



CITY COMMISSION
WEDNESDAY, APRIL 2, 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

Proclamation Recognizing April as Child Abuse and Neglect Prevention Month

Accepted by: Mickey Edwards, Executive Director of SOS; Ginny Samples, Child Advocacy Center Director; and Lisa Harder, Infant Family Specialist & Healthy Families Kansas Supervisor with Kansas Children's Service League

Proclamation Recognizing April 13-19 as National Public Safety Telecommunicators Week

Accepted by: Roxy VanGundy, Director of Lyon County Emergency Communications Center

Proclamation Recognizing April 6-12 as National Library Week

Accepted by: Pauline Stacchini, Director of the Emporia Public Library

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. 25-12 City of Emporia Gas Franchise Agreement with Kansas Gas Service, A Division of One Gas, Inc.**

Presented by: Mark Detter, Deputy City Manager

Recommended Action: Approve Ordinance No.25-12 granting to Kansas Gas Service, a Division of One Gas, Inc., a franchise agreement with the City of Emporia, Kansas settings term, rates, conditions for use of City rights-of-way, and other conditions authorizing the transmission and sale of natural gas within the City of Emporia, Kansas

- 2) **Resolution No. 3763 of the City of Emporia, Kansas Requesting Project Authorization for SE Transmission Watermain Project**

Presented by: Mark Detter, Deputy City Manager

Recommended Action: Approve Resolution No. 3763 of the City of Emporia, Kansas authorizing

certain public improvements for the purpose of SE Transmission Line water line improvements in an amount not to exceed \$7,000,000

3) **2025 Spring Landfill Days**

Presented by: Dean Grant, Public Works Director

Recommended Action: Approve 2025 Spring Landfill Days to be held from April 26th through May 4th

COMMUNICATIONS

Presented by Trey Cocking, City Manager.

CONSENT AGENDA

Presented by Trey Cocking, City Manager.

- 1) Commission Meeting Minutes for March 19, 2025
- 2) 823 West Street Sanitary Sewer License Agreement
- 3) SE Transmission BNSF License Agreement

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

NO STUDY SESSION AGENDA

ADJOURNMENT



PROCLAMATION

WHEREAS, child abuse and neglect are serious problems affecting every segment of our community, and finding solutions requires input and action from everyone in our community; and

WHEREAS, children have a right to be safe and to be provided an opportunity to thrive, learn and grow; and

WHEREAS, child abuse can have long-term psychological, emotional and physical effects that can have lifelong consequences for victims of abuse; and

WHEREAS, we must come together as partners so that the voices of our children are heard by all and we are as a community extending a helping hand to children and families in need; and

WHEREAS, by providing safe, stable, and nurturing relationships for our children, free of violence, abuse, and neglect, we can ensure that Kansas' children will grow to their full potential as the next generation of leaders, helping to secure the future of this state and nation;

WHEREAS, communities must make every effort to promote programs and activities that benefit children and their families;

WHEREAS, we acknowledge that we must work together as a community to increase awareness about child abuse and contribute to promoting the social and emotional well-being of children and families in a safe, stable, nurturing environment.

WHEREAS, prevention remains the best defense for our children and families;

THEREFORE, BE IT RESOLVED, I Erren Harter, Mayor of the City of Emporia hereby proclaim the month of April 2025 as

NATIONAL CHILD ABUSE AND NEGLECT PREVENTION MONTH

in Emporia, Kansas, and urge all citizens to recognize this month by dedicating ourselves to the task of improving the quality of life for all children and families.

On this 2nd Day of April 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, emergencies can occur at any time that require sheriff, police, fire or emergency medical services; and,

WHEREAS, when an emergency occurs the prompt response of sheriff's deputies, police officers, firefighters, and paramedics is critical to the protection of life and preservation of property; and,

WHEREAS, the safety of our deputies, police officers and firefighters are dependent upon the quality and accuracy of information obtained from citizens who telephone the Lyon County Emergency Communications Center; and,

WHEREAS, Public Safety Telecommunicators are the first and most critical contact our citizens have with emergency services; and,

WHEREAS, Public Safety Telecommunicators are the single vital link for our deputies, police officers, and firefighters by monitoring their activities by radio, providing them information, and ensuring their safety; and,

WHEREAS, Public Safety Telecommunicators of the Lyon County Emergency Communications Center have contributed substantially to the apprehension of criminals, suppression of fires, and treatment of patients; and,

WHEREAS, each Communications Officer has exhibited compassion, understanding, and professionalism during the performance of their job in the past year;

THEREFORE, BE IT RESOLVED, I, Erren Harter, Mayor of Emporia, declare the week of April 13th through 19th, 2025, to be

NATIONAL PUBLIC SAFETY TELECOMMUNICATORS WEEK

In Emporia in honor of the men and women whose diligence and professionalism keep our city and citizens safe

On this 2nd Day of April 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



PROCLAMATION

WHEREAS, libraries spark creativity, fuel imagination, and inspire lifelong learning, offering a space where individuals of all ages can explore new ideas and be drawn to new possibilities;

WHEREAS, libraries serve as vibrant community hubs, connecting people with knowledge, technology, and resources while fostering civic engagement, critical thinking, and lifelong learning;

WHEREAS, libraries provide free and fair access to books, digital tools, and innovative programming, ensuring that all individuals—regardless of background—have the support they need to learn, connect, and thrive;

WHEREAS, libraries empower job seekers, entrepreneurs, and lifelong learners by providing access to resources, training, and opportunities that support career growth and economic success;

WHEREAS, libraries nurture young minds through storytimes, STEAM programs, and literacy initiatives, fostering curiosity and a love of learning that lasts a lifetime;

WHEREAS, libraries protect the right to read, think, and explore without censorship, standing as champions of intellectual freedom and free expression;

WHEREAS, dedicated librarians and library workers provide welcoming spaces that inspire discovery, collaboration, and creativity for all; and

WHEREAS, libraries, librarians, and library workers across the country are joining together to celebrate National Library Week under the theme “Drawn to the Library”;

NOW, THEREFORE, I, Erren Harter, Mayor of the City of Emporia, Kansas, do hereby proclaim April 6–12, 2025 as

National Library Week

in the city of Emporia, Kansas, and urge all residents of Emporia to visit their library, explore its resources, and celebrate all the ways the library draws us together as a community.

On this 2nd Day of April 2025

ATTEST:

Erren Harter, Mayor

Kerry Sull, City Clerk



Commission Action Report

Ordinance No. 25-12 City of Emporia Gas Franchise Agreement
With Kansas Gas Service, A Division of One Gas, Inc.

Title: Ordinance No. 25-12 City of Emporia Gas Franchise Agreement with
Kansas Gas Service, A Division of One Gas, Inc.

Presented By: Mark Detter, Deputy City Manager

Background:

The City of Emporia Previously renewed the Gas Franchise Agreement with Kansas Gas Service in 2005. City staff would like to renew the current agreement with Kansas Gas Service, a division of One Gas, Inc., prior to the preparation of the 2026 Budget.

Discussion:

The proposed gas franchise agreement renewal will include a 5% fee for gross receipts from sales and transmission of gas within the City limits of Emporia. The term of the agreement is 10 years with the ability to reopen the agreement in 5 years (2030).

The franchise agreement with Kansas Gas is done in lieu of the City operating a gas system and deriving benefits and expenses from such a system. The primary costs incurred by a City for allowing utility to utilize City Right-Of-Ways is maintenance of such ROWS. The gas franchise agreement details how Kansas Gas will conduct business within the City ROWs, including notifying the City of potential work in the ROWs for gas system maintenance and enhancements and responding to City one-call requests when City utilities are to be maintenance.

Financial Considerations:

The Gas Franchise Agreement was renewed in 2005 when rates increased from 2% to 5%. The Kansas Gas Franchise fees are approximately \$500,000 per year. Gas Franchise fees have kept pace with inflation approximately 50% of the time in the 20-year period of the agreement.

Other Considerations:

The Gas Franchise agreement should be considered again in 5 years to evaluate the fees' status related to inflation.

Recommended Action:

Approve Ordinance No.25-12 granting to Kansas Gas Service, a Division of One Gas, Inc., a franchise agreement with the City of Emporia, Kansas settings term, rates, conditions for the use of City rights-of-way, and other conditions authorizing the transmission and sale of natural gas within the City of Emporia, Kansas.

Attachments:

Ordinance No.25-12 Gas Franchise Agreement
Presentation on Gas Franchise Renewal
KGS Franchise Fees

ORDINANCE NO. 25-12

AN ORDINANCE, granting to Kansas Gas Service, a Division of ONE Gas, Inc., and its successors and assigns, a natural gas franchise, prescribing the terms thereof and relating thereto, providing definitions of terms, prescribing a franchise fee, providing terms and conditions for the use of public rights-of-way, requiring advance notice of work and duty to repair, providing for indemnification and a hold harmless agreement, providing for rules and regulations, prescribing insurance requirements, reserving certain rights, providing for revocation and termination, providing for an acceptance of the terms of the franchise, providing for a reopener, providing for notice of annexations, prescribing relevant governing law, providing for transfer and assignment of the franchise, providing for points of contact and notifications, providing for an agreement to renegotiate, and repealing all ordinances or parts of ordinances inconsistent with or in conflict with the terms hereof.

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

SECTION 1. DEFINITIONS.

For purposes of this Franchise Ordinance the following words and phrases shall have the meanings given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word “shall” is always mandatory, and not merely directory.

“City” shall mean the City of Emporia, Kansas, and, where appropriate by the context, each of its departments, divisions and component units, including public trusts or authorities of which the City is a beneficiary.

“Company” shall mean Kansas Gas Service, a Division of ONE Gas, Inc.

“Consumer” shall mean any Entity located within the municipal corporate limits of the City and serviced by the Company through any use of the Public Ways.

“Distribution” or “Distributed” shall mean all sales, distribution, or transportation of natural gas to any Sales Consumer or Transportation Consumer for use within the City by the Company or by others through the Distribution Facilities of Company in a Public Way.

“Distribution System” or “Distribution Facilities” shall mean a pipeline or system of pipelines, including without limitation, mains, pipes, boxes, reducing and regulating stations, laterals, conduits, and services extensions, together with all necessary appurtenances thereto, or any part thereof located within any Public Way, for the purpose of Distribution or supplying natural gas for light, heat, power, and all other purposes.

“Effective Date” shall mean the date the Company files its written acceptance with the City following the final passage and approval of this Franchise Ordinance by the City, as set forth in Section 10 of this Franchise Ordinance.

“Entity” shall mean any individual person, governmental entity, business, corporation, partnership, firm, limited liability corporation, limited liability partnership, unincorporated association, joint venture, trust, and any form of business enterprise not specifically listed herein.

“Facility” or “Facilities” refers to the Company’s Distribution System or Distribution Facilities.

“Franchise” shall mean the grant of authority, set forth in Section 2 of this Franchise Ordinance, by the City to the Company for the Distribution of natural gas to the inhabitants of the City and to operate a Distribution System or Distribution Facilities.

“Franchise Fee” shall refer to the charges as prescribed in Section 3 of this Franchise Ordinance.

“Franchise Ordinance” shall mean this Ordinance granting a natural gas Franchise to the Company.

“Gross Receipts” shall mean any and all compensation and other consideration derived directly by the Company from any Distribution of natural gas to Consumers within the City. Such term shall not include revenue from certain miscellaneous charges and accounts, including but not limited to: connection fees, disconnection and reconnection fees, temporary service charges, delayed or late payment charges, collection fees, bad debts, customer project contributions, meter test fees, revenues received by Company from Consumers as Franchise Fee reimbursement, and returned check charges. Additionally, Gross Receipts shall not include credit extended pursuant to the Cold Weather Rule (or substitute rule) of the Kansas Corporation Commission for natural gas sold within the corporate limits of the City, nor Volumetric Rate Fees collected by Company and remitted to City in accordance with Section 3 of this Franchise Ordinance.

“MCF” shall mean a measurement of natural gas equal to one thousand cubic feet. It is assumed for purposes of this Franchise Ordinance that one MCF equals one million British Thermal Units.

“Public Improvements” means any public facilities, buildings, or capital improvements, including, without limitation, streets, alleys, sidewalks, sewer, water, drainage, right-of-way improvements, and other Public Projects.

“Public Project” means any project planned or undertaken and financed by the City or any governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, or any other purpose of a public nature paid for with public funds.

“Public Way” or “Public Ways” shall mean the area on, below or above the present and future public streets, avenues, alleys, bridges, boulevards, roads, highways, parks, parking places,

and other public areas, and general utility easements, dedicated to or acquired by the City. The term does not include easements obtained by private entities providing utilities services or private easements in platted subdivisions or tracts.

“Sales Consumer” shall mean, without limitation, any Entity that purchases natural gas within the corporate City limits from Company for delivery to such Consumer within the City through the Company’s Distribution System or Distribution Facilities.

“Transport Gas” shall mean all natural gas transported by Company pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, but not sold by the Company, through Company’s Distribution Facilities to any Transportation Consumer.

“Transportation Consumer” shall mean without limitation, any Entity that transports Transport Gas pursuant to a Kansas Corporation Commission approved transportation tariff, arrangement, or by other agreement, within the City’s municipal corporate limits through Company’s Distribution Facilities for consumption within the City’s corporate limits.

SECTION 2. GRANT OF FRANCHISE.

A. In consideration of the benefits to be derived by the City and its inhabitants, there is hereby granted to the Company (said Company operating a Distribution System in the State of Kansas), a non-exclusive Franchise for a period of ten (10) years from the Effective Date, to construct, maintain, extend and operate its Distribution Facilities along, across, upon, or under any Public Way; for the purpose of selling and distributing natural gas for all purposes to the City, and its inhabitants, and through said City and beyond the limits thereof; to obtain said natural gas, and/or comparable blends of combustible gasses, from any source available; and to do all things necessary or proper to carry on said business.

B. The grant of this Franchise by the City shall not convey title, equitable or legal, in a Public Way and shall give only the right to occupy the Public Way for the purposes and for the period stated in this Franchise Ordinance. This Franchise Ordinance does not:

- (1) Grant the right to use facilities or any other property, natural gas-related or otherwise, owned or controlled by the City or a third party without the consent of such party;
- (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of a Public Way;
- (3) Excuse the Company from obtaining appropriate access or attachment agreements before locating its Facilities on property owned or controlled by the City (other than a Public Way) or a third party; or
- (4) Unless explicitly set forth herein, excuse the Company from obtaining and being responsible for any necessary permit, license, certification, grant, registration, or

any other authorization required by any appropriate governmental entity, including, but not limited to, the City or the Kansas Corporation Commission.

SECTION 3. FRANCHISE FEE.

A. As further consideration for the granting of this Franchise, and in lieu of city occupation, license or permit fees, or revenue taxes, except as expressly provided herein, the Company shall pay to the City during the term of this Franchise, a Franchise Fee of: (i) five percent (5%) of the actual Gross Cash Receipts collected by the Company from the Distribution of natural gas to all Sales Consumers and Transportation Consumers within the corporate limits of the City, all such payments to be made monthly for the preceding monthly period.

B. The Company's obligation for payments of the Franchise Fee shall commence with the first cycle of the monthly billing cycle following the Effective Date of this Franchise Ordinance. Prior to that date, payments shall continue to be calculated and be paid in the manner previously provided in Ordinance No. 05-34, and amendments thereto.

C. In the event a Consumer of Company does not pay a monthly bill from Company in full, Company shall prorate its payments of remissions to the City for sums due on that particular bill so that the amount actually paid by the Consumer to Company on the bill is distributed to Company for the natural gas commodity and transportation or distribution service and to the City for sums due on the bill in proportion to the percentage of the total bill actually paid by the Consumer. In the event Company actually collects any outstanding amounts due on a past due, unpaid, or partially paid monthly bill to a customer, the Company shall pay City its proportionate share of sums due to the City on such bill.

D. Upon written request by the City (but no more than once per quarter), the Company shall submit to the City a certified statement showing the manner in which the Franchise Fee was calculated. The City shall have the right to examine within the corporate limits of the City and during regular business hours, upon reasonable advance written notice to the Company, all books, papers and records kept by the Company in the ordinary course of business and pertaining to its business carried on by it in or through the City, necessary to verify the correctness of the Franchise Fee paid by Company.

E. No acceptance by the City of any Franchise Fee shall be construed as an accord that the amount paid is in fact the correct amount, nor shall acceptance of any Franchise Fee payment be construed as a release of any claim of the City. Any dispute concerning the amount due under this Section shall be resolved in the manner set forth in K.S.A. 12-2001, and amendments thereto.

F. The Franchise Fee required herein shall be in lieu of all taxes, charges, assessments, licenses, fees, and impositions otherwise applicable that are or may be imposed by the City under K.S.A. 12-2001, K.S.A. 17-1902, and amendments thereto. From and after the date hereof, the permit fees required of the Company by any ordinance (presently in effect or hereafter adopted) for a permit to excavate in, or adjacent to, any Public Way shall be deemed a part of the compensation paid pursuant to this Franchise Ordinance and shall not be separately assessed or collected by the City; in no event, however, shall this provision be interpreted to waive the

requirement of notice to the City and the procedural requirements of such ordinance. The Franchise Fee is compensation for use of the Public Way.

SECTION 4. USE OF PUBLIC RIGHT-OF-WAY.

A. Except as provided herein or as regulated by state or federal law, the use of any Public Way under this Franchise by the Company shall be subject to all laws, statutes, regulations and/or city policies (including, but not limited to those relating to the construction and use of the Public Way or other public property) now or hereafter adopted or promulgated. Unless specifically provided herein, the Company shall be subject to all rules, regulations and policies now or hereafter adopted or promulgated by the City relating to permits, sidewalk and pavement cuts, utility location, construction coordination, and other requirements on the use of a Public Way; provided however, that nothing contained herein shall constitute a waiver of or be construed as waiving the right of the Company to oppose, challenge, or seek judicial review of, in such manner as is now or may hereafter be provided by law, any such rules, regulation, or policy proposed, adopted, or promulgated by the City and, further provided other than the items enumerated in this Section 4 herein, that such rules, regulations or policies shall not require the payment of additional fees or additional costs for the use of a Public Way.

B. All mains, services, and pipe which shall be laid or installed under this Franchise shall be so located and laid as not to obstruct or interfere with any water pipes, drains, sewers, or other structures already installed. The Company shall provide, prior to commencing work, information to the City concerning work to be performed in the streets, avenues, bridges, parking areas, and public places of the City, as the City may from time to time require for purposes of record keeping. The City may require that the information be provided on its standard permit form, but without requiring approval, consent, or fees. In the event of an emergency, the Company shall have the right to commence work without having first provided such information or form(s).

C. The Company's use of any Public Way shall always be subject and subordinate to the City's use of the Public Way for any public purpose. The City may exercise its home rule powers in its administration and regulation related to the management of the Public Way; provided that any such exercise must be competitively neutral and may not be unreasonable or discriminatory, nor in conflict with state or federal law.

D. The City reserves the right to lay or permit to be laid cables, electric conduits, water, sewer, gas, or other pipelines, and to do or permit to be done any underground work deemed necessary and proper by the City, along, across, over, or under any Public Way. In permitting such work to be done, the City shall not be liable to the Company for any damage to the Company's Facilities unless the City or its agents or contractors are negligent in causing said damage.

