30 years with the Paola School District at Lakemary Center, 1 year at McLouth Junior and Senior , and one year at Nevada Missouri High School. I currently work at Resource Center for Independent Living. Adam Burnett suggested I apply for this commission.
Please, enter why you would like to be a member of this board or commission.	I think I could provide expertise from being a Special Education Teacher for 47 years that would impact individuals with disabilities.

Email not displaying correctly? [View it in your browser.](#)

Online Form Submittal: Board Application Form

noreply@civicplus.com <noreply@civicplus.com>

Wed 8/7/2024 2:12 PM

To:Sue Bryson <sbryson@emporiaks.gov>;Emporia Info <emporiainfo@emporiaks.gov>

Board Application Form

Select the Board, Emporia Human Relations Commission
Commission, or Committee
applying for

Personal Information

First Name Misty
Last Name Williams
Address1 1679 Road T5
Address2 Field not completed.
City Emporia
State KS
Zip 66801
Home Phone Number 620-794-0221
Business Address 402 Commercial St
Business Phone Number 6203413498
Occupation Director of Mobility Management
Email Address mwilliams@lyoncounty.org

Residency Information

Length of Residency in 20 years
Emporia
Are you a registered voter Yes

Education and Hobbies

High School Madison High

College	Ottawa University
Trade or Business School	<i>Field not completed.</i>
Hobbies	4H, Farming, Ranching, Fishing, Hunting, Racing, Kids Activities
Organization Membership Information	
Are you currently serving on other Boards, Commissions, or Committees?	No
If yes, which	<i>Field not completed.</i>
Have you served on a Board, Commission, or Committee before?	No
If yes, which	<i>Field not completed.</i>
Please, list organization memberships and positions held.	<i>Field not completed.</i>
Please, list areas of special interest.	Goal is meeting individual community member needs through a wide range of transportation options.
Please, enter basic resume information below.	High school: Madison High School Butler Community College- associate's degree in accounting Ottawa University- Bachelor's in accounting and business administration Currently hold Director of Mobility Management for the East Central Kansas region Previously held an Accounting 2 position with GSA/USDA.
Please, enter why you would like to be a member of this board or commission.	To assist in providing citizens safe routes to schools, work, shopping, and recreation, while promoting physical activity and preservation of the environment.

Email not displaying correctly? [View it in your browser.](#)



Commission Action Report

Ordinance No. 24-35 Annexing Land Located East of Road G
and South of W 18th Ave. Pursuant to K.S.A. 12-520

Title: Ordinance No. 24-35 Annexing Land East of Road G
and South of W 18th Ave. Pursuant to K.S.A. 12-520

Agenda Date: November 6, 2024

Presented By: Justin Givens, Planning & Zoning Administrator

Background:

The City of Emporia has received a consent to annexation from the owner of property located at the southeast corner of Road G and W 18th Ave. The property adjoins the city and is eligible for annexation under K.S.A. 12-520. The annexation request is in anticipation of future commercial development, which could include a medical facility on the property.

The property is currently zoned Commercial, which was attested to by the County Counselor, and County Zoning Administrator. Upon annexation, the property retains its zoning designation and will be assigned a Commercial Parcel Type zoning classification.

The subject property is within the natural growth area of the city and has public infrastructure readily available. PLAN ELC, the city/county comprehensive plan, anticipates the property being developed as commercial property.

Prior to development, the property owner or developer will be required to plat the property, and have an approved site plan, and building plans.

Discussion:

K.S.A. 12-520, permits a city to annex land if the land adjoins the city, and the owner of the subject property has consented to the annexation.

Kansas Annexation Law specifically allows that when a property that adjoins the city, and the owner has consented to annexation, no review from either a city or county Planning Commission, or the Board of County Commissioners is required. The only required action is for the City Commission to adopt an ordinance annexing the property.

Financial considerations:

The cost of publication of the ordinance is borne by the City.

Recommended action:

Approve Ordinance No. 24-35 Annexing Land East of Road G and South of W 18th Ave. Pursuant to K.S.A. 12-520.

Attachments:

Ordinance No 24-35 for Annexation
Consent for Annexation
Aerial Location Map
PLAN ELC Area Map
Annexation Application & Exhibits

ORDINANCE NO. 24-35

AN ORDINANCE ANNEXING LAND TO THE CITY OF EMPORIA, KANSAS.

WHEREAS, the following described land adjoins the City of Emporia, Kansas and is generally located south of West 18th Avenue and east of Road "G", in Lyon County; and

WHEREAS, a written consent for annexation of the following described land, signed by all of the owners thereof, has been filed with the City of Emporia, Kansas pursuant to K.S.A. 12-520, as amended; and

WHEREAS, the governing body of the City of Emporia, Kansas, finds it advisable to annex such land.

NOW THEREFORE, BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS:

SECTION 1. That the following described land is hereby annexed and made part of the City of Emporia, Kansas:

A part of the Northwest Quarter of Section 7, Township 19 South, Range 11 East of the 6th P.M., Lyon County, Kansas, written by Travis L Haizlip, PS 1724 on May 02, 2024 and more particularly described as follows: Beginning at the Northwest corner of the Northwest Quarter of said Section 7; thence on a NAD 83, Kansas Regional Coordinate System, Zone 9 bearing of North 89 degrees 00 minutes 04 seconds East on the North line of said Northwest Quarter a distance of 958.46 feet to the West line of an excepted tract described as Tract 2 in Document No. 2024-00630 at the Office of the Lyon County Register of Deeds; thence South 00 degrees 59 minutes 56 seconds East on said West line a distance of 898.84 feet; thence South 89 degrees 00 minutes 04 seconds West a distance of 980.11 feet to the West line of said Northwest Quarter; thence North 00 degrees 22 minutes 50 seconds East on said West line a distance of 899.10 feet to the point of beginning. Containing 20.00 acres of land more or less.

SECTION 2. This ordinance shall take effect and be in force from and after its publication in the official city newspaper.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 6th day of November 2024.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk

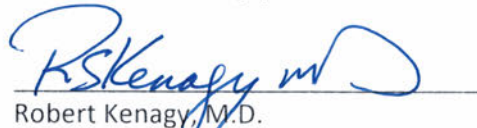
CONSENT TO ANNEXATION

TO THE GOVENING BODY OF THE CITY OF EMPORIA, KANSAS:

The undersigned owner(s) of the following legally described land, located generally SE Corner of 18th and Road G (Parcel ID 1930700000003020), hereby formally consents to annexation of such land into the City of Emporia, Kansas:

A part of the Northwest Quarter of Section 7, Township 19 South, Range 11 East of the 6th P.M., Lyon County, Kansas, written by Travis L Haizlip, PS 1724 on May 02, 2024 and more particularly described as follows: Beginning at the Northwest corner of the Northwest Quarter of said Section 7; thence on a NAD 83, Kansas Regional Coordinate System, Zone 9 bearing of North 89 degrees 00 minutes 04 seconds East on the North line of said Northwest Quarter a distance of 958.46 feet to the West line of an excepted tract described as Tract 2 in Document No. 2024-00630 at the Office of the Lyon County Register of Deeds; thence South 00 degrees 59 minutes 56 seconds East on said West line a distance of 898.84 feet; thence South 89 degrees 00 minutes 04 seconds West a distance of 980.11 feet to the West line of said Northwest Quarter; thence North 00 degrees 22 minutes 50 seconds East on said West line a distance of 899.10 feet to the point of beginning. Containing 20.00 acres of land more or less.

LEGAL OWNER(S)

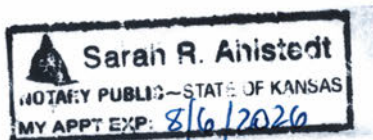

Robert Kenagy, M.D.
President/CEO
Stormont-Vail HealthCare, Inc.

ACKNOWLEDGEMENT

STATE OF KANSAS }
COUNTY OF LYON }

BE IT REMEMBERED, On this 29th day of October, 2024 before me, the undersigned, a notary public in and for the County and State aforesaid, came Robert Kenagy, M.D., President and Chief Executive Officer of Stormont-Vail HealthCare, Inc., such person being personally known to me to be the same person who executed the within instrument of writing and duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal on the day and year last above written.




Notary Public

Road G & W 18th Ave Annexation
Aerial Map



W 18th Ave & Road G
Annexation
PLAN ELC Map



Legend

 Country Home	 Industrial-Flex
 SF Detached	 Light Industrial
 SF Attached	 Heavy Industrial
 Multi-Family	 Civic/Public
 Commercial	 Greenspace/Parks/ Recreation
 Flex-Use	 City Limits
 Mixed-Use	

SENT VIA EMAIL ONLY
tcocking@emporiaks.gov

November 4, 2024

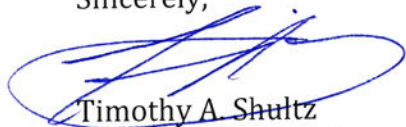
Emporia City Commission
c/o Trey Cocking
City Manager
City of Emporia
104 East 5th Ave.
Emporia, KS 66801

Re: Annexation of Real Estate

Dear Mr. Cocking,

Pursuant to recent discussions with the City of Emporia, Stormont-Vail HealthCare, Inc. ("Stormont") provides this correspondence to reiterate statements it has previously made regarding its intentions with a new building it is contemplating building on property it is asking to be annexed. Stormont would like to construct a building that may include medical offices, labs, related imaging, and other related medical services, as the needs of the City, surrounding communities and environs indicate appropriate including, potentially in years to come an ambulatory surgical center. Stormont agrees it will not begin operating an ambulatory surgical center on the property to be annexed for at least five years.

Sincerely,



Timothy A. Shultz
Associate General Counsel



Commission Action Report

Award Bid for Fire Station Construction

Title: Award Bid for Fire Station Construction

Agenda Date: November 6, 2024

Presented By: Brandon Beck, Fire Chief

Background:

Work continues completing the City Commission's initiative for replacement of Fire Station #1. City staff have been working with our architect, Tessere and our construction manager at risk, Crossland Construction to complete construction documents for the new fire station. Crossland Construction initiated the process of collecting bids for Bid Package #1 on September 26, 2024. A bid opening was held on October 21, 2024.

Discussion:

Crossland Construction sent request for bid emails to 7,959 companies. There were over 120 bids received either online or by mail. Some of the largest scopes, mechanical, electrical, and plumbing were all won by local contractors. Crossland reviewed and confirmed the scope of work on the bid packages received.

Financial considerations:

The contract sum guaranteed by the Construction Manager not to exceed is \$10,084,115, subject to additions and deductions by Change Order. In addition, allowances for fixtures, furniture and equipment are not to exceed \$500,000.

This item will be paid out of the city's bond and interest fund.

Recommended action:

Award bid package #1 to Crossland Construction for \$10,084,115 with an allowance of \$500,000 for fixtures, furniture, and equipment for a total of \$10,584,115.

Attachments:

Emporia Fire A133 Exhibit A GMAX Amendment
Exhibit A.1.1 GMAX A.1 Budget and Allowances
Bid Tab
Emporia Fire A133 Exhibit B Insurance and Bonds



AIA[®] Document A133[®] – 2019 Exhibit A

Guaranteed Maximum Price Amendment

This Amendment dated the Sixth day of November in the year Two Thousand Twenty Four, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the Sixth day of November in the year Two Thousand Twenty-Four (the "Agreement")

(In words, indicate day, month, and year.)

for the following **PROJECT:**

(Name and address or location)

City of Emporia Fire Station #1

THE OWNER:

(Name, legal status, and address)

City of Emporia
111 East 6th Avenue
Emporia, KS 66801

THE CONSTRUCTION MANAGER:

(Name, legal status, and address)

Crossland Construction Company, Inc
3017 N Cypress Dr., Suite A
Wichita, KS 67226

TABLE OF ARTICLES

A.1 GUARANTEED MAXIMUM PRICE

A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

A.4 CONSTRUCTION MANAGER'S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

ARTICLE A.1 GUARANTEED MAXIMUM PRICE

§ A.1.1 Guaranteed Maximum Price

Pursuant to Section 3.2.6 of the Agreement, the Owner and Construction Manager hereby amend the Agreement to establish a Guaranteed Maximum Price. As agreed by the Owner and Construction Manager, the Guaranteed Maximum Price is an amount that the Contract Sum shall not exceed. The Contract Sum consists of the Construction Manager's Fee plus the Cost of the Work, as that term is defined in Article 6 of the Agreement.

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Ten Million Eighty Four Thousand One Hundred Fifteen Dollars (\$ 10,084,115), subject to additions and deductions by Change Order as provided in the Contract Documents.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

Init.

AIA Document A133 – 2019 Exhibit A. Copyright © 1991, 2003, 2009, and 2019. All rights reserved. "The American Institute of Architects," "American Institute of Architects," "AIA," the AIA Logo, and "AIA Contract Documents" are trademarks of The American Institute of Architects. This document was produced at 16:41:54 ET on 10/31/2024 under Order No.2114490548 which expires on 01/12/2025, is not for resale, is licensed for one-time use only, and may only be used in accordance with the AIA Contract Documents® Terms of Service. To report copyright violations, e-mail docinfo@aiacontracts.com.

User Notes:

(2050059363)

§ A.1.1.2 Itemized Statement of the Guaranteed Maximum Price. Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, including allowances; the Construction Manager’s contingency; alternates; the Construction Manager’s Fee; and other items that comprise the Guaranteed Maximum Price as defined in Section 3.2.1 of the Agreement.
(Provide itemized statement below or reference an attachment.)

Reference Exhibit A.1.1 – GMAX A.1 Budget

§ A.1.1.3 The Construction Manager’s Fee is set forth in Section 6.1.2 of the Agreement.

§ A.1.1.4 The method of adjustment of the Construction Manager’s Fee for changes in the Work is set forth in Section 6.1.3 of the Agreement.

§ A.1.1.5 Alternates

§ A.1.1.5.1 Alternates, if any, included in the Guaranteed Maximum Price:

Item	Price
------	-------

§ A.1.1.5.2 Subject to the conditions noted below, the following alternates may be accepted by the Owner following execution of this Exhibit A. Upon acceptance, the Owner shall issue a Modification to the Agreement.
(Insert below each alternate and the conditions that must be met for the Owner to accept the alternate.)

Item	Price	Conditions for Acceptance
------	-------	---------------------------

§ A.1.1.6 Unit prices, if any:
(Identify the item and state the unit price and quantity limitations, if any, to which the unit price will be applicable.)

Item	Units and Limitations	Price per Unit (\$0.00)
N/A		

ARTICLE A.2 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ A.2.1 The date of commencement of the Work shall be:
(Check one of the following boxes.)

- ☐ The date of execution of this Amendment.
- ☒ Established as follows:
(Insert a date or a means to determine the date of commencement of the Work.)

As per Article 3.3 of A-133-2019

If a date of commencement of the Work is not selected, then the date of commencement shall be the date of execution of this Amendment.

§ A.2.2 Unless otherwise provided, the Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. The Contract Time shall be measured from the date of commencement of the Work.

§ A.2.3 Substantial Completion

§ A.2.3.1 Subject to adjustments of the Contract Time as provided in the Contract Documents, the Construction Manager shall achieve Substantial Completion of the entire Work:
(Check one of the following boxes and complete the necessary information.)

- ☒ Not later than 451 (Four Hundred Fifty One) calendar days from the date of commencement of the

Work.

[] By the following date:

§ A.2.3.2 Subject to adjustments of the Contract Time as provided in the Contract Documents, if portions of the Work are to be completed prior to Substantial Completion of the entire Work, the Construction Manager shall achieve Substantial Completion of such portions by the following dates:

Portion of Work	Substantial Completion Date
N/A	

§ A.2.3.3 If the Construction Manager fails to achieve Substantial Completion as provided in this Section A.2.3, liquidated damages, if any, shall be assessed as set forth in Section 6.1.6 of the Agreement.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Guaranteed Maximum Price and Contract Time set forth in this Amendment are based on the Contract Documents and the following:

§ A.3.1.1 The following Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
N/A			

§ A.3.1.2 The following Specifications:
(Either list the Specifications here, or refer to an exhibit attached to this Amendment.)

Reference Exhibit A.1.2 - Enumeration of Contract Documents

Section	Title	Date	Pages
---------	-------	------	-------

§ A.3.1.3 The following Drawings:
(Either list the Drawings here, or refer to an exhibit attached to this Amendment.)

Reference Exhibit A.1.2 - Enumeration of Contract Documents

Number	Title	Date
--------	-------	------

§ A.3.1.4 The Sustainability Plan, if any:
(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Construction Manager's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
N/A		

Other identifying information:

§ A.3.1.5 Allowances, if any, included in the Guaranteed Maximum Price:
(Identify each allowance.)

Item	Price
Reference Exhibit A.1.1 – GMAX A.1 Budget	

§ A.3.1.6 Assumptions and clarifications, if any, upon which the Guaranteed Maximum Price is based:
(Identify each assumption and clarification.)

Reference Exhibit A.1.1 – GMAX A.1 Budget

§ A.3.1.7 The Guaranteed Maximum Price is based upon the following other documents and information:
(List any other documents or information here, or refer to an exhibit attached to this Amendment.)

N/A

ARTICLE A.4 CONSTRUCTION MANAGER’S CONSULTANTS, CONTRACTORS, DESIGN PROFESSIONALS, AND SUPPLIERS

§ A.4.1 The Construction Manager shall retain the consultants, contractors, design professionals, and suppliers, identified below:
(List name, discipline, address, and other information.)

