



**CITY COMMISSION
WEDNESDAY, MARCH 5, 2025 AT 11:00 AM
CITY COMMISSION CHAMBER**

ORDER OF BUSINESS

CALL MEETING TO ORDER Mayor Erren Harter

MEMBERS PRESENT

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

PROCLAMATIONS

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) **Ordinance No. 25-09 Annexing Property Located at 1002 Trusler Road Pursuant to K.S.A. 12-520**
Presented by: Justin Givens, Planning & Zoning Administrator
Recommended Action: Adopt an Ordinance No. 25-09 Annexing Property Located at 1002 Trusler Road Pursuant to K.S.A. 12-520
- 2) **BNSF Agreement for Safety Improvements Study**
Presented by: Jim Ubert, City Engineer
Recommended Action: Approve the Agreement with BNSF for their share (\$571,000) of the Study and authorize the Mayor to sign the agreement
- 3) **HDR Professional Services Agreement**
Presented by: Jim Ubert, City Engineer
Recommended Action: Approve the Professional Services Agreement with HDR for the Study and authorize the Mayor to sign the agreement
- 4) **Award 2025 Hazardous Sidewalk**
Presented by: Jim Ubert, City Engineer
Recommended Action: Staff recommends awarding the contract to South Central Sealing, LLC, and authorize the City Manager to sign the agreement
- 5) **Taxiway Lighting Construction Services Contract with HW Lochner**
Presented by: Dean Grant, Public Works Director

Recommended Action: Approve the contract for construction services with HW Lochner for \$98,975.00

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

- 1) January Budget

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

- 1) Commission Meeting Minutes for February 19, 2025

INFORMATIONAL ITEMS

Presented by Trey Cocking, City Manager.

- 1) Informational Items

GOVERNING BODY COMMENTS

Mayor Erren Harter

Vice-Mayor Becky Smith

Commissioner Susan Brinkman

Commissioner Tyler Curtis

Commissioner Jamie Sauder

EXECUTIVE SESSION

RECESS

Recess to Conference Room 1AB for Study Session

STUDY SESSION AGENDA ITEMS

- 1) Carnegie Building Update
- 2) Disc Golf Update
- 3) Court Costs and Fees
- 4) Winter Storm Response Recap
- 5) Discuss Fee Decrease for Chicken or Fowl Pen and Domestic Animals (farm and non-farm) Permit.
- 6) Citizen Representative to the Joint Traffic Safety Committee
- 7) Flint Hills Technical College Board of Trustees Interviewing Commissioners
- 8) Discuss City/County Meeting on April 2, 2025.

ADJOURNMENT



Commission Action Report

Ordinance No. 25-09 Annexing Property Located
at 1002 Trusler Road Pursuant to K.S.A. 12-520

Title: Adopt an Ordinance No. 25-09 Annexing Property Located at 1002
Trusler Road Pursuant to K.S.A. 12-520

Agenda Date: March 5, 2025

Presented By: Justin Givens, Planning & Zoning Administrator

Background:

The City of Emporia has received a consent to annexation from the owners of property located 1002 Trusler Road. The property consists of an 11 acre tract of land with an existing house located on it. The property adjoins the city, and is eligible for annexation under K.S.A. 12-520. The annexation request is in anticipation of a new home site following a lot split and rezoning to a city Parcel Type.

The property is currently zoned County Agriculture. Upon annexation, the property retains its zoning designation, therefore rezoning is necessary for development. If the rezoning is ultimately approved, the property would be assigned a city Parcel Type of Country Home.

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:

Adopt an Ordinance No. 25-09 Annexing Property Located at 1002 Trusler Road Pursuant to K.S.A. 12-520

Attachments:

Annexation Ordinance
Consent for Annexation
Aerial Location Map
PLAN ELC Area Map
Lot Split Survey

ORDINANCE NO. 25-09

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 at 1002 Trusler Road; 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 ORDANIED 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 TRACT OF LAND IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 424.25 FEET SOUTH OF THE SOUTHWEST CORNER OF THE INTERSECTION OF PEYTON STREET AND RILEY AVENUE IN THE CITY OF EMPORIA; THENCE NORTHWESTERLY ON THE NORTH LINE OF TRUSLER ROAD FOR A DISTANCE OF 413.18 FEET; THENCE NORTH 1146 FEET; THENCE EAST 408.6 FEET; THENCE SOUTH 1208 FEET TO THE POINT OF BEGINNING.

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 5th day of March, 2025.

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 [INSERT GENERAL LOCATION OF PROPERTY], hereby formally consents to annexation of such land into the City of Emporia, Kansas:

A TRACT OF LAND IN THE NW ¼ OF SECTION 11, TOWNSHIP 19, SOUTH, RANGE 11 EAST OF THE 6 TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 424.25 FEET SOUTH OF THE SOUTHWEST CORNER OF THE INTERSECTION OF PEYTON STREET AND RILEY AVENUE IN THE CITY OF EMPORIA; THENCE NORTHWESTERLY ON THE NORTH LINE OF TRUSLER ROAD FOR A DISTANCE OF 413.18 FEET; THENCE NORTH 1146 FEET; THENCE EAST 408.5 FEET; THENCE SOUTH 1208 FEET TO THE POINT OF BEGINNING.

Commonly known as 1002 Trusler Road, Emporia, Kansas 66801.

Parcel # 1911102002009000.



LEGAL OWNER(S)

Tara Birdsall and Russ Ringer

Names typed

ACKNOWLEDGEMENT

STATE OF KANSAS}

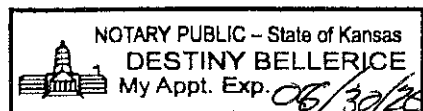
COUNTY OF LYON}

BE IT REMEMBERED, On this 28th day of September, 20 24 before me, the undersigned, a notary public in and for the County and State aforesaid, came Tara Birdsall 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



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 [INSERT GENERAL LOCATION OF PROPERTY], hereby formally consents to annexation of such land into the City of Emporia, Kansas:

A TRACT OF LAND IN THE NW ¼ OF SECTION 11, TOWNSHIP 19, SOUTH, RANGE 11 EAST OF THE 6 TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 424.25 FEET SOUTH OF THE SOUTHWEST CORNER OF THE INTERSECTION OF PEYTON STREET AND RILEY AVENUE IN THE CITY OF EMPORIA; THENCE NORTHWESTERLY ON THE NORTH LINE OF TRUSLER ROAD FOR A DISTANCE OF 413.18 FEET; THENCE NORTH 1146 FEET; THENCE EAST 408.5 FEET; THENCE SOUTH 1208 FEET TO THE POINT OF BEGINNING.

Commonly known as 1002 Trusler Road, Emporia, Kansas 66801.

Parcel # 1911102002009000.

LEGAL OWNER(S)

Russ Ringer

Tara Birdsall and Russ Ringer

Names typed

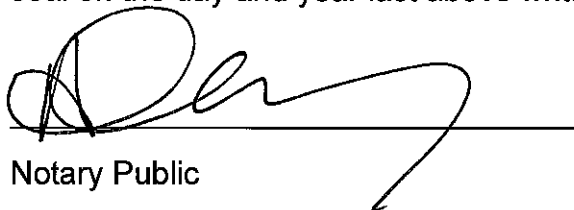
ACKNOWLEDGEMENT

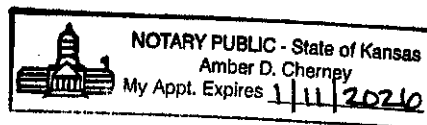
STATE OF KANSAS}

COUNTY OF LYON}

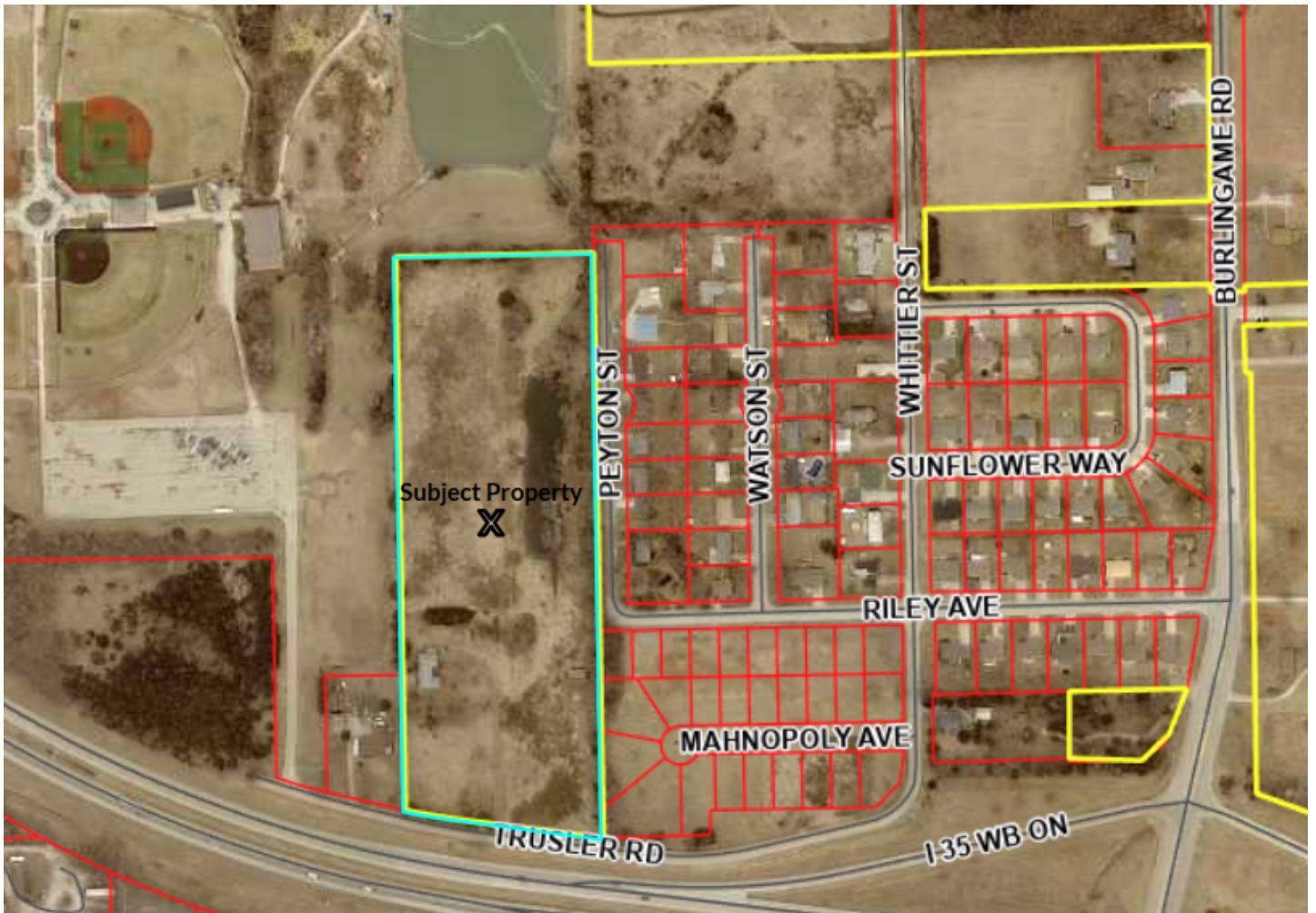
BE IT REMEMBERED, On this 9 day of November, 2024 before me, the undersigned, a notary public in and for the County and State aforesaid, came Russ Ringer such person being personally known to me to be the same person who executed the within instrument of writing and duly acknowledged the execution of 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



1002 Trusler
Annexation
Aerial Map



1002 Trusler
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 | |

LOT SPLIT SURVEY

TWO TRACTS IN THE NORTHWEST QUARTER OF
SECTION 11, T19S, R11E OF THE 6th P.M.
LYON COUNTY, KANSAS

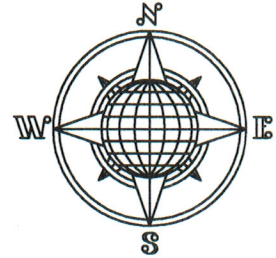
SW CORNER
LOT 15
GOODRICH'S
SUB.

ESU ADDITION
LOT 1 BLOCK B

FALLS ON TREE ROOT.
WITNESS CORNERS FOUND
FROM ESU ADDITION SURVEY
MARKED WITH A
COTTON GIN SPINDLE

GOODRICH'S SUB.

ESU ADDITION
LOT 1 BLOCK B



SCALE: 1" = 150'

GRID BEARINGS NAD83 SOUTH
ZONE

SEE PAGE 2 OF 2 FOR DESCRIPTIONS

McADOO'S
SUB.

LEGEND:
○ -- 1/2" REBAR FOUND FROM ESU ADDITION SURVEY.
● -- 1/2" REBAR FOUND UNCERTAIN ORIGIN.
⊗ -- 1/2"x24" REBAR WITH PINK PS752 ID CAP SET THIS
SURVEY.
⊕ -- COTTON GIN SPINDLE SET.
Ch -- CHORD DISTANCE.
P.O.B. -- POINT OF BEGINNING.
P.O.C. -- POINT OF COMMENCEMENT.

RILEY AVE.

MAHTROPOLIS
ADDITION

PEYTON ST.

TRACT B
(REMAINDER)

HOUSE TRACT
TRACT A
2.03 AC.

CURVE 2
N79°39'24"W
Ch=211.18'
R=2758.93'
A=211.23'

CURVE 1
N83°55'13"W
Ch=199.35'
R=2758.93'
A=199.40'

P.O.B. TRACT A

P.O.C. TRACT A
P.O.B. TRACT B

P.O.B. PARENT TRACT
424.25' SOUTH OF THE
SW CORNER OF
PEYTON AND RILEY
VOL 444 P194

GeoTech, Inc.

115 W. 5th Avenue, Emporia, KS 66801
(620) 342-7491 www.geotechinc.net

CLIENT:

DRAWING FILE

PROJECT #:

FIELD DATE:

DRAWN BY:

SHEET(S)

BIRDSALL

24172-02 FINAL R2

24172-02

9/29/2024

SSB

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1 OF 2

REPORT OF SURVEY

BOUNDARY DESCRIPTIONS FOR LOT SPLIT

TRACT A: HOUSE TRACT

A TRACT IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS PREPARED BY STEVEN S. BROSEMER, PS 752 ON OCTOBER 15, 2024 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A ONE-HALF INCH REBAR AT THE SE CORNER OF A PREVIOUSLY CONVEYED TRACT RECORDED IN VOL. 444 AT PAGE 194, BEING ALSO THE NORTH LINE OF TRUSLER ROAD AND THE NORTH LINE I-35 HIGHWAY;
THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2758.93 FEET, WITH A CHORD THAT BEARS N.83° 55' 13"W. FOR AN ARC DISTANCE OF 199.40 FEET TO THE POINT OF BEGINNING;
THENCE CONTINUING ALONG SAID NORTH LINE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2758.93 FEET, WITH A CHORD THAT BEARS N.79° 39' 24"W. FOR AN ARC DISTANCE OF 211.23 FEET;
THENCE N.01° 22' 46"W. (GRID BEARINGS) FOR 406.74 FEET;
THENCE N.88° 50' 56"E. FOR 205.00 FEET;
THENCE S.01° 36' 23"E. FOR 448.84 FEET TO THE POINT OF BEGINNING.
CONTAINING 2.03 ACRES

TRACT B: REMAINDER

A TRACT IN THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M., LYON COUNTY, KANSAS, AS PREPARED BY STEVEN S. BROSEMER, PS 752 ON OCTOBER 15, 2024 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A ONE-HALF INCH REBAR AT THE SE CORNER OF A PREVIOUSLY CONVEYED TRACT RECORDED IN VOL. 444 AT PAGE 194, BEING ALSO THE NORTH LINE OF TRUSLER ROAD AND THE NORTH LINE I-35 HIGHWAY;
THENCE ON A CURVE TO THE RIGHT, HAVING A RADIUS OF 2758.93 FEET, WITH A CHORD THAT BEARS N.83° 55' 13"W. FOR AN ARC DISTANCE OF 199.40 FEET;
THENCE N.01° 36' 23"W. (GRID BEARINGS) FOR 448.84 FEET;
THENCE S.88° 50' 56"W. FOR 205.00 FEET;
THENCE N.01° 22' 46"W. FOR 737.76 FEET TO A HALF-INCH WITH PS 752 CAP, BEING ALSO A CORNER OF LOT 1 IN BLOCK B OF ESU ADDITION TO THE CITY OF EMPORIA;
THENCE N.88° 28' 13"E. FOR 406.76 FEET TO WEST LINE OF PEYTON STREET AND BEING ALSO A CORNER OF LOT 1 IN BLOCK B OF ESU ADDITION TO THE CITY OF EMPORIA;
THENCE S.01° 16' 12"E. ON SAID WEST LINE OF PEYTON STREET AND THE WEST LINE OF MAHTROPOLIS ADDITION FOR 1214.36 FEET TO THE POINT OF BEGINNING.
CONTAINING 9.00 ACRES

PARENT TRACT: VOL. 444 AT PAGE 194

A TRACT IN THE NW¼ OF SECTION 11, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6TH P.M. DESCRIBED AS FOLLOWS: BEGINNING AT A POINT 424.25 FEET SOUTH OF THE SOUTHWEST CORNER OF THE INTERSECTION OF PEYTON STREET AND RILEY AVENUE IN THE CITY OF EMPORIA; THENCE NORTHWESTERLY ON THE NORTH LINE OF TRUSLER ROAD FOR A DISTANCE OF 413.18 FEET; THENCE NORTH 1146 FEET; THENCE EAST 408.5 FEET; THENCE SOUTH 1208 FEET TO THE POINT OF BEGINNING.

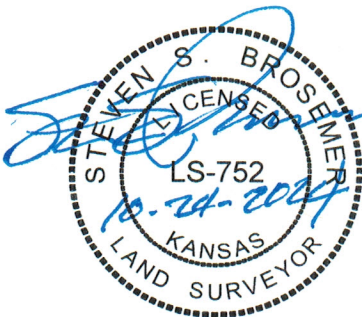
Reviewed by the County Surveyor this 7 day of November 2024.
This survey has been reviewed for filing, pursuant to K.S.A. 58-2005 and K.S.A. 58-2011 for content only and is in compliance with those provisions. No other warranties are extended or implied.

Signature of County Surveyor of Lyon County, Kansas

State of Kansas) ss Certification:
County of Lyon)

This is to certify and acknowledge that I, Steven S. Brosemer, a licensed Land Surveyor in said County and State, did prepare this report under my direct supervision. Unless otherwise noted, this report and survey does not certify to ownership, easements and/or restrictions of record. Further, that certain corner locations may have been determined but not physically marked as shown, in accordance with the Kansas Minimum Standards in effect at the time of survey.

NOTE: This document is not original unless the signature and date are blue ink.



GeoTech, Inc. 115 W. 5th Avenue, Emporia, KS 66801 (620) 342-7491 www.geotechinc.net	CLIENT:	DRAWING FILE	PROJECT #:	FIELD DATE:	DRAWN BY:	SHEET(S)
	BIRDSALL	24172-02 R2	21272-02	9/29/2024	SSB	Page 10 of 262



Commission Action Report

BNSF Agreement for Safety Improvements Study

Title: BNSF Agreement for Safety Improvements Study

Agenda Date: March 5, 2025

Presented By: James Ubert, City Engineer

Background:

With help from HDR and Garrett Nordstrom at Governmental Assistant Services, the City of Emporia applied for and received funding for the United States Department of Transportation Federal Railroad Administration (FRA) for a Corridor Safety Improvements Study in October 2022. After the project award, City Engineering worked with FRA and their consultant Booz, Allen & Hamilton (BAH) as FRA was navigating a new USDOT program. Funding was obligated November 14, 2024. The City solicited six KDOT Pre-Qualified Consultants for this study and selected HDR (with BG Consultants as a subconsultant) in January 2025. In the application to FRA, BNSF wrote a letter of support for the Safety Improvements Study and committed to paying \$571,000 of that study

Discussion:

City Engineering and the City Manager's office selected the HDR team in January 2025 while using KDOT's Request for Qualifications process. Since 2012, the Emporia subdivision rail corridor has unfortunately seen thirteen (13) collisions, four (4) injuries, and three (3) fatalities. This agreement is BNSF's commitment to their financial share of the Study to explore safety improvements, sound improvements, and emergency services access along the rail corridor and at street crossings.

Financial considerations:

The City has an agreement with USDOT for FRA to fund \$601,000 of this study. BNSF is contributing \$571,000 toward this study and the City will be responsible for \$30,000.

Recommended action:

Approve the Agreement with BNSF for their share (\$571,000) of the Study and authorize the Mayor to sign the agreement.

Attachments:

Agreement with BNSF

AGREEMENT

THIS CONTRACT, made and entered into this _____ day of March 2025, by and between The City of Emporia, Kansas hereinafter referred to as (City) and the BNSF Railway Company referred to as (BNSF).

WITNESSETH:

1. This Agreement is to formalize the cooperation and understanding between the City and BNSF in their joint financial venture in furtherance of the Emporia Corridor Improvement Project Study (Project).
2. The City made an application under the 2022 United States Department of Transportation (USDOT) Federal Railroad Administration (FRA) RCE grant program for the Emporia Corridor Improvement Project to study safety improvements that included new grade-separated crossings over BNSF, new sidewalks crossings, enhancing existing roadway underpasses, and improvements at 11 at-grade crossings along with corresponding utility improvements at said crossings within the City. A total project study phase cost when applying for the grant was \$1,202,000.00.
3. The City applied for a 50/50 matching grant whereby the U.S. Department of Transportation would provide \$601,000.00 to the Project if the grant was approved. BNSF indicated in its letter of support that it would pay \$571,000.00 in matching funds to the federal grant while the City would pay \$30,000.00 to complete the Project.
4. The U. S. Department of Transportation awarded \$601,000.00 to the City to complete the \$1,202,000.00 Project. The City is responsible for the remaining \$601,000.00 needed to complete the Project. The grant was approved for the Project to be completed in a time period from November 1, 2024 to January 31, 2027.
5. BNSF in its letter of support for the Emporia Corridor Improvement Project indicated that it was willing to pay \$571,000.00 to support this Project. This Agreement is to formally set forth the cooperation between the City and BNSF on the Project.
6. BNSF agrees to and hereby shall pay to the City an incentive payment in the total amount of \$571,000.00 to fund the performance of the promises provided herein by the City ("Payment"). BNSF's Payment shall be due and payable to City as follows: the sum of \$285,500.00 shall be paid within sixty (60) days of receipt from City of this fully executed Agreement and an invoice with the City's Form W-9; the remaining sum of \$285,500.00 shall be paid within sixty (60) days of receipt from City a confirmation of completed Project deliverables and a second invoice with the City's Form W-9. The City will submit required documentation requesting payment to BNSF at the following address:

BNSF
Kara Brockamp, Manager Public Projects
Kara.brockamp@bnsf.com

7. BNSF will submit payment on the invoices for the Project to:

City of Emporia
Attn: Janet Harrouff
104 East 5th Avenue
P.O. Box 928
Emporia, KS 66801

8. If BNSF has any dispute regarding the invoices, BNSF must submit in writing at the City's address above, the nature of the dispute and the amount in dispute. BNSF must submit any dispute within thirty (30) days of the date of the invoice.
9. BNSF will make payment to the City on or before sixty (60) days from the date of the invoice.
10. This Agreement is controlling for all invoicing, payment and payment dispute issues.
11. The City shall complete the Project at its sole expense in consideration of the Payment received from BNSF and the RCE Grant. The construction and maintenance of the new improvements shall be governed by a separate agreement to be entered into between City and BNSF following completion of the preliminary design of the improvements ("C&M Agreement"). The design of the new improvements shall be subject to BNSF's review and acceptance in accordance with the BNSF-UPRR Joint Guidelines for Railroad Grade Separation Projects and any other applicable engineering standards.
12. Notwithstanding any other part of this Agreement, nothing herein shall constitute an approval of or obligate BNSF to accept the plans prepared by the City, enter into a subsequent agreement for the construction and/or maintenance of a structure over or under the Crossing, provide any temporary or permanent easement or other property right, or otherwise authorize the new structure except as may hereafter be approved by BNSF in its discretion.
13. **The City shall indemnify and hold harmless BNSF for loss and/or damage to persons and/or property belonging to any person arising in any manner from the City's acts or omissions on any work performed by City on BNSF's property under this Agreement to the limits set forth under the Governmental Tort Claims Act.**
14. Nothing in this Agreement shall be construed as providing City 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 City 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 City or its contractors, consultants, or other agents from BNSF for such entry ("Entry Permit").

The Entry Permit will provide that any on-site visits, including diagnostic evaluations, by City and its parties required for the Project shall be conducted only from adjoining properties, and City 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.

City 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

IT IS EXPRESSLY UNDERSTOOD AND AGREED BY AND BETWEEN THE PARTIES HERETO that this agreement is binding on the successors and assigns of each parties.

IN WITNESS WHEREOF, the parties hereto have affixed their signatures to this Contract on the day and year first above written.

City of Emporia
Erren Harter, Mayor

BNSF Railway Company
Craig Rasmussen,
Assistant Vice President
Engineering Services & Structures

Date: _____

Attest: _____
City Clerk



Commission Action Report

HDR Professional Services Agreement

Title: HDR Professional Services Agreement

Agenda Date: March 5, 2025

Presented By: James Ubert, City Engineer

Background:

With help from HDR and Garrett Nordstrom at Governmental Assistant Services, the City of Emporia applied for and received funding for the United States Department of Transportation Federal Railroad Administration (FRA) for a Corridor Safety Improvements Study in October 2022. After the project award, City Engineering worked with FRA and their consultant Booz, Allen & Hamilton (BAH) as FRA was navigating a new USDOT program. Funding was obligated on November 14, 2024. The City solicited six KDOT Pre-Qualified Consultants for this study and selected HDR (with BG Consultants as a subconsultant) in January 2025.

Discussion:

City Engineering and the City Manager's office selected the HDR team in January 2025 while using KDOT's Request for Qualifications process. Since 2012, the Emporia subdivision rail corridor has unfortunately seen thirteen (13) collisions, four (4) injuries, and three (3) fatalities. This agreement is a Study to explore safety improvements, sound improvements, and emergency services access along the rail corridor and at street crossings.

Financial considerations:

The City has an agreement with USDOT for FRA to fund \$601,000 for this study. BNSF is contributing \$571,000 toward this study and the city will be responsible for \$30,000.

Recommended action:

Approve the Professional Services Agreement with HDR for the Study and authorize the Mayor to sign the agreement.

Attachments:

HDR Agreement

City's Agreement with USDOT FRA

AGREEMENT BETWEEN OWNER AND ENGINEER FOR STUDY AND REPORT PROFESSIONAL SERVICES

This is an Agreement between **City of Emporia** (Owner) and **HDR Engineering, Inc.** (Engineer). Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as **Emporia Kansas Corridor Improvement Project** (Project).

Owner and Engineer further agree as follows:

ARTICLE 1—ENGINEER'S SERVICES

1.01 Study and Report Services of Engineer

- A. Engineer's services under this Agreement are generally identified as engineering and planning activities that support the creation of a sealed corridor to improve at fifteen at-grade street crossings at BNSF RR tracks within the city limits of Emporia. This project will focus on identifying and completing conceptual design(s) for grade separating select existing crossings, and on identifying treatments for existing at-grade crossings for improvements to safety, traffic flow, multimodal accommodations as well as the quality of life in Emporia ("Study and Report Services").
- B. Engineer shall perform or furnish the Study and Report Services set forth in this Agreement, expressly including the Basic Services described in Article 1 of Exhibit A, Scope of Engineer's Study and Report Services, and any duly authorized Additional Services described in Article 2 of Exhibit A.

ARTICLE 2—OWNER'S RESPONSIBILITIES

2.01 Owner shall:

- A. Provide Engineer with all criteria and full information as to Owner's requirements for the Study and Report Services, including but not limited to design objectives and constraints; space, capacity and performance requirements; flexibility and expandability goals; security issues; any anticipated funding sources; and budgetary limitations.
- B. Furnish to Engineer all existing studies, reports, and other available information pertinent to the Engineer's performance of the Study and Report Services, including reports and data relative to previous investigations, designs, construction, or existing facilities at or adjacent to any Site under consideration.
- C. Following Engineer's assessment of initially-available Project data and information, and receipt of Engineer's advice regarding the need (if any) for additional Project-related data and information, either (1) authorize Engineer to undertake Additional Services necessary to obtain such additional Project-related data and information, or (2) obtain, furnish, or otherwise make available (if necessary through title searches, or retention of specialists or consultants) such additional Project-related data and information. Such additional data and information would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.

3. Utility information, reports, and mapping.
 4. Property, boundary, easement, right-of-way, topographic, and other special surveys or data, including establishing relevant reference points.
 5. Explorations and tests of subsurface conditions at or adjacent to a Site; geotechnical reports and investigations; drawings of physical conditions relating to existing surface or subsurface structures at a Site; hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment; with appropriate professional interpretation of such information or data.
 6. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental, historical, or cultural studies relevant to the Project, the Site(s), and adjacent areas.
 7. Data or consultations as required for the Project but not otherwise identified in this Agreement.
- D. Advise Engineer of the identity and scope of services of any independent consultants and contractors retained by Owner to perform or furnish services pertinent to the Study and Report Services.
 - E. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
 - F. Inform Engineer in writing of any specific requirements of safety or security programs that are applicable to Engineer, as a visitor to any Site under study.
 - G. Examine all Documents submitted by Engineer (and obtain the advice of an attorney, risk manager, financial advisor, insurance counselor, or other advisors or consultants as Owner deems appropriate with respect to such examination), and render in writing timely decisions pertaining to such Document submittals.
 - H. Inform Engineer regarding any need for assistance in evaluating the possible use of Project Strategies, Technologies, and Techniques, as defined in Exhibit A.
 - I. Furnish (if necessary by retaining qualified specialists or consultants) accounting services; bond and financial advisory services; independent cost estimating; and insurance, risk management, and legal services, as required in support of Engineer's performance of its Study and Report Services.
- 2.02 Owner shall be responsible for all requirements and instructions that it furnished to Engineer pursuant to this Agreement, and for the accuracy and completeness of all programs, reports, data, and other information furnished by Owner to Engineer pursuant to this Agreement. Engineer may use and rely upon such requirements, programs, instructions, reports, data, and information in performing or furnishing services under this Agreement, subject to any express limitations or reservations applicable to the furnished items.
- 2.03 Owner shall give prompt written notice to Engineer whenever Owner observes or otherwise becomes aware of:
- A. any development that affects the scope or time of performance of Engineer's services;
 - B. the presence of any Constituent of Concern at any Site; or

- C. any relevant, material defect or nonconformance in Engineer's services or Owner's performance of its responsibilities under this Agreement.

ARTICLE 3—SCHEDULE

3.01 Schedule for Rendering Services

- A. Engineer shall furnish the Report and any other Study and Report deliverables to Owner within the following specific time-period: as noted in EXHIBIT A, SCOPE OF ENGINEER'S STUDY AND REPORT SERVICES, ARTICLE 1 – BASIC SERVICES, Project Schedule.
- B. Owner shall review the Documents submitted by Engineer and provide one set of coordinated comments to Engineer within 14 days after Owner receives the Documents from Engineer.
- C. Engineer shall revise the Report and other deliverables and submit such Documents to Owner within 14 days of receipt of Owner's comments.
- D. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's Study and Report Services is impaired, or such services are delayed or suspended, then the time for completion of Engineer's Study and Report Services, and the rates and amounts of Engineer's compensation, will be adjusted equitably.

ARTICLE 4—ENGINEER'S COMPENSATION

4.01 Invoices and Payments

- A. Invoices—Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within 30 days of receipt. Engineer shall also comply with the progress reporting and special invoicing requirements (if any) in Exhibit A Paragraph 1.01.A.
- B. Payment—As compensation for Engineer providing or furnishing Study and Report Services, Owner shall pay Engineer as set forth in this Paragraph 4.01, Invoices and Payments. If Owner disputes an invoice, either as to amount or entitlement, then Owner shall promptly advise Engineer in writing of the specific basis for doing so, may withhold only that portion so disputed, and must pay the undisputed portion.
- C. Failure to Pay—If Owner fails to make any payment due Engineer for Study and Report Services or expenses within 30 days after receipt of Engineer's invoice, then (1) the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day; (2) in addition Engineer may, after giving 7 days' written notice to Owner, suspend the Study and Report Services under this Agreement until Engineer has been paid in full all amounts due for such services, expenses, and other related charges, and in such case Owner waives any and all claims against Engineer for any such suspension; and (3) if any payment due Engineer remains unpaid after 90 days, Engineer may terminate the Agreement for cause pursuant to Paragraph 5.01.B.
- D. Reimbursable Expenses—Engineer is entitled to reimbursement of expenses only if so indicated in Paragraph 4.02.A or 4.02.B. If so entitled, and unless expressly specified otherwise, the amounts payable to Engineer for reimbursement of expenses will be the Project-related internal expenses actually incurred or allocated by Engineer, plus all invoiced

external expenses allocable to the Project, including Engineer's subcontractor and subconsultant charges, with the external expenses multiplied by a factor of **[specify numeric factor]**.

4.02 Compensation

A. Basis of Compensation—Basic Services

1. Lump Sum. Owner shall pay Engineer for Basic Services as follows:

- a. A Lump Sum amount of 1,202,000.00. This amount includes ENGINEERS project related direct expenses.
- b. The portion of the compensation amount billed monthly for Engineer's Basic Services will be based upon Engineer's estimate of the percentage of the total Basic Services actually completed during the billing period.

B. Additional Services—For authorized Additional Services, Owner shall pay Engineer an amount equal to the cumulative hours charged by Engineer's employees in providing the Additional Services, times standard hourly rates for each applicable billing class; plus reimbursement of expenses incurred in connection with providing the Additional Services. Engineer's standard hourly rates are attached as Appendix 1.

ARTICLE 5—TERMINATION

5.01 Termination for Cause

A. Either party may terminate the Agreement for cause upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms of the Agreement, through no fault of the terminating party.

1. Notwithstanding the foregoing, this Agreement will not terminate under Paragraph 5.01.A if the party receiving such notice begins, within 7 days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30-day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein will extend up to, but in no case more than, 60 days after the date of receipt of the notice.

B. In addition to its termination rights in Paragraph 5.01.A, Engineer may terminate this Agreement for cause upon 7 days' written notice (a) if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional, (b) if Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control, (c) if payment due Engineer remains unpaid for 90 days, as set forth in Paragraph 4.01.C, or (d) as the result of the presence at the Site of undisclosed Constituents of Concern as set forth in Paragraph 6.06.A.

1. Engineer will have no liability to Owner on account of any termination by Engineer for cause.

- 5.02 Termination for Convenience—Owner may terminate this Agreement for convenience, effective upon Engineer's receipt of notice from Owner.
- 5.03 Payments Upon Termination
- A. In the event of any termination under this Article 5, Engineer will be entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement, and to reimbursement of expenses incurred through the effective date of termination. Upon making such payment, Owner will have the limited right to the use of all deliverable Documents, whether completed or under preparation, subject to the provisions of Paragraph 6.04, at Owner's sole risk.
 - B. If Owner has terminated the Agreement for cause and disputes Engineer's entitlement to compensation for services and reimbursement of expenses, then Engineer's entitlement to payment and Owner's rights to the use of the deliverable documents will be resolved in accordance with the dispute resolution provisions of this Agreement or as otherwise agreed in writing.
 - C. If Owner has terminated the Agreement for convenience, or if Engineer has terminated the Agreement for cause, then Engineer will be entitled, in addition to the payments identified above, to invoice Owner and receive payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's subcontractors or subconsultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Paragraph 4.02.B.

ARTICLE 6—GENERAL CONSIDERATIONS

6.01 Standard of Care

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with any services performed or furnished by Engineer. Subject to the foregoing standard of care, Engineer may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.

6.02 Construction Costs; Project Costs

- A. Engineer's opinions (if any) of probable construction costs are to be made on the basis of Engineer's experience, qualifications, and general familiarity with the construction industry. However, because of the limited and preliminary nature (1) of the Study and Report Services and (2) of any capital improvements described in any delivered Document, and because Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual construction costs will not vary from opinions of probable construction costs prepared by

Engineer. If Owner requires greater assurance as to probable construction costs, then Owner agrees to obtain an independent cost estimate.

- B. The services, if any, of Engineer with respect to Total Project Costs will be limited to assisting the Owner in tabulating the various categories that comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

6.03 Constructors' Work

- A. Engineer shall not at any time supervise, direct, control, or have authority over any Constructor's work, nor will Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any Constructor, or the safety precautions and programs incident thereto, for security or safety at any Site, nor for any failure of a Constructor to comply with laws and regulations applicable to that Constructor's furnishing and performing of its work. Engineer shall not be responsible for the acts or omissions of any Constructor.

6.04 Documents

- A. All Documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such Documents, whether or not the Project is completed.
- B. Owner may make and retain copies of Documents solely for Owner's information and reference in connection with the specific subject matter of the Documents, subject to receipt by Engineer of full payment for all services relating to preparation of the Documents, and subject to the following limitations:
 - 1. Owner acknowledges that such Documents are not intended or represented to be suitable for use by Owner unless completed by Engineer;
 - 2. If Engineer has completed a Report under this Agreement, and received full payment for such Report, then Owner may furnish copies of the completed Report to Owner's consultants and design professionals for their reference in proceeding with design or similar services, provided that Owner informs such consultants and design professionals of Engineer's ownership interests in the Report, and includes with the Report all Engineer's written statements regarding the purpose, scope, use, and limitations of the Report;
 - 3. Owner acknowledges that the Documents are not design or construction documents;
 - 4. No Document shall be altered, modified, or reused by Owner or any third party for any purpose except with Engineer's express written consent;
 - 5. Any use, reuse, alteration, or modification of the Documents, except as authorized in this Agreement or by Engineer's written consent, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, subcontractors, and subconsultants;
 - 6. Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, subcontractors, and subconsultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any unauthorized use, reuse, alteration, or modification of the Documents; and

7. Nothing in this paragraph shall create any rights in third parties.
- C. Owner and Engineer agree to transmit, and accept, the Documents and all other Project-related correspondence, text, data, drawings, documents, information, and graphics, in electronic media or digital format, either directly, or through access to a secure Project website, in accordance with a mutually agreeable protocol.

6.05 Waiver of Damages

- A. To the fullest extent permitted by law, Owner and Engineer waive against each other, and the other's officers, directors, members, partners, agents, employees, subcontractors, subconsultants, and insurers, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to this Agreement or the Project, from any cause or causes. In addition:
1. Limitation of Liability. Owner and Engineer agree that Engineer's total liability to Owner under this Agreement shall be limited to \$100,000 or the total amount of compensation received by Engineer, whichever is greater.

6.06 General Provisions

- A. Constituents of Concern—The parties acknowledge that Engineer's Study and Report Services do not include any services related to unknown or undisclosed Constituents of Concern. If Engineer or any other party encounters, uncovers, or reveals an unknown or undisclosed Constituent of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of the Study and Report Services on the portion of the Project affected thereby until such portion of the Project is no longer affected, or terminate this Agreement for cause if it is not practical to continue providing Study and Report Services.
- B. Dispute Resolution—Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute will be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.
- C. Governing Law—This Agreement is to be governed by the laws of the state in which the Project is located.
- D. Exclusions from Services—Engineer's Study and Report Services do not include: (1) serving as a "municipal advisor" for purposes of the registration requirements of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (2010) or the municipal advisor registration rules issued by the Securities and Exchange Commission; (2) advising Owner, or any municipal entity or other person or entity, regarding municipal financial products or the issuance of municipal securities, including advice with respect to the structure, timing, terms, or other similar matters concerning such products or issuances; (3) providing surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements; or (4) providing legal advice or representation.
- E. Insurance—Engineer will maintain insurance coverage for Workers' Compensation, General Liability, Professional Liability, and Automobile Liability, and will provide certificates of insurance to Owner upon request.

F. Successors and Assigns

1. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 6.06.F.2 the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
 2. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, money that is due or may become due) in this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- G. Beneficiaries—Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any Constructor, other third-party individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

ARTICLE 7—DEFINITIONS

7.01 Definitions Used in this Agreement

- A. Constructor—Any person or entity (not including the Engineer, its employees, agents, representatives, subcontractors, or subconsultants), performing or supporting construction activities relating to the Project, including but not limited to contractors, subcontractors, suppliers, Owner's work forces, utility companies, construction managers, testing firms, shippers, and truckers, and the employees, agents, and representatives of any or all of them.
- B. Constituent of Concern—Asbestos, petroleum, radioactive material, polychlorinated biphenyls (PCBs), lead based paint (as defined by the HUD/EPA standard), hazardous waste, and any substance, product, waste, or other material of any nature whatsoever that is or becomes listed, regulated, or addressed pursuant to laws and regulations regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material.
- C. Documents—All documents expressly identified as deliverables in this Agreement, whether in printed or electronic form, required by this Agreement to be provided or furnished by Engineer to Owner. Such specifically required deliverables may include, by way of example, data, studies, models, and reports (including the Report referred to in Exhibit A).
- D. Site—One or more lands or areas that Engineer studies as the location or possible location of the Project.
- E. Total Project Costs—The total cost of planning, studying, designing, constructing, testing, commissioning, and start-up of the Project, including construction costs and all other Project labor, services, materials, equipment, insurance, and bonding costs, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Owner furnishes for

inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties and private utilities (including relocation if not part of construction costs), Owner's costs for legal, accounting, insurance counseling, and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Owner.

- F. Underground Facilities—All active or not-in-service underground lines, pipelines, conduits, ducts, encasements, cables, wires, manholes, vaults, tanks, tunnels, or other such facilities or systems at a Site, including but not limited to those facilities or systems that produce, transmit, distribute, or convey telephone or other communications, cable television, fiber optic transmissions, power, electricity, light, heat, gases, oil, crude oil products, liquid petroleum products, water, steam, waste, wastewater, storm water, other liquids or chemicals, or traffic or other control systems. An abandoned facility or system is not an Underground Facility.

ARTICLE 8—AGREEMENT, EXHIBITS, ATTACHMENTS

8.01 Total Agreement

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

8.02 Attachments:

- A. Exhibit A, Scope of Engineer's Study and Report Services
- B. Appendix 1, Engineer's Standard Hourly Rates

This Agreement's Effective Date is _____.

Owner:

(name of organization)

By: _____
(authorized individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

Engineer:

(name of organization)

By: _____
(authorized individual's signature)

Date: _____
(date signed)

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address for giving notices:

Designated Representative:

Name: _____
(typed or printed)

Title: _____
(typed or printed)

Address:

Phone: _____

Email: _____

EXHIBIT A, SCOPE OF ENGINEER'S STUDY AND REPORT SERVICES

ARTICLE 1—BASIC SCOPE OF SERVICES

**Emporia, Kansas Corridor Improvement Project
USDOT FRA Project #56- KS-5412-01
Emporia City Project #22BNSF**

Project Description

The City of Emporia has received funding for this project through the United States Department of Transportation (USDOT) Federal Rail Administration (FRA) Fiscal Year 2022. The project is a Rail Corridor Study involving the BNSF Transcontinental Rail and city street crossings in Emporia.

There are fifteen (15) crossings on the 2-mile study corridor along the BNSF Railway Emporia subdivision in Emporia, Kansas. From east to west, these street crossings are Weaver Street, Carter Street, Peyton Street, East Street, Sylvan Street, Cottonwood Street, Exchange Street, Union Street, Market Street, Mechanic Street, State Highway 99 / Commercial Street, Merchant Street, Constitution Street, Congress Street, and State Street. Twelve of these crossings are currently at-grade highway-rail crossings. The corridor also contains three legacy grade-separated crossing (underpasses) with vertical and horizontal roadway clearance constraints that limit tractor-trailer and Fire Department ladder truck use. Underpasses on the corridor also lack adequate pedestrian and cyclist safety features, due primarily to limited horizontal clearance, which limits the mobility of Emporia residents.

The east-west Emporia subdivision of BNSF Railway carries 82 trains per day, or on average of one train about every 18 minutes. Trains traversing the BNSF Emporia Subdivision average about 8,000 feet (approximately 1.5 miles) in length, and within the two-mile stretch of the project corridor, trains occupy multiple crossings simultaneously. The City of Emporia is partnered with BNSF for comprehensive corridor planning activities to support the eventual project development and construction of a sealed corridor concept. Once constructed, the corridor improvements will greatly improve roadway safety and traffic flow, mitigate a physical barrier within the community, and eliminate the risk of future high-rail grade crossing accidents/incidents along the corridor through elimination and improvement of multiple existing at-grade crossings.

Scope of Work

The CONSULTANT will develop planning activities that support the creation of a sealed corridor to improve at-grade crossings within the city limits of Emporia. This project will focus on identifying and completing conceptual design(s) for grade separating select existing crossings, and on identifying treatments for existing at-grade crossings for improvements to safety, traffic flow, multimodal accommodations as well as the quality of life in Emporia. The project will include pre-NEPA project development activities, including public engagement, identification of a full corridor project inventory, conceptual design, and establishment of an implementation plan/project phasing plan to assist with the transition of project elements through future implementation phases, including project development through Preliminary Engineering/NEPA and Final Design and Construction.

The ultimate construction of the improvements to be identified in the corridor study will significantly enhance safety within the City of Emporia by improving existing highway-rail at grade, enhancing pedestrian and cyclist access options through Emporia, and reducing congestion associated with queuing at at-grade crossing during the approximately 82 daily occupied crossing events.

The CONSULTANT's Scope of Work, in this Scope of Services, is to support the City of Emporia with its FRA Grant Award Attachment 2, Project Specific Terms and Conditions. As the Grant Recipient, the City of Emporia will lead coordination with the FRA, and other requirements of the Grant Award not listed in this Scope of Services.

Project Schedule

Dates could be adjusted pending FRA review time.

Notice to Proceed for CONSULTANT

March 7, 2025 - Notice to Proceed

Task 1 Project Management Plan (PMP)

March 7, 2025 - Begin preparing PMP

April 30, 2025 - Submit PMP to FRA

Estimate June 30, 2025: Approval from FRA on PMP

Task 2 Purpose & Need Statement and Stakeholder Coordination Plan

July 1, 2025 - Begin preparing Purpose & Need Statement

July 1, 2025 - Begin preparing Stakeholder Coordination Plan

Aug 29, 2025 - Submit to FRA

Estimate September 30, 2025: Approval from FRA

June 1, 2025 - Begin collecting existing conditions (discuss with FRA about need to begin on June 1)
Complete with Existing Conditions Report in Task 3

Aug 1, 2025 - Begin Stakeholder meetings
Complete with Public meetings in Task 3

Task 3 Alternative Analysis

Oct 1, 2025 - Begin Alternative Analysis Memo

Oct 31, 2025 - Submit to FRA

Estimate November 30, 2025: Approval from FRA

Dec 1, 2025 - Begin Task 3

Oct 31, 2026 - Submit to FRA

Estimate January 31, 2027: Approval from FRA

Jan 31, 2017 - Project Complete

Task 1: Project Management

1.1 Project Administration

The CONSULTANT will:

- Perform project management activities including:
 - Project cost controls
 - Task monitoring - monitoring work progress of the Project as well as the financial status of work
 - Project scheduling and staff work planning - including monitoring actual schedule and budget compared to the recommended baseline schedule and budget
 - Sub-consultant contracting / management
- Develop an internal Project Guide that lays out administrative features of the project, including team contacts, project scope, schedule, QA/QC plan, safety plan, and communication protocols among team members including sub-consultant
- Monthly Invoicing and Progress Reports
 - Invoices will be prepared for the previous month or period of work
 - Invoices will include a budget status amount invoiced to date and amount remaining
 - Progress Report will outline work completed to date, task progress and work planned for the next period(s) and remaining tasks. A list of upcoming deliverables and due dates will be provided.
- Monthly meetings with FRA and City of Emporia. Virtual Meeting

Planned Meetings:

- Bi-Monthly one-hour Internal Project Review meeting with Project Principal, Project Manager, and Project Accountant to review monthly budget and project tracking.
- One Hour Monthly meetings with FRA and City of Emporia (2 CONSULTANT Staff) (estimate 20 mtgs)

Assumptions:

- Project management and administration activities associated with FRA coordination are included in Task 1.
- These activities will be performed during ten (10) months in 2025, twelve (12) months in 2026 and one (1) month in 2027 for a total of 23 months.
- Internal team meetings for project discussion are included in the respective budgets for Tasks 2 thru 9. i.e. no separate meeting time budget included.

Deliverables:

- Monthly Invoices and Progress Reports delivered to City of Emporia

1.2 Project Management Plan

The CONSULTANT will prepare a Project Management Plan (PMP) for submission to the FRA (estimate 40 hours of preparation time), that describes how the Project will be implemented and monitored for effective, efficient, and delivery of the Project on time and within budget. The PMP will describe, in detail, the activities and steps necessary to develop the tasks outlined in this Project Scope in accordance with the Statement of Work (Article 4) in the FRA Grant Agreement. The PMP will also include a:

- Project Schedule
- Project Budget

The PMP will be submitted to the FRA for review and approval and work in Tasks 2 and 3 will not begin until the FRA has provided written approval of the PMP. This project does not have FRA pre-award authority; therefore, work in Tasks 2 and 3 cannot begin until the PMP is approved by the FRA.