E. Whenever by reason of establishing a grade or changing the grade of any street, or the location or manner of construction of any Public Way, the City deems it necessary to alter, change, adapt, or conform any portion of the Company's Facilities located in the Public Way, the City shall provide reasonable notice and such alterations or changes shall be made within a reasonable time by the Company, as ordered in writing by the City, without claim for reimbursement or compensation for damages against the City; provided, however, that this provision is not intended to require the Company to alter, change, adapt, or conform any portion of its Facilities without reimbursement or compensation where the right to locate the same

(whether by private right-of-way grant, utility easement, or otherwise), was acquired prior to the designation of the location as a Public Way.

F. If the City shall require the Company to adapt or conform its Facilities or in any way to alter, relocate, or change its property to enable any other person, firm, corporation, or Entity (whether public or private), other than the City, to use the Public Way, the Company shall be reimbursed by the person, firm, corporation, or Entity desiring or occasioning such change for any and all loss, cost, or expense occasioned thereby. "Person," "Firm," "Corporation," and "Entity" as used in this paragraph shall not include regular departments of the City, or any trust or authority formed by or for the benefit of the City for public utility purposes, but shall include any other agency or authority of the City, whether acting in a governmental or non-governmental capacity, including, but not limited to, any urban renewal authority, or any other agency or authority, which as a part of its program clears whole tracts of land within the municipal corporate limits and relocates citizens for the purpose of urban development or similar aims.

G. The Company and the City shall participate in the Kansas One-Call utility location program. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the location of its Facilities located within a Public Way when requested by the City. Such location and identification shall be promptly communicated in writing to the City without cost to the City, its employees, agents or authorized contractors. The Company shall designate and maintain an agent familiar with the Facilities, who is responsible for providing timely information needed by the City for the design and replacement of Facilities in a Public Way during, and for the design, of Public Improvements.

H. The Company shall be subject to the following fees and costs in connection with its use and occupancy of any Public Way: (i) in the event that the repairs or replacements set forth under Section 5 below, have not been timely completed by Company, the City may charge an excavation fee for each street or pavement cut to recover the costs associated with construction and repair activity; (ii) inspection fees to recover all reasonable costs associated with City inspection of the work of the Company in the Public Way when the Facilities are of such a scope and magnitude so as to require the City to incur such inspection costs by an outside party; and (iii) the repair and restoration costs associated with repairing and restoring the Public Way because of damage caused by the Company, its assigns, contractors, and/or subcontractors in the Public Way.

SECTION 5. NOTICE OF WORK AND DUTY TO REPAIR.

A. Prior to commencing any activities related to the construction, maintenance, or extension of its Facilities along, across, upon, or under the Public Way, the Company shall submit to the City written plans detailing all such activities in the manner required by the City by Ordinance. In the event of an emergency, Company shall have the right to commence work without providing such plans, provided such plans are submitted within five business days of commencement of the work. The Company's Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such Public Ways or unreasonably obstruct the legal use by other utilities.

B. Prior to beginning work, the Company will inspect existing pavement within and/or adjacent to the work area and will report any existing damage or concerns. All earth, materials,

sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Public Way that are damaged, displaced, or removed by the Company shall be fully repaired or replaced to their prior condition or to existing municipal standards as are then in existence, and in a manner satisfactory to the duly authorized representative of the City, after completing such activity as is permitted under this Franchise Ordinance and without cost to the City.

SECTION 6. INDEMNITY AND HOLD HARMLESS.

The Company, its successors and assigns, in the construction, maintenance, and operation of its Facilities, shall use all reasonable and proper precaution to avoid damage or injury to persons and property, and shall indemnify, defend, hold, and save the City harmless from any and all claims, damage, judgements, and reasonable expense, including attorney fees, caused by the negligence of the Company, its successors and assigns, or their agents or servants. The Company or the City shall promptly advise the other in writing of any known claim or demand against the Company or the City related to or arising out of the Company's activities in any Public Way.

SECTION 7. RULES AND REGULATIONS.

The Company shall have the right to make and enforce such reasonable rules and regulations as it may deem necessary for the extension of its Facilities, the sale of its gas, and the prudent conduct of its business, provided that such rules and regulations shall neither be in conflict with the laws of the State of Kansas, with the orders, rules, or regulations of the Kansas Corporation Commission or other regulatory authority having jurisdiction, nor with the ordinances and regulations of the City insofar as they are consistent with the jurisdiction of the Kansas Corporation Commission or such other regulatory authority.

SECTION 8. REVOCATION AND TERMINATION.

In case of failure on the part of the Company to comply with any of the provisions of this Franchise Ordinance, or if the Company should do or cause to be done any act or thing prohibited by or in violation of the terms of this Franchise Ordinance, the Company may be subject to forfeiture of all rights, privileges, and Franchise granted herein, and all such rights, privileges, and franchise hereunder be deemed ceased, terminated, null, and void, and this Franchise Ordinance shall be deemed revoked or terminated, provided that said revocation or termination shall not take effect until the City has completed the following procedures: Before the City proceeds to revoke and terminate this Ordinance, it shall first serve a written notice upon Company, setting forth in detail the neglect or failure complained of, and the Company shall have sixty (60) days thereafter in which to comply with the conditions and requirements of this Franchise Ordinance. If at the end of such sixty (60) day period the City determines that the neglect or failure complained of has not been cured, the City shall take action to revoke and terminate this Franchise Ordinance by an affirmative vote of the governing body present at a public meeting and voting, setting out the grounds upon which this Franchise Ordinance is to be revoked and terminated; provided, to afford the Company due process, the Company shall first be provided reasonable notice of the date, time, and location of the governing body's consideration and shall have the right to address the governing body regarding such matter; and further provided, if the nature of the default is such

that it cannot be reasonably cured within the above said sixty (60) day period, and the governing body believes the Company has in good faith timely commenced its cure and is diligently pursuing the completion of the same, the Company may, in the City's sole discretion, be given a reasonable additional period of time to complete its cure. Nothing herein shall prevent either party from invoking any other remedy that may otherwise exist at law. Upon any determination by the governing body to revoke and terminate this Franchise Ordinance, the Company shall have thirty (30) days to appeal such decision to the District Court where the City is located or in the District Court of Johnson County, Kansas. This Franchise Ordinance shall be deemed revoked and terminated at the end of this thirty (30) day period, unless the Company has instituted such an appeal. If the Company does timely institute such an appeal, such revocation and termination shall remain pending and subject to the court's final judgment. Provided, however, that the failure of the Company to comply with any of the provisions of this Franchise Ordinance or the doing or causing to be done by the Company of anything prohibited by or in violation of the terms of this Franchise Ordinance shall not be a ground for the revocation or termination thereof when such act or omission on the part of the Company is due to any cause or delay beyond the control of the Company or to bona fide legal proceedings.

SECTION 9. RESERVATION OF RIGHTS.

A. In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, applicable Federal laws or regulations as the same may be amended, its home rule powers under the Constitution of the State of Kansas, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

B. In adopting and passing this Ordinance, neither the City's nor the Company's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By the City's adopting and passing this Franchise Ordinance and the Company's acceptance hereof as provided in Section 10, neither the City nor the Company waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or the Company may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

SECTION 10. ACCEPTANCE OF TERMS.

A. This Franchise Ordinance shall take effect and be in force from and after its passage, approval by the City, acceptance by the Company, and publication in the official City newspaper. The Company shall have sixty (60) days after the final passage and approval of this Franchise Ordinance to file with the City Clerk its written acceptance of the provisions, terms, and conditions of this Franchise Ordinance and when so accepted, this Franchise Ordinance and acceptance shall constitute a contract between the City and the Company and such contract shall be deemed effective on the date Company files its acceptance with the City.

B. This Franchise Ordinance, when accepted as provided above, (i) shall constitute the entire agreement between the City and the Company relating to this Franchise, and the same shall

supersede and cancel any prior understandings, agreements, or representations regarding the subject matter hereof, or involved in negotiations pertaining thereto, whether oral or written, (ii) shall be binding upon the parties, including their successors and assigns, and (iii) shall not be amended or further obligations imposed without mutual consent of the parties hereto.

SECTION 11. REOPENER PROVISION.

A. Upon written request of either the City or the Company, this Franchise may be reviewed once after five (5) years from the effective date of this Franchise Ordinance, and once every (5) five years thereafter, to review the Franchise Fee set forth in Section 3 above. Said request must be served upon the other party at least 120 days prior to the end of each period set forth above, and shall state specifically the amendment(s) to the Franchise Fee desired. The City and the Company shall negotiate in good faith in an effort to agree upon a mutually satisfactory amendment of the Franchise.

B. Upon written request of the Company, the Franchise shall be reopened and renegotiated at any time upon a change in federal, state, or local law, regulation, or order which materially affects any rights or obligations of the Company, including, but not limited to, the scope of the grant to the Company or the compensation to be paid to the City.

C. The Franchise Fee percentage rate set forth in Section 3 shall in no event exceed the percentage rate hereafter approved to calculate any fee paid to the City by any Entity for use of the Public Ways, if such fee is based in any way on the amount of revenues or gross receipts from the sale, transportation and/or distribution of natural gas or electric energy (excluding any municipally-owned electric utility) by such other Entity to customers within the City. If at any time after the Effective Date of this Franchise Ordinance, the fee or rate required to be paid by another Entity selling, transporting, and/or distributing natural gas or electric energy (excluding any municipally-owned electric utility) is less than the Franchise Fee percentage rate set forth in Section 3, then this Franchise shall become automatically subject to reopen upon notice by the Company for purposes of negotiation of a new lower Franchise Fee percentage rate.

SECTION 12. NOTICE OF ANNEXATION.

The City shall promptly notify the Company in writing (to include a map) of areas newly annexed into or deannexed from the corporate limits of the City, and the Company shall update its records for the purpose of payment of Franchise Fees as soon as reasonably practicable after receiving such notice. Notwithstanding anything to the contrary in this Franchise Ordinance, the Franchise Fees provided for in Section 3 shall not become effective within any area annexed by the City until the beginning of the monthly billing cycle which begins no more than sixty (60) days after the date that the City provides the Company with a certified copy of the annexation ordinance, proof of publication as required by law, and a map of the City detailing the annexed area.

SECTION 13. RELEVANT LAW.

This Franchise Ordinance is granted pursuant to the provisions of K.S.A. 12-2001 and amendments thereto. Any and all ordinances or parts of ordinances in conflict with the terms

hereof are hereby repealed or considered as having no effect as of the first cycle of the monthly billing cycle as referenced in Section 3 of this Franchise Ordinance.

SECTION 14. TRANSFER AND ASSIGNMENT.

Company shall not have the right to assign, sell, lease, or otherwise transfer in any manner whatsoever to any third party not affiliated with Company the rights and privileges granted under this Franchise Ordinance except as hereinafter provided. Any assignment, sale, lease, or other transfer by the Company of the Franchise granted herein to any third party not affiliated with Company shall be ineffective and void unless:

- (1) The proposed assignment, sale, lease, or transfer shall be in writing:
- (2) The prospective assignee, buyer, lessee, or other transferee shall agree in writing to accept and become responsible for full performance of all conditions, covenants, obligations, and liabilities contained in this Franchise Ordinance; and
- (3) Such writing shall be submitted to the City Clerk of the City.

SECTION 15. POINT OF CONTACT AND NOTICES.

The Company shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Company in the event of an emergency. Company shall provide the City with said local contact's name, address, telephone number, fax number, and e-mail address. Emergency notice by either party to the other may be made by telephone to the City's designee as listed below. All other notices between the parties shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail (return receipt requested), or via the email addresses provided below. Any notice served by U.S. Mail or Certified Mail (return receipt requested) shall be deemed delivered upon actual receipt unless otherwise provided. Other than emergencies, notices to the parties shall be to the following:

The City:

The City of Emporia
Attn: City Clerk
Kerry Sull
Emporia, Kansas 66801

Phone: 620-343-4243
Fax: N/A
Email: ksull@emporiaks.gov

Company:

Kansas Gas Service, a Div. of ONE Gas, Inc.
Attn: Legal Department
7421 W. 129th Street
Overland Park, KS 66213-2713
Phone: (913) 319-8619
Fax: N/A
Email: kgsfranchises@onegas.com

Emergency Contact Information:

Emergency Designee:
Emergency Contact No.:

Natural Gas Emergency No: 888-492-4950
Contact Email: KGSDispatchOverlandPark@onegas.com

Emergency Email:

(or to replacement addresses that may be later designated in writing).

SECTION 16. AGREEMENT TO RENEGOTIATE.

Should the Kansas Corporation Commission take any action with respect to this Franchise Ordinance and any amendment thereto which precludes Company from recovering from its customers any costs or fees provided for hereunder, the parties hereto shall renegotiate this Franchise Ordinance in accordance with or to conform to the Commission's ruling.

PASSED, ADOPTED AND APPROVED this 2nd day of April, 2025.

CITY OF EMPORIA, KANSAS

[seal]

Erren Harter, Mayor

ATTEST:

Kerry Sull, City Clerk



Gas Franchise Renewal

March 19th, 2025

New Agreement vs. Old Agreement

Conditions	New Agreement	Old Agreement
Term of Agreement		10 years
Gross Cash Receipts	5%	
Percentage Transmission	5%-no change	
Reopener Increments		5 years

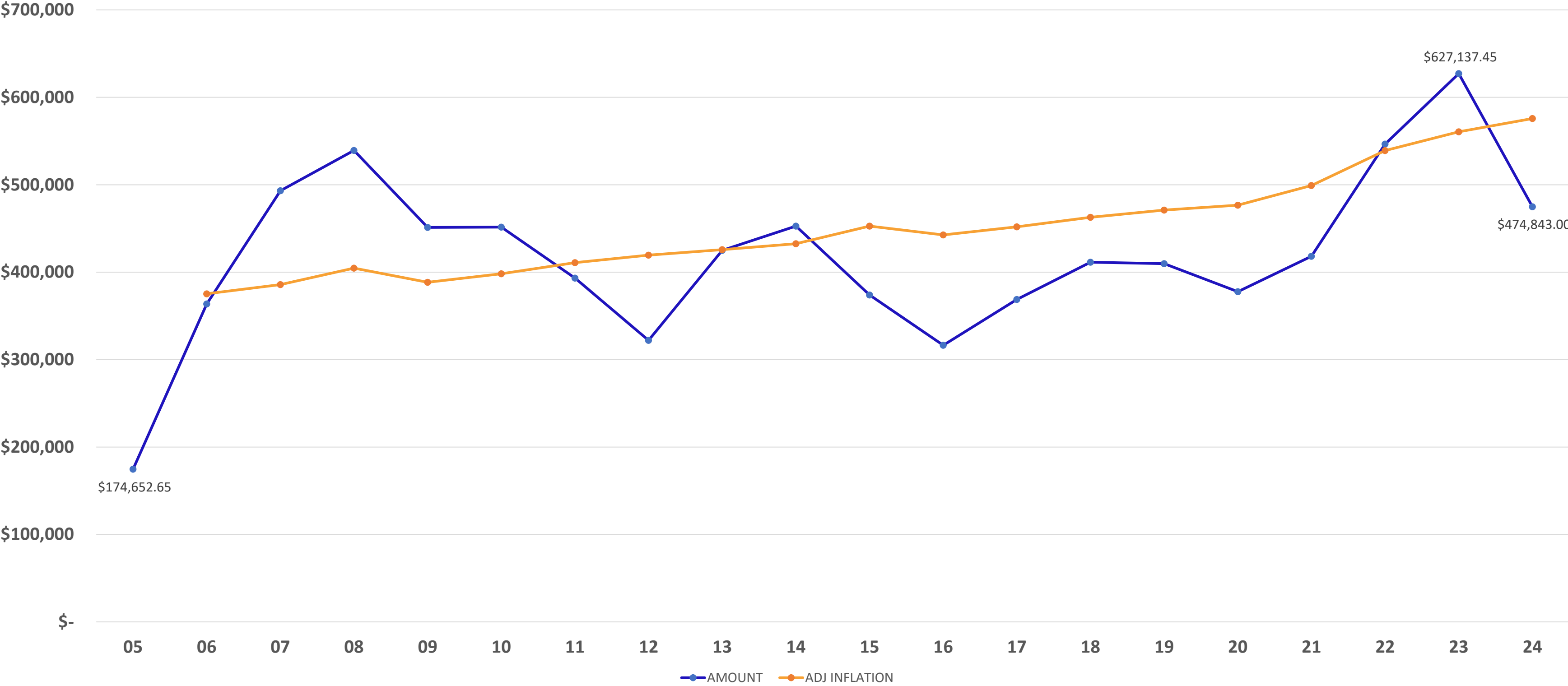
FRANCHISE AGREEMENT CONSIDERATIONS

- Shorter term requires examining agreement more frequently.
- Franchise Fees pay for maintaining City R.o.Ws, which utilities are located upon.
- Franchise agreements are opportunity costs. City had the ability to provide natural gas but opted to allow privatization of gas service.

Other Municipality Gas Rates And Terms Of Agreement

City	Rate	Term of Agreement
PITTSBURG	5% Gross Cash Receipts 1% Transmission	10 Years
HUTCHINSON	5% Gross Cash Receipts	20 Years
HAYS	5% Gross Cash Receipts 3% Transmission	20 Years
MULVANE	5% Gross Cash Receipts 5% Transmission Volumetric Measure	Subject To Renegotiation
ANDOVER	6% Gross Cash Receipts	10 Years
DERBY	6% Gross Cash Receipts	10 Years
EMPORIA (Current)	5% Gross Cash Receipts 5% Transmission	20 Years-5- year increments for reopener
EMPORIA (Proposed)	5% Gross Cash Receipts 5% Transmission	10 Years-5-year reopener

Emporia Gas Franchise Fees



Franchise Fees

An Opportunity to Diversify Your Revenue Sources

Franchise fees are established through a Franchise Agreement and vary from city to city. The fee typically ranges from 1-6% and the term is usually for 20 years. The fee is applied to the customer's monthly utility bill.

What Is a Franchise Fee?

- » A franchise fee is a city-determined fee charged to natural gas customers for the utility's use of public right-of-way (sometimes referred to as "public ways").
- » Kansas Gas Service collects this fee from residents during the billing process and passes it directly to the city; we do not keep any portion of the fee.
- » The amount collected for the fee is based on natural gas usage of and/or delivery to the customer.
- » The city's franchise fee does not impact Kansas Gas Service's other rates and charges; our rates are set by the Kansas Corporation Commission (KCC).

How Is a Franchise Fee Billed?

Cities choose which customers to collect franchise fees from – sales, transportation or both customer types. The goal is to give the City the opportunity and choice to collect franchise fees on all types of customers and consider the financial impact on their communities.

There are different terms for the customers we bill.

» Sales Customer

This customer is charged for the sale and delivery of natural gas — for example, most residences and small businesses. The franchise rate is applied to the total consumption of natural gas.

» Transportation Customer

This customer purchases their natural gas from a third-party marketer and Kansas Gas Service delivers it to the customer via our pipeline system. Therefore, the franchise fee is only applied to the delivery of the natural gas.



To learn more about how we can help your city, please contact:



Commission Action Report

Resolution No 3763 of the City of Emporia, Kansas
Declaring It Necessary to Make Waterline Improvements

Title: Resolution No. 3763 of the City of Emporia, Kansas Declaring It Necessary to Make Waterline Improvements

Agenda Date: April 2, 2025

Presented By: Mark Detter, Deputy City Manager

Background:

The City of Emporia has approved bids for the SE Transmission Line. As was discussed at the March 19th meeting, the City will need approximately \$7,000,000 more in financing for the project.