Reference Exhibit A.1.1 – GMAX A.1 Budget

This Amendment to the Agreement entered into as of the day and year first written above.

OWNER *(Signature)*

Trey Cocking City Manager

(Printed name and title)

CONSTRUCTION MANAGER *(Signature)*

DJ McClenny Vice President

(Printed name and title)

Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit A

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 16:41:54 ET on 10/31/2024.

PAGE 1

This Amendment dated the Sixth day of November in the year ~~Two Thousand Twenty Four~~, is incorporated into the accompanying AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price dated the Sixth day of November in the year Two Thousand Twenty-Four (the "Agreement")

...

City of Emporia Fire Station #1

...

City of Emporia
111 East 6th Avenue
Emporia, KS 66801

...

Crossland Construction Company, Inc
3017 N Cypress Dr., Suite A
Wichita, KS 67226

...

§ A.1.1.1 The Contract Sum is guaranteed by the Construction Manager not to exceed Ten Million Eighty Four Thousand One Hundred Fifteen Dollars (\$ 10,084,115), subject to additions and deductions by Change Order as provided in the Contract Documents.

PAGE 2

Reference Exhibit A.1.1 – GMAX A.1 Budget

...

N/A

...

[X] Established as follows:

...

As per Article 3.3 of A-133-2019

...

[X] Not later than 451 (Four Hundred Fifty One) calendar days from the date of commencement of the Work.

PAGE 3

N/A

...

N/A

...

Reference Exhibit A.1.2 - Enumeration of Contract Documents

...

Reference Exhibit A.1.2 - Enumeration of Contract Documents

...

N/A

PAGE 4

Reference Exhibit A.1.1 – GMAX A.1 Budget

...

Reference Exhibit A.1.1 – GMAX A.1 Budget

...

N/A

...

Reference Exhibit A.1.1 – GMAX A.1 Budget

...

Trey Cocking City Manager

DJ McClenny Vice President

Certification of Document's Authenticity

AIA® Document D401™ – 2003

I, _____, hereby certify, to the best of my knowledge, information and belief, that I created the attached final document simultaneously with its associated Additions and Deletions Report and this certification at 16:41:54 ET on 10/31/2024 under Order No. 2114490548 from AIA Contract Documents software and that in preparing the attached final document I made no changes to the original text of AIA® Document A133™ – 2019 Exhibit A, Guaranteed Maximum Price Amendment, other than those additions and deletions shown in the associated Additions and Deletions Report.

(Signed)

(Title)

(Dated)

Emporia Fire Station #1
10/21/2024



BID TAB DETAIL

Trade Contract Identification
3A Building Concrete

Trade Contractor - Bid Summary

Recommended Trade Contractor							
Contractor:	Crossland	Staubhammer	Harbinger	Kolde	Multicon	Roberts	Voegeli
Base Bid:	\$ 388,000.00	\$ 572,022.86	\$ 702,278.00	\$ 712,688.00	\$ 607,673.00	\$ 617,873.00	\$ 988,392.00

Crossland Construction Recommendation

		Price
BASE BID :	Multicon	\$ 607,673.00
TOTAL ALT:		\$ -

Trade Contract Identification
4A Masonry

Trade Contractor - Bid Summary

Contractor:	BSM	Parish	Perfection	Wheatland				
Base Bid:	\$ 858,500.00	\$ 800,000.00	\$ 880,000.00	\$ 806,250.00				
Alt 1	\$ -	\$ (3,875.00)	\$ (4,000.00)	\$ (5,000.00)				
Total Alt:	0.00	(3,875.00)	(4,000.00)	(5,000.00)	0.00	0.00	0.00	0.00

Crossland Construction Recommendation

		Price
BASE BID :	Parish	\$ 800,000.00
TOTAL ALT:		\$ (3,875.00)

Trade Contract Identification
5A Structural Steel Material

Trade Contractor - Bid Summary

Contractor:	Metal Arts	UMFI						
Base Bid:	\$ 297,280.00	\$ 409,142.00						

Crossland Construction Recommendation

		Price
BASE BID :	Metal Arts	\$ 297,280.00
TOTAL ALT:		\$ -

Trade Contract Identification
5B Structural Steel Installed

Trade Contractor - Bid Summary

Contractor:	Crossland	Mahaney	Heinen					
Base Bid:	\$ 267,000.00	\$ 221,000.00	\$ 380,745.00					

Crossland Construction Recommendation			
Recommended Trade Contractor			Price
BASE BID :	Mahaney	\$	221,000.00
TOTAL ALT:		\$	-

Trade Contract Identification
6A Arch. Millwork & Casework

Trade Contractor - Bid Summary

Contractor:	Blake Clotia	Fixtur World	Higgins	Ozarks	Schmidt			
Base Bid:	\$ 124,938.00	\$ 311,987.00	\$ 122,332.35	\$ 147,922.00	\$ 126,639.00			

Crossland Construction Recommendation			
Recommended Trade Contractor			Price
BASE BID :	Higgins	\$	122,332.35
TOTAL ALT:		\$	-

Trade Contract Identification
6B Stainless Countertops

Trade Contractor - Bid Summary

Contractor:	Blake Clotia	Starfite						
Base Bid:	\$ 3,623.00	\$ 2,340.00						

Crossland Construction Recommendation			
Recommended Trade Contractor			Price
BASE BID :	Starfite	\$	2,340.00
TOTAL ALT:		\$	-

Trade Contract Identification
6C Finish Carpentry & Door/HW Install

Trade Contractor - Bid Summary

Contractor:	Crossland							
Base Bid:	\$ 78,000.00							
Alt 1	\$ 3,500.00							
Total Alt:	3,500.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Crossland Construction Recommendation			
Recommended Trade Contractor			Price
BASE BID :	Crossland	\$	78,000.00
TOTAL ALT:		\$	3,500.00

Trade Contract Identification
7A Roofing

Trade Contractor - Bid Summary

Contractor:	Mahaney	Danker	Town & Country	Wray				
Base Bid:	\$ 748,400.00	\$ 607,925.85	\$ 674,910.00	\$ 669,000.00				

Incomplete Bid

Incomplete Bid

Crossland Construction Recommendation

Recommended Trade Contractor			Price
BASE BID :	Town & Country	\$	674,910.00
TOTAL ALT:		\$	-

Trade Contract Identification
7B Joint Sealants & Waterproofing

Trade Contractor - Bid Summary

Contractor:	IWP	Kpoxy	Patriot	Restoration				
Base Bid:	\$ 83,500.00	\$ 93,239.00	\$ 79,000.00	\$ 97,374.00				

Crossland Construction Recommendation

Recommended Trade Contractor			Price
BASE BID :	Patriot	\$	79,000.00
TOTAL ALT:		\$	-

Trade Contract Identification
7C EIFS

Trade Contractor - Bid Summary

Contractor:	Excel	Silver Creek						
Base Bid:	\$ 135,000.00	\$ 99,866.00						

Crossland Construction Recommendation

Recommended Trade Contractor			Price
BASE BID :	Silver Creek	\$	99,866.00
TOTAL ALT:		\$	-

Trade Contract Identification
8A Door & Hardware Supply

Trade Contractor - Bid Summary

Contractor:	Aorbis	Topeka Foundry	Walsh					
Base Bid:	\$ 162,283.00	\$ 150,635.00	\$ 168,200.00					
Alt 1	\$ 0.10	\$ 30,605.00	\$ 2,400.00					
Total Alt:	0.10	30,605.00	2,400.00	0.00	0.00	0.00	0.00	0.00

Crossland Construction Recommendation

Recommended Trade Contractor			Price
BASE BID :	Topeka Foundry	\$	181,240.00
TOTAL ALT:		\$	0.10

Trade Contract Identification
8B Aluminum Storefront & Glazing

Trade Contractor - Bid Summary

Contractor:	AAA Glass	Double 9 Glass	Hopper's	Manko	Wickham			
Base Bid:	\$ 280,971.00	\$ 215,645.00	\$ 172,200.00	\$ 210,752.00	\$ 251,821.50			

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Hopper's	\$ 172,200.00
TOTAL ALT:			\$ -

Trade Contract Identification
8C Overhead Doors

Trade Contractor - Bid Summary

Contractor:	Reddi							
Base Bid:	\$ 335,552.00							

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Reddi	\$ 335,552.00
TOTAL ALT:			\$ -

Trade Contract Identification
9A Gypsum Assemblies & Ceiling Sys

Trade Contractor - Bid Summary

Contractor:	Empire Wall	Midwest	Wichita Rockers					
Base Bid:	\$ 638,282.34	\$ 669,553.00	\$ 623,122.00					

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Wichita Rockers	\$ 623,122.00
TOTAL ALT:			\$ -

Trade Contract Identification
9B Flooring & Wall Tile

Trade Contractor - Bid Summary

Contractor:	Country Carpet	ISE	Star Flooring	Vitztum				
Base Bid:	\$ 139,500.00	\$ 161,580.00	\$ 99,997.00	\$ 112,910.00				

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Star Flooring	\$ 99,997.00
TOTAL ALT:			\$ -

Trade Contract Identification
9C Interior & Exterior Painting

Trade Contractor - Bid Summary

Contractor:	Justice	Dayco	F&H	Lydia	MVP	Advanced	Grey	
Base Bid:	\$ 175,000.00	\$ 165,665.00	\$ 93,700.00	\$ 110,709.00	\$ 191,100.00	\$ 113,217.00	\$ 142,165.00	

Pro Concrete

\$ 35,000.00

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		F&H	\$ 93,700.00
TOTAL ALT:			\$ -

Trade Contract Identification

10A Specialties Supply

Trade Contractor - Bid Summary

Contractor:	Design Supply/Pole Tech	DH Pace	EPCO/Pole Tech					
Base Bid:	\$ 10,701.00	\$ 10,000.00	\$ 6,632.00					

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		EPCO/Pole Tech	\$ 6,632.00
TOTAL ALT:			\$ -

Trade Contract Identification

10B Specialties Install

Trade Contractor - Bid Summary

Contractor:	Crossland	Pro Hardware						
Base Bid:	\$ 12,000.00	\$ 24,200.00						

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Crossland	\$ 12,000.00
TOTAL ALT:			\$ -

Trade Contract Identification

10C Exterior Signage

Trade Contractor - Bid Summary

Contractor:	Fast Signs	Pinnacle						
Base Bid:	\$ 57,299.00	\$ 34,147.00						

Crossland Construction Recommendation

		Recommended Trade Contractor	Price
BASE BID :		Pinnacle	\$ 34,147.00
TOTAL ALT:			\$ -

Trade Contract Identification

10D PPE Gear Lockers

Trade Contractor - Bid Summary

Contractor:	No Bid							
Base Bid:	\$ -							

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	No Bid	\$ -
TOTAL ALT:		\$ -

Trade Contract Identification
11B Vehicle Exhaust System

Trade Contractor - Bid Summary

Contractor:	ACT - Plemavent	Magna Grip						
Base Bid:	\$ 64,400.00	\$ 75,362.00						

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	ACT - Plemavent	\$ 64,400.00
TOTAL ALT:		\$ -

Trade Contract Identification
12A Window Treatments

Trade Contractor - Bid Summary

Contractor:	Schammerhorn							
Base Bid:	\$ 19,646.00							

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Schammerhorn	\$ 19,646.00
TOTAL ALT:		\$ -

Trade Contract Identification
21A Fire Sprinkler System

Trade Contractor - Bid Summary

Contractor:	Alliance	Kruse	McDaniel	Myers				
Base Bid:	\$ 151,445.00	\$ 154,528.00	\$ 140,389.00	\$ 132,000.00				

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Myers	\$ 132,000.00
TOTAL ALT:		\$ -

Trade Contract Identification
22A Plumbing

Trade Contractor - Bid Summary

Contractor:	Burnap							
Base Bid:	\$ 473,485.00							

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Burnap	\$ 473,485.00
TOTAL ALT:		\$ -

Trade Contract Identification
23A HVAC

Trade Contractor - Bid Summary

Contractor:	BCI	Modern Air						
Base Bid:	\$ 782,938.00	\$ 623,380.00						

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Modern Air	\$ 623,380.00
TOTAL ALT:		\$ -

Trade Contract Identification
26A Electrical

Trade Contractor - Bid Summary

Contractor:	Shelley	Atlas	Wec					
Base Bid:	\$ 1,177,470.00	\$ 1,498,126.00	\$ 1,529,736.00					

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Shelley	\$ 1,177,470.00
TOTAL ALT:	#N/A	\$ -

Trade Contract Identification
31A Earthwork, Site Clearing and Erosion Ctrl

Trade Contractor - Bid Summary

Contractor:	Crossland	Coffman	Fremar					
Base Bid:	\$ 385,000.00	\$ 334,750.00	\$ 315,500.00					

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Fremar	\$ 315,500.00
TOTAL ALT:		\$ -

Trade Contract Identification
32A Site Concrete

Trade Contractor - Bid Summary

Contractor:	with Building							
Base Bid:	\$ -							

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	with Building	\$ -
TOTAL ALT:		\$ -

Trade Contract Identification
32B Landscaping

Trade Contractor - Bid Summary

Contractor:	Seeders	Topeka						
Base Bid:	\$ 25,850.00	\$ 18,700.00						

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Topeka	\$ 18,700.00
TOTAL ALT:		\$ -

Trade Contract Identification
32C Fencing

Trade Contractor - Bid Summary

Contractor:	No Bid							
Base Bid:	No Bid							

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	#N/A	\$ -
TOTAL ALT:		\$ -

Trade Contract Identification
33A Site Utilities

Trade Contractor - Bid Summary

Contractor:	Allowance							
Base Bid:	\$ -							
Total Alt:	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00

Crossland Construction Recommendation

	Recommended Trade Contractor	Price
BASE BID :	Allowance	\$ -
TOTAL ALT:		\$ -

Emporia Fire Station #1		CROSSLAND	
Bid Package #1		CONSTRUCTION COMPANY, INC.	
GMP - Exhibit A.1.1			
SF:			
BP#	Scope	Bid Price	Contractor
1A	Temp Cost of Work	398,963	Crossland
3A	Building Concrete	572,023	Staulbammer
4A	Masonry	800,000	Parish
5A	Structural Steel - Supply Only	297,280	Metal Arts
5B	Structural Steel - Installation Only	221,000	Mahaney
6A	Architectural Millwork	122,332	Higgins
6B	Stainless Countertops	2,340	Starfite
6C	Finish Carpentry & Door/Hardware Install	78,000	Crossland
7A	Roofing	674,910	Town & Country
7B	Joint Sealants & Waterproofing	79,000	Patriot
7C	EIFS	99,866	Silver Creek
8A	Door Hardware - Supply	181,240	Topeka Foundry
8B	Glass & Glazing/Storefront	172,200	Hopper's
8C	Overhead Doors	335,552	Reddi
9A	Gypsum Assemblies & Ceiling Sys	623,122	Wichita Rockers
9B	Flooring & Wall Tile	99,997	Star Flooring
9C	Painting & Wallcoverings	93,700	F&H
10A	Specialties (Supply)	6,632	EPCO/Pole Tech
10B	Specialties (Install)	12,000	Crossland
10C	Signage	34,147	Pinnacle
10D	PP&E Gear Lockers	0	See Allowance
11B	Vehicle Exhaust	64,400	ACT - Plemavent
12A	Window Treatments	19,646	Schammerhorn
21A	Fire Sprinkler System	132,000	Myers
22A	Plumbing	473,485	Burnap
23A	HVAC	623,380	Modern Air
26A	Electrical	1,177,470	Shelley
31A	Earthwork, Site Clearing and Erosion Ctrl	315,500	Fremar
32A	Site Concrete	0	with Building
32B	Landscaping	18,700	Topeka
32C	Fencing	0	See Allowance
33A	Site Utilities	0	See Allowance
	Allowances	677,700.00	
	Subtotal Direct Costs	8,406,585	
5%	Construction Contingency	420,329	
5%	Owner's Contingency	420,329	
LS	Supervision & Management	332,440	
LS	Project Requirements	32,080	
	Preconstruction Phase Fee	0	
	Plan Review & Building Permit	By Owner	
0.95%	Liability Insurance	91,312	
0.90%	Bonding	87,328	
3.00%	Construction Phase Fee	293,712	
Construction Total		10,084,115	

Emporia Fire Station #1

11/6/2024

CROSSLAND
CONSTRUCTION COMPANY, INC.

Allowances

Item Description	Bid Pkg #1 Cost	TOTAL
Gear Grid Locker Allowance	\$ 99,700	\$ 99,700
Fencing Allowance	\$ 7,000	\$ 7,000
Misc Site Electrical Allowance	\$ 15,000	\$ 15,000
Misc Steel Allowance	\$ 20,000	\$ 20,000
Spray Foam Insulation Allowance	\$ 10,000	\$ 10,000
Knox Box Allowance	\$ 1,000	\$ 1,000
Misc Specialties Allowances	\$ 5,000	\$ 5,000
Misc Signage/Plague	\$ 5,000	\$ 5,000
Access Control Allowance	\$ 30,000	\$ 30,000
Polished Apparatus Floor Allowanc	\$ 35,000	\$ 35,000
Site Storm/Sewer Allowance	\$ 450,000	\$ 450,000
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
		\$ -
TOTAL ALLOWANCES	\$ 677,700	\$ 677,700



AIA® Document A133® – 2019 Exhibit B

Insurance and Bonds

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the Sixth day of November in the year Two Thousand Twenty Four

(In words, indicate day, month and year.)

for the following **PROJECT:**
(Name and location or address)

City of Emporia Fire Station #1

THE OWNER:
(Name, legal status, and address)

City of Emporia
111 East 6th Avenue
Emporia, KS 66801

THE CONSTRUCTION MANAGER:
(Name, legal status, and address)

Crossland Construction Company, Inc
3017 N Cypress Dr., Suite A
Wichita, KS 67226

TABLE OF ARTICLES

- B.1 GENERAL**
- B.2 OWNER'S INSURANCE**
- B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS**
- B.4 SPECIAL TERMS AND CONDITIONS**

ARTICLE B.1 GENERAL

The Owner and Construction Manager shall purchase and maintain insurance, and provide bonds, as set forth in this Exhibit. As used in this Exhibit, the term General Conditions refers to AIA Document A201™–2017, General Conditions of the Contract for Construction.