The CONSULTANT will assist the City of Emporia in preparing the FRA Quarterly Report by providing specific project information on status, schedule, deliverables and future progress.

Assumptions:

- Review and approval time by FRA is assumed to be a minimum of two (2) weeks and a maximum of eight (8) weeks total for the PMP submittal.
- The CONSULTANT will address one round of comments from FRA before submitting the final PMP.
- The FRA may require updates to the PMP during the project duration. This scope assumes 2 updates at 4 hours per update.
- HDR and City of Emporia will monitor review time by FRA to keep review process on schedule as much as possible. Monthly conference calls with FRA will assist in monitoring status of reviews. Should the review time extend past 8 weeks an extension to schedule may be needed since Tasks 2 and 3 cannot start until PMP in Task 1 is approved.

Deliverables:

- Project Management Plan (including draft, final and updates)
- Information to City for FRA Quarterly report submitted by City of Emporia

1.3 Final Performance Report and Project Closeout

The CONSULTANT will prepare for the City of Emporia a Final Performance Report for submission to the FRA per FRA's Form 33. The final report will describe the cumulative activities of the project, including a description of the achievements with respect to the project objectives and milestones. Anticipate this Final Performance Report will be 4 to 6 pages total.

The CONSULTANT will respond to up to one round of review comments from the FRA prior to submittal of the Final Performance Report.

Project Closeout by the FRA will occur no later than one (1) year after the end of the Period of Performance Date (January 31, 2027). Project Closeout means the date that the FRA notifies the City of Emporia that the award is closed. The CONSULTANT will monitor the project closeout during this one-year period with 1 hour of monitoring per month for 12 months.

Deliverables:

- Final Performance Report - due a maximum of 120 days after the Period of Performance date of January 31, 2027. Therefore, Final Performance Report is due no later than May 31, 2027.

Task 2: Purpose & Need Statement and Public / Stakeholder Communication and Engagement Plan

2.1 Preliminary Purpose and Need Statement

The CONSULTANT will develop a Preliminary Purpose and Need Statement for the project. The Purpose and Need will be built upon input received from public meetings and early hands-on community and stakeholder engagement activities, as well as important baseline traffic/crossing/crash data.

The Final Purpose and Need statement will be as concise as possible, focusing on the primary challenges to be addressed. The use of charts, tables, maps, and other illustrations useful for demonstrating the need for the project will be included. Ultimately, the Purpose and Need statement will include information on:

- Issues and deficiencies of the present facilities
- Linkages (roadway, pedestrian, bicycle)
- Safety
- Trespassers onto railroad right-of-way within the 2-mile project corridor
- Logical termini
- Public/stakeholder feedback

Assumptions:

- The Purpose and Need will be adjusted in coordination with other project partners and FRA
- The CONSULTANT will address one round of FRA comments on the Preliminary Purpose and Need Statement

Deliverables to FRA:

- Preliminary Purpose & Need Statement
- Final Purpose & Need Statement

2.2 Public / Stakeholder Communication and Engagement Plan

The CONSULTANT will conduct a Stakeholder Analysis. Building on the existing stakeholder list, the CONSULTANT will work with the City to conduct a stakeholder analysis to outline key audiences, organizations/businesses, groups, and individuals who will need to be engaged throughout the project. This analysis will outline each stakeholder's interest in the project and relevant context for engaging with them, such as historical opposition and issues raised. The stakeholder list (at a minimum) will include:

- Emporia Regional Development Association (RDA)
- Emporia Enterprises
- Emporia Main Street
- Fire and Emergency Services
- Public schools (USD#253)
- Emporia State University
- Sacred Heart Church and School
- FHTC Flint Hills Technical College
- Active community groups, especially those south of the railroad tracks
- Residents, especially those from low-income and disadvantaged communities, in the project area
- Select business owners in the project area
- Kansas Department of Transportation

The CONSULTANT will Create a Project-Specific Brand, including a logo, colors, icons, and a tagline for the project. To establish this brand, the CONSULTANT will brainstorm ideas with relevant City staff at a project kickoff meeting. The CONSULTANT will develop up to three branding options. The CONSULTANT will hold a one-hour meeting with the same City staff to review the options and solidify branding.

The CONSULTANT will draft a Public / Stakeholder Communication and Engagement Plan consistent with federal and City standards for meaningful public engagement. This plan will be informed by the Stakeholder Analysis and will include:

- Key messaging that will be used to communicate with stakeholders and the public throughout the project
- Talking points/FAQs aimed at proactively addressing issues that are likely to arise among stakeholders and the public
- Planned engagement strategy, including a detailed outline of tactics to be used (i.e., meetings, outreach methods, social media, etc.)
- Timeline for engagement activities
- Metrics for evaluating success of engagement

The CONSULTANT will conduct stakeholder/project-area analyses to help understand community needs and provide a snapshot of information about behaviors, lifestyles, trends, and communication needs. For example, this analysis can provide what percent of residents south of the railroad tracks have access to the internet at home, or which social media platforms are generally used.

Planned Meetings:

- Branding Kickoff Meeting (3 CONSULTANT staff, 1 Hour virtual meeting) (prepare agenda and meeting minutes)

Assumptions:

- Each deliverable will undergo one round of review by City staff.

Deliverables:

- Stakeholder list in Excel
- Community analytics data memo
- Brand guide
- Communication and Engagement Plan, which will be packaged together with the stakeholder list and brand guide

2.3 Stakeholder Engagement

Stakeholder Engagement. With input from City staff, the CONSULTANT will establish a Community Advisory Committee, which will consist of representatives from the stakeholders identified during the Stakeholder Analysis. This Committee will meet for one hour up to four (4) times throughout the project, likely around the following milestones:

- Project kickoff (an introductory session to provide background and outline the project process)
- Data review (to review preliminary data and analysis completed in the Communication and Engagement Plan)
- Options analysis (to provide feedback on the options determined to be viable)
- Review of near-final draft recommendations/report

The CONSULTANT will also hold up to eight (8) one-hour individual meetings with stakeholder groups to provide them an opportunity to share their feedback in a private setting. These meetings will likely take place with a

select number of stakeholders identified as having significant concerns related to the project. These meetings could also be held with multiple similar stakeholder groups, such as a meeting with education-focused stakeholders.

Community Advisory Committee members will be identified as part of the Public / Stakeholder Communication and Engagement Plan. CONSULTANT will use email, phone, and/or mail outreach to invite these stakeholder representatives to participate in the Committee. CONSULTANT will inquire about stakeholders' availability using a calendar tool and will send calendar invites via email for stakeholder meetings. These meetings will include interactive and discussion-based components, such as gathering comments on a scroll map of the project area.

Planned Meetings:

- Community Advisory Committee, which will consist of representatives from the stakeholders identified during the Stakeholder Analysis. This Committee will meet for one hour up to four (4) times throughout the project.
- Stakeholder Engagement Meeting(s): Up to eight (8) individual In-person meetings with stakeholder groups. Up to 3 CONSULTANT Staff will attend

Assumptions:

- Meeting materials may be used at both the stakeholder and public meetings for efficiency, where appropriate.
- The CONSULTANT will research the project area in coordination with the city and will identify venues for the public and stakeholder meetings.

Deliverables:

- Stakeholder Engagement: Stakeholder meeting agendas and materials, including PowerPoint presentation slide deck, up to four (4) display boards, one handout, scroll map, and comment forms.

2.4 Collecting Existing Conditions

The CONSULTANT will collect data on, and assess where noted, the current site conditions of the project area, which includes the existing at-grade crossing over BNSF Railway at the following fifteen (15) crossings south of downtown Emporia, Kansas: Weaver St, Carter St, Peyton St, East St, Sylvan St, Cottonwood St, Exchange St, Union St, Market St, Mechanic St, State Hwy 99 / Commercial St, Merchant St, Constitution St, Congress St, and State St. This information will be used to develop conceptual alternatives for each crossing through analysis of the existing and potential future conditions. The CONSULTANT will conduct the following data-collection and assessment activities:

- Previous Studies / Engineering: The City and/or BNSF will provide available previous studies or reports available for this project area. The CONSULTANT will review these documents and will extract information relevant to the study.
- Desktop reviews: The CONSULTANT will review available relevant visual data sets, including digital aerial / street-view imagery and GIS mapping.
- Field Visit: The CONSULTANT (two staff members) will conduct a one-day walking site visit to the study crossing locations, noting existing conditions and taking site photographs.
 - The CONSULTANT will prepare a site Job Hazard Analysis and wear PPE

- In advance of the visit, the CONSULTANT will arrange a one-call utility locate with paint or flags within the project area, at no cost to the city, and relevant marked utilities will be noted and photographed during the field visit.
 - CONSULTANT will not access BNSF Right-of-Way during this field visit. No "Right of Entry" permit will be used. All work will be done outside of RR Right of Way.
 - Underpasses: The CONSULTANT will visually assess the condition of the three (3) underpass structures at State Street, Congress Street and Mechanic Street. Only a visual inspection with photographs will be performed. Information on drainage will be noted visually.
- Survey / Soil / Property Data:
 - The CONSULTANT will obtain existing available Lidar survey data for existing topography in the two-mile project corridor extending approximately 700 feet north and south of the railroad tracks. The Lidar will be used primarily to understand the existing ground line elevations for alternatives analysis. A topographic survey will not be collected.
 - The CONSULTANT will review available existing subsurface geotechnical soil boring data near the project area.
 - The CONSULTANT will review existing available property information in the project area to understand approximate property limits within project corridor.
- Infrastructure Data:
 - At-Grade Crossings:
 - For each crossing, the CONSULTANT will inventory the number and width of roadway lanes, speed limit of vehicular traffic, distance between crossings, traffic management devices, sight distance, nearby land usage.
 - The CONSULTANT will identify ongoing/expected maintenance activities or improvements/upgrades to the existing crossings from BNSF or the City of Emporia.
 - Utilities:
 - Based on available data, the CONSULTANT will perform a cursory review of existing utilities near each crossing. The CONSULTANT will log information on age, condition and capacity of utility, if available, including information on future expansion or improvements (if available).
 - HDR will review existing GIS mapping as well as contact local utility companies, based on one call data, to obtain existing as-built utility information within the limits of the project. No field exploration or potholing is included with this Scope of Services.
 - It is expected that private utilities will only be identified based on the one-day walking visit.
 - Utility relocation design is not part of this project scope.
 - Only utility replacements in-kind and no upgrades will be considered for this project.
- Train Operations: Based on available data, the CONSULTANT will inventory the number of trains, train speed, and frequency.
- Safety Data:
 - The CONSULTANT will obtain crash data at each of the at-grade crossings from the last 10-years, including count, location, severity, and contributing circumstances.

- To the extent data is available, the CONSULTANT will inventory historical near misses within the corridor.
- To the extent data is available, the CONSULTANT will inventory historical incidents of trespassing within the corridor. The CONSULTANT will review existing trespasser mitigation measures throughout the project corridor.
- Traffic Data:
 - The CONSULTANT will conduct automated 48-hour video counts at each of the 15 crossings, including the grade-separated ones. The counts will include vehicle classifications as well as bikes and pedestrians. For up to three (3) at-grade crossings, the CONSULTANT will place cameras on both sides of the tracks, facing the tracks, in order to record train arrivals, crossing occupancy durations, and automobile queueing/delay.
 - The CONSULTANT will conduct AM and PM peak-period (2-hour) turning-movement counts at up to 16 study intersections (classified + bikes/pedestrians), expected to include the following:
 - Weaver Street / South Avenue | Weaver Street / US-50
 - Peyton Street / South Avenue | Peyton Street / US-50
 - East Street / South Avenue | East Street / US-50
 - Mechanic Street / 4th Avenue | Mechanic Street / 2nd Avenue
 - Commercial Street / South Avenue | Commercial Street / 2nd Avenue
 - Commercial Street / 4th Avenue | Commercial Street / US-50
 - Merchant Street / 4th Avenue | Merchant Street / 2nd Avenue
 - State Street / South Avenue | State Street / US-50

Assumptions:

- Utility potholing will not be conducted for this phase of the project.

2.5 BNSF Coordination

The CONSULTANT will have meetings each quarter with BNSF Railway to discuss project status and collect rail operations information and information of upgrades to existing crossings and underpass structures as well as provide updates on project study and analysis. City staff will be invited to meetings with BNSF.

Planned Meetings:

- Meeting with BNSF each quarter of year. Three meetings in 2025 and four meetings in 2026.
 - 3 CONSULTANT staff, 1 Hour virtual meeting
 - CONSULTANT will prepare agenda and meeting minutes

2.6 KDOT Coordination

The CONSULTANT will have meetings each quarter with Kansas Department of Transportation to discuss project status regarding K-99 (Commercial St/Merchant St) thru Emporia and regional mobility. Also provide updates on project study and analysis. City staff will be invited to meetings with KDOT.

Planned Meetings:

- Meeting with KDOT each quarter of year. Three meetings in 2025 and four meetings in 2026.
 - 3 CONSULTANT staff, 1 Hour virtual meeting
 - CONSULTANT will prepare agenda and meeting minutes

Task 3: Alternatives Analysis

3.1 Alternative Analysis Methodology Memorandum

The CONSULTANT will prepare and submit a memorandum to the FRA that outlines the methodologies and approach for the Alternative Analysis. This memo will be reviewed and approved prior to commencing with the remainder of Task 3.

The CONSULTANT will respond to up to one round of review comments from the FRA prior to submittal of the final memorandum. Tasks 3.2 to 3.8 will not commence until the memorandum is approved by the FRA.

Assumptions:

- Review time by FRA is assumed to be a minimum of two (2) weeks and a maximum of four (4) weeks total for FRA regarding the Final Alternative Analysis Memo.
- The total of four (4) weeks includes time for revision to the memo based on FRA comments prior to approval.

Deliverables:

- Alternative Analysis Methodology Memo (estimate up to 4 pages in length including a project crossing location map)
- Final Alternative Analysis Memo after CONSULTANT addresses one round of comments from FRA.

3.2 Public / Stakeholder Communication and Engagement Plan

Public Engagement. The CONSULTANT will lead engagement of the broader public through several tactics.

The CONSULTANT will create a **Virtual Open House** – a standalone website with project information and opportunities for the public to provide input. This will include an interactive map where users can add location-specific comments. It may also include a survey or comment form for general project feedback. This virtual open house will be open to stakeholders and the public starting during the data collection phase and will be active for at least two months.

The CONSULTANT will facilitate two in-person **Public Meetings** to request the public's input related to the options analysis. These meetings will take place on different days, at locations easily accessible to stakeholders and at two different times of day to accommodate a wide range of community members. These meetings will consist of a short presentation followed by an open-house-style setup where participants can walk around the room, view information, provide comments, and ask questions of project team members.

The CONSULTANT will **Develop Outreach Materials** to invite stakeholders and the public to participate in the virtual open house and the in-person public meetings. These methods may include:

- Email
- Social media
- Press releases
- Postcards
- Flyers at community gathering places

Walking Outreach to Businesses. The CONSULTANT will provide materials to conduct walking outreach to businesses in the area. These walking outreach sessions will involve stopping into relevant businesses, providing a brief summary of the project to the business owner or manager (when possible), and leaving a handout with more information and opportunities to provide input (i.e. QR code to virtual open house, meeting

dates and times). Two CONSULTANT team members will perform the walking tour over one (1) day and reach as many local downtown businesses as possible. The list of relevant businesses (or a general map area) will be reviewed with City Staff prior to the walking outreach.

Comment Management. Comments collected from stakeholders, online through the virtual open house, during in-person public meetings, and by personal contact will be logged in a database created and maintained by the CONSULTANT.

Planned Meetings:

- Public Meeting(s): In-person Public Meeting #1 in Emporia. Up to 4 hours in length. Attended by up to 4 CONSULTANT staff
- Public Meeting(s): In-person Public Meeting #2 in Emporia. Up to 4 hours in length. Attended by up to 4 CONSULTANT staff
- Walking Tour delivering project information. 8 hours in length for 2 CONSULTANT Staff.

Assumptions:

- Meeting materials may be used at both the stakeholder and public meetings for efficiency, where appropriate.
- The CONSULTANT will research the project area in coordination with the city and will identify venues for the public and stakeholder meetings.

Deliverables:

- Public Meeting(s): Meeting materials, including presentation slide deck, up to ten project display boards, one handout, scroll map, and meeting collateral (comment forms, sign-in sheets, directional signage, etc.).
- Comment Database

3.3 Existing Conditions Report

Existing Crossing Evaluation

The CONSULTANT will prepare issues identification matrix evaluating each of the fifteen highway-rail crossings based on a review of the project existing conditions. The matrix criteria will be determined during the Existing Conditions Analysis and Stakeholder discussion and are anticipated to include the following as a minimum:

- Existing Crossing Condition
- Crossing Use
- Rail Operations
- Land Use Impacts
- Stakeholder Input

Assumptions:

- The CONSULTANT will not resubmit the Existing Conditions Report if the FRA provides comments but rather will address comments in the Alternative Analysis Report.

Deliverables:

- Existing Conditions Report with exhibits and photographs will be submitted to the FRA.
 - The 2019 BNSF Sealed Corridor Study by TranSystems will be included as an attachment to the Existing Conditions Report.
 - Identification matrix of the existing crossings.

3.4 Transportation Technical Analysis

- Existing conditions traffic analysis:
 - The CONSULTANT will analyze existing AM and PM peak-hour operations at the study intersections using the Synchro software.
 - The CONSULTANT will analyze existing daily automobile delays at each crossing using a combination of video data-collection footage from the crossings and analytical spreadsheet-based queuing-theory calculations as a function of trains per day and daily traffic flow patterns.
 - The CONSULTANT will use the historical crash data obtained in previous tasks to analyze the frequency, severity, and type of train-vehicle/pedestrian crashes at the crossings and will qualitatively consider crashes near the crossings that may have been related to queueing during crossing events.
- Travel-demand forecasting: The CONSULTANT will gather information from the City regarding near-term and short-term land-use forecasts near the crossings – both approved / anticipated near-term developments and potential future growth related to further build out of the City's Comprehensive Plan.

In conjunction with the City, and with the approval of FRA, the CONSULTANT will select a horizon year for the future analysis. Based on the future land-use assumptions collected above, the CONSULTANT will develop daily and peak-hour forecasts for each of the study at-grade crossings and study intersections. This may be as simple as applying growth rates, but this scope assumes a level of effort commensurate with developing sketch-level trip generation and distribution assumptions for up to 60 "micro-zones" in the vicinity of the rail corridor.

The CONSULTANT will confer with the City and FRA to determine whether a simple factor should be applied to train volumes for the future year based on expected freight growth along the corridor.

- Future-year No-Build traffic analysis: Based on the traffic volumes developed in the forecasting task, the CONSULTANT will perform Synchro analysis of the study intersections for the agreed-upon future horizon year. The CONSULTANT will forecast crossing delays for the future horizon year. The CONSULTANT will develop a simple high-level crash-prediction based on proportionate increases in exposure as a function of train and automobile volumes.
- Future year Build traffic analyses: For the two corridor improvement alternatives to be developed, the CONSULTANT will evaluate intersection operations, crossing delays, and simple exposure-based crashes for the future horizon year. In support of this evaluation, the CONSULTANT will estimate traffic diversions associated with proposed crossing improvements (such as cul-de-sacs if warranted). As part of the diversion analysis, the CONSULTANT will use the Replica software tool to identify high-level origin-destination (O-D) patterns for vehicles using these crossings.
- Multi-modal transportation analyses:
 - The CONSULTANT will document existing daily pedestrian and bicycle patterns at each crossing.
 - The CONSULTANT will assess the potential impact of the two corridor improvement alternatives on pedestrians and bicyclists. This will include consideration of the extra distance walked/biked to the next available crossing from representative travel sheds. It will also note the reduction in exposure due to proposed grade separations (if warranted) and will provide guidance on tie-ins to the existing (and future) bicycle and pedestrian network on either side of

the tracks. The Comprehensive Plan's future bike/pedestrian networks will be used as a reference point.

- Access and Circulation analyses:
 - The CONSULTANT will assess existing school attendance boundaries, and the anticipated effects of proposed crossing modifications on school access patterns, under both corridor improvement alternatives.
 - The CONSULTANT will confer with local police, fire, and ambulance personnel to understand emergency response service areas and patterns. The CONSULTANT will assess the anticipated effects of proposed crossing modifications on response times, under both corridor improvement alternatives.
- Infrastructure needs assessments:
 - The CONSULTANT will assess the need for geometric, drainage and structural improvements for the underpass structures at State Street, Congress Street, and Mechanic Street.

Assumptions:

- Microsimulation (e.g., VISSIM) will not be used for the traffic analysis.
- The CONSULTANT will provide supporting data for technical analysis and traffic analysis/tools used.

Deliverables:

- No deliverable for this task. Data/Analysis collected will be used for the Alternative Analysis Report.

3.5 Conceptual Engineering

The CONSULTANT will develop conceptual level alternatives (approximately 20% design) for up to two (2) overall alternatives in the project corridor that satisfy the Purpose and Need Statement in Task 2.1. Each overall alternative will show a concept for each of the fifteen crossings (and adjacent cross-streets, as necessary). Note some crossings may only have one improvement developed for each overall alternative.

These conceptual level designs will be used to select a recommended alternative which will serve as the Project Basis of Design and Construction in future phases of the project.

The CONSULTANT will prepare Design Criteria for the alternatives studied.

Conceptual Engineering drawings at a minimum will include:

- Roadway Improvements.
- Mobility enhancements in the project corridor for each overall alternative.
- New Roadway facilities to accommodate vehicular grade crossing (overpass or underpass).
- New Bridge structures to accommodate vehicular grade crossing (overpass or underpass).
- New Bridge structures to accommodate pedestrian/bicycle grade crossing (overpass or underpass). Separate structure or combined structure with roadway.
- Structural Improvements to existing Underpasses.
- Improvements to At-Grade Crossing protection devices for vehicular traffic and pedestrian traffic at Commercial Street / Merchant Street (K-99 Highway).
- Relocation and/or upgrade of existing utilities (water, sewer, storm) to accommodate possible improvements. Determine approximate linear footage amount of relocation and/or upgrades of existing utilities.

- New vehicular and pedestrian grade-separate crossing.

The CONSULTANT will continue Stakeholder involvement, input and communication as identified in Task 3.2.

The CONSULTANT will develop a Project Phasing plan for the selected project option only to assist with the transition of project elements through future implementation phases. This will include:

- The order of implementation with regards to prioritizing which crossings improvements should be prioritize and completed prior to others. A conceptual construction phasing plan for construction at the crossings so traffic flow is not significantly impacted during construction and rail operations is not impacted during construction.

Assumptions:

- Develop up to two overall corridor options not including the no-build option

Deliverables:

- Design Criteria for Alternatives Studied. Submit to City only.
- No deliverable for this task. Conceptual options and Design Criteria will be used for the Alternative Analysis Report.
- Conceptual Options will be 11x17 scaled drawings showing proposed features and dimensions.
- Project phasing plan

3.6 Cost Estimates

The CONSULTANT will develop cost estimates (design, construction and administration) for each overall alternative studied – which may include new grade crossings, street modifications, utility relocation and crossing upgrades to existing facilities for train operations. Cost estimates will be prepared using estimated quantities and unit costs for each element of the project.

Assumptions:

- Land acquisition estimates will be provided by the City of Emporia.
- Contingency factor will be identified and applied for this level of design.
- Utility relocation for in-kind sizes (no upgrades) will include approximate length of relocation at new grading crossing structures only.

Deliverables:

- Detailed cost estimates in tabular form with contingency factor. Land acquisition estimates will be included. Assume new area of TCE, PCE and ROW and City provide cost estimates for land acquisition. No Right-of-Way services included.
- These estimates will be included in the Alternative Analysis Report.

3.7 Preliminary Environmental Impact Analysis

The CONSULTANT will collect environmental data from readily available electronic data sources, which will be entered into a GIS database that will be used for constraints mapping, impact evaluation, and alternative comparison. This data gathering will include, but is not limited to public water supplies, cultural and historical file review, census data, zoning, major utilities, farmlands, noise, water quality, wetlands, streams, floodplains, public lands, 6(f) and 4(f) resources, biological communities (terrestrial and aquatic) and other ecologically important resources, low income and minority populations, community features, and property and landowner data. Data will be compiled into GIS databases for analysis and mapping. Photos of environmentally sensitive

features will be taken. The constraints map will be available for design team consideration through the project design.

The CONSULTANT will develop a Constraints Memo that summarizes the results of mapping and data collection and includes avoidance recommendations. Environmental data collected will be transferred to appropriately scaled aerial photographs and/or overlaid on the conceptual design plans, which will be the basis for avoidance and minimization of environmental impacts during the early design process.

NEPA Class of Action. The Consultant will provide the FRA with documentation and summary of environmental analyses completed to date to help inform FRA's determination for the appropriate NEPA class of action for the recommended alternative(s). This task includes preparation for and virtual attendance at one meeting with the FRA. The CONSULTANT will subsequently develop a Pre-NEPA Report, including a NEPA transition plan for future NEPA requirements.

Planned Meetings:

- Virtual Meeting with Client and FRA. One hour in duration. Up to three CONSULTANT team members will attend. One hour for meeting prep and meeting minutes to distribute. Meeting will be conducted near end of project.

Deliverables:

- The deliverables for this task will be included in the Alternatives Analysis Report
 - Baseline environmental conditions / constraints map
 - Constraints memorandum
 - Pre-NEPA Report (estimate 20 pages)

Exclusions:

- No field studies or surveys will be conducted, and no quantitative analysis (e.g., noise modeling) and/or field surveys (e.g., architectural and/or archaeological survey) are anticipated at this stage of study.
- Additionally, at this stage, no environmental/agency approvals will be sought, but agencies may be contacted to gather pertinent environmental information.

3.8 Concept Evaluation

The CONSULTANT will conduct an evaluation of the alternatives developed in Task 3 with the goal of identifying a recommended alternative. Evaluation criteria will be determined during the Existing Conditions Analysis and Stakeholder discussions and are anticipated to include the following as a minimum:

- Safety to traveling public
- Impacts to stakeholders
- Traffic and mobility impacts
- Environmental effects
- Constructability effects
- Estimated Costs
- Public and Stakeholder Acceptance

Deliverables:

- The CONSULTANT will develop an evaluation matrix with a supporting narrative comparing the alternatives against the evaluation criteria. This evaluation will be provided in the Alternative Analysis Report.
- Review evaluation and recommendations with City during development of the Alternatives Analysis Report.

3.9 Alternatives Analysis Report

The CONSULTANT will prepare and submit to the FRA for approval an Alternatives Analysis Report summarizing the project alternatives and proposing a recommended alternative to carry forward to future project development phases. The report will capture the elements studied in Tasks 1 and 2, as well as Tasks 3.1 to 3.7.

As identified in Task 3.1 and described in the 3.1 Alternative Analysis Memorandum, the Alternatives Analysis Report will study at least two alternatives which can include the no-build alternative along with one proposed alternative for each crossing.

The CONSULTANT will respond to up to one round of review comments from the City of Emporia on the final Report.

The CONSULTANT will respond to up to one round of review comments from the FRA prior to the submittal of the final Report.

Deliverables:

- Alternatives Analysis Report. This Report will be the final project deliverable.

ARTICLE 2—FRA RCA AWARD AGREEMENT, FRA AND CITY OF EMPORIA



U.S Department of Transportation

Federal Railroad Administration

Grant Agreement

1. RECIPIENT NAME AND ADDRESS

Emporia, City of

522 Mechanic St

Emporia, KS 66801-3950

2. AGREEMENT NUMBER: 69A36525420300RCEKS

3. AMENDMENT NO. 0

4. PROJECT PERFORMANCE PERIOD: FROM 11/01/2024 TO 01/31/2027

5. FEDERAL FUNDING PERIOD: FROM 11/01/2024 TO 01/31/2027

1A. IRS/VENDOR NO. 486026579

6. PRE-AWARD AUTHORITY: No 6A. PRE-AWARD DATE: N/A

1B. UEL T7NAKS96JF29 1C. DUNS.

7. ACTION New

8. ASSISTANCE LISTING#: 20.327

TITLE	FEDERAL	NON-FEDERAL	TOTAL
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9. PROJECT TITLE

Emporia Corridor Improvement Project

10. PREVIOUS AGREEMENTS

0.00

0.00

0.00

11. THIS AGREEMENT

601,000.00

601,000.00

1,202,000.00

12. TOTAL AGREEMENT

601,000.00

601,000.00

1,202,000.00

12A. OTHER FEDERAL FUNDING

0.00

13. INCORPORATED ATTACHMENTS

THIS AGREEMENT INCLUDES THE FOLLOWING ATTACHMENTS, INCORPORATED HEREIN AND MADE A PART HEREOF:

Attachment 1, General Terms and Conditions; Attachment 2, Project-Specific Terms and Conditions; Attachment 3, Exhibits

14. STATUTORY AUTHORITY FOR GRANT/ COOPERATIVE AGREEMENT

Sections 22104 and 22305 of the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58 (2021); 49 U.S.C. § 22909 / Advanced Appropriation in the IIJA, Division J, Title VIII, Public Law 117-58 (2021)

15. REMARKS

GRANTEE ACCEPTANCE

AGENCY APPROVAL

16. NAME AND TITLE OF AUTHORIZED GRANTEE OFFICIAL

Mr. Jim Ubert

City Engineer

18. NAME AND TITLE OF AUTHORIZED FRA OFFICIAL

Ms. Karla Maffett

Regional Manager

17. SIGNATURE OF AUTHORIZED GRANTEE OFFICIAL

Electronically Signed

17A. DATE

11/12/2024

19. SIGNATURE OF AUTHORIZED FRA OFFICIAL

Electronically Signed

19A. DATE

11/14/2024

AGENCY USE ONLY

20. OBJECT CLASS CODE: 41010

21. ORGANIZATION CODE: 9000000000

22. ACCOUNTING CLASSIFICATION CODES

DOCUMENT NUMBER	FUND	BY	BPAC	AMOUNT
69A36525420300RCEKS	27X0760722	2025	10030503AA	601,000.00

AWARD ATTACHMENTS

Emporia, City of

69A36525420300RCEKS

1. Attachment 1, General Terms and Conditions
2. Attachment 2, Project-Specific Terms and Conditions
3. Attachment 3, Exhibits

Attachment 1

GENERAL TERMS AND CONDITIONS

Revision Date: October 1, 2024

General Terms and Conditions

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ATTACHMENT 1

This Grant Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the Recipient identified in Attachment 2: Project-Specific Terms and Conditions. This Agreement, including the Agreement cover sheet, this Attachment 1, Attachment 2, and Exhibits A–C, constitutes the entire Agreement between FRA and the Recipient regarding the Project as defined in Attachment 2. All prior discussions and understandings concerning the scope and subject matter of this agreement are superseded by this Agreement.

This Agreement is governed by and subject to 2 C.F.R. part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards, and the U.S. Department of Transportation (USDOT) implementing regulations at 2 C.F.R. part 1201.

ARTICLE 1: TERMS AND CONDITIONS

1.1 General Terms and Conditions

This Attachment 1: General Terms and Conditions, is part of the Agreement between FRA and the Recipient. This Attachment 1 contains the standard terms and conditions governing the administration of this Agreement and the execution of the Project. The General Terms and Conditions incorporate by reference the information contained in Attachment 2 and the Exhibits to this Agreement.

1.2 Project-Specific Terms and Conditions

Attachment 2: Project-Specific Terms and Conditions, is part of the Agreement between FRA and the Recipient. Attachment 2 contains Project-Specific Terms and Conditions, which may include special terms and conditions.

1.3 Program-Specific Clauses

Article 26 of this Attachment 1 contains the applicable program-specific clauses. The Recipient will comply with the program-specific clauses below that are associated with the grant program identified in Attachment 2 of this Agreement. In the event that the Recipient's grant is not authorized under a program listed below, Article 26 does not apply.

- (a) For Projects funded under the Interstate Rail Compacts program (49 U.S.C. § 22910), the Recipient will comply with the program-specific clauses in Article 26.1.
- (b) For Projects funded under the Railroad Crossing Elimination program (49 U.S.C. § 22909), the Recipient will comply with the program-specific clauses in Article 26.2.
- (c) For Projects funded under the Consolidated Rail Infrastructure and Safety Improvements program (49 U.S.C. § 22907), the Recipient will comply with the program-specific clauses in Article 26.3.
- (d) For Projects funded under the Restoration and Enhancement program (49 U.S.C. § 22908), the Recipient will comply with the program-specific clauses in Article 26.4.

(e) For Projects funded under the Federal-State Partnership for Intercity Passenger Rail program (49 U.S.C. § 24911) and Federal-State Partnership for State of Good Repair (as authorized in Sections 11103 and 11302 of the Passenger Rail Reform and Investment Act of 2015 (Title XI of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94 (2015))), the Recipient will comply with the program-specific clauses in Article 26.5.

1.4 Exhibits

Exhibits A–C are part of the Agreement between FRA and the Recipient. The Recipient will comply with Exhibits A–C.

ARTICLE 2: FRA ROLE AND RESPONSIBILITIES

2.1 FRA Role

(a) FRA is responsible for funding disbursements to the Recipient under this Agreement. FRA will also conduct oversight and monitoring activities to assess Recipient progress against established performance goals and to assess compliance with terms and conditions, including the Statement of Work and other requirements of this Agreement.

(b) If this award is made as a Cooperative Agreement, FRA will have substantial programmatic involvement. Substantial involvement means that, after award, technical, administrative, or programmatic staff will assist, guide, coordinate, or otherwise participate with the Recipient in Project activities.

(c) If this award is made as a Grant, FRA will not have substantial programmatic involvement.

2.2 FRA Professional Staff

FRA may provide professional staff to review work in progress, completed products, and to provide or facilitate access to technical assistance when it is available, feasible, and appropriate. FRA professional staff may include the following:

(a) Financial Analyst. The Financial Analyst will serve as the Recipient's point of contact for systems (e.g., Grant Solutions and the Delphi e-Invoicing System) access and troubleshooting as well as for financial monitoring.

(b) Grant Manager. The Grant Manager will serve as the Recipient's point of contact for grant administration and will oversee compliance with the terms and conditions in this Agreement. The Grant Manager reviews financial reports, performance reports, and works with the Project Manager to facilitate effective Project delivery.

(c) Project Manager. The Project Manager will serve as the Recipient's point of contact for the technical aspects of Project delivery. The Project Manager coordinates Project deliverable review, provides technical assistance to the Recipient, and generally assesses Project progress and performance.

ARTICLE 3: RECIPIENT ROLE

3.1 Representations and Acknowledgments on the Project

(a) The Recipient represents that:

- (1) all material statements of fact in the Application were accurate when the Application was submitted and now; and
- (2) the Recipient read and understands the terms and conditions in Attachment 1 and Attachment 2 of this Agreement, the applicable program-specific clauses in Article 26 of this Attachment 1, and the information and conditions in the Exhibits.

(b) The Recipient acknowledges that:

- (1) the terms and conditions impose obligations on the Recipient and that the Recipient's non-compliance with the terms and conditions may result in remedial action, including terminating the Agreement, disallowing costs incurred for the Project, requiring the Recipient to refund Federal contributions to FRA, and reporting the non-compliance in the Federal-government-wide integrity and performance system. Recipient acknowledges that the terms and conditions impose such obligations on the Recipient whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.
- (2) The Recipient acknowledges that the requirements of this Agreement apply to the entire Project, including Project costs satisfied from sources other than Agreement Federal Funds.

(c) By entering into this Agreement with FRA, the Recipient agrees to comply with the terms and conditions in Attachment 1 and Attachment 2, including applicable program-specific clauses in Article 26 of this Attachment 1, Exhibits A–C, and all applicable Federal laws and regulations, including those identified in this Agreement. The Recipient will ensure compliance with all terms of this Agreement and all of its parts for all tiers of subawards and contracts under this Agreement, as appropriate. The Recipient understands that the terms and conditions of this Agreement apply regardless of whether the award is made as a Cooperative Agreement, Grant Agreement, or Phased Funding Agreement.

3.2 Representations on Authority and Capacity

The Recipient represents that:

- (a) it has the legal authority to receive Federal financial assistance under this Agreement;
- (b) it has the legal authority to complete the Project;
- (c) all representations and warranties made in the Federal System for Awards Management (SAM.gov) and in the Application are true and correct;

- (d) it has the capacity, including legal, technical, institutional, managerial, and financial capacity, to comply with its obligations under this Agreement and complete the Project;
- (e) the Non-Federal Funds listed in Article 6 of Attachment 2 of this Agreement are committed to fund the Project;
- (f) it has sufficient funds available to ensure that equipment and infrastructure funded under this Agreement will be operated and maintained in compliance with this Agreement and applicable Federal law;
- (g) it has sufficient funds available to ensure that operations funded under this agreement are conducted in compliance with this Agreement and applicable Federal law; and
- (h) the individual executing this agreement on behalf of the Recipient has the legal authority to enter this Agreement and make the statements and certifications in this Agreement on behalf of the Recipient.

3.3 FRA Reliance

The Recipient acknowledges that:

- (a) FRA relied on statements of fact in the Application and SAM.gov to select the Project to receive this award;
- (b) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient and the Project are eligible to receive financial assistance under this Agreement;
- (c) FRA relied on statements of fact in the Application, SAM.gov, and this Agreement to determine that the Recipient has the legal authority to implement the Project; and
- (d) FRA relied on statements of fact in both the Application and this Agreement to establish the terms of this Agreement; and
- (e) FRA's selection of the Project to receive this award may have prevented awards to other eligible applicants.

3.4 Project Delivery

- (a) The Recipient will implement and complete the Project to FRA's satisfaction under the terms of this Agreement.
- (b) The Recipient will ensure that the Project is financed, constructed, operated, and maintained in accordance with all applicable Federal laws, regulations, and policies.

3.5 Rights and Powers Affecting the Project

- (a) The Recipient will not take or permit any action that deprives it of any rights or powers necessary to the Recipient's performance under this Agreement without written approval of FRA.

(b) The Recipient will act promptly, in a manner acceptable to FRA, to acquire, extinguish, or modify any outstanding rights or claims of right of others that would interfere with the Recipient's performance under this Agreement.

3.6 Notification of Changes to Key Personnel

The Recipient will notify the FRA Grant Manager in writing within 30 days of any change in key personnel who are identified in the Application, which may require an amendment to this Agreement.

ARTICLE 4: AWARD AMOUNT, OBLIGATION, AND TIME PERIODS

4.1 Federal Award Amount

Under this Agreement, FRA awards a Grant to the Recipient in the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

4.2 Federal Obligations

This Agreement obligates for the budget period the amount that is the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement.

4.3 Maximum Funding Amount

This Agreement funds the Project at the lesser amount of the Agreement Federal Funds in Article 6.1 of Attachment 2 of this Agreement, or the FRA maximum contribution percentage of the total Project cost identified in Article 6.5 of Attachment 2 of this Agreement.

4.4 Budget Period

The budget period for this award begins on the date of this Agreement and ends on the end date that is listed in Section 5 on the Agreement cover sheet. In this Agreement, "budget period" is used as defined at 2 C.F.R. § 200.1.

4.5 Period of Performance

The Period of Performance for this award is listed in Section 4 on the Agreement cover sheet. In this Agreement, "Period of Performance" is used as defined at 2 C.F.R. § 200.1.

ARTICLE 5: STATEMENT OF WORK, SCHEDULE, AND BUDGET CHANGES

5.1 Notification Requirement

The Recipient will notify the FRA Grant Manager and Project Manager by electronic correspondence within 30 days of any change in circumstances or commitments that adversely affect the Recipient's plan to complete the Project, including change in authority. In that notification, the Recipient will describe the change and what actions the Recipient has taken or plans to take to ensure completion of the Project. This notification requirement under this Section 5.1 is separate from any requirements under this Article 5 that the Recipient request an amendment to this Agreement.

5.2 Scope and Statement of Work Changes

If the Project's activities differ from the activities described in Article 4 of Attachment 2 of this Agreement, then the Recipient will notify FRA in writing of the change, which may require an amendment to this Agreement.

5.3 Schedule Changes

If one or more of the following conditions are satisfied, then the Recipient will request an amendment to this Agreement to update the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement:

- (a) a completion date for the Project or a component of the Project is listed in the Estimated Project Schedule in Section 5.2 of Attachment 2 of this Agreement and the Recipient's estimate for that milestone changes to a date that is more than six months after the date listed;
- (b) a schedule change would require the budget period to continue after the end of the budget period defined in Section 4.4; or
- (c) a schedule change would require the Period of Performance to continue after the end of the Period of Performance defined in Section 4.5. The Recipient must submit requests to extend the Period of Performance not later than 90 days before the end of the Period of Performance.

For other schedule changes, the Recipient will notify the Grant Manager in writing.

5.4 Budget Changes

- (a) The Recipient acknowledges that if the cost of completing the Project increases:
 - (1) that increase does not affect the Recipient's obligation under this Agreement to complete the Project;
 - (2) any additional funds the Recipient contributes to complete the Project are subject to the requirements of this Agreement in the same manner as the Non-Federal Funds identified in Article 6.5 of Attachment 2 of this Agreement; and
 - (3) FRA will not increase the amount of this award to address any funding shortfall.
- (b) The Recipient will notify FRA in writing if the total Project cost, as described in Table 6-A of Attachment 2 of this Agreement, amount increases, which may result in an amendment to this Agreement.
- (c) The Recipient will notify FRA in writing if the Non-Federal Funds amount decreases, which may result in an amendment to this Agreement.
- (d) For all other budget changes, the Recipient will follow the applicable procedures and document the changes in writing.

5.5 Project Cost Savings

(a) If there are Project Cost Savings, then the Recipient may notify FRA in writing of its intent to include in the Project and complete with the Project Cost Savings the additional activities within the scope of this award that are specified in the Additional Task(s) in Article 4 of Attachment 2 of this Agreement. The Recipient will complete the Additional Task(s) after FRA provides a written approval. An amendment to this Agreement is not required to proceed with the Additional Task(s).

(b) If there are Project Cost Savings, and there are not Additional Task(s) identified in Article 4 of Attachment 2 of this Agreement, then the Recipient may propose a new task that is within the scope of this award and request an amendment to add the new task to this Agreement and complete it with Project Cost Savings.

(c) In this Agreement, “**Project Cost Savings**” means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA’s satisfaction, the actual Project costs are less than the estimated total Project costs. There are no Project Cost Savings prior to completion of the Project or if the actual costs to complete the Project are equal to or greater than the total Project cost listed in Section 6.5 of Attachment 2 of this Agreement.

(d) If there are Project Cost Savings and either the Recipient does not make a proposal or FRA does not accept the Recipient’s proposal under (a) of this Section 5.5, then:

(1) The Recipient will provide written notice to FRA and reduce the Federal Share by the Project Cost Savings, which may result in an amendment to this Agreement; and

(2) If the reduced Federal Share reduces this award and the Recipient received reimbursed costs exceeding the appropriate amount under the reduced award, the Recipient will refund the difference between the reimbursed costs and the reduced award.

(e) In this Agreement, “Federal Share” means the sum of the Agreement Federal Funds and Other Federal Funds amounts that are identified in the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement.

(f) The Recipient acknowledges that amounts that are required to be refunded under this Section constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

5.6 FRA Acceptance of Changes

FRA may accept or reject changes requested under this Article 5, and in doing so may elect to consider only the interests of the grant program and FRA. The Recipient acknowledges that any request under this Article 5 does not amend, modify, or supplement this Agreement unless FRA

accepts the request and the parties amend this Agreement under Section 15.1 of this Attachment 1.

ARTICLE 6: GENERAL REPORTING TERMS

6.1 Alternative Reporting Methods

FRA may establish processes for the Recipient to submit reports required by this Agreement, including electronic submission processes. If the Recipient is notified of those processes in writing, the Recipient will use the processes required by FRA.

6.2 Paperwork Reduction Act Notice

Under 5 C.F.R. § 1320.6, the Recipient is not required to respond to a collection of information that does not display a currently valid control number issued by the Office of Management and Budget (OMB). Notwithstanding any other term of this Agreement, the due date for any information collections required under this Agreement, including the reporting requirements in Articles 7 and 8, is the later of (1) the due date stated with the requirement and (2) the 30th day after OMB approves that information collection.

ARTICLE 7: PROGRESS AND FINANCIAL REPORTING

7.1 Quarterly Project Progress Reports and Recertifications

(a) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a complete FRA Form 34¹ Quarterly Project Progress Report and Recertification that contains, for the previous quarter:

- (1) a certification that the Recipient is in compliance with 2 C.F.R. § 200.303 (Internal Controls) and 2 C.F.R. part 200, Subpart F (Audit Requirements);
- (2) the certification required under 2 C.F.R. § 200.415(a); and
- (3) a certification that the Recipient is complying with any environmental mitigation commitments and Section 106 compliance obligations.

If the date of this Agreement is in the final month of a quarter, then the Recipient will submit the first Quarterly Project Progress Report and Recertification in the quarter that begins after the date of this Agreement.

(b) On or before the 30th day of the first month of each quarter and until the end of the Period of Performance, the Recipient will submit to FRA through GrantSolutions a Federal Financial Report (SF-425) covering the previous quarter.

¹ FRA Form 34 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

7.2 Final Progress Reports and Financial Information

No later than 120 days after the end of the Period of Performance, the Recipient will submit:

- (a) a final Quarterly Project Progress Report and Recertification in the format and with the content described in Section 7.1(a) of this Attachment 1 for each Quarterly Project Progress Report and Recertification;
- (b) a final SF-425 through GrantSolutions;
- (c) a Final Performance Report FRA Form 33 as provided by FRA² ; and
- (d) any other information required under FRA's award closeout procedures.

7.3 Real Property Reporting

The Recipient will comply with the reporting obligations in 2 C.F.R. § 200.330, as directed by FRA.

ARTICLE 8: PERFORMANCE MEASUREMENT AND REPORTING

8.1 Baseline Performance Measurement

Within one year before the start of work on the Project, the Recipient will collect baseline data for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement. Within six months of the start of the Period of Performance, the Recipient will submit to FRA a Baseline Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure. The Recipient will also provide FRA access to the data collected in machine-readable format.

8.2 Post-Project Performance Measurement

For each performance measure that is listed in Article 7 of Attachment 2 of this Agreement, the Recipient will collect data and submit to FRA a Post-Project Performance Measurement Report that describes the data collected, the dates when the data were collected, the data sources, assumptions, variability, and estimated levels of precision for each performance measure, at the frequency and for the duration identified in Article 7 of Attachment 2 of this Agreement. The Recipient will also provide FRA access to the data collected in machine-readable format. If an external factor affects a performance measure, the Recipient will identify that external factor in the Post-Project Performance Measurement Report and discuss the external factor's influence on the performance measure. In the Post-Project Performance Report, the Recipient will compare the actual project performance against the pre-project (baseline) performance and expected post-project performance as described in Table 7-A of Attachment 2 of this Agreement.

²FRA Form 33 is available at <https://railroads.dot.gov/grant-administration/reporting-requirements/fra-reports>

8.3 Project Outcomes Report

Where indicated in Article 7 of Attachment 2 of this Agreement, the Recipient will submit to FRA, not later than January 31st of the year that follows the final year during which data were collected, a Project Outcomes Report that contains:

- (a) an analysis of the impacts of the Project, including a comparison of the baseline performance measurement data collected under Section 8.1 of this Attachment 1 with the post-project performance measurement data that the Recipient reported in the final Post-Project Performance Measurement Report required under Section 8.2 of this Attachment 1;
- (b) for each performance measure that is identified in Article 7 of Attachment 2 of this Agreement, an analysis of the accuracy of the projected outcome; and
- (c) all data collected under Sections 8.1 and 8.2 of this Attachment 1;
- (d) additional information as directed.

8.4 General Performance Measurement Requirements

The Recipient will ensure that all data collection for each performance measure identified in Article 7 of Attachment 2 of this Agreement is completed in a manner consistent with the description, location, and other attributes associated with that performance measure.

8.5 Outcome Measurement and Reporting Survival

The data collection and reporting requirements in Article 8 of this Attachment 1 survive the termination of this Agreement. FRA may consider the Recipient's compliance with this requirement after closeout of the grant in its evaluation of future applications for Federal financial assistance.

ARTICLE 9: NONCOMPLIANCE AND REMEDIES

9.1 Noncompliance Determinations

- (a) Notice of Proposed Determination. If FRA determines that the Recipient may have failed to comply with the United States Constitution, Federal law, or the terms and conditions of this Agreement, FRA will notify the Recipient of a proposed determination of noncompliance through a written notice that:
 - (1) explains the noncompliance;
 - (2) describes a proposed remedy that is consistent with Section 9.2 of this Attachment 1;
 - (3) describes the process and form in which the Recipient may respond to the notice that is consistent with Section 9.1(b) of this Attachment 1; and

(4) if applicable, provides the Recipient an opportunity to cure the noncompliance or take corrective action.

(b) Response to Notice of Proposed Determination. The Recipient may, not later than 7 days after receiving the notice of proposed determination of noncompliance, respond to that notice in the form and through the process described in that notice. In its response, the Recipient may:

- (1) accept the proposed remedy;
- (2) acknowledge the noncompliance, but propose an alternative remedy;
- (3) acknowledge the noncompliance and agree to cure or take corrective action;
or
- (4) dispute the noncompliance.