Discussion:

The City plans to amend the current KDH&E revolving loan to increase the loan amount from \$15,000,000 to \$22,000,000 with \$1,000,000 eligible for loan forgiveness. However, the City is committing to making improvements and in the unlikely event the amendment to the loan is not approved, the City will plan to issue approximately \$7,000,000 in General Obligation Bonds to complete the SE Transmission line project.

Financial considerations:

The increase in the loan value will increase (from previous projections) the future debt service in the water fund for the projects (including Peyton Street, 24th Street, Prairie Street, and SE Transmission Line water line improvements) approximately \$400,000 per year.

Recommended action:

Approve Resolution No. 3763 of the City of Emporia, Kansas authorizing certain public improvements for the purpose of SE Transmission Line water line improvements in an amount not to exceed \$7,000,000.

Attachments:

Resolution No. 3763 of the City of Emporia, Kansas authorizing water line improvements.

**EXCERPT OF MINUTES OF A MEETING
OF THE GOVERNING BODY OF
THE CITY OF EMPORIA, KANSAS
HELD ON APRIL 2, 2025**

The governing body met in regular session at the usual meeting place in the City at 11:00 A.M., the following members being present and participating, to-wit:

Absent:

The Mayor declared that a quorum was present and called the meeting to order.

* * * * *

(Other Proceedings)

There was presented a Resolution entitled:

**A RESOLUTION OF THE CITY OF EMPORIA, KANSAS, AUTHORIZING
CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT
OF THE COSTS THEREOF (WATER IMPROVEMENTS – SOUTHEAST
TRANSMISSION LINE).**

Commissioner _____ moved that the Resolution be adopted. The motion was seconded by Commissioner _____. The Resolution was duly read and considered, and upon being put, the motion for the adoption of the Resolution was carried by the following vote of the governing body:

Yea: _____.

Nay: _____.

The Mayor declared the Resolution duly adopted and the Resolution was then duly numbered Resolution No. 3763 and was signed by the Mayor and attested by the Clerk.

* * * * *

(Other Proceedings)

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On motion duly made, seconded and carried, the meeting thereupon adjourned.

CERTIFICATE

I hereby certify that the foregoing Excerpt of Minutes is a true and correct excerpt of the proceedings of the governing body of the City of Emporia, Kansas, held on the date stated therein, and that the official minutes of such proceedings are on file in my office.

(SEAL)

Kerry Sull, Clerk

RESOLUTION NO. 3763

A RESOLUTION OF THE CITY OF EMPORIA, KANSAS, AUTHORIZING CERTAIN PUBLIC IMPROVEMENTS AND PROVIDING FOR THE PAYMENT OF THE COSTS THEREOF (WATER IMPROVEMENTS – SOUTHEAST TRANSMISSION LINE).

WHEREAS, K.S.A. 13-1024a, as amended by Charter Ordinance No. 41 (the “Act”) of the City of Emporia, Kansas (the “City”), provides that for the purpose of paying for any bridge, viaduct, street, sidewalk, transportation or pedestrian way improvement, airport, public building or structure, parking improvement, or other public utility or works, including any appurtenances related thereto and the land necessary therefor, for lands for public parks and recreation facilities, including golf courses, stadiums and community centers, and developing and making improvements to the same, within or without the City, for the establishment, development and construction of crematories, desiccating or reduction works, including any appurtenances related thereto and the land necessary therefor, within or without the City, or for the improvement, repair or extension of any waterworks, sanitary sewer facilities, sewage treatment or disposal plant, sewerage system, storm water improvement, electric light plant, telecommunications, crematory, desiccating or reduction works or other public utility plant or works owned by the City, and for the purpose of rebuilding, adding to or extending to the same or acquiring land necessary therefor from time to time, as the necessities of the City may require, or for the acquisition of equipment, vehicles and other personal property to be used in relation to any of the improvements authorized herein, the City may borrow money and issue its general obligation bonds and/or temporary notes for the same; and

WHEREAS, the City may issue such general obligation bonds when authorized to do so by the adoption of a resolution by the City Commission (the “Governing Body”) describing the purpose to be provided for and the amount of general obligation bonds to be issued, such bonds to be issued, sold, delivered and retired in accordance with the provisions of the general bond law; and

WHEREAS, the Governing Body desires to authorize the issuance of general obligation bonds of the City to finance all or a portion of the public improvements set forth below.

THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF EMPORIA, KANSAS:

Section 1. Public Improvements; Bond Authorization. The Governing Body hereby authorizes the issuance of general obligation bonds of the City (the “Bonds”) for the following described public improvements (the “Improvements”):

<u>Description</u>	<u>Estimated Cost</u>
Water Improvements – Southeast Transmission Line	\$7,000,000

The estimated costs of the Improvements shall be increased at the pro rata rate of 1 percent per month from and after the date of adoption of this Resolution. The costs of the Improvements, interest on interim financing and associated financing costs shall be payable from the proceeds of the Bonds issued under authority of the Act.

Section 2. Reimbursement. The Bonds may be issued to reimburse expenditures made on or after the date which is 60 days before the date of this Resolution, pursuant to Treasury Regulation § 1.150-2.

Section 3. Effective Date. This Resolution shall take effect and be in full force from and after its adoption by the Governing Body.

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ADOPTED AND APPROVED by the Governing Body of the City of Emporia, Kansas, on April 2, 2025.

(Seal)

Erren Harter, Mayor

ATTEST:

Kerry Sull, Clerk

CERTIFICATE

I hereby certify that the above and foregoing is a true and correct copy of the Resolution of the City adopted by the Governing Body on April 2, 2025, as the same appears of record in my office.

DATED: April 2, 2025.

Kerry Sull, Clerk



Commission Action Report

2025 Spring Landfill Days

Title: 2025 Spring Landfill Days

Agenda Date: April 2, 2025

Presented By: Dean Grant, Director of Public Works

Background:

Spring Landfill Days is an opportunity for citizens of Emporia, Lyon County, and Chase County to bring garbage and construction/demolition to the transfer station/landfill free of charge. Customers must present their April electric bill, and they are limited to 1 trip of not more than 1000 pounds and passenger vehicles with less than 1-ton capacity. Tires, refrigerant-containing appliances, commercial industries, and businesses are charged at the normal rates.

Discussion:

City staff would like to hold the 2025 event from April 26th through May 4th

Financial Considerations:

N/A

Recommended Action:

Approve the 2025 Spring Landfill Days to be held from April 26th through May 4th

Attachments:

2025 Spring Landfill Days Flyer

2025 SPRING LANDFILL DAYS



APRIL 26 - MAY 4

LIMIT OF ONE TRIP

Landfill days will be limited to one (1) trip for residents of Lyon County and Chase County.

FIRST 1,000 POUNDS FREE

The first 1,000 pounds are free of charge. Additional materials over 1,000 pounds will be charged at the normal rate as set by Ordinance 20-31.

City of Emporia/Lyon County Transfer Station

3100 W. South Avenue, Emporia

Hours of Operation

8:00 am to 5:00 pm, Monday thru Saturday

1:00 pm to 5:00 pm, Sunday

REGULATIONS

- ✓ Electric bill must be presented at gate
- ✓ Vehicle: passenger car, light truck (one ton or less), or trailers
- ✓ Commercial or Industrial businesses are not eligible.
- ✓ Disposal of tires and appliance containing refrigerant will be charged the normal rate.
- ✓ All loads must be secured or covered to avoid penalty fee.



Emporia
Kansas
Public Works Department



620-340-6339



www.emporiaks.gov/sanitation

The Governing Body of the City of Emporia, Kansas, met in Regular Session, Wednesday, March 19, 2025, with Mayor Harter presiding and Commissioners Brinkman, Curtis, and Smith present. Commissioner Sauder was absent. Also present were City Manager Cocking, Deputy City Manager Detter, Assistant City Manager Wash, City Clerk Sull and City Attorney Montgomery.

**CITY COMMISSION
(Public Comment)**

This is the time for the public to make comments.

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

No comments were made at this time.

**FINANCE
(2023 Government Finance Officers Association - GFOA)
(Certificate of Achievement)**

Janet Harrouff, Director of Finance, was recognized and addressed the Governing Body. She stated the City of Emporia submitted the 2023 Annual Comprehensive Financial Report to the Government Finance Officers Association for consideration of the Certificate of Achievement for Excellence in Financial Reporting for the fiscal year ending December 31, 2023. The report has been judged by an impartial panel to meet the high standards of the program, which includes to clearly communicate its financial story that is easy to understand. The Certificate of Achievement is the highest form of recognition in the area of governmental accounting and financial reporting and its attainment represents a significant accomplishment by the government and its management. This is the 39th consecutive year the City of Emporia has received the award from 1985 to 2023. Members of the Finance Department for the City of Emporia include Janet Harrouff, Chelsea Tyson and Tess Shepherd.

**CITY COMMISSION
(Board Appointment)**

Community Housing Board/Land Bank:

It was moved by Commissioner Brinkman seconded by Commissioner Smith that Tyler Pettigrew be appointed to the Community Housing Board/Land Bank for a term that expires May 31, 2028. The vote follows: Commissioner Brinkman, aye; Commissioner Smith, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

**PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 2-25-25)
(Application No. 2025-02 – Request of Stormont-Vail Regional Health Systems)
(Rezone Property Located at 1700 Road G)**

The Planning Commission reconvened the regular session meeting of Tuesday, February 18, 2025, at 6:00 pm on Tuesday, February 25, 2025 in the Municipal Courtroom with Chair Rogers presiding. Commissioners, Bucklinger, Thomas, Fowler, Lingenfelter, and Reed were present. Commissioner Ogle was absent.

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

3. Consider PC-2025-02 – A Request to Rezone Property Located at 1700 Road G

Givens provided the Staff Report.

STAFF REPORT

Application #: PC 2025-02

Applicants: Stormont-Vail Regional Health Systems

Owners: Stormont-Vail Regional Health Systems

Requested Action: Consider a request to rezone property from County Agriculture/Commercial Parcel Type to City Commercial Parcel Type.

Purpose: Property was recently annexed and for any development to proceed on the property, it must be rezoned from a Lyon County Zoning Parcel Type to a City of Emporia Parcel Type.

Address: 1700 Road G

Legal description: A part of the Northwest Quarter of Section 7, Township 19 South, Range 11 East of the 6th P.M., Lyon County, Kansas, written by Travis L Haizlip, PS 1724 on May 02, 2024 and more particularly described as follows: Beginning at the Northwest

corner of the Northwest Quarter of said Section 7; thence on a NAD 83, Kansas Regional Coordinate System, Zone 9 bearing of North 89 degrees 00 minutes 04 seconds East on the North line of said Northwest Quarter a distance of 958.46 feet to the West line of an excepted tract described as Tract 2 in Document No. 2024-00630 at the Office of the Lyon County Register of Deeds; thence South 00 degrees 59 minutes 56 seconds East on said West line a distance of 898.84 feet; thence South 89 degrees 00 minutes 04 seconds West a distance of 980.11 feet to the West line of said Northwest Quarter; thence North 00 degrees 22 minutes 50 seconds East on said West line a distance of 899.10 feet to the point of beginning. Containing 20.00 acres of land more or less. Emporia, Lyon County, Kansas

Lot Size: 17.64 acres +/-

Existing Zoning: Lyon County Agriculture / Commercial

Future Zoning in ELC Comp. Plan: Commercial

Surrounding Zoning:

North	Flex Use Low Greenspace/Parks/Recreation County Agriculture
East	Flex Use Low
South	County Agriculture
West	Flex Use Low County Flex Use Low

Surrounding Actual Uses:

North	Frontier Farm Credit Lighthouse Baptist Church
East	DeBauge Soccer Complex
South	Vacant Agricultural Land
West	Evergy Schaefer Equipment Co. Agricultural Land

Analysis: The applicant has requested that this property be rezoned to a city zoning designation to facilitate future development. They are also concurrently seeking to plat the property under City of Emporia Zoning Regulations. The property, while annexed into the city, retains its Lyon County zoning designation until such time as it is rezoned.

The absence of extraterritorial zoning, has created additional steps such as rezoning from a County designation to a City designation, and created uncertainty in what parcels are actually zoned. By rezoning to a City designation, this allows property owners to have a clearer understanding of allowed uses with the particular Parcel Type that is assigned and design parameters for any future development.

The 17 acre tract of land sits at the corner of Road G and 18th Ave, which is prime commercial development space and was contemplated as such in Plan ELC and its Regulating Plan. A Commercial Parcel Type designation allows for a multitude of uses on the property, and would be consistent with the Zoning Regulations of the City.

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; **Removing the County designation and assigning a City zoning designation is consistent with the zoning regulations and required for properties to be developed within the City.**
2. The character and condition of the neighborhood and its effect on the proposed change; **Rezoning this property to a City Commercial Parcel Type would have no negative effect on the neighboring properties. Properties to the north are zoned with City Commercial zoning and those properties to the west are developed as commercial or industrial type properties.**
3. The zoning and uses of properties nearby; **Commercial development has already occurred in the area, and will most likely continue. Commercial / Industrial properties are currently located on the west side of Road G with Every recently opening their local office and yard. The two properties directly to the north, Frontier Farm Credit and the Lighthouse Baptist Church are both zoned as Commercial Parcel Types. A future development north of the subject property has proposed additional commercial property along Road G with housing to be developed on the interior of their property. Uses allowed outright or be Conditional Use Permits would be compatible with the surrounding area.**
4. The suitability of the subject property for the uses to which it has been restricted; **The property was previously zoned as Commercial, and only when the County dissolved the Metropolitan Growth Area and designated properties as County Parcel Types has subject property been restricted.**
5. The extent to which removal of the restrictions will detrimentally affect nearby property; **Removing the County Parcel Type and reclassifying it as a City Commercial Parcel Type will have no detrimental impact on nearby properties. The property has been proposed to be commercial in nature for some time and is listed as such in the comprehensive plan.**
6. The length of time the subject property has remained vacant as zoned; **The property is within the natural growth area of the City and has been zoned as**

a commercial type property for some time. The change in zoning is from a County zoning designation to a City zoning designation and therefore the length of time the subject property has remained vacant should be of minimal influence in the decision making process.

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; **Staff contends there is no value to be gained for the public health, safety, and welfare of this property, by not reclassifying the property under City Zoning Regulations, the City would impose greater hardships on the property owner and diminish the value of the property by not rezoning the property and forcing it to develop under County standards.**
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's Regulating Plan identifies this tract of land as a Commercial Parcel Type, and the area is within the natural growth area of the city. Existing infrastructure is in place, as encouraged by Plan ELC. The subject property is corridor-focused as both Road G and 18th Ave are major development corridors as encouraged by Plan ELC.**
10. Such other factors as are deemed relevant by the Planning Commission or Governing Body.

Neighborhood Communications:

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.

Givens stated that one of the issues that necessitated the rezoning was the fact that any extra-territorial zoning was eliminated by the County and now made it necessary for property owners, who were once within the municipal growth area, to go through additional steps to develop their property.

The Public Hearing was opened.

Tim Shultz, Stormont-Vail Health, spoke in favor of the application, and on behalf of Stormont-Vail. Shultz stated that when they bought the property, they were under the

assumption that it was zoned Commercial and after annexation that they would be able to develop it accordingly under city guidelines. Since learning that it needed to be rezoned, Stormont initiated the rezoning process so their development plans can proceed.

Heather Aylward, 1527 Washington St, Emporia, KS (Newman Regional Health) spoke against the rezoning request, stating that allowing another health care system that would perform duplicative services would hurt Newman Hospital and could possibly hurt the general health and welfare of the community.

Others speaking against the rezoning were:

Ester Knobloch, 2378 KS Hwy 58, Madison, KS
Steven Bazan, 2833 Rio Vista Dr. Emporia, KS
William Barnes, 2901 West Lake Dr. Emporia, KS
Don Hill, 2805 Twin Lakes Dr. Emporia, KS
Jerry Campbell, 1201 Presby Dr. Emporia, KS

The Public Hearing was closed.

Chair Rogers stated that he felt that this was truly a matter of land use, and applying the proper zoning to the property. He stated that he appreciated the speakers, but felt that it was truly a land use issue.

Commissioner Thomas agreed, stating that it was a land use issue, and that there was a need to apply the appropriate parcel type to the property. He further went on to ask about the number of uses listed within the use matrix of the zoning regulations. Givens stated that the uses were just examples and staff when tasked with looking at uses within a parcel type that may not be listed would look at other factors including the Standard Industrial Classifications to determine if a proposed use fit within the parcel type. Thomas felt that the property fit with the Commercial Parcel Type.

Commissioner Bucklinger stated that he felt the proposed use would not fit with the character of the neighborhood as the existing commercial operations were low volume in terms of traffic and the new medical facility would increase the amount of traffic in the area.

Commissioner Reed stated, that while he understood what Bucklinger was saying, he felt that there had been significant upgrades to the road infrastructure in the area, including 18th west of Road G and that the future development of the property could trigger additional upgrades to 18th.

Commissioner Fowler concurred, stating the significant upgrades had been made to Road G by the county and state and that this area was prime for commercial expansion and he felt that 18th should have been improved when Jones Aquatic Park and the soccer complex was built.

Commissioner Lingenfelter felt that Commercial zoning was appropriate, but that she had further questions that would more apply to the platting of the property.

Commissioner Reed made a motion to recommend approval of the request for rezoning based the finding that the request is consistent with the Comprehensive Plan, conforms to the intent of the Zoning Regulations, and there would not be a negative impact on the existing neighborhood. Commissioner Thomas seconded the motion. The motion carried 5-1 (Bucklinger).

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated Stormont-Vail Regional Health purchased property located at the southeast corner of Road G and 18th Avenue for the purpose of building a new medical office facility. The property was recently annexed, and prior to any development occurring on the property it must be rezoned from a County Zoning Parcel Type to a City Parcel Type. He stated the property, while annexed into the city, retains its Lyon County zoning designation until such time as it is rezoned. Rezoning this property to a City Commercial Parcel type is consistent with the zoning regulations and required for properties to be developed within the city. Adopting the ordinance will also allow Stormont-Vail to proceed with development plans for a new medical facility. Medical offices and labs are a permitted use for a commercial parcel type. Future steps in the development process include the approval of a final plat of the property, and site plan approval. At their February 18, 2025, regular meeting, the Planning Commission made a recommendation for adoption of the rezoning ordinance to the City Commission with a vote of 5 – 1. Staff recommend adopting the ordinance to amend the parcel type of property located at 1700 Road G.

**PLANNING AND DEVELOPMENT
(Application No. 2025-02 – Request of Stormont-Vail Regional Health Systems)
(Rezone Property Located at 1700 Road G)
(Ordinance Number 25-10)**

AN ORDINANCE REZONING LAND IN THE CITY OF EMPORIA, KANSAS FROM LYON COUNTY AGRICULTURE (A) / COMMERCIAL (C) PARCEL TYPE TO CITY OF EMPORIA COMMERCIAL (C) PARCEL TYPE AND AMENDING THE OFFICIAL ZONING MAP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance Number 25-10, was presented to the Governing Body for their consideration.

Commissioner Smith made a motion to approve Ordinance Number 25-10 amending the parcel type of property located at 1700 Road G from Lyon County Agriculture/Commercial to City of Emporia Commercial (C). Commissioner Brinkman seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Brinkman, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

**PLANNING AND DEVELOPMENT
(MAPC Excerpts of Regular Meeting Held 2-25-25)
(Application No. 2025-01 – Request of CareArc Inc.)
(Rezone Property Generally Located at 400 W. 15th Avenue)**

The Planning Commission reconvened the regular session meeting of Tuesday, February 18, 2025 at 6:00 pm on Tuesday, February 25, 2025 in the Municipal Courtroom with Chair Rogers presiding. Commissioners, Bucklinger, Thomas, Fowler, Lingenfelter, and Reed were present. Commissioner Ogle was absent.