ARTICLE B.2 OWNER'S INSURANCE

§ B.2.1 General

Prior to commencement of the Work, the Owner shall secure the insurance, and provide evidence of the coverage, required under this Article B.2 and, upon the Construction Manager's request, provide a copy of the property insurance policy or policies required by Section B.2.3. The copy of the policy or policies provided shall contain all applicable conditions, definitions, exclusions, and endorsements.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document is intended to be used in conjunction with AIA Document A201™–2017, General Conditions of the Contract for Construction. Article 11 of A201™–2017 contains additional insurance provisions.

§ B.2.2 Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner’s usual general liability insurance.

§ B.2.3 Required Property Insurance

§ B.2.3.1 Unless this obligation is placed on the Construction Manager pursuant to Section B.3.3.2.1, the Owner shall purchase and maintain, from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located, property insurance written on a builder’s risk "all-risks" completed value or equivalent policy form and sufficient to cover the total value of the entire Project on a replacement cost basis. The Owner’s property insurance coverage shall be no less than the amount of the initial Contract Sum, plus the value of subsequent Modifications and labor performed and materials or equipment supplied by others. The property insurance shall be maintained until Substantial Completion and thereafter as provided in Section B.2.3.1.3, unless otherwise provided in the Contract Documents or otherwise agreed in writing by the parties to this Agreement. This insurance shall include the interests of the Owner, Construction Manager, Subcontractors, and Sub-subcontractors in the Project as insureds. This insurance shall include the interests of mortgagees as loss payees.

§ B.2.3.1.1 Causes of Loss. The insurance required by this Section B.2.3.1 shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood, or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials. Sub-limits, if any, are as follows:

(Indicate below the cause of loss and any applicable sub-limit.)

Cause of Loss	Sub-Limit
N/A	N/A

§ B.2.3.1.2 Specific Required Coverages. The insurance required by this Section B.2.3.1 shall provide coverage for loss or damage to falsework and other temporary structures, and to building systems from testing and startup. The insurance shall also cover debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and reasonable compensation for the Architect’s and Construction Manager’s services and expenses required as a result of such insured loss, including claim preparation expenses. Sub-limits, if any, are as follows:

(Indicate below type of coverage and any applicable sub-limit for specific required coverages.)

Coverage	Sub-Limit
N/A	N/A

§ B.2.3.1.3 Unless the parties agree otherwise, upon Substantial Completion, the Owner shall continue the insurance required by Section B.2.3.1 or, if necessary, replace the insurance policy required under Section B.2.3.1 with property insurance written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 12.2.2 of the General Conditions.

§ B.2.3.1.4 Deductibles and Self-Insured Retentions. If the insurance required by this Section B.2.3 is subject to deductibles or self-insured retentions, the Owner shall be responsible for all loss not covered because of such deductibles or retentions.

§ B.2.3.2 Occupancy or Use Prior to Substantial Completion. The Owner’s occupancy or use of any completed or partially completed portion of the Work prior to Substantial Completion shall not commence until the insurance company or companies providing the insurance under Section B.2.3.1 have consented in writing to the continuance of coverage. The Owner and the Construction Manager shall take no action with respect to partial occupancy or use that would cause cancellation, lapse, or reduction of insurance, unless they agree otherwise in writing.

§ B.2.3.3 Insurance for Existing Structures

If the Work involves remodeling an existing structure or constructing an addition to an existing structure, the Owner shall purchase and maintain, until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, "all-risks" property insurance, on a replacement cost basis, protecting the existing structure against direct physical loss or damage from the causes of loss identified in Section B.2.3.1, notwithstanding the undertaking of the Work. The Owner shall be responsible for all co-insurance penalties.

§ B.2.4 Optional Extended Property Insurance.

The Owner shall purchase and maintain the insurance selected and described below.

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. For each type of insurance selected, indicate applicable limits of coverage or other conditions in the fill point below the selected item.)

- | | |
|--|--|
| | ☐ § B.2.4.1 Loss of Use, Business Interruption, and Delay in Completion Insurance , to reimburse the Owner for loss of use of the Owner's property, or the inability to conduct normal operations due to a covered cause of loss. |
| | 5% of contract value (if applicable) |
| | ☐ § B.2.4.2 Ordinance or Law Insurance , for the reasonable and necessary costs to satisfy the minimum requirements of the enforcement of any law or ordinance regulating the demolition, construction, repair, replacement or use of the Project. |
| | N/A (included in Construction Manager's Policy) |
| | ☐ § B.2.4.3 Expediting Cost Insurance , for the reasonable and necessary costs for the temporary repair of damage to insured property, and to expedite the permanent repair or replacement of the damaged property. |
| | N/A (included in Construction Manager's Policy) |
| | ☐ § B.2.4.4 Extra Expense Insurance , to provide reimbursement of the reasonable and necessary excess costs incurred during the period of restoration or repair of the damaged property that are over and above the total costs that would normally have been incurred during the same period of time had no loss or damage occurred. |
| | N/A (included in Construction Manager's Policy) |
| | ☐ § B.2.4.5 Civil Authority Insurance , for losses or costs arising from an order of a civil authority prohibiting access to the Project, provided such order is the direct result of physical damage covered under the required property insurance. |
| | N/A (included in Construction Manager's Policy) |
| | ☐ § B.2.4.6 Ingress/Egress Insurance , for loss due to the necessary interruption of the insured's business due to physical prevention of ingress to, or egress from, the Project as a direct result of physical damage. |
| | N/A (included in Construction Manager's Policy) |
| | ☐ § B.2.4.7 Soft Costs Insurance , to reimburse the Owner for costs due to the delay of completion of the Work, arising out of physical loss or damage covered by the required property insurance: including construction loan fees; leasing and marketing expenses; additional fees, including those of architects, engineers, consultants, attorneys and accountants, needed for the completion of the construction, repairs, or reconstruction; and carrying costs such as property taxes, building permits, additional interest on loans, realty taxes, and insurance premiums over and above normal expenses. |
| | N/A (included in Construction Manager's Policy, 5%) |

§ B.2.5 Other Optional Insurance.

The Owner shall purchase and maintain the insurance selected below.

Init.

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User Notes:

(1867141733)

(Select the types of insurance the Owner is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance.)

- [] **§ B.2.5.1 Cyber Security Insurance** for loss to the Owner due to data security and privacy breach, including costs of investigating a potential or actual breach of confidential or private information. (Indicate applicable limits of coverage or other conditions in the fill point below.)

N/A

- [] **§ B.2.5.2 Other Insurance**
(List below any other insurance coverage to be provided by the Owner and any applicable limits.)

Coverage
N/A

Limits
N/A

ARTICLE B.3 CONSTRUCTION MANAGER'S INSURANCE AND BONDS

§ B.3.1 General

§ B.3.1.1 Certificates of Insurance. The Construction Manager shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.3 at the following times: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon the Owner's written request. An additional certificate evidencing continuation of commercial liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment and thereafter upon renewal or replacement of such coverage until the expiration of the periods required by Section B.3.2.1 and Section B.3.3.1. The certificates will show the Owner as an additional insured on the Construction Manager's Commercial General Liability and excess or umbrella liability policy or policies.

§ B.3.1.2 RESERVED

§ B.3.1.3 Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the commercial general liability coverage to include (1) the Owner, the Architect, and the Architect's consultants as additional insureds for claims caused in whole or in part by the Construction Manager's negligent acts or omissions during the Construction Manager's operations; and (2) the Owner as an additional insured for claims caused in whole or in part by the Construction Manager's negligent acts or omissions for which loss occurs during completed operations. The additional insured coverage shall be primary and non-contributory to any of the Owner's general liability insurance policies and shall apply to both ongoing and completed operations. To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04.

§ B.3.2 Construction Manager's Required Insurance Coverage

§ B.3.2.1 The Construction Manager shall purchase and maintain the following types and limits of insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below: (If the Construction Manager is required to maintain insurance for a duration other than the expiration of the period for correction of Work, state the duration.)

§ B.3.2.2 Commercial General Liability

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than TWO MILLION DOLLARS (\$ 2,000,000.00) each occurrence, FOUR MILLION DOLLARS (\$ 4,000,000.00) general aggregate, and FOUR MILLION DOLLARS (\$ 4,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;

Init.

- .2 personal injury and advertising injury;
- .3 damages because of physical damage to or destruction of tangible property, including the loss of use of such property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 the Construction Manager's indemnity obligations under Section 3.18 of the General Conditions.

§ B.3.2.2 The Construction Manager's Commercial General Liability policy under this Section B.3.2.2 shall not contain an exclusion or restriction of coverage for the following:

- .1 Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim.
- .2 Claims for property damage to the Construction Manager's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor.
- .3 Claims for bodily injury other than to employees of the insured.
- .4 Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured.
- .5 Claims or loss excluded under a prior work endorsement or other similar exclusionary language.
- .6 Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language.
- .7 Claims related to residential, multi-family, or other habitational projects, if the Work is to be performed on such a project.
- .8 Claims related to roofing, if the Work involves roofing.
- .9 RESERVED.
- .10 Claims related to earth subsidence or movement, where the Work involves such hazards.
- .11 Claims related to explosion, collapse and underground hazards, where the Work involves such hazards.

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than TWO MILLION DOLLARS (\$ 2,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

§ B.3.2.4 The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided such primary and excess or umbrella insurance policies result in the same or greater coverage as the coverages required under Section B.3.2.2 and B.3.2.3, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

§ B.3.2.5 Workers' Compensation at statutory limits.

§ B.3.2.6 Employers' Liability with policy limits not less than TWO MILLION DOLLARS (\$ 2,000,000.00) each accident, TWO MILLION DOLLARS (\$ 2,000,000.00) each employee, and TWO MILLION DOLLARS (\$ 2,000,000.00) policy limit.

§ B.3.2.7 Jones Act, and the Longshore & Harbor Workers' Compensation Act, as required, if the Work involves hazards arising from work on or near navigable waterways, including vessels and docks

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than N/A (\$ N/A) per claim and N/A (\$ N/A) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000.00) per claim and ONE MILLION DOLLARS (\$ 1,000,000.00) in the aggregate.

§ B.3.3 Construction Manager's Other Insurance Coverage

§ B.3.3.1 Insurance selected and described in this Section B.3.3 shall be purchased from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Construction Manager shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 12.2.2 of the General Conditions, unless a different duration is stated below:

(If the Construction Manager is required to maintain any of the types of insurance selected below for a duration other than the expiration of the period for correction of Work, state the duration.)

N/A

§ B.3.3.2 The Construction Manager shall purchase and maintain the following types and limits of insurance in accordance with Section B.3.3.1.

(Select the types of insurance the Construction Manager is required to purchase and maintain by placing an X in the box(es) next to the description(s) of selected insurance. Where policy limits are provided, include the policy limit in the appropriate fill point.)

[X] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

(Where the Construction Manager's obligation to provide property insurance differs from the Owner's obligations as described under Section B.2.3, indicate such differences in the space below.

Additionally, if a party other than the Owner will be responsible for adjusting and settling a loss with the insurer and acting as the trustee of the proceeds of property insurance in accordance with Article 11 of the General Conditions, indicate the responsible party below.)

[N/A] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

[N/A] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[INCLUDED IN BUILDERS RISK] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

[] § B.3.3.2.5 Property insurance on an "all-risks" completed value form, covering property owned by the Construction Manager and used on the Project, including scaffolding and other equipment.

[N/A] § B.3.3.2.6 Other Insurance

(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)

Coverage

Limits

§ B.3.4 Performance Bond and Payment Bond

The Construction Manager shall provide surety bonds, from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located, as follows:

(Specify type and penal sum of bonds.)

Type

Penal Sum (\$0.00)

Payment Bond

100% of Contract Amount

Performance Bond

100% of Contract Amount

Payment and Performance Bonds shall be AIA Document A312™, Payment Bond and Performance Bond, or contain provisions identical to AIA Document A312™, current as of the date of this Agreement.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

N/A

Additions and Deletions Report for AIA® Document A133® – 2019 Exhibit B

This Additions and Deletions Report, as defined on page 1 of the associated document, reproduces below all text the author has added to the standard form AIA document in order to complete it, as well as any text the author may have added to or deleted from the original AIA text. Added text is shown underlined. Deleted text is indicated with a horizontal line through the original AIA text.

Note: This Additions and Deletions Report is provided for information purposes only and is not incorporated into or constitute any part of the associated AIA document. This Additions and Deletions Report and its associated document were generated simultaneously by AIA software at 14:42:54 ET on 10/31/2024.

PAGE 1

This Insurance and Bonds Exhibit is part of the Agreement, between the Owner and the Construction Manager, dated the Sixth day of November in the year Two Thousand Twenty Four

...

City of Emporia Fire Station #1

...

City of Emporia
111 East 6th Avenue
Emporia, KS 66801

...

Crossland Construction Company, Inc
3017 N Cypress Dr., Suite A
Wichita, KS 67226

PAGE 2

N/A

N/A

...

N/A

N/A

PAGE 3

5% of contract value (if applicable)

...

N/A (included in Construction Manager's Policy)

...

N/A (included in Construction Manager's Policy)

...

N/A (included in Construction Manager's Policy)

...

N/A (included in Construction Manager's Policy)

...

N/A (included in Construction Manager's Policy)

...

PAGE 4

N/A (included in Construction Manager's Policy, 5%)

N/A

...

N/A

N/A

...

§ B.3.1.2 Deductibles and Self-Insured Retentions. The Construction Manager shall disclose to the Owner any deductible or self-insured retentions applicable to any insurance required to be provided by the Construction Manager. RESERVED

...

§ B.3.2.2.1 Commercial General Liability insurance for the Project written on an occurrence form with policy limits of not less than TWO MILLION DOLLARS (\$ 2,000,000.00) each occurrence, FOUR MILLION DOLLARS (\$ 4,000,000.00) general aggregate, and FOUR MILLION DOLLARS (\$ 4,000,000.00) aggregate for products-completed operations hazard, providing coverage for claims including

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.9 ~~Claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.~~ RESERVED.

...

§ B.3.2.3 Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager, with policy limits of not less than TWO MILLION DOLLARS (\$ 2,000,000.00) per accident, for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles along with any other statutorily required automobile coverage.

...

§ B.3.2.6 Employers' Liability with policy limits not less than TWO MILLION DOLLARS (\$ 2,000,000.00) each accident, TWO MILLION DOLLARS (\$ 2,000,000.00) each employee, and TWO MILLION DOLLARS (\$ 2,000,000.00) policy limit.

...

§ B.3.2.8 If the Construction Manager is required to furnish professional services as part of the Work, the Construction Manager shall procure Professional Liability insurance covering performance of the professional services, with policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.9 If the Work involves the transport, dissemination, use, or release of pollutants, the Construction Manager shall procure Pollution Liability insurance, with policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.10 Coverage under Sections B.3.2.8 and B.3.2.9 may be procured through a Combined Professional Liability and Pollution Liability insurance policy, with combined policy limits of not less than FIVE MILLION DOLLARS (\$ 5,000,000.00) per claim and FIVE MILLION DOLLARS (\$ 5,000,000.00) in the aggregate.

§ B.3.2.11 Insurance for maritime liability risks associated with the operation of a vessel, if the Work requires such activities, with policy limits of not less than N/A (\$ N/A) per claim and N/A (\$ N/A) in the aggregate.

§ B.3.2.12 Insurance for the use or operation of manned or unmanned aircraft, if the Work requires such activities, with policy limits of not less than ONE MILLION DOLLARS (\$ 1,000,000.00) per claim and ONE MILLION DOLLARS (\$ 1,000,000.00) in the aggregate.

PAGE 6

N/A

...

[X] § B.3.3.2.1 Property insurance of the same type and scope satisfying the requirements identified in Section B.2.3, which, if selected in this Section B.3.3.2.1, relieves the Owner of the responsibility to purchase and maintain such insurance except insurance required by Section B.2.3.1.3 and Section B.2.3.3. The Construction Manager shall comply with all obligations of the Owner under Section B.2.3 except to the extent provided below. The Construction Manager shall disclose to the Owner the amount of any deductible, and the Owner shall be responsible for losses within the deductible. Upon request, the Construction Manager shall provide the Owner with a copy of the property insurance policy or policies required. The Owner shall adjust and settle the loss with the insurer and be the trustee of the proceeds of the property insurance in accordance with Article 11 of the General Conditions unless otherwise set forth below:

...

[N/A] § B.3.3.2.2 Railroad Protective Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for Work within fifty (50) feet of railroad property.