To dispute the noncompliance, the Recipient must include in its response sufficient documentation or other information supporting the Recipient's compliance.

(c) Notice of Final Determination. After considering the Recipient's response or failure to timely respond under Section 9.1(b) of this Attachment 1, FRA will make a final determination. To make a final determination, FRA must provide a written notice to the Recipient that:

- (1) states what the final determination is (e.g., noncompliance or compliance);
- (2) states the basis for the final determination; and
- (3) describes the remedy that FRA is imposing, if applicable, or if FRA is not imposing a remedy, describes the resolution to the proposed determination of noncompliance, including whether the Recipient has cured or corrected the noncompliance.

(d) If FRA determines the noncompliance is one that cannot be addressed while work on the Project is ongoing, in the notice of proposed determination or in the notice of final determination, FRA will direct the Recipient to stop work. The Recipient will stop work and will direct any Subrecipients or contractors to stop work immediately upon receipt of a notice to stop work from FRA.

(e) FRA may consider the public interest in making a determination of noncompliance and imposing a remedy.

9.2 Remedies

(a) If FRA makes a final determination of noncompliance under Section 9.1(c) of this Attachment 1, FRA may impose a remedy, including:

- (1) additional conditions on the award;
- (2) requiring the Recipient to prepare and implement a corrective action plan;

- (3) directing the Recipient to stop work;
- (4) any remedy permitted under 2 C.F.R. §§ 200.339–200.340, including withholding of payments ; disallowance of previously reimbursed costs, requiring refunds from the Recipient to FRA; suspension or termination of the award; or suspension and disbarment under 2 C.F.R. part 180; or
- (5) any other remedy legally available.

(b) The Recipient acknowledges that any amounts FRA requires the Recipient to refund to FRA under this Section 9.2 constitute a debt to the Federal Government that FRA may collect under 2 C.F.R. § 200.346 and the Federal Claims Collection Standards (31 C.F.R. parts 900–999).

(c) Other Remedies. The termination authority under Article 10 of this Attachment 1 supplements and does not limit FRA’s remedial authority under this Article 9 or 2 C.F.R. part 200, including 2 C.F.R. §§ 200.339-200.240. FRA reserves the right to seek any appropriate remedy or otherwise enforce the terms and conditions of this Agreement as authorized by law.

9.3 Other Oversight Entities

Nothing in Article 9 of this Attachment 1 limits any party’s authority to report activity under this agreement to the United States Department of Transportation Inspector General or other appropriate oversight entities.

ARTICLE 10: AGREEMENT SUSPENSION AND TERMINATION

10.1 Suspension of Award Activities

(a) If FRA determines that the remedy for noncompliance imposed under Article 9 of this Agreement does not achieve the desired result or is unlikely to improve compliance or performance, FRA may suspend activities under this Agreement pending corrective action by the Recipient or termination.

(b) If FRA suspends activities under this Agreement, FRA will notify the Recipient in writing of the following, which may be included in the determinations of non-compliance under Section 9.1 of this Attachment 1:

- (1) what project activities, if any, will take place during the period of suspension;
- (2) what costs FRA will reimburse if the suspension is lifted and the award resumed;
- (3) what corrective actions must occur during the suspension; and
- (4) FRA’s intent to terminate the award under this Article 10 if the Recipient does not meet the conditions of the remedial action.

(c) The duration of the temporary suspension of activities under the Agreement should be commensurate with the corrective action needed, but should not exceed 120 days at the outset. If the Recipient is not making sufficient progress in correcting the noncompliance, FRA must consider both financial and programmatic requirements in determining the appropriate extension to avoid the need for termination.

10.2 FRA Termination

(a) FRA may terminate this Agreement and all its obligations under this Agreement if any of the following occurs:

- (1) the Recipient fails to obtain or contribute the required Non-Federal Funds, or alternatives approved by FRA, as provided in this agreement and consistent with Article 6 of Attachment 2 of this Agreement;
- (2) the Recipient fails to meet a milestone by six months after the completion date listed in Article 5 of Attachment 2 of this Agreement and the Recipient fails to request an amendment to this Agreement pursuant to Section 5.3 of this Attachment 1;
- (3) the Recipient fails to comply with the terms and conditions of this Agreement;
- (4) there are changes to the Project that FRA determines are inconsistent with FRA's basis for selecting the Project to receive the award; or
- (5) FRA determines that termination of this Agreement is in the public interest.

(b) The Recipient may request that FRA terminate the Agreement, which may result in FRA determining noncompliance and imposing remedies pursuant to Article 9 of this Attachment 1.

10.3 Closeout Termination

- (a) This Agreement terminates on Project Closeout.
- (b) In this Agreement, "Project Closeout" means the date that FRA notifies the Recipient that the award is closed out. Under 2 C.F.R. § 200.344, Project Closeout should occur no later than one year after the end of the Period of Performance.

10.4 Post-Termination Adjustments

The Recipient acknowledges that under 2 C.F.R. §§ 200.345–200.346, termination of this Agreement does not extinguish FRA's authority to disallow costs, including costs that FRA reimbursed before termination, and recover funds from the Recipient.

10.5 Non-Terminating Events

- (a) The end of the budget period described under Section 4.4 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

(b) The end of the Period of Performance described under Section 4.5 of this Attachment 1 does not terminate this Agreement or the Recipient's obligations under this Agreement.

ARTICLE 11: MONITORING, FINANCIAL MANAGEMENT, CONTROLS, AND RECORDS

11.1 Recipient Monitoring and Record Retention

(a) The Recipient will monitor activities under this award, including activities under subawards and contracts, to ensure:

- (1) that those activities comply with this agreement; and
- (2) that funds provided under this award are not expended on costs that are not allowable under this award or not allocable to this award.

(b) If the Recipient makes a subaward under this award, the Recipient will monitor the activities of the Subrecipient in compliance with 2 C.F.R. §200.332(e).

(c) The Recipient will retain and provide access to records relevant to the award during the course of the Project and for three years after closeout or longer, as required under 2 C.F.R. § 200.334.

(d) The Recipient will adhere to the recording and recordkeeping requirements set forth in 2 C.F.R. §§ 200.334–200.338. Project Closeout does not alter these requirements.

11.2 Financial Records and Audits

(a) The Recipient will keep all Project accounts and records that fully disclose the amount and disposition by the Recipient of the award funds, the total cost of the Project, and the amount or nature of that portion of the cost of the Project supplied by other sources, and any other financial records related to the Project.

(b) The Recipient will keep accounts and records described under Section 11.2(a) of this Attachment 1 in accordance with a financial management system that meets the requirements of 2 C.F.R. §§ 200.302–200.307 and 2 C.F.R. part 200, subpart F and will facilitate an effective audit in accordance with 31 U.S.C. §§ 7501–7506.

(c) The Recipient will separately identify expenditures under the award in financial records required for audits under 31 U.S.C. §§ 7501–7506. Specifically, the Recipient will:

- (1) list expenditures separately on the schedule of expenditures of Federal awards required under 2 C.F.R. part 200, subpart F, including the fiscal year in the format "FY 202X" in the program name; and
- (2) list expenditures on a separate row under Part II, Item 1 (Federal Awards Expended During Fiscal Period) of Form SF-SAC, including "FY 202X" in Column C (Additional Award Identification).

(d) If the Recipient expends \$1,000,000 or more in Federal awards during the Recipient's fiscal year, a single or program audit will be conducted for that year, consistent with 2 C.F.R. §§ 200.501(a) and 200.512(c).

11.3 Internal Controls

The Recipient will establish and maintain internal controls as required under 2 C.F.R. § 200.303.

11.4 FRA Record Access

FRA may access Recipient records related to this award under 2 C.F.R. § 200.337.

11.5 Site Visits

FRA may conduct site visits to review Project activities, accomplishments, and management control systems and to provide technical assistance to the Recipient. The Recipient will provide or ensure reasonable, safe, and convenient access to FRA for any such site visit. FRA will conduct all site visits in such a manner as will not unduly delay work conducted by the Recipient, Subrecipient, or contractor.

ARTICLE 12: CONTRACTING AND SUBAWARDING

12.1 Buy America

(a) For infrastructure projects, steel, iron, manufactured goods, and construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act (Buy American Act), Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(b) For all other projects, the Recipient's acquisition of steel, iron, and manufactured goods with funding provided through this Agreement is subject to the requirements set forth in the Buy American Act, 41 U.S.C. §§ 8301-8305. The Recipient also represents that it has never been convicted of violating the Buy American Act nor will it make funding received under this Agreement available to any person or entity who has been convicted of violating the Buy American Act.

(c) Under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(d) Under 2 C.F.R. § 200.322, the Recipient should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders f under this award.

12.2 Small and Disadvantaged Business Requirements

The Recipient will expend all funds under this award in compliance with the requirements at 2 C.F.R. § 200.321 (Contracting with small businesses, minority businesses, women's business enterprises, veteran-owned businesses, and labor surplus area firms).

12.3 Engineering and Design Services [Reserved]

12.4 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Recipient acknowledges that Section 889 of Pub. L. No. 115-232 and 2 C.F.R. § 200.216 prohibit the Recipient and all Subrecipients from procuring or obtaining certain telecommunications and video surveillance equipment or services under this award.

12.5 Pass-Through Entity Responsibilities

(a) If the Recipient makes a subaward under this award, the Recipient will comply with the requirements for pass-through entities under 2 C.F.R. parts 200 and 1201, including 2 C.F.R. §§ 200.331–200.333, regardless of whether the Recipient is also a Pass-Through Entity as defined in 2 C.F.R. § 200.1.

(b) The Recipient will report any subaward obligation of \$30,000 or more in Federal funds in USASpending.gov consistent with the Federal Funding Accountability and Transparency Act, Pub. L. 109-282.

(c) The Recipient is accountable for performance under this award, the appropriate expenditure of funds, and other requirements under this Agreement. The Recipient is responsible for any non-compliance under the award and for compliance with any remedies imposed.

12.6 Local Hiring Preference for Construction Jobs

Under Section 25019 of the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, div. B, tit. V (2021), a Recipient or Subrecipient may implement a local or other geographical or economic hiring preference relating to the use of labor for construction of a project funded by this grant if funded under title 49 or 23 United States Code, including prehire agreements, subject to any applicable State and local laws, policies, and procedures. The use of such a local or other geographical or economic hiring preference in any bid for a contract for the construction of a project funded by this grant shall not be considered to unduly limit competition. Project labor agreements should be consistent with the definition and standards outlined in Executive Order 13502. The Recipient will document its consideration of Local Hiring Preference for Construction Jobs related to the Project in Article 11 of Attachment 2 of this Agreement. For additional information, see <https://www.transportation.gov/sites/dot.gov/files/2023-05/Creating-Local-Construction-Workforce.pdf>.

12.7 Procurement

The Recipient may acquire property, goods, or services in connection with the Project. If the Recipient is a State or Indian Tribe, then it will follow the same policies and procedures it uses

for procurements with non-Federal funds in compliance with 2 C.F.R. § 200.317. A Subrecipient of a State will follow the policies and procedures allowed by that State when procuring property and services under this award consistent with 2 C.F.R. § 1201.317, notwithstanding 2 C.F.R. § 200.317. An entity that is not a State or Indian Tribe, or Subrecipient of a State or Indian Tribe, will comply with 2 C.F.R. §§ 200.318–200.327, and applicable supplementary USDOT or FRA directives and regulations. The Recipient will provide technical specifications and requirements to FRA for review upon request.

ARTICLE 13: COSTS, PAYMENTS, AND UNEXPENDED FUNDS

13.1 Limitation of Federal Award Amount

Under this award, FRA will not provide funding in an amount greater than the Agreement Federal Funds. The Recipient acknowledges that FRA is not liable for payments exceeding that amount, and the Recipient will not request reimbursement of costs exceeding that amount.

13.2 Project Costs

This award is subject to the cost principles at 2 C.F.R. part 200, subpart E, including provisions on determining allocable costs and determining allowable costs.

13.3 Timing of Project Costs

- (a) The Recipient will not charge to this award costs that are incurred after the budget period.
- (b) The Recipient will not charge to this award costs that were incurred before the date of this Agreement unless those costs are identified as approved pre-award costs in Section 6.6 of Attachment 2 of this Agreement and would have been allowable if incurred during the budget period. This limitation applies to pre-award costs under 2 C.F.R. § 200.458. This agreement hereby terminates and supersedes any previous FRA approval for the Recipient to incur costs under this award for the Project. Section 6.6 of Attachment 2 of this Agreement is the exclusive FRA approval of costs incurred before the date of this Agreement.
- (c) The Recipient may request approval of pre-award costs in a written request that demonstrates the purpose and amount of the costs, compliance with 2 C.F.R. § 200.458, and whether such costs would otherwise serve as Non-Federal Funds.

13.4 Recipient Recovery of Federal Funds

The Recipient will make all reasonable efforts, including initiating litigation, if necessary, to recover Federal funds if FRA determines, after consultation with the Recipient, that those funds have been spent fraudulently, wastefully, or in violation of Federal laws, or misused in any manner. The Recipient will not enter a settlement or other final position, in court or otherwise, involving the recovery of funds under the award unless approved in advance in writing by FRA.

13.5 Unexpended Agreement Federal Funds

Any Agreement Federal Funds that are obligated but not expended on allocable, allowable costs remain the property of the United States.

13.6 Interest Earned

Interest earned on advances of Agreement Federal Funds is not program income.

13.7 Timing of Payments to the Recipient

- (a) Reimbursement is the payment method, unless otherwise approved by FRA.
- (b) The Recipient will not request reimbursement of a cost before the Recipient has entered into an obligation for that cost.

13.8 Payment Method

- (a) The Recipient will use the DELPHI e-Invoicing System (<https://www.dot.gov/cfo/delphi-einvoicing-system.html>) to request reimbursement under this award. FRA will provide access to that system upon request by the Recipient.
- (b) FRA may deny a payment request that is not submitted using the method identified in this Section.

13.9 Information Supporting Expenditures

- (a) When requesting reimbursement of costs incurred or credit for cost share incurred, the Recipient will electronically submit the SF 270 (Request for Advance or Reimbursement) and will submit supporting cost detail to document clearly all costs incurred. As supporting cost detail, the Recipient will include a detailed breakout of all costs incurred and classify all costs by task and by Agreement Federal Funds and Agreement Non-Federal Funds.
- (b) Unless FRA and the Recipient agree otherwise in writing, the Recipient will ensure that the proportion of expenditure of Agreement Federal Funds to Agreement Non-Federal Funds is not more than the maximum percent of total Project cost FRA will contribute identified in Section 6.5 of Attachment 2 of this Agreement. The Recipient will ensure the proportional expenditure of funds is reflected in the detailed breakout of costs supporting the SF 270.
- (c) If the Recipient submits a request for reimbursement that FRA determines does not include or is not supported by sufficient detail, FRA may deny the request or withhold processing the request until the Recipient provides sufficient detail.

13.10 Reimbursement Request Timing Frequency

The Recipient will request reimbursement as needed to maintain cash flow sufficient to timely complete the Project. The Recipient will not submit any single payment request exceeding \$99,999,999.99. The Recipient will not submit a payment request exceeding \$50,000,000.00 unless the Recipient notifies FRA six days before submitting the request.

13.11 Program Income

The Recipient is encouraged to earn income to defray Project costs, where appropriate, and will work with FRA to determine how income may be applied to the grant, in accordance with 2 C.F.R. § 200.307 and 2 C.F.R. § 1201.80. Program income not deducted from total allowable costs may be used only for the purposes and under the terms and conditions established in this Agreement. The Recipient will maintain records of all program income.

ARTICLE 14: PROPERTY AND EQUIPMENT

14.1 General Requirements

The Recipient will comply with the property standards of 2 C.F.R. §§ 200.310–200.316 and will ensure compliance with these standards for all tiers of subawards and contracts under this award.

14.2 Relocation and Real Property Acquisition

The Recipient will comply with the land acquisition policies and relocation requirements in 42 U.S.C. § 4601 et seq. and 49 C.F.R. part 24, subparts A–F, as applicable. At a minimum, under this section, the Recipient will:

- (a) comply with the land acquisition policies in 49 C.F.R. part 24, subpart B and will pay or reimburse property owners for necessary expenses as specified in that subpart;
- (b) provide a relocation assistance program offering the services described in 49 C.F.R. part 24, subpart C and provide reasonable relocation payments and assistance to displaced persons as required in 49 C.F.R. part 24, subparts D–E; and
- (c) make available to displaced persons comparable replacement dwellings in accordance with 49 C.F.R. part 24.
- (d) provide to FRA a real estate acquisition and management plan prior to beginning real property acquisition if the Project is designated a Major Project in Article 1 of Attachment 2 of this Agreement, or if the total Project cost in Section 6.5 of Attachment 2 of this Agreement is greater than \$300 million and the Project is also receiving financial assistance from the Federal Transit Administration (FTA).

14.3 Use for Originally Authorized Purpose

The Recipient will ensure that property and equipment funded under this Agreement is used for the originally authorized purpose. If necessary to satisfy this obligation, the Recipient will enter into appropriate arrangements with the entity or entities using, or with the owner of right-of-way used by, the property and/or equipment funded under this Agreement.

14.4 Maintenance

The Recipient will ensure that any property, improvements to property, and any equipment funded under this Agreement are maintained in good working order and in accordance with FRA regulations, guidelines, and directives.

14.5 Real Property Disposition

In accordance with 2 C.F.R. § 200.311, when real property acquired or improved under this award is no longer used for its originally intended purpose, the Recipient will request disposition instructions from FRA.

14.6 Equipment Disposition

(a) In accordance with 2 C.F.R. §§ 200.313 and 1201.313, when equipment acquired under this award is no longer needed for the Project:

(1) if the entity that acquired the equipment is a State or a Subrecipient of a State, that entity will dispose of that equipment in accordance with State laws and procedures.

(2) if the entity that acquired the equipment is an Indian Tribe, the Indian Tribe shall dispose of that equipment in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in 2 C.F.R. 200.313; and

(3) if the entity that acquired the equipment is neither a State nor an Indian Tribe, that entity will request disposition instructions from FRA. In accordance with 2 C.F.R. § 200.313(f), FRA may permit the Recipient or Subrecipient to retain equipment.

(b) In accordance with 2 C.F.R. §200.443(d), the distribution of the proceeds from the disposition of equipment must be made in accordance with 2 C.F.R. §§ 200.313–200.316 and 2 C.F.R. § 1201.313.

14.7 Recordkeeping

The Recipient will keep records regarding the operation and maintenance of property, improvements to property, equipment, and supplies funded under this Agreement and will provide them to FRA upon request.

14.8 Encumbrance

The Recipient will not create an obligation, such as a transfer of title, lease, lien, mortgage, or encumbrance, that would dispose of or encumber the Recipient's title or other interest in property, improvements to property, equipment or supplies funded under this Agreement without prior written approval from FRA.

The Recipient will not take any action that would adversely affect FRA's interest or impair the Recipient's continuing control over the use of the property, improvements to property, equipment, or supplies funded under the Agreement without prior written approval from FRA.

ARTICLE 15: AMENDMENTS

15.1 Bilateral Amendments

The parties may amend, modify, or supplement this Agreement by mutual agreement in writing signed by FRA and the Recipient. Either party may request to amend, modify, or supplement this Agreement by written notice to the other party.

15.2 FRA Unilateral Amendments

(a) FRA may unilaterally amend this Agreement for the following reasons:

- (1) to comply with Federal law;
- (2) at closeout or in anticipation of closeout; and
- (3) other non-substantive changes, such as to correct typographical errors, as deemed appropriate by FRA.

(b) To unilaterally amend this Agreement under Section 15.3 of this Attachment 1, FRA will provide a written notice to the Recipient that includes the amendment and the date that the amendment is effective.

(c) Except at closeout or in anticipation of closeout, FRA may not unilaterally amend the Statement of Work, this Agreement's monetary amount, the delivery schedule, the Period of Performance, or other terms or conditions of this Agreement.

15.3 Other Amendments

The parties will not amend, modify, or supplement this Agreement except as permitted under Sections 15.1, 15.2, or 15.3 of this Attachment 1. If an amendment, modification, or supplement is not permitted under Section 15.1, 15.2, or 15.3 of this Attachment 1, it is void.

ARTICLE 16: CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE

16.1 Climate Change and Environmental Justice

Consistent with Executive Order 14008, "Tackling the Climate Crisis at Home and Abroad" (Jan. 27, 2021), the Recipient will document its consideration of climate change and environmental justice impacts of the Project in Article 9 of Attachment 2 of this Agreement.

ARTICLE 17: RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

17.1 Racial Equity and Barriers to Opportunity

Consistent with Executive Order 13985, "Advancing Racial Equity and Support for Underserved Communities Through the Federal Government" (Jan. 20, 2021), the Recipient will document its activities related to the Project to improve racial equity and reduce barriers to opportunity in Article 10 of Attachment 2 of this Agreement.

ARTICLE 18: LABOR AND WORK

18.1 Labor and Work

Consistent with Executive Order 14025, “Worker Organizing and Empowerment” (Apr. 26, 2021), and Executive Order 14052, “Implementation of the Infrastructure Investment and Jobs Act” (Nov. 15, 2021) (IIJA), the Recipient will document its consideration of job quality and labor rights, standards, and protections related to the Project in Article 11 of Attachment 2 of this Agreement.

18.2 OFCCP Mega Construction Project Program

If the total eligible Project costs listed in Attachment 2 of this Agreement are greater than \$35,000,000 and the Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP) selects this award for participation in the Mega Construction Project Program, then the Recipient shall partner with OFCCP, as requested by OFCCP.

ARTICLE 19: CRITICAL INFRASTRUCTURE SECURITY AND RESILIENCE

19.1 Critical Infrastructure Security and Resilience

(a) Consistent with Presidential Policy Directive 21, “Critical Infrastructure Security and Resilience” (Feb. 12, 2013), and the National Security Presidential Memorandum on Improving Cybersecurity for Critical Infrastructure Control Systems (July 28, 2021), the Recipient will consider physical and cyber security and resilience in planning, design, and oversight of the Project.

(b) If the Security Risk Designation in Section 1.3 of Attachment 2 of this Agreement is “Elevated,” then not later than two years after the date of this Agreement the Recipient will submit to FRA a report that:

- (1) identifies a cybersecurity point of contact for the transportation infrastructure being improved in the Project;
- (2) summarizes or contains a cybersecurity incident reporting plan for the transportation infrastructure being improved in the Project;
- (3) summarizes or contains a cybersecurity incident response plan for the transportation infrastructure being improved in the Project;
- (4) documents the results of a self-assessment of the Recipient’s cybersecurity posture and capabilities; and
- (5) describes any additional actions that the Recipient has taken to consider or address cybersecurity risk of the transportation infrastructure being improved in the Project.

ARTICLE 20: FEDERAL FINANCIAL ASSISTANCE, ADMINISTRATIVE, AND NATIONAL POLICY REQUIREMENTS

20.1 Uniform Administrative Requirements for Federal Awards

The Recipient will comply, and will ensure that other entities receiving funding under this agreement will comply, with the obligations on non-Federal entities under 2 C.F.R. parts 200 and 1201, regardless of whether the Recipient or other entity receiving funding under this agreement is a Non-Federal entity as defined in 2 C.F.R. § 200.1, except that subpart F of part 200 does not apply if the Recipient or Subrecipient is a for-profit entity.

20.2 Federal Law and Public Policy Requirements

(a) The Recipient will ensure that Federal funding is expended in full accordance with the United States Constitution, Federal law, and statutory and public policy requirements: including but not limited to, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination.

(b) The failure of this Agreement to expressly identify Federal law applicable to the Recipient or activities under this Agreement does not make that law inapplicable.

20.3 Federal Freedom of Information Act

(a) FRA is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552.

(b) The Recipient acknowledges that the Application and materials submitted to FRA by the Recipient related to this Agreement will become FRA records that may be subject to public release under 5 U.S.C. § 552. If the Recipient submits any materials to FRA related to this Agreement that the Recipient considers to include trade secret or confidential commercial or financial information, the Recipient should note that the submission contains confidential business information, mark each affected page, and highlight or otherwise denote the portions of the submission that contain confidential business information.

20.4 History of Performance

Under 2 C.F.R. § 200.206, any Federal awarding agency may consider the Recipient's performance under this Agreement, when assessing the risks of making a future Federal financial assistance award to the Recipient.

20.5 Whistleblower Protection

(a) The Recipient acknowledges that it is a "Recipient" within the scope of 41 U.S.C. § 4712, which prohibits the Recipient from taking certain actions against an employee for certain disclosures of information that the employee reasonably believes are evidence of gross mismanagement of this award, gross waste of Federal funds, or a violation of Federal law related to this award.

(b) The Recipient will inform its employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

20.6 External Award Terms and Obligations

(a) In addition to this document and the contents described in Article 25 of this Attachment 1, this Agreement includes the following additional terms as integral parts:

- (1) Appendix A to 2 C.F.R. part 25: System for Award Management and Universal Identifier Requirements;
- (2) Appendix A to 2 C.F.R. part 170: Reporting Subawards and Executive Compensation;
- (3) 2 C.F.R. § 175.15(b): Trafficking in Persons; and
- (4) Appendix XII to 2 C.F.R. part 200: Award Term and Condition for Recipient Integrity and Performance Matters.

(b) The Recipient will comply with:

- (1) 49 C.F.R. part 20: New Restrictions on Lobbying;
- (2) 49 C.F.R. part 21: Nondiscrimination in Federally Assisted Programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964;
- (3) 49 C.F.R. part 27: Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance; and
- (4) Subpart B of 49 C.F.R. part 32: Governmentwide Requirements for Drug-free Workplace (Financial Assistance).

20.7 Incorporated Certifications

The Recipient makes the representations in the following certifications, which are incorporated by reference:

- (a) Appendix A to 49 C.F.R. part 20 (Certification Regarding Lobbying).

ARTICLE 21: ASSIGNMENT

21.1 Assignment Prohibited

The Recipient will not transfer to any other entity any discretion granted under this Agreement, any right to satisfy a condition under this Agreement, any remedy under this Agreement, or any obligation imposed under this Agreement.

ARTICLE 22: WAIVER

22.1 Waivers

- (a) A waiver of a term of this Agreement authorized by law and granted by FRA will not be effective unless it is in writing and signed by an authorized representative of FRA.

(b) A waiver of a term of this Agreement granted by FRA on one occasion will not operate as a waiver on other occasions.

(c) If FRA fails to require strict performance of a term of this Agreement, fails to exercise a remedy for a breach of this Agreement, or fails to reject a payment during a breach of this Agreement, that failure does not constitute a waiver of that term or breach.

ARTICLE 23: ADDITIONAL TERMS AND CONDITIONS

23.1 Disclaimer of Federal Liability

FRA will not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

23.2 Environmental Review

(a) Except as authorized by law or under 23 C.F.R. § 771.113(d)(4), the Recipient will not begin final design activities; acquire real property, construction materials, or equipment, including rolling stock; begin construction; or take other actions that would have an adverse environmental impact or limit the choice of reasonable alternatives for the Project unless and until FRA complies with the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA), and any other applicable environmental laws and regulations. In addition, the Recipient will not begin project development that involves ground disturbing activity prior to FRA compliance with NEPA and any other applicable environmental laws and regulations.

(b) The Recipient acknowledges that:

(1) FRA's actions under Section 23.2(a) of this Attachment 1 may depend on the Recipient conducting necessary environmental analyses and submitting necessary documents to FRA; and

(2) applicable environmental statutes and regulations may require the Recipient to prepare and submit documents to other Federal, State, and local agencies.

(c) Consistent with 23 C.F.R. § 771.105(a), to the maximum extent practicable and consistent with Federal law, the Recipient will coordinate all environmental investigations, reviews, and consultations as a single process.

(f) The activities described in Article 4 of Attachment 2 of this Agreement and other information described in this Agreement may inform environmental decision-making processes, but the parties do not intend this Agreement to document the alternatives under consideration under those processes. If a build alternative is selected that does not align with Article 4 of Attachment 2 of this Agreement or other information in this Agreement, then FRA will either:

(1) amend this Agreement under Section 15.1 of this Attachment 1 for consistency with the selected build alternative; or

(2) if FRA determines that the condition at Section 10.1(a)(5) of this Attachment 1 is satisfied, terminate this Agreement under Section 10.1(a)(5) of this Attachment 1; or

(3) take other action as deemed appropriate by FRA.

(g) The Recipient will complete any mitigation activities described in the environmental document or documents for the Project, including the terms and conditions contained in the required permits and authorizations for the Project. Article 4 of Attachment 2 of this Agreement identifies documents describing mitigation activities, but the absence of a document from that section does not relieve the Recipient of any compliance obligations.

23.3 Project Maintenance Requirement

The Recipient will ensure that any property and equipment funded within this Agreement is operated and maintained in good operating order and in accordance with 2 C.F.R. §§ 200.310–200.316, 1201.313 and any guidelines, directives, or regulations that FRA may issue.

23.4 Appropriations Act Requirements

The Recipient will comply with applicable requirements of the appropriations act identified in Section 6.3 of Attachment 2 of this Agreement.

23.5 Standards of Conduct

The Recipient will comply with the following standards of conduct:

(a) Standards of Conduct. The Recipient will maintain a written code or standards of conduct governing the performance of its officers, employees, board members, or agents engaged in the award and administration of contracts or agreements supported by the Federal contribution provided through this Agreement. The code or standards will provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from present or potential Subrecipients or contractors. The Recipient may set minimum rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. As permitted by state or local law or regulations, such code or standards will provide for penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or agents, or by Subrecipients or their agents.

(b) Personal Conflict of Interest. The Recipient's code or standards must provide that no employee, officer, board member, or agent of the Recipient may participate in the selection, award, or administration of a contract supported by the Federal contribution if a real or apparent conflict of interest would be involved. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract.

(c) Organizational Conflicts of Interest. The Recipient's code or standards of conduct must include procedures for identifying and preventing real and apparent organizational conflicts of interests. An organizational conflict of interest exists when the nature of the work to be performed under a proposed contract, may, without some restrictions on future activities, result in an unfair competitive advantage to the contractor or impair the contractor's objectivity in performing the contract work.

(d) Existing Codes or Standards. This Section does not require the Recipient to implement a new code or standards of conduct where a state statute, or written code or standards of conduct, already effectively covers all of the required elements.

(e) Disclosure of Conflicts. The Recipient will disclose in writing any potential conflict of interest to FRA or pass-through entity.

23.6 Changed Conditions of Performance

The Recipient will notify FRA of any event that may affect its ability to perform the Project in accordance with the terms of this Agreement.

23.7 Litigation

The Recipient will notify FRA in writing of any decision pertaining to the Recipient's conduct of litigation that may affect FRA's interests in the Project or FRA's administration or enforcement of applicable Federal laws or regulations. The Recipient will inform FRA in writing before naming FRA as a party to any type of litigation for any reason in any forum.

23.8 Bipartisan Infrastructure Law Signage Guidelines

For projects funded by the Bipartisan Infrastructure Law, also known as the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021), the Recipient will ensure:

(a) signage is designed consistent with the guidelines and design specifications available at <https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf>. Signs should include the official Investing in America logo and identify the project as "funded by President Biden's Bipartisan Infrastructure Law."

(b) signage displays the FRA logo and the Recipient logo, if any, along with the official Investing in America logo. The FRA logo should not be displayed in a manner that implies FRA itself is conducting the project.

(c) where applicable, the signage includes the project name (e.g., [Name of] Project funded by President Biden's Bipartisan Infrastructure Law.)

(d) the sign is placed at construction sites where it is clearly visible near the location of work and that the sign is maintained in good condition throughout the construction period.

(e) signs on equipment are placed in an easily visible location and maintained in good condition

23.9 Equipment and Supplies

The Recipient will maintain written policies and procedures that address acquisition, classification, and management of all equipment and supplies acquired or used under this award.

23.10 Safety and Technology Data

The Recipient will ensure that FRA has access to safety and technology relevant data generated by the Recipient under the award, in a machine-readable format, where specified in Article 4 of Attachment 2 of this Agreement.

23.11 Intellectual Property

The Recipient agrees to the standard patent rights clauses issued by the Department of Commerce at 37 C.F.R. Part 401, as applicable.

23.12 Liquidation of Recipient Obligations

- (a) The Recipient will liquidate all obligations of award funds under this Agreement not later than 120 days after the end of the Period of Performance.
- (b) Liquidation of obligations and adjustment of costs under this Agreement follow the requirements of 2 C.F.R. §§ 200.344–200.346.

ARTICLE 24: CONSTRUCTION AND DEFINITIONS

24.1 Agreement

This Agreement consists of the following:

- (a) Agreement Cover Sheet
- (b) Attachment 1: General Terms and Conditions
- (c) Attachment 2: Project-Specific Terms and Conditions
- (d) Exhibit A: Applicable Federal Laws and Regulations
- (e) Exhibit B: Additional Standard Terms
- (f) Exhibit C: Quarterly Project Progress Reports and Recertifications

24.2 Construction

- (a) In these General Terms and Conditions, there are no references to articles or sections in project-specific portions of this Agreement that are not contained in Attachments or Exhibits listed in Section 24.1.
- (b) If a provision in these General Terms and Conditions or the Exhibits conflicts with a provision in the Project-Specific Terms and Conditions in Attachment 2 of this Agreement, then the relevant portion in Attachment 2 prevails. If a provision in the Exhibits conflicts

with a provision in these General Terms and Conditions, then the provision in these General Terms and Conditions prevails.

24.3 Integration

This Agreement constitutes the entire agreement of the parties relating to the Project and supersedes any previous agreements, oral or written, relating to the Project.

24.4 Definitions

This Section defines terms used in this Agreement. Additional definitions found in 2 C.F.R. § 200.1 are incorporated by reference into this Agreement.

“Agreement Federal Funds” means the total amount of Federal funds obligated under this Agreement. This is the amount shown in Section 6.1 of Attachment 2 of this Agreement.

“Application” means the application identified in Article 3 of Attachment 2 of this Agreement, including Standard Form 424 and all information and attachments submitted with that form through Grants.gov.

“Construction Substantial Completion” means the stage of the Project when all construction tasks are complete such that the Recipient can use the Project for its intended use and only closeout activities remain. Activity to address or complete closeout activities will not prevent or disrupt use of the Project.

“Contingent Commitment” means the unobligated amounts of future available budget authority specified in law that FRA commits to obligate under the terms of this Agreement.

“Federal Share” means the sum of Agreement Federal Funds and Other Federal Funds. If there are no Other Federal Funds, the Federal Share is the same as the Agreement Federal Funds.

“General Terms and Conditions” means this Attachment 1.

“Other Federal Funds” means Federal funds that are part of the Approved Project Budget in Section 6.5 of Attachment 2 of this Agreement for the Project but are not obligated under this Agreement.

“Project” means the project proposed in the Application, as modified by the negotiated provisions of this Agreement, including Attachment 2 of this Agreement.

“Project Closeout” means the date that FRA notifies the Recipient that the award is closed out. Under 2 C.F.R. § 200.344, Project Closeout should occur no later than one year after the end of the Period of Performance.

“Project Cost Savings” means the difference between the actual costs to complete the Project and the estimated total Project cost listed in Section 6.5 of Attachment 2 of this Agreement, if after the Recipient completes the tasks identified in Article 4 of Attachment 2 of this Agreement to FRA’s satisfaction, the actual Project costs are less than the estimated total Project costs.

“Rural Area” means any area that is not within an area designated as an urbanized area by the Bureau of the Census.

24.5 Calendar Dates

Unless otherwise specified, all dates and durations are in calendar days, calendar quarters, or calendar years, as appropriate.

24.6 Communication in Writing

Unless otherwise specified, all written communication may be provided by electronic mail.

ARTICLE 25: AGREEMENT EXECUTION AND EFFECTIVE DATE

25.1 Counterparts

This agreement may be executed in counterparts, which constitute one document. The parties intend each countersigned original to have identical legal effect.

25.2 Effective Date

The agreement will become effective when all parties have signed it. The date of this Agreement will be the date this Agreement is signed by the last party to sign it.

ARTICLE 26: PROGRAM-SPECIFIC CLAUSES

26.1 Interstate Rail Compacts Grant Program

The Recipient agrees to comply with the clauses in Section 26.1 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.1 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Non-Federal Match. The Recipient will provide a Non-Federal match of not less than 50 percent of the eligible expenses under the grant.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1, the Recipient will comply with the following clauses, as applicable:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under Section 26.1 of this Attachment 1, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with 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; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.1(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform

Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Operator Limitation. Recipient's eligible expenses must be related to intercity passenger rail service to be operated by Amtrak.

(i) Reporting. As requested by FRA, the Recipient will report on:

- (1) the status of the planning efforts and coordination funded by the grant award;
- (2) plans for continued implementation of the interstate rail compact;
- (3) the status of, and data regarding, any new, restored, or enhanced rail services initiated under the interstate rail compact; and
- (4) other data and information as requested by FRA.

26.2 Railroad Crossing Elimination Program Clauses

The Recipient agrees to comply with the clauses in Section 26.2 of this Attachment 1.

Consistent with 49 U.S.C. §§ 22905(e) & 22909(j), clauses (b), (c), (d), and (g) of Section 26.2 of this Agreement 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law. In addition, clause (f) does not apply to: 1) the Alaska Railroad or its contractors; or 2) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

- (1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient

acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with 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; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.2(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA's website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Impacted Rail Carrier or Real Property Owner Approvals. In accordance with 49 U.S.C. § 22909(e)(2)(A), prior to proceeding with the construction of the Project funded by this Agreement, if applicable, Recipient will obtain necessary approvals to commence construction from any impacted rail carriers or real property owners. If the Project is a planning project, as described in 49 U.S.C. § 22909(d)(6), the Recipient agrees to work collaboratively with rail carriers and right-of-way owners.

(f) Labor Protective Arrangements

(1) Notwithstanding 49 U.S.C. § 22905(e)(1), and in accordance with 49 U.S.C. § 22909(j)(3), any employee covered by the Railway Labor Act (45 U.S.C. § 151 et seq.) and the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.) who is adversely affected by actions taken in connection with the project financed in whole or in part by such grant shall be covered by employee protective arrangements required to be established under 49 U.S.C. § 22905(c)(2)(B). In accordance with 49 U.S.C. § 22905(c)(2)(B), the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404, as such protective arrangements are described in the final FRA guidance titled Equivalent Protections for Railroad Employees and effective December 28, 2022, included herein in Exhibit B.

(2) In accordance with 49 U.S.C. § 22909(j)(3), Recipient, and any successors, assigns, and contractors of Recipient:

- i. shall be bound by the employee protective arrangements required under subparagraph (1); and
- ii. shall be responsible for the implementation of such arrangements and for the obligations under such arrangements, but may arrange for another entity to take initial responsibility for compliance with the conditions of such arrangement.

(3) Labor protections required pursuant to Subsection (f) of Section 26.2 of this Attachment 1 shall be documented consistent with Article 18 of this Attachment 1.

(g) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements

negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(h) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

26.3 Consolidated Rail Infrastructure and Safety Improvements Grants Clauses

The Recipient agrees to comply with the clauses in Section 26.3 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.3 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure

constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) **Railroad Agreements.** In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with 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; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.3(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) **Labor Protective Arrangements.** In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) **Davis-Bacon and Related Acts Provisions.** In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) **Replacement of Existing Intercity Passenger Rail Service.** If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project

funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

26.4 Restoration and Enhancement Grants Clauses

The Recipient agrees to comply with the clauses in Section 26.4 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) and (c) through (g) of Section 26.4 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right-of-way and facilities under current law.

(a) Maximum Funding Limitation. A grant authorized by 49 U.S.C. § 22908 may not exceed:

- (1) 90 percent of the projected net operating costs for the first year of service;
- (2) 80 percent of the projected net operating costs for the second year of service;
- (3) 70 percent of the projected net operating costs for the third year of service;
- (4) 60 percent of the projected net operating costs for the fourth year of service;
- (5) 50 percent of the projected net operating costs for the fifth year of service;
- and
- (6) 30 percent of the projected net operating costs for the sixth year of service.

(b) Buy America. In lieu of Section 12.1 of this Agreement 1:

- (1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT, and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).
- (2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).
- (3) under Section 26.4 of this Attachment 1, "infrastructure project" has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with 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; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.4(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with

those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Route Reporting. The Recipient will provide similar information regarding the route performance, financial, and ridership projections, and capital and business plans that Amtrak is required to provide, and such other data and information as is required by Article 4 of Attachment 2 of this Agreement.

(i) Termination. In addition to the terms of this Attachment 1, FRA may terminate this Agreement upon the cessation of service, or the violation of any other term of this Agreement.

26.5 Federal-State Partnership for Intercity Passenger Rail and Federal-State Partnership for State of Good Repair Clauses

The Recipient agrees to comply with the clauses in Section 26.5 of this Attachment 1.

Consistent with 49 U.S.C. § 22905(e), clauses (b) through (g) of Section 26.5 of this Attachment 1 do not apply to: 1) commuter rail passenger transportation (as defined in 49 U.S.C. § 24102(3)) operations of a State or local government authority (as those terms are defined in 49 U.S.C. § 5302) or its contractor performing services in connection with commuter rail passenger operations; 2) the Alaska Railroad or its contractors; or 3) Amtrak's access rights to railroad right of way and facilities under current law.

(a) Federal Share. The Federal Share of total Project costs shall not exceed 80 percent.

(b) Buy America. In lieu of Section 12.1 of this Attachment 1:

(1) for infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2). For infrastructure projects, construction materials used in the Project are subject to the domestic preference requirement at § 70914 of the Build America, Buy America Act, Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298 (2021) and 2 C.F.R. part 184, as implemented by OMB, USDOT and FRA. The Recipient acknowledges that this Agreement is neither a waiver of § 70914(a) nor a finding under § 70914(b).

(2) for non-infrastructure projects, steel, iron, and manufactured products used in the Project are subject to 49 U.S.C. § 22905(a), as implemented by FRA. The

Recipient acknowledges that this Agreement is neither a waiver of 49 U.S.C. § 22905(a)(1) nor a finding under 49 U.S.C. § 22905(a)(2).

(3) under this Section, “infrastructure project” has the definition provided in 2 C.F.R. § 184.3.

(4) for all projects, the Recipient should under 2 C.F.R. § 200.322, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. The Recipient shall include the requirements of 2 C.F.R. § 200.322 in all subawards, contracts, and purchase orders under this award.

(c) Operators Deemed Rail Carriers. The Recipient recognizes and agrees that 49 U.S.C. § 22905(b) provides that persons conducting rail operations over rail infrastructure constructed or improved in whole or in part with funds provided under chapter 229 of Title 49, United States Code, will be considered a “rail carrier” as defined by 49 U.S.C. § 10102(5), for purposes of Title 49, United States Code, and any other statute that adopts that definition or in which that definition applies, including: the Railroad Retirement Act of 1974 (45 U.S.C. § 231 et seq.); the Railway Labor Act (45 U.S.C. § 151 et seq.); and the Railroad Unemployment Insurance Act (45 U.S.C. § 351 et seq.). The Recipient agrees to reflect this provision in its agreements (if any) with any entity operating rail services over such rail infrastructure.

(d) Railroad Agreements. In accordance with 49 U.S.C. § 22905(c)(1), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then Recipient represents that it has entered into a written agreement with that railroad owner, which includes: compensation for such use; assurances regarding the adequacy of infrastructure capacity to accommodate both existing and future freight and passenger operations; an assurance by the railroad that collective bargaining agreements with 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; and an assurance that Recipient complies with liability requirements consistent with 49 U.S.C. § 28103.

By signing this Agreement, Recipient certifies that the written agreement referenced in this Section 26.5(d) has been executed or is not required.

Additional guidance on compliance with the Railroad Agreements provisions is available on FRA’s website at: <https://railroads.dot.gov/elibrary/frequently-asked-questions-about-rail-improvement-grant-conditions-under-49-usc-ss-22905c1>.

(e) Labor Protective Arrangements. In accordance with 49 U.S.C. § 22905(c)(2)(B), if the Project funded by this Agreement uses rights-of-way owned by a railroad, then the Recipient will ensure compliance with the protective arrangements that are equivalent to those established under Section 504 of the Railroad Revitalization and Regulatory Reform Act of 1976, 49 U.S.C. § 22404. Such protective arrangements are included herein as Exhibit B.5.

(f) Davis-Bacon and Related Acts Provisions. In accordance with 49 U.S.C. § 22905(c)(2)(A), if the Project funded by this Agreement uses rights-of-way owned by a railroad, the Recipient will ensure compliance with the standards of 49 U.S.C. § 24312 with respect to the Project in the same manner that Amtrak is required to comply with those standards for construction work financed under an agreement made under 49 U.S.C. § 24308(a). For these purposes, wages in collective bargaining agreements negotiated under the Railway Labor Act are deemed to comply with Davis-Bacon Act requirements.

(g) Replacement of Existing Intercity Passenger Rail Service. If an intercity passenger rail transportation provider replaces Amtrak intercity passenger rail service through a Project funded by this Agreement, then such provider must comply with the provisions of 49 U.S.C. § 22905(d).

(h) Northeast Corridor Cost Allocation. For projects located on the Northeast Corridor, as that term is defined in 49 U.S.C. § 24911(a)(4), Amtrak and the public authorities providing commuter rail passenger transportation at the Project location on the Northeast Corridor must remain in compliance with 49 U.S.C. § 24905(c)(2).

(i) Interest and Financing Costs. Pursuant to 49 U.S.C. § 24911(g)(2), interest and other financing costs of efficiently carrying out a part of the Project within a reasonable time are a cost of carrying out the Project under a Phased Funding Agreement, except that eligible costs may not be more than the cost of the most favorable financing terms reasonably available for the Project at the time of borrowing. The Recipient will certify to FRA's satisfaction that the Recipient has shown reasonable diligence in seeking the most favorable financing terms.

###

Attachment 2

PROJECT-SPECIFIC TERMS AND CONDITIONS

Project-Specific Terms and Conditions

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ARTICLE 1: PROJECT-SPECIFIC DESIGNATIONS

1.1 Recipient

This Agreement (Agreement) is between the Federal Railroad Administration (FRA) and the City of Emporia (the Recipient).

1.2 Project and Purpose

The purpose of this award is to fund a FY22 Railroad Crossing Elimination grant for the Emporia Corridor Improvement Project (the Project), as described in Article 4 of this Attachment 2, to help achieve the goals identified in the Notice of Funding Opportunity for the Railroad Crossing Elimination Program, 87 Fed. Reg. 40335, July 6, 2022, that solicited applications for Federal financial assistance. FRA and the Recipient will accomplish that purpose by timely completing the Project and ensuring that this award does not substitute for non-Federal investment in the Project, except as proposed in the Application.

1.3 Program Designations

- (a) Research and Development. This award is not for research and development.
- (b) Project Size. This award is for a non-Major Project as that term is defined in FRA Guidance on Development and Implementation of Railroad Capital Projects, January 11, 2023 (Railroad Capital Projects Guidance).
- (c) Phased Funding. This award is not a phased funding agreement as further discussed in Section 6.7 of this Attachment 2.
- (d) Grant or Cooperative Agreement. This award is made as a Grant Agreement.
- (e) Security Risk. This award is for a Project that has a low security risk.
- (f) Rural Area. The information the Recipient provided to FRA, including in the Application, demonstrates this award is for a Project in a Rural Area.

ARTICLE 2: SPECIAL TERMS AND CONDITIONS

There are no special terms for this award.

ARTICLE 3: ADMINISTRATIVE INFORMATION

3.1 Application

Application Title: Emporia Corridor Improvement Project

Application Date: October 11, 2022

3.2 FRA Awarding Official

FRA Office of Railroad Development
Federal Railroad Administration
1200 New Jersey Ave, SE
Washington, DC 20590
FRA-Grants@dot.gov

3.3 Federal Award Date

The “Federal Award Date” is the effective date of this Agreement, as defined under Section 24.4 of Attachment 1 of this Agreement.

3.4 Program Name and Assistance Listings Number

For the Railroad Crossing Elimination program, the Assistance Listings Number is 20.327 and the Assistance Listings Title is Railroad Crossing Elimination.

3.5 Recipient’s Unique Entity Identifier

The Recipient’s Unique Entity Identifier, as defined at 2 C.F.R. § 25.415, is listed in Section 1B on the Agreement cover sheet.

3.6 Federal Award Identification Number

The Federal Award Identification Number is listed in Section 2 on the Agreement cover sheet as the “Agreement Number.”