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

2. Consider PC-2025-01 – A Request to Rezone Property Located at 400 W 15th
Givens provided the Staff Report.

STAFF REPORT

Application #: PC 2025-01

Applicants: CareArc Inc.

Owners: CareArc Inc.

Requested Action: Consider a request to rezone property from Multi-Family (MF) to Civic/Public (CP)

Purpose: Multi-Family property was purchased by CareArc to facilitate the expansion of their employee parking lot.

Address: 400 W 15th

Legal description: PART OF LOT 1 IN JANET'S SUBDIVISION TO THE CITY OF EMPORIA, LYON COUNTY, KANSAS, AS SURVEYED BY AARON C. DAVIS, PS 1368, ON DECEMBER 30, 2024, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 1; THENCE S.00°26'07"W. (BASIS OF BEARINGS) ON THE EAST LINE OF SAID LOT 1 FOR 124.50 FEET; THENCE N.88°30'45"W. FOR 39.73 FEET; THENCE S.87°59'12"W. FOR 23.50 FEET;

THENCE N.89°49'10"W. FOR 77.50 FEET TO THE WEST LINE OF SAID LOT 1 AND BEING 11.00 FEET NORTH OF A CORNER OF LOT 1; THENCE N.00°16'57"W. ON THE WEST LINE OF SAID LOT 1 FOR 110.35 FEET TO THE NORTHEAST CORNER OF LOT 2 IN SAID JANET'S SUBDIVISION; THENCE S.89°25'34"E. ON THE NORTH LINE OF SAID LOT 1 FOR 17.29 FEET; THENCE N.00°49'43"E. ON THE WEST LINE OF SAID LOT 1 FOR 14.76 FEET; THENCE S.89°35'38"E. ON THE NORTH LINE OF SAID LOT 1 FOR 124.69 FEET TO THE POINT OF BEGINNING

Lot Size: 17,368 sq. ft. +/-

Existing Zoning: Multi-Family

Future Zoning in ELC Comp. Plan: N/A

Surrounding Zoning:

North	Commercial Civic/Public
East	Multi-Family Park/Greenspace
South	Multi-Family Single-Family Detached
West	Civic/Public Commercial

Surrounding Actual Uses:

North	Crosswinds Hammond Park
East	Hammond Park Single-Family Residences
South	Hillcrest Apartments Single-Family Residences
West	CareArc Inc. Crosswinds

Analysis: CareArc has purchased a portion of property directly north of the Hillcrest Apartment complex. As CareArc has grown, they have an increased demand for parking at their facility. The change in parcel type will allow for them to develop a parking lot on the property to free up space within their existing parking area for clients.

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 in the parcel type, would be consistent with the zoning regulations. The subject property would be an extension of the Civic/Public parcel type that CareArc is currently zoned as.**
2. The character and condition of the neighborhood and its effect on the proposed change; **The proposed change would not have a negative impact on the area.**

It currently is unused property that would be converted to a parking lot that would provide additional off street parking in the area.

3. The zoning and uses of properties nearby; **Civic/Public uses exist in the area, as well as Commercial and Multi-Family. The rezoning of this area would not have a negative impact on nearby uses and is compatible with the surrounding area.**
4. The suitability of the subject property for the uses to which it has been restricted; **While currently zoned as Multi-Family, the ownership change necessitated a zone change. The applicants could have built a parking lot with a Conditional Use, but staff determined that aligning the property with the parent property's zoning would be more beneficial for the property owner and restrictive in uses for the area.**
5. The extent to which removal of the restrictions will detrimentally affect nearby property; **Staff contends there would be no detrimental impact to neighboring properties if the rezoning was granted.**
6. The length of time the subject property has remained vacant as zoned; **The property was unused by the previous owner, and not a part of the development of the Hillcrest Apartments.**
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 will be no loss to the public health, safety, and welfare by allowing the rezoning and existing services will not be negatively impacted.**
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; **The zone change will allow for adaptive reuse of an area that is not being used, and will allow for more efficient use of space for CareArc in their primary parking area.**
10. Such other factors as are deemed relevant by the Planning Commission or Governing Body.

Neighborhood Communications: As of writing this report, Staff has been contacted by one property owner to the south of 15th Ave. There was no objections on their part.

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 | Current Zoning Map | CareArc Boundary Survey

The Public Hearing was opened.

Renee Hively, CareArc CEO, spoke in favor of the request, stating that the rezoning would facilitate the development of much needed parking, approximately 70 spots, for CareArc employees to use.

Tegan Trahoon, 400 N 15th Ave., also spoke in favor of the request.

No Person spoke against the rezoning.

The Public Hearing was closed.

Commissioner Bucklinger made a motion to recommend approval of the rezoning. Commissioner Lingenfelter seconded the motion. The motion carried 6-0.

Justin Givens, Planning and Zoning Administrator, was recognized and addressed the Governing Body. He stated CareArc purchased a portion of property adjacent to their property and behind the Hillcrest Apartments to facilitate the development of a new parking lot. CareArc is expanding and other developments in the area has created a need for additional parking. He stated rezoning the property to match the existing parcel type for CareArc would be the most appropriate action to facilitate the development of the parking lot. At their February 25, 2025, regular meeting, the Planning Commission voted unanimously recommending rezoning of the property.

PLANNING AND DEVELOPMENT
(Application No. 2025-01 – Request of CareArc Inc.
(Rezone Property Generally Located at 400 W. 15th Avenue)
(Ordinance Number 25-11)

AN ORDINANCE REZONING LAND IN THE CITY OF EMPORIA, KANSAS FROM MULTI-FAMILY (MF) PARCEL TYPE TO CIVIC/PUBLIC (CP) PARCEL TYPE AND AMENDING THE OFFICIAL ZONING MAP TO CONFORM WITH SAID ZONING, to which the City Clerk assigned Ordinance Number 25-11, was presented to the Governing Body for their consideration.

Commissioner Smith made a motion to approve Ordinance Number 25-11 amending the parcel type of a portion of property located at 400 W. 15th Avenue from Multi-Family (MF) to Civic/Public (CP). Commissioner Curtis seconded the motion. The vote follows: Commissioner Smith, aye; Commissioner Curtis, aye; Commissioner Brinkman, aye; and Mayor Harter, aye.

PUBLIC LANDS AND FACILITIES
(Fremont Park Bandstand Project)
(Bids)

Kevin Hanlin, Director of Public Lands and Facilities, was recognized and addressed the Governing Body. He stated the bandstand was originally constructed in 1901 and then rebuilt in 1991, with the help of ESB, and then in 2008 some reinforcement work at the bottom of the bandstand to help the structure. Discussion with the community band director and members lead staff to explore ideas for renovating the bandstand to make it more accessible and safer to use. He stated David Foster, with Foster Design Associates, LLC, provided a rendition of what the new bandstand could look like. He provided new features of lowering the floor taking access from six steps to access the platform down to two steps, adding an ADA ramp on the south side, and expanding out the platform to allow for more space but not to expand past the original eave of the roof. After the rendition was provided by David Foster, Ben Moore Studio was selected to develop plans. Two bids were received as follows:

BID TABULATION FOR FREMONT PARK BANDSTAND

Bidder	Base Bid	Alt #1	Alt #2	Alt #3	Alt #4	Total
Mitchell-Markowitz Construction Co., Inc.	\$154,132	\$2,588	\$12,075	\$55,212	\$14,796	\$238,803
Evergreen	\$156,358	\$6,897	\$10,588	\$46,645	\$23,806	\$244,294

Design-Build

He stated the bid form consisted of the following:

Base Bid consists of rebuild, lower and expand the platform, new steps, ADA ramp, new handrails, replace lower shingles on columns with cement board cedar shake shingle siding.

Alternate No. 1 - 2' concrete slab under the platform.

Alternate No. 2 - additional concrete paving to the south of the new ADA ramp.

Alternate No. 3 - new metal roofing with simulated shake shingles with associated ice and water shield, flashing and sheathing.

Alternate No. 4 - composite decking for the platform.

He stated funding will be provided through the Kahola Fund in the amount of \$168,000, BNSF Grant in the amount of \$60,000, Everygy Grant in the amount of \$5,000, and General Fund Special Project expected not to exceed \$25,000. The total cost of the project including Architectural fees is \$257,803. Staff recommend awarding the bid the Mitchell-Markowitz Construction for the base bid, and all four alternates not to exceed \$238,803.

Commissioner Brinkman made a motion to award the bid for the Fremont Park Bandstand remodel to Mitchell-Markowitz Construction for the base bid and all four alternates not to exceed \$238,803. Commissioner Smith seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Smith, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

**MUNICIPAL COURT
(Pertaining to Court Costs)
(Charter Ordinance Number 47)**

City Attorney Montgomery was recognized and addressed the Governing Body. She stated K.S.A. 12-4112 pertains to court costs in municipal courts but does not apply uniformly to all cities in Kansas. A City may utilize its Home Rule authority under Article XII, Section 5, of the Constitution of the State of Kansas to exempt itself from said provisions. The City previously exempted itself from the provisions of K.S.A. 12-4112 in

Charter Ordinances 9, 16, 18 and 33. She stated this proposed Charter Ordinance exempts the City from the provisions of K.S.A. 12-4112 and repeals Charter Ordinance Number 33 concerning the same topic. Charter Ordinance Number 47 specifies that court costs will be assessed as provided by ordinary city ordinance. She stated approval of a Charter ordinance requires a 2/3 majority vote of the City Commission, publication in the official city newspaper for two consecutive weeks and a sixty-day protest petition window following publication. Staff recommend approval of Charter Ordinance Number 47 pertaining to court costs.

Commissioner Curtis made a motion to approve Charter Ordinance Number 47 pertaining to court costs. Commissioner Smith seconded the motion. The vote follows: Commissioner Curtis, aye; Commissioner Smith, aye; Commissioner Brinkman, 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 February 2025 for the community:**

1. Monthly Local Retail Sales Tax Receipts Update

	2024	2025	Increase of \$29,500.47 for the month, and
	\$ 597,914.46	\$ 627,414.93	Overall increase of 4.94% from year 2024.
YTD	\$ 1,115,283.82	\$ 1,173,268.91	

2. City Share from County Tax

	2024	2025	Increase of \$19,889.11 for the month, and
	\$ 302,081.68	\$ 321,970.79	Overall decrease of 4.60% from year 2024.
YTD	\$ 570,044.59	\$ 597,583.04	

Building Permits issued from 2/1/2025 to 2/28/2025 for new construction, remodeling/repairs and demolition.

Total number of building permits issued through Code Services:	30
Total of valuations associated with those building permits:	\$ 732,751.19
Total number of dollars collected for Building Permit Fees:	\$ 5,104.00
Construct – Single-family dwellings	0
Demo – Single-family dwellings	1

Flint Hills Mall CID for February 2025	\$ 20,076.51
YTD	\$ 39,003.24
Pavilions CID for February 2025	\$ 21,857.48
CID #2	\$ 21,857.48
YTD	\$ 79,270.78
Fairview Hotel CID for February 2025	\$ 8,183.96
YTD	\$ 14,694.22
West Plaza CID for February 2025	\$ 16,760.94
YTD	\$ 19,076.52

Consent Agenda

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

- a. Approve minutes of the Regular Meeting held on March 5, 2025.
- b. 2025 Annual Operation and Maintenance Assurance Statement of Land and Water Conservation Fund.
- c. FHTC Appropriation Funding.
- d. Purchase Hangar Doors for Municipal Airport.
- e. 2025 Jones Aquatic Center Agreement.

The vote follows: Commissioner Curtis, aye; Commissioner Brinkman, aye; Commissioner Smith, 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 APRIL 2, 2025, MEETING.

- Proclamation Recognizing April as National Child Abuse and Neglect Prevention Month.
- Proclamation for National Public Safety Telecommunicators Week.
- Proclamation for National Library Week.
- Franchise Agreement with Kansas Gas Service.

- Property Acquisition at 115 E. 5th Avenue.

- **Study Session:**

No Study Session Agenda.

Chief Owens gave a brief report on the Common Consumption Area that was open on Saturday, March 15, 2025, in conjunction with the St. Patrick's Day parade. He stated there were no problems and the event went well.

CITY COMMISSION (Governing Body Comment)

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

Commissioner Curtis made a motion to recess the meeting at 11:37 a.m., to Conference Room 1AB. Commissioner Smith seconded the motion. The vote follows: Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye. Commissioner Brinkman abstained.

The following items were discussed at the Study Session:

1. Update on Homelessness Advisory Board.
2. Pickle Ball Development Plan.
3. Franchise Agreement with Kansas Gas Service.
4. Discuss SE Transmission Waterline.

Water Maintenance

Southeast Transmission Water Main Improvements – WM2303 Bids

Mark Detter, Deputy City Manager, stated the City has made approximately \$15 million in water line improvements over the last few years. The SE Transmission water main project began preliminary engineering in 2021. Since that time, the scope of the projects has changed over the last four years and prices have increased post COVID. The previous projects included the Peyton Street water main project; 24th Avenue water main project, and Prairie Street water main project and the current SE transmission water main project. To complete the SE Transmission line another \$6 million would need to be added to the SRF Loan bringing the total to approximately \$21 million. The projected debt

payment for these projects in 2021 was \$1.1 million for 20 years. The new projected costs is \$1.550 million for 20 years. The debt service is based on previous projects for Peyton Street, 24th Avenue, Prairie Street and current SE Transmission line project.

Jim Ubert, City Engineer, reviewed the projects that have been completed to meet the demands for water to serve Industrial Park III. A total of 13 projects were submitted for an original total of approximately \$15 million from the SRF Loan. He stated Engineer's Estimates on materials have shown a significant increase in item prices and labor since COVID.

Following further discussion, Commissioner Brinkman made a motion to award the contract to Nowak Construction Co., Inc., contingent upon KDHE concurrence for the Base Bid for the sum of \$9,469,049.00 and authorize the Mayor and City Attorney to process all Contract Documents and proceed with construction. The vote follows: Commissioner Brinkman, aye; Commissioner Curtis, aye; Commissioner Smith, aye; and Mayor Harter, aye.

City Manager Cocking stated Supplement Agreement No. 2 with BG Consultants, Inc., would also need to be approved. BG Consultants will be the construction engineers on site for the project.

Commissioner Brinkman made a motion to authorize the contract with BG Consultants, Inc., Supplemental Agreement No. 2 for Southeast Transmission Water Main Improvements not to exceed \$909,348.00. Commissioner Smith seconded the motion. The vote follows: Commissioner Brinkman, aye; Commissioner Smith, aye; Commissioner Curtis, aye; and Mayor Harter, aye.

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

823 West Street

License Agreement with CK Property Services, LLC

Title: 823 West Street – License Agreement with CK Property Services, LLC

Agenda Date: April 2, 2025

Presented By: James Ubert, City Engineer

Background:

CK Property Services, LLC's plumber contacted City Engineering about extension of a private sanitary sewer line from the 823 West Street property along West Street right of way and connecting to the City's public sanitary sewer in West Street at the alley between 9th Avenue and 8th Avenue. Sanitary Sewer District 045 main was designed and constructed in 1946. The house at 823 West Street was constructed in 1920 (per Lyon Co Beacon). It appears that at some point 823 West Street had connected to the 6" private line (sanitary sewer) that then connects to District 045 main in the alley. City staff was told that this private line now appears to have maintenance issues downstream that impact 823 West Street, therefore CK Property Services, LLC is requesting this license agreement for private sanitary sewer in West St.

Discussion:

The license agreement will allow CK Property Services, LLC to construct their private utility sanitary sewer service line along the City's West Street right of way corridor in front of other properties. The license agreement will also provide a record of such private utility to the City of Emporia GIS database.

Financial considerations:

None to the City of Emporia.

Recommended action:

Approve the License Agreement and authorize the Mayor to sign.

Attachments:

License Agreement between CK Property Services LLC and the City of Emporia for 823 West St.

Exhibit A

Sanitary Sewer District 045 plan and profile

Beacon Map of the Area showing available public sanitary sewers

LICENSE AGREEMENT

This License Agreement made this 18th day of March, 2025 is between the City of Emporia ("**City**"), Kansas, a municipal corporation, and CK Property Services, LLC OF 823 West Street (S45' N85' E101'.75' of Lot 9 in Barnett's Subdivision, 45.0 x 101.75'), Emporia, Kansas ("**Licensee**").

Background

- I. City is the owner of a tract of land situated in the City of Emporia, Lyon County, Kansas and generally described as shown on the attached Exhibit A with Easement descriptions and more commonly known as the west right-of-way of West Street to a point approximately 150 feet south of the intersection of the alley between 8th Avenue and 9th Avenue
- II. City is the owner of a utility easement/right-of-way ("**City Easement**") which generally runs north and south.
- III. Licensee desires to install, maintain, and operate a private sanitary sewer service line within the City Easement ("**Licensed Use**").
- IV. City is willing to allow Licensed Use within City Easement upon the terms and conditions of this Agreement.

Accordingly, the parties agree as follows:

1. City grants and conveys a license to Licensee, under, upon and over a portion of City Easement as shown by the diagram attached as Exhibit A and incorporated by reference in this Agreement.
2. The license granted to Licensee is for the sole purpose of Licensed Use in the City Easement by Licensee or its agents or contractors; and for the purpose of

ingress and egress by Licensee or its agents or contractors necessary for Licensed Use.

3. Licensed Use and Licensee's activities on City Easement must not unduly interfere with existing and lawful use of the public right-of-way and must not be hazardous to the traveling public.
4. After installation of the private sanitary sewer service line, Licensee shall repair, or cause to be repaired, City Easement as reasonably necessary to meet City standards applicable to the City Easement and consistent with Licensed Use.
5. Licensee shall repair or replace, at Licensee's expense, any improvements or utilities disturbed during installation of the sanitary sewer line, as nearly as practicable to the condition of the improvement or utility prior to installation of the Licensed Use.
6. Licensee shall install the private sanitary sewer service line off the city street behind the curb and gutter. Further, Licensee shall install sanitary sewer service line at least three feet from any existing utilities if possible. If existing utilities do not allow installation of service line with at least three feet of clearance, Licensee shall install the service line at a reasonable location providing as much clearance as possible with existing utilities.
7. Licensee shall enroll in the Kansas One Call System (or a successor system) and register the private sanitary sewer service line installed under this agreement with the Kansas One Call System.
8. City may terminate this Agreement at will and for any reason. City shall provide a minimum of 60 days notices to Licensee to terminate this Agreement. Licensee

shall close and abandon the Licensed Use installed by Licensee on City Easement no later than 5:00 p.m. 60 days after Licensee receives notice from City and according to the regulations of the Kansas Department of Health and Environment. Licensee shall restore City Easement as reasonably practicable to its condition immediately prior to closure and abandonment of Licensee's service line.