[N/A] § B.3.3.2.3 Asbestos Abatement Liability Insurance, with policy limits of not less than (\$) per claim and (\$) in the aggregate, for liability arising from the encapsulation, removal, handling, storage, transportation, and disposal of asbestos-containing materials.

[INCLUDED IN BUILDERS RISK] § B.3.3.2.4 Insurance for physical damage to property while it is in storage and in transit to the construction site on an "all-risks" completed value form.

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[N/A] § B.3.3.2.6 Other Insurance

...

Payment Bond

100% of Contract Amount

Performance Bond

100% of Contract Amount

...

N/A



Commission Action Report

Resolution No. 3744 to Amend Hazardous Sidewalk Program Costs

Title: Resolution No. 3744 to Amend Hazardous Sidewalk Program Costs

Agenda Date: November 6, 2024

Presented By: James Ubert, City Engineer

Background:

The City implemented the Hazardous Sidewalk Program with City cost sharing on June 5, 1991 and amended the policy in 2006, 2013 and is now proposing to amend it in 2024.

Discussion:

In 2006, the City of Emporia increased the property owner's share to \$400 maximum (for a residential lot) along one street and \$700 maximum (for a residential lot) along two streets in the Hazardous Sidewalk Program. Since that time (in 18 years) our unit bid costs have increased 80% (about 3.3% annually for 18 years) with no cost share increase to property owner participants.

Staff recommends that for the 2025 Hazardous Sidewalk program we raise the residential property cost share to 25% with the City paying 75% from the current capped costs set in 2006. This will create some equity for residential lots of varying frontage widths while still being a generally affordable way for property owners to participate in the Hazardous Sidewalk maintenance and repair program.

Commercial property participation would remain at 50% property owner/50% City.

Financial considerations:

This will allow the City to complete more projects with our matching budget.

Recommended action:

Approve Resolution No. 3744 to Amend the Hazardous Sidewalk cost-share program.

Attachments:

Resolution 3744

City Code defining a Hazardous Sidewalk.

RESOLUTION NO. 3744

A RESOLUTION OF THE GOVERNING BODY OF EMPORIA, KANSAS REPEALING AND REPLACING THE CITY'S HAZARDOUS SIDEWALK POLICY

WHEREAS, the City Commission adopted the hazardous sidewalk policy on June 5, 1991; and

WHEREAS, the City Commission amended the hazardous sidewalk policy on April 5, 2006; and

WHEREAS, the City Commission amended the hazardous sidewalk policy on June 19, 2013;
and

WHEREAS, the City has determined that its policies and practices have not been
conterminously changed; and

WHEREAS, the City Commission has determined that, in order to promote the public health,
safety and welfare it is necessary and appropriate to repeal and replace the hazardous sidewalk
policy to permit the City to repair or replace public sidewalks or permit property owners to
participate in the City's annual hazardous sidewalk program;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF
EMPORIA, KANSAS that the City's hazardous sidewalk policy adopted in 1991 and amended in
2006 and 2013 is hereby repealed and replaced and that the City hazardous sidewalk policy
attached hereto is hereby approved.

BE IT FURTHER RESOLVED that any policies in conflict with this policy are hereby null and
void regarding any conflicts.

BE IT FURTHER RESOLVED that this policy shall be inserted into the City of Emporia Policy
Manual.

APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF EMPORIA,
KANSAS this 6th day of November 2024.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk

Sidewalk Improvements

A. BACKGROUND

The following policy was developed by the Governing Body as a response to the need to improve, maintain, repair and establish sidewalks in the City of Emporia. Much of the City has been developed without sidewalks being constructed at the time of development. Furthermore, no comprehensive program of sidewalk repair has been followed to assure that existing sidewalks remain safe for pedestrian travel. The following policy addresses these issues as well as requirements for sidewalk installation in new developments or in conjunction with new street construction. This policy shall apply to all public sidewalks under the jurisdiction of the City of Emporia regardless of the zoning of the abutting property.

B. PURPOSE

The purpose of this policy is to establish guidelines for the improvement, maintenance, repair and establishment of sidewalks in the City of Emporia and to set out the extent of the City-at-large participation in the financing of such efforts, if any.

C. POLICY

Section 1. General: The City encourages the construction and maintenance of sidewalks throughout the City.

Section 2. Compliance with City Construction Standards: All sidewalks shall be constructed or reconstructed in accordance with standards established by the City Engineer. All sidewalk construction shall be inspected by the City Engineering Department to determine compliance with said standards.

Section 3. Construction of sidewalks in new subdivisions or in conjunction with new street construction: Sidewalks shall be required on at least one side of all new streets constructed in the City of Emporia. The cost of the sidewalk shall be assessed 100% against the abutting property and property directly across the street from said sidewalk, or against a benefit district petitioned for by the developer.

Section 4. Construction of sidewalks in developed areas not presently served by sidewalks: Sidewalks shall be constructed on one side of the street along arterial and collector streets and heavily used pedestrian routes not presently served by sidewalks. Such sidewalks shall be constructed on a priority basis established by the City Commission subject to the annual appropriation of funds for such purposes.

Section 5. Repair or replacement of Existing Sidewalks: The owner of property abutting a sidewalk shall be responsible for maintaining said sidewalk. Such maintenance may be initiated in the following ways:

- a. The City Manager may cause any sidewalk in the City to be inspected. In the event such inspection reveals that the sidewalk is in need of repair or replacement, the affected property owner shall be notified and given ninety (90) days to repair or replace the sidewalk. If needed repair or replacement is not made by the property owner, then the City shall cause the work to be done as provided by State statute. In

either event costs of such repair or replacement shall be shared by the City and property owner as outlined below.

- b. The adjacent property owner may initiated repair or replacement of sidewalk. Such repair or replacement shall be at the expense of the property owner unless an inspection is conducted by the City building official and a determination made that the City should participate in the expense. Such participation will be at the rate and under the conditions listed in Section 6 of this policy.
- c. The City may repair or replace any public sidewalk at its sole expense if it is deemed to be in the best interest of the public health, safety and welfare. The City shall focus repairs and replacements on sidewalks abutting vacant lots not being offered for sale.
- d. Property owners that wish to repair or replace public sidewalks that are determined by the City Engineering Department to not be hazardous may participate in the City sidewalk repair program at the rate and under conditions listed in Section 6 below.

Section 6. City at large participation in the cost of repair or replacement of exisiting sidewalks: On or about January 1, of each year the City manager shall establish a rate for City-at-large participation in the cost of repair or replacement of exisiting sidewalks that are deemed to be hazardous according to Section 24-62 of the City Code. Such rate shall be expressed in dollars per square foot of sidewalks and shall be equal to one-half (1/2) of the estimated cost per square foot of a sidewalk as the responsibility of the industrial or commercial property owner. Residential zoned property shall be split 25% payable by the property owner and 75% payable by the City.

Section 7. Deviations: Any deviation from the standards set forth in this policy shall be approved by the City Manager.

Section 8. Amendments: This policy may be amended by action of the Governing body.

Sec. 24-62. Hazardous Sidewalk Defined:

A "hazardous sidewalk" is a sidewalk or portion thereof that becomes inadequate or unsafe for public travel due to broken or missing pieces, unevenness or upheaval which causes at least a one-half inch ($1/2$ ") difference in height between two (2) adjoining portions of the sidewalk, or one that has an abrupt change in elevation, or a sidewalk which in the opinion of the city engineer has become unsafe for travel due to deterioration or other reasons. (Ord. 86-2, § 2, 2-19-1986; Ord. 96-39, § 4, 11-6-1996)



Commission Action Report

Ordinance 24-33 Amending City Code Section 24-8
Removal of Snow and Ice from Sidewalks

Title: Ordinance 24-33 Amending City Code Section 24-8
Removal of Snow, Ice from Sidewalks

Agenda Date: November 6, 2024

Presented By: James Watson, Assistant City Attorney

Background:

Current city code section 24-8 requires snow and ice to be removed from sidewalks within five (5) hours from the end of a snow event or in the case of the accumulation ending during the night, within five (5) hours of sunrise.

Discussion:

Whether modifications should be made to the existing code better clarifying the requirements of property owners or tenants for snow and ice removal on public sidewalks and lengthening time to comply with the code.

Property owners or tenants would have 24 hours after the end of a snow or ice event to have snow and ice removed or alternative measures performed.

The changes to the code allow property owners or tenants to more easily comply with the code and still address safety concerns.

Financial considerations:

The City will pay the cost of publication in the newspaper of Ordinance 24-21 and updating the website of the changes.

Recommended action:

Approve Ordinance 24-33 Amending City Code Section 24-8. Removal Snow, Ice from Sidewalks

Attachments:

Ordinance 24-33

ORDINANCE NO. 24-33

AN ORDINANCE AMENDING SECTION 24-8 OF THE CODE OF THE CITY OF EMPORIA, KANSAS, AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE.

BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas:

Section 1. That Section 24-8 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

Section 24-8. Removal of Snow, Ice from Sidewalks

Section 1. *Snow and Ice to be Removed.*

- (1) It shall be unlawful for the owner and/or the occupant of any lots abutting upon any sidewalks to fail to cause to be removed from such sidewalks all snow and ice within 24 hours from the time that the snow fall or ice storm ceases.
- (2) It shall be unlawful for any person to place snow removed from private property upon any public street, alley or sidewalk.

Section 2. *Same; Exception; Alternative Remedy.* Where there shall be ice or compacted snow on any such sidewalk of such a character as to make it practically impossible to remove the same, the sprinkling of ashes, sand or other noncorrosive chemicals on the accumulation of ice or snow in such a manner as to make such sidewalk reasonably safe for pedestrian travel shall be deemed a sufficient compliance with the provisions of this code until the ice or snow can be removed.

Section 3. *Same; Penalty.* That any person violating the provisions of Section 1 shall upon conviction, be fined \$25.00 for the first violation and an amount of not less than \$50.00 nor more than \$100.00 for a second or subsequent violation within a continuous 12 month period of the first violation.

Section 4. *Removal May be Made by City.* If any owner or occupant of any lot or lots shall refuse or neglect to clean or remove from the sidewalk abutting the lot or lots all snow and ice within the time specified, the city may cause such snow and ice to be removed from sidewalks and the cost thereof shall be assessed against such abutting lot or lots, and the city clerk shall certify the same to the county clerk for collection as provided by law.

Section 5. *Costs on Tax Rolls.* The city clerk shall, at the time of certifying other city taxes to the county clerk, certify the unpaid costs for removal of snow or ice performed under the authority of Section 4 and the county clerk shall extend the same on the tax roll of the county against the lot or parcel of ground. The cost of such work shall be paid from the general fund or other proper fund of the city, and such fund shall be reimbursed when payments therefor are received or when such assessments are collected and received by the city.

Section 2. That Section 24-8 of the Code of the City of Emporia, Kansas as it existed prior to the adoption of this ordinance is hereby repealed.

Section 3. This ordinance shall take effect upon its publication in the official City newspaper.

Section 4. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an addition or amendment thereto and shall be appropriately renumbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas,
this 6th day of November, 2024.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Ordinance No. 24-34 for a Conditional Use Permit
for an Accessory Dwelling Unit at 928 Neosho Street.

Title: Ordinance No. 24-34 for a Conditional Use Permit for an Accessory Dwelling Unit at 928 Neosho Street.

Agenda Date: November 6, 2024

Presented By: Justin Givens, Planning & Zoning Administrator

Background:

The owners of 928 Neosho Street are proposing to remove an existing garage and replace the garage with an accessory dwelling unit. The unit is being built with the intention of housing an aging relative but could be used as a rental unit in the future.

Under the new Zoning Regulations, Accessory Dwelling Units are allowed through the Conditional Use Permitting process. This allows for notification of neighbors and alerts them to the fact that a living unit is either being built or converted in close proximity to their home.

The Planning Commission, at their October 15, 2024, meeting, conducted the required public hearing and made a unanimous recommendation for approval to the City Commission.

Discussion:

The proposed accessory dwelling unit meets all of the required building standards for the development of an ADU. It is located on the site of the former garage and expanded slightly. The ADU will provide for one off-street parking space as required by the zoning regulations, and the applicant have proposed a structure that will have a similar look in building materials and colors as the main structure so that it blends with the existing home.

As noted in the staff report, this property is in close proximity to a registered historic site. Previously, projects in proximity to historic sites required review and approval from the State Historic Preservation Office. As of 2013, the Historic Preservation Act was amended, and the review of projects on adjacent properties is no longer required.

The Governing Body, when considering a recommendation from the Planning Commission on a Conditional Use Permit Application may; 1) Adopt the ordinance as presented or with conditions that the Governing Body sees fit; 2) Override the Planning Commission's recommendation by a 2/3 majority vote of the entire City Commission; 3) Table the request for further study; 4) Return the application to the Planning Commission, giving reasons for doing so.

Financial considerations:

The cost of publication of the ordinance is borne by the City.

Recommended action:

Adopt Ordinance No. 24-34 for a Conditional Use Permit for an Accessory Dwelling Unit at 928 Neosho Street.

Attachments:

Ordinance No. 24-34 CUP | Aerial Location Map

Site Plan | Elevation Drawings

Excerpt of Minutes from Planning Commission meeting including the Staff Report

ORDINANCE NO. 24-34

AN ORDINANCE ISSUING A CONDITIONAL USE PERMIT FOR A CERTAIN DESCRIBED AREA IN THE CITY OF EMPORIA, KANSAS.

BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas:

Section 1. A Conditional Use Permit is hereby granted to allow an Accessory Dwelling Unit on a Single-Family Detached Parcel at the following described property:

Lot 144 Neosho Street, Emporia Original Township, Emporia, Lyon County, Kansas;

Commonly Known As: 928 Neosho Street, Emporia, KS

Section 2. The following additional conditions are imposed upon the Conditional Use Permit:

- 1) The construction of the Accessory Dwelling Unit shall be compliant with all local, state, and federal regulations and in accordance with the approved site plan submitted with the application for the conditional use.

Section 3. This ordinance shall become effective upon publication in the official city newspaper.

PASSED AND APPROVED this 6th day of November 2024.

ERREN HARTER, Mayor

ATTEST:

KERRY SULL, City Clerk

928 Neosho
Aerial Photo







EXCERPT OF MINUTES- 10/15/2024
EMPORIA PLANNING COMMISSION

The Planning Commission met in a regular session on Tuesday, October 15, 2024, with Chair Rogers presiding. Members Ogle, Bucklinger, Barnes, Fowler, and Lingenfelter were present.

City staff: Justin Givens, Planning & Zoning Administrator, was present.

Chair Rogers called the meeting to order.

3. Consider PC-2024-12 – A Request for an Accessory Dwelling Unit for 928 Neosho.

Chair Rogers asked if proper notice had been given. **Givens** confirmed that proper notice was provided to the newspaper.

Chair Rogers asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No ex-parte communications or conflict of interests were reported.

Givens provided the staff report.

STAFF REPORT

Application #: PC 2024-12

Applicants: Mike & Shelley Wise

Requested Action: Approval of a Conditional Use Permit for an Accessory Dwelling Unit

Purpose: Applicant desires to remove an existing garage and replace with an accessory dwelling unit.

Address: 928 Neosho

Legal description: Lot 144 Neosho St, Emporia Original Township, Emporia, Lyon County, Kansas

Lot Size: 50 ft. x 130 ft.

Existing Zoning: Single-Family Detached (SF-D)

Future Zoning in ELC Comp. Plan: Single-Family Detached (SF-D)

Surrounding Zoning:

North – Single-Family Detached (SF-D) | Multi-Family (MF)
East – Multi-Family (MF)
South – Single-Family Detached (SF-D) | Multi-Family (MF)
West – Single-Family Detached (SF-D)

Surrounding Actual Uses:

North: Single-Family Detached Homes | Single-Family Attached Homes
East: Single-Family Detached Homes
South: Single-Family Detached Homes
West: Single Family Detached Homes

Analysis:

The applicants desire to remove an existing detached accessory structure and erect a new Accessory Dwelling Unit in the rear of the property. The applicants are requesting the CUP for an ADU in order to provide better living accommodations for an elderly parent. The removal of the existing garage and planned expansion will still keep the property below the maximum lot coverage and meet our required setbacks. A single off-street parking space will remain for the occupant of the ADU to use.

Considerations: 26-109. Factors to be Considered for a Conditional Use Permit:

Because of particular conditions associated with their activities, certain uses which might have an adverse effect upon nearby properties or upon the character and future development of a district are not permitted outright in districts, but are permitted as conditional uses when their proposed location is supplemented by additional requirements so as to make the use requested compatible with the surrounding property, the neighborhood and the zoning jurisdiction.

In approving a conditional use, the minimum requirements set out in these regulations for the underlying district must be met unless otherwise reduced by specific reference in the approval of the Governing Body. The requirements may be made more stringent if there are potentially injurious effects which may be anticipated upon other property or the neighborhood or which may be contrary to public health, safety or welfare.

The Planning Commission may recommend approval of a Conditional Use that is expressly authorized to be permitted in a particular zoning district, and the Governing Body may approve such Conditional Use, using the following factors as guidelines: **Staff**

Commentary in Bold

1. Whether approval of the conditional use would be consistent with the intent and purpose of these regulations; **When the zoning regulations were adopted, properties such as this one were contemplated to allow ADUs outright because of the alley access and location to amenities. Had the regulations not changed to require all properties needing conditional uses for ADUs the applicants could have installed one without approval from the Planning or City Commission. Staff feels that this request is consistent with the regulations.**

2. Whether the location of the proposed use is compatible to other land uses in the surrounding neighborhood; **Based on the location the proposed ADU is compatible**

to other land uses in the area. There are multi-family units in the area and the ADU would be adjacent to the alley so as not to intrude on other homes.