ARTICLE 4: STATEMENT OF WORK

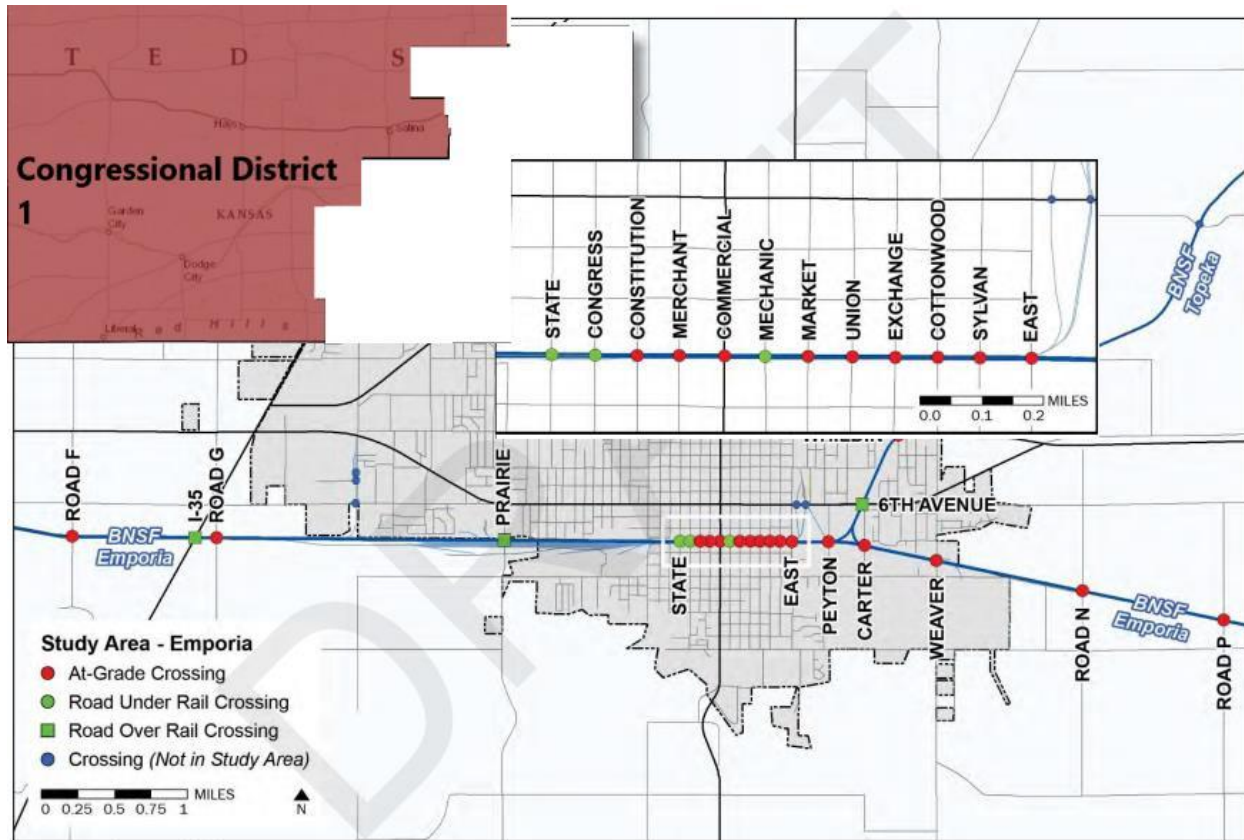
4.1 General Project Description

The City of Emporia, Kansas contains 15 crossings on a 2-mile section of the BNSF Railway (BNSF) Emporia subdivision (the Corridor). Twelve of these crossings are currently at-grade highway-rail crossings. The corridor also contains three legacy grade-separated crossings (underpasses) with vertical and horizontal roadway clearance constraints that limit tractor-trailer and Emporia Fire Department (EFD) ladder truck use. Underpasses on the corridor also lack adequate pedestrian and cyclist safety features, due primarily to limited horizontal clearances, which limits the mobility of Emporia residents.

The east-west Emporia subdivision carries 82 trains per day, or an average of one train every 18 minutes. Trains traversing the BNSF Emporia Subdivision average 8,000 feet (approx. 1.51 miles) in length, and given the two-mile stretch of the Emporia boundaries, trains occupy multiple crossings simultaneously. The City of Emporia is partnered with BNSF to complete comprehensive corridor planning activities to support the eventual project development and construction of a sealed corridor concept. Once constructed, the corridor improvements will greatly improve roadway safety and traffic flow, mitigate a physical barrier within the community, and eliminate the risk of future highway-rail grade crossing accidents/incidents along the corridor through the elimination, and improvement of multiple existing at-grade crossings.

4.2 Project Location

The 2-mile Corridor under study is located within the city limits of Emporia, Kansas, along the BNSF Emporia Subdivision. There are 15 current at-grade and grade-separated roadway and pedestrian crossings in the Project boundaries. Emporia, KS is located within Lyon County, KS, and is within Kansas' 1st Congressional District.



The current at-grade and grade-separated roadway and pedestrian crossings within the Corridor include the following:

DOT #	RR Owner and Operator	Roadway	Milepost Location (MP)	At Grade vs Grade Separated
006311W	BNSF	Weaver Street	110.56	At-Grade
006312D	BNSF	Carter Street	111.05	At-Grade
006066V	BNSF	Peyton Street	111.25	At-Grade
006067C	BNSF	East Street	111.45	At-Grade
006070K	BNSF	Sylvan Street	111.51	At-Grade

006071S	BNSF	Cottonwood Street	111.56	At-Grade
006072Y	BNSF	Exchange Street	111.62	At-Grade
006074M	BNSF	Union Street	111.67	At-Grade
006075U	BNSF	Market Street	111.73	At-Grade
006097U	BNSF	Mechanic Street	111.78	Grade-Separated
006076B	BNSF	State Highway 99 / Commercial Street	111.84	At-Grade
006077H	BNSF	Merchant Street	111.88	At-Grade
006078P	BNSF	Constitution Street	111.94	At-Grade
006079W	BNSF	Congress Street	111.99	Grade-Separated
006080R	BNSF	State Street	112.06	Grade-Separated

4.3 Project Scope

The Recipient, in partnership with BNSF, will complete planning activities that support the creation of a sealed corridor to eliminate at-grade crossings within the city limits of Emporia, KS. The Emporia Corridor Improvement Planning Project will focus on identifying and completing conceptual design(s) for grade separating select existing crossings and on identifying treatments for existing at-grade crossings for closures to improve safety, traffic flow, multimodal accommodations as well as the quality of life in Emporia, KS. The project will complete necessary pre-NEPA project development activities, including public engagement, identification of a full corridor project inventory, conceptual design, and establishment of an implementation/project phasing plan to assist with the transition of project elements through future implementation phases, including project development through PE/NEPA and FD/Construction. The objective of the Project is to complete a comprehensive corridor study that identifies the improvements necessary to create a sealed corridor concept within the City of Emporia. Detailed elements of the scope include the following:

- Alternatives analysis of design concepts to include a no-build option/alternative.
- Comprehensive, multi-format public engagement process with the public. Receive input for locally preferred alternatives at each proposed project roadway crossing closure and grade-separated overpass.
- Design of roadway closure treatments consisting of cul-de-sac or hammerhead construction at the following streets:
 - Constitution

- Merchant
 - Market
 - Union
 - Cottonwood
 - Sylvan
 - Peyton
 - Carter
- Design of utility upgrades and relocation as necessary
- Design of a new pedestrian grade-separated crossing over the tracks at Exchange St.
- Design of a new vehicular and pedestrian grade-separated crossing over the tracks at the following streets:
 - East
 - Weaver
- Review of trespasser mitigation throughout the corridor to include within the overall design.
- Feasibility review of grade separating the Commercial Street crossing vs. keeping the crossing at grade
- Crossing safety enhancement review and design at Commercial Street (K-99 Highway)
- Review of safety and structural enhancements at the existing State Street roadway underpass and include them within the overall design.
- Completing the proposed design work to support future entry into the preliminary engineering-NEPA project development phases.
- Engineer's Opinion of Probable Cost of Construction (EOPC).

The ultimate construction of the improvements to be identified in the corridor study will significantly enhance safety within the City of Emporia by reducing or potentially eliminating the number of existing highway-rail at grade crossings, enhancing pedestrian and cyclist access options through Emporia, and reducing congestion associated with queuing at at-grade crossings during the approximately 82 daily occupied crossing events.

The Recipient will notify FRA in writing of any requested changes in Project Scope and will not proceed with the changed scope unless approved by FRA in writing. If approved, changes to Project Scope may require additional environmental review or an amendment to this Agreement.

Task 1: Project Administration and Management

Subtask 1.1: Project Administration

The Recipient will perform all tasks required for the Project through a coordinated process, which will involve affected railroad owners, operators, stakeholders, and funding partners, including:

- BNSF
- Lyon County
- FRA

The Recipient will facilitate the coordination of all activities necessary for the implementation of the Project. The Recipient will:

- Participate in a Project kickoff meeting with FRA following the award;
- complete necessary steps to hire a qualified consultant/contractor to perform required Project work, as necessary;
- hold regularly scheduled Project meetings with FRA;
- inspect and approve work as it is completed; and
- participate in other coordination, as needed.

Subtask 1.2: Project Management Plan

The Recipient will prepare a Project Management Plan (PMP), that describes how the Project will be implemented and monitored to ensure effective, efficient, and safe delivery of the Project on time and within budget. The PMP will describe, in detail, the activities and steps necessary to complete the tasks outlined in this Statement of Work.

The PMP will include a Project Schedule and Project Budget for the work to be performed under this Agreement. The Project Schedule will be consistent with the Estimated Project Schedule in Section 5.2 of this Attachment 2 but provide a greater level of detail. Similarly, the Project Budget should be consistent with the Approved Project Budget in Section 6.5 of this Attachment 2 but provide a greater level of detail.

The Recipient will submit the PMP to FRA for review and approval. The Recipient will implement the Project as described in the approved PMP. The Recipient will not begin work on subsequent tasks until FRA has provided written approval of the PMP unless FRA has provided pre-award authority for such work under Section 6.6 of this Attachment 2. FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

FRA may require the Recipient to update the PMP. The Recipient will submit any such updates to FRA for review and approval, and FRA will determine if updates to the PMP require an amendment to this Agreement. The Project Budget and Project Schedule may be revised consistent with Article 5 of Attachment 1 of this Agreement without amending this Agreement.

Subtask 1.3: Project Closeout and Final Performance Report

The Recipient will submit a Final Performance Report as required by Section 7.2 of Attachment 1 of this Agreement, which should describe the cumulative activities of the Project, including a complete description of the Recipient's achievements with respect to the Project objectives and milestones.

Task 1 Deliverables:

Deliverable ID	Subtask	Deliverable Name
1.1	1.2	Project Management Plan
1.2	1.3	Final Performance Report

Task 2: Purpose & Need Statement and Stakeholder Coordination Plan

Emporia and BNSF recognize the importance of public involvement in the project planning process and its role in the overall success of a project. The public involvement process and project goals must be carefully considered before choosing the appropriate strategy. The Recipient will work to develop a Public Involvement Plan that reflects all communities impacted by the current at-grade and grade-separated roadway and pedestrian crossings in the 2-mile corridor project boundaries.

Subtask 2.1: Preliminary Purpose and Need Statement

The Recipient will develop, and submit to FRA for approval, a preliminary Purpose and Need statement to serve as the foundation for the Alternatives Analysis. The preliminary Purpose and Need is for project planning and will be subject to agency and public review and comment as part of a potential future NEPA process.

Subtask 2.2: Stakeholder Coordination Plan (Public Involvement Plan)

The Recipient will develop, and submit to FRA for approval, a Stakeholder Coordination Plan. The Stakeholder Coordination Plan will identify key contacts within agencies, civic and business groups, public officials, relevant interest groups, present and potential riders/users, private service providers/shippers, other key stakeholder groups, and the public. The Stakeholder Coordination Plan will also identify potential state, local, and Federal agencies that should be consulted with. The plan will identify involvement activities linked to key milestones in the planning/conceptual engineering and alternatives analysis process and align with the Detailed Project Schedule from Task 1.

Task 2 Deliverables:

Deliverable ID	Subtask	Deliverable Name
2.1	2.1	Preliminary Purpose & Need Statement

2.2	2.2	Stakeholder Coordination Plan (Public Involvement Plan)
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Task 3: Alternatives Analysis

The Recipient acknowledges that work on Task 3 will not commence until the Task 2 Deliverables, have been completed, and submitted to FRA, and the Recipient has received approval in writing from FRA to commence work on subsequent tasks. FRA will not reimburse the Recipient for costs incurred in contravention of this requirement.

Subtask 3.1: Public Involvement Plan/Stakeholder Coordination Plan

Following the development of a Public Involvement Plan / Stakeholder Coordination Plan, the Recipient will work to compose a draft methodology document and the draft study. The draft study will include elements of design of roadway closure treatments consisting of cul-de-sac or hammerhead construction; design of utility upgrades and relocation as necessary; design of new pedestrian grade-separated crossings; design of new vehicular and pedestrian grade-separated crossings; review of trespasser mitigation throughout the corridor to include within overall design; feasibility review of either grade separations or continuing to keep streets at-grade; crossing safety enhancement review; review of safety and structural; and completing the proposed design work to support future entry into the preliminary engineering-NEPA project development phases. Conceptual design will be prepared for elements of the project recommended for improvements to support the Final Study. The Recipient will utilize its public involvement plan to capture comments from the community on the study elements. The incorporation of these comments will be reflected in the Final Study.

Subtask 3.2: Alternatives Analysis Report

The Recipient will submit to FRA, for approval, an Alternatives Analysis report, which will determine the preliminary range of reasonable alternatives to carry forward into future project development phases. The Recipient must consider at least two alternatives which can include the no-build alternative along with one proposed alternative for each rail crossing. The Alternatives Analysis report will build upon completed and approved deliverables identified in Tasks 1 through 3. Before initiating work under task 3 the Recipient will submit to FRA, for approval, a memo documenting the methodologies to be employed in carrying out Alternative Analysis.

Subtask 3.3: Existing Conditions

The Recipient will assess the condition of current rail operations and infrastructure and other conditions within the project area. This should include information on the roadway crossing characteristics, train operations, and safety, maintenance activities, and engineering/capacity constraints of the existing facilities or infrastructure. The Recipient will identify any planned or programmed infrastructure improvements contained in state and local planning documents and check to see if rail operators have planned infrastructure enhancements. The Recipient's report on existing conditions will include an assessment of:

- **Roadway Crossing Features:** The number of highway lanes, highway speed limit, traffic flows, character of highway traffic through the railroad crossing, types of traffic control devices (including protective devices), land use, sight distance, topography, and distance to the next closest crossing. Include information on sidewalks, bicycle lanes, and public transit (if this applies).
- **Train Operations:** The number of train tracks, train speed and train traffic through the railroad crossing.
- **Safety:** The safety of the highway-rail grade crossings (including crash history, near misses, injuries, fatalities, or incidences of rail-related trespassing for each railroad crossing, if such exists), and deficiencies that hinder achieving a higher level of safety.

As part of this subtask, the Recipient will produce to FRA a previous conditions report produced in 2019 by TranSystems.

Subtask 3.4: Transportation Technical Analysis

The Recipient will conduct a transportation technical analysis of the railroad crossing. The Federal Highway Administration Scoping and Conducting Data-Driven 21st Century Transportation System Analyses (2017) [<https://ops.fhwa.dot.gov/publications/fhwahop16072/fhwahop16072.pdf>] document can be used as a reference to help scope the technical analysis. The transportation technical analysis should be completed for each alternative. General considerations for the technical analysis should include the following items listed below.

- Traffic counts per day that use the roadway now versus the traffic counts expected in the future, including any seasonal variation in traffic counts. Include pedestrian and bicycle counts if this applies.
- Determine the travel delay including the peak demand for each railroad crossing.
- Frequency and duration of roadway blockage by trains including sidewalks and bicycle lanes (if this applies) and consider peak demand for train operations.
- Discuss the direction the travel delays are occurring in (northbound, southbound, westbound, and eastbound).
- The character of the adjacent road network and whether the railroad crossing creates access issues for the community, and does this consider future development projections close to the railroad crossing? For relevant circumstances, access issues for schools and/or emergency facilities.

If the Recipient is performing a microsimulation, section 6 (pages 42-55) in the Case Studies to Develop a Highway-Rail Grade Crossing Analysis Framework Using Microsimulation (2023)¹ document should be used for guidance. Additionally, the Recipient should provide the supporting data for the technical analysis and if any traffic analysis tool(s) were used to perform the work. The Recipient will work with

¹ <https://railroads.dot.gov/elibrary/case-studies-develop-highway-rail-grade-crossing-analysis-framework-using-microsimulation>

the FRA to determine any further technical analysis and traffic simulation required to perform a thorough assessment of vehicle movements impacted by potential grade crossing changes.

Subtask 3.5: Conceptual Engineering

The Recipient will develop conceptual engineering to a level sufficient to identify necessary infrastructure improvements for each alternative. Conceptual engineering will include developing design criteria, track work concepts, structural concepts, and roadway crossing concepts for grade separation or closure, track relocation, installation of protective devices (signals, signs, other measures that improve safety), mobility enhancements, technology solutions, etc. The Recipient will coordinate with key stakeholders including FRA on this task. The conceptual engineering designs will form the basis of the Project design and construction. The scope elements should fulfill the high-level conceptual engineering requirements found in the Railroad Capital Project Guidance (2023) document section V.b.ii.D.

Subtask 3.6: Capital Cost Estimates

The objective of this task is to identify the capital cost to design, construct, and implement the proposed project. The Recipient will provide capital cost estimates for each alternative, including quantity and unit cost of each element relating to core track structures, roadway crossing enhancements, land acquisition, contingencies, and any new facilities or upgrades required for train operations.

Subtask 3.7: Preliminary Environmental Impact Analysis

The objective of this task is to identify key environmental considerations in the development of alternatives to support future lifecycle stages of the project's development. The Recipient will perform a high-level qualitative socioeconomic, cultural, human environment, and natural environmental resource inventory and preliminary effects analysis as part of the development and screening of options concurrently with tasks 3.3 and 3.4. The Recipient can use the Railroad Capital Project Guidance (2023)² document section IV.b.ii.E as a high-level reference for developing the preliminary environmental analysis.

Task 3 Deliverables:

Deliverable ID	Subtask	Deliverable Name
3.1	3.1	Public Involvement Plan/Stakeholder Coordination Plan

² <https://railroads.dot.gov/elibrary/fra-guidance-development-and-implementation-railroad-capital-project>

3.2	3.2	Alternatives Analysis Report
3.3	3.3	Existing Conditions Report (including TranSystems 2019 Study)
3.4	3.4, 3.5, 3.7	Alternative Analysis (Including Conceptual Engineering, Transportation Analysis, and Preliminary Environmental Impact Analysis)
3.5	3.64	Capital Cost Estimates (EOPC)

4.4 Implement Required Environmental Commitments

None.

ARTICLE 5: AWARD DATES AND ESTIMATED PROJECT SCHEDULE

5.1 Award Dates

Budget Period End Date: January 31, 2027

Period of Performance End Date: January 31, 2027

5.2 Estimated Project Schedule

Milestones associated with this Agreement are identified in Table 5-A: Estimated Project Schedule. The Recipient will complete these milestones to FRA's satisfaction by the Schedule Date, subject to Article 5 of Attachment 1 of this Agreement. The Recipient will notify FRA in writing when it believes it has achieved the milestone.

Table 5-A: Estimated Project Schedule

Milestone	Schedule Date
Preliminary Purpose & Need Statement	October 31, 2024
Stakeholder Coordination Plan (Public Involvement Plan)	December 01, 2024
Existing Conditions Report	June 30, 2025

Alternative Analysis (including Conceptual Engineering, Transportation Analysis, and Preliminary Environmental Impact Analysis)	November 1, 2025
Capital Cost Estimates	February 1, 2026

ARTICLE 6: AWARD AND PROJECT FINANCIAL INFORMATION

6.1 Award Amount

Agreement Federal Funds: \$601,000

6.2 Federal Obligation Information

Federal Obligation Type: Single

6.3 Federal Authorization and Funding Source.

Authorizing Statute: Sections 22104 and 22305 of the Infrastructure Investment and Jobs Act, Public Law 117-58 (November 15, 2021); 49 U.S.C. § 22909.

Appropriation: Infrastructure Investment and Jobs Act, Division J, Title VIII (Public Law 117-58 (2021)).

6.4 Funding Availability

Program funding that is obligated under this Agreement remains available until expended.

6.5 Approved Project Budget

The estimated total Project cost under this Agreement is \$1,202,000

FRA will contribute a maximum of 50% percent of the total Project cost, not to exceed the Agreement Federal Funds in Section 6.1 of this Attachment 2. FRA will fund the Project at the lesser amount of the Agreement Federal Funds or the FRA maximum contribution percentage of total Project costs.

The Recipient will contribute \$601,000 in Agreement Non-Federal Funds. Recipient's Agreement Non-Federal Funds are comprised of cash contributions in the amount of \$30,000 from the City of Emporia and \$571,000 from BNSF Railway.

The Recipient will complete the Project to FRA's satisfaction within the Approved Project Budget, subject to Article 5 of Attachment 1 of this Agreement.

Table 6-A: Approved Project Budget by Task

Task #	Task Title(s)	Agreement Federal Funds	Agreement Non-Federal Funds	Total
1	Project Administration and Management	\$60,000	\$60,000	\$120,000
2	Purpose & Need Statement and Stakeholder Coordination Plan	\$391,000	\$391,000	\$782,000
3	Alternatives Analysis	\$150,000	\$150,000	\$300,000
Total		\$601,000	\$601,000	Total Project Cost: \$1,202,000

Table 6-B: Approved Project Budget by Source

Funding Source	Total Amount	Percentage of Total Project Cost
Federal Share	\$601,000	50%
Agreement Federal Funds	\$601,000	50%
FY22 RCE Program	\$601,000	50%
Agreement Non-Federal Funds	\$601,000	50%
City of Emporia, Kansas	\$30,000	2.5%
BNSF Railway	\$571,000	47.5%

6.6 Pre-Award Costs

None. Consistent with 2 C.F.R. part 200, costs incurred before the date of this Agreement are not allowable costs under this award. FRA will neither reimburse those costs under this award nor consider them as a non-Federal cost-sharing contribution to this award.

6.7 Phased Funding Agreement

None.

ARTICLE 7: PERFORMANCE MEASUREMENT INFORMATION

Table 7-A: Performance Measurement Table identifies the performance measures that this Project is expected to achieve. These performance measures will enable FRA to assess the Recipient's progress in achieving grant program goals and objectives. The Recipient will report on these performance measures in accordance with the frequency and duration specified in Table 7-A.

Upon Project completion, the Recipient will submit reports comparing the actual Project performance of the new and or improved asset(s) against the pre-Project (baseline) performance and expected post-Project performance as described in Table 7-A. The Recipient will submit the performance measures report to the Project Manager in accordance with Table 7-A.

Table 7-A: Performance Measurement Table

Goal	Objective	Performance Measure	Description of Measure	Measurement	Reporting
Safety	<i>To create a feasible plan (including conceptual engineering and early NEPA documentation) to allow for the elimination of multiple at grad crossings that will eliminate rail interaction and incidents</i>	<i>Establishing multiple alternatives for crossing closures.</i>	<i>Prioritization of Locally Preferred Alternative to Close Select Crossings.</i>	Pre-Project (Baseline) Performance as of: October 2022 No Priorities	Frequency: Once
				Expected Post-Project Performance: Locally Preferred Alternative for Each Crossing.	Duration: At Completion of Study
Safety	<i>To create a feasible plan (including conceptual engineering and early NEPA documentation) to allow for the elimination of multiple at grad crossings that will eliminate rail interaction and incidents</i>	<i>Establishing crossing safety improvement alternatives.</i>	<i>Prioritization of Locally Preferred Alternative for Crossing Upgrades.</i>	Pre-Project (Baseline) Performance as of: October 2022 No Prioritization.	Frequency: One Time
				Expected Post-Project Performance: Locally Preferred Alternative for Each Crossing	Duration: At Completion of Study.

The Recipient will prepare a Project Outcomes Report pursuant to Section 8.3 of Attachment 1 of this Agreement.

ARTICLE 8: ENVIRONMENTAL COMPLIANCE

In accordance with the National Environmental Policy Act (NEPA; 42 U.S.C. § 4321 et seq.), other environmental statutes, related regulatory requirements, and FRA's NEPA-implementing regulations (23 C.F.R. part 771), FRA has determined that the actions funded under this Agreement as described in this Attachment 2, Article 4, Section 4.3, Tasks 1-3, are categorically excluded from detailed environmental review pursuant to 23 C.F.R. § 771.116 (c) (3). In accordance with Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108; 36 C.F.R. part 800), FRA has also determined that the actions funded under this Agreement have no potential to cause effects to historic properties. The actions do not require the use of property protected by Section 4(f) of the Department of Transportation Act (49 U.S.C. § 303; 23 C.F.R. part 774).

Categorical exclusions (CEs) are actions identified in an agency's NEPA-implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 C.F.R. § 1508.1(e). In analyzing the applicability of a CE, FRA also considered whether unusual circumstances are present that would warrant a more detailed environmental review through the preparation of an EA or EIS. In accordance with 23 C.F.R. § 771.116 (a) and (b), FRA has further concluded that no unusual circumstances exist with respect to development of the activities funded under this grant that might trigger the need for a more detailed environmental review.

Should conditions or the scope of the action change, such as the need for ground-disturbing investigations, the Recipient must notify FRA and receive written response and notice to proceed before proceeding. FRA will evaluate whether this determination remains applicable or if additional environmental review is necessary.

ARTICLE 9: CLIMATE CHANGE AND ENVIRONMENTAL JUSTICE IMPACTS

9.1 Consideration of Climate Change and Environmental Justice Impacts

This Section identifies how the Project addresses climate change and environmental justice priorities. The Recipient certifies that rows marked with “X” in the following table are accurate:

	The Project directly supports a Local/Regional/State Climate Action Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Project directly supports a Local/Regional/State Equitable Development Plan that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Project directly supports a Local/Regional/State Energy Baseline Study that results in lower greenhouse gas emissions. <i>(Identify the plan in the supporting narrative below.)</i>
	The Recipient or a Project partner used environmental justice tools, such as the EJSCREEN, to minimize adverse impacts of the Project on environmental justice communities. <i>(Identify the tool(s) in the supporting narrative below.)</i>
X	The Project supports a modal shift in freight or passenger movement to reduce emissions or reduce induced travel demand. <i>(Describe that shift in the supporting narrative below.)</i>
X	The Project utilizes demand management strategies to reduce congestion, induced travel demand, and greenhouse gas emissions. <i>(Describe those strategies in the supporting narrative below.)</i>
	The Project incorporates electrification infrastructure, zero-emission vehicle infrastructure, or both. <i>(Describe the incorporated infrastructure in the supporting narrative below.)</i>
	The Project supports the installation of electric vehicle charging stations. <i>(Describe that support in the supporting narrative below.)</i>
	The Project promotes energy efficiency. <i>(Describe how in the supporting narrative below.)</i>
	The Project serves the renewable energy supply chain. <i>(Describe how in the supporting narrative below.)</i>
	The Project improves disaster preparedness and resiliency. <i>(Describe how in the supporting narrative below.)</i>
	The Project avoids adverse environmental impacts to air or water quality, wetlands, and endangered species, such as through reduction in Clean Air Act criteria pollutants and greenhouse gases, improved stormwater management, or improved habitat connectivity. <i>(Describe how in the supporting narrative below.)</i>
	The Project repairs existing dilapidated or idle infrastructure that is currently causing environmental harm. <i>(Describe that infrastructure in the supporting narrative below.)</i>
	The Project supports or incorporates the construction of energy- and location-efficient buildings. <i>(Describe how in the supporting narrative below.)</i>

	The Project includes recycling of materials, use of materials known to reduce or reverse carbon emissions, or both. <i>(Describe the materials in the supporting narrative below.)</i>
	The Project includes other actions or attributes that address climate change and environmental justice. <i>(Describe those actions in the supporting narrative below.)</i>
	The Project does not include actions or attributes that address climate change and environmental justice but, before beginning construction of the Project, the Recipient will take relevant actions described below to address climate change and environmental justice impacts of the Project. <i>(Identify the relevant actions in the supporting narrative below.)</i>

9.2 Supporting Narrative

Modal Shift

The proposed project would provide mobility benefits to both people and goods as the reduction in at-grade train crossings will prevent idling. According to the 2022 Kansas State Rail Plan, the share of goods moved by rail in 2014 totaled 368.4 million tons, valued at \$324.1 billion, carried by 6.9 million carload units. These rail movements represent 64.7% of modal tonnage in Kansas and 58.9% of modal value in 2014. The 2022 Kansas State Rail Plan estimates that rail tonnage will increase 11.6% (0.4% annually) and 40% (1.3% annually) of goods by value from 2014 to 20240.

Emissions benefits associated with the sealed corridor and creation of multiple grade-separated crossings are anticipated due to reduced idling vehicles stopped at crossings with passing trains. The vehicle emission reductions from expected reduced idling are namely carbon dioxide, volatile organic compounds, and nitrogen oxides.

The City of Emporia will include additional details on community benefits and emissions reductions as the design of the project matures, including quantification of anticipated emissions reductions once the project inventory is produced, and analysis of air quality impacts associated with the corridor project through future environmental analysis efforts. Emporia may also seek to include potential future passenger rail operations as the result of the crossing improvements made through the city.

Demand Management Strategy

The project will focus on studying the corridor to identify and conceptually plan grade separations and crossing closures to improve safety, traffic flow and multimodal accommodations. Coordinated with this effort will be the identification of complementary improvements where feasible to benefit pedestrian and cyclist access through downtown Emporia.

ARTICLE 10: RACIAL EQUITY AND BARRIERS TO OPPORTUNITY

10.1 Efforts to Improve Racial Equity and Reduce Barriers to Opportunity

This Section identifies how the Project addresses efforts to improve racial equity and reduce barriers to opportunity. The Recipient certifies that rows marked with “X” in the following table are accurate:

	A racial equity impact analysis has been completed for the Project. <i>(Identify a report on that analysis or, if no report was produced, describe the analysis and its results in the supporting narrative below.)</i>
	The Recipient or a Project partner has adopted an equity and inclusion program/plan, or has otherwise instituted equity-focused policies related to project procurement, material sourcing, construction, inspection, hiring, or other activities designed to ensure racial equity in the overall delivery and implementation of the Project. <i>(Identify the relevant programs, plans, or policies in the supporting narrative below.)</i>
X	The Project includes physical-barrier-mitigating land bridges, caps, lids, linear parks, and multimodal mobility investments that either redress past barriers to opportunity or that proactively create new connections and opportunities for underserved communities that are underserved by transportation. <i>(Identify the relevant investments in the supporting narrative below.)</i>
X	The Project includes new or improved walking, biking, and rolling access for individuals with disabilities, especially access that reverses the disproportional impacts of crashes on people of color and mitigates neighborhood bifurcation. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Project includes new or improved freight access to underserved communities to increase access to goods and job opportunities for those underserved communities. <i>(Identify the new or improved access in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to improve racial equity and reduce barriers to opportunity. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient has not yet taken actions related to the Project to improve racial equity and reduce barriers to opportunity but, before beginning construction of the Project, the Recipient will take relevant actions described below to improve racial equity and reduce barriers to opportunity. <i>(Identify the relevant actions in the supporting narrative below.)</i>

10.2 Supporting Narrative

Barriers to Opportunity:

A sealed corridor with multiple grade-separated crossings would remove the potential for train-vehicle conflicts, which would allow emergency vehicles traveling north and south a direct connection to the regional highway network without the need to reroute. The efficiency gained through this direct connection can improve emergency vehicle response times when access to nearby US Highway 50 is required. Currently trains occupy multiple crossings simultaneously, severely limiting emergency access options over the railroad corridor during crossing events.

A sealed corridor with multiple grade-separated crossings can improve access to the residences and employers located in the northern jurisdiction of the city by providing reliable connections that would not be impeded in the event of a passing train. With the current at-grade crossings, the residences and employers located within the southern jurisdiction are virtually isolated during a train crossing event as no grade-separated facilities currently exist. This results in safety and operational impacts as users of the transportation network must reroute, which can lead to users crossing the BNSF at unsafe locations, dangerous traffic maneuvers to avoid queues, or delay users until the train passes. Residents of the Emporia community who live near the crossing disproportionately bear the burden of associated with barrier presented by the current limited grade separate options; creating additional grade separation will enhance equity throughout the community by improving access to employment and commerce centers.

New or Improved Access:

Of the 15 existing street crossings within the proposed 1.5-mile BNSF sealed corridor there are 3 existing underpasses (State St, Congress St, & Mechanic St) that have sidewalk crossings. Those 3 existing underpasses are within 1/3 mile or less of each other in distance beginning at the State Street (west end of corridor). The proposed grade separated crossings will add 3 new sidewalk crossings – 2 street crossings (with sidewalks) and 1 pedestrian bridge crossing. The proposed sidewalk crossings will add connectivity across the railroad for individuals walking, biking, and rolling access for individuals with disabilities at Weaver Street (the east end of the corridor), East Street and Exchange Street (pedestrian bridge).

ARTICLE 11: LABOR AND WORK

11.1 Efforts to Support Good-Paying Jobs and Strong Labor Standards

This Section identifies the Recipient's efforts to support good-paying jobs and strong labor standards related to the Project. The Recipient certifies that rows marked with "X" in the following table are accurate:

	The Recipient or a Project partner has adopted the use of project labor agreements in the overall delivery and implementation of the Project. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>
	The Recipient or a Project partner has adopted the use of local and economic hiring preferences in the overall delivery and implementation of the Project, subject to all applicable State and local laws, policies, and procedures. <i>(Describe the relevant provisions in the supporting narrative below.)</i>
	The Recipient or a Project partner has adopted the use of registered apprenticeships in the overall delivery and implementation of the Project. <i>(Describe the use of registered apprenticeships in the supporting narrative below.)</i>
	The Recipient or a Project partner will provide training and placement programs for underrepresented workers in the overall delivery and implementation of the Project. <i>(Describe the training programs in the supporting narrative below.)</i>
	The Recipient or a Project partner will support free and fair choice to join a union in the overall delivery and implementation of the Project by investing in workforce development services offered by labor-management training partnerships or setting expectations for contractors to develop labor-management training programs. <i>(Describe the workforce development services offered by labor-management training partnerships in the supporting narrative below.)</i>
	The Recipient or a Project partner will provide supportive services and cash assistance to address systemic barriers to employment to be able to participate and thrive in training and employment, including childcare, emergency cash assistance for items such as tools, work clothing, application fees and other costs of apprenticeship or required pre-employment training, transportation and travel to training and work sites, and services aimed at helping to retain underrepresented groups like mentoring, support groups, and peer networking. <i>(Describe the supportive services and/or cash assistance provided to trainees and employees in the supporting narrative below.)</i>
	The Recipient or a Project partner has documented agreements or ordinances in place to hire from certain workforce programs that serve underrepresented groups. <i>(Identify the relevant agreements and describe the scope of activities they cover in the supporting narrative below.)</i>

X	The Recipient or a Project partner participates in a State/Regional/Local comprehensive plan to promote equal opportunity, including removing barriers to hiring and preventing harassment on work sites, and that plan demonstrates action to create an inclusive environment with a commitment to equal opportunity, including: a. affirmative efforts to remove barriers to equal employment opportunity above and beyond complying with Federal law; b. proactive partnerships with the U.S. Department of Labor’s Office of Federal Contract Compliance Programs to promote compliance with EO 11246 Equal Employment Opportunity requirements; c. no discriminatory use of criminal background screens and affirmative steps to recruit and include those with former justice involvement, in accordance with the Fair Chance Act and equal opportunity requirements; d. efforts to prevent harassment based on race, color, religion, sex, sexual orientation, gender identity, and national origin; e. training on anti-harassment and third-party reporting procedures covering employees and contractors; and f. maintaining robust anti-retaliation measures covering employees and contractors. <i>(Describe the equal opportunity plan in the supporting narrative below.)</i>
	The Recipient has taken other actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards. <i>(Describe those actions in the supporting narrative below.)</i>
	The Recipient has not yet taken actions related to the Project to create good-paying jobs with the free and fair choice to join a union and incorporate strong labor standards but, before beginning construction of the Project, will take the relevant actions described below. <i>(Identify the relevant actions in the supporting narrative below.)</i>

11.2 Supporting Narrative

The Emporia community is well situated to complete the proposed rail crossing elimination grant by engaging with local labor in project delivery. The development of a sealed corridor project will likely spur local assignments and potential hires and subcontracts from larger Kansas contractors in the metropolitan areas of Wichita, Topeka, and Kansas City to Emporia residents.

The City of Emporia may engage disadvantaged business enterprises (DBE) and contractors with apprenticeship programs based on service providers registered within Kansas. As the project planning develops, the City of Emporia remains committed to identifying techniques and strategies to incentivize the use of local labor forces during the future project development and final/design construction phases of the sealed corridor project(s).

The City of Emporia has a Title VI Plan in place. The City of Emporia as recipients of Federal funds for programs, has given the assurance that within its daily operations, it will not discriminate against any person because of race, color, national origin, sex, age, disability, veteran or low-income status to

anyone who works, lives or plays in Emporia. Emporia has confirmed this plan with FRA, and FRA has received and warehoused a copy of the plan.



Exhibits

Revision Date: December 11, 2023

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EXHIBIT A: APPLICABLE FEDERAL LAWS AND REGULATIONS

By entering into this Agreement, the Recipient assures and certifies, with respect to this award, that it will comply with all applicable Federal laws, regulations, executive orders, policies, guidelines, and requirements as they relate to the application, acceptance, and use of Federal funds for this Project. Performance under this Agreement shall be governed by and in compliance with the following requirements, as applicable, to the type of organization of the Recipient and any applicable sub-recipients. The applicable provisions to this Agreement include, but are not limited to, the following:

GENERAL FEDERAL LEGISLATION

- a. Davis-Bacon Act - 40 U.S.C. § 3141 et seq.
- b. Federal Fair Labor Standards Act - 29 U.S.C. § 201 et seq.
- c. Hatch Act - 5 U.S.C. § 1501 et seq.
- d. Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 - 42 U.S.C. § 4601 et seq.
- e. National Historic Preservation Act of 1966 – Section 106 - 54 U.S.C. § 306108
- f. Archeological and Historic Preservation Act of 1974 - 54 U.S.C. §§ 312501–312508
- g. Native American Graves Protection and Repatriation Act - 25 U.S.C. § 3001 et seq.
- h. Clean Air Act, P.L. 90-148, as amended – 42 U.S.C. § 7401 et seq.
- i. Section 404 of the Clean Water Act, as amended - 33 U.S.C. § 1344
- j. Section 7 of the Endangered Species Act, P.L. 93-205, as amended – 16 U.S.C. § 1536
- k. Coastal Zone Management Act, P.L. 92-583, as amended – 16 U.S.C. § 1451 et seq.
- l. Flood Disaster Protection Act of 1973, Section 102(a) – 42 U.S.C. § 4012a
- m. Age Discrimination Act of 1975 - 42 U.S.C. § 6101 et seq.
- n. American Indian Religious Freedom Act, P.L. 95-341, as amended
- o. Sections 523 and 527 of the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd through 290dd-2
- p. Architectural Barriers Act of 1968 - 42 U.S.C. § 4151 et seq.
- q. Power Plant and Industrial Fuel Use Act of 1978, P.L. 100-42 - Section 403 - 42 U.S.C. § 8373
- r. Contract Work Hours and Safety Standards Act - 40 U.S.C. § 3701 et seq.
- s. Copeland Anti-kickback Act, as amended - 18 U.S.C. § 874 and 40 U.S.C. § 3145
- t. National Environmental Policy Act of 1969 - 42 U.S.C. § 4321 et seq.
- u. Wild and Scenic Rivers Act, P.L. 90-542, as amended – 16 U.S.C. § 1271 et seq.
- v. Federal Water Pollution Control Act, as amended - 33 U.S.C. §§1251–1376
- w. Single Audit Act of 1984 - 31 U.S.C. § 7501 et seq.
- x. Americans with Disabilities Act of 1990 - 42 U.S.C. § 12101 et seq.
- y. Title IX of the Education Amendments of 1972, as amended - 20 U.S.C. §§ 1681–1683 and §§ 1685–1687
- z. Section 504 of the Rehabilitation Act of 1973, as amended - 29 U.S.C. § 794
- aa. Title VI of the Civil Rights Act of 1964 - 42 U.S.C. § 2000d et seq.
- bb. Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions – 31 U.S.C. § 1352
- cc. Freedom of Information Act - 5 U.S.C. § 552, as amended
- dd. Magnuson-Stevens Fishery Conservation and Management Act – 16 U.S.C. § 1801 et seq.
- ee. Farmland Protection Policy Act of 1981 – 7 U.S.C. § 4201 et seq.
- ff. Noise Control Act of 1972 – 42 U.S.C. § 4901 et seq.
- gg. Fish and Wildlife Coordination Act of 1956 – 16 U.S.C. § 661 et seq.

- hh. Section 9 of the Rivers and Harbors Act and the General Bridge Act of 1946 - 33 U.S.C. §§ 401 and 525
- ii. Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303
- jj. Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended – 42 U.S.C. §§ 9601–9657
- kk. Safe Drinking Water Act – 42 U.S.C. §§ 300f to 300j-26
- ll. The Wilderness Act – 16 U.S.C. §§ 1131–1136
- mm. Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 – 42 U.S.C. § 6901 et seq.
- nn. Migratory Bird Treaty Act 16 U.S.C. § 703 et seq.
- oo. The Federal Funding Transparency and Accountability Act of 2006, as amended (Pub. L. 109–282, as amended by section 6202 of Public Law 110–252)
- pp. Cargo Preference Act of 1954 – 46 U.S.C. § 55305
- qq. Section 889 of the John D. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. 115-232
- rr. Efficient Environmental Reviews - 23 U.S.C. § 139
- ss. Grant Conditions – 49 U.S.C. § 22905
- tt. Build America, Buy America Act – Pub. L. No. 117-58, div. G, tit. IX, subtit. A, 135 Stat. 429, 1298

EXECUTIVE ORDERS

- a. Executive Order 11246 – Equal Employment Opportunity
- b. Executive Order 11990 – Protection of Wetlands
- c. Executive Order 11988 – Floodplain Management
- d. Executive Order 12372 – Intergovernmental Review of Federal Programs
- e. Executive Order 12549 – Debarment and Suspension
- f. Executive Order 12898 – Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- g. Executive Order 13166 – Improving Access to Services for Persons With Limited English Proficiency
- h. Executive Order 13985 – Advancing Racial Equity and Support for Underserved Communities Through the Federal Government
- i. Executive Order 14005 – Ensuring the Future is Made in All of America by All of America’s Workers
- j. Executive Order 14008 – Tackling the Climate Crisis at Home and Abroad

GENERAL FEDERAL REGULATIONS

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 C.F.R. Parts 200, 1201
- b. Non-procurement Suspension and Debarment – 2 C.F.R. Parts 180, 1200
- c. Investigative and Enforcement Procedures – 14 C.F.R. Part 13
- d. Procedures for predetermination of wage rates – 29 C.F.R. Part 1
- e. Contractors and subcontractors on public building or public work financed in whole or part by loans or grants from the United States – 29 C.F.R. Part 3
- f. Labor standards provisions applicable to contracts governing federally financed and assisted construction (also labor standards provisions applicable to non-construction contracts subject to the Contract Work Hours and Safety Standards Act) – 29 C.F.R. Part 5
- g. Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department

- of Labor (Federal and federally assisted contracting requirements) – 41 C.F.R. Parts 60 et seq.
- h. New Restrictions on Lobbying – 49 C.F.R. Part 20
- i. Nondiscrimination in Federally Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964 – 49 C.F.R. Part 21
- j. Uniform relocation assistance and real property acquisition for Federal and Federally assisted programs – 49 C.F.R. Part 24
- k. Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance – 49 C.F.R. Part 25
- l. Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance – 49 C.F.R. Part 27
- m. DOT's implementation of DOJ's ADA Title II regulations compliance procedures for all programs, services, and regulatory activities relating to transportation under 28 C.F.R. Part 35
- n. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Transportation – 49 C.F.R. Part 28
- o. Denial of public works contracts to suppliers of goods and services of countries that deny procurement market access to U.S. contractors – 49 C.F.R. Part 30
- p. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) – 49 C.F.R. Part 32
- q. DOT's implementing ADA regulations for transit services and transit vehicles, including the DOT's standards for accessible transportation facilities in Part 37, Appendix A – 49 C.F.R. Parts 37 and 38
- r. Environmental Impact and Related Procedures – 23 C.F.R. Part 771
- s. Procedures Implementing Section 4(f) of the Department of Transportation Act – 23 C.F.R. Part 774

Specific assurances required to be included in the Agreement by any of the above laws, regulations, or circulars are hereby incorporated by reference into this Agreement.

EXHIBIT B: ADDITIONAL STANDARD TERMS

EXHIBIT B.1: TITLE VI ASSURANCES**TITLE VI ASSURANCE**

Implementing Title VI of the Civil Rights Act of 1964, as amended

**ASSURANCE CONCERNING NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS AND
ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE**

(Implementing the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act, as amended)

49 C.F.R. Parts 21, 25, 27, 37 and 38

The United States Department of Transportation (USDOT)

Standard Title VI/Non-Discrimination Assurances

DOT Order No. 1050.2A

By signing and submitting the Application and by entering into this Agreement, the Recipient **HEREBY AGREES THAT**, as a condition to receiving Federal financial assistance from the Federal Railroad Administration (FRA), it is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled *Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation—Effectuation Of Title VI Of The Civil Rights Act Of 1964*);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the “Acts” and “Regulations,” respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity,” for which the Recipient receives Federal financial assistance from DOT, including FRA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted program:

1. The Recipient agrees that each “activity,” “facility,” or “program,” as defined in §§ 21.23 (b) and 21.23 (e) of 49 C.F.R. § 21 will be (with regard to an “activity”) facilitated, or will be (with regard to a “facility”) operated, or will be (with regard to a “program”) conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with the Grant and, in adapted form, in all proposals for negotiated agreements regardless of funding source:

“The Recipient, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.”

3. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
4. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
7. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

- a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
8. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
9. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the Recipient also agrees to comply (and require any sub-recipients, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing FRA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by FRA. You must keep records, reports, and submit the material for review upon request to FRA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

The Recipient gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the FRA under this Agreement. This ASSURANCE is binding on the Recipient, other recipients, sub-recipients, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the program or project funded under this Agreement.

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally assisted programs of the U.S. Department of Transportation, Federal Railroad Administration (FRA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 C.F.R. Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Recipient or FRA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or FRA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or FRA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or FRA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the



contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Specific Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Recipient will accept title to the lands and maintain the project constructed thereon in accordance with the Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (Nov. 15, 2021), 23 U.S.C. § 117 and the policies and procedures prescribed by the Federal Railroad Administration (FRA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Recipient all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto Recipient and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Recipient, its successors and assigns.

The Recipient, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Recipient will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Recipient pursuant to the provisions of Specific Assurance 7(a):

- A. The (Recipient, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:
 - 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (Recipient, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Recipient will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Recipient pursuant to the provisions of Specific Assurance 7(b):

- A. The (Recipient, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, “as a covenant running with the land”) that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (Recipient, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Recipient will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Recipient will there upon revert to and vest in and become the absolute property of Recipient and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 C.F.R. Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 C.F.R. Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 U.S.C. § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. Parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 *et seq.*).

EXHIBIT B.2: CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS -- PRIMARY COVERED TRANSACTIONS**2 C.F.R. Parts 180 and 1200**

These assurances and certifications are applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FRA approval or that is estimated to cost \$25,000 or more—as defined in 2 C.F.R. Parts 180 and 1200.

By signing and submitting the Application and by entering into this Agreement, the Recipient is providing the assurances and certifications for First Tier Participants and Lower Tier Participants, as set out below.

1. Instructions for Certification – First Tier Participants:

a. The prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "civil judgment," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers to any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment, including a civil settlement, rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust

statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FRA approval or estimated to cost \$25,000 or more - 2 C.F.R. Parts 180 and 1200)

a. The prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "civil settlement," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 C.F.R. Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a Recipient or subrecipient of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a Recipient or subrecipient of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction,” without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the System for Award Management website (<https://www.sam.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

EXHIBIT B.3: REQUIREMENTS REGARDING DELINQUENT TAX LIABILITY OR A FELONY CONVICTION UNDER ANY FEDERAL LAW

As required by sections 744 and 745 of Title VII, Division E of the Consolidated Appropriations Act, 2022, Pub. L. No. 117-103 (Mar. 15, 2022), and implemented through USDOT Order 4200.6, the funds provided under this award shall not be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to, any corporation that:

- (1) Has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, where the awarding agency is aware of the unpaid tax liability, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government; or
- (2) Was convicted of a felony criminal violation under any Federal law within the preceding 24 months, where the awarding agency is aware of the conviction, unless a Federal agency has considered suspension or debarment of the corporation and made a determination that suspension or debarment is not necessary to protect the interests of the Government.

The Recipient therefore agrees:

1. **Definitions.** For the purposes of this exhibit, the following definitions apply:

“Covered Transaction” means a transaction that uses any funds under this award and that is a contract, memorandum of understanding, cooperative agreement, grant, loan, or loan guarantee.

“Felony Conviction” means a conviction within the preceding 24 months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the United States Code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 U.S.C. 3559.

“Participant” means the Recipient, an entity who submits a proposal for a Covered Transaction, or an entity who enters into a Covered Transaction.

“Tax Delinquency” means an unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

2. **Mandatory Check in the System for Award Management.** Before entering a Covered Transaction with another entity, a Participant shall check the System for Award Management (the **“SAM”**) at <http://www.sam.gov/> for an entry describing that entity.
3. **Mandatory Certifications.** Before entering a Covered Transaction with another entity, a Participant shall require that entity to:

- (1) Certify whether the entity has a Tax Delinquency; and
- (2) Certify whether the entity has a Felony Conviction.