9. Licensee shall release City and any of its franchises from any responsibility or liability for damage to service line installed under this Agreement, except for gross negligence or willful misconduct by City or and of its franchises.
10. Licensee shall indemnify City, its officers, and employees from any liability to persons or property arising out of any gross negligence or intentional misconduct of Licensee or and of its agents or contractors in connection with Licensed Use of City Easement.
11. Licensee shall reimburse City for any real estate taxes it may incur based on the presence of Licensee's sanitary sewer service line on City Easement.
12. Licensee is solely responsible for obtaining any additional easements, licenses, right-of-ways, etc. from other property owners if required to make effective use of this license.
13. The license granted by this Agreement is a covenant running with the land so long as the license continues. Further, the parties bind and obligate themselves and their executors, administrators, successors, and assigns to the rights and obligations granted and assumed by this Agreement. Despite the previous

sentence, Licensee shall not assign this license without the express written consent from City, and City shall not unreasonably withhold consent.

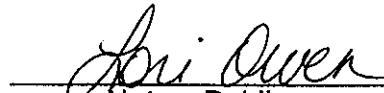
14. This Agreement may be filed of record with the Lyon County Register of Deeds by City, at its expense, and if so filed may be terminated by filing a copy of the written termination notice provided for in Section 8 with the Lyon County Register of Deeds.



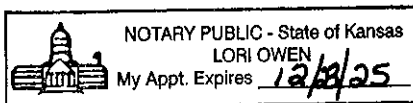
Clint Arndt, Member

BE IT REMEMBERED, that on this 18th day of March, A.D., 2025, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Clint Arndt, Member, CK Property Services, LLC, who is personally known to me to be the same person who executed the above instrument of writing and such person duly acknowledges the execution of the same.

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


Notary Public

My Commission Expires 12/23/25



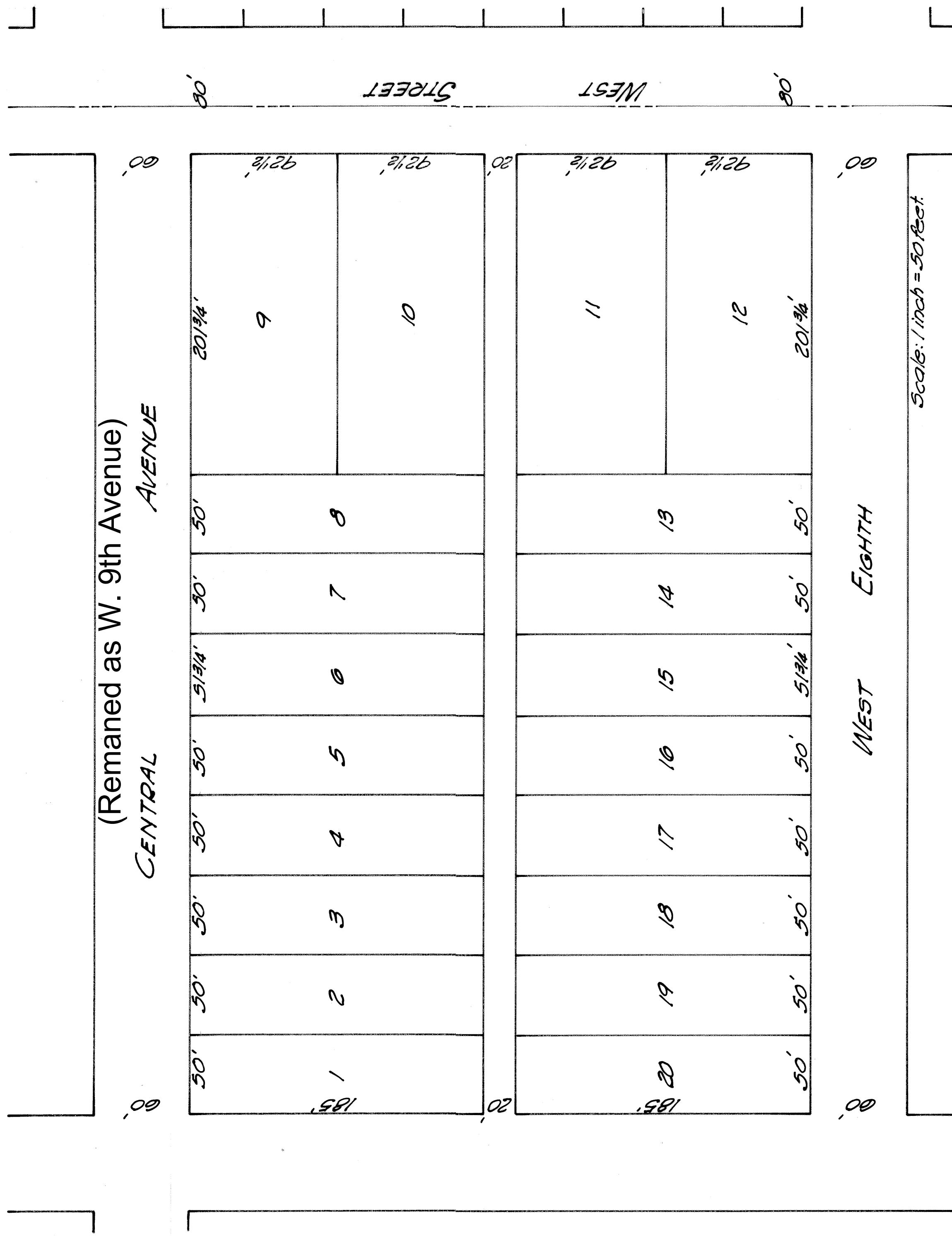
CITY OF EMPORIA, KS
BY:

ERREN HARTER, Mayor

ATTEST:

KERRY SULL, City Clerk

(For License Agreement between City of Emporia & Lot 9, Barnett's Subdivision)



BARNETT'S SUBDIVISION

of Lots 4 and 5 and parts of 3 and 6 LEWIS ADDITION
Emporia, Kansas.

Milliken,
Surveyor.

State of Kansas ss I, the undersigned, sole administrator of the estate of James County of Lyon Barnett, late of said County, in his lifetime the proprietor and owner of the above described Subdivision of Lots 4 and 5 and parts of 3 and 6, Lewis Addition to the City of Emporia, Kansas, Surveyed by Robert Milliken, Surveyor, as such Administrator duly authorized hereto by an order of the Probate Court of said Lyon County bearing date August 22nd A.D. 1885 do hereby certify that the above plat is an accurate map or plot of Barnett's Subdivision of Lots 4 and 5 and parts of 3 and 6 of Lewis Addition to the City of Emporia and that the same accurately sets forth and describes First: all the parcels of ground within said Subdivision reserved for public property by their boundaries, courses and extent and intended for avenues, streets, lanes, alleys and other public use, and Second: all lots intended sale by numbers and their precise length and width.

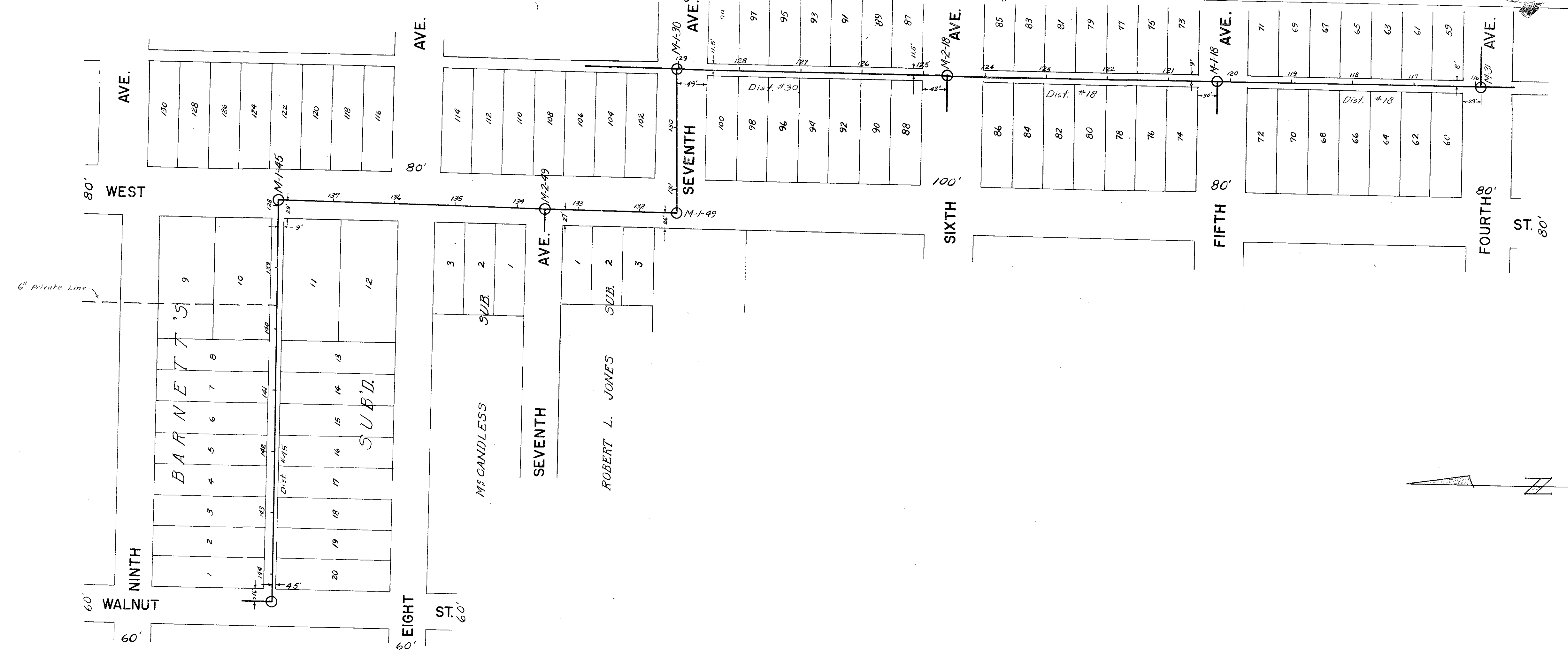
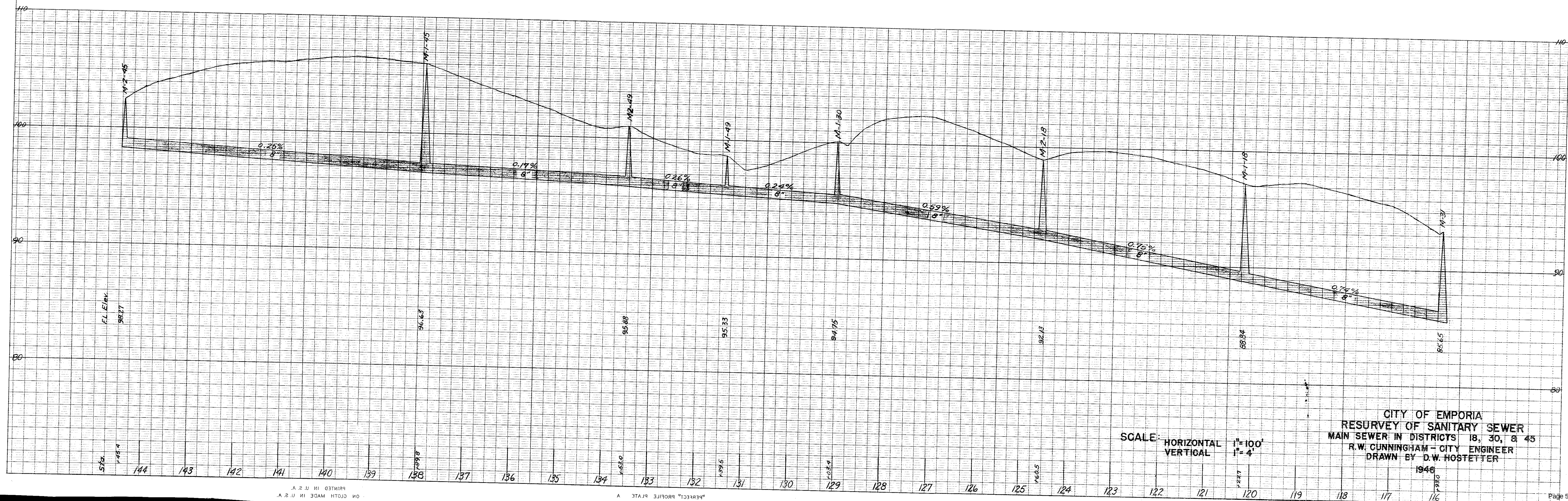
*Margaret C. Barnett
Sole Administrator % of James Barnett deceased.*

State of Kansas ^{ss} On this 22nd day of August A.D. 1893, before me a Notary Public in County of Lyon and for said County and State personally appeared Margaret L. Barnett, Sole Administrator of the Estate of James Barnett late of said County deceased, to me personally known to be the identical person described and who executed the certificate on the Plat of Barnetts Subdivision of Lots 4 and 5 and parts of 3 and 6 Lewis Addition, Emporia, Kansas, and said Margaret L. Barnett duly acknowledged the execution of said certificate.

nd year last above written.
J. D. Holden
Notary Public
Cyon County Kansas.

Filed for record Aug. 25th, 1885 at 1 o'clock P.M.
E. Beck, Register of Deeds
By W. Boes, Deputy.

Redrawn from old plot
March 15, 1958.
L. M. Gould Draftsman.

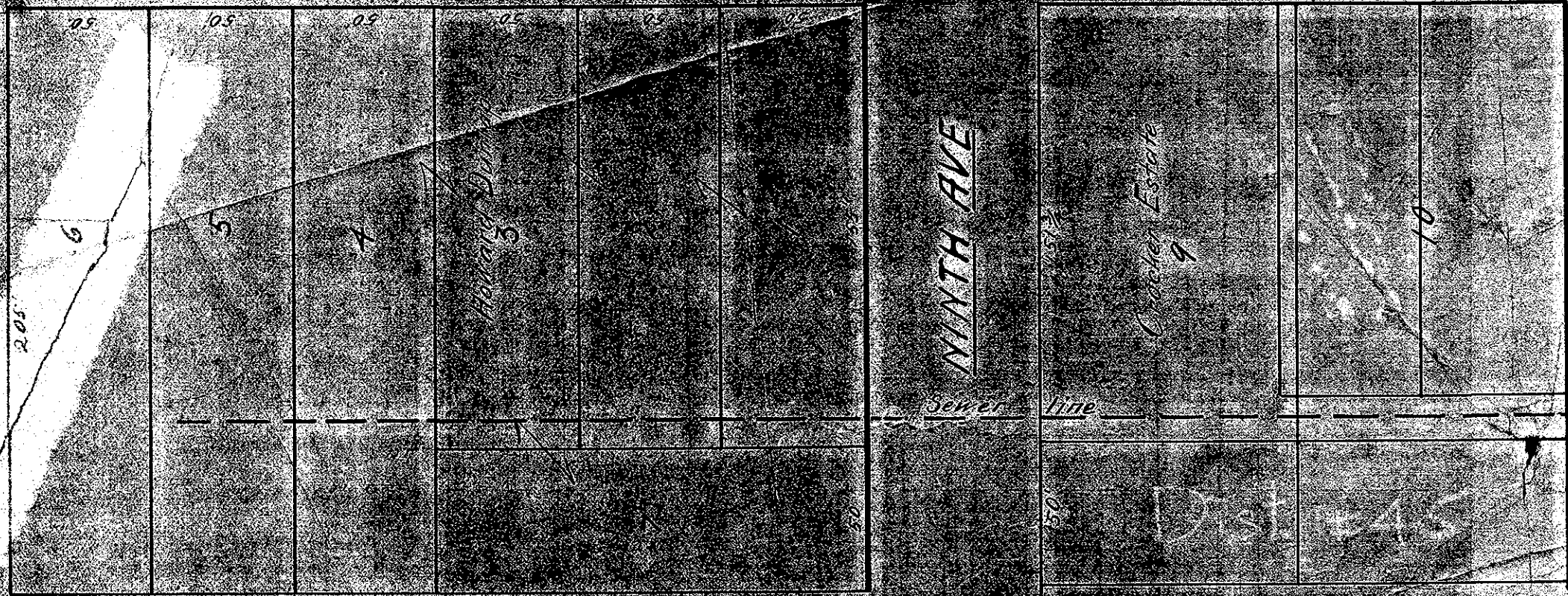


SCALE: HORIZONTAL 1"=100'
VERTICAL 1"=4'

CITY OF EMPORIA
RESURVEY OF SANITARY SEWER
MAIN SEWER IN DISTRICTS 18, 30, & 45
R.W. CUNNINGHAM - CITY ENGINEER
DRAWN BY D.W. HOSTETTER
1946

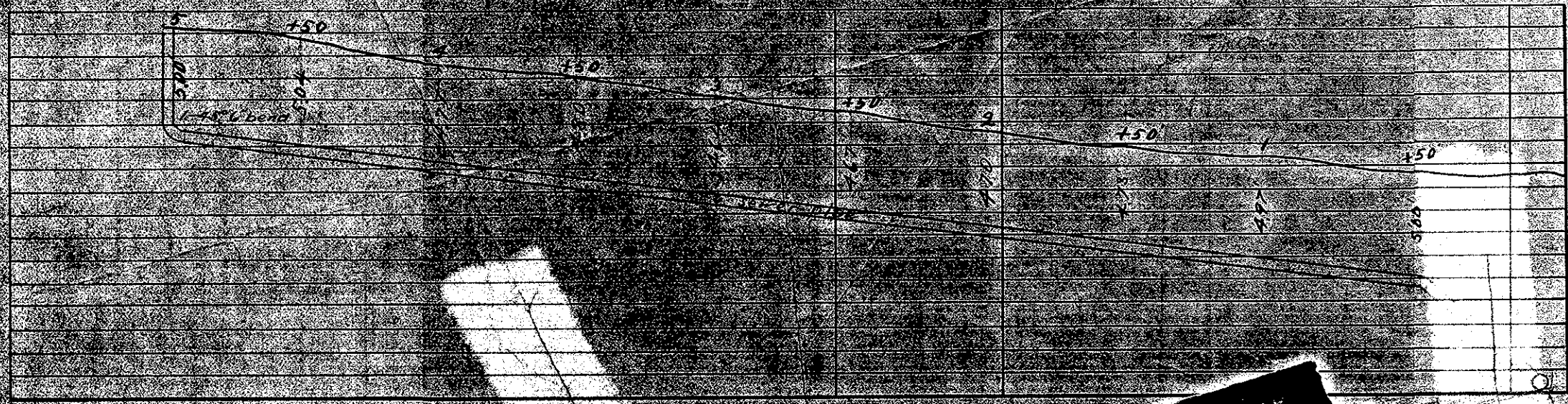
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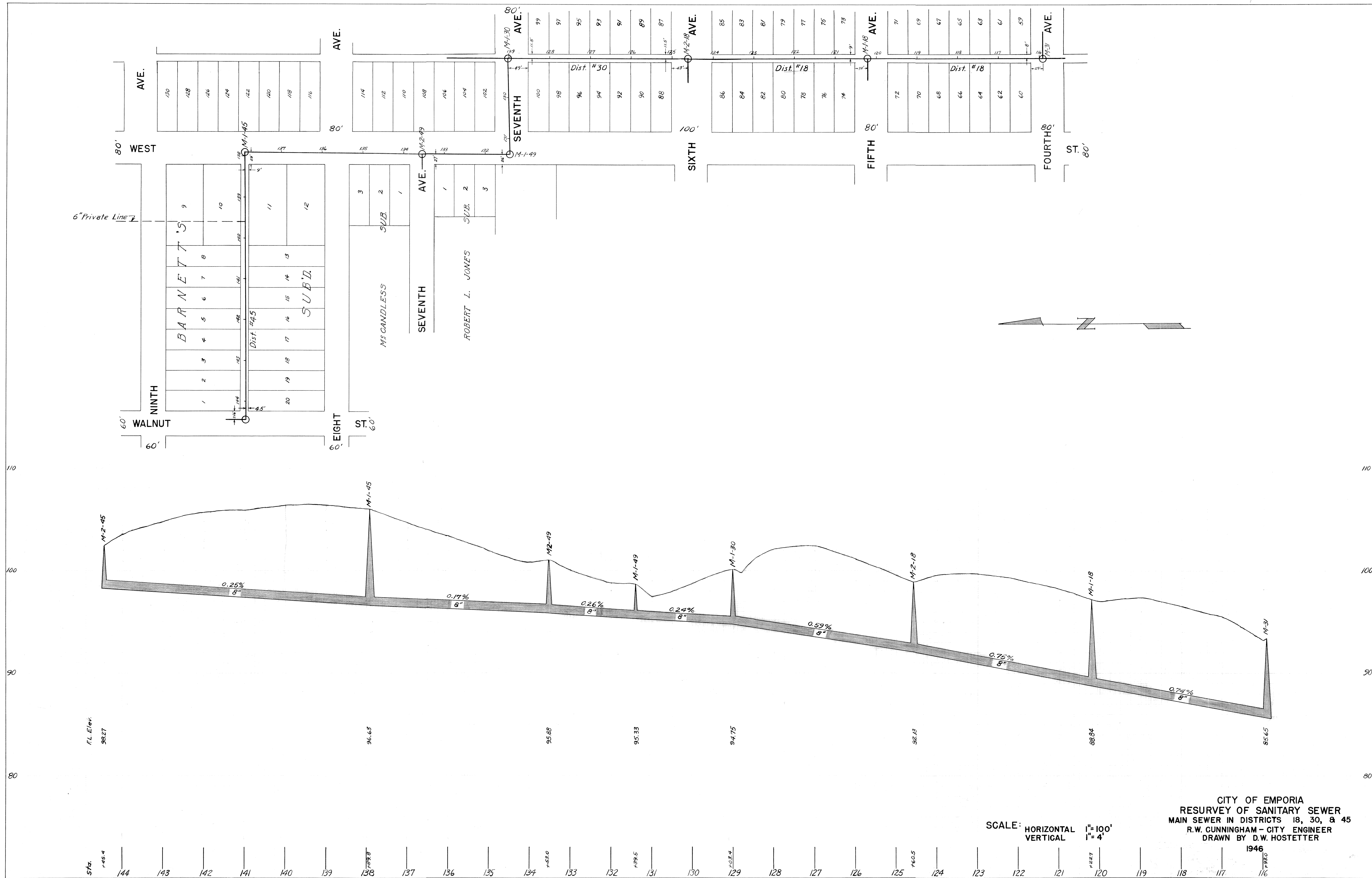