3. Whether the proposed use places an undue burden on the existing transportation and service facilities in the area affected and, if so, whether such additional transportation and service facilities can be provided; **there would be no undue burden placed on any existing service.**

4. Whether the proposed use is made necessary or desirable because of changed or changing conditions in the area affected; **as identified in PLAN ELC, there is a housing shortage within Emporia and units such as this were encouraged to be built. Until housing demands are met, ADUs should continue to be encouraged.**

5. The length of time the subject property has remained vacant or undeveloped as zoned; (the use of land for agricultural purposes shall be considered as viable use of the land and not be considered as allowing the land to be vacant or undeveloped); **N/A**

6. Whether the applicant's property is suitable for the proposed conditional use; **as previously stated properties such as this are encouraged by the comprehensive plan and as it can meet all setback requirements the property is suitable for the proposed ADU**

7. The recommendations of professional staff; **staff is supportive of the proposed ADU.**

8. Whether the proposed conditional use would be in conformance to and further enhance the implementation of the City's Comprehensive Plan; **the proposed project would be considered infill development as it does not require the extension of services, which is an objective of Plan ELC. Additionally, the proposed development of the ADU is encouraged in PLAN ELC.**

9. Whether the relative gain to the public health, safety, and general welfare outweighs the hardship imposed on the applicant by not upgrading the value of the property by approving the proposed conditional use; **ADUs as contemplated by the comprehensive plan provide a measurable gain to the community as it creates housing options and units that are lacking in Emporia.**

10. Whether the proposed conditional use, if it complies with all the conditions upon which the approval is made contingent, will not adversely affect the property in the area affected; **staff does not for see an adverse impact on the neighboring property owners. The ADU unit will have a dedicated parking spot and since it is on the corner limited traffic would be generated by the ADU.**

11. For uses as solid waste disposal facilities, including sanitary landfills, construction and demolition landfills and transfer stations, whether the proposed conditional use is consistent with the adopted Solid Waste Management Plan of Lyon County, and amendments thereto; **N/A**

12. Such other factors as may be relevant from the facts and evidence presented in the application. **N/A**

Neighborhood Communications: Staff received one call about the proposed ADU and its relationship to a historical structure across the alley. The necessity for review of projects adjacent to a historic structure has been eliminated and this project does not require a review as other projects previously did.

Recommendation: If the Planning Commission finds that the project is advisable, it may forward a recommendation to approve the Conditional Use Permit to the Governing Body based on the findings that the project is consistent with the intent and purpose of the zoning regulations, will not have an adverse impact on the surrounding area and the use is consistent with neighboring uses subject to the following conditions;

- 1) The project meets all applicable zoning, building, fire, and other applicable code regulations.
- 2) Any additional conditions the Planning Commission or City Commission deem necessary to protect the public health, safety, and general welfare.

Attachments: Aerial Map | Current Zoning Map

Commissioner Fowler asked about additional parking in the future if the applicant would want to expand their parking. **Givens** stated that yes, the applicant could add additional parking if they wanted.

The Public Hearing was opened.

Mike Wise, 928 Neosho (applicant) stated that the reason for the accessory dwelling unit was for an aging parent, who wanted to maintain some independence, but they wanted to move them closer. He stated that he was aware of the discussions of accessory dwelling units when Urban Collaborative was proposing them in the zoning regulations.

Commissioner Fowler asked about utilities for the property. **Wise** stated that all utilities would be run from the house and billed to their existing accounts.

No Person spoke against the accessory dwelling unit.

The Public Hearing was closed.

Chair Rogers asked about the setbacks. **Givens** stated that based on city code, the applicant is allowed to build back on the rear property line as long as they do not extend or increase an existing variance.

Commissioner Barnes made a motion to recommend approval of the Conditional Use Permit for an Accessory Dwelling Unit. Commissioner Ogle seconded the motion. The motion carried 6-0.



Commission Action Report

Lift Station #1 Construction Services Agreement with BG

Title: Lift Station #1 Construction Services Agreement with BG Consultants

Agenda Date: November 6, 2024

Presented By: Dean Grant, Director of Public Works

Background:

Lift station #1 has had no significant rehabilitation since being placed into service over 40 years ago, and it is currently operating with only one pump. The planned project will replace the wetwell, convert the lift station to a two-pump submersible style with the ability to add a third pump, add a screen to remove solids from the collection system and replace the antiquated odor control system.

Discussion:

Staff would like to enter into an agreement with BG Consultants for construction services.

Financial Considerations:

The cost for construction services with BG Consultants is not-to-exceed \$260,514.00 and will be paid for from the money bonded for the project.

Recommended Action:

Approve the agreement with BG Consultants for construction services on the Lift Station #1 project.

Attachments:

Supplement Agreement No. 5 – Construction Services for Lift Station #1

**Supplemental Agreement No. 5
to
Engineering Services Agreement
Between
City of Emporia, KS and BG Consultants, Inc.
for
20-1235E City of Emporia Lift Stations 1, 2 & 15 Rehabilitation and Replacement
Improvements
Preliminary Engineering Services**

The purpose of this Supplement No. 5 is to define additional professional services requested by the **City of Emporia**, hereinafter called the CLIENT, to be provided by **BG Consultants, Inc.**, hereinafter called the CONSULTANT. This agreement is a supplement to the **City of Emporia Lift Stations 1, 2 & 15 Rehabilitation and Replacement Improvements AND BG CONSULTANTS, INC., DATED May 9, 2020.**

SECTION I – SCOPE OF SERVICES

Under the terms of Supplement No. 5, the CLIENT and CONSULTANT agree to modify the scope of services for the Lift Station No. 1 portion of the contract only to include additional professional Construction Administration Services described as follows:

1. Advertise the lift station project documents on Drexel Services Website for the purpose of distribution to bidding contractors
2. Answer questions of the bidding community in the form of Addendum and chair a pre-bid meeting at the project site for bidding contractors.
3. Review submitted bids and provide Engineer's Recommendation for contract award to the lowest responsible bidder.
4. Provide general administration of the construction contract including Resident Construction Observation (full time) and Construction Engineering Services (part time) Exhibit A.
5. Participate and chair the preconstruction conference
6. Process contractor equipment and material submittals in accordance with project documents.
7. Process applications for payment and project change orders in accordance with project documents.
8. Process completion paperwork including substantial completion and final completion certificates.

SECTION II – COMPENSATION

As compensation for the additional services described in Section I, the CLIENT agrees to pay the CONSULTANT a fee based on the actual hours expended on the Project at the rates indicated in the attached 2024 BG Consultants, Inc. Standard Hourly Rates (attached) and the actual reimbursable expenses permitted under this Agreement and

incurred on the Project, but not to exceed a maximum fee of \$260,514.00 Dollars.
Furthermore, all billings will be made on a monthly basis for the prior month's work.

SECTION III – OTHER MATTERS

It is mutually agreed and understood that all terms of the original Agreement, not specifically revised by this Supplement No. 5, shall remain unchanged and in full force.

IN WITNESS WHEREOF, the parties have executed this Supplement No. 5 on this ____ day of _____, 2024.

City of Emporia, KS
CLIENT

By _____

Title _____

Date _____

BG Consultants, Inc.
CONSULTANT

By  _____
Bruce Boettcher, P.E.

Title Vice President

Date 9/13/24



2024 BG CONSULTANTS STANDARD HOURLY RATES

<u>POSITION</u>	<u>STANDARD PER HOUR 2024</u>
PRINCIPAL III	\$308.00
PRINCIPAL II	\$267.00
PRINCIPAL I	\$256.00
ENGINEER/ARCHITECT V	\$240.00
ENGINEER/ARCHITECT IV	\$201.00
ENGINEER/ARCHITECT III	\$186.00
ENGINEER/ARCHITECT II	\$176.00
ENGINEER/ARCHITECT I	\$159.00
INTERN ENGINEER/GRADUATE ARCHITECT IV	\$181.00
INTERN ENGINEER/GRADUATE ARCHITECT III	\$168.00
INTERN ENGINEER/GRADUATE ARCHITECT II	\$158.00
INTERN ENGINEER/GRADUATE ARCHITECT I	\$136.00
TECHNICIAN IV	\$156.00
TECHNICIAN III	\$141.00
TECHNICIAN II	\$122.00
TECHNICIAN I	\$110.00
TECHNICIAN	\$88.00

SENIOR CONSTRUCTION OBSERVER	\$153.00
CERTIFIED CONSTRUCTION OBSERVER	\$127.00
CONSTRUCTION OBSERVER	\$111.00
SENIOR PROJECT SURVEYOR	\$200.00
PROJECT SURVEYOR	\$197.00
ASSISTANT PROJECT SURVEYOR	\$131.00
FIELD SUPERVISOR	\$122.00
FIELD SURVEYOR II	\$99.00
FIELD SURVEYOR I	\$86.00
CLERICAL II	\$82.00
CLERICAL I	\$66.00

- Note:
- 1) The hourly rates shown above are effective for services through December 31st of the contract year and are subject to revision annually.
 - 2) For any Federal Wage and Hour Law nonexempt personnel, overtime will be billed at 1.5 times the hourly labor billing rates shown.
 - 3) Expert Witness and Depositions will be charged at 1.5 times the hourly labor billing rates shown.

EXHIBIT A

Portions of:

Exhibit A – Construction Engineering Services and Resident Project Representative.
EJCDC® E-500 (modified excerpts), Agreement Between Owner and Engineer for Professional
Services.

SECTION A – CONSTRUCTION ENGINEERING SERVICES

A1.01 *Construction Phase*

- A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from Owner, Engineer shall:
1. *General Administration of Construction Contract:* Consult with Owner and act as Owner's representative as provided in the Construction Contract. The extent and limitations of the duties, responsibilities, and authority of Engineer shall be as assigned in EJCDC® C-700, Standard General Conditions of the Construction Contract (2013 Edition), prepared by the Engineers Joint Contract Documents Committee, or other construction general conditions specified in this Agreement. If Owner, or Owner and Contractor, modify the duties, responsibilities, and authority of Engineer in the Construction Contract, or modify other terms of the Construction Contract having a direct bearing on Engineer, then Owner shall compensate Engineer for any related increases in the cost to provide Construction Phase services. Engineer shall not be required to furnish or perform services contrary to Engineer's responsibilities as a licensed professional. All of Owner's instructions to Contractor will be issued through Engineer, which shall have authority to act on behalf of Owner in dealings with Contractor to the extent provided in this Agreement and the Construction Contract except as otherwise provided in writing.
 2. *Resident Project Representative (RPR):* Provide the services of an RPR at the Site to assist the Engineer and to provide more extensive observation of Contractor's work. Duties, responsibilities, and authority of the RPR are as set forth in Section B. The furnishing of such RPR's services will not limit, extend, or modify Engineer's responsibilities or authority except as expressly set forth in Section B.
 3. *Pre-Construction Conference:* Participate in and chair a pre-construction conference prior to commencement of Work at the Site.
 4. *Electronic Transmittal Protocols:* If the Construction Contract Documents do not specify protocols for the transmittal of Project-related correspondence, documents, text, data, drawings, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, then together with Owner and Contractor jointly develop such protocols for transmittals between and among Owner, Contractor, and Engineer during the Construction Phase and Post-Construction Phase.
 5. *Original Documents:* Maintain and safeguard during the Construction Phase at least one original printed record version of the Construction Contract Documents, including

Drawings and Specifications signed and sealed by Engineer and other design professionals in accordance with applicable Laws and Regulations. Throughout the Construction Phase, make such original printed record version of the Construction Contract Documents available to Contractor and Owner for review.

6. *Schedules*: Receive, review, and determine the acceptability of any and all schedules that Contractor is required to submit to Engineer, including the Progress Schedule, Schedule of Submittals, and Schedule of Values.
7. *Baselines and Benchmarks*: establish baselines and benchmarks for locating the Work which in Engineer's judgment are necessary to enable Contractor to proceed.
8. *Visits to Site and Observation of Construction*: In connection with observations of Contractor's Work while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as Engineer deems necessary, to observe as an experienced and qualified design professional the progress of Contractor's executed Work. Such visits and observations by Engineer, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of the Work or to involve detailed inspections of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement and the Construction Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on Engineer's exercise of professional judgment, as assisted by the Resident Project Representative, if any. Based on information obtained during such visits and observations, Engineer will determine in general if the Work is proceeding in accordance with the Construction Contract Documents, and Engineer shall keep Owner informed of the progress of the Work.
 - b. The purpose of Engineer's visits to the Site, and representation by the Resident Project Representative, if any, at the Site, will be to enable Engineer to better carry out the duties and responsibilities assigned to and undertaken by Engineer during the Construction Phase, and, in addition, by the exercise of Engineer's efforts as an experienced and qualified design professional, to provide for Owner a greater degree of confidence that the completed Work will conform in general to the Construction Contract Documents and that Contractor has implemented and maintained the integrity of the design concept of the completed Project as a functioning whole as indicated in the Construction Contract Documents. Engineer shall not, during such visits or as a result of such observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to any Constructor's work in progress, for the coordination of the Constructors' work or schedules, nor for any failure of any Constructor to comply with Laws and Regulations applicable to furnishing and performing of its work. Accordingly, Engineer neither guarantees the performance of any Constructor nor assumes responsibility for any Constructor's failure to furnish or perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents.

- c. The visits described above shall be at least monthly and the Engineer shall document all visits to the project with copies furnished to the Owner
- 9. *Defective Work:* Reject Work if, on the basis of Engineer's observations, Engineer believes that such Work is defective under the terms and standards set forth in the Construction Contract Documents. Provide recommendations to Owner regarding whether Contractor should correct such Work or remove and replace such Work, or whether Owner should consider accepting such Work as provided in the Construction Contract Documents.
- 10. *Compatibility with Design Concept:* If Engineer has express knowledge that a specific part of the Work that is not defective under the terms and standards set forth in the Construction Contract Documents is nonetheless not compatible with the design concept of the completed Project as a functioning whole, then inform Owner of such incompatibility, and provide recommendations for addressing such Work.
- 11. *Clarifications and Interpretations:* Accept from Contractor and Owner submittal of all matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. With reasonable promptness, render a written clarification, interpretation, or decision on the issue submitted, or initiate an amendment or supplement to the Construction Contract Documents.
- 12. *Non-reviewable Matters:* If a submitted matter in question concerns the Engineer's performance of its duties and obligations, or terms and conditions of the Construction Contract Documents that do not involve (1) the performance or acceptability of the Work under the Construction Contract Documents, (2) the design (as set forth in the Drawings, Specifications, or otherwise), or (3) other engineering or technical matters, then Engineer will promptly give written notice to Owner and Contractor that Engineer will not provide a decision or interpretation.
- 13. *Field Orders:* Subject to any limitations in the Construction Contract Documents, Engineer may prepare and issue Field Orders requiring minor changes in the Work.
- 14. *Change Orders and Work Change Directives:* Recommend Change Orders and Work Change Directives to Owner and prepare Change Orders and Work Change Directives as requested.
- 15. *Differing Site Conditions:* Respond to any notice from Contractor of differing site conditions, including conditions relating to underground facilities such as utilities, and hazardous environmental conditions. Promptly conduct reviews and prepare findings, conclusions, and recommendations for Owner's use.
- 16. *Shop Drawings, Samples, and Other Submittals:* Review and take other appropriate action with respect to Shop Drawings, Samples, and other required Contractor submittals, but only for conformance with the information given in the Construction Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as indicated by the Construction Contract Documents. Such reviews or other action will not extend to means, methods, techniques, sequences, or procedures

of construction or to safety precautions and programs incident thereto. Engineer shall meet any Contractor's submittal schedule that Engineer has accepted.

17. *Substitutes and "Or-equal"*: Evaluate and provide recommendation to the owner as the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor. Review of substitutes "or equals" shall be in accordance with the General Conditions of the Construction Contract.
18. *Inspections and Tests*:
 - a. Receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Construction Contract Documents and performed by OTHERS. Engineer's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Construction Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Construction Contract Documents. Engineer shall be entitled to rely on the results of such inspections and tests.
 - b. As deemed reasonably necessary, request that Contractor uncover Work that is to be observed, tested, or approved by OTHERS.
 - c. Pursuant to the terms of the Construction Contract, require special observations or testing of the Work by OTHERS, whether or not the Work is fabricated, installed, or completed.
19. *Change Proposals and Claims*: (a) Review and respond to Change Proposals. Review each duly submitted Change Proposal from Contractor and, within 30 days after receipt of the Contractor's supporting data, either deny the Change Proposal in whole, recommend approval to owner in whole, or deny it in part and recommend approval to owner in part. Such actions shall be in writing, with a copy provided to Owner and Contractor. If the Change Proposal does not involve the design (as set forth in the Drawings, Specifications, or otherwise), the acceptability of the Work, or other engineering or technical matters, then Engineer will notify the parties that the Engineer will not resolve the Change Proposal. (b) Provide information or data to Owner regarding engineering or technical matters pertaining to Claims.
20. *Applications for Payment*: Based on Engineer's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that Engineer recommends Contractor be paid. Recommend reductions in payment (set-offs) based on the provisions for set-offs stated in the Construction Contract. Such recommendations of payment will be in writing and will constitute Engineer's representation to Owner, based on such observations and review, that, to the best of Engineer's knowledge, information and belief, Contractor's Work has progressed to the point indicated, the Work is generally in accordance with the Construction Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Construction Contract Documents, and to any other qualifications stated in the recommendation), and the conditions

precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is Engineer's responsibility to observe the Work. In the case of unit price Work, Engineer's recommendations of payment will include final determinations of quantities and classifications of the Work (subject to any subsequent adjustments allowed by the Construction Contract Documents).