4 Prohibition. If

- (1) the SAM entry for an entity indicates that the entity has a Tax Delinquency or a Federal Conviction;
- (2) an entity provides an affirmative response to either certification in section 3; or
- (3) an entity's certification under section 3 was inaccurate when made or became inaccurate after being made

then a Participant shall not enter or continue a Covered Transaction with that entity unless the USDOT has determined in writing that suspension or debarment of that entity are not necessary to protect the interests of the Government.

5. Mandatory Notice to the USDOT.

- (a) If the SAM entry for a Participant indicates that the Participant has a Tax Delinquency or a Felony Conviction, the Recipient shall notify the USDOT in writing of that entry.
- (b) If a Participant provides an affirmative response to either certification in section 1, the Recipient shall notify the USDOT in writing of that affirmative response.
- (c) If the Recipient knows that a Participant's certification under section 1 was inaccurate when made or became inaccurate after being made, the Recipient shall notify the USDOT in writing of that inaccuracy.

6. Flow Down. For all Covered Transactions, including all tiers of subcontracts and subawards, the Recipient shall:

- (1) require the SAM check in section 2;
- (2) require the certifications in section 3;
- (3) include the prohibition in section 4; and
- (4) require all Participants to notify the Recipient in writing of any information that would require the Recipient to notify the USDOT under section 5.

EXHIBIT B.4: RECIPIENT POLICY TO BAN TEXT MESSAGING WHILE DRIVING

(a) *Definitions.* The following definitions are intended to be consistent with the definitions in DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009) and Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009). For clarification purposes, they may expand upon the definitions in the executive order.

For the purpose of this Term B.4, “**Motor Vehicles**” means any vehicle, self-propelled or drawn by mechanical power, designed and operated principally for use on a local, State or Federal roadway, but does not include a military design motor vehicle or any other vehicle excluded under Federal Management Regulation 102-34-15.

For the purpose of this Term B.4, “**Driving**” means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic congestion, a traffic signal, a stop sign, another traffic control device, or otherwise. It does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, “**Text messaging**” means reading from or entering data into any handheld or other electronic device (including, but not limited to, cell phones, navigational tools, laptop computers, or other electronic devices), including for the purpose of Short Message Service (SMS) texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless this practice is prohibited by State or local law. The term also does not include glancing at or listening to a navigational device that is secured in a commercially designed holder affixed to the vehicle, provided that the destination and route are programmed into the device either before driving or while stopped in a location off the roadway where it is safe and legal to remain stationary.

For the purpose of this Term B.4, the “**Government**” includes the United States Government and State, local, and tribal governments at all levels.

(b) *Workplace Safety.* In accordance with Executive Order 13513, Federal Leadership on Reducing Text Messaging While Driving (Oct. 1, 2009) and DOT Order 3902.10, Text Messaging While Driving (Dec. 30, 2009), the Recipient, subrecipients, contractors, and subcontractors are encouraged to:

(1) adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving—

(i) Company-owned or -rented vehicles or Government-owned, leased or rented vehicles; or

(ii) Privately-owned vehicles when on official Government business or when performing any work for or on behalf of the Government.

(2) Conduct workplace safety initiatives in a manner commensurate with the size of the business, such as—

(i) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and

(ii) Education, awareness, and other outreach to employees about the safety risks associated with texting while driving.

(c) *Subawards and Contracts.* To the extent permitted by law, the Recipient shall insert the substance of this exhibit, including this paragraph (c), in all subawards, contracts, and subcontracts under this award that exceed the micro-purchase threshold, other than contracts and subcontracts for the acquisition of commercially available off-the-shelf items.

EXHIBIT B.5: EQUIVALENT LABOR PROTECTIONS UNDER 49 U.S.C. 22905(c)(2)(B)

This Exhibit provides guidance on the protective arrangements equivalent to the protective arrangements established under Section 504 of the Railroad Revitalization Reform Act of 1976, with respect to employees affected by actions taken in connection with a Project financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B). Fluctuations and changes in volume or character of employment brought about solely by other causes are not within the scope of this Exhibit.

1. Definitions. Whenever used in this Exhibit, capitalized terms shall have the meanings below:

(a) “Average Monthly Compensation” means the total compensation received by a Displaced Employee or a Dismissed Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement or dismissal, divided by twelve (12). The Average Monthly Compensation shall be adjusted to reflect subsequent general wage increases.

(b) “Average Monthly Time” means the total number of hours worked by a Displaced Employee during the last twelve (12) months in which they were employed immediately preceding the date of their displacement, divided by twelve (12).

(c) “Day” means one 24-hour calendar day (including holidays and weekends) for purposes of calculating deadlines and other timeframes in this Exhibit.

(d) “Displaced Employee” means a Protected Employee who remains employed by a Railroad but, as a result of a Project, is placed in a worse position with respect to compensation and rules governing working conditions. A Protected Employee’s status as a Displaced Employee begins on the date said employee is harmed.

(e) “Dismissed Employee” means a Protected Employee who: (1) as a result of a Project, is deprived of employment with the Railroad because (i) the Railroad eliminates the Protected Employee’s position, or (ii) the Railroad eliminates another employee’s position (and that employee’s exercise of seniority rights results in the Protected Employee’s inability to secure another position by the exercise of the Protected Employee’s seniority rights); and (2) is unable to secure another position by exercise of their seniority rights. A Protected Employee’s status as a Dismissed Employee begins on the date said employee is deprived of employment.

(f) “Project” means any action financed in whole or in part with financial assistance subject to 49 U.S.C. § 22905(c)(2)(B).

(g) “Protected Employee” means an employee of a Railroad who is affected by actions taken pursuant to a Project, whether the Project is initiated by a Railroad or a Recipient. If a Railroad rearranges or adjusts its forces in anticipation of a Project with the purpose or effect of depriving an employee of benefits to which they otherwise would have become entitled under this Exhibit, then that employee is a Protected Employee under this Exhibit. An employee’s status as a Protected Employee shall continue for the duration of the applicable Protective Period. An employee who solely benefitted as a result of a Project shall not be a Protected Employee under this Exhibit.

(h) “Protective Period” means that period during which a Displaced Employee or a Dismissed Employee is provided the protections described in this Exhibit. The Protective Period begins

on the date an employee of a Railroad is displaced or dismissed and ends after six (6) years. However, the Protective Period for any particular employee shall not continue longer than the period of time the Railroad employed the employee prior to the date of their displacement or dismissal. For purposes of this Exhibit, an employee's length of service shall be determined in accordance with the provisions of Section 7(b) of the Washington Job Protection Agreement of May 1936, as amended.

(i) "Recipient" means any person or entity receiving financial assistance subject to the requirements of 49 U.S.C. § 22905(c), including grantees, subrecipients, contractors, and subcontractors.

(j) "Railroad" means (1) a railroad carrier as defined in 49 U.S.C. § 20102(3), or (2) any person deemed a rail carrier pursuant to 49 U.S.C. § 22905(b).

2. Flow Down.

(a) In accepting financial assistance for a Project, the Recipient is responsible for ensuring the compliance with the protections provided in this Exhibit. The Recipient shall make the acceptance of this Exhibit a condition of any new contract (or incorporate its terms into any existing contract by amendment) that uses funds subject to the requirements of 49 U.S.C. § 22905(c). These conditions shall apply to a Recipient, any Railroad and any contractor of any tier with which the Recipient contracts using funds subject to the requirements of 49 U.S.C. § 22905(c).

(b) The Recipient shall require in an agreement (either in a new agreement or as an amendment to an existing agreement) with a Railroad owning the right-of-way to be improved by a Project that the Railroad notify its employees (or their representatives) of the Project being funded with financial assistance subject to 49 U.S.C. § 22905(c) and the applicability of these protections.

(c) Any Railroad employee (or their representatives) may notify a Recipient of a dispute or controversy relating to the requirements of this Exhibit to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

3. Collective Bargaining Agreements.

(a) **Existing Agreements.** The rates of pay, rules, working conditions, and all collective bargaining and other rights, privileges, and benefits (including continuation of pension rights and benefits) of a Railroad's employees under applicable laws, regulations, and/or existing collective bargaining agreements shall be preserved and remain applicable unless changed by future collective bargaining agreements or applicable statutes or regulations. As applied to the regulation of subcontracting by the Railroads of a Project, the provisions of this section shall mean that a determination of whether or not such work validly may be subcontracted by a Railroad shall not be affected by the fact that the work is being financed by funds subject to the requirements of 49 U.S.C. § 22905(c)(2)(B). Nothing in this Exhibit shall be construed as depriving any Railroad employee of any rights or benefits or eliminating any obligations that such employee may have under any existing contractual or statutory arrangement, including job security agreements, protective conditions, or arrangements.

(b) **Election by Protected Employee.** Where a Protected Employee is eligible for protections under both this Exhibit and another contractual or statutory arrangement, the Protected Employee shall elect between the protection under this Exhibit and protection under such other arrangement. After

such an election, the Protected Employee shall be protected only by the arrangement that they elect. The Protected Employee shall not be entitled to any protection or benefit (regardless of whether such benefit is duplicative) under the arrangement that they do not elect. However, if the elected protection expires pursuant to the terms of the arrangement that governs the elected protection, the Protected Employee is entitled to protection under the arrangement not originally elected for the remainder, if any, of the Protective Period.

4. Change in Operations, Services, Facilities, or Equipment.

(a) **Notice.** When a Railroad contemplates a change or changes in its operations, services, facilities, or equipment as a result of a Project, which may cause the dismissal or displacement of Protected Employees or rearrangement of forces involving such employees, it shall give at least sixty (60) days' written notice of such intended changes to both Protected Employees and their duly authorized representatives (if applicable). Such notice shall contain a full and adequate description of the proposed changes, including an estimate of the number of Protected Employees of each class affected by the intended changes.

(b) **Negotiations.**

(i) **Initiation of Negotiation.** Within sixty (60) days after the Railroad issues a notice under Section 4(a) of this Exhibit, the Railroad or the Protected Employees (or their representatives) may, by written notice to the other party, request a meeting and opportunity to negotiate an agreement with respect to the application of the terms and conditions of this Exhibit. These negotiations shall commence within fourteen (14) days from the receipt of such request.

(ii) **Subject of Negotiations.** Each change to rail operations, services, facilities, infrastructure, or equipment (including rights-of-way, track, and signal and crossing systems) that may result in dismissal or displacement of Protected Employees or rearrangement of forces involving such employees shall be subject to review and negotiation by the parties, but only to the extent necessary to ensure compliance with this Exhibit. For any contemplated rearrangement of rail forces, the Railroad and the representative(s) of the Protected Employees shall agree on the method of selection of employees to be moved, and the assignment of those employees to new roles.

(c) **Arbitration.** If the Railroad and the representative(s) of the Protected Employees fail to agree within forty-five (45) days from the initial meeting and opportunity to negotiate, either party may submit the dispute for arbitration in accordance with the following procedures:

(i) **Notice & Selection of Arbitrator.** Within ten (10) days after either party has notified the other in writing of their desire to submit the dispute for arbitration, the parties shall select a neutral arbitrator. If the parties cannot agree upon the selection of said arbitrator, then the parties shall submit a request to the National Mediation Board to appoint an arbitrator. In either case, a hearing shall be scheduled no later than thirty (30) days after an arbitrator has been appointed.

(ii) **Binding Decision.** The decision of the arbitrator shall be final, binding, and conclusive and shall be rendered within thirty (30) days from the date of the commencement of the hearing of the dispute.

(iii) **Expenses.** The salary and expenses of the arbitrator shall be borne equally by the parties to the proceeding; all other expenses shall be paid by the party incurring them.

(d) **Implementation.** If a notice is issued under Section 4(a), the Railroad shall not implement such a change or changes until: (i) sixty (60) days after the notice in accordance with Section 4(a), if no party requests a meeting and opportunity to negotiate; (ii) the parties reach agreement pursuant to Section 4(b), if a party requests a meeting and opportunity to negotiate; or (iii) a referee has rendered a decision pursuant to Section 4(c).

5. Protections for Displaced Employees

(a) Displacement Allowances.

(i) **In General.** If a Displaced Employee is unable, in the normal exercise of such employee's seniority rights under existing agreements, rules and practices, to obtain a position that is compensated equal to or exceeding the compensation the Displaced Employee received in the position from which such employee was displaced, then the Displaced Employee shall, during the Protective Period, be paid a monthly displacement allowance equal to the difference between the monthly compensation received by the Displaced Employee in the position in which such employee is retained and the Average Monthly Compensation received by the Displaced Employee in the position from which such employee was displaced (the "Displacement Allowance").

(ii) **Application of Displacement Allowance.** If a Displaced Employee's compensation in that employee's retained position is less in any month in which such employee performs work than the Average Monthly Compensation, then the Displaced Employee shall be paid the difference between the current compensation and the Average Monthly Compensation. However, the Displacement Allowance shall be reduced by the Displaced Employee's time lost as a result of voluntary absences, to the extent that the Displaced Employee is not available for service equivalent to the Displaced Employee's Average Monthly Time. If, on the other hand, the Displaced Employee, in such employee's retained position, works in excess of the Average Monthly Time in any given month, then the Displaced Employee shall be additionally compensated for such excess time at the rate of pay of the employee's retained position. If a Displaced Employee fails to exercise their seniority rights to secure another position available to the employee which does not require a change in such employee's place of residence, to which the employee is entitled under the working agreement, and which carries a rate of pay and compensation exceeding those of the position that the employee elects to retain, then the Displaced Employee shall thereafter be treated for the purposes of this section as occupying the position such employee elects to decline.

(iii) **Early Expiration.** The Displacement Allowance shall cease prior to the expiration of the Protective Period in the event of the Displaced Employee's resignation, death, retirement, or dismissal for justifiable cause.

(b) **Moving Expenses.** Any Protected Employee retained in the service of a Railroad, or who is later restored to service after being entitled to receive a Dismissal Allowance, and is required to change the point of such employee's employment as a result of the Project, and within the employee's Protective Period is required to move the employee's place of residence, shall be reimbursed for all expenses of moving the employee's household and other personal effects, including travel expenses, temporary living expenses, and any actual wage loss during the time necessary to make the move, and for a reasonable time thereafter, not to exceed five (5) days.

(i) **Prior Agreement.** The exact extent of the responsibility of a Railroad under this Section and the ways and means of transportation shall be agreed upon in advance by the Railroad and the Protected Employee or their representatives.

(ii) **Exception.** Changes in residence that are not a result of a Project, which are made after the initial change and that grow out of the normal exercise of seniority rights, are not within the purview of this Section.

(iii) **Furloughed Employees.** The Railroad shall, to the same extent provided above, assume the moving expenses outlined in Section 5(b) for an employee furloughed within three (3) years after changing such employee's point of employment as a result of a Project, who elects to move their place of residence back to their original point of employment.

(iv) **Reimbursement.** A claim for reimbursement shall be paid under the provisions of this Section within sixty (60) days after it is submitted, unless disputed by the Railroad, but no claim shall be paid if presented to the Railroad more than ninety (90) days after the date on which the expenses were incurred.

(c) **Losses from Home Sale or Contract Termination.** Any Displaced Employee who is retained in the service of a Railroad (or who is later restored to service after being entitled to receive a dismissal allowance), and who is required to change the point of such employee's employment during the Protective Period as a result of a Project, is entitled to the following:

(i) **Home Sale for Less Than Fair Market Value.** If the Displaced Employee owns their place of residence in the locality from which such employee is required to move, then at the Displaced Employee's option, the Railroad shall reimburse the Displaced Employee for the difference between the actual sale price and the fair market value of the employee's place of residence. The Railroad shall pay such difference within sixty (60) days after the Displaced Employee has filed a claim for such loss in accordance with Section 5(c)(vi), unless a controversy arises as to which Section 5(c)(vii) applies. In each case, the fair market value of the home in question shall be determined without consideration of the Project. The Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the Displaced Employee to any other person.

(ii) **Election to Receive Closing Costs.** The Displaced Employee may elect to waive the provisions of Section 5(c)(i) and to receive, in lieu thereof, an amount equal to the closing costs that are customarily paid for and assumed by a seller of real estate in the jurisdiction in which the employee's residence is located. Such costs shall include customary fees paid to a licensed realtor (not to exceed six percent (6%) of the final sale price) and any prepayment penalty required by any mortgagor or beneficiary of a deed of trust. Such costs shall not include

the payment of any mortgage discount points or similar interest discount fees by the Displaced Employee.

(iii) Pending Contract to Purchase. If a Displaced Employee has entered into a contract to purchase a place of residence, but due to a Project must cancel that contract, the Railroad shall indemnify the Displaced Employee against any losses due to such cancellation, and shall relieve the Displaced Employee from any further obligation under the contract.

(iv) Unexpired Lease. If the Displaced Employee holds an unexpired lease of a dwelling as the employee's primary place of residence, and the Displaced Employee must cancel the lease due to a Project, the Railroad shall indemnify the Displaced Employee from all costs and liability arising from said cancellation.

(v) Exclusions. Any change in residence that is not due to or caused by a Project, or that resulted from the normal exercise of a Protected Employee's seniority rights, shall not be within the purview of this Section.

(vi) Notification of Claims. A Displaced Employee shall notify, in writing, the Railroad of such employee's claim arising from this Section 5(c) within one (1) year of the date the Displaced Employee's claim accrues.

(vii) Home Value Disagreements. In the event of disagreement between a Railroad and a Displaced Employee as to the value of a Displaced Employee's claim, either party (or their representatives) may request, in writing, a joint conference to resolve the disagreement.

A. Real Estate Appraisers. If the parties are unable to resolve the disagreement, either party may refer the disagreement to two licensed real estate appraisers, one of whom shall be selected by the Displaced Employee (or such employee's representatives), and one of whom shall be selected by the Railroad. If the two selected real estate appraisers are unable to agree on a valuation within thirty (30) days, the selected real estate appraisers shall designate (or agree to a method by which to select) a third licensed real estate appraiser within ten (10) days. If unable to agree on a selection, either party may request the National Mediation Board to designate within twenty (20) days a third licensed real estate appraiser. A decision by two of the three licensed real estate appraisers shall be required to determine the value in dispute. Said decision shall be final and conclusive.

B. Payment of Expenses. The salary and expenses of the third or neutral appraiser shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(d) Failure to Exercise Seniority Rights. If a Displaced Employee is able but does not exercise such employee's seniority rights to secure another position that does not require a change in the employee's primary place of residence, the Displaced Employee shall not be entitled to moving expenses or protections due to the sale of a home outlined in Sections 5(b)&(c).

6. Protections for Dismissed Employees.

(a) **Dismissal Allowance.** A Dismissed Employee shall be paid a monthly dismissal allowance from the date they are deprived of employment through the Protective Period.

(i) **Monthly Dismissal Allowance Calculation.** The monthly dismissal allowance shall be equivalent to the Average Monthly Compensation received by the Dismissed Employee in the last twelve (12) months of employment prior to the employee's dismissal.

(ii) **Submission of Claim.** A claim for the initial month of a dismissal allowance shall be paid within ninety (90) days and a claim for a subsequent month shall be paid within sixty (60) days after the claim is filed by the Dismissed Employee, unless the claim is disputed by the Railroad pursuant to Section 8 of this Exhibit.

(iii) **Reduction or Suspension of Dismissal Allowance.** If a Dismissed Employee accepts new employment (or reemployment by the dismissing Railroad) during the Protective Period, the dismissal allowance shall be reduced such that the accepted monthly compensation at the then-current position (including any unemployment insurance compensation received) plus the dismissal allowance is equivalent to the Dismissed Employee's Average Monthly Compensation. If the compensation of the Dismissed Employee's then-current employment is greater than the dismissal allowance, the dismissal allowance shall be suspended. Such reduction or suspension shall continue for the duration of the Protective Period, unless and until the Dismissed Employee's then-current compensation is reduced or eliminated. Prior to dismissal, such Dismissed Employee (or their representative) and the dismissing Railroad shall agree upon a procedure by which such Railroad shall be informed of the earnings and benefits of such Dismissed Employee in their new position of employment.

(iv) **Early Termination.** The dismissal allowance shall cease prior to the expiration of the Protective Period in the event of the Dismissed Employee's resignation, death, retirement, dismissal for justifiable cause under existing agreements, failure without good cause to return to service after being notified in accordance with an applicable working agreement, or failure without good cause to accept a comparable position that does not require a change of residence, for which the Dismissed Employee is qualified and eligible with the Railroad from which such employee was dismissed after being notified, if the employee's return does not infringe upon employment rights of other employees under a working agreement.

(b) **Separation Allowance.** A Dismissed Employee may, at such employee's option, within seven (7) days of dismissal or an arbitration award establishing the employee's status as a Dismissed Employee, resign and (in lieu of all other benefits and protections provided in this Exhibit) accept a lump sum payment computed in accordance with Section 9 of the Washington Job Protection Agreement of May 1936, as amended.

(c) **Priority of Employment or Re-Employment.** Any Protected Employee whose employment is terminated or who is furloughed as a result of a Project shall, if they so request, be granted priority of employment or re-employment to fill a position comparable to that which they held on the Railroad (even if in a different craft or class), so long as they are qualified, or by training or retraining can become physically and mentally qualified, for the position. However, such priority of

employment or re-employment must not be in contravention of any relevant collective bargaining agreements.

(i) **Training or Re-Training.** In the event such training or retraining is requested by a Protected Employee pursuant to Section 6(c), the Railroad shall provide such training or retraining at no cost to the Protected Employee.

(ii) **Waiver of Protections.** If a Protected Employee who has made a request under Section 6(c) fails without good cause within ten (10) days to accept an offer of a comparable position for which such employee has satisfactorily completed such training, the Protected Employee shall, upon the expiration of such ten (10) day period, forfeit all rights and benefits under this Exhibit.

7. Fringe Benefits. No Protected Employee shall be deprived during the Protective Period of any (non-salary) rights, privileges, or benefits attached to such employee's previous employment under the terms and conditions of an existing employment agreement (including, but not limited to, free transportation, hospitalization, pensions, insurance, or vacation benefits), so long as such rights, privileges, or benefits continue to be accorded to other employees of the Railroad, in active service or on furlough as the case may be, to the extent that such rights, privileges, or benefits can be so maintained under present authority of law, corporate action, or through future authorization.

8. Arbitration of Disputes.

(a) **Scope.** Any dispute under these conditions not settled by the relevant parties will be resolved in arbitration as provided herein. In the event a Railroad and the Protected Employee(s) (or their representatives) cannot settle a dispute or controversy with respect to the interpretation, application, or enforcement of any provision of this Exhibit (other than those Sections of this Exhibit that provide for another means of dispute resolution) within thirty (30) days after the dispute arises, either party may refer the dispute to an arbitration committee. The affected Protected Employee(s) (or their representatives) may notify a Recipient of a dispute or controversy under this Section 8 to ensure compliance with 49 U.S.C. § 22905(c)(2)(B).

(b) **Notice.** The party referring the dispute to an arbitration committee shall notify the other party in writing of its intent to refer a dispute or controversy to an arbitration committee.

(c) **Selection of Members.** Within ten (10) days of receipt of the written notice, each party to the arbitration shall select one (1) member of the committee, and the members thus chosen shall select an additional, neutral member to serve as chairman. If any party fails to select its member of the arbitration committee within the prescribed time limit, the general chairman of the involved labor organization or a senior officer designated by the Railroad or the Recipient, as the case may be, shall be deemed the selected member. Should the members be unable to agree upon the appointment of the neutral member within ten (10) days, the parties shall then within an additional ten (10) days agree to a method by which a neutral member shall be appointed; failing such agreement, either party may request the National Mediation Board to designate within twenty (20) days the neutral member whose designation will be binding upon the parties.

(d) **Multiple Representatives.** In the event a dispute involves more than one labor organization, each will be entitled to a representative on the arbitration committee, in which event the Railroad or Recipient may appoint additional representatives equivalent to the number of labor

organization representatives; provided, however, that the decision in such case shall be made by the neutral member.

(e) **Decisions Binding.** The decision, by majority vote except as provided otherwise in paragraph (d) of this Section, of the arbitration committee shall be final, binding, conclusive, and rendered within forty-five (45) days after the hearing of the dispute or controversy has been concluded and the record closed.

(f) **Expenses.** The salaries and expenses of the neutral member shall be borne equally by the parties to the proceeding, and all other expenses shall be paid by the party incurring them.

9. Classification of a Protected Employee. In the event an employee (or their representatives) cannot settle a dispute or controversy with the Railroad or the Recipient as to whether or not a particular employee would be affected by a Project, either party may refer the dispute to an arbitration committee within thirty (30) days after the dispute arises pursuant to the arbitration procedures in Section 8. For any such dispute, the employee of a Railroad shall have the burden to identify, with reasonable specificity, the Project that allegedly affected them, and to specify the pertinent facts of that Project, including the change or changes resulting from the Project that allegedly affected them. The burden shall then shift to the Railroad or Recipient to show that factors other than a change resulting from the Project affected the employee. The employee shall prevail on this issue if it is established that the Project had an effect upon the employee, even if other factors also may have affected the employee.

10. Resolution of Disputes for Non-Bargaining Unit Protected Employees. Any Protected Employee who is not represented by a labor organization shall be afforded substantially the same levels of protection as are afforded to members of labor organizations under this Exhibit. In the event any dispute arises between a Railroad and an employee not represented by a labor organization with respect to the interpretation, application, or enforcement of any provision of this Exhibit that cannot be settled by the parties within thirty (30) days after the dispute arises, either party may, as an alternative to the dispute resolution procedures outlined in this Exhibit, refer the dispute within ninety (90) days after the dispute arises to the Secretary of Labor for determination. The determination of the Secretary of Labor, or their designated representative, shall be final and binding on the parties.

11. Severability. In the event any provision of this Exhibit is held to be invalid or otherwise unenforceable under applicable law, the remaining provisions of this Exhibit shall not be affected.

EXHIBIT C: QUARTERLY PROJECT PROGRESS REPORTS AND RECERTIFICATIONS

FRA GRANT/COOPERATIVE AGREEMENT
Quarterly Progress Report

A. Submission Information

1. Report Submission Date (mm/dd/yy): 2. Report Quarter: - 3. FFY: -

4. Agreement Number	5. Project Title		6. Project Type
7. Completed By (Name)	8. Title	9. Email	10. Phone

11. Certification: By checking this box, I certify that I have reviewed this report and that, to the best of my knowledge, the report is complete, accurate, and meets the terms and conditions of the award.

B. Overall Project Status

	a. Status	b. Explanation
12. Scope	Off-Track	
13. Schedule	Off-Track	
14. Budget	Off-Track	
15. Significant Activities this Quarter		16. Significant Activities Planned for Next Quarter

17. Amendment Request?	17 a. Status	17 b. Explanation
Yes	N/A	

C. Financial Status

Budget Status

18. Budget Changes?	18 a. Status	18 b. Explanation
Yes	N/A	

Expenditures and Reimbursement Status

Funding Source	Actual Expenditures this Quarter
19. FRA Grant:	
20. Grantee Match:	
21. Other Federal Funds:	
22. Total:	\$ 0.00

23. Accomplishments Related to Expenditures in this Quarter	24. Accomplishments Related to Expenditures in other Quarters (if applicable)

Reimbursement Forecast

25. Planned Reimbursement Requests to FRA		26. Unliquidated Obligations	
25 a. Next Quarter	25 b. Next Four Quarters (Cumulative)	26 a. Any reported on this quarter's SF-425?	26 b. Explanation
		No	

D. Major Milestones

If your project contains one or more of the following components, please report on all that apply:

		Completion Date mm/dd/yy			
27. Milestone Name	28. Status	29. Planned	30. Actual	31. Change to Status?	32. Status Notes
All Projects					
27 a. Award of Sub-Contract(s)	Off-Track			N/A	
27 b. Project Work Begun	Off-Track			N/A	
27 c. Project Substantially Complete	Off-Track			N/A	
Projects with a Construction Component					
27 d. Construction Notice to Proceed Issued	Off-Track			N/A	
27 e. ROW Acquisition Complete	Off-Track			N/A	
27 f. Construction Ground-Breaking	Off-Track			N/A	
27 g. Construction Substantially Complete	Off-Track			N/A	
27 h. Environmental Mitigation Substantially Complete	Off-Track			N/A	
27 i. Ribbon-Cutting Ceremony	Off-Track			N/A	
27 j. Commencement of Service	Off-Track			N/A	
Projects with a Rolling Stock Component					
27 k. Test Vehicle Complete	Off-Track			N/A	
27 l. First Rolling Stock Delivery	Off-Track			N/A	

E. Statement of Work Task Status

33. Task #	34. Task Name	35. Status	36. Task Started?	Completion Date (mm/dd/yy)		39. Percent Complete (%)	40. Change to Status?
				37. Planned	38. Actual		
1	Pre-populated	Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
		Off-Track	N/A				N/A
	Contingency (optional)						

41. Status Notes

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ARTICLE 3—ADDITIONAL SERVICES

3.01 Additional Services

- A. If authorized in writing by Owner, Engineer shall furnish or obtain from others Additional Services of the types listed below.
- B. Site-related Additional Services
 - 1. Services to make measured drawings of existing conditions or facilities, to conduct tests or investigations of existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by Owner or others.
 - 2. Provide necessary field surveys and topographic and utility mapping to be used for study and design purposes.
 - 3. Provide additional mapping and documentation services relating to utilities, including Underground Facilities, arising from Engineer's services under Exhibit A Paragraph 1.02.A.13 above, based when applicable on the guidance in ASCE 38, "Standard Guideline for the Collection and Depiction of Existing Subsurface Utility Data."
 - 4. Preparation of environmental assessments and impact statements; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 - 5. Providing assistance in responding to or investigating the presence of any Constituent of Concern at any Site, in compliance with current Laws and Regulations.
- C. Additional Study, Investigation, and Report Services
 - 1. Undertaking investigations and studies including, but not limited to:
 - a. detailed consideration of operations, maintenance, and overhead expenses;
 - b. the preparation of feasibility studies (such as those that include projections of output capacity, utility project rates, project market demand, or project revenues) and cash flow analyses, provided that such services are based on the engineering and technical aspects of the Project, and do not include rendering advice regarding municipal financial products or the issuance of municipal securities;
 - c. preparation of appraisals;
 - d. evaluating processes available for licensing, and assisting Owner in obtaining process licensing;
 - e. detailed quantity surveys of materials, equipment, and labor; and
 - f. audits or inventories required in connection with construction performed or furnished by Owner.
 - 2. Services resulting from significant changes in the scope, extent, or character of the Project including, but not limited to, changes in size, complexity, Owner's schedule, character of construction, or method of financing; and revising the Report or other deliverables when such revisions are required by changes in Laws and Regulations

Exhibit A, Scope of Engineer's Study and Report Services.

EJCDC® E-525, Agreement Between Owner and Engineer for Study and Report Professional Services.
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enacted subsequent to the Effective Date or are due to any other causes beyond Engineer's control.

3. Services resulting from Owner's request to evaluate additional potential solutions.

D. Additional Services—General

1. Attendance, presentations, and support at public meetings and hearings, including preparation for such meetings and hearings, and drafting related exhibits and handouts.
2. Preparation of applications and supporting documents for private or governmental grants, loans, or advances in connection with the Project.
3. Services required as a result of Owner providing incomplete or incorrect information to Engineer.
4. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructability review requested by Owner; and performing or furnishing services required to revise studies, reports, or other documents as a result of such review processes.
5. Providing renderings or models for Owner's use, including services in support of building information modeling or civil integrated management.
6. Services during out-of-town travel required of Engineer, other than for visits to the Site or Owner's office as required in Basic Services (Article 1 of Exhibit A).
7. Preparing to serve or serving as a consultant or witness for Owner in any litigation, arbitration, lien or bond claim, or other legal or administrative proceeding involving the Project.

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Agreement between Owner and Engineer for Study and Report Professional Services dated _____.

ENGINEER'S STANDARD HOURLY RATES

A. Standard Hourly Rates:

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraph 4.01 of the Agreement, and are subject to annual review and adjustment.

B. Schedule of Hourly Rates:

Billing Class	Rate
Project Manager	\$320.00/hour
Public Involvement Lead	\$100.00/hour
Sr Planner	\$400.00/hour
Sr Traffic Engineer	\$360.00/hour
Rail Engineer	\$135.00/hour
Bridge Engineer	\$180.00/hour
Roadway Engineer	\$225.00/hour
Accountant	\$145.00/hour

Appendix 1, Engineer's Standard Hourly Rates.

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Commission Action Report

Award 2025 Hazardous Sidewalk Program

Title: Award 2025 Hazardous Sidewalk Program

Agenda Date: March 5, 2025

Presented By: James Uberty, City Engineer

Background:

At 3:00 pm, Tuesday, February 25, 2025, the City Engineer's Office publicly opened bids for the 2025 Hazardous Sidewalk Program. The bids received is used for setting unit prices for each individual project line item. Bid totals were achieved by multiplying these unit prices with our initial estimated quantities from the list of site work projected for the 2025 Hazardous Sidewalk program. The following are the totals for the bids received and the Engineer's Estimate.

CONTRACTOR	BASE BID
South Central Sealing, LLC	\$51,237.50
Burlington Construction	\$69,182.50
S.R. Coffman Construction	\$72,410.00
Engineer's Estimate	\$65,070.00

Discussion:

Three bids were received and the Bid Tabulation is attached.

Financial considerations:

The 2025 Hazardous Sidewalk Program is budgeted at \$100,000.00, paid from Multi-Year Fund. Locations and quantities will be added throughout the year as property owners sign up for participation in the program. The program also allows the homeowner the option to hire their own bonded contractor to replace their sidewalk at these set unit prices. The program participation is 25% residential property owner/75% City and 50% commercial property owner/50% City, beginning 2025.

Recommended action:

Staff recommends awarding the contract to South Central Sealing, LLC and authorize the City Manager to sign the agreement.

Attachments:

Bid tabulation.

**CITY OF EMPORIA, KS
BID TABULATION
FOR 2025 HAZARDOUS SIDEWALK PROJECT**

Bid Date and Time:
3:00 pm on 02/25/2025
at City Engineering

Quantity Base Bid	Units	Description	South Central Sealing LLC		Burlington Construction		S.R. Coffman Construction		CITY ENGINEER'S ESTIMATE	
			Unit	Total	Unit	Total	Unit	Total	Unit	Total
100	S.F.	4" SIDEWALK (0-100 SF)	\$9.50	\$950.00	\$20.00	\$2,000.00	\$20.00	\$2,000.00	\$18.00	\$1,800.00
2,000	S.F.	4" SIDEWALK (101-250 SF)	\$8.95	\$17,900.00	\$10.00	\$20,000.00	\$11.50	\$23,000.00	\$9.50	\$19,000.00
2,500	S.F.	4" SIDEWALK (251+ SF)	\$9.00	\$22,500.00	\$9.25	\$23,125.00	\$9.75	\$24,375.00	\$8.50	\$21,250.00
400	S.Y.	6" SIDEWALK	\$9.50	\$3,800.00	\$12.50	\$5,000.00	\$12.00	\$4,800.00	\$12.00	\$4,800.00
150	S.F.	6" REINF. SIDEWALK	\$9.75	\$1,462.50	\$13.50	\$2,025.00	\$12.50	\$1,875.00	\$14.00	\$2,100.00
50	Hr.	MISC. SITE WORK	\$35.00	\$1,750.00	\$70.00	\$3,500.00	\$70.00	\$3,500.00	\$70.00	\$3,500.00
50	L.F.	CURB & GUTTER R&R	\$41.00	\$2,050.00	\$73.50	\$3,675.00	\$70.00	\$3,500.00	\$70.00	\$3,500.00
20	S.Y.	HANDICAP RAMP (WARNING PANEL)	\$28.00	\$560.00	\$385.00	\$7,700.00	\$350.00	\$7,000.00	\$350.00	\$7,000.00
5	S.Y.	HANDICAP RAMP (NO PANEL)	\$23.00	\$115.00	\$287.50	\$1,437.50	\$280.00	\$1,400.00	\$280.00	\$1,400.00
60	L.F.	SAW CUTTING	\$2.50	\$150.00	\$12.00	\$720.00	\$16.00	\$960.00	\$12.00	\$720.00
TOTAL AMOUNT OF BASE BID:				\$51,237.50		\$69,182.50		\$72,410.00		\$65,070.00



Commission Action Report

Taxiway Lighting Construction Services Contract with HW Lochner

Title: Taxiway Lighting Construction Services Contract with HW Lochner

Agenda Date: March 5, 2025

Presented By: Dean Grant, Director of Public Works

Background:

The construction for the airport taxiway lighting system project bid on May 23, 2024. This project will convert the remaining airport lighting to LED and upgrade the electrical circuits. Construction on the lighting system will start in the fall of this year, and we would like to have the construction services contract with HW Lochner executed prior to the contractor starting work.

Discussion:

The construction services contract with HW Lochner is \$90,750.00 not-to-exceed for preliminary and construction observation phases, and \$8,225.00 lump sum for the project closeout phase.

Financial Considerations:

This project, including construction services, is reimbursed 90% by the FAA through our AIP and BIL funding. The city's portion will be \$9,897.50

Recommended Action:

Approve the contract for construction services with HW Lochner for \$98,975.00

Attachments:

HW Lochner Contract for Construction Services

CONSULTANT AGREEMENT

Owner: City of Emporia, Kansas

Client: City of Emporia, Kansas

Consultant: H.W. Lochner, Inc. ("Lochner")

Date:

Project: **BASE BID**
Replace Runway 1-19 Parallel Taxiway Lighting System

Lochner and the Client (collectively, the "Parties" and individually, a "Party") agree as follows:

1. **Agreement.** This Agreement is a contract between Lochner and the Client for Lochner to perform consulting, engineering, and/or design services on the Project.

2. **Lochner.** Lochner is the Client's Consultant for the services listed in this Agreement which Lochner is contracting to provide for the Project, and Lochner shall facilitate the exchange of information between or among Lochner and the Client, Lochner and other consultants retained by the Client, and Lochner and other consultants that Lochner may have retained for the Project. All communications between Lochner and the Client shall be through Lochner unless the Client authorizes otherwise.

Lochner represents that it is a properly licensed engineering firm and is registered to practice its profession and to conduct business in the State of Kansas.

3. **Scope of Services.** Lochner shall perform the services set forth in Attachment A Scope of Work/Services, as awarded herein (the "Services").

4. **Compensation.** The Client shall compensate Lochner in accordance with Attachment B Agreement Price and Schedule of Values

5. **Schedule.** Lochner shall perform its Services within a timeframe mutually agreed to by Lochner and the Client as specified in Attachment C.

Lochner shall strive to cooperate with and to coordinate its Services with the activities of all other parties to the Project, including other consultants retained by the Client.

6. **Additional Services.** If the Client requests Lochner to perform services that Lochner believes to be in addition to the Services specified in Section 3 of this Agreement, and for which Lochner believes it is entitled to additional time or additional compensation, before commencing with any Additional Services Lochner shall submit a written cost estimate and revised schedule in accordance with Section 15 of this Agreement. Lochner shall not commence with any Additional Services without written authorization by the Client.

7. **Standard of Care.** The standard of care applicable to Lochner's Scope of Services shall be the degree of skill and care normally employed by professionals engaged to perform services similar

to the Services required herein at the same time and in the same geographic area as the performance of Services hereunder and on projects similar in size and scope to the Project. In the event a standard of care is prescribed by statute, such statutory formulation shall be the Standard of Care.

8. Payment. Lochner shall send invoices to the Client at monthly intervals. Payment will be made to Lochner for invoiced Services not more than thirty (30) days following submittal of invoice to the Client.

9. Correction of Work. Lochner shall correct any Services that fail to conform to the Standard of Care set forth in Section 7 of this Agreement at Lochner's own expense.

10. Termination. Lochner may terminate this Agreement upon five (5) days written notice if the Client breaches any term of this Agreement. The Client may terminate this Agreement upon seven (7) days written notice without cause for the Client's own convenience. If this Agreement is terminated by Lochner for the Client's breach, the Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination as a result of the Client's breach. If this Agreement is terminated by the Client for its convenience, Client shall be liable to Lochner for all costs and expenses that Lochner incurred prior to the termination.

11. Insurance. Lochner will provide and maintain the following policies of insurance under the terms and conditions set forth below:

1. Professional Liability Insurance retroactive to the date of commencement of Lochner's services in relation to the Project with a per claim and aggregate limit in the amount of the greater of \$1.0 million. This policy shall be maintained in effect for a period of one (1) year after completion of all Lochner's Services hereunder.

2. Commercial General Liability ("CGL") Insurance in the amount of \$1.0 million per occurrence, \$1.0 million aggregate limit, and \$1.0 million products and completed operations aggregate limit. In addition to the coverage provided by the Commercial General Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury, property damage, products-completed operations (for a minimum of five (5) years after completion of work) and broad form contractual liability.

3. Comprehensive Automobile Liability ("Auto") Insurance in the amount of \$1.0 million per occurrence, and \$1.0 million aggregate limit. In addition to the coverage provided by the Comprehensive Automobile Liability Insurance, if not already included in such coverage, such insurance shall also provide coverage for personal injury, bodily injury and property damage arising out of owned, hired, leased and non-owned vehicles, automobiles, trucks and trailers.

4. Workmen's Compensation Insurance in the amount of the statutory maximum, if there is one, and if there is no statutory maximum, in the amount of \$1.0 million and Employer's Liability Insurance of at least \$1.0 million.

5. Umbrella Excess Liability Insurance in the minimum amount of \$3.0 million each occurrence, and \$3.0 million aggregate limit. The Umbrella Excess Liability Insurance shall be written on an umbrella excess basis over, and shall follow form to, the Commercial General Liability Insurance policy, the Comprehensive Automobile Liability Insurance policy, and the Employer's

Liability Insurance policy. The Umbrella Excess Liability Insurance policy shall be endorsed to provide defense coverage obligations.

Lochner will include coverage for its subcontractors in its policies or obtain from each subcontractor equivalent insurance as required of Lochner hereunder. The provisions of Section 11 shall apply equally to Lochner's subcontractors as they do to Lochner.

All insurance policies will be endorsed to provide that the insurance company will give the Client at least thirty (30) days written notice of cancellation or material change prior to such cancellation or modification.

Prior to commencement of Lochner's Scope of Services hereunder, Lochner shall provide the Client with certificates of insurance evidencing the requirements set forth herein.

12. Indemnification. Lochner agrees to indemnify the Client and its officers, directors, members, managers, employees and assigns (the "Indemnitees") from and against liability, claims, damages, losses and expenses (including, but not limited to, reasonable attorneys' fees, expert witness costs, other litigation costs, judgments, settlements and economic losses) (collectively the "Losses" and individually, a "Loss") arising out of or resulting from negligent performance of any Services or duties under this Agreement by Lochner, its subcontractors, lower-subcontractors, or agents of any tier or their respective employees provided, however, that in the event of a Loss arising out of damages to persons or property, the foregoing obligation (1) shall not require Lochner to indemnify any Indemnitee for Losses other than to the extent caused by the act, omission or default of Lochner, its contractors, subcontractors, lower-subcontractors, materialmen, or agents of any tier or their respective employees, where such is prohibited by law, and (2) shall not require Lochner to indemnify any Indemnitee for Losses caused in whole or in part by any act, omission, or default of the Indemnitee, where such is prohibited by law. If the obligation to indemnify set forth in this Section is broader than that allowed by applicable law, this Section should be interpreted as providing the broadest indemnification obligation permitted and should be limited only to the extent necessary to comply with that law.

Lochner shall reimburse the Client for its reasonable attorneys' fees, expert witness costs and other litigation costs to enforce this Section 12 and shall survive the termination or full performance of this Agreement by either or both Lochner and/or the Client. Section 12 is to be read separately and independently of Section 11 and the additional insured obligations therein contained.

13. Waiver of Immunity. In claims against any person or entity indemnified under Section 12 by an employee of Lochner, a subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable (a "Claimant"), the indemnification obligation under Section 12 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Claimant's employer under workers' compensation acts, disability benefit acts or other employee benefit acts.

14. Ownership of Documents. If the Agreement requires that any of the Client's documents, drawings, plans, specifications, or other work product are, or shall become, the property of another person, Lochner shall, at the Client's request, assign all rights of ownership of any like document prepared by Lochner to the same person.

15. Changes. Client may, by written direction only, make changes, revisions, additions, or deletions (collectively called “changes”) to this Agreement. Any claim by Lochner for an adjustment under this paragraph must be asserted in writing fully supported by factual documentation to the Client, within fifteen (15) calendar days from the date of receipt by Lochner of the written change order from the Client, or within such extension of this period as Client, in its sole discretion, may grant in writing at Lochner's request prior to expiration of said period.

Claims arising under this Agreement shall be decided in the state or federal courts located in Kansas.

16. Confidentiality. Lochner acknowledges, that as part of Lochner's relationship with the Client, it will have access to information that is not publicly available (“Confidential Information”). Lochner agrees that it will maintain strict confidentiality with respect to such Confidential Information and will not, directly, or indirectly, disseminate it or use it for any purpose unrelated to Lochner's obligations under this Agreement. Lochner shall not, without the prior written consent of the Client, make any public statement, announcement or release concerning the Project or the Confidential Information to trade publications, the press, or any other individual, corporation, partnership, or entity except as may be necessary to comply with the requirements of any applicable law, governmental order or regulation. In the event Lochner believes it is required to disclose any Confidential Information in order to comply with any applicable law, governmental order or regulation, Lochner shall promptly notify the Client of same with sufficient time to allow the Client to object or otherwise take actions to prevent the disclosure of such Confidential Information.

17. Quality Control/Quality Assurance. Lochner shall perform Quality Control/Quality Assurance (QC/QA) commensurate with the Standard of Care throughout the provision of all Services by Lochner pursuant to the terms of this Agreement.

18. Miscellaneous Provisions.

1. Assignment. Lochner shall not assign this Agreement or the benefits arising therefrom without the prior written consent of the Client.

2. Integration. This Agreement represents the entire and integrated Agreement between Lochner and the Client and supersedes all prior negotiations, representations or agreements, either written or oral.

3. Third Parties. There are no third-party beneficiaries to this Agreement other than as expressly indicated in Section 11 (Insurance) and Section 12 (Indemnification).

4. Invalidity. In the event any provision or part of a provision of this Agreement is found invalid by a tribunal of competent jurisdiction, (i) the other provisions or parts of the provision of this Agreement shall remain in full force and effect notwithstanding such finding, and (ii) the Agreement shall be interpreted to, as closely as possible, effectuate the purpose the original Agreement language.

5. Mutually Negotiated. The Parties acknowledge that the terms and conditions of this Agreement have been the subject of mutual negotiation, and that this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

6. Survival. Notwithstanding anything herein to the contrary, the provisions of this Agreement providing for limitation of or protection against liabilities between the Parties, shall survive termination of the Agreement and/or completion of the Services hereunder.

7. Limitation of Liability. Lochner's liability for any claim or breach of Standard of Care shall be limited to the amount of its Compensation as defined in Section 11.1.

8. Notices. Unless otherwise provided herein, all notices, requests, consents, approvals, demands and other communications to be given hereunder shall be in writing and shall be deemed given upon (a) the date of delivery when hand delivered to the respective Parties as set forth below, or (b) actual receipt as evidenced by proof of delivery by a national courier service or the United States Postal Service, addressed to the respective Parties at the following addresses:

Notice to Lochner:

Larry Wagner
lwagner@hwlochner.com

H.W. Lochner, Inc.
15717 College Boulevard
Lenexa, KS 66219

Notice to Client:

Dean Grant
dgrant@emporiaks.gov

City of Emporia, Kansas
Director of Public Works
1220 Hatcher
Emporia, KS 66801

9. Mutual Waiver of Consequential Damages. In no event shall either Party, their members, managers, affiliates, officers, directors, employees, agents, or shareholders be liable to the other Party for any special, incidental or consequential damages, direct or indirect, including, but not limited to, lost revenue, lost profits, financing costs, overhead, penalties, fines, liquidated damages and lost opportunities, whether incurred by a Party or by third parties to that Party may be liable, whether sounding in breach of contract, warranty, tort (including negligence), strict or statutory liability or otherwise, arising from or relating to the Services under this Agreement.

10. Electronically Produced Documents. Electronically produced documents will be submitted in data files compatible with AutoCAD Release 2020. Lochner makes no warranty as to the compatibility of the data files beyond the above specified hardware and release or version of the stated software.

Because data stored on electronic media can deteriorate undetected or be modified without Lochner's knowledge, the electronic data files submitted to the Sponsor or other Agencies will have an acceptance period of thirty (30) days. If during that period the Sponsor or other Agencies find any errors or omissions in the files, Lochner will correct the errors or omissions as a part of the basic

Agreement. Lochner will not be responsible for maintaining copies of the submitted electronic data files after the acceptance period.

11. Engineer's Opinion of Probable Project Cost and Construction Cost. Since Lochner has no control over the cost of labor, materials, equipment or services furnished by others, or over the Contractor(s) methods of determining prices, or over competitive bidding or market conditions, Lochner's opinions of probable Project Cost and Construction Cost provided for herein are to be made on the basis of Lochner's experience and qualifications and represent its best judgment as an experienced and qualified professional engineer, familiar with the construction industry; but Lochner cannot and does not guarantee that proposals, bids or actual Project or Construction Cost will not vary from opinions of probable cost prepared by Lochner. However, Lochner represents that it will use reasonable engineering care and judgment commonly exercised by an engineer in the same or similar circumstances in making and transmitting such cost estimates to the Client.