PLAN
OF
PRIVATE SEWER
IN
DUNLAPS ADDITION

Scale 2" = 100'

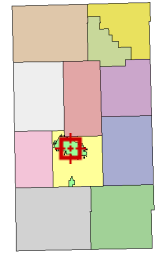


Alva J. Smith
City Engineer





Overview



Legend

- Parcels
- City Limits
- Sanitary Sewer Points**
 - AIR RELIEF
 - + CLEAN OUT
 - L LIFT STATION
 - M MANHOLE
 - W PRIVATE
 - W WET WELL
 - <all other values>
- Sanitary Sewer Lines**
 - ABANDONED
 - ACTIVE
 - - - PROPOSED
- AddressPoints**
- Road Centerline

Parcel ID	1920904012026000	Alternate ID	n/a	Owner Address	CK PROPERTY SERVICES, LLC
Sec/Twp/Rng	09-19S-11E	Class	R - Residential		1103 COMMERCIAL ST
Property Address	823 WEST STREET	Acreage	0.1		EMPORIA, KS 66801-2920
	Emporia				

District 005

Brief Tax Description BARNETT'S SUB DIV, S09, T19S, R11E, ACRES 0.1, S4S N85 E101.75 LT 9 (45.0 X 101.7)

(Note: Not to be used on legal documents)

Disclaimer: The data used to produce this map is not survey accurate. It is intended for tax purposes only.

Date created: 3/25/2025

Last Data Uploaded: 3/25/2025 10:13:05 AM

Developed by **SCHNEIDER**
GEOSPATIAL



Commission Action Report

SE Transmission Main
License Agreement (23W-18932) with BNSF

Title: SE Transmission Main – License Agreement (23W-18932) with BNSF
Agenda Date: April 2, 2025
Presented By: James Uberty, City Engineer

Background:

The City's engineer, BG Consultants, applied for the encroachment permit with Jones Lang LaSalle Brokerage, Inc. (BNSF's right-of-way permit agent) on behalf of the City for the Southeast Transmission Main water project. The license agreement (23W-18932) between BNSF and the City of Emporia is a requirement for said encroachment and use of BNSF's right of way.

Discussion:

The permit and license agreement are a requirement for encroachment, construction and operation of the Southeast Transmission Main project on BNSF right of way.

Financial considerations:

The City will be responsible for the \$3,700.00 license fee and the \$1,266.00 Licensor's Blanket Railroad Protective Liability Policy for the project. The City doesn't have Protective Liability Coverages of \$5,000,000 per occurrence and \$10,000,000 in the aggregate (as required by BNSF), therefore we purchase through the Licensor.

Recommended action:

Approve the License Agreement (23W-18932) with BNSF (thru Jones Lange LaSalle Brokerage, Inc.) and authorize signature of the agreement.

Attachments:

BNSF License Agreement (thru JLL) (23W-18932)



Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131

City of Emporia
Attention: Mr. im Ubert
522 Mechanic St.
Emporia, Kansas 66801

23W-18932

Dear Mr. Ubert:

Attached please find a copy of the requested contract for execution by an official authorized to execute contract agreements on behalf of your company. Please print one (1) copy, execute, and **return copy with original signature** for completion on part of BNSF Railway Company ("BNSF"), along with the following requirements:

- A credit card payment in the amount of \$3,700.00 is payable online at <https://bnsf.railpermitting.com> which covers the contract fee.

Please note the agreements cannot be executed by BNSF without an approved insurance certificate. If there are any issues with your insurance, you will be contacted by a member of the Risk Management team of BNSF Railway.

1. A Certificate of Insurance as required in the agreement.
2. A **separate policy** for Railroad Protective Liability Insurance as required in the agreement (**ORIGINAL POLICY MUST BE PROVIDED**). BNSF Railway Company will be the only insured party; OR;

In lieu of providing a separate policy for Railroad Protective Liability Insurance, you may participate in the BNSF's Railroad Protective Policy by checking the appropriate box in the contract and paying an additional \$1,266.00 with your contract fee to <https://bnsf.railpermitting.com>.

PLEASE ADVISE IF THIS PROJECT IS ARRA FUNDED.

Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the premises completes the safety orientation program at the website www.BNSFcontractor.com prior to entering upon the premises. The certification is good for one year, and each person entering the premises must possess the card certifying completion.

Acceptance and deposit of any check by BNSF does not constitute an agreement between BNSF and Licensee for the requested license. BNSF shall not be obligated to hold the check in a separate fund, but may commingle the funds with other funds of BNSF, and in no event shall BNSF be responsible for interest on said funds.

The enclosed permit is not a binding agreement and shall become binding only when, and if, it is executed by you and fully approved and executed by BNSF Railway Company. Upon completion on behalf of BNSF, one fully executed counterpart will be returned for your records.

The specifications/plans you provided may differ from BNSF's minimum specification requirements. Therefore, prior to your installation, please review the Exhibit A to determine the specifications necessary for your installation.

Please be informed that if contracts, fees, and insurance are not returned within sixty (60) days, the processing fee will increase to \$1,600.00.

Sincerely,

Ashley Walls

Ashley Walls
Permit Manager
Attachment

PIPELINE LICENSE

THIS PIPELINE LICENSE ("**License**") is made to be effective _____, 2024 (the "**Effective Date**") by and between **BNSF RAILWAY COMPANY**, a Delaware corporation ("**Licensor**") and **CITY OF EMPORIA**, a Kansas municipality ("**Licensee**").

In consideration of the mutual covenants contained herein, the parties agree to the following:

GENERAL

1. Grant of License. Licensor hereby grants Licensee a non-exclusive license, subject to all rights, interests, and estates of third parties, including, without limitation, any leases, use rights, easements, liens, or other encumbrances, and upon the terms and conditions set forth below, to construct and maintain, in strict accordance with the drawings and specifications approved by Licensor as part of Licensee's application process (the "**Drawings and Specifications**"), one (1) pipeline, 20 inches in diameter inside a 30 inch steel casing (collectively, the "**Pipeline**"), across or along Licensor's rail corridor at or near the station of Emporia, County of Lyon, State of Kansas, Line Segment 7151, Mile Post 112.13 as shown on the attached Drawing No. 89107, dated October 02, 2023, attached hereto as **Exhibit "A"** and incorporated herein by reference (the "**Premises**").
2. Term. This License shall commence on the Effective Date and shall continue for a period of twenty-five (25) years, subject to prior termination as hereinafter described.
3. Existing Improvements. Licensee shall not disturb any improvements of Licensor or Licensor's existing lessees, licensees, easement beneficiaries or lien holders, if any, or interfere with the use, repair, maintenance or replacement of such improvements.
4. Use of the Premises. Licensee shall use the Premises solely for construction, maintenance, and use of the Pipeline in accordance with the Drawings and Specifications. The Pipeline shall carry potable water, and Licensee shall not use the Pipeline to carry any other material or use the Premises for any other purpose. Licensee is expressly prohibited from using or allowing any telecommunication facilities or equipment within the Premises, or using or allowing the use of the Premises for any other purpose.
5. Alterations. Except as set forth in this License, Licensee may not make any alterations to the Premises or permanently affix anything to the Premises or any buildings or other structures adjacent to the Premises without Licensor's prior written consent.

COMPENSATION

6. License Fee. Licensee shall pay Licensor, prior to the Effective Date, a one-time payment (in lieu of recurring periodic fixed license fees) in the amount the sum of Three Thousand Seven Hundred and No/100 Dollars (\$3,700.00) as compensation for the use of the Premises.
7. Costs and Expenses.
 - 7.1 For the purpose of this License, "cost" or "costs" and "expense" or "expenses" includes, but is not limited to, actual labor and material costs including all assignable additives, and material and supply costs at current value where used.
 - 7.2 Licensee agrees to reimburse Licensor (pursuant to the terms of **Section 8** below) for all costs and expenses incurred by Licensor in connection with Licensee's use of the Premises or the presence, construction and maintenance of the Pipeline, including but not limited to the furnishing of Licensor's flaggers and any vehicle rental costs incurred, inspection coordination, safety, mobilization and/or other observation services described in this License (collectively, the "**Services**"). Licensee shall bear the cost of the Services, when deemed necessary by Licensor's representative. Flagging costs shall include, but not be limited to, the following: pay for at least an eight (8) hour basic day with time and one-half or double time for overtime, rest days and holidays (as applicable); vacation allowance; paid holidays (as applicable); railway and

unemployment insurance; public liability and property damage insurance; health and welfare benefits; transportation; meals; lodging and supervision. Negotiations for railway labor or collective bargaining agreements and rate changes authorized by appropriate Federal authorities may increase flagging rates. Flagging rates in effect at the time of performance by the flaggers will be used to calculate the flagging costs pursuant to this **Section 7**.

- 7.3 Licensor, at its sole discretion, may elect to designate a third party (the "**Scheduling Agent**"), to perform and/or arrange for the performance of the Services.
8. Payment Terms. All invoices are due thirty (30) days after the date of invoice. If Licensee fails to pay any monies due to Licensor within thirty (30) days after the invoice date, then Licensee shall pay interest on such unpaid sum from the due date until paid at an annual rate equal to the lesser of (i) the prime rate last published in *The Wall Street Journal* in the preceding December plus two and one-half percent (2-1/2%), or (ii) the maximum rate permitted by law.

LICENSOR'S RESERVED RIGHTS

9. Reserved Rights of Use. Licensor excepts and reserves the right, to be exercised by Licensor and any other parties who may obtain written permission or authority from Licensor:
- 9.1 to maintain, use, operate, repair, replace, modify and relocate any utility, power or communication pipe/lines/cables and appurtenances (other than the Pipeline) and other facilities or structures of like character upon, over, under or across the Premises existing as of the Effective Date;
 - 9.2 to construct, maintain, renew, use, operate, change, modify and relocate any tracks or additional facilities, structures and related appurtenances upon, over, under or across the Premises; or
 - 9.3 to use the Premises in any manner as Licensor in its sole discretion deems appropriate, provided Licensor uses all commercially reasonable efforts to avoid material interference with the use of the Premises by Licensee for the purpose specified in **Section 4** above.
10. Right to Require Relocation. If at any time during the term of this License, Licensor desires the use of its rail corridor in such a manner as would, in Licensor's reasonable opinion, be interfered with by the Pipeline, Licensee shall, at its sole expense, within thirty (30) days after receiving written notice from Licensor to such effect, make such changes in the Pipeline as in the sole discretion of Licensor may be necessary to avoid interference with the proposed use of Licensor's rail corridor, including, without limitation, the relocation of the Pipeline, or the construction of a new pipeline to replace the Pipeline. Notwithstanding the foregoing, Licensee agrees to make all emergency changes and minor adjustments, as determined by Licensor in its sole discretion, to the Pipeline promptly upon Licensor's request.

LICENSEE'S OPERATIONS

11. Construction and Maintenance of the Pipeline.
- 11.1 Licensee shall not enter the Premises or commence construction unless accompanied by Licensor's representative, the Scheduling Agent or its designee. Licensee shall notify Licensor's representative or the Scheduling Agent at ROWCoordinator@BNSF.com at least ten (10) business days prior to installation of the Pipeline and prior to entering the Premises for any subsequent maintenance thereon. Only in the event of emergency, Licensee shall notify Licensor's Roadmaster of entry onto the Premises, at the telephone (505) 864-5176, as soon as practicable and shall promptly thereafter follow up with written notice of such entry to the email provided above.
 - 11.2 Licensee's on-site supervisors shall retain/maintain a fully executed copy of this License at all times while on the Premises.
 - 11.3 While on the Premises, Licensee shall use only public roadways to cross from one side of Licensor's tracks to the other.

- 11.4 Any contractors or subcontractors performing work on the Pipeline or entering the Premises on behalf of Licensee shall be deemed servants and agents of Licensee for purposes of this License.
- 11.5 Under no conditions shall Licensee be permitted to conduct any tests, investigations or any other activity using mechanized equipment and/or machinery, or place or store any mechanized equipment, tools or other materials, within twenty-five (25) feet of the centerline of any railroad track on the Premises unless Licensee has obtained prior written approval from Licensor. Licensee shall, at its sole cost and expense, perform all activities on and about the Premises, including without limitation all construction and maintenance of the Pipeline, in such a manner and of such materials as not at any time to endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. If ordered to cease using the Premises at any time by Licensor's personnel due to any hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine the safe nature thereof, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is safe. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 11.6 Licensee shall, at its sole cost and expense, construct and maintain the Pipeline in such a manner and of such material that the Pipeline will not at any time endanger or interfere with (i) the existence or use of present or future tracks, roadbeds, or property of Licensor, (ii) the safe operation and activities of Licensor or existing third parties, or (iii) the rights or interests of third parties. The construction of the Pipeline shall be completed within one (1) year of the Effective Date, and any subsequent maintenance shall be completed within one (1) year of initiation. Within fifteen (15) days after completion of the construction of the Pipeline or the performance of any subsequent maintenance thereon, Licensee shall, at Licensee's own cost and expense, restore the Premises to substantially their state as of the Effective Date, unless otherwise approved in advance by Licensor in writing. On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense, surrender the Premises to Licensor pursuant to the terms and conditions set forth in **Section 24** hereof.
- 11.7 Licensor may direct one or more of its field engineers or inspectors to observe or inspect the construction and/or maintenance of the Pipeline at any time for compliance with the Drawings and Specifications and Legal Requirements (defined below). Licensee shall reimburse Licensor for the cost of such observation or inspection related services pursuant to **Section 8**. If ordered at any time to halt construction or maintenance of the Pipeline by Licensor's personnel due to non-compliance with the Drawings and Specifications or any other hazardous condition, Licensee shall immediately do so. Notwithstanding the foregoing right of Licensor, the parties agree that Licensor has no duty or obligation to observe or inspect, or to halt work on, the Pipeline, it being solely Licensee's responsibility to ensure that the Pipeline is constructed and maintained in strict accordance with the Drawings and Specifications and in a safe and workmanlike manner in compliance with all terms hereof. Neither the exercise of, nor the failure by Licensor to exercise, any right granted by this Section will alter in any way the liability allocation provided by this License. If at any time Licensee shall, in the sole judgment of Licensor, fail to properly perform its obligations under this **Section 11**, Licensor may, at its option and at Licensee's sole expense, arrange for the performance of such work as it deems necessary for the safety of its operations and activities. Licensee shall promptly reimburse Licensor for all costs and expenses of such work, pursuant to the terms of **Section 8**. Licensor's failure to perform any obligations of Licensee shall not alter the liability allocation hereunder.

12. Boring and Excavation.

- 12.1 Prior to Licensee conducting any boring, excavation, or similar work on or about any portion of the Premises, Licensee shall contact the applicable State's call-before-you-dig utility location service to have 3rd parties mark the location of utilities. Licensee shall explore the proposed location for such work with hand tools to a depth of at least three (3) feet below the surface of the ground to determine whether pipelines or other structures exist below the surface, provided,

however, that in lieu of the foregoing hand-tool exploration, Licensee shall have the right to use suitable detection equipment or other generally accepted industry practice (e.g., consulting with the United States Infrastructure Corporation) to determine the existence or location of pipelines and other subsurface structures prior to drilling or excavating with mechanized equipment. Licensee shall request information from Licensors concerning the existence and approximate location of Licensors' underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline by contacting Licensors' Telecommunications Helpdesk, currently at 1-800-533-2891 (option 1, then option 7), at least ten (10) business days prior to installation of the Pipeline. Upon receiving Licensee's timely request, Licensors will provide Licensee with the information Licensors has in its possession regarding any existing underground lines, utilities, and pipelines at or near the vicinity of the proposed Pipeline and, if applicable, identify the location of such lines on the Premises pursuant to Licensors' standard procedures. Licensors does not warrant the accuracy or completeness of information relating to subsurface conditions of the Premises and Licensee's operations will be subject at all times to the liability provisions herein.

- 12.2 For all bores greater than 26-inch diameter and at a depth less than 10.0 feet below bottom of rail, a soil investigation must be performed by Licensee and reviewed by Licensors prior to construction. This study is to determine if granular material is present, and to prevent subsidence during the installation process. If the investigation determines in Licensors' reasonable opinion that granular material is present, Licensors may select a new location for Licensee's use, or may require Licensee to furnish for Licensors' review and approval, in Licensors' sole discretion, a remedial plan to deal with the granular material. Once Licensors has approved any such remedial plan in writing, Licensee shall, at Licensee's sole cost and expense, carry out the approved plan in accordance with all terms thereof and hereof.
- 12.3 No wells shall be installed without prior written approval from Licensors.
- 12.4 Any open hole, boring, or well constructed on the Premises by Licensee shall be safely covered and secured at all times when Licensee is not working in the actual vicinity thereof. Following completion of that portion of the work, all holes or borings constructed on the Premises by Licensee shall be:
 - 12.4.1 filled in to surrounding ground level with compacted bentonite grout; or
 - 12.4.2 otherwise secured or retired in accordance with any applicable Legal Requirement. No excavated materials may remain on Licensors' property for more than ten (10) days, but must be properly disposed of by Licensee in accordance with applicable Legal Requirements.