- b. By recommending payment, Engineer shall not thereby be deemed to have represented that observations made by Engineer to check the quality or quantity of Contractor's Work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's Work in progress, or involved detailed evaluations of the Work beyond the responsibilities specifically assigned to Engineer in this Agreement. Neither Engineer's review of Contractor's Work for the purposes of recommending payments nor Engineer's recommendation of any payment including final payment will impose on Engineer responsibility to supervise, direct, or control the Work, or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on Engineer to make any examination to ascertain how or for what purposes Contractor has used the money paid to Contractor by Owner; to determine that title to any portion of the Work, including materials or equipment, has passed to Owner free and clear of any liens, claims, security interests, or encumbrances; or that there may not be other matters at issue between Owner and Contractor that might affect the amount that should be paid.
21. *Contractor's Completion Documents:* Receive from Contractor, review, and transmit to Owner maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance required by the Construction Contract Documents, certificates of inspection, tests and approvals, and Shop Drawings, Samples, and other data approved as provided under Paragraph A1.01.A.16. Receive from Contractor and review the annotated record documents which are to be assembled by Contractor in accordance with the Construction Contract Documents to obtain final payment. The Engineer shall prepare Record Drawings, and furnish such Record Drawings to Owner.
 22. *Substantial Completion:* Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with Owner and Contractor, visit the Site to review the Work and determine the status of completion. Follow the procedures in the Construction Contract regarding the preliminary certificate of Substantial Completion, punch list of items to be completed, Owner's objections, notice to Contractor, and issuance of a final certificate of Substantial Completion. Assist Owner regarding remaining engineering or technical matters affecting Owner's use or occupancy of the Work following Substantial Completion.
 23. *Other Tasks:* Perform or provide the following other Construction Phase tasks or deliverables:
 - a. Upon Substantial Completion, the Engineer shall provide a copy of the Certificate of Substantial Completion to the Owner.

- b. The Engineer shall prepare Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor, and furnishing 2 copies of such Record Drawings to Owner.
- 24. *Final Notice of Acceptability of the Work:* Conduct a final visit to the Project to provide opinion as to whether the Work is complete and acceptable so that Engineer may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, Engineer shall also provide a notice to Owner and Contractor to the best of Engineer's knowledge, information, and belief, and based on the extent of the services provided by Engineer under this Agreement.
- 25. *Standards for Certain Construction-Phase Decisions:* Engineer will render decisions regarding the requirements of the Construction Contract Documents, and judge the acceptability of the Work, pursuant to the specific procedures set forth in the Construction Contract for initial interpretations, Change Proposals, and acceptance of the Work. In rendering such decisions and judgments, Engineer will not show partiality to Owner or Contractor, and will not be liable to Owner, Contractor, or others in connection with any proceedings, interpretations, decisions, or judgments conducted or rendered in good faith.
- B. *Duration of Construction Phase:* The Construction Phase will commence with the execution of the first Construction Contract for the Project or any part thereof and will terminate upon written recommendation by Engineer for final payment to Contractors. If the Project involves more than one prime contract then Construction Phase services may be rendered at different times in respect to the separate contracts. Engineer shall be entitled to an equitable increase in compensation if Construction Phase services (including Resident Project Representative Services, if any) are required after the original date for completion and readiness for final payment of Contractor as set forth in the Construction Contract.
- C. *Limitation of Responsibilities:* Engineer shall not be responsible for the acts or omissions of any Contractor, Subcontractor or Supplier, or other individuals or entities performing or furnishing any of the Work, for safety or security at the Site, or for safety precautions and programs incident to Contractor's Work, during the Construction Phase or otherwise. Engineer shall not be responsible for the failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.02 *Post-Construction Phase*

- A. Upon written authorization from Owner during the Post-Construction Phase, Engineer shall:
 - 1. Together with Owner, visit the Project to observe apparent defects in the Work, make recommendations as to replacement or correction of defective Work, if any, or the need to repair of known damage to the Site or adjacent areas, and assist Owner in consultations and discussions with Contractor concerning correction of defective Work and needed repairs.
 - 2. Together with Owner, visit the Project within one month before the end of the Construction Contract's correction period to ascertain whether any portion of the Work or the repair of known damage to the Site or adjacent areas is defective and therefore subject to correction by Contractor.

3. Perform or provide the following other Post-Construction Phase tasks or deliverables:
 - a. Notify known regulatory agencies of the completion of the project
 - b. Two (2) sets of As-Built Drawings
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate twelve months after the commencement of the Construction Contract's correction period.

SECTION B – Duties, Responsibilities, and Limitations of Authority of Resident Project Representative

D1.01 Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR") to assist Engineer in observing progress and quality of the Work. The RPR may provide full time representation or may provide representation to a lesser degree. RPR is Engineer's representative at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions.
- B. Through RPR's observations of the Work, including field checks of materials and installed equipment, Engineer shall endeavor to provide further protection for Owner against defects and deficiencies in the Work. However, Engineer shall not, as a result of such RPR observations of the Work, supervise, direct, or have control over the Work, nor shall Engineer (including the RPR) have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, for security or safety at the Site, for safety precautions and programs incident to the Work or any Constructor's work in progress, for the coordination of the Constructors' work or schedules, or for any failure of any Constructor to comply with Laws and Regulations applicable to the performing and furnishing of its work. The Engineer (including RPR) neither guarantees the performances of any Constructor nor assumes responsibility for any Constructor's failure to furnish and perform the Work, or any portion of the Work, in accordance with the Construction Contract Documents. In addition, the specific terms set forth in Exhibit A, Paragraph A1.01, of this Agreement are applicable.
- C. The duties and responsibilities of the RPR are as follows:
 1. *General:* RPR's dealings in matters pertaining to the Work in general shall be with Engineer and Contractor. RPR's dealings with Subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Owner only with the knowledge of and under the direction of Engineer.
 2. *Schedules:* Review the progress schedule, schedule of Shop Drawing and Sample submittals, schedule of values, and other schedules prepared by Contractor and consult with Engineer concerning acceptability of such schedules.
 3. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences, and other Project-related meetings (but

not including Contractor's safety meetings), and prepare and circulate copies of minutes thereof.

4. *Safety Compliance:* Comply with known Site safety programs, as they apply to RPR, and if required to do so by such safety programs, receive safety training specifically related to RPR's own personal safety while at the Site.
5. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor. Working principally through Contractor's authorized representative or designee, assist in providing information regarding the provisions and intent of the Construction Contract Documents.
 - b. Assist Engineer in serving as Owner's liaison with Contractor when Contractor's operations affect Owner's on-Site operations.
 - c. Assist in obtaining from Owner additional details or information, when required for proper execution of the Work.
6. *Clarifications and Interpretations:* Receive from Contractor submittal of any matters in question concerning the requirements of the Construction Contract Documents (sometimes referred to as requests for information or interpretation—RFIs), or relating to the acceptability of the Work under the Construction Contract Documents. Report to Engineer regarding such RFIs. Report to Engineer when clarifications and interpretations of the Construction Contract Documents are needed, whether as the result of a Contractor RFI or otherwise. Transmit Engineer's clarifications, interpretations, and decisions to Contractor.
7. *Shop Drawings and Samples:*
 - a. Record date of receipt of Samples and Contractor-approved Shop Drawings.
 - b. Receive Samples that are furnished at the Site by Contractor, and notify Engineer of availability of Samples for examination.
 - c. Advise Engineer and Contractor of the commencement of known Work requiring a Shop Drawing or Sample submittal, if RPR believes that the submittal has not been received from Contractor, or has not been approved by Contractor or Engineer.
8. *Proposed Modifications:* Consider and evaluate Contractor's suggestions for modifications to the Drawings or Specifications, and report such suggestions, together with RPR's recommendations, if any, to Engineer. Transmit Engineer's response (if any) to such suggestions to Contractor.
9. *Review of Work; Defective Work:*
 - a. Report to Engineer whenever RPR believes that known Work is defective under the terms and standards set forth in the Construction Contract Documents, and provide recommendations as to whether such Work should be corrected, removed and replaced, or accepted as provided in the Construction Contract Documents.

- b. Inform Engineer of known Work that RPR believes is not defective under the terms and standards set forth in the Construction Contract Documents, but is nonetheless not compatible with the design concept of the completed Project as a functioning whole, and provide recommendations to Engineer for addressing such Work. ; and
- c. Advise Engineer of that part of the Work that RPR believes should be uncovered for observation, or requires special testing, inspection, or approval by OTHERS.

10. *Inspections, Tests, and System Start-ups:*

- a. Consult with Engineer in advance of scheduled inspections, tests, and systems start-ups by OTHERS.
- b. Observe that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate Owner's personnel, and that Contractor maintains adequate records thereof.
- c. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.
- d. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including those to be performed by public or known agencies having jurisdiction over the Work.
- e. Accompany visiting inspectors representing public or known agencies having jurisdiction over the Work, record the results of these inspections by OTHERS, and report to Engineer.

11. *Records:*

- a. Maintain at the Site files for correspondence, reports of job conferences, copies of Construction Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Construction Contract, RFIs, Engineer's clarifications and interpretations of the Construction Contract Documents, progress reports, contractor approved Shop Drawing and Sample submittals, and Project-related documents.
- b. Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, Subcontractors present at the Site, Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, deliveries of equipment or materials, general daily activities, decisions, observations in general, and observations as in the case of observing test procedures; and send copies to Engineer.
- c. Upon request from Owner to Engineer, photograph or video Work in progress or Site conditions.
- d. Record and maintain, up-to-date lists of the names, addresses, fax numbers, e-mail addresses, websites, and telephone numbers (including mobile numbers) of all Contractors, Subcontractors, and major Suppliers of materials and equipment.
- e. Maintain records for use in preparing Project documentation.

- f. Upon completion of the Work, furnish original set of RPR Project documentation to Engineer.

12. *Reports:*

- a. Furnish to Engineer periodic reports of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- b. Furnish to Engineer and Owner copies of all inspection, test, and system start-up reports provided by OTHERS.
- c. Inform Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, possible force majeure or delay events, damage to property by fire or other causes, or the discovery of potential differing site condition or Constituent of Concern.

13. *Payment Requests:* Review applications for payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.

14. *Certificates, Operation and Maintenance Manuals:* During the course of the Work, observe that materials and equipment certificates, operation and maintenance manuals and other data required by the Contract Documents to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to Engineer for review and forwarding to Owner prior to payment for that part of the Work.

15. *Completion:*

- a. Participate in Engineer's visits to the Site regarding Substantial Completion, assist in the recommendation of Substantial Completion, and prior to the issuance of a Certificate of Substantial Completion submit a punch list of observed items requiring completion or correction.
- b. Participate in Engineer's visit to the Site in the company of Owner and Contractor, to observe completion of the Work, and prepare a final punch list of items to be completed or corrected by Contractor.
- c. Observe whether all items on the final punch list have been completed or corrected, and make recommendations to Engineer concerning acceptance and issuance of the Final Completion documentation.

D. Resident Project Representative shall not:

- 1. Authorize any deviation from the Construction Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of Engineer's authority as set forth in this Agreement.

3. Undertake any of the responsibilities of Contractor, Subcontractors, or Suppliers, or any Constructor.
4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of the Work, by Contractor or any other Constructor.
5. Advise on, issue directions regarding, or assume control over security or safety practices, precautions, and programs in connection with the activities or operations of Owner or Contractor.
6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
8. Authorize Owner to occupy the Project in whole or in part.

End of Exhibit A

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, October 16, 2024, with Mayor Harter presiding and Commissioners Brinkman, Curtis, and Sauder present. Commissioner Smith was absent. Also present were City Manager Cocking, Deputy City Manager Detter, Assistant City Manager Wash, City Clerk Sull and City Attorney Montgomery.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

The public is invited to make comments at this time. Please limit comments to two (2) minutes each. Please state your name and address prior to making comments.

No comments were made at this time.

**CITY COMMISSION
(Board Appointment)**

Homelessness Advisory Board:

It was moved by Commissioner Brinkman seconded by Mayor Harter that Jessica Reth and Rene Hively be appointed to the Homelessness Advisory Board to fill unexpired terms ending September 9, 2026. The vote follows: Commissioner Brinkman, aye; Mayor Harter, aye; Commissioner Curtis, aye; and Commissioner Sauder, aye.

**PLANNING AND DEVELOPMENT
(Annex Property Along S Highway 99)
(Tract 1 and Tract 2)
(Ordinance Number 24-32)**

AN ORDINANCE ANNEXING LAND TO THE CITY OF EMPORIA, KANSAS, to which the City Clerk assigned Ordinance Number 24-32, was presented to the Governing Body for their consideration.

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated the two subject properties adjoin the city by containing a parking area for Soden's Bridge and the walking trail adjacent to the Cottonwood River. He stated Kansas Statutes permits a city to unilaterally annex land if the land adjoins the city and is owned by or held in trust for the city or any agency thereof. The north property does adjoin the city and is city owned property. Land adjoins a city when the only thing separating a city and the land to be annexed is the width of a watercourse. He stated a portion of the property on the south (west) side of the river is directly across the river from the City and therefore adjoins the City for annexation purposes. He stated no resolution, notice, or public hearing are required to annex these properties. He stated the City is only annexing the property described in Tract 1 and Tract 2. No right of way will be annexed. Staff recommend approval of Ordinance Number 24-32 annexing land along S Highway 99 into city limits.

Commissioner Sauder made a motion to approve Ordinance Number 24-32 annexing land along S Highway 99 pursuant to K.S.A. 12-520(a) (1)-(6). Commissioner Curtis seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Curtis, aye; Commissioner Brinkman, aye; and Mayor Harter, aye.

PLANNING AND DEVELOPMENT
(MAPC Excerpts Held 9-17-24)
(Request of the Bailey Group, CSJD, LLC and Quik Trip Corp.)
(Approve Final Plat for Flint Hills Crossing Addition)

The Planning Commission met in a regular session on Tuesday, September 17, 2024, with Chair Rogers presiding. Members Ogle, Bucklinger, Barnes, Fowler, and Lingenfelter were present.

City staff: Justin Givens, Planning & Zoning Administrator, was present. Other City Staff present: Jim Ubert, City Engineer.

Chair Rogers called the meeting to order.

2. Consider PC-2024-10 – A Request to Approve a Final Plat for Flint Hills Crossing
Chair Rogers asked if proper notice had been given. Givens confirmed that proper notice was provided to the newspaper.

Chair Rogers asked if any Commissioners needed to recuse themselves or report any ex-parte communications. No ex-parte communications or conflict of interests were reported.

Givens provided the Staff Report.

STAFF REPORT

Application #: PC 2024-10

Applicants: The Bailey Group, CSJD, LLC; Quick Trip Corporation
Owners: Quick Trip Corporation; DeBauge Family Investments LP & CSJD LLC.

Requested Action: Approval of a Final Plat for Flint Hills Crossing

Purpose: Applicants desire to plat an approximately 8-acre tract of land for commercial development

Address: North of Interstate 35 / KTA Exchange | West of Graphic Arts Road

Legal description: A TRACT OF LAND LOCATED IN THE NORTHEAST QUARTER OF SECTION 7, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6th P.M., IN THE CITY OF EMPORIA, LYON COUNTY, KANSAS, MORE PARTICULARLY DESCRIBED BY BRIAN J WESTBERG, PS 1708, ON JUNE 25, 2024, AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 7; THENCE ALONG THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7 S. 00°26'08" W. 777.83 FEET; THENCE PERPENDICULAR TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7 N. 89°33'52" W. 60.00 FEET TO THE POINT OF BEGINNING ON THE WEST RIGHT OF WAY LINE OF GRAPHIC ARTS ROAD, A PUBLIC STREET IN THE CITY OF EMPORIA; THENCE CONTINUING PERPENDICULAR TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7 N. 89°33'52" W. 191.88 FEET; THENCE ON A CURVE TO THE LEFT WITH A RADIUS OF 350.00 FEET, AN ARC LENGTH OF 162.77 FEET, THE CHORD OF SAID CURVE BEARS 161.31 FEET S. 77°06'45" W.; THENCE S. 63°47'23" W. 407.54 FEET; THENCE S. 86°17'23" W. 122.82 FEET; THENCE S. 63°47'23" W. 54.18 FEET; THENCE S. 41°17'23" W. 122.82 FEET; THENCE S. 63°47'23" W. 171.94 FEET; THENCE S. 26°12'37" E. 100.00 FEET; THENCE N. 63°47'23" E. 235.72 FEET; THENCE S. 66°32'43" E. 38.84 FEET; THENCE ON A NON-TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 400.00 FEET, AN ARC LENGTH OF 126.53 FEET, THE CHORD OF SAID CURVE BEARS 126.00 FEET S. 05°40'10" E.; THENCE S. 03°23'33" W. 107.04 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF INTERSTATE HIGHWAY 35; THENCE ALONG THE NORTHERLY RIGHT OF WAY LINE OF SAID INTERSTATE HIGHWAY 35 THE FOLLOWING SIX COURSES: N. 71°07'17" E. 9.51 FEET, N. 88°37'49" E. 73.05 FEET, S. 69°52'32" E. 203.95 FEET, N. 70°25'53" E. 558.59 FEET, N. 00°26'08" E. 150.67 FEET, N. 44°57'09" E. 28.52 FEET TO THE WEST RIGHT OF WAY LINE OF GRAPHIC ARTS ROAD, A PUBLIC STREET IN THE CITY OF EMPORIA, BEING 60.00 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7; THENCE ALONG THE WEST RIGHT OF WAY LINE OF SAID GRAPHIC ARTS ROAD, BEING PARALLEL WITH AND 60.00 FEET WEST OF THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 7 N. 00°26'08" E. 355.34 FEET TO THE POINT OF BEGINNING, CONTAINING 11.08 ACRES

Area Size: 11 acres +/- total land including right of way – 8-acre developable land

Existing Zoning: Flex-Use Low

Surrounding Zoning:

North: Flex-Use Low | Multi-Family

East: Civic | Public
South: Interstate 35
West: Flex-Use Low

Surrounding Actual Uses:

North: Vacant Property | Chapel Ridge Apartment Homes
East: Flint Hills Technical College
South: Interstate 35
West: Vacant Property

Future Zoning in ELC Comp. Plan: Flex-Use Low

Analysis:

The applicant has requested to plat an 8-acre tract of land and associated right of way to develop a commercial convenience store with gas and diesel fueling stations. The proposed plat will extend the north exit from the I35 round about, which will then tie into a new road that connects to Graphic Arts Road. This road will also eventually continue west to serve future development.