12. Force Majeure. Any delay or failure of Lochner in the performance of its required obligations hereunder shall be excused if and to the extent caused by acts of God, war, riot, strike, fire, storm, flood, windstorm, discovery or uncovering of hazardous or toxic materials or causes beyond the reasonable control of Lochner, provided that prompt written notice of such delay or suspension be given by Lochner to the Client. Upon receipt of said notice, if necessary, the time for performing shall be extended for a period of time reasonably necessary to overcome the effect of such delays and Lochner shall be reimbursed for the cost of such delays.

13. Client's Responsibilities.

- a. Arrange for access to and make all provisions for Lochner to enter upon public and private property as required for it to perform his/her services.
- b. Assist in approvals and permits from all governmental entities having jurisdiction over the project and such approvals and consents from others as may be necessary for completion of the project.
- c. Designate in writing a person to act as Client representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, and interpret and define Sponsor policies and decisions.
- d. Give prompt written notice to Lochner whenever Client observes or knows of any development that affects the scope or timing of Lochner's services.
- e. Pay publishing cost for advertisements of notices, public hearings, request for bids, and other similar items. The Sponsor shall pay for all permits and licenses that may be required by local, state or federal authorities; and shall secure the necessary land, easements and rights-of-way required for the project.
- f. Available information relating to environmental conditions at the property, including any permits, clearances, investigations, and remediation required for federal, state, and local agencies identified by environmental consultants for the Sponsor in currently available reports.

14. Mandatory Federal Contract Provisions. (Reference Attachment D)

H.W. LOCHNER, INC.

CITY OF EMPORIA, KANSAS

By: 
CEI Group Manager
Title: _____
Date: May 22, 2024

By: _____
Title: _____
Date: _____

Attachments

- Attachment A Scope of Work/Services
- Attachment B Agreement Price and Schedule of Values
- Attachment C Time Schedule
- Attachment D Mandatory Federal Contract Provisions

SCOPE OF WORK/SERVICES

WHEREAS, the Client has agreed to employ the Consultant to provide the construction administration, materials testing, observations, and project closeout services for the proposed project.

All services will be performed in accordance with good engineering practice and applicable published criteria of the Federal Aviation Administration (FAA), primarily FAA Advisory Circulars and Central Region Guidance publications.

- AC 150/5300-13B *"Airport Design"*
- AC 150/5340-1M *"Standards for Airport Markings"*
- AC 150/5370-2G *"Operational Safety on Airports During Construction"*
- AC 150/5370-10H *"Standard Specifications for Construction of Airports."*
- AIP Guide 900, *"Project Design Development Project."*
- AIP Guide 1000, *"Construction Phase."*

The following is a detailed description of the specific engineering services that are a duty of this Agreement.

A. CONSTRUCTION SERVICES

1. Preliminary
 - a. Coordinate with Client and FAA to establish inspection scope, estimate, and agreement for services.
 - b. Prepare copies of the Construction Plans and Contract Documents/Technical Specifications for use by the Contractor during construction.
 - c. A Construction Observation Plan will not be required for this project.
 - d. Attend and conduct a pre-construction conference. Minutes of the conference will be prepared and distributed to the attendees.
2. Provide construction management and on-site construction observation services.
 - a. Provide construction observation services, including preparation of daily reports, weekly reports, and other reports as required by the FAA to document the prosecution and progress of the Project. The Consultant shall provide full-time observation of the Project.
 - b. Respond to RFI's from the contractor and complete site visits to monitor project progression.
 - c. Review material certification submittals from the Contractor.
 - d. Prepare Contractor's progress estimates and Sponsor's request for reimbursement of funds.
 - e. Prepare change orders and supplemental agreements necessary for construction of the Project.
 - f. Perform material(s) testing (field laboratory) as required by the Construction Observation Plan.
 - g. Attend and conduct a final review of the Project with the Sponsor and Contractor.

3. Project Closeout Phase

- a. Prepare and submit to the Sponsor one (1) set of black line prints of the record drawings. The Sponsor will be provided with electronic data of the record drawings upon request.
- b. Prepare the documents relating to engineering design and construction services for Project closeout as required by the FAA.
- c. ~~Attend one (1) FAA flight check of NAVAIDs.~~
- d. Prepare and submit the Final Construction Report.
- e. Compile a copy of the Contractor's certified payroll records for the Sponsor.
- f. An update to the Airport Layout Drawings will not be completed for this Project.

AGREEMENT PRICE & SCHEDULE OF VALUES

The Client agrees to compensate the Consultant for performing engineering services as described herein on the following basis:

COMPENSATION SCHEDULE

A. CONSTRUCTION SERVICES

1. through 2\$90,750.00 Not-to-Exceed

3. Project Closeout Phase..... \$8,225.00 Lump Sum

Total Construction Services

\$98,975.00 Not-to-Exceed

The Consultant shall not proceed with the services described herein until written authorization in the form of a Notice to Proceed is received from the Client.

For engineering services applicable to Item A. Construction Services, Parts 1 and 2, the Consultant will submit monthly statements to the Client for payroll costs times a factor for labor and general administrative overhead (3.0851) and all other expenses incurred on the Project. A pro rata share of the fixed payment in proportion of the statement amount to the not-to-exceed amount will be included on the monthly statement.

The fixed payment to the Consultant for services outlined in Item A., Parts 1 and 2, shall be \$10,058.11, and the total payment to the Consultant shall not exceed \$90,750.00.

If the Contractor exceeds a construction contract period of 65 calendar days, the Consultant may renegotiate the respective fixed payment and not-to-exceed amount. The renegotiated fixed payment and not-to-exceed amount will be estimated based on direct salary costs, labor and general overhead, out-of-pocket expenses, and profit similar to those used in this Agreement.

The Consultant will use an independent laboratory for materials acceptance testing.

Travel on and off the Project site required of Consultant personnel will be compensated at the current rate allowed by the Internal Revenue Service.

Costs other than personnel services incurred by the Consultant will be documented in the written statement and will be at the cost to the Consultant from the vendor.

For Item A. Construction Services, Part 3, partial payment shall be made to the Consultant for those portions of the services completed. The Consultant shall submit to the Client a monthly statement showing an estimate of completion, and the portion of compensation requested for each element and phase of the services. The request for partial payments will not be in excess of the value of the services completed at the time the statement is rendered.

DERIVATION OF CONSULTANT PROJECT COSTS

CONSTRUCTION SERVICES

CONSTRUCTION MANAGEMENT AND OBSERVATION SERVICES

REPLACE RUNWAY 1-19 PARALLEL MITL SYSTEM

FAA AIP PROJECT NO. 3-20-0020-019-2024

EMPORIA MUNICIPAL AIRPORT (EMP)
EMPORIA, KANSAS

May 10, 2024

1. DIRECT SALARY COSTS

<u>TITLE</u>	<u>HOURS</u>	<u>RATE/HOUR</u>	<u>COST (\$)</u>
Project Manager	62	\$65.00	\$ 4,030.00
Design Engineer I	70	\$38.00	\$ 2,660.00
Construction Observer (*)	489	\$35.00	\$ 17,115.00
Technician	28	\$30.00	\$ 840.00
Administrative Assistant	14	\$25.00	\$ 350.00

Total Direct Salary Costs= \$ 24,995.00

2. LABOR AND GENERAL ADMINISTRATIVE OVERHEAD

Percentage of Direct Salary Costs @ 168.27% \$ 42,059.09

3. SUBTOTAL OF ITEMS 1 AND 2 \$ 67,054.09

4. PROFIT @ 15% \$ 10,058.11

5. OUT-OF-POCKET EXPENSES

a. Mileage	4,372	miles @ \$0.67/mile =	\$ 2,929.24
b. Meals	51	@ \$59.00/day =	\$ 3,009.00
c. Motel	47	days @ \$107.00/day =	\$ 5,029.00
d. Misc. Mailing, Etc.		=	\$ 170.56
e. Misc. Materials Testing		=	\$ 2,500.00

Total Expenses = \$ 13,637.80

6. SUBCONTRACT COST

a. None

7. TOTAL COST (ITEMS 3, 4, 5 AND 6) \$ 90,750.00

(*) Construction Observation time based on 50 hrs per week during construction activities.

DERIVATION OF CONSULTANT PROJECT COSTS

CONSTRUCTION SERVICES PROJECT CLOSEOUT PHASE

REPLACE RUNWAY 1-19 PARALLEL MITL SYSTEM

FAA AIP PROJECT NO. 3-20-0020-019-2024

Project Manager	8	\$65.00	\$	520.00
Design Engineer I	24	\$38.00	\$	912.00
Construction Observer (*)	0	\$35.00	\$	-
Technician	28	\$30.00	\$	840.00
Administrative Assistant	13	\$25.00	\$	<u>325.00</u>

Total Direct Salary Costs= \$ 2,597.00

2. LABOR AND GENERAL ADMINISTRATIVE OVERHEAD

Percentage of Direct Salary Costs @ 168.27% \$ 4,369.97

3. SUBTOTAL OF ITEMS 1 AND 2 \$ 6,966.97

4. PROFIT @ 15% \$ 1,045.05

5. OUT-OF-POCKET EXPENSES

a. Mileage	0	miles @ \$0.67/mile =	\$	-
b. Meals	0	@ \$59.00/day =	\$	-
c. Motel	0	days @ \$107.00/day =	\$	-
d. Mailing & Misc. Expenses		=	\$	212.98

Total Expenses = \$ 212.98

6. SUBCONTRACT COST

a. None \$ -

7. TOTAL COST (ITEMS 3, 4, 5 AND 6) \$ 8,225.00

TIME SCHEDULE

The performance of this Agreement is contingent and valid only on the receipt by the Client of a grant from the FAA for the Project. After receipt and acceptance of the grant offer, the Consultant agrees to proceed with the services immediately upon receipt of a written Notice to Proceed (NTP) by the Client, and to employ such personnel as required to complete the Scope of Services in accordance with the following time schedule:

SCHEDULED PERFORMANCE IN CALENDAR DAYS

A. CONSTRUCTION SERVICES

1. through 2. Construction Services As Required for 65 Calendar Day Construction Project
3. Project Closeout Phase 90 Calendar Days After Project Acceptance

The schedule presented above does not include review time by the Client, FAA or other interested agencies.

FEDERAL CONTRACT PROVISIONS FOR A/E AGREEMENTS

ALL REFERENCES MADE HEREIN TO “CONTRACTOR”, “PRIME CONTRACTOR”,
“BIDDER”, “OFFEROR”, AND “APPLICANT” SHALL PERTAIN TO THE
ARCHITECT/ENGINEER (A/E).

ALL REFERENCES MADE HEREIN TO “SUBCONTRACTOR”, “SUB-TIER CONTRACTOR”
OR “LOWER TIER CONTRACTOR” SHALL PERTAIN TO ANY SUBCONSULTANT UNDER
CONTRACT WITH THE A/E.

ALL REFERENCES MADE HEREIN TO “SPONSOR” AND “OWNER” SHALL PERTAIN TO
THE STATE, CITY, AIRPORT AUTHORITY OR OTHER PUBLIC ENTITY EXECUTING
CONTRACTS WITH THE A/E.

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PROVISIONS APPLICABLE TO ALL CONTRACTS**ACCESS TO RECORDS AND REPORTS**

Reference: 2 CFR § 200.334
 2 CFR § 200.337
 FAA Order 5100.38

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

CIVIL RIGHTS – GENERAL

Reference: 49 USC § 47123

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

CIVIL RIGHTS – TITLE VI ASSURANCES

Reference: 49 USC § 47123
 FAA Order 1400.11

Title VI Solicitation Notice

The Sponsor, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 USC §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders or offerors that it will affirmatively ensure that for any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity to submit bids in response to this invitation and no businesses will be discriminated against on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in consideration for an award.

Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);

- 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

Nondiscrimination Requirements / Title VI Clauses for Compliance

Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees as follows:

1. **Compliance with Regulations:** The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be

amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.
3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.
4. **Information and Reports:** The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the Sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the Sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:
 - a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
 - b. Cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The Contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. The Contractor will take action with respect to any subcontract or procurement as the Sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the Contractor may request the Sponsor to enter into any litigation to protect the interests of the Sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

Reference: 2 CFR § 200, Appendix II(K)
2 CFR § 200.216

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to use and procurement of certain telecommunications and video surveillance services or equipment in compliance with the National Defense Authorization Act [Public Law 115-232 § 889(f)(1)].

FEDERAL FAIR LABOR STANDARDS ACT (FEDERAL MINIMUM WAGE)

Reference: 29 USC § 201, et seq
2 CFR § 200.430

All contracts and subcontracts that result from this solicitation incorporate by reference the provisions of 29 CFR part 201, et seq, the Federal Fair Labor Standards Act (FLSA), with the same force and effect as if given in full text. The FLSA sets minimum wage, overtime pay, recordkeeping, and child labor standards for full and part-time workers.

The Contractor has full responsibility to monitor compliance to the referenced statute or regulation. The Contractor must address any claims or disputes that arise from this requirement directly with the U.S. Department of Labor – Wage and Hour Division.

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970

Reference: 20 CFR Part 1910

All contracts and subcontracts that result from this solicitation incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (29 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

RIGHT TO INVENTIONS

Reference: 2 CFR Part 200, Appendix II(F)
37 CFR Part 401

Contracts or agreements that include the performance of experimental, developmental, or research work must provide for the rights of the Federal Government and the Owner in any resulting invention as established by 37 CFR part 401, Rights to Inventions Made by Non-profit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements. This contract incorporates by reference the patent and inventions rights as specified within 37 CFR § 401.14. Contractor must include this requirement in all sub-tier contracts involving experimental, developmental, or research work.

SEISMIC SAFETY

Reference: 49 CFR Part 41

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a “certification of compliance” that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

TAX DELINQUENCY AND FELONY CONVICTIONS

Reference: Section 8113 of the Consolidated Appropriations Act, 2022 (Public Law 117-103) and similar provisions in subsequent appropriations acts
DOT Order 4200.6 – Appropriations Act Requirements for Procurement and Non-Procurement Regarding Tax Delinquency and Felony Convictions

The Contractor certifies:

- 1) It is not a corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability. A tax delinquency is any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted, or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.
- 2) It is not a corporation that was convicted of a criminal violation under any Federal law within the preceding 24 months. A felony conviction is a conviction within the preceding twenty four (24) months of a felony criminal violation under any Federal law and includes conviction of an offense defined in a section of the U.S. code that specifically classifies the offense as a felony and conviction of an offense that is classified as a felony under 18 USC § 3559.

The Contractor agrees to incorporate the above certification in all lower tier subcontracts.

TRADE RESTRICTION CERTIFICATION

Reference: 49 USC § 50104
49 CFR Part 30

By submission of an offer, the Offeror certifies that with respect to this solicitation and any resultant contract, the Offeror:

- 1) is not owned or controlled by one or more citizens of a foreign country included in the list of countries that discriminate against U.S. firms as published by the Office of the United States Trade Representative (USTR);
- 2) has not knowingly entered into any contract or subcontract for this project with a person that is a citizen or national of a foreign country included on the list of countries that discriminate against U.S. firms as published by the USTR; and

- 3) has not entered into any subcontract for any product to be used on the Federal project that is produced in a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR.

This certification concerns a matter within the jurisdiction of an agency of the United States of America and the making of a false, fictitious, or fraudulent certification may render the maker subject to prosecution under Title 18 USC § 1001.

The Offeror/Contractor must provide immediate written notice to the Owner if the Offeror/Contractor learns that its certification or that of a subcontractor was erroneous when submitted or has become erroneous by reason of changed circumstances. The Contractor must require subcontractors provide immediate written notice to the Contractor if at any time it learns that its certification was erroneous by reason of changed circumstances.

Unless the restrictions of this clause are waived by the Secretary of Transportation in accordance with 49 CFR § 30.17, no contract shall be awarded to an Offeror or subcontractor:

- 1) who is owned or controlled by one or more citizens or nationals of a foreign country included on the list of countries that discriminate against U.S. firms published by the USTR; or
- 2) whose subcontractors are owned or controlled by one or more citizens or nationals of a foreign country on such USTR list; or
- 3) who incorporates in the public works project any product of a foreign country on such USTR list.

Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render, in good faith, the certification required by this provision. The knowledge and information of a contractor is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

The Offeror agrees that, if awarded a contract resulting from this solicitation, it will incorporate this provision for certification without modification in all lower tier subcontracts. The Contractor may rely on the certification of a prospective subcontractor that it is not a firm from a foreign country included on the list of countries that discriminate against U.S. firms as published by USTR, unless the Offeror has knowledge that the certification is erroneous.

This certification is a material representation of fact upon which reliance was placed when making an award. If it is later determined that the Contractor or subcontractor knowingly rendered an erroneous certification, the Federal Aviation Administration (FAA) may direct through the Owner cancellation of the contract or subcontract for default at no cost to the Owner or the FAA.

VETERAN'S PREFERENCE

Reference: 49 USC § 47112(c)

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC § 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$10,000**DISTRACTED DRIVING**

Reference: Executive Order 13513
DOT Order 3902.10

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving", (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving", (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$10,000 that involve driving a motor vehicle in performance of work activities associated with the project.

EQUAL EMPLOYMENT OPPORTUNITY (EEO)

Reference: 2 CFR Part 200, Appendix II(C)
41 CFR § 60-1.4
41 CFR § 60-4.3
Executive Order 11246

Equal Opportunity Clause

During the performance of this contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff, or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in

response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the Contractor's commitments under this section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any such rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

PROHIBITION OF SEGREGATED FACILITIES

Reference: 2 CFR Part 200, Appendix II(C)
41 CFR Part 60-1

- (a) The Contractor agrees that it does not and will not maintain or provide for its employees any segregated facilities at any of its establishments, and that it does not and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained. The Contractor agrees that a breach of this clause is a violation of the Equal Employment Opportunity clause in this contract.
- (b) "Segregated facilities," as used in this clause, means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees that are segregated by explicit directive or are in fact

segregated on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin because of written or oral policies or employee custom. The term does not include separate or single-user rest rooms or necessary dressing or sleeping areas provided to assure privacy between the sexes.

- (c) The Contractor shall include this clause in every subcontract and purchase order that is subject to the Equal Employment Opportunity clause of this contract.

TERMINATION OF CONTRACT

Reference: 2 CFR Part 200, Appendix II(B)
FAA Advisory Circular 150/5370-10, Section 80-09

Termination for Convenience (Professional Services)

The Owner may, by written notice to the Consultant, terminate this Agreement for its convenience and without cause or default on the part of Consultant. Upon receipt of the notice of termination, except as explicitly directed by the Owner, the Contractor must immediately discontinue all services affected.

Upon termination of the Agreement, the Consultant must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

Termination for Cause (Professional Services)

Either party may terminate this Agreement for cause if the other party fails to fulfill its obligations that are essential to the completion of the work per the terms and conditions of the Agreement. The party initiating the termination action must allow the breaching party an opportunity to dispute or cure the breach.

The terminating party must provide the breaching party seven (7) days advance written notice of its intent to terminate the Agreement. The notice must specify the nature and extent of the breach, the conditions necessary to cure the breach, and the effective date of the termination action. The rights and remedies in this clause are in addition to any other rights and remedies provided by law or under this agreement.

- a) **Termination by Owner:** The Owner may terminate this Agreement for cause in whole or in part, for the failure of the Consultant to:
1. Perform the services within the time specified in this contract or by Owner approved extension;
 2. Make adequate progress so as to endanger satisfactory performance of the Project; or
 3. Fulfill the obligations of the Agreement that are essential to the completion of the Project.

Upon receipt of the notice of termination, the Consultant must immediately discontinue all services affected unless the notice directs otherwise. Upon termination of the Agreement, the Consultant

must deliver to the Owner all data, surveys, models, drawings, specifications, reports, maps, photographs, estimates, summaries, and other documents and materials prepared by the Engineer under this contract, whether complete or partially complete.

Owner agrees to make just and equitable compensation to the Consultant for satisfactory work completed up through the date the Consultant receives the termination notice. Compensation will not include anticipated profit on non-performed services.

Owner further agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

If, after finalization of the termination action, the Owner determines the Consultant was not in default of the Agreement, the rights and obligations of the parties shall be the same as if the Owner issued the termination for the convenience of the Owner.

b) **Termination by Consultant:** The Consultant may terminate this Agreement for cause in whole or in part, if the Owner:

1. Defaults on its obligations under this Agreement;
2. Fails to make payment to the Consultant in accordance with the terms of this Agreement;
3. Suspends the project for more than one hundred eighty (180) days due to reasons beyond the control of the Consultant.

Upon receipt of a notice of termination from the Consultant, Owner agrees to cooperate with Consultant for the purpose of terminating the agreement or portion thereof, by mutual consent. If Owner and Consultant cannot reach mutual agreement on the termination settlement, the Consultant may, without prejudice to any rights and remedies it may have, proceed with terminating all or parts of this Agreement based upon the Owner's breach of the contract.

In the event of termination due to Owner breach, the Consultant is entitled to invoice Owner and to receive full payment for all services performed or furnished in accordance with this Agreement and all justified reimbursable expenses incurred by the Consultant through the effective date of termination action. Owner agrees to hold Consultant harmless for errors or omissions in documents that are incomplete as a result of the termination action under this clause.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$25,000

DEBARMENT AND SUSPENSION

Reference: 2 CFR Part 180 (Subpart B)
 2 CFR Part 200, Appendix II(H)
 2 CFR Part 1200
 DOT Order 4200.5
 Executive Orders 12549 and 12689

Certification of Offeror/Bidder Regarding Debarment

By submitting a bid/proposal under this solicitation, the bidder or offeror certifies that neither it nor its principals are presently debarred or suspended by any Federal department or agency from participation in this transaction.

Certification of Lower Tier Contractors Regarding Debarment

The successful bidder, by administering each lower tier subcontract that exceeds \$25,000 as a “covered transaction”, must confirm each lower tier participant of a “covered transaction” under the project is not presently debarred or otherwise disqualified from participation in this federally-assisted project. The successful bidder will accomplish this by:

1. Checking the System for Award Management at website: <http://www.sam.gov>.
2. Collecting a certification statement similar to the Certification of Offeror /Bidder Regarding Debarment, above.
3. Inserting a clause or condition in the covered transaction with the lower tier contract.

If the Federal Aviation Administration later determines that a lower tier participant failed to disclose to a higher tier participant that it was excluded or disqualified at the time it entered the covered transaction, the FAA may pursue any available remedies, including suspension and debarment of the non-compliant participant.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$100,000**CONTRACT WORKHOURS AND SAFETY STANDARDS ACT REQUIREMENTS**

Reference: 2 CFR Part 200, Appendix II(E)
 2 CFR § 5.5(b)
 40 USC § 3702
 40 USC § 3704

1. Overtime Requirements.

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic, including watchmen and guards, in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; Liability for Unpaid Wages; Liquidated Damages.

In the event of any violation of the clause set forth in paragraph (1) of this clause, the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this clause, in the sum of \$29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this clause.

3. Withholding for Unpaid Wages and Liquidated Damages.

The Federal Aviation Administration (FAA) or the Owner shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any

such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this clause.

4. Subcontractors.

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) and also a clause requiring the subcontractor to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this clause.

LOBBYING AND INFLUENCING FEDERAL EMPLOYEES

Reference: 31 USC § 1352 – Byrd Anti-Lobbying Amendment
2 CFR Part 200, Appendix II(I)
49 CFR Part 20, Appendix A

Certification Regarding Lobbying

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$150,000**CLEAN AIR AND WATER POLLUTION CONTROL**

References: 2 CFR Part 200, Appendix II(G)
 42 USC § 7401, et seq
 33 USC § 1251, et seq

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC §§ 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC §§ 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

The Contractor must include this requirement in all subcontracts that exceed \$150,000.

PROVISIONS APPLICABLE TO CONTRACTS EXCEEDING \$250,000**BREACH OF CONTRACT TERMS**

Reference: 2 CFR § 200 Appendix II(A)

Any violation or breach of terms of this contract on the part of the Contractor or its subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement.

Owner will provide Contractor written notice that describes the nature of the breach and corrective actions the Contractor must undertake in order to avoid termination of the contract. Owner reserves the right to withhold payments to Contractor until such time the Contractor corrects the breach or the Owner elects to terminate the contract. The Owner's notice will identify a specific date by which the Contractor must correct the breach. Owner may proceed with termination of the contract if the Contractor fails to correct the breach by the deadline indicated in the Owner's notice.

The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights and remedies otherwise imposed or available by law.

DISADVANTAGED BUSINESS ENTERPRISE

Reference: 49 CFR Part 26

Solicitation Language (Solicitations that include a Contract Goal)**Bid Information Submitted as a matter of responsiveness:**

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsiveness, the Bidder or Offeror must submit the following information with its proposal on the forms provided herein:

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;

- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Bid Information submitted as a matter of bidder responsibility:

The Owner's award of this contract is conditioned upon Bidder or Offeror satisfying the good faith effort requirements of 49 CFR § 26.53.

As a condition of responsibility, every Bidder or Offeror must submit the following information on the forms provided herein within five days after bid opening.

- 1) The names and addresses of Disadvantaged Business Enterprise (DBE) firms that will participate in the contract;
- 2) A description of the work that each DBE firm will perform;
- 3) The dollar amount of the participation of each DBE firm listed under (1);
- 4) Written statement from Bidder or Offeror that attests their commitment to use the DBE firm(s) listed under (1) to meet the Owner's project goal;
- 5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- 6) If Bidder or Offeror cannot meet the advertised project DBE goal, evidence of good faith efforts undertaken by the Bidder or Offeror as described in appendix A to 49 CFR part 26. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Solicitation Language (Race/Gender Neutral Means)

The requirements of 49 CFR part 26 apply to this contract. It is the policy of the Owner to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. The Owner encourages participation by all firms qualifying under this solicitation regardless of business size or ownership.

Prime Contracts (Contracts Covered by a DBE Program)

Contract Assurance (49 CFR § 26.13)

The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may

result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the Contractor from future bidding as non-responsible.

Prompt Payment (49 CFR § 26.29)

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) calendar days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) calendar days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

Termination of DBE Subcontracts (49 CFR § 26.53(f))

The prime contractor must not terminate a DBE subcontractor listed in response to the above *Solicitation Language (Solicitations that include a Contract Goal)* section (or an approved substitute DBE firm) without prior written consent of Owner. This includes, but is not limited to, instances in which the prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The prime contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains written consent from the Owner. Unless the Owner's consent is provided, the prime contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Owner may provide such written consent only if the Owner agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the circumstances listed in 49 CFR §26.53.

Before transmitting to the Owner its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Owner, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise the Owner and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owner should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Owner may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

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GENERAL FUND

as of January 31, 2025

GENERAL FUND

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	6,450,183	5,489,073	5,489,073	6,741,570	6,741,570
REVENUE					
Ad Valorem Property Tax	6,401,026	7,122,464	3,515,000	4,028,900	(513,900)
Sales Tax	9,789,887	9,960,982	830,080	821,421	8,659
Franchise Tax	2,819,267	2,776,900	231,408	237,260	(5,852)
Other Taxes	747,810	776,594	61,221	73,365	(12,144)
Intergovernmental Taxes	424,887	338,838	19,735	54,668	(34,933)
Licenses & Permits	294,976	276,850	23,061	23,885	(824)
Charges for Services	2,411,599	2,272,700	166,188	161,774	4,414
Fines & Fees	525,589	497,300	41,437	55,677	(14,240)
Use of Property and Money	914,263	735,596	61,297	54,892	6,405
Reimbursements	226,524	158,716	13,221	7,353	5,868
Misc. Rev. - Administrative Transfers	2,731,921	3,075,160	247,908	253,211	(5,303)
Transfer from Solid Waste Fund	0	0	0	0	0
Transfer from Health Insurance Fund	0	0	0	0	0
Operating Revenues	240	0	16	10	6
Nonoperating Revenues	225,753	0	0	0	0
TOTAL RECEIPTS	27,513,743	27,992,100	5,210,572	5,772,417	(561,845)
EXPENDITURES					
Personnel Services	17,949,291	18,052,533	1,534,007	1,477,888	56,119
Vacancy Rate	0	0	0	0	0
Maintenance & Repair	968,713	1,153,800	96,123	106,067	(9,944)
Commodities	1,631,449	2,134,335	177,822	178,506	(684)
Other Charges	354,999	910,645	66,808	15,102	51,706
Capital Outlay	225,163	201,500	201,500	954	200,546
Debt Reduction	0	0	0	0	0
Stock	0	0	0	0	0
Transfer to Industrial Development Sales Tax	925,000	925,000	77,083	77,083	0
Transfer to Multi Year Fund	3,358,119	3,416,507	284,709	275,567	9,142
Transfer to Project accounts	(1,774)	0	0	0	0
Transfer to Equipment Reserve	0	572,200	47,679	0	47,679
Utilities	550,047	635,050	52,906	40,242	12,664
Communications	107,898	145,250	12,081	7,112	4,969
Training and Travel	182,158	239,200	19,925	17,943	1,982
Jail Expenses	62,200	87,500	7,291	0	7,291
Other Contractual	888,344	1,205,316	99,167	86,236	12,931
Excess Carryover	0	0	0	0	0
Outstanding PO's	0	0	0	0	0
TOTAL EXPENDITURES	27,201,608	29,678,836	2,677,101	2,282,700	394,401
Revenue less expenses	312,135	(1,686,736)	2,533,471	3,489,718	956,247
Cash Basis Adjustments/Non-appropriated Balance	(20,748)	0	0	(43,732)	
Ending Cash Balance	6,741,570	3,802,337	8,022,544	10,187,555	
Base for Reserve calculation	22,695,100	24,563,629	2,066,130	1,929,096	
15% Reserve	3,404,265	3,684,544	309,920	289,364	
Amount over 15% Reserve	3,337,305	117,793	7,712,625	9,898,191	
Percentage	29.70%	15.48%	388.29%	528.10%	

Multi Year Fund
as of January 31, 2025

				2025	2025
				Purchase Order	Budget/estimated
				Expenses	
				Actual	
Beginning unencumbered balance				2,326,981.19	3,060,010.61
REVENUE					
Sales Tax Proceeds from General Fund				275,567.25	3,416,507.00
Interest				8,063.52	130,000.00
State Reimbursement				400,000.00	-
Outstanding PO's				396,747.12	
Accounts Receivable				0.00	
Total Revenue				1,080,377.89	3,460,515.00
PPP	102-0101-400.0505	2020, 21 & 22 Private/Public partnership	0.00	0.00	668,000.00
SK2302	102-0101-400.0505	ADA Sidewalks	0.00		17,578.46
	102-0101-400.0265	Miscellaneous storm water repairs			150,000.00
	102 0601 400 0257	Hazardous Sidewalk	0.00		100,000.00
SK2201	102-0601-400.1516	Sidewalk 12th & Burlingame & 24th Prairie to Lincoln	0.00	144,039.18	145,241.61
PV2501	102-0601-400.1516	2025 Street Rehab	(0.00)	(0.00)	1,100,000.00
	102-0601-400.1516	CCLIP Geom. Improvs. K99/Commercial (KS Ave to SCL)	0.00		250,000.00
	102-0601-400.1516	Misc Street Repairs			100,000.00
PV2404	102-0601-400.1516	Street Preservation	249,023.12	249,023.12	300,000.00
	102-0801-400.0502	Jones Park Mower Shed		0.00	30,000.00
	102-0801-400.0505	Peter Pan Park Pond cleanup		0.00	120,000.00
	102-0803-400.0505	JAC replace sand in filters		0.00	30,000.00
	102-0806-400.0502	Hoof Stock Sheds		0.00	50,000.00
	102-0806-400.0502	Trumpeter Swan Exhibit - repairs		0.00	54,000.00
ZO2201	102-0806-400.0505	Fire Alarm & Smoke Detection at Zoo	6,295.00	6,295.00	26,000.00
ZO2402	102-0806-400.0505	Bird enclosure sheds, enclosures & ventilation USDA		0.00	145,000.00
ZO2502	102-0806-400.0505	King Vulture Remodel USDA	31,800.00	31,800.00	195,000.00
ZO2501	102-0806-400.0505	Fencing in Zoo replaced/repared		14.30	88,900.00
	102-0806-400.0505	3 phase recycling pump replace & new pond aeration			18,000.00
	102-0806-400.0505	Hoofstock Work Area (Bison, mule deer llama) AZA Requirement			180,000.00
	102-0901-400.0502	ADA Improvements East Foyer		0.00	300,000.00
	102-0901-400.0502	HVAC updates Building control update		0.00	45,000.00
	102-0901-400.0502	618 Mechanic Roof		0.00	60,000.00
	102-0901-400.0502	Civic Roof		0.00	301,000.00
	102-0901-400.0502	Replace Steam Lines & update HVAC	0.00	0.00	50,000.00
	102-0901-400.0502	Remodel East Foyer & Vestibule door ways add with ADA		0.00	50,000.00
	102-0901-400.0502	Exterior & Arena Decorative lights	0.00	0.00	45,000.00
CV2302	102-0901-400.0502	Police department Lobby Remodel ADA	138,928.00	2,500.00	141,428.00
	102-0901-400.0502	Civic Convert from Steam to Hot Water Heat System			475,000.00
	102-0901-400.0502	Replace Windows in Auditorium add with walkin cooler			106,000.00
CV2202	102-0901-400.0502	Elevator Controls	0.00	4,145.00	4,145.00
	102-0902-400.0502	Remodel Library Public Bathrooms.office & children demo	0.00	0.00	315,000.00
	102-1400-400.0505	Replace Mogas Fuel Tank & 24hr fuel pumps		0.00	130,000.00
	102-1400-400.0505	Airport Apron Extension (FAA 90%)		0.00	100,000.00
	102-1400-400.0505	Ramp Expansion Construction (KDOT 90%)			88,000.00
	102-1400-400.0502	Replace Both Community Hangar Doors (KDOT 85%)			37,500.00
	102-1400-400.0505	Reconstruct South Taxilanes (FAA 90%)		0.00	90,300.00
	102-2503-400.0505	12th and Merchant Replace signal heads and upgrade cameras to opticon			90,000.00
	102-2503-400.0505	18th and Industrial N & S And I-35 cammera upgrades			70,000.00
EXPENDITURES				426,046.12	6,266,665.07
Ending Unencumbered Cash balance				2,830,614.48	(479,168.88)
2024 budgeted projects				2,830,614.48	-

Insurance Reserve

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Original Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$663,358	\$0	\$0	\$699,713	\$0
REVENUE					
Transfer from General	\$0	\$0	\$0	\$0	\$0
Transfer from Int Improvem	\$0			\$0	\$0
Insurance payment	\$0			\$0	\$0
Interest	\$36,355	\$0		\$1,733	(\$1,733)
TOTAL RECEIPTS	\$36,355	\$0	\$0	\$1,733	(\$1,733)
EXPENDITURES					
Maintenance & Repair		\$0			\$0
Misc Projects		\$0			
TOTAL EXPENDITURES	\$0	\$0	\$0	\$0	\$0
Ending Cash Balance	\$699,713	\$0	\$0	\$701,446	(\$1,733)

Vacant Property Program

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Original Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$90,362	\$0	\$0	\$7,580	\$0
REVENUE					
Transfer from ARPA funds	\$0	\$0	\$0	\$0	\$0
Interest	\$2,358	\$0		\$34	(\$34)
TOTAL RECEIPTS	\$2,358	\$0	\$0	\$34	(\$34)
EXPENDITURES					
Maintenance & Repair	\$0	\$0		\$0	\$0
Other Contractual Services	\$85,140	\$0		\$0	
TOTAL EXPENDITURES	\$85,140	\$0	\$0	\$0	\$0
Ending Cash Balance	\$7,580	\$0	\$0	\$7,614	(\$34)

City of Emporia, Kansas

Library Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Original Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$0	\$0	\$0	\$78	\$0
REVENUE					
Ad Valorem Property Tax	\$1,086,316	\$1,145,062	\$572,531	\$644,731	(\$72,200)
Back Tax Collection	\$17,805	\$15,000	\$7,500	\$3,317	\$4,183
Motor Vehicle Tax	\$109,107	\$100,229	\$10,000	\$12,106	(\$2,106)
Recreational Vehicle Tax	\$1,098	\$1,156	\$100	\$82	\$18
AdValorem Tax Reduction	(\$12,513)	(\$12,492)	(\$6,246)	(\$2,668)	(\$3,578)
General Fund Contribution		\$0			\$0
TOTAL RECEIPTS	\$1,201,813	\$1,248,955	\$583,885	\$657,567	(\$73,682)
EXPENDITURES					
Insurance Refund		\$0			\$0
Misc Projects		\$0			
Appropriation	\$1,201,735	\$1,248,955	\$583,885	\$657,567	(\$73,682)
TOTAL EXPENDITURES	\$1,201,735	\$1,248,955	\$583,885	\$657,567	(\$73,682)
Ending Cash Balance	\$78	\$0	\$0	\$78	\$0

Transient Guest Tax

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$999,063	\$588,887	\$588,887	\$671,185	\$0
REVENUE					
Transient Guest Tax	\$932,626	\$950,000	\$250,000	\$229,900	\$20,100
Interest on Investment	\$24,211	\$10,000	\$833	\$2,232	(\$1,399)
Fence rental	\$2,369	\$0	\$0	\$0	\$0
Miscellaneous	\$14,432			\$0	\$0
Repayment of extra funds - Chamber				\$0	\$0
Accounts Receivable - fence rental	\$8,540			\$0	\$0
TOTAL RECEIPTS	\$982,178	\$960,000	\$250,833	\$232,132	\$18,701
EXPENDITURES					
CVB Appropriation	\$462,000	\$480,000			\$0
Trusler Sports Complex		\$0			\$0
City cost associated with events	\$40,000	\$40,000			\$0
Civic Auditorium improvements	\$50,000	\$50,000			\$0
Red Rock's Appropriation	\$7,500	\$10,000			\$0
ESU Welch Stadium	\$400,000	\$0			\$0
Disc Golf Course Maintenance & Employee	\$100,000	\$100,000			\$0
Emporia Main Street	\$95,000	\$95,000			\$0
Emporia Arts Council Support	\$30,000	\$30,000			\$0
Emporia Granda	\$30,000	\$30,000			\$0
Symphony in the Flint Hills		\$0			\$0
Unbound Bike Event	\$15,000	\$20,000			\$0
DDO	\$20,000	\$50,000			\$0
PDGA Professional Disc Golf World	\$20,000	\$20,000			\$0
Immaginarium		\$45,000			\$0
National Teachers Hall of Fame		\$10,000			\$0
Free for Kansas - Music event	\$20,000	\$20,000			\$0
Dynamic Discs - Jones course improvement	\$17,900				\$0
Hispanics of Today and Tomorrow	\$0	\$20,000		\$0	\$0
Marketing money (Mainstreet & Visit Emporia)		\$120,000			\$0
Miscellaneous	\$2,656	\$0		\$0	\$0
Special Projects		\$0	\$0		\$0
Outstanding PO's	\$0			\$0	
TOTAL EXPENDITURES	\$1,310,056	\$1,140,000	\$0	\$0	\$0
Ending Cash Balance	\$671,185	\$408,887	\$839,720	\$903,317	\$18,701
Transient Guest Tax Receipts	2021	2022	2023	2024	2025
1ST QUARTER-JANUARY	\$105,764.76	\$184,682.75	\$217,964.96	\$208,253.00	\$229,900.15
2ND QUARTER-APRIL	\$135,567.13	\$143,987.80	\$170,824.51	\$163,048.74	\$0.00
3RD QUARTER-JULY	\$192,642.58	\$223,905.58	\$232,566.63	\$298,395.94	\$0.00
4TH QUARTER-OCTOBER	\$200,102.99	\$219,288.14	\$230,393.63	\$262,929.27	\$0.00
TOTAL	\$634,077.46	\$771,864.27	\$851,749.73	\$932,626.95	\$229,900.15

City of Emporia, Kansas

Industrial Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	23,447	24,265	24,265	25,977	0
REVENUE					
Ad Valorem Property Tax	1,060	1,000	500	631	(131)
Back Tax Collections	20	21	11	3	8
Motor Vehicle Tax	128	91	41	12	29
Ad Valorem Tax Reduction	(12)	(16)	(8)	(3)	(5)
Interest on Investment	1,334	800	66	66	0
Miscellaneous					
TOTAL RECEIPTS	2,530	1,896	610	709	(99)
EXPENDITURES					
Travel Expense & Miscellaneous	0	1,185	0		0
Other charges	0				0
Contractual Services	0	0			0
Special Projects and Reserve Fund	0	24,976			0
TOTAL EXPENDITURES	0	26,161	0	0	0
Ending Cash Balance	25,977	0	24,875	26,686	(99)

Economic Sales Tax

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$1,319,820	\$989,728	\$989,728	\$1,038,291	\$0
Revenue:					
Sales Tax Receipts	\$925,000	\$925,000	\$77,083	\$77,083	\$0
Interest Income	\$31,551	\$20,000	\$1,666	\$2,959	(\$1,293)
Money for Land Purchases	\$195,906	\$0		\$0	\$0
Bond Proceeds	\$0	\$0	\$0	\$0	\$0
Return unused money WM	\$0	\$0		\$0	\$0
RDA returned money				\$79,182	(\$79,182)
Total Revenue	\$1,152,457	\$945,000	\$78,749	\$159,224	(\$80,475)
Expense:					
Appropriation to the RDA	\$358,184	\$386,192	\$96,548	\$0	\$96,548
Emporia Enterprises	\$35,000	\$0	\$0	\$0	\$0
Main Street	\$45,000	\$45,000	\$45,000	\$0	\$45,000
Flint Hills Tech College	\$0	\$100,000	\$0	\$0	\$0
Land Purchase	\$0	\$0	\$0	\$0	\$0
Simmons Discount	\$0	\$0		\$0	\$0
Land Purchase Bond Pmt	\$85,963	\$86,000	\$86,000	\$0	\$86,000
Transfer to B&I water proj	\$350,000	\$350,000	\$350,000	\$0	\$350,000
Soden Rd water main ext	\$0	\$0	\$0		\$0
Water Valves	\$0				\$0
Dynamic Brewing Compar	\$500,000			\$0	\$0
VisionFirst Advisors	\$59,826			\$0	\$0
Special Projects	\$13	\$967,535	\$0	\$0	\$0
Total Expenses	\$1,433,986	\$1,934,727	\$577,548	\$0	\$577,548
Ending Cash Balance	\$1,038,291	\$1	\$490,929	\$1,197,515	(\$658,023)

Special Alcohol Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	120,433	116,893	120,433	122,643	0
REVENUE					
Private Club Liquor Tax	108,123	104,660	0	0	0
Interest on Investment	6,287	3,000	250	304	(54)
TOTAL RECEIPTS	114,410	107,660	250	304	(54)
EXPENDITURES					
Appropriations	112,200	144,400	0	0	0
Special Projects		0	0	0	0
TOTAL EXPENDITURES	112,200	144,400	0	0	0
Ending Cash Balance	122,643	80,153	120,683	122,947	(54)

	Receive in 2021	Receive in 2022	Receive in 2023	Receive in 2024	Receive in 2025
Appropriations					
Cross Winds	\$15,000.00	\$15,000.00	\$15,000.00	\$20,000.00	\$105,000.00
Corner House	\$48,750.00	\$65,000.00	\$75,000.00	\$85,000.00	\$0.00
Emporia State University	\$6,750.00	\$6,750.00	\$7,200.00	\$7,200.00	\$7,200.00
Flint Hills Tech (Mental Health)	\$0.00				\$7,200.00
Crosswinds Building Match					25,000.00
Total	\$70,500.00	\$86,750.00	\$97,200.00	\$112,200.00	\$144,400.00

	2021	2022	2023	2024	2025
Receipts					
1ST QUARTER - MARCH	\$17,214.78	\$23,976.09	\$25,545.76	\$26,804.33	\$0.00
2ND QUARTER - JUNE	\$18,634.04	\$22,129.19	\$26,129.12	\$26,489.58	\$0.00
3RD QUARTER - SEPTEMBER	\$25,844.73	\$28,544.72	\$31,037.27	\$29,035.42	\$0.00
4TH QUARTER - DECEMBER	\$24,664.21	\$25,393.46	\$27,455.87	\$25,793.55	\$0.00
TOTAL	\$86,357.76	\$100,043.46	\$110,168.02	\$108,122.88	\$0.00

City of Emporia, Kansas

Special Park Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$115,908	\$103,068	\$0	\$124,327	\$0
REVENUE					
Private Club Liquor Tax	\$108,123	\$104,660	\$0	\$0	\$0
Donations& Grants		\$0	\$0	\$0	\$0
Lake Kahola Proceeds		\$0			\$0
Trf of funds from project account	\$0	\$0		\$0	\$0
Interest on Investment	\$8,719	\$4,000	\$333	\$539	(\$206)
TOTAL RECEIPTS	\$116,842	\$108,660	\$333	\$539	(\$206)
EXPENDITURES					
Capital Outlay	\$93,423	\$135,250	\$135,250	\$0	\$135,250
Municipal Band Allocation	\$15,000	\$15,000	\$0	\$0	\$0
Miscellaneous					\$0
Commodities	\$0	\$0		\$0	\$0
Contractual Services	\$0	\$0	\$0	\$0	\$0
Other Charges					\$0
Transfer to Project Account	\$0			\$0	\$0
Outstanding PO's	\$0			\$0	
Special Projects	\$0	\$61,478	\$0		\$0
TOTAL EXPENDITURES	\$108,423	\$211,728	\$135,250	\$0	\$135,250
Ending Cash Balance	\$124,327	\$0	-\$134,917	\$124,866	(\$135,456)

Receipts	2020	2021	2022	2023	2024
1ST QUARTER - MARCH	\$22,675.47	\$17,214.77	\$23,976.10	\$25,545.75	\$26,804.32
2ND QUARTER - JUNE	\$22,611.90	\$18,634.04	\$22,129.19	\$26,129.11	\$26,489.57
3RD QUARTER - SEPTEMBER	\$7,881.00	\$25,844.73	\$28,544.72	\$31,037.26	\$29,035.43
4TH QUARTER - DECEMBER	\$14,069.39	\$24,664.03	\$25,393.46	\$27,455.86	\$25,793.55
TOTAL	\$67,237.76	\$86,357.57	\$100,043.47	\$110,167.98	\$108,122.87

Capital Items	Budget Amount	Purchase Price
Golf Course	\$43,000.00	Tees & Banks Reel Mower (2003)
Golf Course	\$52,500.00	Tees & Banks Reel Mower (2004)
	<u>95,500.00</u>	

City of Emporia, Kansas

Special Street Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	179,135	113,211	113,211	188,562	
REVENUE					
Gasoline Tax	653,077	665,570	665,570	161,365	504,205
Special City-County Tax	80,767	79,813	79,813	0	79,813
Damages	20,438	5,000	5,000	0	5,000
Interest on Investment	15,927	10,000	10,000	785	9,215
Transfer of Funds	102,420	100,000	100,000	0	100,000
Sale of Salvage	0			0	0
Miscellaneous	125	0		0	0
TOTAL RECEIPTS	872,754	860,383	860,383	162,149	698,234
EXPENDITURES					
Personnel Services	632,443	634,288	622,142	52,298	569,844
Vacancy		(12,147)			0
Maintenance & Repair	87,417	131,870	131,870	2,779	129,091
Commodities	108,214	154,350	154,350	14,180	140,170
Other Charges	20,827	(41,712)	(41,711)	144	(41,855)
Capital Outlay	0	0		0	0
Transfer of Funds	0	25,000	25,000	0	25,000
Utilities	9,225	5,750	5,750	1,110	4,640
Communications	2,420	2,700	2,700	196	2,504
Training & Travel	6,216	8,000	8,000	359	7,641
Contractual Services	24,585	41,100	65,494	947	64,547
Special Projects	0	24,394	0	0	0
Audit Adjustments	(28,021)			(9,815)	9,815
Outstanding PO's	0			0	0
TOTAL EXPENDITURES	863,327	973,593	973,595	62,197	911,398
Net Change in Cash	9,427	(113,210)	(113,212)	99,953	
Ending Cash Balance	188,562	1	(1)	288,515	

Receipts	2021	2022	2023	2024	2025
1st Quarter - Jan Payment	\$161,594.64	\$167,557.74	\$167,412.68	\$159,680.00	\$0.00
2nd Quarter - April Payment	\$149,245.64	\$157,106.42	\$149,529.56	\$151,744.49	\$0.00
Extra Payment- June	\$54,671.53				0
3rd Quarter - July Payment	\$172,643.49	\$166,060.14	\$166,505.96	\$174,865.61	\$0.00
4th Quarter - Oct Payment	\$174,419.30	\$165,112.70	\$164,909.80	\$166,786.70	\$0.00
Total	\$712,574.60	\$655,837.00	\$648,358.00	\$653,076.80	\$0.00

Capital Item	Budget Amount	Purchase Price
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City of Emporia, Kansas