LIABILITY AND INSURANCE

13. Liability and Indemnification.

- 13.1 For purposes of this License: (a) "**Indemnitees**" means Licensors and Licensors' affiliated companies, partners, successors, assigns, legal representatives, officers, directors, shareholders, employees, and agents; (b) "**Liabilities**" means all claims, liabilities, fines, penalties, costs, damages, losses, liens, causes of action, suits, demands, judgments, and expenses (including, without limitation, court costs, reasonable attorneys' fees, costs of investigation, removal and remediation, and governmental oversight costs) environmental or otherwise; and (c) "**Licensee Parties**" means Licensee and Licensee's officers, agents, invitees, licensees, employees, or contractors, or any party directly or indirectly employed by any of them, or any party they control or exercise control over.
- 13.2 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND AND HOLD HARMLESS INDEMNITEES FOR, FROM, AND AGAINST ANY AND ALL LIABILITIES OF ANY NATURE, KIND, OR DESCRIPTION DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM, OR RELATED TO (IN WHOLE OR IN PART):**

- 13.2.1 **THIS LICENSE, INCLUDING, WITHOUT LIMITATION, ITS ENVIRONMENTAL PROVISIONS,**
- 13.2.2 **ANY RIGHTS OR INTERESTS GRANTED PURSUANT TO THIS LICENSE,**
- 13.2.3 **LICENSEE'S OCCUPATION AND USE OF THE PREMISES,**
- 13.2.4 **THE ENVIRONMENTAL CONDITION AND STATUS OF THE PREMISES CAUSED BY OR CONTRIBUTED TO BY LICENSEE, OR**
- 13.2.5 **ANY ACT OR OMISSION OF ANY LICENSEE PARTY.**
- 13.3 **TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE NOW AND FOREVER WAIVES AND WILL INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM ANY AND ALL CLAIMS THAT BY VIRTUE OF ENTERING INTO THIS LICENSE, LICENSOR IS A GENERATOR, OWNER, OPERATOR, ARRANGER, OR TRANSPORTER FOR THE PURPOSES OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, AS AMENDED ("CERCLA") OR OTHER ENVIRONMENTAL LAWS (DEFINED BELOW). NOTHING IN THIS LICENSE IS MEANT BY EITHER PARTY TO CONSTITUTE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES AND THIS LICENSE SHOULD NOT BE SO CONSTRUED. IF ANY AGENCY OR COURT CONSTRUES THIS LICENSE TO BE A WAIVER OF ANY INDEMNITEE'S COMMON CARRIER DEFENSES, LICENSEE AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND INDEMNITEES FOR ANY LIABILITIES RELATED TO THAT CONSTRUCTION OF THIS LICENSE. IN NO EVENT AS BETWEEN LICENSOR AND LICENSEE AS TO USE OF THE PREMISES AS CONTEMPLATED BY THIS LICENSE SHALL LICENSOR BE RESPONSIBLE TO LICENSEE FOR THE ENVIRONMENTAL CONDITION OF THE PREMISES.**
- 13.4 **IF ANY EMPLOYEE OF ANY LICENSEE PARTY ASSERTS THAT HE OR SHE IS AN EMPLOYEE OF ANY INDEMNITEE, TO THE FULLEST EXTENT PERMITTED BY LAW, LICENSEE SHALL, AND SHALL CAUSE ITS CONTRACTOR TO, RELEASE, INDEMNIFY, DEFEND, AND HOLD THE INDEMNITEES HARMLESS FROM AND AGAINST ANY LIABILITIES ARISING OUT OF OR RELATED TO (IN WHOLE OR IN PART) ANY SUCH ASSERTION INCLUDING, BUT NOT LIMITED TO, ASSERTIONS OF EMPLOYMENT BY AN INDEMNITEE RELATED TO THE FOLLOWING OR ANY PROCEEDINGS THEREUNDER: THE FEDERAL EMPLOYERS' LIABILITY ACT, THE SAFETY APPLIANCE ACT, THE LOCOMOTIVE INSPECTION ACT, THE OCCUPATIONAL SAFETY AND HEALTH ACT, THE RESOURCE CONSERVATION AND RECOVERY ACT, AND ANY SIMILAR STATE OR FEDERAL STATUTE.**
- 13.5 **THE FOREGOING OBLIGATIONS OF LICENSEE SHALL NOT APPLY TO THE EXTENT LIABILITIES ARE PROXIMATELY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY INDEMNITEE, BUT SHALL APPLY TO ALL OTHER LIABILITIES, INCLUDING THOSE ARISING FROM OR ATTRIBUTED TO ANY OTHER ALLEGED OR ACTUAL NEGLIGENCE, INTENTIONAL ACTS, OR STRICT LIABILITY OF ANY INDEMNITEE.**
- 13.6 Upon written notice from Licensor, Licensee agrees to assume the defense of any lawsuit or other proceeding brought against any Indemnatee by any entity, relating to any matter covered by this License for which Licensee has an obligation to assume liability for and/or save and hold harmless any Indemnatee. Licensee shall pay all costs and expenses incident to such defense, including, but not limited to, reasonable attorneys' fees, investigators' fees, litigation and appeal expenses, settlement payments, and amounts paid in satisfaction of judgments.
- 14. **Personal Property Risk of Loss. ALL PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, FIXTURES, EQUIPMENT, OR RELATED MATERIALS UPON THE PREMISES WILL BE AT THE RISK OF LICENSEE ONLY, AND NO INDEMNITEE WILL BE LIABLE FOR ANY DAMAGE THERETO OR THEFT THEREOF, WHETHER OR NOT DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF ANY INDEMNITEE.**

15. Insurance. Licensee shall, at its sole cost and expense, procure and maintain during the term of this License the following insurance coverage:

15.1 Commercial General Liability "CGL" Insurance.

- a. The policy will provide a minimum of \$5,000,000 per occurrence and an aggregate limit of at least \$10,000,000 but in no event will the coverage be in an amount less than the amount otherwise carried by Licensee. Coverage must be purchased on a post 2004 ISO occurrence form or equivalent and include coverage for, but not limited to, the following:
 - Bodily Injury and Property Damage
 - Personal Injury and Advertising Injury
 - Fire legal liability
 - Products and completed operations
 - Sudden and accidental pollution coverage
 - Contractual Liability for an "Insured Contract" consistent with the definition under the standard ISO general liability policy form.
- b. This policy will include the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - The definition of "Insured Contract" will be amended to remove any exclusion or other limitation for any work being done within 50 feet of Licensor's property;
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor and Jones Lang LaSalle Brokerage, Inc. to include coverage for ongoing and completed operations;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.
- c. The parties agree that the workers' compensation and employers' liability related exclusions in the CGL policy(s) are intended to apply to employees of the policyholder and will not apply to Licensor's employees.
- d. No other endorsements that limit coverage with respect to Licensee's obligations under this agreement may be included on the policy.

15.2 Business Automobile Insurance.

- a. The insurance will provide minimum coverage with a combined single limit of at least \$1,000,000 per accident, and include coverage for, but not limited to the following:
 - Bodily injury and property damage.
 - Any and all vehicles owned, used or hired.
- b. The policy will include the following endorsements or language, which will be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor;
 - Additional insured endorsement in favor of and acceptable to Licensor;
 - Separation of insureds;
 - The policy shall be primary and non-contributing with respect to any insurance carried by Licensor.

15.3 Workers' Compensation and Employers' Liability Insurance.

- a. The policy will provide coverage of all employees performing any part of the installation or maintenance of the Pipeline including coverage for, but not limited to:
 - Licensee's statutory liability under the workers' compensation laws of the state(s) in which the work or services under this agreement are to be performed. The policy will cover all of Licensee's employees, regardless of whether such coverage is optional under the law of that state(s).

- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 by disease policy limit, \$500,000 by disease each employee.
- b. The policy will include contain the following endorsements or language, which shall be indicated on or attached to the certificate of insurance:
 - Waiver of subrogation in favor of and acceptable to Licensor.

15.4 Railroad Protective Liability Insurance. The policy will name only Licensor as the Insured and will provide coverage of at least \$5,000,000 per occurrence and \$10,000,000 in the aggregate. The coverage obtained under this policy shall only be effective during the initial installation and/or construction of the Pipeline. **THE CONSTRUCTION OF THE PIPELINE SHALL BE COMPLETED WITHIN ONE (1) YEAR OF THE EFFECTIVE DATE.** If further maintenance of the Pipeline is needed at a later date, an additional Railroad Protective Liability Insurance Policy shall be required. The policy will be issued on a standard ISO form CG 00 35 12 04 and include the following:

- Endorsed to include the Pollution Exclusion Amendment.
- Endorsed to include the Limited Seepage and Pollution Endorsement.
- Endorsed to remove any exclusion for punitive damages.
- Endorsed to include Evacuation Expense Coverage Endorsement.
- No other endorsements restricting coverage may be added.
- The original policy must be provided to Licensor and Licensee shall not perform any work or services of any kind under this agreement until Licensor has reviewed and approved the policy.
- The definition of "Physical Damage to Property" will be endorsed to read: "means direct and accidental loss of or damage to all property owned by any named insured and all property in any named insured's care, custody and control (including, but not limited to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, tunnels, bridges and buildings) arising out of the acts or omissions of the contractor named on the Declarations."

In lieu of providing a Railroad Protective Liability Policy, for a period of one (1) year from the Effective Date, Licensee may participate in Licensor's Blanket Railroad Protective Liability Insurance Policy available to Licensee or its contractor. The limits of coverage are the same as above. The cost is \$1,266.00.

- ☐ Licensee may **elect** to participate in Licensor's Blanket Policy;
- ☐ Licensee **declines** to participate in Licensor's Blanket Policy.

15.6 Other Requirements:

- 15.6.1 Where allowable by law, no exclusion for punitive damages may be included in any policy.
- 15.6.2 Licensee agrees to waive its right of recovery against Licensor for all claims and suits against Licensor. In addition, Licensee's insurers, through the terms of the policy or policy endorsement, waive their right of subrogation against Licensor for all claims and suits. Licensee further waives its right of recovery, and its insurers also waive their right of subrogation against Licensor for loss of Licensee's owned or leased property or property under Licensee's care, custody, or control.
- 15.6.3 Allocated Loss Expense, including but not limited to defense costs and expenses, will be in addition to all policy limits for coverage under the insurance requirements.
- 15.6.4 Licensee is not allowed to self-insure without the prior written consent of Licensor. If Licensor allows Licensee to self-insure, Licensee shall directly cover any self-insured retention or other financial responsibility for claims in lieu of insurance. Any and all Licensor liabilities that would otherwise be covered by Licensee's insurance in

accordance with the provisions of this agreement, will be covered as if Licensee elected not to include a self-insured retention or other financial responsibility for claims.

- 15.6.5 Prior to entering the Premises or commencing any work related to the installation or subsequent maintenance of the Pipeline, Licensee shall furnish to Licensor an acceptable certificate(s) of insurance from an authorized representative evidencing the required coverage(s), endorsements, and amendments.
- 15.6.6 Licensee shall notify BNSF in writing at least 30 days prior to any cancellation, non-renewal, substitution or material alteration of any insurance requirement.
- 15.6.7 Any insurance policy shall be written by a reputable insurance company acceptable to Licensor or with a current Best's Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the service is to be provided.
- 15.6.8 If the coverage provided by any of the insurance policies required by this agreement is purchased on a "claims made" basis, Licensee hereby agrees to maintain coverage in force for a minimum of three years after expiration, cancellation or termination of this agreement.
- 15.6.9 Licensee agrees to provide evidence to Licensor that it has the required coverage in place at least annually or in the event of a renewal or material change of coverage
- 15.6.10 Licensee represents that this License has been thoroughly reviewed by Licensee's insurance agent(s)/broker(s), and that Licensee has instructed them to procure the insurance coverage required by this License.
- 15.6.11 Not more frequently than once every five years, Licensor may, at its discretion, reasonably modify the insurance requirements to reflect the then-current risk management practices in the railroad industry and underwriting practices in the insurance industry.
- 15.6.12 If Licensee will subcontract any portion of the operation, Licensee shall require that the subcontractor provide and maintain insurance coverage(s) as set forth herein, naming Licensor as an additional insured. In addition, Licensee shall require that the subcontractor shall release, defend and indemnify Licensee to the same extent and under the same terms and conditions as Licensee is required to release, defend and indemnify Licensor under this agreement.
- 15.6.13 Failure to provide evidence as required by this section shall entitle, but not require, Licensor to terminate this License immediately. Acceptance of a certificate that does not comply with this section shall not operate as a waiver of Licensee's obligations hereunder.
- 15.6.14 The fact that Licensee obtains insurance (including, without limitation, self-insurance) shall not release or diminish Licensee's liabilities or obligations including, without limitation, the liabilities and obligations under the indemnity provisions of the License. Damages recoverable by Licensor shall not be limited by the amount of the required insurance coverage.
- 15.6.15 In the event of a claim or lawsuit involving BNSF arising out of this Agreement, Licensee will make the policy covering such claims or lawsuits available to BNSF.
- 15.6.16 If Licensee maintains broader coverage and/or higher limits than the minimum requirements in this Agreement, BNSF requires and shall be entitled to the broader coverage and/or the higher limits. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to BNSF.

15.6.17 These insurance provisions are intended to be a separate and distinct obligation on the part of the Licensee. Therefore, these provisions shall be enforceable and Licensee shall be bound thereby regardless of whether or not indemnity provisions are determined to be enforceable in the jurisdiction in which the work or services are performed under this License.

15.6.18 For purposes of this **Section 15**, Licensors shall mean "Burlington Northern Santa Fe, LLC", "BNSF Railway Company" and the subsidiaries, successors, assigns and affiliates of each.

COMPLIANCE WITH LAWS, REGULATIONS, AND ENVIRONMENTAL MATTERS

16. Compliance with Laws, Rules, and Regulations.

- 16.1 Licensee shall observe and comply with any and all applicable federal, state, local, and tribal laws, statutes, regulations, ordinances, orders, covenants, restrictions, or decisions of any court of competent jurisdiction ("**Legal Requirements**") relating to the construction, maintenance, and use of the Pipeline and the use of the Premises.
- 16.2 Prior to entering the Premises, Licensee shall and shall cause its contractor(s) to comply with all of Licensors's applicable safety rules and regulations. Licensee must ensure that each of its employees, contractors, agents or invitees entering upon the Premises completes the safety orientation program at the Website "www.BNSFcontractor.com" (the "**Safety Orientation**") within one year prior to entering upon the Premises. Additionally, Licensee must ensure that each and every employee of Licensee, its contractors, agents and invitees possess a card certifying completion of the Safety Orientation prior to entering upon the Premises. Licensee must renew (and ensure that its contractors, agents or invitees, as applicable, renew) the Safety Orientation annually.
- 16.3 Licensee shall obtain on or before the date it or its contractor enters the Premises, any and all additional rights-of way, easements, licenses and other agreements relating to the grant of rights and interests in and/or access to the Premises (collectively, the "**Rights**") and such other rights, licenses, permits, authorizations, and approvals (including without limitation, any necessary local, state, federal or tribal authorizations and environmental permits) that are necessary in order to permit Licensee to construct, maintain, own and operate the Pipeline and otherwise to perform its obligations hereunder in accordance with the terms and conditions hereof.
- 16.4 Licensee shall either require that the initial stated term of each such Rights be for a period that does not expire, in accordance with its ordinary terms, prior to the last day of the term of this License or, if the initial stated term of any such Right expires in accordance with its ordinary terms on a date earlier than the last day of the term of this License, Licensee shall, at its cost, exercise any renewal rights thereunder, or otherwise acquire such extensions, additions and/or replacements as may be necessary, in order to cause the stated term thereof to be continued until a date that is not earlier than the last day of the term of this License.
- 16.5 Upon the expiration or termination of any Right that is necessary in order for Licensee to own, operate or use the Pipeline in accordance with the terms and conditions of this License, this License thereby shall automatically expire upon such expiration or termination of the Right.

17. Environmental.

- 17.1 Licensee shall strictly comply with Environmental Laws (as defined below). Licensee shall not maintain a treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws on the Premises. Licensee shall not release or suffer the release of oil or Hazardous Materials (as defined below) on or about the Premises.
- 17.2 Except as specifically set forth in Section 4 of this License, Licensee covenants that it will not handle or transport Hazardous Materials through the Pipeline or on Licensors's property. Upon

request by Licensor, Licensee agrees to furnish Licensor with proof, satisfactory to Licensor, that Licensee is in compliance with the provisions of this **Section 17.2**.

- 17.3 Licensee shall give Licensor immediate notice to Licensor's Resource Operations Center at (800) 832-5452 of any known (i) release of Hazardous Materials on, from, or affecting the Premises, (ii) violation of Environmental Laws, or (iii) inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to Licensee's use of the Premises. Licensee shall use its best efforts to immediately respond to any release on, from, or affecting the Premises. Licensee also shall give Licensor prompt notice of all measures undertaken on behalf of Licensee to investigate, remediate, respond to or otherwise cure such release or violation.
- 17.4 If Licensor has notice from Licensee or otherwise of a release or violation of Environmental Laws arising in any way with respect to the Pipeline which occurred or may occur during the term of this License, Licensor may require Licensee, at Licensee's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure such release or violation affecting the Premises or Licensor's right-of-way.
- 17.5 Licensee shall immediately report to Licensor's Resource Operations Center at (800) 832-5452 any conditions or activities upon the Premises known to Licensee which create a risk of harm to persons, property or the environment and shall take all reasonable actions necessary to prevent injury to persons, property, or the environment arising out of such conditions or activities; provided, however, that Licensee's reporting to Licensor shall not relieve Licensee of any obligation whatsoever imposed on it by this License. Licensee shall promptly respond to Licensor's request for information regarding said conditions or activities.
- 17.6 During the term of this License, Licensor may, at Licensor's option, require Licensee to conduct an environmental audit, including but not limited to sampling, of the Premises through an environmental consulting engineer acceptable to Licensor, at Licensee's sole cost and expense, to determine if any noncompliance or environmental damage to the Premises has occurred during occupancy thereof by Licensee. The audit shall be conducted to Licensor's satisfaction and a copy of the audit report shall promptly be provided to Licensor for its review. Licensee shall pay all expenses for any remedial or corrective action that may be required as a result of said audit to correct any noncompliance or environmental damage, and Licensee shall diligently pursue and complete all necessary work prior to termination of this License. Licensee's obligations under this Section 17.6 shall survive termination of this License.
- 17.7 Notwithstanding anything in this Section 17, the parties agree that Licensor has no duty or obligation to monitor Licensee's use of the Premises to determine Licensee's compliance with Environmental Laws, it being solely Licensee's responsibility to ensure that Licensee's use of the Premises is compliant. Neither the exercise nor the failure by Licensor to exercise any rights granted in this Section will alter the liability allocation provided by this License.
- 17.8 **"Environmental Law(s)"** shall mean any federal, state, local, or tribal law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material, or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, CERCLA 42 U.S.C. §9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §5101 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq.; the Clean Air Act, 42 U.S.C. §7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. §2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. §300f et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 et seq.; and the Occupational Safety and Health Act, 29 U.S.C. 651 et seq.; all as have been amended from time to time, and any other federal, state, local, or tribal environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

- 17.9 **"Hazardous Material(s)"** shall include but shall not be limited to any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, local, or tribal governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint, polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (i) substances, (ii) materials, or (iii) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals", "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

DISCLAIMER OF WARRANTIES

18. No Warranties.

18.1 **LICENSOR'S DUTIES AND WARRANTIES ARE LIMITED TO THOSE EXPRESSLY STATED IN THIS LICENSE AND SHALL NOT INCLUDE ANY IMPLIED DUTIES OR IMPLIED WARRANTIES, NOW OR IN THE FUTURE. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE BY LICENSOR OTHER THAN THOSE CONTAINED IN THIS LICENSE. LICENSEE HEREBY WAIVES ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES OR WHICH MAY EXIST BY OPERATION OF LAW OR IN EQUITY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, HABITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

18.2 **LICENSOR MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING (A) THE SCOPE OF THE LICENSE OR OTHER RIGHTS GRANTED HEREUNDER TO LICENSEE OR (B) WHETHER OR NOT LICENSEE'S CONSTRUCTION, MAINTENANCE, OWNERSHIP, USE OR OPERATION OF THE PIPELINE WILL VIOLATE OR INFRINGE UPON THE RIGHTS, INTERESTS AND ESTATES OF THIRD PARTIES, INCLUDING, WITHOUT LIMITATION, ANY LEASES, USE RIGHTS, EASEMENTS AND LIENS OF ANY THIRD PARTY.**

19. Disclaimer of Warranty for Quiet Enjoyment. **LICENSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LICENSEE IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE.**

20. Eviction at Risk of Licensee. In case of the eviction of Licensee by anyone owning, claiming title to, or claiming any interest in the Premises, or by the abandonment by Licensor of the affected rail corridor, Licensor shall not be liable (i) to refund Licensee any compensation paid hereunder, except for the pro-rata part of any recurring charge paid in advance, or (ii) for any damages or costs Licensee sustains in connection with the eviction.