The property being platted is only one piece of a 64-acre tract of land that. These infrastructure improvements including roads, water, and sewer will be placed to accommodate future development. At this time there are no plans to plat the remaining 64-acres, but rather individual pieces will be platted as development occurs. Staff is aware that this is not the most ideal approach to development, but is mindful of looking at possible future development on the remaining property to ensure maximum benefit and minimize duplicative services, or possible conflicts between developments.

1. Plat Name: The proposed name of the plat is Flint Hills Crossing, which meets requirements.
2. Legal Description: The legal description shown on the preliminary plat meets requirements.
3. Lots: One lot is proposed, which is acceptable.
4. Blocks: As this is for one commercial lot, no block identification is required.
5. Streets and Access: The development is adjacent to Interstate 35 and Graphic Arts Road.
 - Crossing Boulevard will connect the development to Graphic Arts and serve as an internal circulation road.
 - Flint Hills Way will be extended north from the I35 roundabout and connect with Crossing Boulevard.
 - A Roundabout is proposed for the Flint Hills Way / Crossing Boulevard intersection.
 - Appropriate Access Control has been provided for the development.
 - KDOT and KTA both have consulted on and reviewed the circulation plans for the development and we are awaiting final approval from KDOT.
6. Building Lines:
 - A 30 foot building setback line has been provide along Flint Hills Way and Crossing Boulevard which is acceptable.
 - A 50 foot building setback line has been provided along Graphic Arts Road and Interstate 35 which is acceptable.
7. Easements: Easements for utilities are shown on the plat.

- An additional 15 foot easement shall be provided for within the building setback line.
8. Reserves: No reserves are shown on the plat.
9. Drainage: The City Engineer has approved the drainage plan for the property. The development will utilize underground storage systems as opposed to traditional drainage/retention ponds and drainage has been contemplated for this site only.
10. Public & Private Improvements: A utility plan has been reviewed by the Utility Advisory Board, and other private utilities. An additional 15 foot easement shall be shown on the plat within the building setback line.
- Streets & Sidewalks: A 100 foot right of way has been provided for both Crossing Boulevard and Flint Hills Way, which is of adequate site to accommodate the proposed street widths, sidewalks, and utilities.
 - Sanitary Sewer: An existing sanitary sewer line will be capped and left in place and a new sewer main of sufficient size will be installed to accommodate the current proposed development and future development in the area.
 - Water: The lot will be served by an appropriately sized line as approved by city code.
 - Fire Protection: The Fire Marshall will approve the location of hydrants during the final street design.
 - Private Utilities: The applicant has met with all private utility companies and an additional easement shall be provided for within the building setback line.
11. Miscellaneous: There are several typographical errors on the face of the plat that will need to be corrected prior final adoption of the Governing Body.

Neighborhood Communications: At the time of writing this report, staff has not been in contact with any adjacent property owners.

Recommendation: Staff recommends a motion to recommend approval of the Final Plat subject to staff and Planning Commission comments to the Governing Body.

Attachments: Final Plat / Revised Preliminary Plat / Aerial Map / Zoning Map

Commissioner Bucklinger asked about the zoning for the remaining property. Givens stated that it was currently zoned Flex-Use Low and he did not anticipate any rezoning requests. Bucklinger also asked about the approval process from KDOT. Jim Ubert, City Engineer, spoke about the KDOT approval process running concurrently with the platting process. KDOT has requested that the plat be approved before issuing final approval for the road design.

Commissioner Rogers, stated that if there was a major change to the plat it would require additional review from the Planning Commission.

Commissioner Fowler asked about the existing drainage and how the new development would work. Ubert, stated the design for QuikTrip would actually reduce runoff and had met the city's stormwater requirements.

The Public Hearing was opened.

Trenton Worley, BG Consultants, Applicant's Agent, spoke in favor of the application for his clients. Mr. Worley stated that the project was moving forward with road design and other infrastructure design, and this was one of the steps necessary to move the development forward.

No person spoke against the plat.

The Public Hearing was closed

Commissioner Barnes made a motion to recommend approval of the plat to the City Commission contingent upon final approval from KDOT. Commissioner Lingenfelter seconded the motion. The motion carried 6-0.

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated the owners of property located north of I-35 and west of Graphic Arts Road have requested that a final plat be approved for their property. He stated Flint Hills Crossing Addition is an approximately 8-acre tract of land that is being platted for the development of a future Quik Trip Traveler Convenience location. The proposed plat would allow for the development of an approximately 7,400 sq. ft. convenience store with 8 auto gas islands and 6 tractor trailer diesel islands. The plan proposes the use of underground storage to meet the city's stormwater regulations. The stormwater plan has been approved by the City Engineer. He stated there will also be a residual area that has the potential for additional development to the east of the proposed travel center. The applicants, city staff and KDOT have worked to ensure that connecting roads that are included within the plat work with future highway plans. The applicants have provided the necessary access controls and appropriate openings to control traffic flow in and out of the development. Staff recommend approval of the final plat for Flint Hills Crossing Addition.

Commissioner Brinkman made a motion to approve the final plat for Flint Hills Crossing Addition. Commissioner Sauder seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

ENGINEERING
(Flint Hills Crossing - Project No. PV2205)
(Right of Way, Permanent Sanitary Sewer and Drainage Easements)

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated Flint Hills Crossing Phase 1 improvements will provide the City infrastructure to serve the Quik Trip site. He stated the right of way, permanent sanitary sewer easement

and permanent drainage easement documents were donated by The Bailey Group, LP and CSJD, LLC for the construction of the Flint Hills Crossing Phase 1 improvements. He stated there is no financial consideration as documents were donated in conjunction with the platting. Staff recommend accepting the right of way, permanent sanitary sewer easement and permanent drainage easement.

Commissioner Brinkman made a motion to accept the right of way, permanent sanitary sewer easement and permanent drainage easement. Commissioner Curtis seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Sauder, aye; and Mayor Harter, aye.

CITY COMMISSION
(Intent to Issue General Obligation Bonds - \$3,218,275.00)
(Flint Hills Crossing – Public Improvements Infrastructure)
(Resolution Number 3741)

Mark Detter, Deputy City Manager, was recognized and addressed the Governing Body. He stated the Flint Hills Crossing Subdivision has been in various stages of development. The City Engineer, KDOT and Planning and Zoning are ready for the development plan to progress where the City will allow for the issuance of \$2,000,000.00 in public improvements. He stated the Community Improvement District (CID) will be financing the site from revenue captured from the site once the proposed Quik Trip is developed and generates revenue. The improvement costs will be approximately \$3,500,000.00 to \$3,750,000.00, with the CID paying 50% of the costs. He stated the City believes adequate infrastructure for the site meets future land growth projections and staff recommend approval of Resolution Number 3741 authorizing improvements for Flint Hills Crossing Subdivision.

Commissioner Sauder made a motion to approve Resolution Number 3741, a resolution authorizing expenditure through the issuance of General Obligation Bonds for the purpose of improvements to Flint Hills Crossing Subdivision. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye and Mayor Harter, aye.

ENGINEERING
(Flint Hills Crossing - Project No. PV2205)
(Paving and Utility Improvements)
(Bids)

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated bids were received for Flint Hills Crossing, Phase 1 for paving and utility improvements that will provide the infrastructure to serve the proposed Quik Trip site. The bids are as follows:

Contractor	Base Bid
<i>Bruce Davis Construction, LLC</i>	<i>\$2,687,630.03</i>
Ebert Construction Co., Inc.	\$3,220,943.17
Middle Creek Corporation	\$3,348,262.35
Apex Excavation LLC	\$5,425,115.00
Engineer's Estimate	\$3,693,602.50

He stated the project will be funded on an interim basis by a general bond issue that is to be paid off by the Community Improvement District (CID). He stated Bruce Davis Construction, LLC submitted the lowest, responsive bid and based on recent work performed for the City, they are qualified to construct Flint Hills Crossing project. He stated staff recommend awarding the bid to Bruce Davis Construction, LLC for the base bid amount of \$2,687,630.03 subject to KDOT approval.

Commissioner Curtis made a motion to award the bid to Bruce Davis Construction, LLC for the base bid amount of \$2,687,630.03 subject to KDOT approval. Commissioner Sauder seconded the motion. The vote follows: Commissioner Curtis, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; and Mayor Harter, aye.

INDUSTRIAL REVENUE BONDS
(Intent to Issue IRB's for \$3,500,000.00 for 502 Lofts, LLC)
(Public Hearing)
(Resolution Number 3742)

Taylor Wash, Assistant City Manager, was recognized and addressed the Governing Body. She stated the public hearing and adoption of the proposed resolution are the first steps in the issuance of Industrial Revenue Bonds in the amount of

\$3,500,000.00 for 502 Lofts, LLC, for the purpose of purchasing, acquiring, constructing, furnishing and equipping a commercial and residential facility in Emporia, Kansas. She stated this property is located at 502 Commercial Street. The renovation of the three-story building will include 7 long-term apartments, 3 hotel units and 1 commercial space. This project received a HOPE VI grant in the amount of \$500,000.00 from the Department of Housing and Urban Development (HUD). She stated the property is eligible for sales tax and property tax exemptions for a term of ten (10) years, subject to the fulfillment of the conditions of the City's Public Incentives Policy. The City is not liable for the principal or interest on the bonds under Kansas Statutes. She stated staff recommend a public hearing be opened and adopt Resolution Number 3742 regarding the interest to issued Industrial Revenue Bonds in the amount of \$3,500,000.00 for 502 Lofts, LLC.

Mayor Harter then declared the public hearing open.

As no one in attendance wished to address the Governing Body, Mayor Harter then declared the public hearing closed.

Commissioner Brinkman made a motion to adopt Resolution Number 3742, a resolution regarding the intent to issue Industrial Revenue Bonds in the amount of \$3,500,000.00 for 502 Lofts, LLC. Commissioner Sauder seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

CITY MANAGER'S REPORT (Financials & Building Permits)

This is the time for the City Manager to make comments and reports to the public. **The following is general information for the month of September 2024 for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2023	2024	Increase of \$69,797.24 for the month, and
	\$ 482,428.13	\$ 552,225.37	Overall increase of 0.54% from year 2023.
YTD	\$4,794,681.67	\$4,820,763.26	

2. City Share from County Tax

	2023	2024	Increase of \$38,559.58 for the month, and
	\$ 244,386.83	\$ 282,946.41	Overall decrease of 2.16% from year 2023.
YTD	\$2,525,468.66	\$2,472,115.79	

Building Permits issued from 9/1/2024 to 9/30/2024 for new construction, remodeling/repairs and demolition.

Total number of building permits issued through Code Services:	50
Total of valuations associated with those building permits:	\$1,245,321.67
Total number of dollars collected for Building Permit Fees:	\$ 8,793.50
Construct – Single-family dwellings	0
Demo – Single-family dwellings	1
Flint Hills Mall CID for September 2024	\$ 19,177.24
YTD	\$ 184,166.74
Pavilions CID for September 2024	\$ 17,614.36
CID #2	\$ 17,602.03
YTD	\$ 282,256.67
Fairview Hotel CID for September 2024	\$ 5,143.08
YTD	\$ 27,670.61

Consent Agenda

It was moved by Commissioner Sauder, seconded by Commissioner Brinkman that the Consent Agenda listed below be ratified as a whole:

- a. Approve minutes of the Regular Meeting held on October 2, 2024.
- b. Name City's Portion of Road F.
- c. Adopt Resolution Number 3743 for Local Government Social Media Policy.
- d. Equipment Purchase for Golf Course.
- e. Accept Kretsinger Addition Right of Way and Easements for Project No. HD23KRET.

City Manager Cocking wanted to discuss information on where the City is on the Kretsinger Addition. He stated there were two easements that we could not secure prior to today. The City went to court on both of them, the City reached a \$3,000.00 settlement, out of court, with the owner for a drainage on the Kretsinger Addition. The other remaining easement on the Kretsinger property belongs to the Historical Society. The trustee does not feel that they have the legal authority to transfer the property, and they did ask the City to go through the judicial process and the final hearing has been set. Once those easements have been secured, which will be done in November, the City will ask BG Consultants to reconfirm the construction estimates. The project could be bid out in the spring of 2025. The project does not have the budget for an outside inspector, so it will be done internally. Before moving forward with the project, the City will get estimates, we will reconfirm on estimated sales and make sure the RHID will cover any costs involved in the project. Once bids come in and

depending on what they come at, the project may or may not be feasible, which would include more conversation about moving forward on the project. He stated there are several points to this project and this is simply accepting an easement and preventing any further judicial action.

The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

City Manager Cocking stated on Saturday, October 12, 2024, former Commissioner Giefer was awarded the EA Mosher Excellence in Local Government Award by the League of Kansas Municipalities, it is the highest award that they honor. The League provides two plaques, one which will be displayed in the Commission Meeting Room, and one will go to the family.

CITY COMMISSION (City Manager's Report)

This is an opportunity for the City Manager to present information to the public that may not be reported in other news accounts or City activities or to highlight accomplishments of the organization.

At the time this Agenda was prepared, the following items were in the works:

TENTATIVE AGENDA FOR NOVEMBER 6, 2024, MEETING.

- Proclamation for Naming Small Business Saturday.
- Emporia State University Update.
- Resolution to Amend Hazardous Sidewalk Policy.
- Easement for Kretsinger Development.

Study Session: - Emporia Municipal Airport, 1005 Rd 120.

Discuss Increase in Utility Rates.

Discuss Tyler Technologies Work Order Asset Management.

CITY COMMISSION (Governing Body Comment)

This is the time for the Mayor and City Commissioners to make comments and reports to the public.

Commissioner Brinkman wanted to thank City staff for the work they did on the nomination of former Mayor Giefer's EA Mosher Award.

Commissioner Curtis wanted to thank the City for allowing him the opportunity to attend the conference for the Kansas League of Municipalities. He stated it was a great experience. He stated it was really revealing how respected our staff are amongst their peers and colleagues. Trey and Mark and the team certainly are held in high regard amongst individuals and that was really good to see. He also wanted to commit that he serves on a council for the middle school and as part of that, as you know there was a threat to the middle school a few days back and John Martin, the principal there, could not say enough good things about how well our police department fulfilled their duties that day. He mentioned that from the time the threat was reported, to the time it was confirmed, to the time the suspect was in custody was less than 30 minutes. That speaks really well to our police department. They obviously trained and they have obviously done things to prepare for these kinds of situations and he really wanted to thank the police department and their staff for continuing to keep those kinds of things front and center. What the police department is doing to prepare for these types of potential threats is commendable.

EXECUTIVE SESSION

Mayor Harter made a motion to recess into Executive Session for 25 minutes inviting pertinent city staff to discuss confidential data of third parties relating to potential economic development. The justification for executive session is provided in K.S.A. 75-4319 (b)(4) to protect financial affairs and trade secrets of third parties. The open meeting will resume in the City Commission Meeting Room at approximately 11:50 a.m. Commissioner Sauder seconded the motion. The vote follows: Mayor Harter, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; and Commissioner Curtis, aye.

Upon reconvening the meeting in Regular Session, at 11:50 a.m., this same date, in the City Commission Meeting Room, Commissioner Sauder made a motion to continue the executive session for the reason stated previously with all the same pertinent city staff and resuming the open meeting in the City Commission Meeting Room at approximately

12:01 p.m. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

Upon reconvening the meeting in Regular Session, at 12:01 p.m., this same date in the City Commission Meeting Room. Mayor Harter stated they had discussed confidential data of third parties relating to potential economic development projects and no action was taken.