Drug Forfeiture Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$35,885	\$40,045	\$40,045	\$65,741	
REVENUE					
Receipts from Drug Forfeitures	\$40,393	\$5,000	\$416	\$3,000	(2,584)
Interest on Investment	\$2,710	\$2,000	\$166	\$170	(4)
Miscellaneous					
TOTAL RECEIPTS	\$43,103	\$7,000	\$582	\$3,170	(2,588)
EXPENDITURES					
Commodities	\$11,268	\$5,000	\$416	\$0	416
Capital Outlay		\$0		\$0	-
Communications	\$330	\$0		\$0	-
Other Charges	\$1,649		\$0	\$0	-
Transfer of funds					
Other Contractual	\$0	\$0		\$0	-
Travel & Training					-
Maintenance & Repair	\$0	\$0	\$0	\$0	-
Outstanding PO's	\$0			\$0	
Special Projects		\$42,045	\$0		
TOTAL EXPENDITURES	\$13,247	\$47,045	\$416	\$0	416
Ending Cash Balance	\$65,741	\$0	\$40,211	\$68,911	

Storm Water

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$243,446	\$0	\$0	\$139,005	
REVENUE					
Transfer from Multi Year	\$100,000	\$0	\$0	\$0	-
Interest on Investment	\$13,609	\$0	\$0	\$344	(344)
Miscellaneous					
TOTAL RECEIPTS	\$113,609	\$0	\$0	\$344	(344)
EXPENDITURES					
Commodities	\$0	\$0	\$0	\$0	-
Capital Outlay	\$7,184	\$0		\$0	-
Communications	\$702	\$0		\$0	-
Other Charges	\$0			\$0	-
Transfer of funds	\$0			\$0	-
Other Contractual	\$72,258	\$0		\$0	-
Travel & Training					-
Maintenance & Repair	\$137,906	\$0	\$0	\$0	-
Outstanding PO's	\$0			\$0	
Special Projects		\$0	\$0		
TOTAL EXPENDITURES	\$218,050	\$0	\$0	\$0	-
Ending Cash Balance	\$139,005	\$0	\$0	\$139,349	

City of Emporia, Kansas

Land Bank

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$127,414	\$0	\$0	\$133,963	
REVENUE					
Transfer from Multi Year	\$0	\$0	\$0	\$0	-
Interest on Investment	\$6,967	\$0	\$0	\$332	(332)
Sale of Property	\$0			\$0	
TOTAL RECEIPTS	\$6,967	\$0	\$0	\$332	(332)
EXPENDITURES					
Commodities	\$0	\$0	\$0	\$0	-
Capital Outlay		\$0			-
Communications	\$0	\$0		\$0	-
Other Charges	\$418	\$0	\$0	\$11	(11)
Purchase of Property	\$0	\$0	\$0		
Communications	\$0	\$0	\$0	\$0	-
Other Contractual Services		\$0	\$0		-
Maintenance & Repair	\$0	\$0	\$0	\$0	-
Outstanding PO's	\$0			\$0	
Special Projects		\$0	\$0		
TOTAL EXPENDITURES	\$418	\$0	\$0	\$11	(11)
Ending Cash Balance	\$133,963	\$0	\$0	\$134,283	

City of Emporia, Kansas

Bond & Interest Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$2,358,480	\$3,765,846	\$2,358,480	\$3,945,106	\$0
REVENUE					
Ad Valorem Property Tax	\$2,064,333	\$2,061,111	\$1,030,555	\$1,160,342	(129,787)
Back Tax Collection	\$35,227	\$40,000	\$10,000	\$6,400	3,600
Special Assessments	\$67,861	\$35,301	\$17,650	\$19,932	(2,282)
Motor Vehicle Tax	\$219,397	\$192,621	\$20,500	\$23,192	(2,692)
Ad Valorem Tax Reduction	-\$23,734	-\$22,000	-\$11,000	-\$4,801	(6,199)
Interest on Investment	\$189,025	\$100,000	\$8,333	\$12,791	(4,458)
Recreation Center - Pool renovation		\$0			0
Recreation Center - Office/Locker Remodel		\$0			0
Recreation Center - Ball Diamond Improvemen	\$0	\$0	\$0	\$0	0
Recreation Center - Fitness Room	\$51,360	\$49,440	\$0	\$0	0
Industrial Land Payment - Ind Sales Tax	\$85,963	\$0		\$0	0
Sale of Bonds	\$0	\$0	\$0	\$0	0
RHID Krestinger Tax Payment	\$44	\$0		\$2	(2)
Hanger Payment - General Fund		\$0			0
Miscellaneous	\$0	\$0		\$0	0
Transfer of Funds from Project Accounts	\$0	\$0	\$0	\$0	0
TOTAL RECEIPTS	\$2,689,476	\$2,456,473	\$1,076,038	\$1,217,858	-\$141,820
EXPENDITURES					
Principal	\$875,000	\$929,000	\$0	\$0	0
Interest Coupons	\$227,850	\$195,100	\$0	\$0	0
Transfer of funds	\$0			\$0	
Misc projects		\$5,098,219	\$0		
TOTAL EXPENDITURES	\$1,102,850	\$6,222,319	\$0	\$0	0
Ending Cash Balance	\$3,945,106	\$0	\$3,434,518	\$5,162,964	

City of Emporia, Kansas

Equipment Reserve Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
Beginning Cash Balance	\$579,091	\$0	\$0	\$249,176	
REVENUE					
Transfer from other funds	\$0			\$0	-
Interest on Investment	\$31,505			\$444	(444)
Sale of Vehicles	\$203,380			\$0	
TOTAL RECEIPTS	\$234,885	\$0	\$0	\$444	(444)
EXPENDITURES					
Leasing Payment	\$564,800			\$70,073	(70,073)
Outstanding PO's	\$0			\$0	
Special Projects					
TOTAL EXPENDITURES	\$564,800	\$0	\$0	\$70,073	(70,073)
Ending Cash Balance	\$249,176	\$0	\$0	\$179,547	

Water Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	830,592	357,845	357,845	10,000	0
REVENUE					
Sale of Water	9,286,308	9,873,500	822,791	732,346	90,445
Service Charge	83,539	100,000	8,333	5,812	2,521
Penalties	102,425	92,000	7,666	8,016	(350)
Sale of Salvage	0	0		0	0
Reimbursed Expense	57,451	20,000	1,728	0	1,728
Interest on Investment	42,986	40,000	3,333	974	2,359
Sale of Bonds	0	0	0	0	0
Trf from Industrial Fund	350,000	350,000	350,000	0	350,000
Trf from Project fund	0	0	0	0	0
Non Operating Revenue	5,240,370	0		0	0
Miscellaneous	0	2,100	83	0	83
TOTAL RECEIPTS	15,163,079	10,477,600	1,193,934	747,148	446,786
EXPENDITURES					
Personnel Services	1,387,665	1,502,807	125,223	109,856	15,367
Vacancy		(28,910)	0		0
Maintenance & Repair	1,381,379	1,110,400	92,526	112,031	(19,505)
Commodities	2,047,987	1,769,350	147,446	119,192	28,254
Other Charges	644,539	340,260	39,746	36,050	3,696
Industrial Discount		320,000			
Capital Outlay	373,685	415,000	415,000	116,757	298,243
Debt Payment	1,825,075	1,635,939	1,705,688	0	1,705,688
Stock	120,609	5,000	416	0	416
Transfer to Project Account	5,240,370	0	0	0	0
Utilities	630,971	712,100	59,040	49,952	9,088
Communications	24,833	44,700	3,721	854	2,867
Travel & Training	19,330	22,500	1,874	444	1,430
Contractual Services	1,222,028	1,329,450	706,620	705,692	928
Administrative Fee 16%	1,105,842	1,405,680	117,140	119,388	(2,248)
Excess Carryover		0	0		0
Change in Liabilities	(40,644)	0		(179,736)	179,736
Outstanding PO's					
TOTAL EXPENDITURES	15,983,671	10,584,276	3,414,440	1,190,479	2,223,961
NET CHANGE IN CASH	(820,592)	(106,676)	(2,220,506)	(443,331)	(1,777,175)
ENDING CASH BALANCE	10,000	251,169	(1,862,661)	(433,331)	
Principal Bond Payments	(1,415,000)	(1,415,000)	(1,415,000)	0	
Depreciation	1,456,758	1,550,000	129,166	0	
Capitalized Assets	(3,879,788)	(995,000)	0	0	
Liabilities					
ADJUSTMENTS	(3,838,030)	(860,000)	(1,285,834)	0	
Base for reserve calculation	10,369,616	10,169,276	2,999,440	1,073,722	
20% reserve amount	2,073,923	2,033,855	599,888	214,744	
Amount over 20% reserve	(2,063,923)	(1,782,686)	(2,462,549)	(648,075)	
Percent	0.10%	2.47%	-62.10%	-40.36%	

Wastewater Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	1,029,532	726,707	1,029,532	640,981	
REVENUE					
Sales/Charges	6,600,709	7,040,000	586,666	565,293	21,373
Extra Strength Surcharge	163,428	155,000	12,914	11,097	1,817
Interest on Investment	45,923	30,000	2,500	3,472	(972)
New System taps	2,000	5,000	416	0	827
Loss on sales of assets	0			0	
Grant money	0	0	0	0	0
Sale of Bonds	0	0	0	0	0
Non Operating Revenue	135,920		0	0	0
Miscellaneous	6,808	1,000	83	300	(217)
TOTAL RECEIPTS	6,954,788	7,231,000	602,579	580,163	22,827
EXPENDITURES					
Personnel Services	1,425,385	1,310,671	118,997	102,943	16,054
Vacancy	0	(23,100)		0	0
Maintenance & Repair	420,819	489,100	53,120	46,597	6,523
Commodities	534,367	374,750	394,000	22,588	371,412
Other Charges	165,841	187,785	3,813	11,880	(8,067)
Capital Outlay	117,523	405,000	400,000	0	400,000
Debt Payment	2,983,764	2,800,484	2,767,241	0	2,767,241
Transfer to Project fund	135,920	79,100	0	0	0
Utilities	749,512	599,500	54,290	61,606	(7,316)
Communications	22,855	29,600	2,578	635	1,943
Travel & Training	9,652	11,500	1,290	228	1,062
Contractual Services	344,176	239,550	31,730	56,492	(24,762)
Administrative Fee flat	610,000	610,000	50,833	50,833	0
Excess Carryover		0	0		0
Change in Liabilities	(176,476)	0		(75,859)	75,859
Outstanding PO's					
TOTAL EXPENDITURES	7,343,338	7,113,940	3,877,892	277,945	3,599,947
NET CHANGE IN CASH	(388,551)	117,060	(3,275,313)	302,218	(3,577,120)
ENDING CASH BALANCE	640,981	843,767	(2,245,781)	943,199	
Depreciation	2,096,619	2,125,205	177,099	0	
Principal Bond Payments	(2,285,730)	(2,211,279)	(2,211,279)	(2,211,279)	
Capitalized Assets	(3,169,496)	(405,000)	0	0	
Change in Liabilities		0			
ADJUSTMENTS	(3,358,607)	(491,074)	(2,034,180)	(2,211,279)	
Base for reserve calculation	7,089,895	6,708,940	3,477,892	277,945	
20% Cash Reserve amount	1,417,979	1,341,788	695,578	55,589	
Amount over 20% Cash Reserve	(776,998)	(498,021)	(2,941,359)	887,611	
Percentage	9.04%	12.58%	-64.57%	339.35%	

Solid Waste Fund

as of January 31, 2025

	Preceding Year 2024 (Actual)	2025 Budget	2025 Jan Budget	2025 YTD Actual	Difference b/w YTD Budget & YTD Actual
BEGINNING CASH	3,388,241	2,347,675	3,388,241	2,848,396	
REVENUE					
Refuse Collection Fees	3,047,423	3,300,000	275,000	268,167	6,834
Loss on Sale of Assets	0	0		0	0
Interest on Investments	156,375	120,000	10,000	7,581	2,419
Trf from Health Ins - Premiums		0			0
Resale of Recyclables	144,698	90,000	7,500	8,319	(819)
Box Container Fees	1,869,277	2,013,000	167,749	148,793	18,956
Landfill Fees	578,017	597,500	49,791	29,975	19,816
Transfers	0	0		0	0
Miscellaneous	15,845	5,500	457	0	457
TOTAL RECEIPTS	5,811,636	6,126,000	510,497	462,834	47,663
EXPENDITURES					
Personnel Services	2,496,197	2,636,900	219,730	215,166	4,564
Vacancy		(51,039)			0
Maintenance & Repair	257,114	390,500	32,537	13,329	19,208
Commodities	399,765	447,100	37,248	42,426	(5,178)
Other Charges	395,271	378,730	65,147	26,328	38,819
Capital Outlay	320,359	1,150,000	1,150,000	320,359	829,641
Transfer to Equipment Reserve	0	0	0	0	0
Utilities	52,096	74,000	6,164	7,538	(1,374)
Communications	38,036	54,300	4,521	1,075	3,446
Transfer to project		0			0
Travel & Training	6,051	11,600	964	643	321
Contractual Services	1,759,615	1,879,000	156,575	59,523	97,052
Administrative Fee 16%	975,905	924,880	77,073	71,509	5,564
Excess Carryover	0	577,705	0	0	0
Change in Liabilities	(28,569)	0		(19,340)	19,340
Outstanding PO's					
TOTAL EXPENDITURES	6,671,840	8,473,676	1,749,959	738,556	1,011,403
NET CHANGE IN CASH	(860,204)	(2,347,676)	(1,239,462)	(275,722)	(963,740)
ENDING CASH BALANCE	2,528,037	(1)	2,148,779	2,572,674	
Principal Payments	0	0	0	0	
Depreciation	394,298	455,000	37,082	0	
Capitalized Assets	(459,572)	(655,000)	0	0	
Change in Liabilities		0			
ADJUSTMENTS	(65,274)	(200,000)	37,082	0	
Base for reserve calculation	6,351,481	7,323,676	599,959	418,197	
20% cash reserve amount	1,270,296	1,464,735	119,992	83,639	
Amount over 20% Cash Reserv	1,257,740	(1,464,736)	2,028,787	2,489,034	
Percentage	39.80%	0.00%	358.15%	615.18%	

CITY OF EMPORIA
ACTUAL COMPARED TO BUDGET
as of January 31, 2025
EXPENSES FOR GENERAL FUND DEPARTMENTS

	2025 AMENDED BUDGET	2025 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED	General Fund Shared Revenue	Shared Budget	Actual Shared Budget	Department Net
						4,801,101	5,419,767	
COMMISSION/MANAGER/CLERK	5,310,571.00	118,899.00	5,191,672	2%	18.12%	869,873	981,964	863,065
FINANCE/HUMAN RESOURCES	546,811.00	44,312.00	502,499	8%	1.87%	89,568	101,109	56,797
INFORMATION SYSTEMS	549,437.00	45,776.00	503,661	8%	1.87%	89,998	101,595	55,819
COMMUNICATION	20,100.00	1,673.00						
POLICE PROTECTION	5,982,680.00	530,745.00	(510,645)	2641%	0.07%	3,292	3,717	(527,028)
ANIMAL CONTROL	286,834.00	23,894.00	5,958,786	0%	20.41%	979,965	1,106,242	1,082,348
FIRE PROTECTION	3,589,287.00	296,533.00	(9,699)	103%	0.98%	46,983	53,038	(243,495)
AMBULANCE SERVICE	4,176,286.00	456,274.00	3,133,013	13%	12.25%	587,926	663,686	207,412
CODE SERVICES	998,619.00	82,737.00	4,093,549	2%	14.25%	684,077	772,226	689,489
COURT SERVICES	659,309.00	47,990.00	950,629	5%	3.41%	163,574	184,652	136,662
ENGINEERING	755,403.00	62,573.00	596,736	9%	2.25%	107,995	121,911	59,338
SNOW REMOVAL	75,000.00	6,248.00	749,155	1%	2.58%	123,735	139,680	133,432
GOLF COURSE MAINTENANCE	584,155.00	48,111.00	26,889	64%	0.26%	12,285	13,868	(34,243)
GOLF SHOP	528,024.00	43,671.00	540,484	7%	1.99%	95,685	108,015	64,344
PARK	1,356,066.00	124,535.00	403,489	24%	1.80%	86,490	97,636	(26,899)
DISC GOLF	226,735.00	18,889.00	1,337,177	1%	4.63%	222,124	250,747	231,858
AQUATIC CENTER	243,300.00	19,503.00	207,846	8%	0.77%	37,139	41,925	23,036
ZOO	938,587.00	77,740.00	223,797	8%	0.83%	39,853	44,988	25,485
CIVIC BUILDING OPERATIONS	908,451.00	75,388.00	860,847	8%	3.20%	153,741	173,552	95,812
LIBRARY MAINTENANCE	86,417.00	7,196.00	833,063	8%	3.10%	148,805	167,979	92,591
GROUNDS MAINTENANCE	139,727.00	11,632.00	79,221	8%	0.29%	0	15,979	8,783
CONCESSION STAND	90,952.00	7,574.00	128,095	8%	0.48%	22,887	25,837	14,205
SHOP MAINTENANCE	92,616.00	7,252.00	83,378	8%	0.31%	14,898	16,818	9,244
STREET LIGHTING	349,020.00	29,084.00	85,364	8%	0.32%	15,171	17,125	9,873
MISC APPROPRIATIONS	91,500.00	53,453.00	62,416	32%	0.31%	14,988	16,919	(12,165)
AIRPORT	897,333.00	72,662.00	824,671	8%	3.06%	146,983	165,924	112,471
PARKING FACILITY	11,600.00	965.00	10,635	8%	0.04%	1,900	2,145	(70,517)
TRANSERS	4,341,507.00	361,792.00	3,979,715	8%	14.81%	711,140	802,777	801,812
CONTINGENCY	-356,397.00	0	(356,397)	0%	-1.22%	(58,378)	(65,900)	(427,692)
EXCESS CARRYOVER	0		0	#DIV/0!				
GENERAL FUND	33,479,930	2,677,101	30,490,046	8%	99.44%	5,412,697	6,126,152	
	29,310,704							

CITY OF EMPORIA
 ACTUAL COMPARED TO BUDGET
 as of January 31, 2025
 EXPENSES FOR WATER FUND DEPARTMENTS

	2025 AMENDED BUDGET	2025 ACTUAL WITH ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
DEBT	1,607,029	1,705,688	(98,659)	106%
ADMINISTRATION	2,477,296	178,572.00	2,298,724	7%
WATER MAINTENANCE	2,179,180	180,180.00	1,999,000	8%
WATER PLANT	6,116,943	2,286,615.00	3,830,328	37%
WATER STOCK	5,000	416.00	4,584	8%
	<u>12,385,448</u>	<u>4,351,471</u>	<u>8,033,977</u>	<u>2</u>

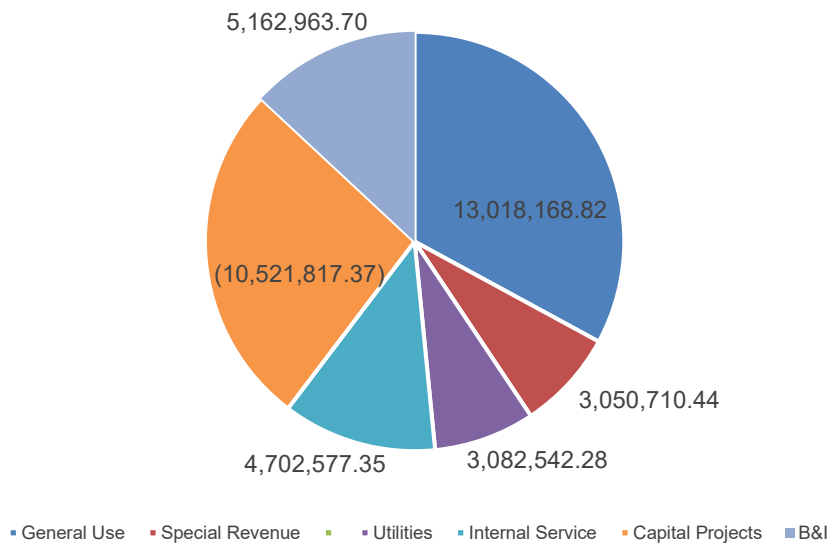
CITY OF EMPORIA
 ACTUAL COMPARED TO BUDGET
 as of January 31, 2025
 EXPENSES FOR WASTEWATER FUND DEPARTMENTS

	2025 AMENDED BUDGET	2025 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
DEBT	2,741,951	2,767,241	(25,290)	101%
ADMINISTRATION	1,389,337	80,379	1,308,958	6%
SEWER MAINTENANCE	2,122,741	563,777	1,558,964	27%
SEWER PLANT	3,828,885	643,594	3,185,291	17%
	<u>10,082,914</u>	<u>4,054,991</u>	<u>6,027,923</u>	<u>2</u>

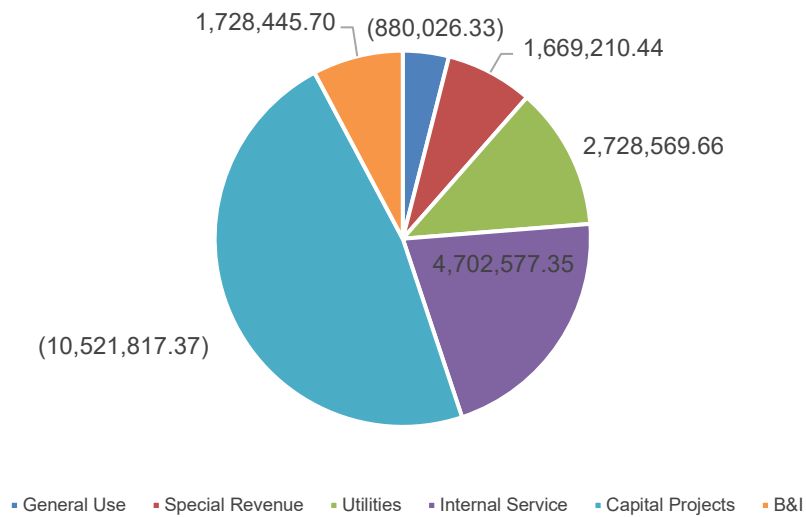
CITY OF EMPORIA
 ACTUAL COMPARED TO BUDGET
 as of January 31, 2025
 EXPENSES FOR SOLID WASTE FUND DEPARTMENTS

	2025 AMENDED BUDGET	2025 W ENCUMBRANCES	DIFFERENCE B/W ACTUAL & BUDGET	PERCENTAGE RECEIVED/ USED
ADMINISTRATION	1,738,158	100,949	399,598	6%
COLLECTIONS	3,782,145	743,791	797,978	20%
TRANSFER STATION	2,643,661	842,695	535,461	32%
RECYCLING CENTER	754,712	62,524	221,275	8%
	<u>8,918,676</u>	<u>1,749,959</u>	<u>1,954,312</u>	<u>1</u>

Unencumbered Cash



Available Funds



City of Emporia
Unencumbered Cash Report
as of January 31, 2025

	Amount	YTD Budget	Difference	Unencumbered Cash		
101 General Fund	10,187,555.34	8,022,544.00	2,165,011.34	General Use	13,018,168.82	70.39%
102 Multi Year Fund	2,830,613.48	5,875,651.15	(3,045,037.67)	Special Revenue	3,050,710.44	16.49%
103 Insurance Reserve	701,446.24	-	701,446.24			
104 Vacant Property Program	7,613.80	-	7,613.80	Utilities	3,082,542.28	16.67%
201 Library Fund	78.00	-	78.00	Internal Service	4,702,577.35	25.43%
203 Transient Guest Tax Fund	903,317.21	839,720.00	63,597.21	Capital Projects	(10,521,817.37)	-56.89%
204 Industrial Fund	26,686.15	24,875.00	1,811.15	B&I	5,162,963.70	27.92%
205 Economic Sales Tax Fund	1,197,514.92	490,929.00	706,585.92		18,495,145.22	
206 Special Alcohol Fund	122,946.80	120,683.00	2,263.80			
207 Special Park & Recreation Fund	124,866.38	(134,917.00)	259,783.38	Budget		
208 Special Street Fund	288,514.59	(1.00)	288,515.59	General Use	(880,026.33)	
209 Drug Money Forfeitures Fund	68,911.43	40,211.00	28,700.43	Special Revenue	1,669,210.44	
210 Storm Water Fund	139,349.34	-	139,349.34	Utilities	2,728,569.66	
218 Emergency Shelter Grant Fund	(962.70)		(962.70)	Internal Service	4,702,577.35	
224 Fire Public Education	7,813.16		7,813.16	Capital Projects	(10,521,817.37)	
225 Police Grants Fund	(1,832.97)		(1,832.97)	B&I	1,728,445.70	
251 Emporia Homeowner Repair	876.16		876.16			
252 2014 Housing Rehab	27,379.58		27,379.58			
254 2020 CDBG Rehab Grant	3,994.00		3,994.00			
260 Land Bank	134,283.47		134,283.47			
301 Bond and Interest Fund	5,162,963.70	3,434,518.00	1,728,445.70			
305 Equipment Reserve Fund	179,547.09	-	179,547.09			
401 Coronavirus Recovery Grant	-		-			
406 Internal Improvement Fund	3,700,941.29		3,700,941.29			
407 Rec Center Projects	(131,520.42)		(131,520.42)			
409 Water Treatment Plant Improvement	406,400.07		406,400.07			
413 Water Main Improvements	(5,937,095.52)		(5,937,095.52)			
415 Civic Auditorium Project Fund	194,679.63		194,679.63			
423 Airport Improvements Fund	239,765.74		239,765.74			
428 Park Improvements Fund	(168,579.64)		(168,579.64)			
441 Paving Projects Fund	(1,301,098.33)		(1,301,098.33)			
442 Construction Projects Fund	(11,126,754.88)		(11,126,754.88)			
444 Waste water Improvement	3,601,444.69		3,601,444.69			
501 Water Utility Fund	(433,330.84)	(1,862,660.83)	(648,075.20)			
502 Sewer Fund	943,199.43	(2,245,781.00)	887,610.52			
503 Solid Waste Fund	2,572,673.69	2,148,779.00	2,489,034.33			
601 Worker's Comp Fund	2,177,246.00		2,177,246.00			
602 Health Care Fund	2,525,331.35		2,525,331.35			
708 Fire Insurance Proceeds	6,974.92		6,974.92			
	19,383,752.35					



DATE: February 15, 2025
TO: City Commissioners
FROM: Janet Harrouff
SUBJECT: Budget Comparison

The **General Fund** Income Statement for the one-month period ending January 31, 2025, has been reviewed and the significant budget variations have been explained below.

Revenue:

Ad Valorem Tax: \$513,900 higher than YTD budget

Sales Tax: \$8,659 lower than YTD Budget.

City Sales Tax: \$482 higher

County Wide Tax: \$9,140 lower

Franchise tax: \$5,852 higher than YTD Budget

Electric - \$6,653 lower

Gas - \$23,148 higher

Cable - \$9,583 lower

Expense

Personnel Services: \$56,119 lower than YTD budget

Other Charges: \$51,706 lower than YTD budget

Appropriation to Main Street, \$50,000 not processed until February 10

Total revenues for the one-month period ending January 31, 2025, were \$561,845 over the YTD budget while expenses were \$394,401 under the YTD Budget. Therefore, the General Fund experienced operating results of \$956,247 more favorable than the YTD Budget.

I have reviewed the **Water Fund** Income Statement for the one-month period ending January 31, 2025. The significant budget variations have been explained below.

Revenue

Sale of Water: \$90,445 under YTD budget.

Expense

Capital Outlay: \$298,243 lower than YTD budget due to not purchasing items yet.

Total revenues for the one-month period ending January 31, 2025, were \$446,786 under the YTD budget while expenses were \$2,223,961 under the YTD Budget. Therefore, the Water Fund experienced operating results of \$1,777,175 more favorable than the YTD Budget.

I have reviewed the **Wastewater Fund** Income Statement for the one-month period ending January 31, 2025. The significant budget variations have been explained below.

Revenue:

Sewer Charges: \$21,373 lower than YTD budget

Expenses

Commodities: \$371,412 lower than YTD Budget
Chemical contract not issued

Capital Outlay: \$400,000 lower than YTD budget due to not purchasing items yet.

Total revenues for the one-month period ending January 31, 2025, were \$22,827 lower than the YTD budget while expenses were \$3,599,947 lower than the YTD Budget. Therefore, the Wastewater Fund experienced operating results of \$3,577,120 more favorably than the YTD Budget.

I have reviewed the **Solid Waste Fund** Income Statement for the one-month period ending January 31, 2025. The significant budget variations have been explained below.

Revenue

Collection fees: \$6,834 lower than YTD budget

Rolloff: \$18,956 lower than YTD budget

Landfill fees: \$19,816 lower than YTD budget

Expenses

Capital Outlay \$829,641 lower than YTD budget due to items not purchased yet.

Contractual Services: \$97,052 lower than YTD budget due to Hamm's invoice not paid until February 10th.

Total revenues for the one-month period ending January 31, 2025, were \$47,663 lower than YTD budget while expenses were \$1,011,403 lower than the YTD Budget. Therefore, the Solid Waste Fund experienced operating results of \$963,740 more favorable than the YTD Budget.

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, February 19, 2025, with Mayor Harter presiding and Commissioners Brinkman, Curtis, Sauder and Smith present. 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.

Caron Daugherty, Flint Hills Technical College President, was in attendance to accept a proclamation declaring the month of February as “Career and Technical Education (CTE) Month” by the Association for Career and Technical Education and supported by Flint Hills Technical College. She stated the CTE programming offers students the opportunity to gain the academic, technical, and employability skills necessary for career readiness. Leaders from business and industry nationwide report increasing challenges related to addressing the skills gap and connecting qualified professionals with careers in critical and growing CTE related fields, such as advanced manufacturing, cybersecurity, energy, healthcare, information technology, and transportation. She stated CTE programs with FHTC prepare students for rewarding careers by offering programs of study that lead to industry-recognized credentials. She urged all citizens in our community to become familiar with the services and benefits offered by THTC and to support and participate in these CTE programs to enhance their individual skills and productivity.

Mayor Harter then presented the proclamation.

**CITY COMMISSION
(Public Building Commission)
(Enter into Base Lease and Project Lease for Fire Station Project)
(Resolution Number 3761)**

Mark Detter, Deputy City Manager, was recognized and addressed the Governing Body. He stated the City is currently constructing a new Fire Station No. 1 and will be upgrading Fire Station No. 2. This proposed resolution declares the City of Emporia's intent to enter into a base lease and project lease completing leasing documents between the City of Emporia and the Public Building Commission. The resolution will allow the PBC to lease ground Fire Station No. 1 will be constructed on at 518 Market Street from the City and the City to lease from the Public Building Commission (PBC) the new Fire Station building. He stated the bonds will be issued for a total of \$12,210,000.00 to include construction and equipping of Fire Station No. 1 and design fees for Fire Station No. 1 and No. 2. The City's lease payments to the PBC will be equivalent to the debt service payments on the PBC Bond issue on a yearly basis. The debt payments start at approximately \$825,000.00 per year and will be retired in 2044 at approximately \$1,200,000.00 a year accommodating existing debt service schedules and will mature well within the life of the structure. The City will own the building upon retirement of the Bonds. Staff recommend approval of Resolution Number 3761 declaring the intent of the City of Emporia, Kansas to enter into a base lease and a project lease between itself and the City of Emporia, Kansas Public Building Commission related to the financing of a fire station facility project; approving the forms of said base lease and project lease; and authorizing the execution thereof and certain related documents.

Commissioner Sauder made a motion to approve Resolution Number 3761 declaring the intent of the City of Emporia, Kansas to enter into a base lease and a project lease between itself and the City of Emporia, Kansas Public Building Commission related to the financing of a fire station facility project; approving the forms of said base lease and project lease; and authorizing the execution thereof and certain related documents. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 1-21-25)
(Application No. 2024-17 – Request of CM2 Development)
(Rezone Property Located at 1402, 1408, 1414, 1407 & 1401 Michelle Circle)
(912 and 908 Michelle Street)

The Planning Commission met in a regular session on Tuesday, January 21, 2025, with Chair Rogers presiding. Commissioners Ogle, Bucklinger, Thomas, Fowler, Lingenfelter, Reed were present.

City staff: Justin Givens, Planning & Zoning Administrator, was present. City Engineer, Jim Ubert, was also in attendance.

Chair Rogers called the meeting to order.

2. Consider PC-2024-17 – A Request to for Rezoning of Property Located at 1402, 1408, 1414, 1407, and 1401 Michelle Circle, and 912 and 908 Michelle Street.

Chair Rogers asked if proper notice had been given. **Givens** confirmed that proper notice was provided to the newspaper for the original public hearing date.

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 Updated Staff Report.

UPDATED STAFF REPORT

Application #: PC 2024-17

Applicants: City of Emporia

Owners: CM2 Development

Requested Action: Consider a request to rezone property from Single-Family Detached (SF-D) to Single-Family Attached (SF-A)

Purpose: Rezoning to correct misclassification on recently adopted zoning map.

Address: 1402, 1408, 1414, 1407, and 1401 Michelle Circle; and 912 and 908 Michelle Street.

Legal description: Lots 15, 16, 17, 18, 19, 20, and 21, Eastwood 3rd Addition, Emporia, Lyon County, Kansas

Lot Size: 50' x 170' 8,500 sq. ft.

Existing Zoning: Single-Family Detached

Future Zoning in ELC Comp. Plan: Single-Family Detached

Surrounding Zoning:

North – Commercial / Multi-Family

East – Single-Family Detached

South – Park

West – Single-Family Detached / Single-Family Attached

Surrounding Actual Uses:

North – Vacant Property / Multi-Family Apartment Complex

East – Railroad Tracks / Large Lot Single-Family Homes

South – Whittier Park

West – Single-Family Attached & Detached Homes

Updated Analysis: These lots were previously rezoned as part of an overall rezoning of property on the east side of Michelle Street. The subject lots abut the rail spur and are not necessarily conducive to single-family detached units. The property owner approached staff about the rezoning to facilitate the sale of the properties to a potential developer, who intended on building duplexes on the properties. Staff discussed the possibility of the developer applying for Conditional Use Permits for each duplex, but for ease of process it was determined that rezoning the property back to Single-Family Attached as it was previously zoned would be best.

Each lot exceeds the required square footage necessary for single-family attached dwellings. The proposed cul-de-sac would be required to be built prior to any building permits being issued if the rezoning was granted. All utilities are present in the area.

The development of the property to the north of this is in limbo and staff is supportive of approving the rezoning for these properties independent of any future development plans for the northern properties.

Following the meeting in December, staff discussed drainage issues along Michelle, Mary and 9th Street with the City Engineer. There is a ridge to the north of the subject property that divides run-off from the north and south. The run-off that travels south enters into storm drains on East 9th. That water is conveyed to the drainage ditch that runs behind the subject properties.

Water that flows north of the ridge travels along Mary and Michelle to an inlet and then to 12th. The redesign of stormwater for Whittier Apartments will assist in decreasing the amount of runoff in this area, but will not elevate all of the drainage issues.

Engineering staff feels that any additional run-off created by the new duplexes could be handled by designing Michelle Circle so that it tilts towards the east and not discharging water onto Michelle Street. Grading of the lots to direct run-off towards the ditch will also be required for stormwater management.

When the property was originally rezoned from the former R-1 to R-2 districts under the previous zoning code, the allowed lot coverage for each district was 40% which is shown in the attached table. Based on the concern of increased run-off and drainage issues in the area, staff would recommend that a condition of the rezoning be that no lot exceed 40% lot coverage. This would allow for two-family dwellings to still be built on the property, but limit the amount of impervious surface and reduce the amount of run-off that would be created.

Staff is still supportive of the rezoning, as it was previously rezoned to allow two-family dwellings and only mapping errors have created a situation in which the owners have to request the rezoning of the property to Single-Family Attached now. Additionally, proper design of the road and lot grading will minimize the amount of run-off placed onto Michelle St and not add run-off to the existing inlets at 9th and Michelle.

Considerations: 9.8.3.a.8. Factors to be Considered for a Rezoning:

When a proposed amendment would result in a change of the zoning classification of any specific property, the recommendation of the Planning Commission, accompanied by a copy of the record of the hearing, shall contain statements as to the present classification, the classification under the proposed amendment, the reasons for seeking such reclassification, a summary of the facts presented, and a statement of the factors upon

which the recommendation of the Planning Commission is based using the following guidelines: **Staff Commentary in Bold**

1. Whether the change or approval would be consistent with these regulations; **The change would be consistent with the zoning regulations. Each lot meets the minimum size for development of single-family attached homes. The building envelope is appropriate as well for single-family attached homes.**
2. The character and condition of the neighborhood and its effect on the proposed change; **The existing neighborhood is a mix of owner-occupied and rental single-family detached homes and single-family attached homes. The homes are older in the area and these new homes will not have a negative impact on the character or condition of the neighborhood.**
3. The zoning and uses of properties nearby; **The area is mixed with single-family attached and detached homes. The detached homes are a mix of owner occupied and rental property. The additional homes whether they are owner occupied or rental property will not have a negative effect on the area.**
4. The suitability of the subject property for the uses to which it has been restricted; **The property is conducive to single-family detached and single-family attached homes. The property has been vacant since platting in 1978. The adjacent rail, staff would maintain, makes it difficult to develop the property as owner occupied single-family detached homes. Allowing single-family attached homes while still impacted by the proximity to the rail spur will be more easily marketable.**
5. The extent to which removal of the restrictions will detrimentally affect nearby property; **Staff does not anticipate any negative impacts to the nearby property. The area is already a mix of single-family detached and attached and a blend of owner occupied and rental property. By not removing the restrictions of strictly single-family detached homes the property would most likely continue to remain vacant.**
6. The length of time the subject property has remained vacant as zoned; **The property has been zoned single-family residential in some form until it was rezoned to single-family attached in 2022. It has been vacant since being platted, and only now, as what was thought to be single-family attached zoning was there interest in developing the property.**
7. The relative gain to the public health, safety, and welfare by the destruction of the value of plaintiff's property as compared to the hardship imposed upon the individual landowner public services, including transportation, exist or can be provided to serve the uses that would be permitted on the property if it were reclassified or granted a conditional use; **There would be no gain in the public health, safety, and welfare if the rezoning were denied. Existing services are available with minimal impact on extending services to this area. The existing hardship imposed on the property owner would continue and most likely this property would remain undeveloped.**
8. The recommendations of a permanent or professional planning staff; **Staff is supportive of the rezoning.**
9. The conformance of the requested change to Plan ELC; **Plan ELC promotes adaptive uses and reuses of existing infill properties and the regulations**

have been put in place to accommodate a wide array of housing options. The proposed rezoning would help to meet the housing goals set out in Plan ELC

10. Such other factors as are deemed relevant by the Planning Commission or Governing Body.

Neighborhood Communications: At the original public hearing, several area residents expressed concerns about drainage and additional homes in the area. Minutes from the public hearing are attached with this report.

Recommendation: Staff recommends the Planning Commission make a motion of approval for the Rezoning to the Governing Body based on the following;

- 1) The request is consistent with the Comprehensive Plan;
- 2) The request conforms to the intent of the Zoning Regulations
- 3) There would not be a negative impact on the existing neighborhood
- 4) Approval would reaffirm the previous actions of the Planning Commission

Attachments: Aerial Map with Utilities | Current Zoning Map | Excerpt of Minutes

Givens discussed the original lot coverage ratio from the previous zoning code and the differences with the new regulations. He stated that under the previous code, which the property was rezoned originally, 40% was the maximum lot coverage, which would reduce the amount of runoff created by any new development.

Commissioner Fowler expressed his concerns about the drainage overall in the area, not necessarily with any building that could be built on the property.

Jim Ubert, City Engineer, addressed the Planning Commission. He discussed the factors that go in to helping minimize stormwater and issues that created some of the drainage issues in the area.

Ubert felt, that with proper planning and design, the developer could reduce the amount of stormwater that would go on to Michelle Street. Titling the road design for Michelle Circle to the east and by ensuring that lot grading directed stormwater to the north and east would reduce the amount of runoff from this property adding to the existing stormwater issues.

Commissioner Rogers made a motion to recommend approval of the Rezoning with conditions that the maximum lot coverage be 40% and that the City Engineer approve the final floor elevations for each building. Commissioner Lingenfelter seconded the motion. The motion carried 7-0.

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated the owners of the property located on Michelle Street and Michelle Circle have requested the property be reclassified as Single-Family Attached. The property was previously rezoned under the former zoning classification to R-2 Medium Density Residential but was inadvertently reclassified to Single-Family Detached

when the new zoning map was adopted. He stated the Planning Commission recommended that the maximum lot coverage be reduced to 40% as that was the maximum lot coverage when the property was previously rezoned. He stated there were concerns about drainage and stormwater management concerns in the area of these properties. At their January 21, 2025, regular meeting, City staff provided additional information on drainage in the area, limiting the maximum lot coverage, and allowing the City Engineer to approve final floor elevations for each structure, as well as designing Michelle Circle to direct stormwater away from Michelle Street, the Planning Commission voted unanimously to recommend approval of rezoning the properties with the conditions as stated.

PLANNING AND DEVELOPMENT
(Application No. 2024-17 – Request of CM2 Development)
(Rezone Property Located at 1402, 1408, 1414, 1407 & 1401 Michelle Circle)
(912 and 908 Michelle Street)
(Ordinance Number 25-06)

AN ORDINANCE REZONING LAND IN THE CITY OF EMPORIA, KANSAS FROM SINGLE-FAMILY DETACHED (SF-D) PARCEL TYPE TO SINGLE-FAMILY ATTACHED (SF-A) PARCEL TYPE AND AMENDING THE OFFICIAL ZONING MAP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance Number 25-06, was presented to the Governing Body for their consideration

Commissioner Smith made a motion to approve Ordinance Number 25-06, amending the parcel type of properties located at 1402, 1408, 1414, 1407, 1401 Michelle Circle, and 912 and 908 Michelle Street from Single-Family Detached (SF-D) to Single-Family Attached (SF-A). Commissioner Curtis seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Harter, aye.

PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 1-21-25)
(Application No. 2024-11 – Request of XRS Pro Homes, LLC)
(Approve Final Plat for the XRS Pro Homes Addition)

The Planning Commission met in a regular session on Tuesday, January 21, 2025, with Chair Rogers presiding. Commissioners Ogle, Bucklinger, Thomas, Fowler, Lingenfelter, Reed were present.

City staff: Justin Givens, Planning & Zoning Administrator, was present. City Engineer, Jim Ubert, was also in attendance.

Chair Rogers called the meeting to order.

. Consider PC-2024-11 – A Request to Approve a Minor Plat – XRS Pro Homes Addition.

Chair Rogers asked if proper notice had been given. **Givens** confirmed that proper notice was provided to the newspaper and property owners for the original public hearing.

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.

UPDATED STAFF REPORT

Application #: PC 2024-11

Applicants: Alex Trujillo, Next Level Builders

Owners: XRS Pro Homes LLC

Requested Action: Approval of a Minor Plat

Purpose: Applicants desire to plat an approximately 1-acre tract of land for the purpose of building single-family detached homes.

Address: 1002 E South Ave.

Legal description: A TRACT OF LAND COMMENCING AT THE SOUTHWEST CORNER OF THE NORTHEAST QUARTER OF SECTION 14, TOWNSHIP 19 SOUTH, RANGE 11 EAST OF THE 6 TH P.M., LYON COUNTY, KANSAS, THENCE EAST 185 FEET, THENCE NORTH 270 FEET, THENCE WEST 185 FEET TO THE WEST LINE OF SAID NE 1/4, THENCE SOUTH 270 FEET TO THE PLACE OF BEGINNING. EXCEPT THAT PORTION ON THE SOUTH AND WEST SIDES THEREOF TAKEN FOR ROAD PURPOSES.

Area Size: 1 Acre +/- | 39,600 sq. ft.

Existing Zoning: Single-Family Detached

Surrounding Zoning:

North- Single-Family Residential

East- Single-Family Residential

South- Light Industrial

West – Single-Family Residential

Surrounding Actual Uses:

North – Single-Family Homes

East – Single-Family Homes

South – Vacant Industrial Property

West –Single-Family Homes

Future Zoning in ELC Comp. Plan: Single-Family Detached

Updated Analysis: Based on feedback from the Planning Commission and the public hearing, the applicant is now proposing to create three lots on the property located at the northeast corner of E South Ave. and Carter St. All three of the lots will take access from Carter St. as was suggested by the Planning Commission during the original hearing.

Each lot now exceeds not only the infill minimum lot size, but also the greenfield standard. Each lot is in excess of 11,000 sq. ft., and should be more in line with the larger lots within the area. This tract is unique in that all utilities are existing in the area and will not require the extension of any service line for the developer.

The increased lot size, will allow the developer to build either larger homes on the property or maintain smaller homes with more lot space than a traditional development.

1. **Plat Name:** The minor plat is proposed to be named XRS Pro Homes Addition, which meets requirements.
2. **Legal Description:** The legal description shown on the plat meets requirements.
3. **Lots:** The minor plat proposes three lots.

Lot #	Square Footage	Front Setback Infill Standard	Building Greenfield Standard
Lot 1	11,902	15'	25'
Lot 2	11,852	15'	25'
Lot 3	11,854	15'	25'

The proposed plat reflects the infill building standard front setback of 15'. Based on the increased lot size, this could be adjusted to accommodate the larger lots or remain at 15'. The increased standard of 25' would be more reflective of properties in the area.

4. **Blocks:** No blocks are proposed, which is acceptable for a plat such as this.
5. **Streets and Access:** The development is adjacent to E South Ave. and Carter St.
 - No access control is necessary for this addition. Lot 3's driveway will be required to be out of the easement and the engineering department will approve of the location of the drive when a building permit is pulled for the property.
 - Formal dedication of right of way for E. South Ave. and Carter St. will be given if the plat is approved. E. South Ave will have a right of way set at 40 ft. due to its collector status. A 30 ft. right of way will be granted for Carter St., which is the typical width of a residential street.
6. **Building Setbacks:**
 - A 15 ft. front building setback has been provided. Lot 3 has an additional side yard setback of 15 feet as is typical with corner lots. There is also an easement that all permanent structures must stay out of.
 - No rear or side yard setbacks are shown on the plat which is typical. Side and Rear Yard setbacks are 5' and 20' for either infill or greenfield development.
7. **Easements:**
 - No new easements are necessary for this development.
 - A 60 ft. water line easement exists between the center-line of E South Ave. going north. This easement will increase the setback of any permanent structure on Lot 3.
8. **Reserves:** No reserves are shown or are necessary.
9. **Drainage:** This development is not subject to stormwater regulations based on the size of the development.
10. **Public & Private Improvements:** No new public or private utilities will be necessary for this development as all are in place and existing.
11. **Plat Binder:** A plat binder, identifying all property interests and encumbrances shall be submitted prior to submittal to the City Commission for final approval.
12. **Miscellaneous:**
 - The applicant shall revise the plat prior to submittal to the City Commission with updated signature blocks to reflect changes in elected and appoint officials since the plat was originally drawn.

Neighborhood Communications: Several property owners expressed concerns during the public hearing on the proposed size of the original lots. Staff has included the minutes from the original meeting for review.

Recommendation: Staff recommends approval of the Revised Minor Plat subject to Staff and Planning Commission comments, and that a correct (if any) Revised Minor Plat be submitted and approved by Staff prior to submittal to the City Commission.

Attachments: Minor Final Plat / Minor Preliminary Plat / Minutes from Original Meeting / Aerial Map / Zoning Map

Robert Trujillo, XRS Pro Homes, spoke on behalf of his company, stating that they were fine with reducing the number of lots from five to three, and the 25 foot setback was acceptable. He also stated that they were ready to start building once the plat was approved.

Commissioners discussed the differences in the 15 foot and 25 foot front building setback.

Commissioner Bucklinger made a motion to recommend approval of the Minor Plat with an adjusted front building setback to 25 feet, based on staff recommendation. Commissioner Ogle seconded the motion. The motion carried 7-0.

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated the owners of property located at the northeast corner of E. South Avenue and Carter Street have requested that a minor plat be approved for the property. The property is currently a single .90-acre lot with the proposed plat splitting the lot into three separate parcels. At their January 21, 2025, regular meeting, the Planning Commission made a recommendation for approval. The plat was recommended for approval after being revised from an earlier proposal that called for five lots. He stated the applicant revised the plat from the original five lots that were proposed based on feedback from the public hearing and Planning Commission. He stated the revised plan calls for three 11,000 square foot lots that will fit within the character of the existing neighborhood. Staff recommend approval of a Final Plat for the XRS Pro Homes Addition.

Follow further discussion, Commissioner Curtis made a motion to approve the Final Plat for the XRS Pro Homes Addition. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; Commissioner Smith, aye; and Mayor Harter, aye.

**CITY COMMISSION
(Amend Community Housing Board)
(Ordinance Number 25-07)**

AN ORDINANCE PERTAINING TO THE COMMUNITY HOUSING BOARD; AMENDING SECTION 17-63 OF THE CODE OF THE CITY OF EMPORIA, KANSAS AND REPEALING SAID SECTION AS IT EXISTED PRIOR TO THE ADOPTION OF THIS ORDINANCE, to which the City Clerk assigned Ordinance Number 25-07, was presented to the Governing Body for their consideration.

City Attorney Montgomery was recognized and addressed the Governing Body. She stated members of the Community Housing Board also serve on the Emporia Land Bank. The Board members requested a text change to update to make quorum requirements identical for both boards. She stated the proposed ordinance has been restructured to include clarifying sections and subsections including the following substantive updates:

- Subsection (a)7 anti-discrimination language updated to reflect current legal requirements.
- Subsection (b) authorizes the board chair or public officer to call a special meeting.
- Subsection (d)1 authorizes the establishment of bylaws.
- Subsection (d)2 quorum definition modified to “a majority of the board.”
- Subsection (d)5 conflict of interest language modified to mirror state law requirements.
- Appointment eligibility modified to residents of the City of Emporia

Staff recommends additional updates to formatting and language to modernize and enhance clarity and approve Ordinance Number 25-07 pertaining to the Community Housing Board, amending Section 17-63 of City Code.