LIENS AND TAXES

21. Liens and Charges. Licensee shall promptly pay and discharge any and all liens arising out of any construction, alterations or repairs done, suffered or permitted to be done by Licensee on the Premises. Licensor is hereby authorized to post any notices or take any other action upon or with respect to the Premises that is or may be permitted by law to prevent the attachment of any such liens to the Premises; provided, however, that failure of Licensor to take any such action shall not relieve Licensee of any obligation or liability under this **Section 21** or any other Section of this License.

22. Taxes. Licensee shall pay when due any taxes, assessments or other charges (collectively, "**Taxes**") levied or assessed by any governmental or quasi-governmental body upon the Pipeline or any other improvements constructed or installed on the Premises by or for Licensee (collectively, the "**Improvements**") or any Taxes levied or assessed against Licensor or the Premises that are attributable to the Improvements.

DEFAULT, TERMINATION, AND SURRENDER

23. Default and Termination. In addition to and not in limitation of Licensor's right to terminate for failure to provide evidence of insurance as required pursuant to the terms of **Section 15**, the following events are also deemed to be events of default pursuant to which Licensor has the right to terminate as set forth below:
- 23.1 If default shall be made in any of Licensee's covenants, agreements, or obligations contained in this License and Licensee fails to cure said default within thirty (30) days after written notice is provided to Licensee by Licensor, or in case of any assignment or transfer of this License in violation of **Section 26** below, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee. Notwithstanding the foregoing, Licensor shall have the right to terminate this License immediately if Licensee fails to provide evidence of insurance as required in **Section 15**.
 - 23.2 Should Licensee not comply fully with the obligations of **Section 17** regarding the handling or transporting of Hazardous Materials, notwithstanding anything contained in any other provision of this License, Licensor may, at its option, terminate this License by serving five (5) days' notice in writing upon Licensee.
 - 23.3 Any waiver by Licensor of any default or defaults shall not constitute a waiver of the right to terminate this License for any subsequent default or defaults, nor shall any such waiver in any way affect Licensor's ability to enforce any Section of this License. The remedies set forth in this **Section 23** shall be in addition to, and not in limitation of, any other remedies that Licensor may have at law or in equity.
 - 23.4 In addition to and not in limitation of Licensor's rights to terminate this License for failure to provide evidence of insurance or occurrence of defaults as described above, this License may be terminated by either party, at any time, by serving thirty (30) days' written notice of termination upon the other party. Such termination shall not release either party hereto from any liability or obligation under the License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or thereafter in case by the terms of the License it is provided that anything shall or may be done after termination hereof.
24. Surrender of the Premises.
- 24.1 On or before expiration or termination of this License for any reason, Licensee shall, at its sole cost and expense:
 - 24.1.1 if so directed by Licensor in writing, remove the Improvements, the Pipeline and all appurtenances thereto, or, at the sole discretion of Licensor, fill and cap or otherwise appropriately decommission the Pipeline with a method satisfactory to Licensor;
 - 24.1.2 report and restore any damage to the Premises or Licensor's other property arising from, growing out of, or connected with Licensee's use of the Premises;
 - 24.1.3 remedy any unsafe conditions on the Premises created or aggravated by Licensee; and
 - 24.1.4 leave the Premises in substantially the condition which existed as of the Effective Date, or as otherwise agreed to by Licensor.
 - 24.2 Upon any expiration or termination of this License, if Licensee fails to surrender the Premises to Licensor or if Licensee fails to complete its obligations under **Section 24.1** above (the "**Restoration Obligations**"), Licensee shall have a limited license to enter upon the Premises solely to the extent necessary for Licensee to complete the Restoration Obligations, and all liabilities and obligations of Licensee hereunder shall continue in effect until the Premises are surrendered and the Restoration Obligations are completed. Neither termination nor expiration shall release Licensee from any liability or obligation under this License, whether of indemnity or

otherwise, resulting from any acts, omissions or events happening prior to the date of termination, or, if later, the date when Licensee surrenders the Premises and all of the Restoration Obligations are completed.

- 24.3 If Licensee fails to complete the Restoration Obligations within thirty (30) days after the date of such termination of its tenancy, then Licensors may, at its election, either: (i) remove the Pipeline and the other Improvements or otherwise restore the Premises, and in such event Licensee shall, within thirty (30) days after receipt of bill therefor, reimburse Licensors for cost incurred, (ii) upon written notice to Licensee, take and hold the Pipeline and the other Improvements and personal property as its sole property, without payment or obligation to Licensee therefor, or (iii) specifically enforce Licensee's obligation to restore and/or pursue any remedy at law or in equity against Licensee for failure to so restore. Further, if Licensors has consented to the Pipeline and the other Improvements remaining on the Premises following termination, Licensee shall, upon request by Licensors, provide a bill of sale in a form acceptable to Licensors conveying the Pipeline and the other Improvements to Licensors for no additional consideration.

MISCELLANEOUS

25. Successors and Assigns. All provisions contained in this License shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of Licensors and Licensee to the same extent as if each such successor and assign was named a party to this License.
26. Assignment.
- 26.1 Licensee may not sell, assign, transfer, or hypothecate this License or any right, obligation, or interest herein (either voluntarily or by operation of law, merger, or otherwise) without the prior written consent of Licensors, which consent may not be unreasonably withheld or delayed by Licensors. Any attempted assignment by Licensee in violation of this **Section 26** shall be a breach of this License and, in addition, shall be voidable by Licensors in its sole and absolute discretion.
- 26.2 For purposes of this **Section 26**, the word "assign" shall include without limitation (a) any sale of the equity interests of Licensee following which the equity interest holders of Licensee immediately prior to such sale own, directly or indirectly, less than 50% of the combined voting power of the outstanding voting equity interests of Licensee, (b) any sale of all or substantially all of the assets of (i) Licensee and (ii) to the extent such entities exist, Licensee's parent and subsidiaries, taken as a whole, or (c) any reorganization, recapitalization, merger or consolidation involving Licensee. Notwithstanding the foregoing, any reorganization, recapitalization, merger or consolidation following which the equity interest holders of Licensee immediately prior to such reorganization, recapitalization, merger or consolidation own, directly or indirectly, at least 50% of the combined voting power of the outstanding voting equity interests of Licensee or any successor thereto or the entity resulting from such reorganization, recapitalization, merger or consolidation shall not be deemed an assignment. THIS LICENSE SHALL NOT RUN WITH THE LAND WITHOUT THE EXPRESS WRITTEN CONSENT OF LICENSORS, SUCH CONSENT TO BE IN LICENSORS'S SOLE DISCRETION.
- 26.3 Notwithstanding the provisions of **Section 26.1** above or anything contained in this License to the contrary, if Licensee sells, assigns, transfers, or hypothecates this License or any interest herein in contravention of the provisions of this License (a "**Purported Assignment**") to another party (a "**Purported Transferee**"), the Purported Transferee's enjoyment of the rights and privileges granted under this License shall be deemed to be the Purported Transferee's agreement to be bound by all of the terms and provisions of this License, including but not limited to the obligation to comply with the provisions of **Section 15** above concerning insurance requirements. In addition to and not in limitation of the foregoing, Licensee, for itself, its successors and assigns, shall indemnify, defend and hold harmless Licensors for all Liabilities of any nature, kind or description of any person or entity directly or indirectly arising out of, resulting from or related to (in whole or in part) a Purported Assignment. The provisions of this **Section 26.3** shall survive the expiration or earlier termination of this License.
- 26.4 Licensors shall have the right to transfer and assign, in whole or in part, all of its rights and

obligations under this License, and upon any such transfer or assignment, Licensor shall be released from any further obligations hereunder, and Licensee agrees to look solely to the successor in interest of Licensor for the performance of such obligations.

27. Notices. Any notice, invoice, or other writing required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if (i) placed in the United States mail, certified, return receipt requested, or (ii) deposited into the custody of a nationally recognized overnight delivery service, addressed to the party to be notified at the address for such party specified below, or to such other address as the party to be notified may designate by giving the other party no less than thirty (30) days' advance written notice of such change in address.

If to Licensor: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131
Attn: Permits/Licenses

with a copy to: BNSF Railway Company
2650 Lou Menk Dr.
Fort Worth, TX 76131
Attn: Senior Manager Real Estate

If to Licensee: City of Emporia
522 Mechanic St. Emporia,
Kansas 66801
Attn: _____

28. Survival. Neither termination nor expiration will release either party from any liability or obligation under this License, whether of indemnity or otherwise, resulting from any acts, omissions or events happening prior to the date of termination or expiration, or, if later, the date when the Pipeline and the other Improvements are removed and the Restoration Obligations are completed in accordance with the terms hereof.
29. Recordation. It is understood and agreed that this License shall not be placed or allowed to be placed on public record.
30. Applicable Law. All questions concerning the interpretation or application of provisions of this License shall be decided according to the substantive laws of the State of Texas without regard to conflicts of law provisions.
31. Severability. To the maximum extent possible, each provision of this License shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this License shall be prohibited by, or held to be invalid under, applicable law, such provision shall be ineffective solely to the extent of such prohibition or invalidity, and this shall not invalidate the remainder of such provision or any other provision of this License.
32. Integration. This License is the full and complete agreement between Licensor and Licensee with respect to all matters relating to Licensee's use of the Premises, and supersedes any and all other agreements between the parties hereto relating to Licensee's use of the Premises as described herein. However, nothing herein is intended to terminate any surviving obligation of Licensee or Licensee's obligation to defend and hold Licensor harmless in any prior written agreement between the parties.
33. Joint and Several Liability. If Licensee consists of two or more parties, all the covenants and agreements of Licensee herein contained shall be the joint and several covenants and agreements of such parties.
34. Waiver. The waiver by Licensor of the breach of any provision herein by Licensee shall in no way impair the right of Licensor to enforce that provision for any subsequent breach thereof.

35. Interpretation.

35.1 This License shall be interpreted in a neutral manner, and not more strongly for or against any party based upon the source of the draftsmanship; both parties hereby agree that this License shall not be subject to the principle that a contract would be construed against the party which drafted the same. Article titles, headings to sections and paragraphs and the table of contents (if any) are inserted for convenience of reference only and are not intended to be a part or to affect the meaning or interpretation hereof. The exhibit or exhibits referred to herein shall be construed with and as an integral part of this License to the same extent as if they were set forth verbatim herein.

35.2 As used herein, "include", "includes" and "including" are deemed to be followed by "without limitation" whether or not they are in fact followed by such words or words of like import; "writing", "written" and comparable terms refer to printing, typing, lithography and other means of reproducing words in a visible form; references to any person are also to that person's successors and permitted assigns; "hereof", "herein", "hereunder" and comparable terms refer to the entirety hereof and not to any particular article, section, or other subdivision hereof or attachment hereto; references to any gender include references to the masculine or feminine as the context requires; references to the plural include the singular and vice versa; and references to this License or other documents are as amended, modified or supplemented from time to time.

36. Counterparts. This License may be executed in multiple counterparts, each of which shall, for all purposes, be deemed an original but which together shall constitute one and the same instrument, and the signature pages from any counterpart may be appended to any other counterpart to assemble fully executed documents, and counterparts of this License may also be exchanged electronically and any electronic version of any party's signature shall be deemed to be an original signature for all purposes.

37. Licensor's Representative. Jones Lang LaSalle Brokerage, Inc. is acting as representative for BNSF Railway Company.

END OF PAGE – SIGNATURE PAGE FOLLOWS

This License has been duly executed by the parties hereto as of the Effective Date.

LICENSOR:

BNSF Railway Company, a Delaware corporation

By: Jones Lang LaSalle Brokerage, Inc.
2650 Lou Menk Drive, MOB2
Fort Worth, TX 76131

By: _____
By: Patricia Villegas
Title: Vice President, Permits

LICENSEE:

City of Emporia, a Kansas municipality

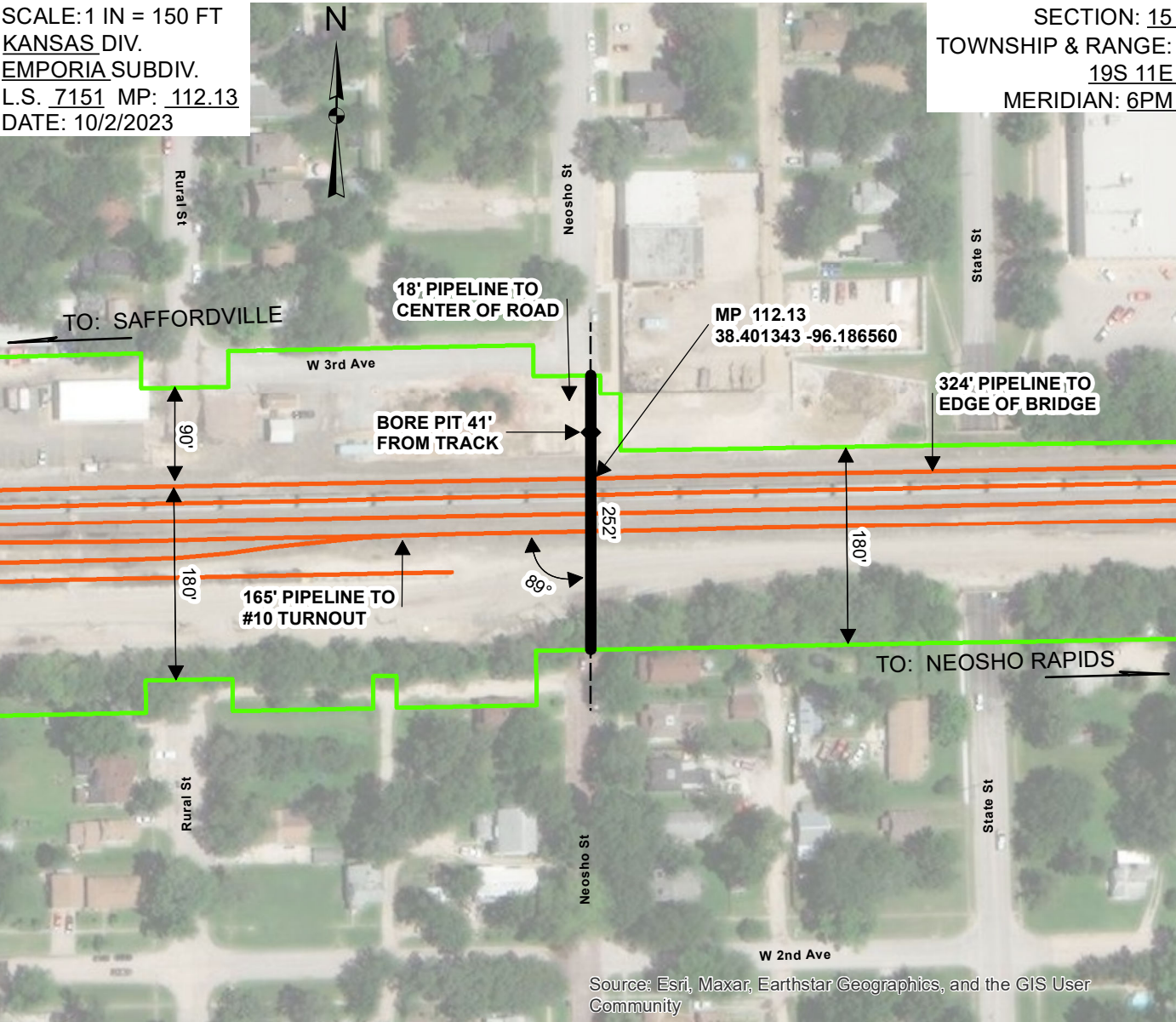
By: _____
By:
Title:

EXHIBIT "A"

SCALE: 1 IN = 150 FT
KANSAS DIV.
EMPORIA SUBDIV.
L.S. 7151 MP: 112.13
DATE: 10/2/2023

SECTION: 15
TOWNSHIP & RANGE:
19S 11E
MERIDIAN: 6PM

MAP REF. 502094



DESCRIPTION OF PIPELINE
PIPELINE SHOWN BOLD

	CARRIER PIPE	CASING PIPE		CARRIER PIPE	CASING PIPE
SIZE:	20"	30"	LENGTH ON R/W:	252'	252'
CONTENTS:	POTABLE WATER		WORKING PRESSURE:	100 PSI	
PIPE MATERIAL:	PVC	STEEL	BURY: BASE/RAIL TO TOP OF CASING		8.7'
SPECIFICATIONS / GRADE:	DR18	ASTM A 139 GRADE B	BURY: NATURAL GROUND		5.75'
WALL THICKNESS:	1.2"	0.5"	BURY: ROADWAY DITCHES		5.75'
COATING:	-	BITUMINOUS	CATHODIC PROTECTION		NO

VENTS: NUMBER - SIZE - HEIGHT OF VENT ABOVE GROUND -
NOTE: CASING TO BE JACKED OR DRY BORED ONLY

EMPORIA
COUNTY OF LYON

STATE OF KS

BTH



Commission Action Report

Informational Items

Title: Informational Items

Agenda Date: April 2, 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, April 16, 2025.

Commission Meeting :

- National Small Business Week
- Earth Day Proclamation
- Arbor Day Proclamation
- Ordinance Vacating a Platted Alley West of 12th Avenue Baptist Church
- Award 2025 Street Rehab

Study Session :

- NRH Update
- Disc Golf/Champions Landing
- Emporia Human Relations Update
- Discuss Stormwater Utility
- Amend Ordinance for Grease Interceptor