Commissioner Sauder made a motion to recess the meeting to 12:20 p.m., to Conference Room 1AB. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

The following items were discussed at the Study Session:

1. Discuss Economic Development Organizational Assessment Review.
2. Discuss Snow Removal Policy.

1. Economic Development Organizational Assessment Review.

Following discussion of the report submitted by VisionFirst for an Economic Development Organizational Assessment, Mayor Harter made a motion to create an Economic Development Steering Committee and nominated Commissioners Brinkman and Smith to serve. The Steering Committee will consist of a Chair and/or Executive members from the following organizations:

Regional Development Association – 2 members
Emporia Main Street – 2 members
Emporia Area Chamber of Commerce – 2 members
Visit Emporia – 1 member
Transient Guest Tax – 1 member
Emporia State University – 1 member
FHTC – 1 member
Lyon County Commissioner - 1
Lyon County – 2 members
Emporia Enterprises – 1 member
City Manager
Assistant City Manager
City Commissioner – 2 Tyler Curtis to serve if needed.

The vote follows: Commissioner Sauder, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

Commissioner Sauder then made a motion to adjourn. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Approve Memorandum of Understanding with BNSF

Title: Approve Memorandum of Understanding with BNSF

Agenda Date: November 6, 2024

Presented By: James Uberty, City Engineer

Background:

The City of Emporia applied for a United States Department of Transportation (USDOT) Federal Rail Administration (FRA) Consolidated Rail Infrastructure and Safety Improvements (CRISI) study grant and received funding.

Discussion:

The City of Emporia has fifteen (15) street crossings over the BNSF Transcontinental Railroad (within the BNSF Emporia Subdivision) within the study area. This corridor study will look at safety improvements for those street crossings. This Memorandum of Understanding with BNSF is a USDOT FRA requirement for this study.

Financial considerations:

The \$1,202,000 study will be funded as follows:

\$601,000	USDOT FRA (50%)
\$571,000	BNSF (47.5%)
\$30,000	City of Emporia (2.5%)

The City's portion will be funded by the Multi Year fund.

Recommended action:

Staff recommends approval of the Memorandum of Understanding with BNSF.

Attachments:

Memorandum of Understanding with BNSF



Contract Number: BF-20305371

Memorandum of Understanding
Corridor Planning Study

BNSF File No.: BF-20305371

Mile Post 210.5 – 212.1

Line Segment 7100

**U.S. DOT Number 006311W, 006312D, 006066V, 006070K, 006071S, 006072Y,
006074M, 006075U, 006076B, 006077H, 006078P, 006078P, 006079W, 006080R
Emporia Subdivision**

This Agreement ("**Agreement**") is executed to be effective as of _____ ("**Effective Date**"), by and between BNSF RAILWAY COMPANY, a Delaware corporation ("**BNSF**") and the City of Emporia, a political subdivision of the State of Kansas ("**Agency**").

RECITALS

WHEREAS, BNSF owns and operates a line of railroad in and through the City of Emporia, State of Kansas;

WHEREAS, Agency has stated its intention to proceed initially with a project to complete an engineering study on the railroad crossings between MP 210.5 and MP 212.1 in the City of Emporia (the "**Project**");

WHEREAS, the Department of Transportation Federal Railroad Administration ("FRA") has awarded the Agency a grant through the Railroad Crossing Elimination (RCE) Program ("Grant Agreement") for the Emporia Corridor Planning Project ("Project"); ~~and~~

WHEREAS, the Agency and BNSF intend to cooperate on implementing plans resulting from the Project; and

WHEREAS, the FRA requires that both Parties agree to certain assurances pursuant to 49 USC § 22905(c)(1), prior to any award of a grant under the RCE Program.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements of the parties contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:



Contract Number: BF-20305371

1) Parties' Assurances

Assurances pursuant to 49 USC § 22905(c)(1). The parties hereby provide the following assurances with respect to this Agreement:

(A) Agency and BNSF assure that the project as proposed above, when complete, has adequate infrastructure capacity to accommodate both existing and future freight and passenger train operations (49 U.S.C. § 22905(c)(1)(B)).

(B) BNSF assures that collective bargaining agreements with the railroad's employees (including terms regulating the contracting of work) will remain in full force and effect according to their terms for work performed by the railroad on the railroad transportation corridor for the construction of the proposed project (49 U.S.C. § 22905(c)(1)(C)).

(C) As appropriate, Agency assures that it complies with the liability requirements consistent with 49 U.S.C. § 28103.

Notwithstanding the foregoing assurances, the parties agree and provide further as follows:

(D) BNSF's assurance regarding capacity in Subsection (A) above is made by BNSF in consideration of current conditions and presently-known expectations for future capacity needs pursuant to BNSF's review of preliminary plans and specifications provided to date for the project, in order to meet the grant purposes including to ensure the project does not limit current or future rail capacity. The provision of said assurance shall in no way obligate, limit, or otherwise restrict either party's rights or obligations under this Agreement or otherwise, or the ability to make changes in and to the project location or BNSF's right of way to accommodate future needs, including but not limited to any needs occasioned by BNSF's provision of rail services as a common carrier.

(E) Nothing in this Agreement shall be construed as prohibiting, limiting, or otherwise restricting BNSF from negotiating and/or modifying (including the removal of any of) the terms (including subcontracting terms) of any applicable collective bargaining agreement now in effect as provided by or pursuant to the Railway Labor Act (45 U.S.C. § 151 et seq., as amended). Further, nothing in this Agreement shall be construed as providing any separate or additional remedy for an alleged breach of a collective bargaining agreement, which are and shall be limited to those remedies provided by such collective bargaining agreement and/or the Railway Labor Act, as applicable.



Contract Number: BF-20305371

(F) These assurances are made for the purposes of this Agreement only. No third party benefits are intended or provided.

2) No Right of Entry

Nothing in this Agreement shall be construed as providing Agency or its contractors, consultants, or other agents any right of entry upon property owned or occupied by BNSF. Any preliminary engineering or other work required by Agency in connection with the Project necessitating entry upon BNSF's railroad right-of-way shall only be conducted as authorized by a separate written permit obtained by Agency from BNSF for such entry ("**Entry Permit**").

The Entry Permit will provide that any on-site visits, including diagnostic evaluations, by Agency and its parties required for the Project shall be conducted only from adjoining properties, and Agency shall ensure that no attendees enter or remain on BNSF's right-of-way, except when using an authorized highway-rail crossing designated for such purpose.

Agency or its agents must contact BNSF's Manager of Public Projects, Kara Brockamp at kara.brockamp@bnsf.com, or BNSF's permitting agent Jones Lang LaSalle Brokerage, Inc. ("**JLL**") at <http://bnsf.railpermitting.com/> to obtain the required Entry Permit prior to any entry.

3) Disclaimer

BNSF GIVES NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE ACCURACY, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER, OF OR FOR THE WORK PERFORMED PURSUANT TO THIS AGREEMENT OR ANY REPORT OR OTHER DELIVERABLE WHICH BNSF MAY FURNISH TO AGENCY PURSUANT TO THIS AGREEMENT. BNSF SHALL IN NO WAY BE RESPONSIBLE FOR AGENCY'S PROPER RELIANCE UPON, INTERPRETATION OF, OR OTHER USE OF THE WORK. BNSF IS NOT A CONTRACTOR, AGENT, PARTNER, OR JOINT VENTURER OF AGENCY BECAUSE OF THIS AGREEMENT OR BECAUSE OF BNSF'S PERFORMANCE OF THE WORK. LIKEWISE, THE BNSF PARTIES WHO MAY ASSIST BNSF IN PERFORMING THE WORK ARE DOING SO FOR BNSF'S BENEFIT ONLY, AND ARE NOT — AND SHALL NOT BE DEEMED TO BE — CONTRACTORS, SUBCONTRACTORS, OR AGENTS OF AGENCY.



Contract Number: BF-20305371

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year first written above.

City of Emporia

BNSF Railway Company

By: _____

By: _____

Name: _____

Name: _____
Manager Public Projects

Accepted and effective on _____.



Commission Action Report

KDOT TA Supplemental Agreement

Title: KDOT TA Supplemental Agreement No. 1, Project No. SK2201, KDOT 056 TE-0516-01

Agenda Date: November 6, 2024

Presented By: James Ubert, City Engineer

Background:

The City of Emporia was awarded project TA-T051 (601) by KDOT for sidewalk and hike & bike path improvements along 24th Ave (Prairie Street to Lincoln Street) and along 12th Ave (Dillons to Burlingame Road) & Burlingame Road (12th Ave to Riley Ave). The City Commission approved the Resolution of Support for this project on May 4, 2022 and approved the original project agreement with KDOT on December 20, 2023.

Discussion:

Supplemental Agreement No. 1 will adjust the funding to remove the funding cap.

Financial considerations:

KDOT will participate at 80% of the total actual participating Costs of Construction & Construction Engineering (CE). The City will be responsible for the remaining 20% of total participating costs, 100% of the Preliminary Engineering (PE) which was completed by City Engineering, Right of Way and Utility Relocation Costs, and 100% of Non-Participating Costs. The project is estimated to be \$950,000 with KDOT's cost share being \$760,000 and the City paying \$190,000.

Recommended action:

Authorize the Mayor to sign the KDOT supplemental agreement.

Attachments:

KDOT supplemental agreement no. 1.

PROJECT NO. 056 TE-0516-01
TA-T051(601)
TRANSPORTATION ALTERNATIVES PROJECT
SIDEWALK IMPROVEMENTS PROJECT
CITY OF EMPORIA, KANSAS

S U P P L E M E N T A L A G R E E M E N T N o . 1

This Supplemental Agreement, effective the date signed by the Secretary or the Secretary's designee, is by and between the **Secretary of Transportation**, Kansas Department of Transportation (KDOT) (the "Secretary") and the **City of Emporia, Kansas** (the "Project Sponsor," or "City"), **collectively**, the "Parties."

RECITALS:

- A. The Parties entered into an Agreement dated January 4, 2024, for a Transportation Alternatives Project (the "Original Agreement").
- B. The Parties mutually desire to supplement the Original Agreement to reflect a removal of the funding cap.

NOW, THEREFORE, the Parties agree as follows:

1. On page 4 of the Original Agreement, Article II, paragraph 1, be replaced in its entirety to read as follows:

1. **Funding.** The table below reflects the funding commitments of each Party. The Participating Costs of Construction include all Construction Contingency Items. The Parties agree the estimated costs and contributions are to be used for encumbrance purposes and may be subject to change. **The City agrees to notify the Bureau of Local Projects if costs increase more than 10% over the original estimate and award amounts.**

Party	Responsibility
Secretary	80% of Participating Costs of Construction and Construction Engineering (CE).
City	20% of Total remaining Actual Costs of Construction and CE. 100% of Participating Costs of Preliminary Engineering, Right of Way, and Utility Agreements. 100% Non-Participating Costs.

2. **Counterparts.** This Supplemental Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one in the same Agreement.

THIS SUPPLEMENTAL AGREEMENT shall not be construed to alter, modify, or void the terms, provisions or conditions of the Original Agreement, which is incorporated into this Supplemental Agreement by reference, except as herein specifically provided.

The signature page immediately follows this paragraph.

IN WITNESS WHEREOF, the Parties have caused this Supplemental Agreement to be signed by their duly authorized officers.

ATTEST:

THE CITY OF EMPORIA, KANSAS

CITY CLERK

(Date)

MAYOR

(SEAL)

Kansas Department of Transportation
Secretary of Transportation

By: _____
Greg M. Schieber, P.E. (Date)
Deputy Secretary and
State Transportation Engineer



Commission Action Report

Lockwood Heights Reimbursement Agreement

Title: Lockwood Heights Reimbursement Agreement

Agenda Date: November 6th, 2024

Presented By: Tayler Wash, Assistant City Manager

Background:

The Lockwood Heights Subdivision RHID was established on April 16, 2024. The infrastructure is privately owned and financed. The developers intend to build 24 single-family homes on the approximately 5-acre tract of land.

Discussion:

The RHID Act provides a financing tool that allows the City to capture the incremental gain in property tax created by an approved housing project in a RHID for up to 25 years. The funds can be used to reimburse a developer for eligible development costs incurred. This reimbursement agreement ensures that the City will reimburse the Developer for eligible project expenses, estimated at \$5,301,000, using property tax increments as funds become available. It also ensures that reimbursement requests, verified by the Chief Building Official and City Manager, will follow City codes and will be disbursed to ESB Financial, acting on behalf of the Developer, through the City Treasurer's office.

Financial Considerations:

There are no financial obligations related to the City as a result of this reimbursement agreement. Property tax increments will be allocated to the City under the provisions of the RHID act and the City will reimburse those funds to the developer.

Recommended Action:

Authorize the City Manager to sign the Lockwood Heights Reimbursement Agreement.

Attachments:

Lockwood Heights Reimbursement Agreement

REIMBURSEMENT AGREEMENT

Lockwood Heights Subdivision

This Agreement dated the ____ day of November, 2024 between the City of Emporia, Kansas, hereinafter referred to as “City,” Mid Kansas Properties LLC, hereinafter referred to as “Developer,” and ESB Financial, pertains to reimbursement of eligible costs for the development of the Lockwood Heights Subdivision within the City as a Reinvestment Housing Improvement District project to be governed by the laws of the State of Kansas that were in effect on April 16, 2024.

WHEREAS the Rural Housing Incentive District Act, K.S.A. 12-5241 *et seq.* (the “Act”) provides a financing tool for eligible cities and counties to address housing shortages by allowing a city or county to capture the incremental gain in property tax created by an approved housing project in a Rural Housing Incentive District for up to 25 years and use such incremental increase to reimburse a developer for eligible development costs incurred; and

WHEREAS, expenses eligible under the Act as specified in K.S.A. 12-5249 include acquisition of property as provided in K.S.A. 12-5247; payment of relocation assistance; site preparation; sanitary and storm sewers and lift stations; drainage conduits, channels and levees; street grading, paving, graveling, macadamizing, curbing, guttering, and surfacing; street lighting fixtures, connections and facilities; underground gas, water, heating, and electrical services and connections located within the public right-of-way; sidewalks; water mains and extensions; and renovation or construction of residential dwellings or other structures exclusively for residential use on existing lots where infrastructure including streets, sewer, water and utilities has been in existence for at least 10 years; and

WHEREAS, the Governing Body of the City approved Ordinance No. 24-13 establishing a Reinvestment Housing Incentive District, approving a Development Plan for the Lockwood Subdivision, and authorizing the City to reimburse the Developer for eligible expenses through use of the property tax increments allocated to the City under the provisions of the Act; and

WHEREAS, development costs will be privately financed through ESB Financial.

NOW, THEREFORE, in consideration of the promises and the mutual representations, covenants, and agreements herein contained, the Parties agree as follows:

Representations of the Parties.

1. The City shall reimburse the Developer for eligible improvements as set forth in KSA 12-5249, subject to availability of funds captured through property tax incremental increases.
2. Developer anticipates eligible project expenses of \$5,301,000.00.
3. All improvements eligible under the Act and this Agreement shall be constructed in accordance with the City of Emporia building, fire zoning and related codes and ordinances.

4. Developer shall submit all requests for reimbursement of reimbursable project costs through a certificate of costs including all bids and estimates.
5. The eligible costs to be reimbursed shall be certified by the City's Chief Building Official and City Manager after eligible invoices have been submitted and approved.
6. Disbursements shall be made through the office of the City Treasurer under adopted policies of the City.
7. ESB Financial and Developer agree that ESB Financial shall receive reimbursements on behalf of the Developer. Checks issued by the City for reimbursement of eligible expenses shall be issued to ESB Financial, 801 Merchant St., Emporia, KS 66801.

Term.

8. This Agreement shall remain in full force and effect until April 15, 2049, or until all eligible reimbursements are met by the captured ad valorem incremental tax increases as set forth above, whichever occurs first.

Transfer and Assignment.

The Developer may not assign this Agreement and the rights, duties and obligations hereunder except for the administrative duties and assignment of proceeds with the written consent of the Parties.

Indemnification.

The Developer and ESB Financial agree to indemnify and hold the City, its employees, agents and independent contractors and consultants harmless, from and against any and all suits, claims, costs of defense, damages, injuries, liabilities, judgments, costs and/or expenses, including court costs and attorney fees, resulting from, arising out of or in any way connected with the actions and undertaking in implementation of this Agreement. This right to indemnification shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as the date set forth above and represent that the individuals executing this Agreement on behalf of the Parties have the express authority to do so.

Trey Cocking, City Manager
City of Emporia

Jamie Sauder, Developer
Mid Kansas Properties, LLC

ESB Financial



Commission Action Report

Informational Items

Title: Informational Items

Agenda Date: November 6, 2024

Presented By: Trey Cocking, City Manager

Background:

This is an opportunity for the City Manager to present information to the public that may not be reported in other news accounts or City activities or to highlight the organization's accomplishments.

Discussion:

At the time this Agenda was prepared, the following items were in the works for the tentative Agendas of the upcoming meetings on Wednesday, November 20, 2024.

Commission Meeting :

- Ordinance for Increase in Utilities Fees.
- Franchise Agreement with Zayo.
- Financials & Permits
- Budget
- Minutes
- Easement for Kretsinger Development.
- 2024 ESG Grant.

Study Session:

- Rules & Regulations water/wastewater discussion.
- Review Land Bank Property.
- Discuss Common Consumption in the Downtown Area.
- Groundbreaking for Fire Station.



Commission Action Report

Executive Session

Title: Executive Session

Agenda Date: November 6, 2024

Recommended Action:

Recess into executive session for 60 minutes inviting pertinent city staff to discuss confidential data of a third party relating to economic development. The justification for the executive session is provided by K.S.A. 75-4319(b)(4) to protect financial affairs and trade secrets of third parties. The open meeting will resume in Conference Room 1AB room at approximately __:____ a.m./p.m.