Commissioner Smith made a motion to approve Ordinance Number 25-07 pertaining to the Community Housing Board, amending Section 17-63 of City Code. Commissioner Curtis seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Sauder, aye; and Mayor Harter, aye.

**SEWER MAINTENANCE
(Lift Station No. 1)
(Supplemental Agreement No. 6)
(BG Consultants, Inc.)**

Dean Grant, Director of Public Works, was recognized and addressed the Governing Body. He stated previously the only bid for construction of Lift Station No. 1 was rejected due to the significantly higher cost than expected. The project will need some changes to the scope and design of Lift Station No. 1 prior to re-bidding the project. For savings cost, rehabilitating the existing structures and electrical, as well as adding peak flow storage, BG Consultants will need to design the changes to the project for rebidding. Staff would like to execute Supplemental Agreement No. 6 with BG Consultants, Inc., in the amount of \$76,300.00. This project is funded with bond money.

Commissioner Smith made a motion to approve Supplement Agreement No. 6 with BG Consultants, Inc., in the amount of \$76,300.00. Commissioner Sauder seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

**PAVING
(KDOT CCLIP FY2027 SP Mill and Overlay Project)
(K-99 Hwy – 3rd Ave. to 12th Ave.)
(US-50 Hwy – Neosho St. to Mechanic St.)
(KDOT Project No. 56 U-2558-01)**

Jim Ubert, City Engineer, was recognized and addressed the Governing Body. He stated the City of Emporia was awarded the mill and overlay project on K-99 Highway by KDOT in July 2024. The mill and overlay project will provide the necessary maintenance and repair for the portion of K-99 Highway (Commercial Street) from 3rd Avenue to 12th Avenue and on US-50 Highway (6th Avenue) from Neosho Street to Mechanic Street. He stated KDOT has allocated \$400,000.00 for construction and construction engineering. The City will be responsible for all preliminary engineering, right of way, utility costs, 10% of approve costs up to the \$400,000.00, and all other costs over that amount. Staff recommend accepting KDOT CCLIP-SP Agreement for the mill and overlay on K-99 Highway (Commercial Street) from 3rd Avenue to 12th Avenue and US-50 Highway (6th

Avenue) from Neosho Street to Mechanic Street and authorize the Mayor to sign KDOT Agreement 1034-24.

Commissioner Smith made a motion to accept KDOT CCLIP-SP agreement for the mill and overlay on K-99 Highway (Commercial Street) from 3rd Avenue to 12th Avenue and US-50 Highway (6th Avenue) from Neosho Street to Mechanic Street and authorize the Mayor to sign KDOT Agreement 1034-24. Commissioner Curtis seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Sauder, 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 January 2025 for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2024	2025	Increase of \$28,484.62 for the month, and
	\$ 517,369.36	\$ 545,853.98	Overall increase of 5.22% from year 2024.
YTD	\$ 517,369.36	\$ 545,853.98	

2. City Share from County Tax

	2024	2025	Increase of \$7,604.34 for the month, and
	\$ 267,962.91	\$ 275,567.25	Overall decrease of 2.78% from year 2024.
YTD	\$ 267,962.91	\$ 275,567.25	

Building Permits issued from 1/1/2025 to 1/31/2025 for new construction, remodeling/repairs and demolition.

Total number of building permits issued through Code Services:	16
Total of valuations associated with those building permits:	\$11,499,464.87
Total number of dollars collected for Building Permit Fees:	\$ 5,385.00

Construct – Single-family dwellings	0
Demo – Single-family dwellings	0

Flint Hills Mall CID for January 2025	\$ 18,926.73
YTD	\$ 18,926.73

Pavilions CID for January 2025	\$ 17,777.91
CID #2	\$ 17,777.91
YTD	\$ 35,555.82

Fairview Hotel CID for January 2025	\$	6,510.26
YTD	\$	6,510.26
West Plaza CID for January 2025	\$	2,315.58
YTD	\$	2,315.58

Consent Agenda

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

- a. Approve minutes of the Regular Meeting held on February 5, 2025.
- b. Approve minutes of the Special Meeting held on February 12, 2025.
- c. Ordinance Number 25-08 Authorizing a Beer Garden for Town Royal St. Patrick's Day Celebration.

AN ORDINANCE EXEMPTING THE PARKING LOT SOUTH OF 405 COMMERCIAL STREET AND FOURTH AVENUE BETWEEN COMMERCIAL STREET AND THE ALLEY WEST OF COMMERCIAL STREET IN THE CITY OF EMPORIA, KANSAS, FROM THE PROHIBITION ON THE CONSUMPTION OF ALCOHOLIC BEVERAGES, to which the City Clerk assigned Ordinance Number 25-08, was presented to the Governing Body for their consideration.

- d. Tyler Technology Reporting Tool, Work Order, and Asset Management.
- e. Allocation to Emporia Arts Council.
- f. Award Bid for Replacement of Zoo Visitor Railing/Fencing
- g. Award Bid for Design of King Vulture Remodel.
- h. Award Water Treatment Plant Electrical Addition

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

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 MARCH 5, 2025, MEETING.

- Ordinance Vacating a Platted Alley West of 12th Avenue Baptist Church.
- Construction Services Contract for Airport Taxiway with HW Lochner.
- Construction Services Contract with BG Consultants for SE Transmission.
- HDR Agreement for USDOT Federal Railroad Administration.
- Award SE Transmission Contract.
- Award Hazardous Sidewalk Contract.
- **Study Session:**
 - Discuss Disc Golf Update.
 - Discuss Court Fees Increase.
 - Update on Homelessness Advisory Board.
 - Update on Carnegie Building.
 - Snow Recap.
 - Citizen Representative to the Joint Traffic Safety Committee.

EXECUTIVE SESSION

Commissioner Smith made a motion to recess into Executive Session for 15 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 this room at approximately 11:56 a.m. Commissioner Sauder seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

Upon reconvening the meeting in Regular Session, at 11:56 a.m., this same date, in the City Commission Meeting Room, Mayor Harter stated they had discussed confidential data of a third party relating to economic development and no action was taken.

**CITY COMMISSION
(Governing Body Comment)**

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

Commissioner Sauder made a motion to recess the meeting at 12:14 p.m., to Conference Room 1AB. Commissioner Brinkman seconded the motion. The vote follows: Commissioner Sauder, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye.

The following items were discussed at the Study Session:

1. TGT Appropriations Process Review.
2. FHTC Appropriation Funding.
3. Discuss 2025 Street Rehabilitation Project.
4. 2024 Financial Review

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

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Commission Action Report

Informational Items

Title: Informational Items

Agenda Date: March 5, 2025

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, March 19, 2025.

Commission Meeting :

- Finance GFOA Award
- Ordinance Vacating a Platted Alley West of 12th Avenue Baptist Church
- Award Bandstand Bids
- Rezone Stormont Vail Property
- Construction Services Contract with BG Consultants for SE Transmission
- Award SE Transmission

Study Session

- JAC Agreement
- Gas Franchise Agreement

Title: Carnegie Library
Agenda Date: March 5, 2025
Presented By: Kevin Hanlin, Director of Public Lands and Facilities

Background:

In 2016, the Carnegie Library became empty when the Lyon County Museum moved to its new location on Commercial Street. The building was utilized for storage by the Museum for several years until the final items were moved out in 2020. In July 2021, BG Consultants were hired to evaluate the structural conditions of the building. In the spring of 2022, their findings were shared with the commission. After some discussion and an offer to sell the building, staff held several rounds of open house opportunities for other interested buyers. No additional offers were submitted.

Discussion:

Staff is looking for direction as to the future of the building.

Financial considerations:

Turning off all utilities to the building and removing the deteriorating handicap ramp (building remains, used for storage) = \$50,000

Razing the building and returning to greenspace = \$225,000

Razing the building and salvaging certain historic elements of the structure (wood casing, windows, water fountain, tile, stone, etc...) = \$400,000

City of Emporia Engineering estimate of cost for amphitheater = \$ 35,000

David Foster Design estimate of cost for amphitheater = \$150,000

Audio/video equipment and infrastructure = \$75,000

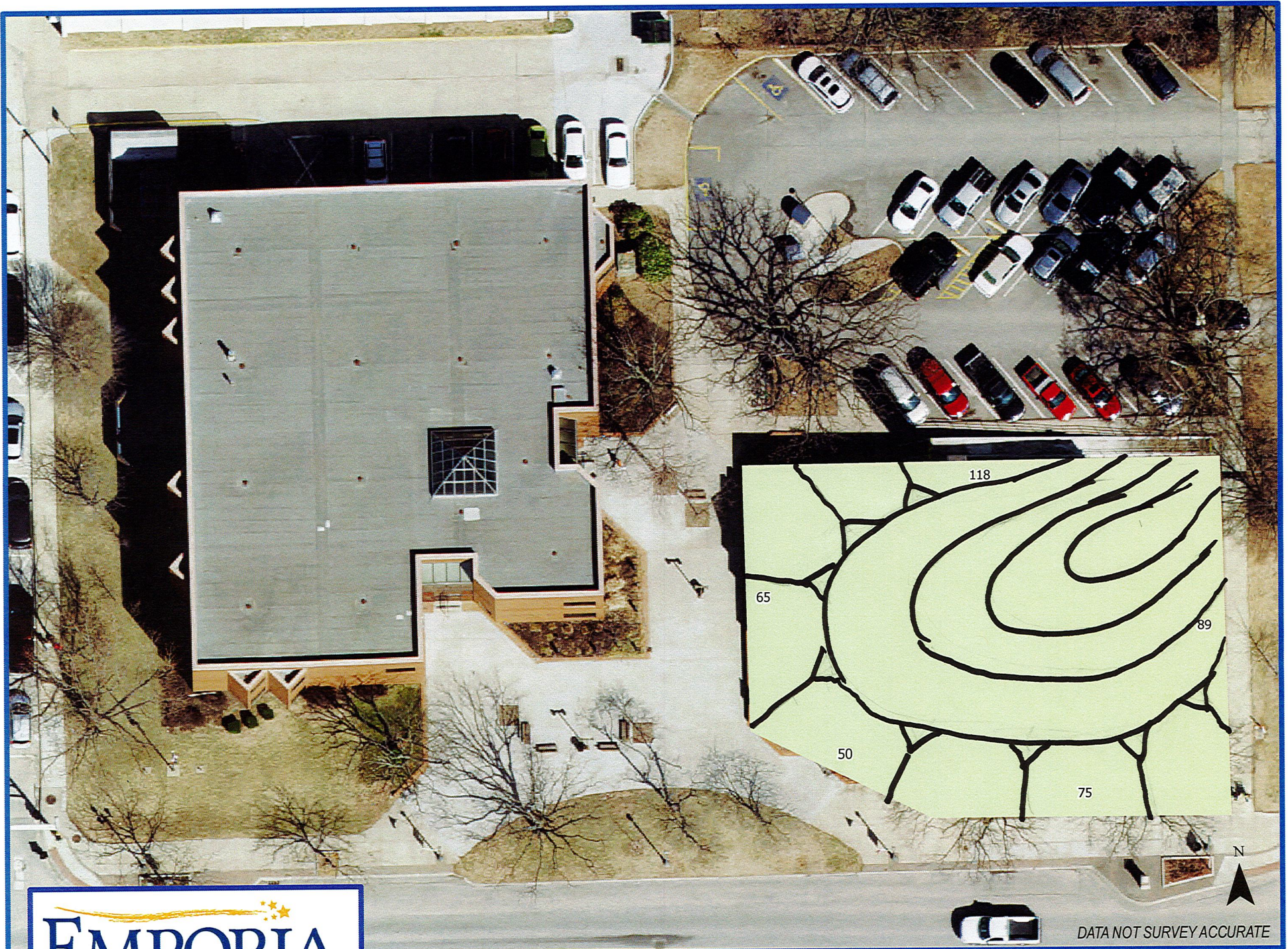
Amphitheater Structure, seating, and amenities = \$450,000

Staff estimate of cost for demo (with historic salvage of materials), a/v equipment and infrastructure, stage, seating, and structure, = \$1,075,000

Attachments:

City of Emporia Engineering Green Space Option

David Foster Design of Amphitheater Using Features from the Carnegie Library



Carnegie Library				
Demolition, Green Space & Terracing (3 ft to 4 ft high) Option				
Preliminary Concept Estimate				
November 21, 2022				
<u>Description</u>	<u>Quantity</u>	<u>UOM</u>	<u>Unit Price</u>	<u>Extend. Price</u>
Demolition of Building	1	LS	\$ 190,000.00	\$ 190,000.00
Earthwork Terracing	1	LS	\$ 10,000.00	\$ 10,000.00
Contingencies (15%)				\$ 25,000.00
TOTALS				\$ 225,000.00



111 SE 7th St

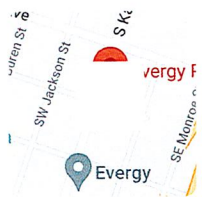
Topeka, Kansas

Google

Street View - Jul 2021



Image capture: Jul 2021 © 2022 Google

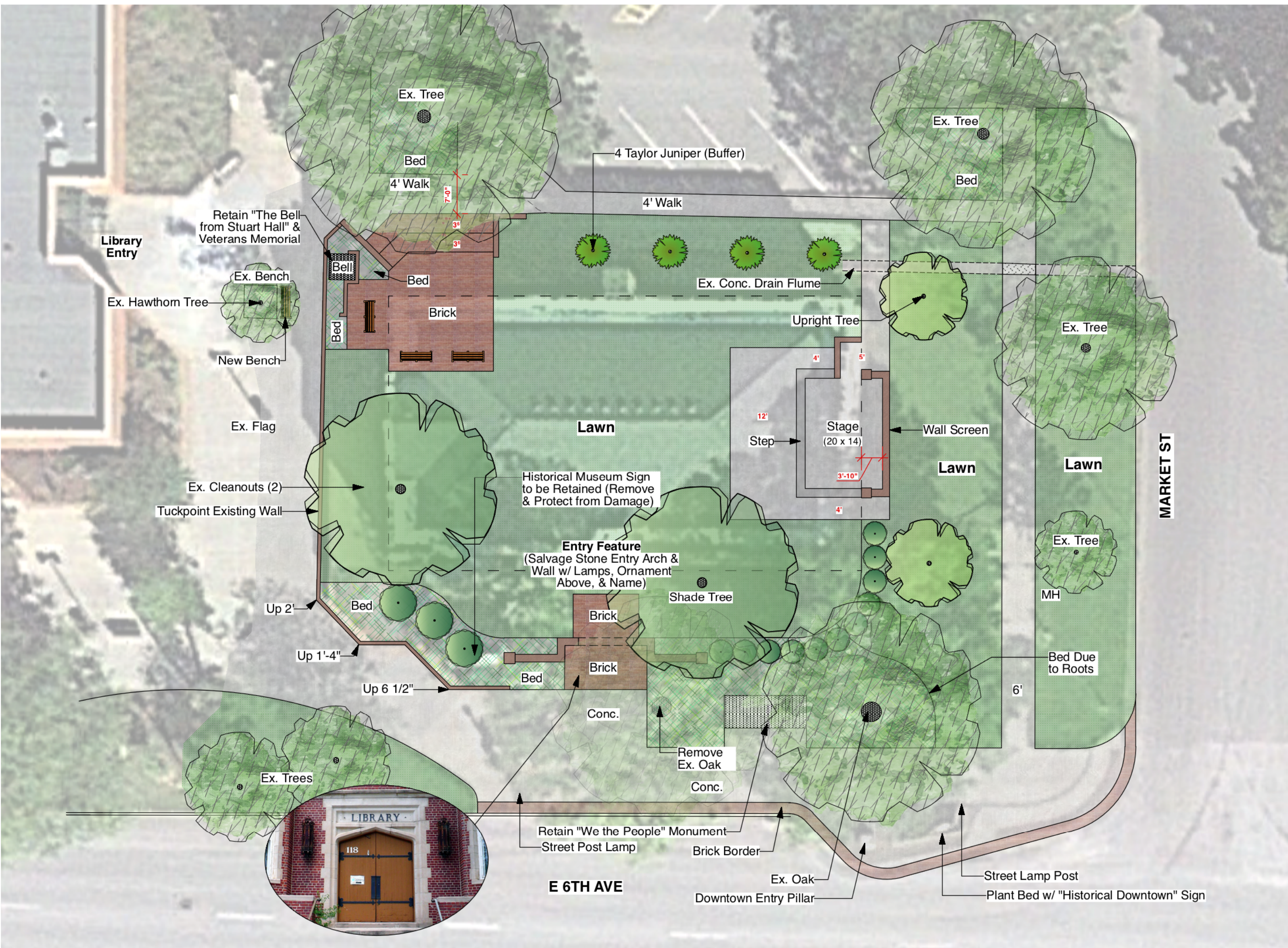


Andover, Kansas
Google
Street View - Aug 2019



Image capture: Aug 2019 © 2022 Google





Concept Plan

Emporia Library Park

6th Street & Market, Emporia KS

sheet: 1 of 1 scale 1/16" = 1'-0"

date: 12/6/2023 project: #23058

Title: Disc Golf
Agenda Date: March 5, 2025
Presented By: Tucker Eckols, Disc Golf Superintendent

Background:

The City of Emporia agreed with Dynamic Discs to create a disc golf superintendent position in charge of the management and improvement of all city-owned disc golf courses. This position was filled on December 26, 2023. Accomplished duties included the removal, renumbering, and replacement of several disc golf tee pads, rock work, dirt work, grass seeding, tree planting, weeding, herbicide application, and the acquisition and installation of disc golf throw nets, new trash cans, and pet waste bag stations.

Discussion:

In addition to regular management, future improvements accomplished via this position are expected to include removal or relocation of old pad and pin placements in Jones Park and Peter Pan Park, the remodel and inclusion of rock work on two holes at Jones Park, the addition of rock work, railroad ties, or other construction to combat erosion on Hammond hole 9, the addition of permanent signs to the Soden's Grove course, and the acquisition and installation of floating pond fountains in the Jones Park ponds.

Financial considerations:

The annual allocated funding for this position in 2024 was ~\$126,000. Future required annual funding should be the same amount.

Title: Court Costs and Fees

Agenda Date: March 5, 2025

Presented By: Christina Montgomery, City Attorney

Background:

Approximately 1,500 to 1,800 cases are filed in Emporia Municipal Court each year.

Court costs and fees were last updated in 2016. Since that time, court revenue has remained relatively steady while expenses have increased approximately 70%. Areas of significant increase include wages and benefits, jail housing fees, software, insurance, equipment and supplies, and professional services including court appointed defense counsel and interpreters.

Staff has reviewed court costs and fees in various municipal courts throughout the state and compiled a chart showing commonly implemented costs and fees.

Discussion:

Staff recommends the following increases to costs and fees:

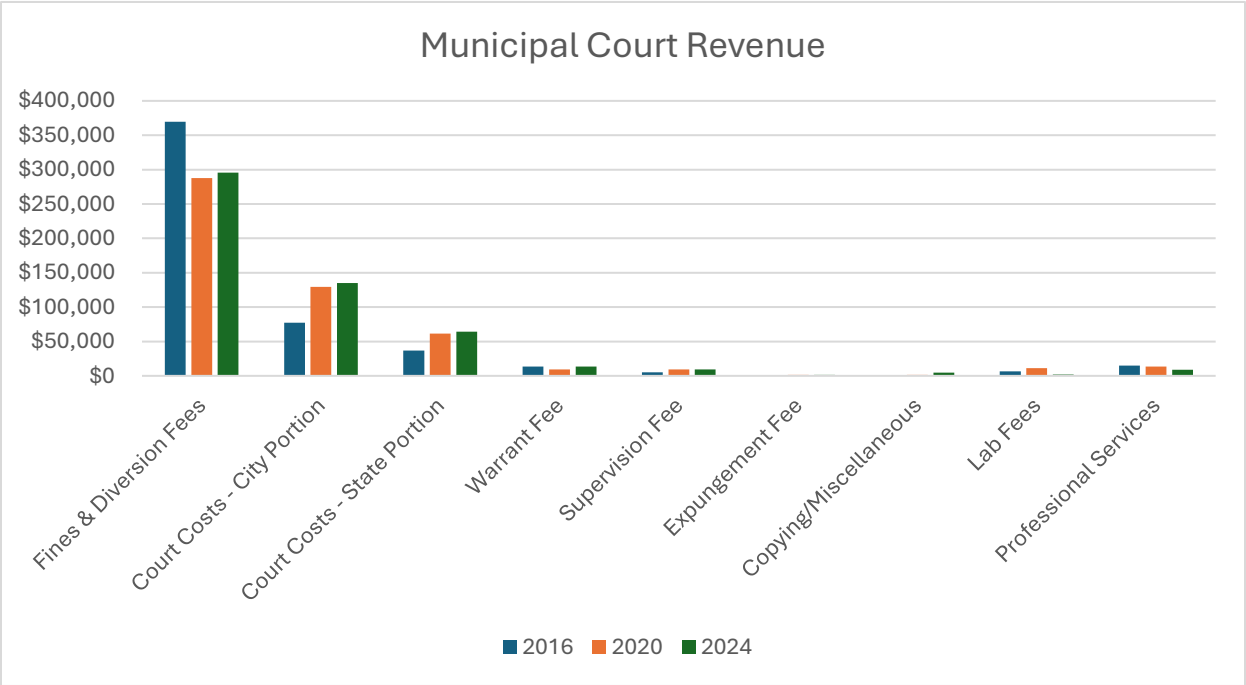
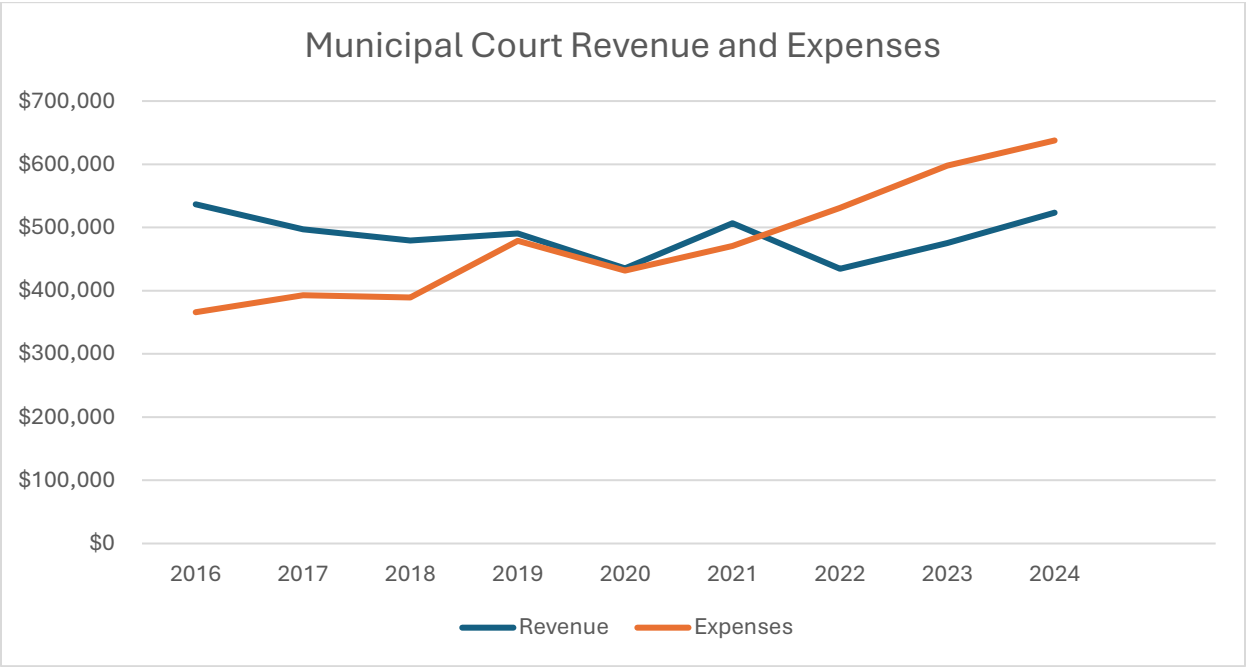
- Increase Court Costs from \$73 to \$95
- Increase Probation/Diversion Supervision Fee from \$50 to \$100
- Establish Public Safety Technology Fee of \$10 per case
- Establish \$50 Probation/Diversion Revocation Fee
- Establish Jail Reimbursement Costs up to per diem rate paid by City, waived for financial hardship

Additional options used by other courts:

- Payment Plan fees for payment plans over 120 days
- Fees for continuance requests, trials, or other additional hearings
- Establish Failure to Appear and/or Failure to Pay as separate offense with associated fines

Attachments:

Revenue and Expense Sheet



Court Costs and Fees Comparison

This non-exhaustive review is based on information available in online codes

	Court Costs	Warrant Fee	Payment Plan Fee	Hearing Fee	Jail Costs	Failure to Appear Offense	Failure to Pay Offense	Technology Fee
Gardner	50	X						
Salina	58							
Augusta	70	X		X		X	X	
Emporia	73	X						
Independence	75	X			X		X	
Derby	78	X		X		X	X	X
Pratt	80					X		
Newton	80				X			
Wichita	82	X	X	X	X	X	X	X
Great Bend	83				X			
Garden City	90	X				X		
Goddard	90	X	X	X		X	X	
Arkansas City	96	X				X		
Coffeyville	98	X			X	X		
Pittsburg	100	X						
Peabody	100	X		X	X			X
Hays	100	X						
Eureka	114					X	X	
Junction City	120					X		
District Court	108 Traffic 158 Criminal					X		

Title: Winter Storm Response Recap

Agenda Date: March 5, 2025

Presented By: Dean Grant, Director of Public Works
Jeff Meek, Assistant Director of Public Works

Discussion

Dean Grant, Public Works Director, and Jeff Meek, Assistant Public Works Director will talk about this year's snow events and the City's response to clearing snow.

They will cover the following topics:

- Winter Storm Response Policy
- Routes (Current and Proposed)
- Equipment
- Labor
- Challenges

ORDINANCE NO 22-48

AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO ANIMALS; AMENDING SECTION 6-5 ANIMAL OR FOWL PENS AND 6-10 KEEPING DOMESTIC ANIMALS (FARM AND NONFARM) OF THE CODE OF THE CITY OF EMPORIA, KANSAS.

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

Section 1. That Section 6-5 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 6-5. Animal Or Fowl Pens:

- (a) It shall be unlawful to maintain any stable, shed, yard, pen or other place in which animals or fowl shall be kept in such a manner as to be or become offensive to those residing in the vicinity or annoying to the public.
- (b) Any pen, coop or other building upon a lot used for the purpose of confining or housing the animal must be constructed of such material and in such manner that they can be kept clean and sanitary at all times.
- (c) Animal enclosures must provide adequate space for each animal, both horizontally and vertically, to be able to make normal postural and social adjustments and provide adequate freedom of movement.
- (d) Enclosures and fencing must be secure to hold the animals and must be kept in good repair.
- (e) No debris, garbage, water, excrement, or any other potential health hazard shall be allowed to accumulate.
- (f) Fencing for the keeping of domestic farm animals shall meet the following additional requirements:
 - 1) Fencing shall not be closer than twenty-five feet (25') from the front lot line.
 - 2) The primary housing for large animals shall not be less than seventy-five feet (75') from the lot line and not less than one hundred feet (100') from any neighboring dwelling.
 - 3) Chicken coops and runs shall be constructed in such a way as to keep chickens fully enclosed. Chickens must remain inside enclosures at all times. Chicken enclosures must meet the following additional requirements:
 - i. Enclosures shall have a minimum of twelve (12) square feet per chicken, not to exceed fifty (50) square feet in total.
 - ii. Enclosures shall be located fully within the back yard of the owner or keeper of the chickens. Enclosures shall not be located in the front yard or side yard.
 - iii. Chicken enclosures shall not be closer than ten feet (10') from the lot line and shall not be closer than fifty feet (50') from any dwelling, church, school, or business structure other than that of the owner or keeper.
- (g) If an authorized public officer determines that a violation of this section exists, the officer may file a complaint with the Municipal Court for such violation. Each day that any violation of this Article continues shall constitute a separate offense.

(Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 2, 3-4-1998; Ord. 22-48, §1, 11-2-2022)”

Section 2. That Section 6-10 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

“Sec. 6-10. Keeping Domestic Animals (Farm and Nonfarm):

(a) Domestic Nonfarm Animals

- 1) It shall be unlawful to keep, cause to be kept, harbor or maintain any domestic nonfarm animal in a residential zone of the city in any manner contrary to the provisions of this article or any other provision of the city code or zoning regulations.
- 2) It shall be unlawful to keep more than three (3) domestic nonfarm animals 16 weeks of age or older for the purposes of breeding, raising, or as pets unless such animals are kept solely within the residence of the owner. This provision shall not apply to a licensed kennel, animal shelter, animal clinic, animal hospital, animal foster home, or community cat caregiver.

(b) Domestic Farm Animals.

- 1) It shall be unlawful to keep, cause to be kept, harbor, or maintain any domestic farm animal in a residential zone of the city without a permit. Any person wishing to keep a domestic farm animal in a residential zone of the city may make application for a domestic farm animal permit. Such permit shall be issued only after an inspection of the premises and a finding of fact to the effect that the permitting requirements have been met.
- 2) The following permit requirements must be met and verified by inspection prior to the issuance of a domestic farm animal permit:
 - i. Existing or planned animal and fowl pens conform to the requirements of Sec. 6-5. Farm animals and fowl must remain fully enclosed in pens on owners' or keepers' property at all times.
 - ii. No animal nuisance exists or shall be created.
 - iii. No more than one large farm animal per acre shall be permitted, with a minimum lot size of one acre required for a large animal.
 - iv. No more than four (4) chickens shall be permitted per lot. No roosters shall be permitted.
 - v. No swine shall be permitted.
 - vi. No more than four (4) animals in total shall be permitted per lot, including domestic farm and nonfarm animals.
 - vii. Commercial farm operations are prohibited.
 - viii. Slaughtering is prohibited.
 - ix. Offspring of animals authorized by this section but in excess of the permitted number may remain on the property until the age of weaning in the case of mammals, or the age of maturity in the case of fowl. In no event shall an adult rooster remain on permitted property.
 - x. Persons applying for a domestic farm animal permit for rented property must provide a letter or written statement from the landlord granting permission to house farm animals on the property.

- 3) Application for farm animal permit will be to the city clerk and a permit fee shall be paid at the time of making such application. An annual permit fee in the amount of fifty dollars (\$50.00) is initially established.
- 4) The city clerk shall, upon receipt of an application for permit, cause the city officer or employee designated by the city manager to conduct the investigation as required hereby and if the result of such investigation meets the requirements of this section shall issue the permit. In the event of a denial of such permit the city clerk shall immediately notify the applicant by first class mail and the applicant shall then have ten (10) calendar days in which to appeal such determination to the property maintenance appeal board of the city. The property maintenance appeal board shall determine whether such permit should be issued and if so, under what conditions the keeping of such animals will be authorized under the provisions of this section. Any permit issued under the provisions of this section may be revoked or canceled by the property maintenance appeal board at any time during the term thereof; provided, that such officer or employee as designated by the city manager shall first send a notice to the permittee outlining the violation of this chapter determined to be in existence with respect to the property and notifying the permittee that if such violations are not abated within ten (10) days of such notice, such matter will be brought before the property maintenance appeal board, at a date and time to be set and identified in the notice, for determining whether to revoke or cancel the permit as in its judgment will best serve and protect the public health and welfare of the city. Any permits issued shall be issued for a period of one year. No new permit may be issued without reapplication and inspection as provided herein. (Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 3, 3-4-1998; Ord. 22-48, §2, 11-2-2022)"

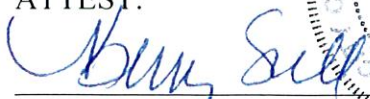
Section 3. That Sections 6-5 and 6-10 of the Code of the City of Emporia, Kansas as they existed prior to the adoption of this ordinance are hereby repealed.

Section 4. This ordinance shall take effect on January 1, 2023 and after its publication in the official City newspaper.

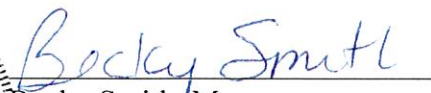
Section 5. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 2nd day of November, 2022.

ATTEST:


Kerry Sull, City Clerk




Becky Smith, Mayor

I, Kerry Sull, City Clerk of the City of Emporia, Lyon County, Kansas, do hereby certify that the foregoing is a true and correct copy of Ordinance Number 22-48 passed and approved by the Governing Body at their Regular Meeting held November 2, 2022 and published in the Emporia Gazette on Novmeber 8, 2022.

DONE this 8th day of November, 2022, in the City of Emporia, Lyon County, Kansas.


Kerry Sull, City Clerk

(SEAL)



The Emporia Gazette
517 Merchant St.
(620) 342-4800

I, Bettina Shank, of lawful age, being duly sworn upon oath, deposes and says that I am the Operations Manager of The Emporia Gazette, a publication that is a "legal newspaper" as that phrase is defined for the city of Emporia, for the County of Lyon, in the state of Kansas, that this affidavit is Page 1 of 2 with the full text of the sworn-to notice set forth on the pages that follow, and that the attachment hereto contains the correct copy of what was published in said legal newspaper in consecutive issues on the following dates:

PUBLICATION DATES:

8 Nov 2022

Notice ID: zsDm4f3wxfaW0Az4PjDP

Notice Name: Ord 22-48

PUBLICATION FEE: \$220.24

Bettina Shank
Operations Manager

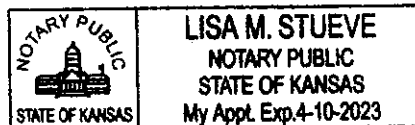
VERIFICATION

STATE OF KANSAS
COUNTY OF LYON

Signed or attested before me on this

8 day of November, A.D. 2022.

Lisa M. Stueve
Notary Public



(First Published in the Emporia Gazette on November 08, 2022)

ORDINANCE NO 22-48
AN ORDINANCE OF THE CITY OF EMPORIA, KANSAS PERTAINING TO ANIMALS; AMENDING SECTION 6-5 ANIMAL OR FOWL PENS AND 6-10 KEEPING DOMESTIC ANIMALS (FARM AND NONFARM) OF THE CODE OF THE CITY OF EMPORIA, KANSAS. BE IT ORDAINED by the Governing Body of the City of Emporia, Kansas:
Section 1. That Section 6-5 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:
"Sec. 6-5. Animal Or Fowl Pens:
(a) It shall be unlawful to maintain any stable, shed, yard, pen or other place in which animals or fowl shall be kept in such a manner as to be or become offensive to those residing in the vicinity or annoying to the public.
(b) Any pen, coop or other building upon a lot used for the purpose of confining or housing the animal must be constructed of such material and in such manner that they can be kept clean and sanitary at all times.
(c) Animal enclosures must provide adequate space for each animal, both horizontally and vertically, to be able to make normal postural and social adjustments and provide adequate freedom of movement.
(d) Enclosures and fencing must be secure to hold the animals and must be kept in good repair.
(e) No debris, garbage, water, excrement, or any other potential health hazard shall be allowed to accumulate.
(f) Fencing for the keeping of domestic farm animals shall meet the following additional requirements:
1) Fencing shall not be closer than twenty-five feet (25') from the front lot line.
2) The primary housing for large animals shall not be less than seventy-five feet (75') from the lot line and not less than one hundred feet (100') from any neighboring dwelling.
3) Chicken coops and runs shall be constructed in such a way as to keep chickens fully enclosed. Chickens must remain inside enclosures at all times. Chicken enclosures must meet the following additional requirements:
i. Enclosures shall have a minimum of twelve (12) square feet per chicken, not to exceed fifty (50) square feet in total.
ii. Enclosures shall be located fully within the back yard of the owner or keeper of the chickens. Enclosures shall not be located in the front yard or side yard.
iii. Chicken enclosures shall not be closer than ten feet (10') from the lot line and shall not be closer than fifty feet (50') from any dwelling, church, school, or business structure other than that of the owner or keeper.
(g) If an authorized public officer determines that a violation of this section exists, the officer may file a complaint with the Municipal Court for such violation. Each

day that any violation of this Article continues shall constitute a separate offense.

(Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 2, 3-4-1998; Ord. 22-48, §1, 11-2-2022)"

Section 2. That Section 6-10 of the Code of the City of Emporia, Kansas, is hereby amended to read as follows:

"Sec. 6-10. Keeping Domestic Animals (Farm and Nonfarm):

(a) Domestic Nonfarm Animals:

1) It shall be unlawful to keep, cause to be kept, harbor or maintain any domestic non-farm animal in a residential zone of the city in any manner contrary to the provisions of this article or any other provision of the city code or zoning regulations.

2) It shall be unlawful to keep more than three (3) domestic nonfarm animals 16 weeks of age or older for the purposes of breeding, raising, or as pets unless such animals are kept solely within the residence of the owner. This provision shall not apply to a licensed kennel, animal shelter, animal clinic, animal hospital, animal foster home, or community cat caregiver.

(b) Domestic Farm Animals:

1) It shall be unlawful to keep, cause to be kept, harbor, or maintain any domestic farm animal in a residential zone of the city without a permit. Any person wishing to keep a domestic farm animal in a residential zone of the city may make application for a domestic farm animal permit. Such permit shall be issued only after an inspection of the premises and a finding of fact to the effect that the permitting requirements have been met.

2) The following permit requirements must be met and verified by inspection prior to the issuance of a domestic farm animal permit:

i. Existing or planned animal and fowl pens conform to the requirements of Sec. 6-5. Farm animals and fowl must remain fully enclosed in pens on owners' or keepers' property at all times.

ii. No animal nuisance exists or shall be created.

iii. No more than one large farm animal per acre shall be permitted, with a minimum lot size of one acre required for a large animal.

iv. No more than four (4) chickens shall be permitted per lot. No roosters shall be permitted.

v. No swine shall be permitted.

vi. No more than four (4) animals in total shall be permitted per lot, including domestic farm and nonfarm animals.

vii. Commercial farm operations are prohibited.

viii. Slaughtering is prohibited.

ix. Offspring of animals authorized by this section but in excess of the permitted number may remain on the property until the age of weaning in the case of mammals, or the age of maturity in the case of fowl. In no event shall an adult rooster remain on permitted property.

x. Persons applying for a domestic farm animal permit for rented property must provide a letter or written statement from

the landlord granting permission to house farm animals on the property.

3) Application for farm animal permit will be to the city clerk and a permit fee shall be paid at the time of making such application. An annual permit fee in the amount of fifty dollars (\$50.00) is initially established.

4) The city clerk shall, upon receipt of an application for permit, cause the city officer or employee designated by the city manager to conduct the investigation as required hereby and if the result of such investigation meets the requirements of this section shall issue the permit. In the event of a denial of such permit the city clerk shall immediately notify the applicant by first class mail and the applicant shall then have ten (10) calendar days in which to appeal such determination to the property maintenance appeal board of the city. The property maintenance appeal board shall determine whether such permit should be issued and if so, under what conditions the keeping of such animals will be authorized under the provisions of this section. Any permit issued under the provisions of this section may be revoked or canceled by the property maintenance appeal board at any time during the term thereof; provided, that such officer or employee as designated by the city manager shall first send a notice to the permittee outlining the violation of this chapter determined to be in existence with respect to the property and notifying the permittee that if such violations are not abated within ten (10) days of such notice, such matter will be brought before the property maintenance appeal board, at a date and time to be set and identified in the notice, for determining whether to revoke or cancel the permit as in its judgment will best serve and protect the public health and welfare of the city. Any permits issued shall be issued for a period of one year. No new permit may be issued without reapplication and inspection as provided herein. (Ord. 97-38, § 1, 10-15-1997; Ord. 98-7, § 3, 3-4-1998; Ord. 22-48, §2, 11-2-2022)"

Section 3. That Sections 6-5 and 6-10 of the Code of the City of Emporia, Kansas as they existed prior to the adoption of this ordinance are hereby repealed.

Section 4. This ordinance shall take effect on January 1, 2023 and after its publication in the official City newspaper.

Section 5. The provisions of this ordinance shall be included and incorporated in the Code of Ordinances of the City of Emporia, KS as an amendment thereto and shall be appropriately numbered to conform to the uniform numbering system of the Code.

PASSED AND APPROVED by the Governing Body of the City of Emporia, Kansas, this 2nd day of November, 2022.

Becky Smith, Mayor

ATTEST:

Kerry Sull, City Clerk

JOINT ENACTMENT

CITY OF EMPORIA ORDINANCE NO. 17-04

LYON COUNTY COMMISSION RESOLUTION NO. 9-17

A JOINT ENACTMENT OF THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS, AND THE BOARD OF COUNTY COMMISSIONERS OF LYON COUNTY, KANSAS ESTABLISHING THE EMPORIA/LYON COUNTY JOINT TRAFFIC SAFETY COMMITTEE.

WHEREAS, the Governing Body of the City of Emporia, Kansas, and the Board of County Commissioners of Lyon County, Kansas desire to promote and develop traffic safety within the City and the County; and

WHEREAS, the Governing Body of the City of Emporia previously adopted Ordinance No. 17-04, codified under Emporia City Code Chapter 25, Article V, establishing the City Traffic Safety Committee

WHEREAS, the Board of County Commissioners of Lyon County desires to collaborate with the City of Emporia in the promotion and development of traffic safety within the City and County; and

WHEREAS, the Governing Body of the City of Emporia, Kansas, and the Board of County Commissioners of Lyon County, Kansas recognize the need for a Joint Traffic Safety Committee;

NOW, THEREFORE, BE IT RESOLVED by the Governing Body of the City of Emporia, Kansas, and the Board of County Commissioners of Lyon County, Kansas as follows:

Section 1. THAT City Ordinance No. 25-95 is hereby amended, and such language is adopted as Lyon County Resolution 9-17 as follows:

THAT the City of Emporia and the County of Lyon do hereby create the Emporia/Lyon County Joint Traffic Safety Committee for the purpose of establishing and regulating placement, removal, or adjustments in routine traffic and parking matters. The committee shall also be available to provide review and recommendation to the governing bodies on traffic matters of a non-routine nature.

The Emporia/Lyon County Joint Traffic Safety Committee will consist of nine (9) members including members of both the City of Emporia and Lyon County and citizens with technical experience in civil engineering, community planning or traffic engineering. The City shall appoint five (5) members which shall consist of the City Manager, who shall serve as Chair, Fire Chief, Police Chief, Public Works Director and City Engineer, or their designees. The County shall appoint four (4) members which shall consist of one (1) from the Lyon County Highway Department or designee; one (1) from the Lyon County Sheriff's Department or designee; and two (2) civilian members with technical experience in civil engineering, community planning or traffic engineering.

The committee shall establish a regular meeting time at least monthly and a majority of the committee must be present to constitute an official meeting and to conduct business. Any action shall be by a majority vote of the entire committee.

There is currently in existence a Traffic Safety Committee with members serving on the present committee, and the members thereof shall continue in their position until they resign. The duties of this committee shall not be amended. They shall continue with their regular meetings and a majority of the committee must be present to constitute an official meeting and to conduct business. Any action shall be by a majority vote of the entire committee.

Section 2. THAT City Ordinance No. 25-96 is hereby amended, and such language is adopted as Lyon County Resolution 9-17 as follows:

(a) The Emporia/Lyon County Joint Traffic Safety Committee shall have authority to consider and establish routine traffic and parking regulations. Routine traffic and parking regulations shall be deemed to consist of:

1. The removal of placement of warning, informational and regulatory signs.
2. The designation of school crossing zones and crosswalks.
3. Signalization sequence of existing traffic control signs.
4. Designation, establishment of adjustment of speed limitations.
5. The designation of timed parking.
6. Designation of emergency traffic routes.

(b) Any item of a traffic or parking nature not meeting the definition of "routine" as established in this section shall be deemed a non-routine traffic or parking item and shall be considered in accordance with section 25-97 of this chapter.

Section 3. THAT City Ordinance No. 25-97 is hereby amended, and such language is adopted as Lyon County Resolution 7-17 as follows:

Traffic and parking matters of a non-routine nature shall be referred upon the discretion of the governing body of either Lyon County or the City of Emporia to the consideration of the Emporia/Lyon County Joint Traffic Safety Committee for consideration and recommendation to the respective governing body. All such recommendations to the governing body shall be in writing and shall contain the basis for the conclusions reached by the Emporia/Lyon County Joint Traffic Safety Committee. Final action on such matters shall be taken only by the governing body.

Section 4. THAT City Ordinance No. 25-98 is hereby amended, and such language is adopted as Lyon County Resolution 9-17 as follows:

The Emporia/Lyon County Joint Traffic Safety Committee shall consider any request for the placement, removal or adjustment of a routine traffic or parking matter made to the city or may institute consideration of such routine matters upon their own motion. All such requests shall be forwarded to the chair of the committee, who shall place consideration of the request on the agenda of the next scheduled meeting of the committee. Applicants shall be notified of the date of the committee meeting. If the committee determines an application has merit, it shall forward a recommendation to the governing body of either Lyon County or the City of Emporia.

The governing body shall consider the recommendation at a regularly scheduled study session. If the governing body determines that the application has merit, it shall return the application to the Emporia/Lyon County Joint Traffic Safety Committee for a public hearing.

The Emporia/Lyon County Joint Traffic Safety Committee shall hold the public hearing at their next regularly scheduled meeting more than thirty (30) days following the determination of the governing body that the application has merit. Notice of the date, time and location of the public hearing shall be published not less than fifteen (15) days nor more than thirty (30) days before the date of the public hearing in the official city newspaper.

The applicant shall be notified by regular mail not less than fifteen (15) days before the date of the hearing. All property owners within one block of the application site, or other distance as the chair considers appropriate, shall be notified by regular mail not less than fifteen (15) days before the date of the hearing. The applicant and all interested parties shall be permitted to testify at the public hearing, subject to the rules set forth by the chair.

Following the close of the public hearing, the committee shall make a final determination regarding routine applications as described in this article. The committee shall make a recommendation to the appropriate governing body for all non-routine applications as described in this article. The decision of the committee for routine applications and the governing body for non-routine applications shall be final.

Section 5. THAT City Ordinance No. 25-99 is hereby amended, and such language is adopted as Lyon County Resolution 9-17 as follows:

A decision of a routine application by the Emporia/Lyon County Joint Traffic Safety Committee may be appealed to the appropriate governing body of either Lyon County or the City of Emporia by a person making the request or anyone aggrieved by the determination. The appellant shall provide in writing to the chair of the committee the basis for their appeal. The appropriate governing body shall consider the appeal at a regularly scheduled meeting not more than sixty (60) days after the appeal has been filed with the chair of the committee. The governing body shall make a determination whether to approve or deny the appeal not more than thirty (30) days following the close of the appeal hearing. The governing body may also return the appeal to the committee for reconsideration at the committee's next regularly scheduled meeting. The committee shall forward a recommendation to the governing body. The decision of the governing body shall be final. The determination of the committee shall not be implemented pending any action of the governing body.

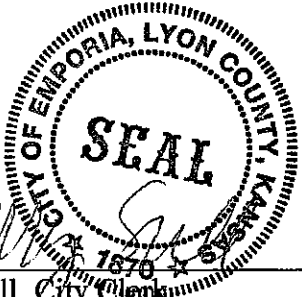
Section 6. THAT City Ordinance No. 25-100 is hereby amended, and such language is adopted as Lyon County Resolution 9-17 as follows:

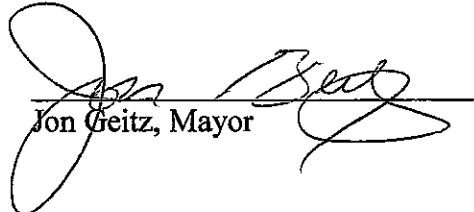
Emergency regulatory and warning signs may be installed as directed by the Emporia/Lyon County Joint Traffic Safety Committee as the committee determines is necessary to promote the public health, safety and welfare. Such signage shall be effective until such time as the committee and governing body has made a final determination on the emergency signage as set forth herein.

Section 7. THAT this Joint Enactment shall become effective upon its adoption by the Governing Body of the City of Emporia and the Board of County Commissioners of Lyon County, Kansas.

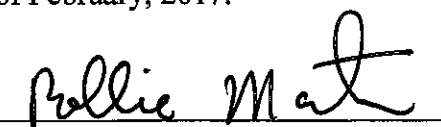
APPROVED AND ADOPTED BY THE GOVERNING BODY OF THE CITY OF EMPORIA, KANSAS, this 23 day of February, 2017.

Attest:

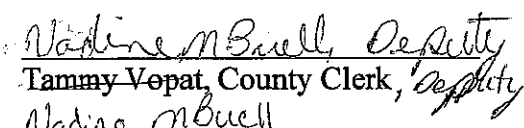

Kerry Sull, City Clerk


Jon Geitz, Mayor

APPROVED AND ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF LYON COUNTY, KANSAS, this 23 day of February, 2017.


Rollie Martin, Chairman

Attest:


Nadine MBuell, Deputy
Tammy Vopat, County Clerk, Deputy
Nadine MBuell

